Health and Other Legislation Amendment Bill 2022

Explanatory Notes

Short title

The short title of the Bill is the Health and Other Legislation Amendment Bill 2022 (Bill).

Policy objectives and the reasons for them

The Bill amends the following Acts to facilitate initiatives that promote Queenslanders' health, to support the provision of health services in Queensland and to improve the operation of health portfolio and related legislation:

- *Hospital and Health Boards Act 2011* to:
  - strengthen protections for the physical and psychological wellbeing of the public health workforce by requiring Hospital and Health Boards and Hospital and Health Services to proactively consider the health, safety and wellbeing of staff of public sector health service facilities, and
  - reinforce the right to access health services under the *Human Rights Act 2019* by clarifying when healthcare security officers can direct persons to leave public healthcare premises;
- *Medicines and Poisons Act 2019* to:
  - protect the health of the community by ensuring information contained on registers about approvals of persons working with medicines or poisons, and administrative action taken against persons who have dealt with medicines or poisons in an improper way, can be disclosed if it is in the public interest;
  - ensure that Queensland Health can disclose confidential medicines and poisons information to Hospital and Health Services, Veterinary Surgeons Board of Queensland and law enforcement agencies for regulation, safety and compliance purposes; and
  - make operational and technical amendments to ensure that the requirements and exemptions for certain pest management activities are clear;
- *Recording of Evidence Act 1962* to establish a statutory framework for recording the proceedings of prescribed tribunals and providing access to copies of records and transcriptions of the proceedings;
- *Mental Health Act 2016* to:
  - support the Mental Health Review Tribunal (MHRT) to implement contemporary record-keeping practices by ensuring there are no operational barriers to it conducting electronic recording and appropriately sharing records; and
  - reduce delays in tribunal processes and patients receiving appropriate treatment by removing the requirement that adults with capacity who wish to waive the right to representation in MHRT proceedings may only do so in writing;

- *Public Health Act 2005* to:
  - maximise resources to screen children for preventable vision loss by authorising the disclosure of student information from schools to Queensland Health's vision screening health service; and
  - modernise the Queensland Cancer Register so that it more accurately reflects the incidence of cancer and knowledge regarding cancer-related treatments in Queensland by extending notification requirements to diagnostic imaging practices and enabling additional data to be collected from existing notifiers;
- *Radiation Safety Act 1999* to make operational and technical improvements regarding an offence for failing to ensure that a person does not receive greater than a specified dose of ionising radiation, and when a regulation may prescribe particular radioactive materials as exempt from requirements in the Act;
- *Transplantation and Anatomy Act 1979* to:
  - ensure efficient processes for the supply of human tissue products for essential health purposes by removing the requirement for Queensland doctors seeking to purchase products that are already approved by the Therapeutic Goods Administration's 'Special Access Scheme' to apply for a Ministerial permit; and
  - support consistent and practical processes for the donation of human tissue, such as organ donation after death, by ensuring that consent processes are consistent between public and private hospitals; and
- *Water Fluoridation Act 2008* to enable water fluoridation decisions to be appropriately communicated to affected communities by removing the requirement for decision and implementation notices to be published in a print newspaper.

Amendments to the *Hospital and Health Boards Act 2011*

Health, safety and wellbeing of staff of public sector health service facilities

The objective of the amendments to the Hospital and Health Boards Act is to strengthen protections for the wellbeing of workers in Queensland's public health services, including clinical, administrative and operational staff. In these explanatory notes, the term 'wellbeing' when used in connection with the Hospital and Health Boards Act refers to the concepts of health, safety and wellbeing. This includes both physical and psychological health, safety and wellbeing, as well as emotional wellbeing and cultural safety.

The public health workforce operates in what is often a high-pressure, challenging environment. The importance of public health workers' contribution to the Queensland community have become even more visible during the COVID-19 pandemic. It is also apparent that the complex nature of their work can pose unique risks to their wellbeing.

There are various work health and safety obligations imposed by Queensland and Commonwealth legislation to protect staff wellbeing in workplaces generally. However, there are no protections specific to the public health workforce. The Bill aims to require Hospital and Health Services, which provide public health services, and Hospital and Health Boards, which govern Services, to proactively consider ways of supporting the wellbeing of staff in Queensland's public sector health service facilities, including staff who perform community or home-based work. This requirement is intended to complement and contribute to compliance activities required under existing work health and safety legislation such as the *Work Health*

and Safety Act 2011 and *Work Health and Safety Regulation 2011*, as well as the *Managing the Risk of Psychosocial Hazards at Work Code of Practice* (due to commence on 1 April 2023), without affecting its broader application.

Clarifying the power to direct persons to leave public health facilities

The Hospital and Health Boards Act enables Health Service Chief Executives to appoint suitably qualified persons as security officers. These healthcare security officers may exercise powers under the Act in respect of health service land.

Section 183 of the Hospital and Health Boards Act allows healthcare security officers to direct a person to leave Hospital and Health Service land, or part of the land, if they are causing a public nuisance, which relates to being disorderly or creating a disturbance. Healthcare security officers may also direct a person to leave in related circumstances. These include where a security officer reasonably believes or suspects that a person has just caused a public nuisance, a person may pose a threat to the safety of anyone else on the land, or a person has no lawful justification or excuse to be on the land.

The power for healthcare security officers to direct a person to leave a health facility engages human rights considerations. Section 37 of the Human Rights Act provides a right to access health services, and states that a person must not be refused emergency medical treatment immediately necessary to save their life or to prevent serious impairment. Often healthcare staff have already engaged with a person before requesting security assistance, and therefore medical needs have been considered before the person is directed to leave. Where medical need is not already clear, it is operational practice for healthcare security officers to contact clinical staff to ensure that directing the person to leave is appropriate.

To reinforce these practices, and ensure the Hospital and Health Boards Act is consistent with the Human Rights Act, the Bill clarifies that a person must not be directed to leave public health premises if they require emergency medical treatment.

Amendments to the *Medicines and Poisons Act 2019*

Disclosure of information from confidential registers

Sections 228 to 230 of the Medicines and Poisons Act require Queensland Health to maintain an administrative action register and a substance authority register. A major function of these registers is to protect the public from harm.

The administrative action register contains details of administrative action taken against persons who have dealt with medicines and poisons in an inappropriate way. Administrative action includes when a condition of the person's authorisation to deal with medicines and poisons has been changed, when an authority is temporarily or permanently suspended and when a licence or approval under the Act is cancelled. For example, administrative action may stop a doctor from being able to prescribe particular medications. The substance authority register contains information about licences and authorities that have been granted to persons or businesses that deal with medicines and poisons. It was intended that information from the registers would enable someone to confirm that a person has appropriate approvals to deal with medicines or poisons. However, there are two barriers to the registers fulfilling this purpose.

First, the Medicines and Poisons Act allows the chief executive of Queensland Health to publish the registers on Queensland Health's website, but does not provide that information

from the registers can be disclosed directly to a person. In some circumstances it would be appropriate for discrete information to be provided to a person who has made an enquiry to Queensland Health. For example:

- a local government worker may make an enquiry over the phone about persons approved to conduct baiting activities in their catchment to assist them to identify if someone is conducting unapproved baiting;
- a business that is purchasing poisons from a wholesaler may wish to verify that the wholesaler is licensed; or
- a member of the public who has contracted a pest management technician to address a pest infestation may want to confirm whether the technician has the correct approvals for the work they are proposing to do.

Depending on the nature of the concerns and the legitimacy of the request, disclosing information directly to a person may protect the public from harms resulting from unauthorised or improper use of medicines or poisons.

Second, while the Medicines and Poisons Act permits the chief executive to publish the administrative action and substance authority registers on Queensland Health's website, there are limitations on disclosing confidential information, such as information about a person's identity. Section 231(2) of the Medicines and Poisons Act prohibits the chief executive from including confidential information on a public register unless they are satisfied that the inclusion of the confidential information is reasonably necessary to avoid a health risk and that the inclusion of the confidential information will not place a person at risk of harm.

This prohibition does not specify a level of harm or relevant types of harm. Because the chief executive cannot be satisfied that publication of confidential information will not cause any harm to any person, the registers have not been published online. There is no utility in publishing the registers without confidential information because the registers would not be able to resolve community enquiries about whether there are any issues with a particular person's authority to work with medicines or poisons.

The objective of the Bill is to protect the health of the Queensland community by ensuring that the chief executive can appropriately disclose information from the registers by providing information from the registers directly to a person where it is in the public interest, and by publishing information from the substance authority register online.

Disclosure of information to additional entities

Section 221 of the Medicines and Poisons Act authorises Queensland Health officers to disclose confidential medicines and poisons information they have become aware of in performing functions or powers under the Act to certain entities if the information is reasonably necessary for the entity to exercise its functions. The functions of the entities listed in section 221 relate to regulation, safety and compliance.

The Veterinary Surgeons Board of Queensland (VSBQ) and Hospital and Health Services are not included in this list of entities. However, it is appropriate to share certain information with them. For example, it is relevant to disclose to the VSBQ that a veterinarian's authority to deal with medicines is suspended, and to disclose to a Hospital and Health Service that Queensland Health is investigating a report of lost or stolen medicines and the involvement of a staff

member is suspected. The objective of the Bill is to ensure there is no barrier to information being shared with VSBQ and Hospital and Health Services for regulation, safety and compliance purposes.

Queensland Health also obtains confidential medicines and poisons information that can be relevant to disclose to the Queensland Police Service, Australian Federal Police, police services in other states and territories and non-police agencies that perform law enforcement functions. This information may be beneficial to disclose before disclosure is required by law, for example, to proactively assist the other entity to detect, investigate, prevent or prosecute an offence in relation to a substance that is regulated under the Medicines and Poisons Act. Section 221(d) of the Act authorises disclosure to a *law enforcement agency*, but does not provide certainty about whether a law enforcement agency includes police agencies from other jurisdictions, or non-police agencies with relevant enforcement functions. The Bill aims to clarify that confidential information can be appropriately disclosed to all relevant law enforcement agencies.

Definition of 'fumigation activity' and 'pest control activity'

The type of endorsements, competencies and approvals required by pest management technicians under the Medicines and Poisons Act vary according to whether they are using a fumigant or pesticide. However, the Act does not provide guidance about whether substances in the form of a mist or fog, are a fumigant or pesticide. This creates uncertainty for pest management technicians' obligations under the Act, for example, whether they should apply for a fumigation licence or a pest control licence. The Bill seeks to clarify that use of gaseous substances to manage pests, or substances that become gaseous at the time of use, are fumigation activities and not pest control activities.

Definition of 'primary producer'

The Medicines and Poisons Act provides that primary producers (such as farmers and growers) do not need to be authorised by Queensland Health to use non-household fumigants or pesticides on their own land. *Primary producer* is currently defined as a person producing or storing agricultural or horticultural products. This definition could be interpreted to capture persons who are storing products on their own land, but not producing them on the land, such as storage along the supply chain, landscape gardening, maintenance of ovals and retail garden work. It could also be interpreted to capture non-commercial hobby farmers. These activities are not intended to be exempted from requiring authorisation to use non-household fumigants and pesticides. Queensland Health has received enquiries from producers about whether they are a primary producer that would require authorisation from Queensland Health.

The Bill intends to amend the definition of *primary producer* to put it beyond doubt that the primary producer exemption for authorisation to use non-household pesticides and fumigants only applies to persons who are producing, or both producing and storing, agricultural or horticultural products for commercial purposes. Other persons can use household pesticides in accordance with the Act, or apply to Queensland Health to use other pesticides or fumigants.

Amendments to the *Recording of Evidence Act 1962*

The Recording of Evidence Act requires the recording of all evidence, rulings, directions, addresses, summings-up, and other matters in legal proceedings heard in a court (including a tribunal). The Act establishes a framework for recording legal proceedings and providing

access to copies of records and transcriptions of proceedings that is generally suited to the functioning of the courts and larger more formal proceedings such as those heard by the Queensland Civil and Administrative Tribunal (QCAT). It has been identified that the framework is not readily adaptable to smaller tribunals, such as the MHRT, with particular requirements and that often do not sit in a regular, controlled premises such as a court room.

In recognition of the different requirements of smaller tribunals the Bill establishes a framework for recording the proceedings of prescribed tribunals and providing access to copies of records and transcriptions of the proceedings that is more appropriately suited to the operational requirements of smaller tribunals.

Amendments to the *Mental Health Act 2016*

Accessing records and transcriptions of MHRT proceedings

The objective of the amendments to the Mental Health Act is to ensure that there are no operational barriers, such as restrictions on disclosing information, to the MHRT recording proceedings, including electronically, and sharing records in an appropriate way. The Bill aims to ensure that persons subject to proceedings and relevant entities such as their mental health service and courts can request and obtain accurate records of hearings. Accurate records of hearings can assist a person who has had a hearing and their treating team to recall and understand the MHRT's decision, and, if needed, support them to seek advice. Accurate records also support the Mental Health Court where a person before the Court has had a relevant MHRT matter. The MHRT intends to transition to electronically recording its proceedings in line with contemporary recording practices of courts and tribunals.

The Mental Health Act contains strict confidentiality requirements, ranging from general obligations, requirements to comply with confidentiality orders, and restrictions on disclosing victim impact statements. MHRT proceedings are sensitive and typically closed to the public. Only specific persons are entitled to request reasons for decisions. Proceedings explore individuals' mental health experiences in detail, and consider evidence that may involve personal information of third parties or have the potential to cause harm if it is disclosed.

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

The Bill also ensures that the MHRT is not in breach of overarching confidentiality obligations under the Act if it is complying with the Recording of Evidence Act. The amendments to the Mental Health Act will support the MHRT to implement electronic recording and enable the MHRT to provide records to third parties for recording or transcription purposes. It is not intended for the Bill to conflict with any lawful entitlement to copies of records or transcriptions that exist separately to the Recording of Evidence Act.

Waiving the right to representation

Under section 740(3) of the Mental Health Act, the MHRT must appoint a lawyer or another representative to represent a person at a MHRT hearing if:

- the person is a minor;

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

Section 740(3) enables a person to waive the right to be represented by the appointed person if they are an adult with capacity. This waiver must be provided in writing.

The requirement for a written waiver can be an administrative burden for patients and can create a barrier to individuals exercising their rights in a timely manner. The MHRT is unable to dismiss a legal representative where a written waiver is not provided, even if a person has capacity and has chosen to waive their right to representation. This can cause delays in the determination of hearings by the MHRT, as the representative cannot be dismissed and it is undesirable to continue a hearing against a patient's wishes. As a result, the MHRT must adjourn the proceeding until the written waiver can be completed. During an adjournment period, a person's involuntary treatment can continue without independent review or, in the case of electroconvulsive therapy applications, access to treatment may be delayed.

The Bill aims to allow a person to waive the right to be represented by any means of communication, including verbally. As the right to representation is an important protection for persons appearing before the MHRT, the Bill also ensures that existing safeguards about when the right can be waived continue to apply, and inserts safeguards for the provision of non-written waiver.

Amendments to the *Public Health Act 2005*

Disclosure of information to the school vision screening program

The Queensland Health Primary School Nurse Health Readiness Program (vision screening program) is a public health program that screens the Queensland prep student cohort each school year for the presence of amblyopia (lazy eye) and amblyopic risk factors, subject to parental/guardian consent. Amblyopia is the leading cause of preventable vision loss in children under eight years of age. Identifying young students affected by amblyopia, and referring them for follow-up, can improve their engagement at school and long-term educational outcomes.

Currently, the success of the vision screening program relies heavily on school staff and vision screening nurses undertaking significant administrative work. The program is resource-intensive, as there is no authority for schools to share information with the vision screening program, so that vision screening staff can assist by communicating with families whose children are eligible for vision screening. Instead, school staff spend significant time following up missing consent forms and forwarding any paper forms to vision screening staff. In addition, vision screening program nurses are required to manually enter student information from paper-based consent forms, which is time consuming and limits their availability to screen the number of students necessary to achieve universal coverage.

Chapter 5, part 4 of the Public Health Act allows student information to be shared between schools and Queensland Health dental and immunisation programs, to support positive health outcomes for children. The Bill will remove the administrative burden on school staff and nurses, increase capacity for families of eligible students to be contacted and maximise

resources to screen more children for vision loss, by including the vision screening program in this information sharing framework.

Requirements to notify the Queensland Cancer Register

Population-based cancer data is critical to understanding the impact of cancer and informing efforts to effectively address the burden of cancer and evaluate the success of cancer-related treatments. The Queensland Cancer Register is one of the largest population-based cancer registers in Australia and is a unique data resource bringing the most comprehensive set of cancer data elements together to provide an accurate picture of cancer in Queensland.

Chapter 6, part 2, division 2 of the Public Health Act requires directors of pathology laboratories, persons in charge of a hospital and persons in charge of a residential care facility to make notifications to the Queensland Cancer Register. These notification requirements reflect the types of health facilities and technologies involved in the diagnosis and management of cancer when the register was established in the 1980s.

The Queensland Cancer Register is currently not required to be notified of important information from pathology laboratories (such as diagnostic, staging, follow-up and monitoring examinations performed by the laboratories), or any information from diagnostic imaging practices. It is also not notified of all relevant cancer-related treatment from hospitals. Notifications from hospitals are limited to persons who separate from the hospital, and the first time in a calendar year that a person attends hospital as an outpatient for cancer treatment.

The objective of the Bill is to modernise the data that is provided to the Queensland Cancer Register, so that diagnostic imaging practices are required to make notifications, additional information is obtained from pathology laboratories, and hospital notifiers are required to provide more information about each treatment episode. This will support the Queensland Cancer Register to collect more accurate data, to inform understanding of cancer, analyse the use of treatments and develop strategies and education programs regarding cancer. It will also align with other Queensland Government commitments to address cancer, such as the record funding announced in June 2022 to develop a standalone cancer hospital with treatment, research, education and training facilities.

Amendments to the *Radiation Safety Act 1999*

The Radiation Safety Act regulates the risks of radiation exposure by specifying requirements for dealing with radiation. It provides exemptions from these requirements in certain circumstances. For example, the Act allows radiation sources prescribed by regulation to be exempt from the requirements of the Act where the exemption could not reasonably be expected to pose any, or more than negligible, health risks to any person, or adverse effects on the environment. However, the Radiation Safety Act does not allow radioactive material that is not a radioactive substance to be exempted. This is despite radioactive material that is not a radioactive substance posing a lower radiation risk than radiation sources.

The Bill intends to address the inconsistency by extending the power for the Radiation Safety Regulation to exempt radioactive material that is not a radioactive substance from requirements of the Act. The objective of this amendment is to ensure that exemptions can be made under the Radiation Safety Regulation for low-risk radioactive material, for example, the disposal of bodily waste by a patient following certain health treatments such as radiotherapy.

The Bill also transfers the offence for a person to fail to ensure that another person does not

receive in excess of a specific radiation dose from radioactive materials that are not radioactive substances, from the Radiation Safety Regulation to the Radiation Safety Act. Moving the offence to the Act would provide a clear head of power for the regulation to prescribe the relevant radiation doses.

Amendments to the *Transplantation and Anatomy Act 1979*

Supply of human tissue products under the TGA 'Special Access Scheme'

The Therapeutic Goods Administration (TGA) administers the 'Special Access Scheme' to allow the supply of certain therapeutic goods, including human tissue products, that are not listed on the Australian Register of Therapeutic Goods. This option is available if a doctor has a specific clinical need for such a product and there is no suitable alternative for the patient. Goods accessed under the scheme are required for essential health purposes, including life-saving treatment.

The TGA processes requests under the Special Access Scheme on a case-by-case basis, through set application and notification pathways that consider the seriousness of the patient's condition and whether the product has an established history of use for a particular condition.

The Transplantation and Anatomy Act prohibits buying, selling and trading in tissue except in relation to three specific categories of tissue, where the trading is for therapeutic, medical or scientific purposes. These categories do not include goods approved by the TGA Special Access Scheme, which means that after a request is approved under the Special Access Scheme, a Ministerial permit is required before doctors in Queensland can purchase the goods. A Queensland Health delegate grants a Ministerial permit on the basis that TGA approval has been given. The application to Queensland Health is therefore duplicative and can delay the provision of important healthcare. The Bill will remove this duplication.

Consent to organ donation in private hospitals

The Bill will also streamline the process for family members to consent to tissue being removed from a deceased person in a private hospital, for example for organ donation, by aligning it with the consent processes applicable in public hospitals. In public hospitals, a designated officer must authorise the removal of tissue, which involves them making inquiries into whether the deceased person had expressed any objection to the removal of tissue. The senior available next of kin (for example, the spouse, parent or adult child of the deceased person) must also consent to the removal of tissue. In public hospitals, the next of kin may provide verbal consent if it is not practical in the circumstances to obtain written consent. If this occurs, a record must be added to the deceased person's hospital records and reasonable efforts must be made to have the consent or communication confirmed in writing.

If a person is in a private hospital, only written consent from the senior available next of kin is permitted. There is also no requirement for a designated officer to authorise the removal of tissue. There are similar discrepancies between public and private hospitals in relation to the processes for authority for post-mortem examinations and authority for anatomical study.

The objective of the Bill is to ensure that consent processes for post-mortem removal of tissue are efficient and sensitive to the needs of mourning family members regardless of what type of hospital the deceased person is in. In private hospital situations, the requirement for written consent to be obtained from families of a deceased patient can be an unwelcome imposition at

an extremely distressing time. The lack of the option for the senior available next of kin to provide verbal consent in private hospitals can also cause delays in clinicians being able to remove tissue from the deceased. Human tissue donation after death is extremely time critical and it is essential that any possible efficiencies in the process are maximised.

Amendments to the *Water Fluoridation Act 2008*

The Water Fluoridation Act requires local governments to publish notification of decisions to add fluoride to a water supply, or decisions to remove fluoride from a water supply, in a newspaper circulating in the relevant area. It also requires public potable water suppliers to provide advance notice of their intention to add or remove fluoride from a water supply, also through a newspaper circulating in the relevant area.

The print media landscape is changing, especially in rural and remote areas where many Queensland communities no longer have access to a hardcopy local newspaper. Notifying communities of fluoridation matters through a newspaper is not always possible, and for some communities it may not be the preferable or most accessible form of communication. The Water Fluoridation Act is the only piece of health portfolio legislation that contains newspaper notification requirements.

The Bill aims to update notification requirements in relation to fluoridation, to modernise the requirements and ensure a flexible approach can be taken to suit the needs of different communities.

Achievement of policy objectives

Amendments to the *Hospital and Health Boards Act 2011*

Health, safety and wellbeing of staff of public sector health service facilities

The Bill amends the Hospital and Health Boards Act to require Hospital and Health Services and Hospital and Health Boards to proactively consider the wellbeing of staff of public sector health service facilities.

Section 19 of the Hospital and Health Boards Act sets out the functions of Hospital and Health Services, including the matters to which Hospital and Health Services must consider in the performance of their functions. Similarly, section 22 of the Hospital and Health Boards Act sets out matters that Hospital and Health Boards must consider in controlling Hospital and Health Services. The Bill amends these sections to require Hospital and Health Services and Hospital and Health Boards to have regard to the need to promote a culture, as well as implement measures, to support the wellbeing of staff of public sector health service facilities. The amendments are intended to ensure that staff wellbeing is a visible consideration in planning and service delivery for public health services in Queensland.

The Bill allows flexibility in how Hospital and Health Services and Hospital and Health Boards may meet the new requirements. It does not compel specific actions. This flexibility accommodates the diverse operating contexts of the 16 Hospital and Health Services and corresponding Hospital and Health Boards across Queensland.

The flexibility also enables regard to staff wellbeing to be demonstrated in a form that complements and contributes to broader existing or future workplace health and safety obligations and ensures that the Bill does not impact Hospital and Health Service and Hospital

and Health Board obligations under other legislation.

This amendment creates opportunities for Hospital and Health Services and Hospital and Health Boards to demonstrate that staff wellbeing is a priority. It also provides a specific and common measure against which Services and Boards can document successes. It is anticipated that the Bill will support Services and Boards to prioritise both existing and new staff wellbeing efforts, and to establish health service focus areas.

Clarifying the power to direct persons to leave public health facilities

The Bill inserts a new requirement into section 183 of the Hospital and Health Boards Act, to provide that a healthcare security officer must not direct a person to leave health services land, or part of the land, if the person requires emergency medical treatment immediately necessary to save their life or to prevent serious impairment. This amendment echoes the wording in section 37(2) of the Human Rights Act.

The Bill makes a person's need for emergency care an objective requirement. That is, if a person requires emergency medical treatment that is immediately necessary to save their life or to prevent serious impairment, security officers should not direct them to leave, and the security officer's beliefs about the person's health are irrelevant. This objective requirement reinforces operational practice for healthcare security officers to communicate with healthcare staff about a person's medical needs. Healthcare staff will therefore remain responsible for making clinical decisions about the urgency and seriousness of health care before a person is given a direction to leave Hospital and Health Service land.

Amendments to the *Medicines and Poisons Act 2019*

Disclosure of information from confidential registers

To facilitate appropriate disclosure of information from the administrative action register and the substance authority register, the Bill replaces the prohibition on publication of confidential information from the registers unless it is reasonably necessary to avoid a health risk and will not place a person at risk of harm, with authority for the chief executive to disclose information from the registers directly to a person who makes an enquiry if it is in the public interest. This public interest test will enable the chief executive to consider a range of factors in deciding whether it is appropriate and safe to disclose the information.

The Bill retains the ability for the chief executive to publish the substance authority register on the Queensland Health website. However, it removes the ability for the administrative action register to be published on the Queensland Health website. Queensland Health intends to create central guidance material to support departmental officers with a delegation from the chief executive to assess what is in the public interest and how to verify the legitimacy of requests for information from the registers. These amendments balance individual privacy with the need to protect the public from harm.

Disclosure of information to additional entities

The Bill adds Hospital and Health Services and VBSQ to the list of entities in section 221 of the Medicines and Poisons Act. This will enable Queensland Health officers to disclose confidential medicines and poisons information they have become aware of in performing functions or powers under the Act to Hospital and Health Services and VBSQ for regulation, safety and compliance purposes.

The Bill also clarifies that section 221(d) of the Medicines and Poisons Act enables information to be disclosed to an entity of the State, or another jurisdiction, that is responsible for law enforcement, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance. This will remove any ambiguity about the parameters of a 'law enforcement agency' and ensure that confidential information about medicines and poisons can be shared with federal police and state and territory police services, or other entities that are law enforcers.

Definition of 'fumigation activity' and 'pest control activity'

The Bill amends the definition of *fumigation activity* so that it refers to preparation or use of a substance to conduct existing types of fumigation activities (killing a pest, sterilising grain or seed to prevent germination, treating soil in which pests might be living or another activity prescribed by regulation) specifically in relation to when the substance becomes gaseous. The Bill also amends the definition of *pest control activity* to clarify that pest control activities are activities that are not fumigation activities. These amendments put beyond doubt that gaseous substances, or substances that start in another state but become a gas when they are in use, and are used for the above purposes, relate to fumigation activities. They will clarify for pest control technicians whether they should comply with the requirements for fumigation activities or pest control activities under the *Medicines and Poisons (Pest Management Activities) Regulation 2021*.

Definition of 'primary producer'

The Bill amends the definition of *primary producer* so that it only includes persons using the land to commercially produce agricultural or horticultural products. This clarifies that only persons producing agricultural or horticultural products or persons both producing and storing agricultural or horticultural products are exempt from the requirements to seek Queensland Health authorisation for use of non-household fumigants and pesticides. The new definition does not exempt persons who store, but do not produce, agricultural products from the requirements to seek authorisation.

Under the new definition, smaller producers such as bee-keepers, market gardens and hobby farms will still be covered by the exemption if they sell products for a profit.

Amendments to the *Recording of Evidence Act 1962*

The Bill amends the Recording of Evidence Act to establish a statutory framework for recording the proceedings of prescribed tribunals and for providing access to copies of the records and transcriptions of the proceedings. The framework is tailored to the requirements of prescribed tribunals by more appropriately balancing the need to preserve open justice with the particular operating procedures of smaller tribunals.

The Bill provides that the prescribed judicial person for the tribunal may arrange for the recording of relevant matter in a legal proceeding and/or the transcription of a record. The recording or transcription may be carried out by a member or staff of the tribunal or by someone else, such as an external service provider. The requirement for all relevant matter to be recorded will continue to apply to prescribed tribunals under the new framework.

The prescribed judicial person for the tribunal must ensure arrangements are in place for providing copies of records and/or transcriptions to judicial persons at no cost and to other persons in accordance with fees, if any, prescribed by regulation, such as at the regulated fee,

at no cost, or at a reduced cost.

The Bill provides safeguards to protect the privacy, safety, and wellbeing of persons referred to in records or transcriptions by providing that access to a copy of a record or transcription of a legal proceeding (or part of a legal proceeding) may be restricted under the Recording of Evidence Act or another Act, or by an order of a court (including a tribunal) or judicial person.

If the amendments in the Bill are passed and enacted, consequential amendments will be made to the *Recording of Evidence Regulation 2018* to give effect to the new framework.

Amendments to the *Mental Health Act 2016*

Accessing records and transcriptions of MHRT proceedings

The Bill amends the Mental Health Act to insert new section 793A, which clarifies and restricts who may access copies of records or transcriptions of MHRT proceedings under the Recording of Evidence Act to ensure that recording of evidence obligations are appropriately tailored to the nature of MHRT proceedings.

New section 793A provides that if a person requests a copy of a record or transcription under the Recording of Evidence Act, the president must not make the copy available unless the person is:

- a judicial person;
- the registrar of the Mental Health Court;
- the Chief Psychiatrist performing a function or exercising a power under the Mental Health Act;
- an inspector appointed by the Chief Psychiatrist performing a function or exercising a power under the Mental Health Act; or
- a person entitled to written notice of the relevant decision.

This enables the MHRT to refuse to provide records requested by other persons who are not closely connected to the proceedings, reflecting the sensitive nature of proceedings.

The persons able to access copies of records or transcriptions based on their entitlement to written notice of the relevant decision will depend in part on the nature of the proceeding, as section 755 of the Mental Health Act entitles persons to written notice of a decision if they were entitled to be given notice of the relevant hearing. For example, under section 418 of the Mental Health Act, the persons entitled to notice of a hearing relating to review of a treatment authority are the person subject to the authority, the applicant (where there is an applicant and the applicant is not the person subject to the authority), the administrator of the authorised mental health service responsible for the person and the Chief Psychiatrist (if the person is a classified patient). Under section 460, persons entitled to notice of a hearing for the purpose of making a forensic order after a forensic order is made under the Criminal Code are the person, the Attorney-General, the Chief Psychiatrist, the Director of Forensic Disability and the administrator of the authorised mental health service to which the person was admitted under the Criminal Code forensic order. Under section 503, only the applicant is entitled to a notice of a hearing relating to an application for an examination authority.

Lawyers, personal guardians or attorneys and nominated support persons for persons subject to proceedings will be able to access copies of records or transcriptions for persons subject to proceedings as sections 287 and 785 of the Mental Health Act entitle them to written notices. Family, carers or other support persons will also be able to receive copies of records or transcriptions in certain circumstances, as section 287 of the Act permits them to receive written notice if the patient may not understand or benefit from receiving the notice, giving the notice to the other person appears to be in the patient's best interests, and the patient has not asked for communication with the other person not to happen. These existing provisions ensure that the MHRT can provide copies of records or transcriptions to formal representatives and appropriate support persons, such as if a person subject to proceedings has requested that their case manager be given a copy.

As well as ensuring that only certain persons can obtain copies of records and transcriptions, new section 793A ensures that the MHRT can appropriately refuse or redact records. If a person is an entitled person, section 793A(2)(e) only enables them to be provided a copy of a record or a transcription to the extent that a confidentiality order, or restrictions on disclosure of victim impact statements, are not contravened.

New section 793A, in subsections (4) and (5), also ensures that when a person who is entitled to records on the basis that they are an applicant for an examination authority (where the person is not an administrator of an authorised mental health service or otherwise authorised by one), the records made available to that entitled person must not contain the contact, health or healthcare information of the person who is the subject of the application . Persons entitled to records on the basis of being an applicant for an examination authority may be a member of the public or have a history of conflict with the person the subject of the application. They may not be sufficiently connected to the MHRT proceedings and it may not be justifiable to provide sensitive and personal information to them without patient consent. Other persons who are provided a copy of a record or transcription (including persons subject to proceedings and judicial persons) will not have records redacted to remove contact, health or healthcare information.

While the Bill places limits on the provision of copies of recordings or transcripts, these limits only apply to records requested under the Recording of Evidence Act. The Bill does not affect entitlements to records under other legislation, for example, entitlements of statutory bodies. For example, the Office of the Public Guardian is an independent statutory office with investigative functions under the *Public Guardian Act 2014* and can request records from the MHRT under that Act. The Bill does not limit the application of the Public Guardian Act. Requests made outside of the Recording of Evidence Act will be considered with regard to the powers and permissions in the relevant legislation and the confidentiality provisions within the Mental Health Act.

The Bill also amends section 778(3)(b) of the Mental Health Act to clarify that it is not an offence for relevant persons to use or disclose personal information if the use or disclosure is permitted under any part of the Mental Health Act or is required or permitted by law. Section 778 prohibits the disclosure of personal information except for in limited circumstances and has maximum penalty of 100 penalty units. Currently the exemption for use or disclosure permitted under the Mental Health Act only applies to part 3 of the Act. This minor amendment ensures that the offence for disclosing confidential information is not triggered when the MHRT appropriately uses or discloses information in accordance with the Recording of Evidence Act framework and new section 793A of the Mental Health Act. For example, if the

MHRT provides a record to a third party transcription service to arrange a transcript that has been requested by an entitled person, there would be no offence under section 778.

The section 778 offence will continue to act as a safeguard against the improper disclosure of records. A separate offence under section 790 will also continue to apply. Under section 790, a person (any person, not only a *relevant person*) must not publish to the public, or publicly disseminate, a report of a proceeding of the MHRT unless the MHRT has granted leave. The MHRT may only grant leave if it is satisfied that publication of the report is in the public interest, and the report does not contain information that identifies or is likely to identify the person subject to the proceeding, a witness in the proceeding or a person mentioned or involved in the proceeding. The section 790 offence will apply to publication of records made through electronic recording, whether electronic, audio or written records.

When these amendments commence, the MHRT will make electronic recording its default recording method. Exceptions will only be made where there are compelling reasons, for example, if it is justifiable based on the special circumstances of a particular patient (such as where a patient is significantly distressed by being recorded and requests that it not occur).

Waiving the right to representation

The Bill updates section 740(4) of the Mental Health Act to allow adults with capacity to waive the right to representation other than in writing. Given the importance of the right to representation, the new section only allows non-written waiver if the MHRT is satisfied that this would not cause injustice to the person.

This limitation on when non-written waiver can be provided appropriately balances the importance of the right to representation with the general rights of individuals during their proceedings. The MHRT will consider various factors in determining whether non-written waiver would cause injustice to the person. For example, the MHRT may be satisfied that it would not cause injustice to accept non-written waiver because the proceeding is electronically recorded. The MHRT could also be satisfied that it would not cause injustice to accept non-written waiver in cases where a person has requested that electronic recording not occur and has refused to sign a written waiver, because requiring written waiver could delay the person's access to healthcare or result in them refusing to take part in a proceeding relating to their own orders and treatment. The restriction on non-verbal waiver recognises the importance of the right to representation while protecting the rights of particularly vulnerable individuals.

The MHRT will remain responsible for assessing a person's capacity to waive the right to a representative appointed by the MHRT. If the MHRT assesses a person as lacking capacity, the person will not be able to waive their right to representation. The MHRT will also retain the ability to require a waiver in writing if it is considered necessary. In addition, if the MHRT is authorised to accept a verbal waiver without it being electronically recorded, the MHRT must record the waiver in another way to meet its obligations under the Recording of Evidence Act.

Amendments to the *Public Health Act 2005*

Disclosure of information to the school vision screening program

The Bill will apply chapter 5, part 4 of the Public Health Act to the vision screening program. This will enable the vision screening program, as per immunisation and dental programs, to request information from schools about families who have not returned an electronic or paper

consent form for their child. This will allow vision screening nurses to directly follow up families of children who have not returned a consent form, address any questions about the program and identify any support that may be required to complete electronic forms rather than paper forms. These amendments will reduce administrative burden on school staff and nurses and maximise the number of children who are screened for preventable vision loss by creating opportunities for nurses to contact families directly.

Queensland Health will update its consent material and information resources for the vision screening program, to ensure that parents and guardians will be able to understand how their children's information may be used. Families will have the option of returning consent forms that advise that they do not want their children to participate in the program, and can also inform their children's school that they do not wish to be contacted by the program. The vision screening program will not contact these families.

The Bill will maintain existing privacy protections relating to information sharing. The Public Health Act only allows specific information listed in the Act and the *Public Health Regulation 2018* to be shared. This includes the name and date of birth of student, the name and contact details of a parent or guardian and information that will assist the vision screening program to decide how best to communicate with the family, such as the language that the student speaks at home. Information sharing under chapter 5, part 4 is also subject to the *Information Privacy Act 2009*.

Currently the vision screening program is the only vision screening program that can request and receive student information under the Public Health Act. Any non-government vision screening program providers will only have authority to request or obtain student information under the new provisions if they are engaged by a Hospital and Health Service. In addition, section 213AE of the Act ensures that any contracted services are subject to the Information Privacy Act.

School principals or their delegates will continue to be able to refuse to provide a student's information, if they consider that disclosure is not in the best interests of the student. Examples of where this may apply are where there are safety issues, parenting disputes or legal proceedings, as there may be implications for the student's welfare or compliance with legal orders if the vision screening program make contact with the family.

Requirements to notify the Queensland Cancer Register

The Bill will make several changes to modernise and increase the data that is available to the Queensland Cancer Register. The inclusion of new notification requirements will provide comprehensive coverage of cancer incidence and allow the Queensland Cancer Register to monitor the progress of a disease after diagnosis, evaluate the effectiveness of treatments and monitor disease-free intervals to provide an indication of a person's cancer returning.

The Bill will require diagnostic imaging providers to make notifications to the Queensland Cancer Register where a diagnostic imaging procedure, such as a scan, indicates that the individual has, has had, may have or may have had cancer, and the director of the diagnostic imaging practice reasonably suspects that the procedure was carried out to identify whether cancer is present, or to support or inform treatment of the cancer. Diagnostic imaging providers will base their view on the reason for the procedure on the referral details available to them.

The Bill will require pathology laboratories to notify all cancer-related pathology results for examinations following a person's primary cancer diagnosis, even if the result does not indicate

the person has cancer. Currently, the Public Health Act states that a notification should be provided if an examination indicates that a person from whom the specimen was taken is or was suffering from cancer.

The Bill will also enable additional data to be required from hospitals. Currently, notifications from hospitals are only required if an inpatient with cancer separates from the hospital, or if a person is attending the hospital as an outpatient to receive cancer treatment for the first time in a calendar year. The Bill will require hospitals to notify the Queensland Cancer Register if an individual attends the hospital for any reason, and they are diagnosed with cancer at the hospital and/or given cancer-related treatment, regardless of how many times they have previously attended for treatment. *Cancer-related treatment* is defined as an investigation, procedure or treatment provided to a person who has, or has had cancer, that is related to treating the cancer or an issue arising from previous treatment of cancer. It includes surgery, radiotherapy, all types of systemic therapy (for example chemotherapy, immunotherapy), whether to eliminate or shrink the cancer, or to provide symptom relief.

These new notification requirements will capture data that was formerly provided by residential care facilities. As such, the Bill will remove residential care facilities as notifiers.

The Bill will maintain the requirement that notifications be provided in the approved form. The form will be approved by the chief executive, published online and provided to notifiers. It is intended to require the following information through the approved form:

- for diagnostic imaging practices – the name of the referring doctor; the full name, date of birth, residential address and demographic details of the individual; the name of the procedure; date of the procedure; and the report of the procedure;
- for pathology laboratories – the name of the referring doctor; the full name, date of birth, residential address and demographic details of the individual; a description of the specimen type; the name of the examination; date of the examination; and the results of the examination; and
- for hospitals – the full name, date of birth, residential address and demographic details of the individual; the date the individual attended the hospital for treatment; if the person was admitted, the date they were admitted and any other details recorded with the admission such as reason for admission; if the person was diagnosed at the hospital, the diagnosis; date, type of cancer, method of diagnosis and doctor details for each cancer treatment; and if the treatment has ended, the date and reason for it ending, including where the person has died.

To ensure that reporting processes are efficient, notifiers will continue to be able to submit the form electronically. Queensland Health is supporting interested diagnostic imaging practices to access technology that will significantly automate the reporting process. Public and private hospitals currently comply with their notification requirements by submitting relevant extracts of data from patient management systems and a shared hospital database called the Queensland Hospital Admitted Patient Data Collection (QHAPDC) to the Queensland Cancer Register at regular intervals. The notification process for hospitals will not change. Similarly, pathology laboratories will be able to rely on the reporting mechanisms and cancer-related flagging tools they already have in place.

The Bill will maintain the offence for pathology laboratories and hospitals failing to comply with notification requirements, and will insert the same offence for diagnostic imaging practices. The offence has a maximum penalty of 20 penalty units, in accordance with the

existing penalty for failing to comply with notification requirements. The Bill will place notification obligations on the directors of pathology laboratories, diagnostic imaging providers and hospitals. A *director* will be defined as the person responsible for the day-to-day administration of the premises, regardless of their title or any financial interest. The Bill does not prevent another person (for example, an employee) from submitting the required notifications on a director's behalf. However, the ultimate responsibility for giving a notification rests with the director.

If the Bill is passed and enacted, the Public Health Regulation will be amended to prescribe the timeframe for notifications. It is proposed to maintain the current 30-day timeframe for all notifiers, except for data on treatment episodes from hospitals, which will have a timeframe of 120 days. This aligns the timeframe for new notification obligations with hospitals' existing obligations for reporting QHAPDC data under the *Private Health Facilities Regulation 2016*. This will prevent inconsistent and duplicative processes.

It is also intended to amend section 45 of the Public Health Regulation, which prescribes non-notifiable skin cancers, to make more types of skin cancers notifiable. This will enable the Queensland Cancer Register to obtain important data to inform knowledge and management of skin cancers which have risks of locoregional recurrence and reduced survival rates.

These reforms to the Queensland Cancer Register notification framework will commence by proclamation. It is proposed for the amendments to commence 12 months after the Bill is passed. Over this 12-month period Queensland Health will work with notifiers to ensure that they are aware of their obligations and options for notification, including by updating existing written guidance on notification obligations and processes. This implementation period will also enable technical improvements to be made to the technology for diagnostic imaging practices, in accordance with any feedback that diagnostic imaging providers have.

The Bill will also insert transitional provisions to ensure clarity about notification obligations where a notifiable event occurred under the former notification requirements, but no notification was made. These provisions are described below in the notes on provisions.

Amendments to the *Radiation Safety Act 1999*

The Bill will enable low risk radioactive material to be exempted under the Radiation Safety Regulation from requirements in the Act, such as disposal requirements, by extending the equivalent provision for radioactive substances to include radioactive material that is not also a radioactive substance. The Bill also inserts a new offence into the Radiation Safety Act for a person to fail to ensure that another person does not receive in excess of a specific radiation dose from radioactive materials that are not radioactive substances. It sets a maximum penalty of 100 penalty units.

If the Bill is passed and enacted, the Radiation Safety Regulation will be amended to clarify that, where a person has been administered a radioactive substance as part of a diagnostic or therapeutic procedure, and the person's bodily waste contains radioactive material, the person's bodily waste is exempt from the requirements of the Act. The Regulation will also be amended to remove the offence and penalty that has been inserted into the Radiation Safety Act. The Regulation will maintain details of the prescribed dose limits that are provided for in the Act offence.

Amendments to the *Transplantation and Anatomy Act 1979*

The Bill will exempt human tissue products that are approved by and supplied under the TGA's Special Access Scheme from trade prohibitions in the Transplantation and Anatomy Act. This will remove the requirement for doctors to apply to Queensland Health for a Ministerial permit to be able to purchase products for patients after they have received Special Access Scheme approval.

The Bill will also amend the definition of *hospital* so that it does not require private hospitals to be prescribed by regulation. It will define *hospital* as private hospitals under *Private Health Facilities Act 1999*. This will ensure that all private hospitals under that Act have the same consent process for families to consent to removal of tissue as the process in public hospitals. It will also avoid the need to amend regulations in the future to account for private hospitals changing names, new private hospitals, or private hospitals that are no longer operating.

Amendments to the *Water Fluoridation Act 2008*

The Bill will amend the Water Fluoridation Act to remove the requirement that water fluoridation notices be published in a print newspaper and replace it with a requirement that notices be published in a publicly accessible way. This will still allow newspaper notification where appropriate, while authorising other forms of notification such as publishing the information on the local government's website. These requirements will apply to both local governments and public potable water suppliers.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

While the amendments to the Recording of Evidence Act in the Bill do not necessarily impose significant additional costs for government, utilisation of the provisions by prescribed tribunals to change current practices, such as through implementing electronic recording of proceedings may result in some additional administrative and operational costs for government. As the MHRT intends to implement electronic recording, it will face additional costs relating to the procedures for providing copies of records or transcriptions to entitled persons. The MHRT will seek funding for these costs within existing government resources.

Cancer Alliance Queensland, which manages the Queensland Cancer Register, will implement the amendments to the Public Health Act to modernise the Register through existing resources. This includes supporting the roll-out and initial fees of the technology developed for diagnostic imaging providers and managing the increased data that will be received. However, the increased data received will create additional analysis and evaluation work. Cancer Alliance Queensland intends to seek additional resources from within Queensland Health's existing budget to support this work.

The above costs to government will be absorbed by existing budget allocations. Any other costs associated with the amendments included in the Bill will be minimal and met from existing staffing levels and budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles in the *Legislative Standards Act 1992*. Any departures from fundamental legislative principles are described below, and are considered justifiable.

Amendments to the *Medicines and Poisons Act 2019*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Privacy and confidentiality

The amendments to the Medicines and Poisons Act in clause 13 of the Bill enable the disclosure of information kept on registers of information about medicines and poisons. The amendments in clause 12 also enable the disclosure of information relevant to the functions of the Veterinary Surgeons Board Queensland (VSBQ) and Hospital and Health Services, and clarify that confidential information can be provided to law enforcement agencies in other jurisdictions. The amendments may therefore impact the right to privacy of individuals whose information is shared. As above, the right to privacy is relevant to whether legislation has sufficient regard to the rights and liberties of individuals.

Amendments to support the disclosure of confidential information to VSBQ, Hospital and Health Services and law enforcement agencies are justified to facilitate information-sharing between appropriate entities that will mitigate and address inappropriate use of medicines and poisons. The Health Ombudsman's 2016 Investigation report, *Undoing the knots constraining medicine regulation in Queensland*, noted a lack of information-sharing between agencies that deal with many interrelated matters each year.

Clarifying that information can be provided to law enforcement agencies outside of Queensland provides operational certainty when dealing with information about possible criminal offending that is relevant to another jurisdiction. The amendments to enable information sharing with VSBQ and Hospital and Health Services will ensure these entities can be provided with information necessary to support regulation, safety and compliance activities. All entities are subject to privacy requirements such as those in the Information Privacy Act, the Hospital and Health Boards Act, privacy legislation in other jurisdictions and any other privacy obligations under their governing legislation. Overall, the amendments have sufficient regard to the rights and liberties of individuals given their purpose is to ensure public safety, and because only the rights and liberties of individuals engaging in potentially harmful activity are affected.

The amendment to enable the disclosure of confidential information contained on the administrative action and substance authority registers also engages privacy considerations. The Bill allows the chief executive to disclose confidential information contained in the registers, or publish information from the substance authority register, where they are satisfied that the disclosure of information is in the public interest. This public interest test will replace the requirement for the chief executive to consider whether the information is reasonably necessary to avoid a health risk, and whether the confidential information will place a person at risk of harm.

In order to determine whether disclosure is in the public interest, the chief executive will consider a range of factors, including factors relating to harm. To support the chief executive

and delegates to consider the rights and liberties of individuals, Queensland Health intends to issue internal guidance on how to assess what is in the public interest and how to assess any requests for disclosure received.

Public interest is a well-established term that is used in health portfolio and other legislation, often without definition. It embeds regard to the rights and liberties of individuals. Any departures from the right to privacy associated with the amendments regarding the registers are therefore justified.

Natural justice

Section 4(3)(b) of the Legislative Standards Act states that whether the legislation has sufficient regard to the rights and liberties of individuals depends on, for example, whether the legislation is consistent with principles of natural justice. One of the principles of natural justice is that a person should not be deprived of a right or interest without being given an adequate opportunity to be heard, that is, to present their case to the decision-maker. The amendments to the Medicines and Poisons Act in clauses 12 and 13 of the Bill to allow the disclosure of information to VSBQ, Hospital and Health Services and law enforcement agencies, and to allow disclosure of information from the administrative action register, engage the issue of natural justice because they do not require the person whose information is disclosed to be notified in advance of the disclosure. However, any departure from the principles of natural justice is justified in the interests of public safety, and because there are limits to disclosure.

The disclosure of information to the VSBQ, Hospital and Health Services and law enforcement agencies will only be permitted where the administrator within Queensland Health is satisfied that the disclosure is reasonably necessary for the entity to exercise its functions, and the confidential information will be collected, stored and used by the entity in a way that protects the privacy of the persons to whom the information relates from unjustified intrusion. The disclosure of information will therefore only be made for regulation, safety and compliance purposes and adhere to strict information privacy safeguards. The other entity may not act on the information. If it does, that other entity must do so in compliance with its governing legislation.

The Bill enables the chief executive to disclose information from the administrative action register on a case-by-case basis. While practitioners do not need to be informed about disclosures, they are provided natural justice before being placed on the register. Information is placed on the register after administrative action has been taken and the practitioner has already had an opportunity to contest the issues relevant to that action, for example, through show cause processes. The exception is where immediate action has been taken on the basis of an urgent need to prevent a serious health risk. In addition, the Bill only enables information to be disclosed from the administrative action register if it is in the public interest. The public interest test is a high bar that affords protection to practitioners.

The Bill also enables the substance authority register to be published, or to be used to disclose information, if it is in the public interest. This register relates to the general status of authorities which is less sensitive than administrative action information. As disclosure does not relate to adverse findings it is unlikely to engage natural justice issues. However, as with the administrative action register, the Bill only enables information to be disclosed from the substance authority register if it is in the public interest, which is a high threshold.

Amendments to the *Public Health Act 2005*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Privacy and confidentiality

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have been identified by the former Scrutiny of Legislation Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties.

The amendments to the Public Health Act in the Bill engage these issues because they enable the Queensland Cancer Register to be provided with additional data about a person's cancer diagnosis and cancer management (part 5, division 3), and allow student information to be shared with the vision screening program (part 5, division 2). However, it is considered that the amendments strike an appropriate balance between the rights and liberties of individuals and long-term public health benefits.

Under section 231 of the Public Health Act, the Queensland Cancer Register has significant public health functions. Its purpose is to collect data to help with monitoring and analysing the outcomes and patterns of cancer, monitoring cancer mortality and increasing public awareness of cancer, and to assist in the planning of services and strategies for the prevention and management of cancer. The amendments will support the collection of a wider range of data about cancer, which will enable the Queensland Cancer Register to analyse more accurate information about cancer. This will inform strategies against cancer, which will benefit the community.

The Queensland Cancer Register has been in place for almost 40 years and there are strong privacy safeguards in place. The private information collected must be maintained in accordance with strict privacy and confidentiality obligations under the *Information Privacy Act 2009*. Cancer Alliance Queensland, which manages the operation of the Register, abides by Queensland Health security policies and follows industry best practice regarding data security. All Queensland Cancer Register data is stored on Queensland Health servers which have strict access controls to ensure the Queensland Cancer Register can only be accessed by current Cancer Alliance Queensland staff from limited locations.

While de-identified data from the Queensland Cancer Register can be released to researchers, clinicians, hospital administrators and the public on request or application, there are clear processes in place to ensure that any release of data complies with privacy principles, the Information Privacy Act, the Hospital and Health Boards Act and ethical standards. The Register is regularly audited and there are processes for correcting information if required. In addition, if a patient is found not to have had cancer, their data is immediately removed.

Cancer Alliance Queensland makes information about the operation of the Queensland Cancer Register, notifications under the Public Health Act and privacy safeguards available to health consumers online and through a brochure. If the Bill is passed, these resources will be updated to reflect the new notification requirements. The resources will be made available online and shared with notifiers, as well as stakeholders who work closely with people with cancer (such as oncologists and nurses), to ensure that information is accessible to persons whose data may be notifiable. During the 12-month implementation period before the new notification requirements commence, Cancer Alliance Queensland will work with notifiers to identify

additional opportunities for notifiers to advise patients about the Queensland Cancer Register to patients, for example through patient intake forms.

The vision screening program enables visual abnormalities in children to be detected and treated early. In turn, it minimises the impact of vision issues on a child's learning. The amendments will support the vision screening program to contact families who have not returned consent forms and talk to those families to determine whether they would like their child to be screened for preventable vision loss. The vision screening program does not currently have access to this information, and the Bill will therefore support more children to be screened. The benefit of disclosing student information to key school health programs to improve coverage of health services is well established, as the Public Health Act already authorises the disclosure of information about students to dental and immunisation programs.

Once information is collected, it must be maintained in accordance with strict privacy and confidentiality obligations under the Information Privacy Act and Hospital and Health Boards Act. Information that the vision screening program receives will be stored securely on Children's Health Queensland's QVision database. Registered nurses in each Hospital and Health Service that are contracted by Children's Health Queensland will only be able to access information about children located within their catchment area.

Parents and families are currently provided detailed information about the vision screening program. If the Bill is passed, this material will be updated to explain the disclosure of information that is authorised by the Public Health Act. The vision screening program will also work with schools to identify other opportunities to educate families about the vision screening program, such as through newsletters and school enrolment processes.

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

Proportionality and relevance of penalties

The proportionality and relevance of penalties is also relevant to whether legislation has sufficient regard to the rights and liberties of the individual. Clause 21 of the Bill creates a new offence in the Public Health Act for diagnostic imaging practices that fail to make notifications that will be required from them. The maximum penalty for failing to notify is 20 penalty units. This is a relevant and proportionate penalty. It assists to maintain the value of Queensland Cancer Register as a population-based cancer register that must record all cancer cases in the Queensland population. The penalty is consistent with existing offences which apply to hospitals and pathology laboratories.

Immunity from prosecution

Section 4(3)(h) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether the legislation does not confer immunity from proceedings or prosecution without adequate justification. The Public

Health Act affords protection to a person who provides further information in response to a notice from the chief executive given for a cancer notification. The person who gives the further information is deemed to not have breached any duties of confidentiality and cannot be held to have breached any code of professional ethics or departed from accepted standards of conduct. This provision already applies to pathology laboratories and hospitals, and will apply to diagnostic imaging practices if the Bill is passed and enacted. It is necessary for this provision to apply to diagnostic imaging practices to ensure that the protection for all notifiers is consistent, and to ensure the Queensland Cancer Register can collect accurate diagnostic imaging data.

Delegation of administrative power

Section 4(3)(c) of the Legislative Standards Act also provides that whether legislation allows the delegation of administrative power only in appropriate circumstances and to appropriate persons is relevant to whether the legislation has sufficient regard to rights and liberties of individuals. The Bill's amendments to the Public Health Act to update Queensland Cancer Register notification requirements require notifications to be made via an approved form. Because the approved form, rather than the Act, will contain the particulars that are required, the Bill engages the concept of delegation.

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

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

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

The time within which a cancer notification must be given to the Queensland Cancer Register by hospitals and pathology laboratories is currently prescribed by section 47 of the *Public Health Regulation 2018* (30 days after the person separates from hospital or after a pathological examination). It is intended to amend the Regulation to extend this timeframe to the new requirements for diagnostic imaging practices, and to provide hospitals 120 days to provide notifications relating to treatment periods. These are appropriate matters for subordinate legislation and are consistent with current legislation.

Similarly, while the provisions of the Public Health Act that allow school students' information to be shared with specific program providers state what information can be provided, additional information is prescribed by regulation (see sections 213AD of the Public Health Act and section 39 of the Public Health Regulation). This ensures that if additional information is

identified by school program providers as being necessary to guide appropriate communication with families, the information can be prescribed by regulation. It is not currently intended to change the information prescribed in the Public Health Regulation. As above, additional relevant particulars are appropriate matters to incorporate into subordinate legislation and are consistent with the current legislative framework.

For both these issues, the head of power will have been scrutinised by the Legislative Assembly. Regulation amendments will also be tabled in the Legislative Assembly and subject to disallowance. On this basis, and the suitability of the subject matter for subordinate legislation, any departure from the principle in section 4(2)(b) of the Legislative Standards Act is justified.

Amendments to the *Recording of Evidence Act 1962*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Privacy and confidentiality

As above, the right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The amendments to the Recording of Evidence Act in clause 35 of the Bill may be a departure from fundamental legislative principles in relation to privacy and confidentiality as the new framework preserves the existing requirement for copies of records and transcripts to be made available to any person. Any departure is justified as it is necessary to balance the right to privacy against the right to a fair trial by facilitating the making of complete and accurate records of all proceedings and allowing appropriate persons to access copies of records or transcriptions to ensure accountability and transparency in proceedings.

The effects of the departure are also mitigated by the ability to restrict who may access copies of records or transcriptions of proceedings under the Recording of Evidence Act or another Act, or by an order of a court (including a tribunal), or judicial person.

Natural justice

Section 4(3)(b) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether legislation is consistent with principles of natural justice. The principles of natural justice include procedural fairness requirements such as ensuring that court processes are transparent.

The recording of evidence provisions in clause 35 of the Bill may potentially breach this fundamental legislative principle by restricting access to copies of records or transcriptions of proceedings. Any departure is justified as it is necessary to balance the competing right to privacy of parties to the proceeding and others who may have given evidence, such as a victim or alleged victim of a crime.

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

Section 4(4)(a) and (b) of the Legislative Standards Act provide that whether a Bill has

sufficient regard to the institution of Parliament may depend on whether the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

The recording of evidence provisions in clauses 30 to 35 of the Bill will apply to tribunals that are prescribed by regulation and provide for a judicial person prescribed by regulation to arrange for the recording and transcription of records, and to ensure arrangements are in place for accessing copies of records and transcriptions at a cost prescribed by regulation, or in accordance with entitlements prescribed by regulation. This may raise the principle that legislation has sufficient regard to the institution of Parliament.

Any departure is justified as it is necessary to ensure the legislation is sufficiently flexible to apply the new framework to appropriate smaller tribunals, to place obligations on appropriate judicial persons associated with the tribunals, and to enable access to copies of records or transcriptions in a manner that reflects the cost of providing services, while ensuring copies of records and transcriptions are available for free or at a reduced cost for identified persons or categories of persons. The effects of the departure are also mitigated by limiting the delegation only to subordinate legislation within the meaning of the *Statutory Instruments Act 1992*, which ensures that any regulation pursuant to the delegation must be tabled before, and may be disallowed by, the Legislative Assembly.

Amendments to the *Mental Health Act 2016*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

Privacy and confidentiality

As above, the right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues are relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The amendments to the Mental Health Act in clause 17 of the Bill allow the MHRT to disclose a copy of a record or a transcription in accordance with the Recording of Evidence Act to a judicial person, the registrar of the Mental Health Court, the Chief Psychiatrist, inspectors appointed by the Chief Psychiatrist or persons entitled to written notice of decisions under the Act. These amendments enable the disclosure of confidential information. However, any departure from fundamental legislative principles is justifiable as the amendments achieve a balance between facilitating transparency of proceedings in line with contemporary practice and ensuring that persons who are not sufficiently connected to the recorded proceedings are not provided with records.

Natural justice

Section 4(3)(b) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals may depend on whether legislation is consistent with principles of natural justice.

As above, the principles of natural justice encompass procedural fairness requirements such as ensuring that court processes are transparent. The amendments to the Mental Health Act in clause 17 of the Bill may breach this fundamental legislative principle by limiting access to

recordings of proceedings to specific parties. Any departure is justified as it is necessary to uphold the right to privacy of parties to proceedings, which contain details of sensitive mental health matters that are subject to confidentiality requirements under the Mental Health Act.

Amendments to the *Radiation Safety Act 1999*

Whether the legislation has sufficient regard to the rights and liberties of individuals (*Legislative Standards Act 1992*, s 4(2)(a))

The amendments to the Radiation Safety Act in clause 28 of the Bill will insert an offence for persons who fail to ensure that another person does not receive a radiation dose from radioactive materials that are not radioactive substances higher than the radiation dose prescribed under a regulation.

As above, the proportionality and relevance of penalties is relevant to consideration of whether legislation has sufficient regard to the rights and liberties of the individual. The new offence in the Radiation Safety Act is necessary to ensure an appropriate head of power for the existing offence in section 60 of the Radiation Safety Regulation related to dose limits for radioactive materials that are not radioactive substances. The offence will also enable other dose limits to be prescribed by regulation that are designed to protect the health of people who are exposed to certain radioactive material.

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

Whether the legislation has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, s 4(2)(b))

Section 4(4) of the Legislative Standards Act states that whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, it provides for the delegation of power only in appropriate cases and to appropriate persons, and provides sufficient scrutiny by the Legislative Assembly.

The amendments to the Radiation Safety Act will allow appropriate dose limits for radioactive material to be prescribed by regulation. This amendment may be considered to infringe on the fundamental legislative principle about whether the Bill has sufficient regard to the institution of Parliament. However, is appropriate for dose limits to be outlined in regulations as they contain highly technical information that is more appropriately dealt with in subordinate legislation.

The amendments will also insert a head of power into the Radiation Safety Act for the Radiation Safety Regulation to exempt radioactive material from a requirement of the Act. This will allow, for example, radioactive material disposed of naturally through bodily waste to be exempt from the disposal requirements of the Act where persons have undergone nuclear medicine procedures.

These heads of power will be scrutinised by the Legislative Assembly, and the Regulation changes will be tabled in the Assembly and subject to disallowance. The proposed amendment is therefore considered to have sufficient regard to the institution of Parliament.

Consultation

In September and October 2022, over 200 stakeholders were given the opportunity to provide feedback on the Bill. Stakeholders consulted included Hospital and Health Services, Hospital and Health Boards, Health Consumers Queensland, professional bodies, mental health stakeholders, legal organisations, public health bodies, proposed information sharing partners, pest management technicians, persons who work with poisons, agriculture and horticulture stakeholders, Queensland Cancer Register notifiers and proposed notifiers, governing bodies for schools, private hospitals, the Local Government Association of Queensland and drinking water service suppliers.

All stakeholder feedback was carefully considered. Stakeholders were generally supportive of, or raised no concerns about, the Bill. These stakeholders included the Australian Medical Association Queensland, Queensland Nurses and Midwives' Union, Health Consumers Queensland, Office of the Health Ombudsman, Office of the Information Commissioner, Private Hospital Association of Queensland, Queensland Aboriginal and Islander Health Council, MHRT, Mental Health Court, Queensland Advocacy Incorporated, Pharmaceutical Society of Australia, Australian Environmental Pest Managers Association, AgForce, VSBQ, Queensland Catholic Education Commission, Independent Schools Queensland, Cancer Council Queensland, Cancer Australia, Radiation Advisory Council, Queensland Water Directorate, Australian Dental Association and Local Government Association of Queensland.

The main areas of feedback are outlined below.

Amendments to the Public Health Act – Queensland Cancer Register

Some stakeholders raised queries about the ability of diagnostic imaging providers, pathology laboratories and public and private hospitals to comply with the extended reporting obligations. Some stakeholders who will have new notification responsibilities also sought clarity on technical and operational matters. As noted above, most notifiers will be able to comply with their requirements through existing notification practices. Diagnostic imaging providers, who are becoming notifiers for the first time, are being supported to install technology that will alleviate the impost of making manual notifications. No concerns have been raised with this approach. Stakeholders will continue to be consulted, and provided with education and assistance from Queensland Health, in the lead up to the notification requirements commencing.

Amendments to the Recording of Evidence Act and Mental Health Act – recording of proceedings

Stakeholders supported the MHRT transitioning to electronic recording, in line with the practice of courts and the QCAT. Some stakeholders suggested the Bill should mandate prescribed tribunals to electronically record their proceedings. This is not considered necessary, as the Recording of Evidence Act does not currently prescribe the format in which the proceedings of the courts and QCAT are recorded. It is intended that the MHRT will electronically record proceedings unless there are compelling reasons not to. Stakeholders also provided operational feedback regarding access to records and transcription, such as the need to ensure that the process for requesting records is accessible. This feedback will be taken into account as the MHRT prepares

to implement electronic recording, and to inform any consequential amendments to the Recording of Evidence Regulation. Relevant stakeholders will be consulted during this process.

Amendments to the Medicines and Poisons Act – disclosure of information

Some stakeholders did not support the disclosure of information to additional entities for regulation, safety and compliance purposes, or the disclosure of information from the administrative action register or substance authority register. As a result of this feedback, the Bill was amended to ensure the administrative action register cannot be published by the chief executive. The remaining feedback related to privacy and confidentiality. As noted above, particularly in relation to fundamental legislative principles, various safeguards are in place to ensure the appropriate disclosure of information. The purpose of the disclosure is to protect the community's health.

Consistency with legislation of other jurisdictions

Amendments to the Hospital and Health Boards Act regarding emergency medical treatment, the Medicines and Poisons Act, the Mental Health Act, the Public Health Act regarding the vision screening program, the Radiation Safety Act and the Water Fluoridation Act are unique to Queensland legislation.

Amendments to the Recording of Evidence Act to establish a legislative framework for recording the proceedings of prescribed tribunals and providing access to copies of records and transcriptions of the proceedings are also specific to the legislative framework of the State of Queensland.

Amendments to the *Hospital and Health Boards Act 2011*

The *Health Care Act 2008* (SA) requires governing boards of public hospitals and the South Australia Ambulance Service to promote a positive workplace culture, promote the health, safety and wellbeing of staff, and implement relevant policies.

The Bill inserts similar requirements into the Hospital and Health Boards Act to ensure that workplace culture, and opportunities to implement measures that support wellbeing, are proactively considered in planning and service delivery for public health services in Queensland. The amendments do not mirror the exact wording of the South Australian legislation because they attach to existing provisions in the Hospital and Health Boards that provide mandatory considerations for Hospital and Health Services and Hospital and Health Boards, and unlike in South Australia the Queensland Ambulance Service is a division of the Queensland Health, without a governing Board.

Other jurisdictions in Australia do not have specific legislative requirements about the wellbeing of public health workers. However, work health and safety legislation apply in all states and territories.

Amendments to the *Public Health Act 2005*

All Australian jurisdictions have a cancer register and mandatory reporting requirements. The amendments to the Public Health Act to modernise the Queensland Cancer Register will require information about the progress of cancer, treatment and pathology findings following diagnosis. This information is notifiable in several Australian jurisdictions. Other jurisdictions,

such as England, New Zealand and certain states in the United States of America and Canada also require one or more of these categories of information.

For example, information regarding the stage or grade of cancer is mandatory to notify in the Northern Territory, South Australia, Victoria, Western Australia and Tasmania, as per the *Cancer (Registration) Act Regulations 2010* (NT), *Health Care Regulations 2008* (SA), *Improving Cancer Outcomes (Diagnostic Reporting) Regulations 2012* (Vic), *Health (Western Australian Cancer Register) Regulations 2011* (WA) and *Guidelines for Notifying Diseases and Food Contaminants* made under the *Public Health Act 1997* (Tas). Information regarding treatment is mandatory to notify in Victoria under the Improving Cancer Outcomes (Diagnostic Reporting) Regulations. In New South Wales and South Australia, under the *Cancer Institute Act 2003* (NSW) and South Australia's Health Care Regulation, treatment information must be provided if requested. The legislation and guidelines outlined in this paragraph also enable notification of some pathology results post-diagnosis.

While no Australian jurisdictions have mandatory notification for diagnostic imaging results, medical imaging reports are notifiable in England and some states in the United States of America and Canada. The amendments to the Public Health Act will support Queensland to be a national leader in cancer knowledge, and ensure public health strategies against cancer are guided by comprehensive evidence on the features and progression of cancer.

Amendments to the *Transplantation and Anatomy Act 1979*

New South Wales, South Australia, the Australian Capital Territory and Tasmania do not require additional approvals for supply of products that have already been approved by the TGA Special Access Scheme.

The New South Wales *Anatomy Act 1977*, defines *hospital* to include a private health facility within the meaning of the *Private Health Facilities Act 2007* (NSW). This is the same way the Bill defines private hospitals. No other Australian jurisdiction defines *hospital* in its human tissue legislation. A plain reading of this term would include both private and public hospitals.

Amendments to the *Water Fluoridation Act 2008*

Other than in the *Fluoridation of Public Water Supplies Act 1957* (NSW), which requires gazettal of fluoridation decisions, water fluoridation legislation in other Australian jurisdictions does not contain any community notification requirements.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Health and Other Legislation Amendment Act 2022*.

Commencement

Clause 2 provides for the commencement of the Act.

Parts 2, 4, 6, 7, 8 and part 5, division 3 commence on proclamation. These parts amend the *Hospital and Health Boards Act 2011*, *Mental Health Act 2016, Radiation Safety Act 1999, Recording of Evidence Act 1962, Transplantation and Anatomy Act 1979* and *Public Health Act 2005* in relation to the Queensland Cancer Register.

The amendments to the *Medicines and Poisons Act 2019, Water Fluoridation Act 2008* and Public Health Act in relation to the vision screening school health program commence on assent.

Part 2 Amendment of Hospital and Health Boards Act 2011

Act amended

Clause 3 states that this part amends the Hospital and Health Boards Act.

Amendment of s 7 (Role of Hospital and Health Services)

Clause 4 simplifies section 7(5) of the Hospital and Health Boards Act regarding the role of Hospital and Health Services, to remove duplication in the Act.

Section 7 of the Act is intended to provide a high-level summary of the role of Hospital and Health Services. However, section 7(5) duplicates considerations for Hospital and Health Boards as set out in detail at section 19(3)(a) and (b). Clause 4 replaces the duplicative statement about what is required with a statement that the Act requires a Hospital and Health Services to have regard to particular matters in performing its functions.

Amendment of s 19 (Functions of Services)

Clause 5 extends the list, at section 19(3), of matters to which Hospital and Health Services must have regard in performing their functions. It inserts a requirement for a Service to have regard to the need to promote a culture and implement measures to support the health, safety and wellbeing of staff of public sector health service facilities.

Amendment of s 22 (Role of exercising control over Service)

Clause 6 extends the list, at section 22(2), of matters to which Hospital and Health Boards must have regard in controlling the Hospital and Health Service. It inserts a requirement for a Board

to have regard to the need to promote a culture and implement measures to support the health, safety and wellbeing of staff of public sector health service facilities. This aligns with the requirement that clause 5 inserts for Hospital and Health Services.

Amendment of s 183 (Power to deal with persons causing a public nuisance)

Clause 7 inserts new subsection (2A) into section 183. Section 183 provides healthcare security officers the power to direct persons to leave health services land, or part of the land. The new subsection states that a security officer must not give a direction for the person to leave health services land or part of the land if they require emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.

Clause 7(2) renumbers section 183(2A) and (3) as sections 183(3) and 183(4).

Part 3 Amendment of Medicines and Poisons Act 2019

Act amended

Clause 8 states that this part amends the Medicines and Poisons Act.

Amendment of s 14 (Meaning of *fumigant* and *pesticide*)

Clause 9 amends section 14(1) and section 14(2) as a consequence of the amendments to section 19. Sections 14(1) and 14(2) provide that a *fumigant* or a *pesticide* are used to carry out an 'activity'.

Clause 9(1) omits the paragraph references '19(2)(a), (b), (c) or (d)' from section 14(1) and replaces them with a reference to section 19(2). Clause 9(2) omits and replaces the paragraph references '19(3)(a), (b) or (c)' with a reference to section 19(3). This is because the new sections 19(2) and 19(3) in the Bill refer to a *fumigation activity* and *pest control activity*. Existing sections 19(2) and 19(3) do not refer to activities and specific references were therefore required in sections 14(1) and 14(2) to the paragraphs in sections 19(2) and 19(3) that mentioned activities.

Amendment of s 19 (Meaning of *pest management activity*, *fumigation activity* and *pest control activity*)

Clause 10 amends the definitions of *fumigation activity* and *pest control activity* to incorporate gaseous substances.

Clause 10 omits section 19(2), which provides that a *fumigation activity* is the preparation or use of a substance to kill a pest, sterilise grain or seed to prevent germination, treat soil in which pests might be living or carry out another activity prescribed by regulation to be a fumigation activity. It inserts new section 19(2) which defines *fumigation activity* as the same types of activities, but only in relation to preparing or using a substance to conduct the activities when the substance becomes gaseous. Clause 10 also updates section 19(3) to clarify that the definition of *pest control activity* relates to an activity that is not a *fumigation activity*. No other changes are made to the types of activities listed under the definition of *pest control activity*.

These amendments clarify that if an activity does not use substances that are prepared or used in a gaseous form, the activity is not a fumigation activity.

Clause 10 also makes minor drafting changes. It removes repetition of the word 'or' between the subparagraphs in sections 19(2) and (3) and repetition of the term 'fumigation activity' in section 19(2)(d).

Amendment of s 44 (Offence to carry out pest management activities)

Clause 11 omits the definition of *primary producer*, which refers to a person producing or storing agricultural products, and replaces it with a definition that provides that a primary producer 'in relation to land, means a person using the land to commercially produce agricultural or horticultural products'.

Under this amendment, persons who are storing but not producing products on their land, and persons who engage in non-commercial production are not primary producers. They therefore must comply with the requirements of the Act, for example, by seeking necessary approvals from Queensland Health, or complying with the requirements in section 44 regarding use of household pesticides.

Amendment of s 221 (Disclosure of information to entities performing relevant functions)

Clause 12 inserts and clarifies the entities to which administrators may disclose confidential information under section 221.

Clause 12(1) replaces section 221(d), which authorises disclosure to a law enforcement agency for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance with new subsections (d), (da) and (db), which list different entities to which information can be disclosed.

New subsection (d) allows information to be disclosed to a Hospital and Health Service and new subsection (da) allows information to be disclosed to the Veterinary Surgeons Board of Queensland.

New subsection (db) allows information to be disclosed to an entity of the State or another jurisdiction responsible for law enforcement, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance. This clarifies previous subsection (d), which did not clearly account for interstate law enforcement entities or the possibility that non-police agencies may have law enforcement functions.

Clauses 12(2) renumbers sections 221(1)(da) to (j) so that the subsections within section 221(1) read consecutively.

Clause 12(3) omits section 221(3), which states that section 221 is subject to section 227. It replaces it with a statement that 221 does not limit, and is not limited by new section 231. This means that authority to disclose information from the administrative action register and to disclose information from or publish the substance authority register under section 231 exists independently of any restrictions in section 221.

Clause 12(3) also moves current section 221(3), which states that section 221 is subject to section 227, to subsection (3A), and clarifies that section 227 relates to the disclosure of

information from the monitored medicines database. This means that the ability to disclose under section 227 must be read with section 221.

Clause 12(4) renumbers sections (3A) and (4) so that the subsections within amended section 221 read consecutively.

Replacement of s 231 (Publishing registers)

Clause 13 replaces section 231 to enable information from the administrative action and substance authority registers to be disclosed in different ways, and to amend the test for when the chief executive may give information from the registers to a person.

Currently, section 231(1) allows the chief executive to publish the administrative action register and the substance authority register on the department's website. Clause 13 inserts new section 231(1), which enables the chief executive to publish all or part of the substance authority register on the department's website. It also inserts new section 231(2) which enables the chief executive to give information, including confidential information, from the administrative action register or the substance authority register to a person seeking the information if it is in the public interest. The effect of clause 13 is that it removes the chief executive's current ability to publish the administrative action register on the department's website.

New sections 231(1) and (2) only enable the chief executive to publish or give information from the registers if satisfied it is in the public interest to do so. The previous test in section 231(2) for including information in a public register was for the chief executive to be satisfied that inclusion of the information is reasonably necessary to avoid a health risk, and that the inclusion of the information will not place a person at risk of harm. The new public interest test is a high bar that allows various factors to be considered objectively.

The updates that clause 13 makes to section 231 remove the requirement for the chief executive to remove information from the public sphere if it relates to administrative action that no longer has effect. This requirement is no longer necessary because the Bill removes the chief executive's ability to publish the administrative action register.

Part 4 Amendment of Mental Health Act 2016

Act amended

Clause 14 states that this part amends the Mental Health Act.

Amendment of s 740 (Appointment of representative)

Clause 15 replaces subsection 740(4). New section 740(4)(a) maintains the ability for an adult with capacity to waive the right to be represented by an appointed representative in writing.

New section 740(4)(b) inserts the ability for an adult with capacity to waive the right to be represented by an appointed representative in another way if the Mental Health Review Tribunal (MHRT) is satisfied that it would not cause injustice to the person. This amendment enables the MHRT to accept verbal or other non-written waiver from an adult with capacity where appropriate, after considering any injustice issues.

Clause 15 does not make any other amendments to section 740. The requirements in the Mental Health Act regarding when the MHRT must appoint a representative, and the factors relevant to when a person has capacity to waive the right, continue to apply.

Amendment of s 778 (Offence to use or disclose personal information)

Clause 16 amends section 778(3)(b), which authorises personal information to be disclosed if the use or disclosure is permitted under part 3 or is otherwise required or permitted by law, to replace the reference to part 3 with 'this Act'. This ensures that the use or disclosure is permitted if it is permitted under any part of the Act, not only part 3. The amendment ensures that the MHRT does not commit an offence under section 778 if it discloses copies of records or transcriptions of its proceedings under new chapter 17, part 5.

Insertion of new ch 17, pt 5

Clause 17 inserts new chapter 17, part 5 into the Act. Within chapter 17, part 5, clause 17 inserts section 793A to restrict how section 6 of the Recording of Evidence Act applies to MHRT proceedings.

New section 793A(1) provides that section 793A applies if:

- a record is made in relation to a proceeding under the Mental Health Act;
- section 6 of the Recording of Evidence Act applies in relation to the record or a transcription of the record;
- the president of the MHRT is the judicial person prescribed by regulation for the tribunal for section 6; and
- a person requests a copy of the record or transcription under section 6.

This limits the application of section 793A to persons requesting records under section 6 of the Recording of Evidence Act. The restrictions within section 793A therefore do not apply to requests made under other legislation, for example, by statutory bodies that have powers or authority to compel or request information.

New section 793A(2) provides that the president must not make available the copy of the record or transcription to the person unless the person is:

- a judicial person;
- the registrar of the Mental Health Court;
- the Chief Psychiatrist;
- an inspector other than the Chief Psychiatrist; or
- an entitled person.

The entitlement of the Chief Psychiatrist and inspector to copies of records or transcriptions is limited to the performance of their functions or exercise of their powers under the Mental Health Act.

Judicial person is defined by new section 793A(5) with reference to section 4 of the Recording of Evidence Act. *Entitled person* is defined by new 793A(5) as, in relation to requesting a copy

of a record or transcription, a person entitled to be given written notice of a decision in a proceeding to which the copy relates.

Various sections of the Mental Health Act give persons entitlement to written notice of a decision. Section 755(1) of the Act entitles persons to written notice of a decision if they are entitled to be given notice of the hearing. The persons entitled to notice of a hearing vary according to the nature of the proceeding, as per current sections 418 (for a review of a treatment authority), 439 (for a review of a forensic order), 460 (for a hearing regarding making a forensic order), 471 (for a review of a treatment support order), 487 (for a review of a person's fitness for trial), 500 (for a review of a minor's detention in a high security unit), 503 (for an application for an examination authority), 508 (for an application to perform electroconvulsive therapy), 511 (for an application to perform a non-ablative neurosurgical procedure), 516 (for an application for transfer into Queensland) and 524 (for an application for interstate transfer).

Section 785 enables written notices to be given to lawyers who are providing legal services to a patient. If a person has nominated a support person and/or a personal guardian or attorney, section 287 requires written notices to be given to the nominated support person and/or personal guardian or attorney. Section 287 also enables written notices to be given to family members, carers or other support persons in certain circumstances. The Bill therefore enables lawyers, nominated support persons and personal guardians or attorneys to request a copy of a record or transcription, and enables family members, carers or other support persons to request a copy of a record or transcription in certain circumstances.

New section 793A(2)(e) only allows the president to make a copy of a record or transcription available to an entitled person to the extent that doing so would not contravene a confidentiality order or section 743. Confidentiality orders include orders made under section 722, where the MHRT has prohibited or restricted the disclosure of information to a person the subject of the proceeding because it would cause serious harm to the health of the person or put the safety of someone at serious risk. Section 743 prohibits the MHRT from disclosing victim impact statements to a person the subject of the proceeding unless the victim or close relative asks that the statement be disclosed.

New subsections 793A(3) and (4) require the president to ensure that a copy of a record or transcription which is given to persons who have received the advice in section 502(1)(c), in connection with an application for an examination authority, does not contain contact details, health information or healthcare information about the person the subject of that application. The persons mentioned in section 502(1)(c) are persons who have received advice from a doctor or authorised mental health practitioner about clinical matters relating to the person subject to the examination authority.

Part 5 Amendment of Public Health Act 2005

Division 1 Preliminary

Act amended

Clause 18 states that this part amends the Public Health Act.

Division 2 Amendment commencing on assent

Amendment of s 213AA (Definitions for part)

Clause 19 replaces the definition of *school health program* in section 213AA to include a vision screening health service in the definition, in addition to a dental health service and an immunisation service.

Clause 19 also simplifies the definition in section 213AA by amending the definition from *a program carried out for the purpose of providing* the health services specified to *a program carried out to provide the students* with the health services.

The effect of this amendment is that Hospital and Health Services, or an entity that is engaged by a Hospital and Health Service, that carry out a vision screening program, can require school principals to disclose the student information specified in section 213AD to them.

Division 3 Amendments commencing by proclamation

Amendment of s 229 (Definitions for pt 2)

Clause 20 amends the definitions in section 229 to support the amendments that the Bill makes in relation to Queensland Cancer Register notification requirements.

Clause 20(1) omits the definition of *residential care facility* from section 229 because the Bill removes provisions requiring notifications from residential care facilities.

Clause 20(2) inserts a definition of *director*. It defines *director* as the person responsible for the day-to-day administration of the premises regardless of whether the person has the title of director or whether they have a financial interest in the premises. This definition clarifies which persons within diagnostic imaging facilities, pathology laboratories and hospitals are responsible for providing notifications to the Queensland Cancer Register.

Clause 20(3) updates section references within the definition of *notification about cancer* to encompass the new notification sections below.

Replacement of s 234 (Notifications about cancer to be given to chief executive)

Clause 21 replaces section 234 with a new section 234 and inserts new sections 234A, 234B, 234C and 234D.

Existing section 234 requires the director of a pathology laboratory, and the person in charge of a hospital or residential care facility to complete a notification and give it to the chief executive within the time prescribed under a regulation.

New section 234(1) states that new section 234 applies if the examination was carried out at the laboratory and either the examination indicates that the individual has, or has had cancer, or the director reasonably suspects the examination is a cancer-related follow-up examination.

New section 234(2) requires the director of the pathology laboratory to give the chief executive a notification about the pathological examination within the period prescribed by regulation, in the approved form.

The requirement to notify the chief executive where the examination indicates that the individual has, or has had cancer, is an existing requirement. The requirement to notify the chief executive where there is a reasonable suspicion that the examination is a cancer-related follow-up examination is a new requirement.

For non-compliance with these requirements, new section 234(2) sets a maximum penalty of 20 penalty units. This is the same penalty that currently applies to non-compliance with notification requirements.

New section 234(3) defines a *cancer-related follow-up examination* as a pathological examination of a specimen of human origin that is carried out after the person has been diagnosed with cancer, and is carried out to determine the characteristics or status of the cancer, or support or inform the treatment of the cancer.

New 234A sets out notification requirements for diagnostic imaging practices.

Section 234A(1) states that the section applies if a diagnostic imaging procedure is carried out at the practice and either the procedure indicates that the person has, has had, may have, or may have had cancer, or the director reasonably suspects the procedure is a cancer-related follow up procedure.

Section 234A(2) requires the director to give the chief executive a notification about the diagnostic imaging procedure within the period prescribed by regulation, in the approved form.

The notification requirement for diagnostic imaging providers is new. For non-compliance with the requirement, section 234A(2) sets a maximum penalty of 20 penalty units, which is the same penalty that applies to other notifiers.

Section 234A(3) defines *cancer-related follow-up procedure* as a diagnostic imaging procedure that is carried out after the person has been diagnosed with cancer, and to identify the presence or absence of cancer or support or inform the treatment of the cancer. It also defines a *diagnostic imaging practice* as a premises used for carrying out diagnostic imaging procedures, and *diagnostic imaging procedure* as a procedure producing an image of an internal part of the human body for a diagnostic purpose.

New sections 234B, 234C and 234D relate to hospital notification requirements.

Section 234B(1) states that section 234B applies to the director of the hospital if a person attends a hospital for treatment or care and is diagnosed with cancer by a doctor at the hospital.

Section 234B(2) states that the director of the hospital must give the chief executive a notification about the diagnosis, within the period prescribed by regulation, in the approved form. This is an existing notification requirement. For non-compliance with this requirement, section 234B(2) sets a maximum penalty of 20 penalty units. As above, this is the same penalty that applies to all notifiers. This is also the same penalty that currently applies to non-compliance with hospital notification requirements.

Section 234C(1) states that section 234C applies to the director of a hospital if a person attends a hospital for treatment or care, and the person is provided cancer-related treatment as a patient of the hospital, whether at the hospital or elsewhere.

Section 234C(2) states that the director of the hospital must give the chief executive a notification about each cancer-related treatment provided to the person, within the period prescribed by regulation, in the approved form. This is a new notification requirement. Hospital treatment notifications are currently only required the first time in the calendar year that the person has attended hospital. For non-compliance with this requirement, section 234C(2) sets a maximum penalty of 20 penalty units.

Section 234C(3) defines *cancer-related treatment* for the purposes of section 234C as an investigation, procedure or treatment that is provided to a person who has, or has had, cancer, and is related to treating the cancer, and includes investigations, procedures or treatment related to previous treatment for cancer. An example of an investigation, procedure or treatment related to previous treatment for cancer is provided under section 234C(3)(b) as 'treatment of an adverse reaction to a medicine administered to treat cancer'.

Section 234C(4) provides that *cancer-related treatment* does not include pathological examinations to which new section 234 applies or diagnostic imaging procedures to which new section 234A applies.

Section 234D(1) states that section 234D applies to the director of a hospital if a person attends the hospital for treatment or care, the director of the hospital reasonably suspects the person has, or has had, cancer, and the person dies while at the hospital.

Section 234D(2) states that the director of the hospital must give the chief executive a notification about the death, within the period prescribed by regulation, in the approved form. This is an existing notification requirement. If this requirement is not complied with, section 234D(2) sets a maximum penalty of 20 penalty units.

Amendment of s 235 (Directions to give notifications about cancer to contractor)

Clause 22 makes minor amendments to section 235, which enables the chief executive to direct a notifier to make a notification to the contractor instead of the chief executive. It inserts a definition of *relevant provision* and replaces references to specific sections with this term.

Amendment of s 236 (Further information may be required)

Clause 23 amends section 236, which enables the chief executive or contractor to require further information for the accuracy, completeness or integrity of the register. It states which doctors can be given a notice requiring further information.

Clause 23 omits and inserts a clarification into section 236(2)(b) that section 236(2), which enables the chief executive to give doctors who have referred a specimen for pathological examination a notice requiring further information, applies to doctors mentioned in a notification given under new section 234(2). This amendment is required because the Bill amends the Public Health Act to insert notification requirements for diagnostic imaging providers, whereas the current section 236(2)(b) refers only to a doctor who referred a specimen for pathological examination.

Insertion of new ch 12, pt 10

Clause 24 inserts transitional provisions, to clarify notification obligations where a notification to the Queensland Cancer Register was required under former section 234, but no notification was made before the new notification requirements commenced.

New section 518 provides that the section applies if before commencement of the Queensland Cancer Register amendments, a pathological examination was conducted or a patient in a hospital separated from the hospital. If the time for making a notification (30 days) had not ended by commencement, notification is required under former section 234. For pathological examinations, notification will therefore be required within 30 days of the examination, with the referring doctor's name, and in the previous approved form. For separations from hospital, notification will be required within 30 days of the separation, in the previous approved form.

If the time for making a notification (30 days) has expired, the director of the pathology laboratory or the person in charge of a hospital will have failed to comply with their notification obligations.

Amendment of sch 2 (Dictionary)

Clause 25 omits the definition of *residential care facility* because the Bill removes notification requirements for residential care facilities.

Part 6 Amendment of Radiation Safety Act 1999

Act amended

Clause 26 states that this part amends the Radiation Safety Act.

Amendment of s 42 (Causing radiation exposure)

Clause 27 makes minor amendments to the offence provision in section 42 to clarify the application of the section and ensure terminology is consistent with other provisions of the Act.

Clause 27(1) inserts the words *from radiation practice* after the heading for section 42. Clause 27(2) replaces section 42(1) to provide that the section applies in relation to a radiation source possessed under a possession licence for a radiation practice.

Insertion of new s 42A

Clause 28 inserts new section 42A.

Section 42A(1) states that section 42A applies to person who possesses radioactive material that is not a radioactive substance.

Section 42A(2) provides that a person must ensure that another person does not receive a radiation dose of ionising radiation that is higher that the radiation dose limit prescribed by regulation for the ionising radiation. It sets a maximum penalty of 100 penalty units.

The insertion of section 42A will enable the Radiation Safety Regulation to be amended to remove the current, equivalent offence and maximum penalty of 20 penalty units. Prescribed dose limits will remain in the Regulation.

Amendment of s 210 (Limited exemption for radiation source)

Clause 29 amends section 210, which enables a regulation to exempt a radiation source from the Radiation Safety Act or a provision of the Act.

Clause 29(1) amends the heading of section 210 from 'limited exemption for radiation source' to 'limited exemption for radioactive material and radiation apparatus'.

Clause 29(2) amends section 210(1) to replace 'a radiation source' with 'radioactive material or a radiation apparatus'.

These amendments will extend the ability the Radiation Safety Regulation to make exemptions for radiation sources (which comprise (a) radioactive substances (which are a subset of radioactive material); and (b) radiation apparatus; but not (c) radioactive material that is not a radioactive substance) to exemptions for all types of radioactive material, whether or not it is a radioactive substance.

The Bill does not amend section 210(2) which states that the exemption must not be one that could reasonably be expected to pose any, or more than negligible, health risks to any person or advise effects on the environment.

Part 7 Amendment of Recording of Evidence Act 1962

Act amended

Clause 30 states that this part amends the Recording of Evidence Act.

Amendment of s 4 (definitions)

Clause 31 amends the definition of recording service to include a reference to new section 6.

Amendment of s 5 (Recording of relevant matter in legal proceedings)

Clause 32 amends section 5 to provide that a recording for a legal proceeding before a tribunal mentioned in section 6(1) may be done under an arrangement under section 6(2).

Amendment of s 5B (Availability of copies of records and transcriptions)

Clause 33 amends section 5B to provide that the section does not apply in relation to legal proceedings mentioned under section 5C or new section 6.

Amendment of s 5C (Inquiries and examinations)

Clause 34 amends section 5C to omit subsection (4).

Insertion of new s 6

Clause 35 inserts new section 6 (Recording of relevant matter in legal proceedings) which sets out the provisions to establish the framework for legal proceedings before prescribed tribunals.

Subsection (1) states that section 6 applies in relation to legal proceedings before a tribunal, other than QCAT, prescribed by regulation.

Subsection (2) provides that the judicial person prescribed by regulation for the prescribed tribunal may arrange for the recording of relevant matter in the legal proceeding and/or the transcription of a record of the legal proceeding.

Subsection (3) states that an arrangement under subsection (2) may be for a recording or transcription to be carried out by a member or staff of the tribunal or by someone else.

Subsection (4) provides that the judicial person prescribed by regulation must ensure appropriate arrangements are in place for providing copies of records and/or transcriptions to any person.

Subsection (5) provides that copies of records or transcriptions must be available on request to judicial persons at no cost and to another person at the cost, if any, prescribed by regulation.

Subsection (6) provides that subsection (4) does not apply to the extent that under the Recording of Evidence Act or another Act or under an order of a court or judicial person, a copy of a record or transcription must not be made available to a person.

Part 8 Amendment of Transplantation and Anatomy Act 1979

Act amended

Clause 36 states that this part amends the Transplantation and Anatomy Act.

Amendment of s 4 (Interpretation)

Clause 37 amends the definition of *hospital* to remove the requirement that private hospitals must be declared under section 5 to be taken to be a hospital under this Act.

Clause 37(1) replaces subsection (c) with new subsection (b) in the definition of *hospital*, so that a *hospital* for the purposes of the Act includes private hospitals under the *Private Health Facilities Act 1999*. This amendment ensures that private health facilities that meet the requirements of the Private Health Facilities Act are treated the same as public hospitals under the Act without the need for a declaration.

Clause 37(2) renumbers paragraph 4(1)(d) as paragraph (c).

Omission of s 5 (Declaration of hospitals)

Clause 38 omits section 5, which enables a regulation to declare a private hospital as a hospital for the purposes of the Act. Section 5 is no longer required because the above amendment to

section 4 provides that all private hospitals under the Private Health Facilities Act are hospitals under the Transplantation and Anatomy Act, and do not need to be declared.

Amendment of s 42AA (Trading of tissue for particular purposes)

Clause 39 amends section 42AA to enable tissue obtained under the Therapeutic Goods Administration's Special Access Scheme to be exempt from prohibitions on the buying and selling of tissue (under sections 40 and 42) and restrictions on advertisements relating to the buying of tissue (under section 41).

Clause 39(1) inserts new section 42AA(1)(c)(iv), regarding tissue 'obtained under the scheme known as the 'Special Access Scheme' administered by the Therapeutic Goods Administration'. This amendment ensures that such tissue is not prohibited or restricted by sections 40 to 42 if the other existing criteria in section 42AA apply. The existing criteria require that the tissue has been subjected to processing or treatment, the trading of the tissue is for therapeutic, medical or scientific purposes, the tissue is not specified types of tissue, such as tissue stored at a tissue bank.

Clause 39(2) inserts a definition of *Therapeutic Goods Administration* into section 42AA(2).

Part 9 Amendment of Water Fluoridation Act 2008

Act amended

Clause 40 states that this part amends the Water Fluoridation Act.

Amendment of s 13 (Notification of intention relating to fluoridation of public potable water supply)

Clause 41 amends notification requirements for water fluoridation decisions and changes to water fluoridation status.

Clause 41(1) omits section 13(2)(b), which requires local governments which decide to add or cease to add fluoride to a public potable water supply to publish a notice that is given to the chief executive, specifically in a newspaper circulating in the area of the State serviced by the water supply.

Clause 41(2) omits section 13(3)(b), which requires public potable water suppliers to, at least 30 days before adding fluoride or ceasing to add fluoride, publish a notice that is given to the chief executive about the intended change, again in a newspaper circulating in the area of the State serviced by the public potable water supply.

Clauses 41(1) and (2) replace the requirements in sections 13(2)(b) and 13(3)(b) with a requirement for the notices given to the chief executive to be published in a publicly accessible way. In both of these sections, the Bill inserts two examples of a publicly accessible publication: publishing the notice on the local government's website and publishing the notice in a newspaper circulating in the area of the State serviced by the public potable water supply.