

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

## **Explanatory Notes**

### **Title of the Bill**

Health and Other Legislation Amendment Bill 2007

### **Objectives of the Bill**

The main objective of the Bill is to amend the:

- *Ambulance Service Act 1991* and the *Health Services Act 1991* to create a regulatory framework for the conduct of root cause analysis (RCA) in relation to a reportable event that happened during the provision of a health service by a public sector health service, a private health facility or the Queensland Ambulance Service;
- *Mental Health Act 2000* to give effect to a number of recommendations from the Final Report of the Review of the Mental Health Act 2000, *Promoting Balance in the Forensic Mental Health System*;
- *Mental Health Act 2000* to allow for the appointment of additional judges to the Mental Health Court to address the rising workload of the Court;
- *Tobacco and Other Smoking Products Act 1998* to prohibit the sale and commercial display and supply of bongs and ‘ice’ pipes (including their component parts).

### **Achievement of the Objectives**

The *Ambulance Service Act 1991* and the *Health Services Act 1991* are to be amended to create a regulatory framework for the conduct of an RCA of a reportable event that happened during the provision of an ambulance or health service. The amendments implement recommendations in the *Action Plan – Building a better health service for Queensland* (October 2005) and the *Queensland Health Systems Review Final Report* (September 2005) concerning the development of legislation that encourages and protects

good quality and safety assurance analysis within public sector health services.

RCA is a quality improvement technique that explores the chain of events responsible for adverse events in order to identify the factors which caused or contributed to the event as well as the measures that may be implemented to prevent or reduce recurrences of the same type of event. It is widely acknowledged within health and other industry sectors that adverse events rarely have a single cause, and that adverse events commonly result from a combination of individual, team, organisational and environmental factors. The objective of an RCA is to understand how and why an event occurred, rather than to apportion blame or determine liability. As RCA focuses on identifying systemic factors that contributed to an event it is not an appropriate tool to investigate matters concerning the competence of individuals providing health services. RCA is intended to work in parallel to, and not as a substitute for consumer complaint systems, professional standards regulation or legal processes (civil and criminal).

The success of RCA depends on voluntary participation by individuals involved in reportable events. If RCA is seen as a tool that may be used to blame or punish, health practitioners and other health care providers will be unlikely to participate in the process. The benefits to patient safety will be lost as system failures will go undetected and may continue to result in patient harm. To ensure that health service personnel can participate in RCA free from fear that the information they divulge will later be used against them, the Bill will provide statutory privilege to information and documents produced for RCA purposes. While new information produced as a result of an RCA will be privileged, the legislation will not prevent pre-existing information being used as evidence in civil, criminal, coronial or disciplinary proceedings.

The regulatory framework for the conduct of RCA is enabling legislation – it does not mandate that an RCA be conducted for a reportable event. The aim of the legislation is to facilitate the use of RCA by public sector health services, private health facilities and the Queensland Ambulance Service by providing a framework that:

- defines what an RCA is for the purposes of the legislation;
- sets out principles to guide the conduct of an RCA;
- provides for events including the death of, or permanent harm to, a patient to be prescribed as a reportable event for the purposes of the legislation;

- provides for the appointment of a multidisciplinary team, to be known as an RCA team, to conduct an RCA;
- provides for an RCA to be stopped, if during the course of an RCA, a reasonable belief is developed that the event involves a blameworthy act by an individual or the capacity of a person who was involved in the event was impaired by alcohol or drugs;
- sets out what information an RCA team will be required to provide at the conclusion of an RCA;
- limits the circumstances under which information generated for the purposes of an RCA may be disclosed or given in evidence;
- provides statutory protections for persons involved in the conduct of an RCA, including the members of an RCA team and persons who honestly and on reasonable grounds provide information to an RCA team;
- requires the RCA provisions be reviewed within two years of commencement to ensure they adequately meet community expectations and remain appropriate.

The Bill also amends the *Mental Health Act 2000* to give effect to the following recommendations from the Final Report of the Review of the Mental Health Act 2000, *Promoting Balance in the Forensic Mental Health System* (The Mental Health Act Review)-

- Recommendation 3.1 - That the provision stating how the purpose of the *Mental Health Act 2000* is to be achieved be amended to provide that community protection and the needs of victims be taken into account in decisions relating to forensic patients.
- Recommendation 3.18 - That the *Mental Health Act 2000* be amended to delete reference to the term ‘non-party’ and instead refer to a statement by a victim or interested person, in recognition of the particular position of victims of crime.
- Recommendation 3.19 - That section 284 of the *Mental Health Act 2000* be amended to provide that a victim or an interested person may make a statement to the Mental Health Court for the purpose of assisting the Court in making a decision on a reference, including a decision:
  - whether or not the person was of unsound mind or is unfit for trial
  - whether or not to make a forensic order

- whether to order, approve or revoke limited community treatment
- as to any conditions the Court may impose on an order for limited community treatment.
- Recommendation 3.20 - That the *Mental Health Act 2000* be amended to provide that a statement by a victim or an interested person contain the views of the victim or interested person on:
  - the conduct of the person the subject of the proceeding and the impact of that conduct on the victim or the interested person
  - the risk the victim or interested person believes the person the subject of the proceeding represents to the victim or the interested person or another person
  - any matters relevant to the decisions the Court may make.

The Court should give the statement such weight as it considers appropriate.

- Recommendation 3.22 - That section 285 of the *Mental Health Act 2000* be amended to require the Mental Health Court, in its decision on a reference, to give reasons for:
  - taking into account a victim statement or an interested person statement and how the statement was taken into account, or
  - refusing to take into account a victim statement or an interested person statement.
- Recommendation 3.23 - That the *Mental Health Act 2000* be amended to enable the Mental Health Court registry to provide a copy of any victim or interested person statement to the authorised mental health service and to the Mental Health Review Tribunal, unless the Court orders to the contrary.
- Recommendation 3.41 - That, in relation to Mental Health Review Tribunal proceedings, the *Mental Health Act 2000* be amended to delete reference to the term ‘non-party’ and instead refer to a statement by a victim or interested person, in recognition of the particular position of victims of crime.
- Recommendation 3.42 - That section 464 of the *Mental Health Act 2000* be amended to provide that a victim of crime or other interested person may make a statement to the Mental Health Review Tribunal for the purpose of assisting the Tribunal in making a decision on a review for a forensic patient, including a decision:

- whether to revoke a forensic order
- whether to order, approve or revoke limited community treatment
- as to any conditions the Tribunal may impose on an order for limited community treatment.
- Recommendation 3.43 - That the *Mental Health Act 2000* be amended to provide that a statement by the victim or other interested person is to contain the views of the victim or interested person on:
  - the conduct of the person the subject of the proceeding and the impact of that conduct on the victim or interested person
  - the risk the victim or interested person believes the person subject to the proceeding represents to the victim or interested person or another person
  - any matters relevant to the decisions that the Mental Health Review Tribunal may make.
- Recommendation 4.22 - That the *Mental Health Act 2000* be amended to provide that the role of the Attorney-General in the Mental Health Review Tribunal is to represent the public interest.

In addition, the Bill amends the *Mental Health Act 2000* to allow for the appointment of one or more additional judges to the Mental Health Court. This was requested by the Honourable Paul de Jersey, Chief Justice of Queensland, to help address the rising workload of the Court. In summary, the amendments:

- provide that the Court is to consist of the President of the Court and other members of the Court, and is constituted by a member of the Court;
- allow the Governor in Council to appoint one or more Supreme Court Judges as members of the Court;
- require the Governor in Council to appoint one of the members of the Court as President of the Court;
- allow the Governor in Council to appoint one of the members of the Court as acting President of the Court;
- specify what happens if a member of the Court dies or is incapacitated after starting to hear a proceeding; and
- outline the transitional arrangements that will apply (the current 'constituting judge' will become a member of the Court).

The Bill amends the *Tobacco and Other Smoking Products Act 1998* to –

- introduce a prohibition on the sale and commercial display and supply of ‘ice’ pipes (for the smoking of crystal methamphetamine); and
- amend section 26ZQ to improve the enforceability of the existing prohibition on the sale, supply and display of bongos (including component parts).

In addition, a minor amendment will be made to the definition of ‘provide’ for the purposes of section 26W in the *Tobacco and Other Smoking Products Act 1998*. This amendment will remove any doubt that smoking is prohibited in an outdoor eating or drinking place where food or drink is *available* for purchase. Currently, the definition of ‘provide’ only includes circumstances where food or drink is in the process of being distributed, given away or sold.

### **Alternative Ways of Achieving Policy Objectives**

Alternative ways of achieving the policy objects were considered. However, each of the policy objectives dealt with in the Bill is required to be effected by legislation.

### **Estimated Cost for Government Implementation**

There are administrative and operational costs (including monitoring and enforcement costs) associated with Government implementation of the Bill. These costs will be funded from within existing allocations.

### **Consistency with Fundamental Legislative Principles**

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

#### **Regulation Making Power**

New section 38G inserts a definition of the term reportable event for the purposes of the RCA amendments to the *Health Services Act 1991*. The term ‘reportable event’ is defined to mean an event prescribed under a regulation that happens while providing a health service at a health service facility.

The inclusion of this definition raises the issue of whether the legislation has sufficient regard to the institution of Parliament by sufficiently subjecting the exercise of a delegated legislative power to the scrutiny of

the Legislative Assembly as provided for in section 4(4)(b) of the *Legislative Standards Act 1992*.

Following consultations with the Health Quality and Complaints Commission it was requested that those events, including the unexpected death or permanent harm to a patient, be prescribed under regulation rather than the principal Act. The Commission's preference for having the events prescribed under regulation is that this will enable greater flexibility to amend the events prescribed in a timely fashion, so as to maintain consistency with national and state monitoring and reporting practices. The Commission is concerned that if the list of events is not prescribed under regulation, the benefits to be gained from the introduction of a regulatory framework for the conduct of RCA will be lost.

Since 2000, work has been undertaken by the Australian Council for Safety and Quality in Health Care (now the Australian Commission on Safety and Quality in Health Care) to develop a national strategic framework to improve safety and quality across the health care system in Australia. As a result of this work, in April 2004, the Australian Health Ministers' Conference agreed to implement a range of initiatives to improve the safety and quality in public hospitals, including the requirement that all public hospitals implement an incident management system as well as report on an agreed set of sentinel events at a State and National level. It is proposed, that the events to be prescribed under the regulation will be based on the core sentinel events developed by the Australian Council for Safety and Quality in Healthcare.

At a state level, the Health Quality and Complaints Commission, which was established in July 2006, has a statutory responsibility to oversee and review the quality of health services. As provided for by the *Health Quality and Complaints Commission Act 2006*, the HQCC is responsible for matters such as: creating or adopting quality, safety and clinical practice standards; monitoring and reporting on compliance with the standards; promoting continuous quality improvement in health services; making recommendations to health service providers about ways to improve health services; and receiving, analysing and disseminating information about the quality of health services. One of the current priorities of the Commission is to establish a network of information sources that will allow the Commission to monitor the quality of care provided by all health services in Queensland. Accordingly, as part of this information network the legislation ensures that the Commission is provided with a copy of the report prepared at the conclusion of an RCA.

## **Protection from Liability**

The success of RCA depends on voluntary participation by individuals to be appointed as RCA team members to conduct an RCA or to provide the RCA team with information about a reportable event. Experience in other jurisdictions and feedback obtained on the draft Bill clearly indicates that health personnel will be reluctant to participate in an RCA unless they can be assured that they are provided with protections from liability. Consequently, a number of clauses have been included in the RCA amendments to the *Ambulance Service Act 1991* and the *Health Services Act 1991* that protect against liability for certain acts. The inclusion of these provisions raises the issue of whether the legislation has sufficient regard to the rights and liberties of individuals by conferring immunity from proceedings or prosecution without adequate justification (see section 4(3)(h) of the *Legislative Standards Act 1992*).

New section 38ZD in the *Health Services Act 1991* provides that an RCA team member, or relevant person for an RCA team, who acts honestly and without negligence is not civilly liable. The protection extends to actions for defamation, breach of confidentiality and disciplinary action.

These provisions are defensible on the grounds that it is not appropriate for an individual to be made personally liable as a consequence of that individual agreeing to carry out the responsibilities of an RCA team member or relevant person in good faith. A person cannot be compelled to become a member of an RCA team. Rather the cooperation of health personnel will be sought to conduct an RCA to help improve the quality and safety of services provided at a health service facility. In order to be able to identify and analyse the factors that may have contributed to the occurrence of an event, it is important that personnel who are responsible for the provision of health services be involved in the conduct of an RCA. It is anticipated that health personnel will readily agree to being appointed to an RCA team, as such a contribution to the improvement of health services will be seen as fulfilling their professional responsibility to patients. However, this may not be case unless health personnel are confident that they can undertake the work of an RCA team member without fear that their involvement will result in future repercussions or reprisals.

It is important to note, however, that the protection offered under section 38ZD does not extend to a person who is not acting honestly or for actions taken outside the scope of the RCA provisions.

New sections 38ZE in the *Health Services Act 1991* and 36V in the *Ambulance Service Act 1991* provides a person who honestly and on



reasonable grounds provides information to an RCA team for the conduct of an RCA with statutory protection. The protection includes protection from any liability, defamation or breach of confidentiality. Nor can a person be held to have breached any code of professional ethics or departed from accepted standards of conduct.

As stated above, the conduct of an RCA relies upon the voluntary participation of those individuals who may have been involved with or have knowledge about a reportable event. If these individuals are not confident that the information they provide as part of an RCA cannot be used against them at a later time, they are less likely to be open and frank with the RCA team. Unless the legislation offers protection for the provision of information to an RCA team for the conduct of an RCA, it is anticipated that health personnel will be reluctant to contribute information. It is therefore essential that concerns about potential legal liability be addressed by the legislation to ensure that health personnel can provide information that will help identify systemic factors that may be compromising the safety and quality of health services.

### **Offence provisions – ice pipes and bongs**

The breadth of the offences in proposed sections 26ZPA and 26ZQ of the *Tobacco and Other Smoking Products Act 1998* for the sale, supply and display of ice pipes and bongs potentially raise a fundamental legislative principle issue.

The offence provisions focus on devices that are *capable* of being used for smoking illegal drugs. This approach is used to avoid legal argument about the *intended* purpose of the bong or ice pipe (eg that the bong was intended for use as an ornament or for smoking tobacco). However, since many innocuous objects are capable of being used to smoke illegal drugs, the offences potentially capture persons who supply and display, for example, aluminium foil, orange juice bottles, garden hoses or test tubes. This raises a potential ambiguity of the kind mentioned in s 4(3)(k) of the *Legislative Standards Act 1992*.

To counter this problem, both proposed sections 26ZPA and 26ZQ provide that it is a defence for the person to prove the bong or ice pipe (or components), as the case may be, is designed primarily for a purpose other than smoking a dangerous drug.

Use of the broad expression "capable of being used" in these particular offence provisions is exceptional, to reflect the broad policy intent of removing ice pipes and bongs from display in these specific retail-related situations.

## **Consultation**

### **Community**

The following bodies have been consulted about the Bill:

- Association of Salaried Medical Officers, Queensland
- Australasian College of Dermatologists (Qld Faculty)
- Australasian College for Emergency Medicine
- Australasian College of Podiatric Surgeons
- Australasian Day Surgery Association
- Australian and New Zealand College of Anaesthetists
- Australian and New Zealand College of Mental Health Nurses
- Australian and New Zealand Society of Nuclear Medicine (Qld Branch)
- Australian Association of Musculo-Skeletal Medicine
- Australian Association of Occupational Therapists - Queensland Inc
- Australian College of Critical Care Nurses
- Australian College of Health Service Executives
- Australian College of Midwives, Qld Branch
- Australian College of Operating Room Nurses (ACORN)
- Australian Institute of Radiography (Qld Branch)
- Australian Medical Association (Qld Branch)
- Australian Neonatal Nurses Association – Qld
- Australian Orthopaedic Association (Qld Branch)
- Australian Physiotherapy Association - Queensland Branch
- Australian Private Hospitals Association
- Australian Rural Nurses
- Congress of Aboriginal and Torres Strait Islander Nurses
- Council of Deans of Nursing and Midwifery (Australia and New Zealand)
- Directors of Nursing Association Queensland (Inc)

- Fulltime Medical Staff Association
- Infection Control Practitioners Association of Queensland
- Medical Superintendents Association of Queensland
- National Enrolled Nurse Association
- Pharmacy Guild of Australia - Queensland Branch
- Private Hospitals Association of Queensland
- Queensland Public Sector Union
- Queensland Nurses Union
- Royal Australian and New Zealand College of Obstetricians and Gynaecologists
- Royal Australian and New Zealand College of Ophthalmologists
- Royal Australian and New Zealand College of Psychiatrists
- Royal Australian and New Zealand College of Radiologists (Qld Branch)
- Royal Australasian College of Dental Surgeons Inc.
- Royal Australasian College of Medical Administrators
- Royal Australasian College of Physicians
- Royal Australasian College of Surgeons
- Royal Australian College of General Practitioners
- Royal College of Nursing Australia
- Royal College of Pathologists of Australasia
- Rural Doctors Association of Queensland
- Society of Hospital Pharmacists of Australia

The majority of stakeholders who provided feedback on the RCA provisions supported the creation of a regulation framework for RCA. Although, a few stakeholders expressed concern that the introduction of legislation for the conduct of RCA may narrow the tools used by health service facilities to promote cultural change in relation to safety and quality issues.

## **Government**

The following government agencies and statutory bodies have been consulted about, and support the introduction of, the Bill:

- Crime and Misconduct Commission
- Department of Communities
- Department of Justice and Attorney-General
- Department of Premier and Cabinet
- Health Quality and Complaints Commission
- Office of the Health Practitioner Registration Boards
- Office of the Information Commissioner
- Office of the State Coroner
- Queensland Nursing Council
- Queensland Police Service

## **Notes on Provisions**

### **Part 1                      Preliminary**

Clause 1 sets out the short title of the Bill.

Clause 2 sets out the arrangements for the commencement of the Bill.

### **Part 2                      Amendment of *Health Services Act 1991***

Clause 3 specifies that part 2 of the Bill amends the *Health Services Act 1991*.

Clause 4 amends section 2, which sets out the meaning of key terms used throughout the *Health Services Act 1991*, as a consequence of the new Part 4B (Root cause analyses) being inserted into the Act by clause 5.

Clause 5 inserts new Part 4B into the Act to create a regulatory framework for the conduct of a root cause analysis (or RCA) of a reportable event that happened while providing a public sector health service or a health service at a private health facility. This new part is comprised of section 38G to 38ZL.

Section 38G lists those terms which have been defined for the purposes of Part 4B, including: chain of events document, commissioning authority, coroner, health service facility, notice, private health facility, RCA report, RCA team, relevant person and reportable event.

Section 38H sets out the meaning of root cause analysis of a reportable event for the purposes of Part 4B. That is, a systematic process of analysis which can be used to identify the factors that contributed to the happening of a reportable event as well as remedial measures that could be implemented to prevent a recurrence of a similar event. In addition, this section clarifies that RCA is not an appropriate means to investigate the professional competence of a person in relation to a reportable event; or ascertain who is to blame for the happening of the event.

Section 38I states the purpose of the new part 4B. That is, to facilitate the use of root cause analysis by health service facilities as a quality improvement technique to assess and respond to reportable events that happen while providing health services at the facilities.

Section 38J sets out principles to guide the conduct of RCAs. These principles have been drawn from the work of the USA Veteran's Health Administration which developed RCA as an investigation technique to help health services understand how and why an event occurred (so as to prevent it from recurring) as well as other international literature regarding the use of this quality improvement technique in health and other industry sectors.

Section 38K specifies who may appoint an RCA team to conduct an RCA, that is:

- if the event happens during the provision of a public sector health service the commissioning authority is the chief executive or the delegate of the chief executive (as provided for by section 38ZI)
- if the event happens while a health service is provided at a private health facility, the commissioning authority is the individual who has

the day-to-day management of the facility or the individual who has overall management responsibility for the facility

- if the event happens while a health service is provided at the Mater Misericordiae Public Hospitals, the commissioning authority is the individual who has the day-to-day management of the Mater Misericordiae Public Hospitals, or who is the chief executive of the Mater Misericordiae Health Services Brisbane Limited.

Section 38L sets out the factors that a commissioning authority must take into account before appointing an RCA team to conduct an RCA of a reportable event. The commissioning authority must be satisfied that:

- persons to be appointed to the team have the appropriate skills, knowledge and experience to conduct an RCA of the event, having regard to the nature of the event. However, a person cannot be appointed to an RCA team if the person was directly involved in provision of the health service during which the event happened;
- the conduct of an RCA of the event would be assisted by the provision of immunities and protections provided to persons under the new Part 4B; and
- the potential benefit in disclosing relevant information is outweighed by the potential benefit of restricting disclosure of the information as provided for under the new Part 4B.

Sections 38M and 38N set out the reporting requirements for an RCA team appointed to conduct an RCA of a reportable event.

At the conclusion of an RCA, the RCA team must prepare an RCA report that includes the following information:

- a description of the event
- a statement of the factors the RCA team considers contributed to the happening of the event
- any recommendations about changes or improvements in a policy, procedure or practice relating to the provision of health services, to reduce the likelihood of, or prevent, the same type of event happening again during the provision of health services.

The RCA team must as soon as practicable after preparing an RCA report give it to the commissioning authority who appointed the team (see section 38N).

The RCA team may also prepare a chain of events document that details, or pictorially represents, the chain of events identified by the team as having

led to the happening of the reportable event. The RCA team must give the chain of events document to the commissioning authority who appointed the team, when it gives the RCA report to the commissioning authority (see section 38N).

However, as provided for by subsection 38M(3), neither the RCA report or chain of events document can contain the name or address of: the person who received the health service during the provision of which the reportable event happened; a person involved in the provision of the health service during which the reportable event happened; or a member of the RCA team.

Sections 38O to 38Q set out the circumstances under which an RCA may be stopped by either an RCA team appointed to conduct the RCA or the commissioning authority who appointed the RCA team. These provisions help give effect to subsection 38H which specifies that RCA is not to be used to: investigate the professional competence of a person in relation to the event; or ascertain who is to blame for the happening of the event.

An RCA must be stopped if the RCA team reasonably believes, or the commissioning authority receives information that leads the commissioning authority to reasonably believe, that:

- the event involves a blameworthy act, which is defined under section 38O to mean an intentionally unsafe act, deliberate patient abuse or conduct that constitutes a criminal offence; or
- the capacity of a person who was directly involved in the provision of the health service during which the reportable event happened was impaired by alcohol or drugs.

An RCA may also be stopped if the commissioning authority becomes aware that a relevant entity has started an investigation of the reportable event. Relevant entity is defined for the purposes of section 38Q to mean: the Health Quality and Complaints Commission, a coroner, a board under the *Health Practitioner (Professional Standards) Act 1999*, the Queensland Nursing Council, the commissioner of the police service or another entity that has the power under an Act of the State, the Commonwealth or another State to deal with the event. The commissioning authority may consult any of these bodies prior to giving notice to the RCA team to stop an RCA under section 38Q(3).

In addition, the commissioning authority must stop the RCA if the commissioning authority comes to the view that the event the basis of the appointment of the RCA team is not a reportable event.

If the RCA team reasonably believes that an RCA should be stopped under section 38P, the team will be required to stop its conduct of the RCA and give notice to the commissioning authority to this effect. Such notice must be in a form approved by the chief executive but must not contain any information about why the RCA team stopped its conduct of the RCA.

If the commissioning authority determines that an RCA should or must be stopped under section 38Q, the commissioning authority will be required to give notice to the RCA team to this effect. Such notice must be in a form approved by the chief executive.

Sections 38R to 38ZC set out the circumstances under which information (defined as including documents such as the working notes of an RCA team member, draft documents, an RCA report or chain of events document) gathered during the conduct of an RCA may be disclosed or released.

Section 38S makes it an offence for an RCA team member to disclose information acquired as a member of an RCA team, other than for one of the following authorised purposes:

- the conduct of an RCA of the reportable event
- the preparation of an RCA report or chain of events document
- the giving of an RCA report or chain of events document to the commissioning authority as required by section 38N
- the giving of a notice to the commissioning authority that the RCA team reasonably believes that the RCA should be stopped as provided for by section 38P
- the giving of information to an inspector monitoring and enforcing compliance with provisions of the new Part 4B (see clause 6)

Section 38S also imposes a similar duty of confidentiality on the relevant person for an RCA team. As defined in section 38G, a relevant person for an RCA team may be either:

- a person who provides administrative or secretarial services to the commissioning authority in exercising its powers under part 4B; or
- a person who provides administrative or secretarial services to the RCA team; or
- a person who advises the RCA team about the conduct of an RCA or the preparation of an RCA report or chain of events document.



Section 38T makes it an offence for a commissioning authority to disclose information in, or release, an RCA report or chain of events documents, unless it is required or permitted under new sections 38U to 38ZA; or the information in an RCA report is to be used for the preparation and giving of a safety and quality report. However, this restriction does not apply if:

- the disclosure is necessary or incidental to the exercise of the commissioning authority's powers under Part 4B. This exception will ensure that a commissioning authority can provide information to a relevant person who may provide administrative or secretarial services to assist the commissioning authority under Part 4B or to a relevant person who has been nominated to advise an RCA team about the conduct of an RCA; or
- the disclosure of information is to an inspector monitoring and enforcing compliance with the new Part 4B.

Section 38T also makes it an offence for a commissioning authority to disclose the identity of an RCA team member or disclose information which could identify an RCA team member, other than the giving of such information to an inspector monitoring and enforcing compliance with the new Part 4B.

In addition, section 38T makes it an offence for a relevant person for a commissioning authority to disclose information other than for the purpose of helping the commissioning authority to exercise the powers of this office under Part 4B. However, this restriction does not apply if:

- the disclosure is for the purpose of helping the commissioning authority to exercise its powers under Part 4B; or
- the information is given in response to a request from an inspector monitoring and enforcing compliance with the new Part 4B.

Section 38U imposes an obligation on the commissioning authority to provide the Health Quality and Complaints Commission with a copy of the RCA report prepared at the conclusion of an RCA of a reportable event as well as the name and address of the health service facility at which the reportable event happened. However, the commissioning authority need not comply with this obligation if there is an agreement under section 38W.

Section 38V imposes a statutory obligation on the commissioning authority for a private health facility to provide the Chief Health Officer with a copy of the RCA report prepared at the conclusion of an RCA of a reportable event as well as the name and address of the health service facility at which the reportable event happened. The legislation provides for such

information to be given to the Chief Health Officer in light of this officer's statutory responsibilities for the licensing of private health facilities.

Section 38W provides that if a commissioning authority has given the RCA report to the Chief Health Officer and there is in place a written agreement that the Chief Health Officer will provide the report (and other required details) to the Health Quality and Complaints Commission, the Chief Health Officer must provide the report (and other required details) to the Commission.

Section 38X enables an RCA report, chain of events document and other specified information to be given to a patient safety entity that is responsible for the planning, implementation, management and evaluation of patient safety initiatives and programs for a health service facility.

The documents and information must be given to a patient safety entity by a commissioning authority if:

- the giving of such information is authorised by the chief executive; and
- a regulation has been made that specifies the entity is a prescribed patient safety entity for the health service facility; and
- a regulation has been made that specifies the purpose for which the entity may be given information.

Section 38X also makes it an offence for a person who performs functions for a prescribed patient safety entity to:

- give a copy of an RCA report or chain of events document to anyone else; and
- disclose any information given to the entity (including information contained in an RCA report and chain of events document) to anyone else other than for the authorised purpose for which it was given; and
- use the information given to the entity (including information contained in an RCA report and chain of events document) other than for the authorised purpose for which it was given.

Section 38Y imposes a statutory obligation on the commissioning authority to give a copy of an RCA report to a coroner or police officer if a coroner is investigating the death of a person and the death is a reportable event for which an RCA may be conducted.

In addition, section 38Y clarifies that a commissioning authority must respond to a query made by a coroner or police officer to determine whether an RCA is being, or has been, conducted in relation to the death.

If the commissioning authority has advised a coroner or police officer that an RCA is being conducted but the RCA is subsequently stopped under section 38P or 38Q, the commissioning authority must advise the coroner or police officer of this occurrence.

The obligations under section 38Y also apply to an RCA report of an event a coroner considers may be relevant to the death under investigation.

Section 38Z specifies that a commissioning authority must comply with a request of the Minister or chief executive to confirm whether an RCA report has been prepared for a reportable event and to provide a copy of the RCA report given to the commissioning authority by the RCA team.

Section 38ZA enables the commissioning authority to give a copy of the RCA report or disclose information contained in an RCA report to a person the commissioning authority reasonably believes has a sufficient personal or professional interest in the reportable event to which the report relates.

Where a person receiving a health service has been unintentionally harmed, effective communication with the person and the person's family and carers is important to minimising further distress. It is therefore intended that the RCA report may be communicated to persons with a personal interest in a reportable event – for example, a patient, a patient's family or a patient's carer.

It is also essential that the information contained in an RCA report be communicated to persons with a professional interest in a reportable event. For example, the staff on duty at the time a reportable event occurred, as well as any other staff affected by the proposed recommendations, need to understand why an event occurred and how it is proposed that future occurrences be prevented.

Section 38ZB provides that a 'stated person' is neither competent nor compellable to produce information obtained during the conduct of an RCA, or documents created solely for the purposes of an RCA, in a proceeding, or in compliance with a requirement under an Act or legal process. This ensures that RCA team members, a commissioning authority, a relevant person for an RCA team, a relevant person for a commissioning authority or a prescribed patient safety entity cannot be called upon to give information or produce documents that they have obtained as a result of the conduct of an RCA. An exception to this prohibition has been included to enable information to be accessed for proceedings for an alleged offence against the new Part 4B (eg a breach of the restriction on the disclosure of information by an RCA team member)

or Part 7A (eg failing to give information to an inspector as required by a notice under section 63ZD).

Section 38ZC provides that a person who gives information to an RCA team for the conduct of an RCA cannot be compelled to divulge or communicate such information in a proceeding, or in compliance with a requirement under an Act or legal process. Specifically such persons cannot be required to give information about:

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

Sections 38ZD to 38ZH also provide additional protections from liability and reprisal to RCA team members as well as persons who give information to the RCA team.

Section 38ZD provides a protection from civil liability for RCA team members, and relevant persons for an RCA team, who act honestly and without negligence as required of them under Part 4B. The protection includes specific protection from actions for defamation and breach of confidentiality as well as liability for disciplinary action. The section also provides who must indemnify RCA team members and relevant persons should proceedings be commenced relating to a liability for which the person is protected under this section.

Section 38ZE provides a protection from liability for persons who honestly and on reasonable grounds give information to an RCA team, or relevant person for an RCA team, during the conduct of an RCA. The protection extends to actions for defamation and breach of confidentiality as well as liability for disciplinary action. In addition, a person cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

Section 38ZF establishes that it is unlawful for anyone to take reprisal against a person who provides assistance to an RCA team for the conduct of an RCA. The provision also establishes a test for determining when unlawful reprisal has taken place.

Section 38ZG establishes that a person who takes an unlawful reprisal against anyone who assists with the conduct of an RCA commits a misdemeanour.

Section 38ZH enables any person who suffers reprisal for assisting with the conduct of an RCA to sue for damages. The provision also specifies the powers of the Court to grant an appropriate remedy and specifies that if the matter is to go to trial in the Supreme Court or the District Court, it must be decided by a Judge sitting without a jury.

Section 38ZI enables the chief executive's power to appoint an RCA team under section 38K or make an authorisation under section 38X to be delegated to an officer or employee of the department who has the qualifications, experience or standing appropriate to exercise the power.

Section 38ZJ provides that if a commissioning authority appoints an RCA team under section 38K to conduct an RCA, but it later transpires the event was not a reportable event, the confidentiality requirements, protections and privileges under Part 4B apply as if the event was a reportable event. It should be noted that in this circumstance, section 38Q(1)(b)(iii) requires the commissioning authority to stop the RCA.

Section 38ZK specifies that an RCA report is not admissible as evidence in any proceedings, except a coroner's inquest.

Section 38ZL states that the Minister must within 2 years of the commencement of provisions under Part 4B, start a review of Part 4B to ensure that it is adequately meeting community expectations and that its provisions remain appropriate. As soon as practicable after the review is completed, the Minister will be required to present a report of the outcome of the review to the Legislative Assembly.

Clauses 6 and 7 amend various provisions in Part 7 to enable the appointment of inspectors with appropriate powers to investigate alleged offences under the new Part 4B (Root cause analyses).

Clause 8 inserts a new Part 7B (Proceedings) into the Act as a consequence of the insertion of the new 4B (Root cause analyses). This part is comprised of sections 63ZK to 63ZN.

Section 63ZK specifies that an offence against the Act, other than an offence against section 38ZG(1) for taking a reprisal, is a summary offence.

Section 63ZL specifies the time limitation for starting summary proceedings under the *Justices Act 1886* for a summary offence.

Section 63ZM specifies how proceedings for an indictable offence against the Act may be taken and the circumstances in which a magistrate must not hear the charge summarily.

Section 63ZN sets out the circumstances in which proceedings for indictable offences must be before a magistrate. It also specifies the limited jurisdiction that may be exercised if a proceeding is brought before a justice who is not a magistrate.

Clause 9 amends the regulation making head of power in section 68 as a consequence of the insertion of the new Part 4B (Root cause analyses). The amendment will enable regulations to be made about the procedures to be followed by an RCA team in its conduct of an RCA of a reportable event.

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

Clause 10 specifies that Part 3 amends the *Mental Health Act 2000*.

Clause 11 amends section 381 to specify that the Mental Health Court (the court) consists of the president (appointed under new section 388 inserted by clause 13) and the other members of the court (appointed under new section 385 inserted by clause 13). Currently, under section 382 of the Act, the court consists of, and is constituted by, a single Supreme Court judge.

Clause 12 amends section 382 to specify that the court is constituted (for hearing a particular matter) by a member of the court sitting alone and makes other consequential amendments to that section.

Clause 13 omits Chapter 11, Part 2 and inserts a new Part 2 (sections 385-387) and Part 2A (sections 388-388D).

Section 385 allows the Governor in Council to appoint, by commission, a Supreme Court judge to be a member of the court for a term of not more than 3 years.

Section 386 specifies that the appointment of the judge does not affect the judge's tenure of office or rights or privileges as a judge and makes it clear that the judge's service as a member of the court is taken to be service as a Supreme Court judge.

Section 387 specifies when the judge's office as a member of the court ends and clarifies that the judge may be continued in office by the Governor in Council to enable the completion of a hearing.

Section 388 requires the Governor in Council to appoint a member of the court as president of the court and allows the appointment to be made at the same time as the person is appointed as a member of the court.

Section 388A outlines the responsibilities of the president of the court and specifies that the president has power to do all things necessary to perform those responsibilities.

Section 388B provides that the president of the court holds office as president while a member of the court.

Section 388C outlines how the president of the court may resign office.

Section 388D allows the Governor in Council to appoint a member of the court to act as the president of the court in specified circumstances.

Clause 14 amends section 398 to clarify that the registrar of the court may be given directions by a member of the court for a proceeding being heard by that member, or by the president of the court.

Clause 15 inserts new section 415A which specifies the action that the president of the court may take if a member of the court starts to hear a proceeding but dies or becomes incapable of continuing the hearing. The president may take the specified action on his or her own initiative, or in response to an application made by a party to the proceeding, but must first consult with the parties to the proceeding.

Clause 16 amends section 416 to enable the court's jurisdiction to punish a contempt of the court to be exercised on the initiative of a member of the court.

Clause 17 amends section 418 to confer the protection and immunities outlined in the section on all members of the court.

Clause 18 amends section 419 to require that rules made by the Governor in Council about the court or the registry may only be made with the consent of the president of the court.

Clause 19 amends section 420 to allow the president of the court to give directions about the practice and procedure of the court, subject to the Act and the court rules.

Clause 20 amends section 421 to allow the president of the court to approve forms for use under the Act.

Clause 21 amends section 435 to confer on the president of the court the obligation to prepare the annual report on the operation of the court and the registry.

Clause 22 amends section 493 to update a reference to the president's power to approve forms under section 421.

Clause 23 amends the heading of Chapter 16, Part 2.

Clause 24 amends section 583 to make it clear that the transitional arrangements under that section applied to the "constituting judge" of the court appointed under the current provisions of the Act.

Clause 25 inserts new Chapter 11, Part 3 (sections 589-593) which consists of transitional provisions.

Section 589 defines the terms "commencement", "post-amended Act" and "pre-amended Act".

Section 590 specifies that the "constituting judge" of the court appointed under the current provisions of the Act is taken to be member of the court under new section 385 and holds office until the person's appointment as "constituting judge" would have ended or the person ceases to be a Supreme Court judge, whichever occurs first.

Section 591 ensures that rules of the court made under section 419(1) remain in force after its amendment by clause 18.

Section 592 ensures that directions about the practice and procedure of the court given under section 420(1) remain in force after its amendment by clause 19.

Section 593 provides that forms approved under section 421 are taken to have been approved under that section after its amendment by clause 20.

Clause 26 amends Schedule 2 by omitting the definition of "constituting judge" and inserting definitions of "commencement" "post-amended Act" and "pre-amended Act" by reference to their meaning under section 589.

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

Part 4 gives effect to Recommendations 3.1, 3.18, 3.19, 3.20, 3.22, 3.23, 3.41, 3.42, 3.43 and 4.22 of the Final Report of the Review of the Mental



Health Act 2000, *Promoting Balance in the Forensic Mental Health System* (The Mental Health Act Review).

Clause 27 states that this part amends the *Mental Health Act 2000*.

Clause 28 amends section 4 to include in the purpose of the Act the need to balance the rights and freedoms of persons with mental illness with the rights and freedoms of other persons.

The Mental Health Act conforms to the framework endorsed by all Australian Governments in 1992 in the *National Mental Health Strategy* which was developed to implement Australia's commitment to adopting the *United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*. This framework places the humanitarian treatment of people with mental illness within the broader framework of individual and community rights and safety. In particular the *United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* recognises the need to balance the fundamental freedoms and basic rights of people with mental illness, with the fundamental rights and freedoms of others (United Nations, *United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, GA Res 46/119 (1991)).

The Purpose of the Act has been amended to better reflect this balance and to complement the amendments to section 5 recommended under the Mental Health Act Review.

Clause 29 amends section 5 to provide that the protection of the community and the needs of victims of an alleged offence, allegedly committed by a forensic patient, must be taken into account when a decision concerning a forensic order is made under the Act. This clause implements Recommendation 3.1 of the Mental Health Act Review.

Clause 30 consequentially amends the example in section 223(2) to give effect to the new definitions of 'victim' and 'direct victim' in the schedule to the Act.

Clause 31 consequentially amends section 228B to give effect to the new definitions of 'victim' and 'direct victim' in the schedule to the Act.

Clause 32 consequentially amends section 228C to give effect to the new definitions of 'victim' and 'direct victim' in the schedule to the Act.

Clause 33 amends the heading for chapter 7, part 6, division 6 to remove reference to 'non-parties' and replace with reference to 'victims or

concerned persons'. This clause implements Recommendation 3.18 of the Mental Health Act Review.

Although the recommendation suggested use of the term 'interested persons', that term has a defined meaning elsewhere in the Act. Accordingly, the substitute term 'concerned person' has been used. This is reflected throughout these amendments.

Clause 34 amends section 284 to give effect to Recommendations 3.18, 3.19 and 3.20 in relation to the giving of material to the Mental Health Court by persons who are not parties to the hearing of the reference. The clause:

- replaces the reference to 'non-party' in the heading and entire section with 'victim or concerned person'. Concerned person is defined in subsection 1 to mean a person other than a victim and other than a party to the hearing;
- removes the requirement for relevancy of material to the reference to be proven before it is submitted;
- provides examples of decisions for which the material may be submitted to assist the court. The list of decisions is not meant as an exhaustive list of decisions that the court may make, but rather as a guide for victims and concerned persons to the decisions in the Act that the court has authority to make;
- provides for the matters for which the victim or concerned person may express views about in material submitted to the court; and
- specifies that the court may place such weight as it considers appropriate on any victim or concerned person's material it takes into account.

Clause 35 amends section 285 to replace references to 'non-party' with 'victim or concerned person' and to require the court to give as soon as practicable after making a decision on a reference, reasons for taking or refusing to take material submitted by the victim or concerned person into account. The section will also require a statement to be given about how material taken into account was taken into account.

Section 285(3) specifies that a confidentiality order made under section 426 will displace any obligation to provide the reasons to the person to whom the reference relates.

The purpose of the amendment is to ensure that victims and other people who make statements to the court are provided with information about the decision as well as how the decision was made.

While the section does not specify whether the reasons should be in writing or not, the discretion to provide reasons in writing will continue to lie with the court which may issue directives where appropriate. For example, the court may issue a directive that particular matters, such as the reasons in section 285, be provided in writing to a victim who was not able to be present in court when the decision and reasons were delivered orally.

Clause 36 inserts new section 286A to enable the court to give a copy of material submitted by a victim or a concerned person to the administrator of the authorised mental health service responsible for the treatment and care of the person to whom the reference relates or the tribunal. The section specifies that the copy of the material may only be given after a decision on a reference has been made and provides that the court may order that a copy of the material not be given to the administrator or the tribunal. If the court orders that a copy not be given it must give reasons for the order in its decision on the reference. This clause implements Recommendation 3.23 of the Mental Health Act Review.

Clause 37 consequentially amends section 313B to give effect to the new definitions of ‘victim’ and ‘direct victim’ in the schedule to the Act.

Clause 38 consequentially amends section 313C to give effect to the new definitions of ‘victim’ and ‘direct victim’ in the schedule to the Act.

Clause 39 amends section 426 to add the reasons for taking or refusing to take into account material submitted by victims or concerned persons, and any statement provided about how the material was taken into account, as matters for which a confidentiality order may be made.

Clause 40 amends section 450 to specify that the role of the Attorney-General at hearings for a review under chapter 6, part 3 or 4 is to represent the public interest. This amendment implements Recommendation 4.22

Clause 41 amends section 464 to give effect to Recommendations 3.41, 3.42 and 3.43 in relation to the giving of material to the tribunal by persons who are not parties to the proceeding. The clause:

- replaces the reference to ‘non-party’ in the heading and entire section with ‘victim or concerned person’. Concerned person is defined in subsection 1 to mean a person other than a victim and other than a party to the proceeding;

- removes the requirement for relevancy of material to the proceeding to be proven before it is submitted;
- provides examples of decisions for which the material may be submitted to assist the tribunal. The list of decisions is not meant as an exhaustive list of decisions that the tribunal may make, but rather as a guide for victims and concerned persons to the decisions in the Act that the tribunal has authority to make;
- provides for the matters for which the victim or concerned person may express views about in material submitted to the tribunal; and
- specifies that the tribunal may place such weight as it considers appropriate on any victim or concerned person's material it takes into account.

Clause 42 amends section 465 to replace references to 'non-party material' with 'material submitted by victim or concerned person'.

Clause 43 amends schedule 2 (Dictionary) to replace the definition of 'victim' and insert definitions for 'concerned person', 'direct victim' and 'immediate family'.

The definition of 'victim' has been expanded to include the 'direct victim' and a member of the 'immediate family' of the direct victim to recognise the emphasis placed by the Mental Health Act Review on the broader group of people that may suffer harm from the alleged criminal actions of a person suffering a mental illness. The definition is adopted from the definition of 'victim' in the *Criminal Offence Victims Act 1996*.

The clause also inserts definitions of 'expert's report' and 'report' to cross reference the terms used in the Act.

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

Clause 44 specifies that part 5 amends the *Tobacco and Other Smoking Products Act 1998*

Clause 45 amends the definition of 'provide', as defined for the purposes of s.26W to include the words 'or is available to be provided'. This

amendment is necessary to remove any doubt that smoking is prohibited in an outdoor eating or drinking place where food or drink is *available* for purchase. Currently, the definition of ‘provide’ only includes circumstances where food or drink is in the process of being distributed, given away or sold.

Clause 46 inserts a new section 26ZPA dealing with the sale, supply and display of ice pipes. This section will prohibit any person from selling an ice pipe or a component of an ice pipe. In addition, the commercial supply or display of an ice pipe, or a component of an ice pipe, will be prohibited.

An ice pipe is defined as a device capable of being used for administering a dangerous drug by the drawing of smoke or fumes resulting from heating or burning the drug in the device in the drug’s crystal, powder, oil or base form. The specification of the form of the drug is included in the definition to ensure that tobacco pipes are not captured. The definition is deliberately broad to give effect to the policy intent to remove these items from retail display. This will ensure that retailers cannot argue that the display of an ice pipe is for decorative purposes only.

A component of an ice pipe is defined as an item that is apparently intended to be part of an ice pipe and is not capable of being used for administering a dangerous drug without an adjustment, modification or addition. This is to prevent retailers attempting to circumvent the prohibition of ice pipes by selling their component parts disassembled.

It will be a defence for a person to prove that an ice pipe, or a component of an ice pipe, is designed primarily to be used for a purpose other than administering a dangerous drug. This is to ensure that the prohibition does not capture innocuous everyday items such as aluminium foil or a spoon, which are capable of being used to make ‘home-made’ ice pipes.

However, a mere statement on, or made in relation to, the ice pipe or components of an ice pipe to the effect that it is designed or intended to be used for a lawful purpose will not of itself be enough to prove the defence. This provision is also consistent with the law regarding self-serving statements.

Clause 47 omits section 26ZQ of the Act and replaces it with a new section 26ZQ titled Sale, supply and display of bongs. This section will prohibit any person from selling a bong or a component of a bong. In addition, the commercial supply or display of a bong, or a component of a bong, will be prohibited.

A bong is defined in the section as a device capable of being used for administering a dangerous drug by the drawing of smoke or fumes

resulting from heating or burning the drug in or on the device through water or another liquid in the device. The definition is deliberately broad to give effect to the policy intent to remove bongs from retail display.

A component of a bong is defined as an item that is apparently intended to be part of a bong and is not capable of being used for administering a dangerous drug without an adjustment, modification or addition. This will ensure that retailers do not attempt to circumvent the prohibition of bongs by selling their component parts disassembled.

The definition of bong specifically excludes a 'hookah', which is traditionally used by some cultures to smoke flavoured tobacco and has significant cultural meaning among Queensland's ethnic communities, being more than just an implement for smoking.

'Hookah' is defined in the Dictionary as a fully assembled device for smoking tobacco by the drawing of smoke or fumes, resulting from heating or burning the tobacco in the device, through water or another liquid in the device; and that has one or more openings and one or more flexible hoses, each with a mouthpiece, through which the smoke or fumes are drawn. An example diagram of a traditional hookah is included and the term 'mouthpiece' is defined, in order to differentiate between a hookah and a bong, and clarify the intent of the exemption.

To address concerns that this exclusion may open a loophole for retailers to modify bongs to resemble hookahs, a new section 26ZQA will limit the retail display of hookahs to a number prescribed by regulation. This will enable officers to monitor the effectiveness of the restriction and facilitate amendment if required.

It will be a defence for a person to prove that a bong, or a component of a bong, is designed primarily to be used for a purpose other than administering a dangerous drug. This is to ensure that the prohibition does not capture innocuous everyday items such as a garden hose or a bucket, which are capable of being used to make 'home-made' bongs.

However, a mere statement on, or made in relation to, the bong or components of a bong to the effect that it is designed or intended to be used for a lawful purpose will not of itself be enough to prove the defence. This provision is also consistent with the law regarding self-serving statements.

Clause 48 amends the Schedule (Dictionary) of the *Tobacco and Other Smoking Products Act 1998* to include a definition for 'dangerous drug' which refers to section 4 of the *Drugs Misuse Act 1986*.

The term shop is defined to include: any part of a building or place that is used for the sale, or supply as part of a business activity, of goods; and a stall or other structure used for the sale, or supply as part of a business activity, of goods at a market or elsewhere.

The term 'hookah' is defined as referred to above and includes an example diagram of a hookah. In addition, 'mouthpiece' is defined, in relation to the flexible hose of a hookah, as a device or part of a device of a type usually attached to the end of the hose and designed particularly for the purpose of being held in the human mouth for inhaling smoke or fumes drawn through the hose.

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

Clause 49 specifies that part 6 of the Bill amends the *Ambulance Service Act 1991*.

Clause 50 inserts new Part 4A into the *Ambulance Service Act 1991* to create a regulatory framework for the conduct of root cause analysis (or RCA) of a reportable event that happened while ambulance services are being provided. This new part is comprised of sections 36A to 36ZC.

Section 36A list those terms which have been defined for the purposes of Part 4A including: chain of events document, commissioning authority, coroner, notice, RCA report, RCA team, relevant person and reportable event.

Section 36B sets out the meaning of root cause analysis of a reportable event for the purposes of Part 4A. That is, a systematic process of analysis which can be used to identify the factors that contributed to the happening of a reportable event as well as remedial measures that could be implemented to prevent a recurrence of a similar event. In addition, this section clarifies that RCA is not an appropriate means to investigate the professional competence of a person in relation to a reportable event, or to ascertain who is to blame for the happening of the event.

Section 36C states the purpose of the new part 4A. That is, to facilitate the use of root cause analysis by the Queensland Ambulance Service as a quality improvement technique to assess and respond to reportable events that happen while providing ambulance services.

Section 36D sets out principles to guide the conduct of RCAs. These principles have been drawn from the work of the USA Veteran's Health Administration which developed RCA as an investigation technique to help health services understand how and why an event occurred (so as to prevent it from recurring) as well as other international literature regarding the use of this quality improvement technique in health and other industry sectors.

Section 36E provides that the commissioner, Queensland Ambulance Service is the commissioning authority responsible for the appointment of members of an RCA team to conduct an RCA of a reportable event..

Section 36F sets out the factors which the commissioner, Queensland Ambulance Service must take into account before appointing an RCA team to conduct an RCA of a reportable event. The commissioner, Queensland Ambulance Service must be satisfied that:

- persons to be appointed to the team have the appropriate skills, knowledge and experience to conduct an RCA of the event, having regard to the nature of the event. However, a person cannot be appointed to an RCA team if the person was directly involved in provision of the ambulance services during which the event happened;
- the conduct of an RCA of the event would be assisted by the provision of immunities and protections provided to persons under the new Part 4A; and
- the potential benefit in disclosing relevant information is outweighed by the potential benefit of restricting disclosure of the information as provided for under the new Part 4A.

Section 36G and 36H sets out the reporting requirements for an RCA team appointed to conduct an RCA of a reportable event.

At the conclusion of an RCA, the RCA team must prepare an RCA report that includes the following information:

- a description of the event
- a statement of the factors the RCA team considers contributed to the happening of the event
- any recommendations about changes or improvements in a policy, procedure or practice relating to the provision of ambulance services to reduce the likelihood of, or prevent, the same type of event happening again during the provision of ambulance services.

The RCA team must as soon as practicable after preparing an RCA report give it to the commissioner, Queensland Ambulance Service.



The RCA team may also prepare a chain of events document that details, or pictorially represents, the chain of events identified by the team as having led to the happening of the reportable event. The RCA team must give the chain of events document to the commissioner, Queensland Ambulance Service when it gives the commissioner the RCA report.

However, as provided for by subsection 36G(3), neither the RCA report nor a chain of events document can contain the name or address of: the person who received the ambulance service during the provision of which the reportable event happened; a person involved in the provision of the ambulance service during which the reportable event happened; or a member of the RCA team.

Sections 36I to 36K set out the circumstances under which an RCA may be stopped by either an RCA team appointed to conduct the RCA or the commissioner, Queensland Ambulance Service. These provisions help give effect to the subsection 36B(2) which specifies that RCA is not to be used to investigate the professional competence of a person in relation to the event or to ascertain who is to blame for the happening of the event.

An RCA must be stopped if the RCA team reasonably believes, or the commissioner, Queensland Ambulance Service receives information that leads the commissioner to reasonably believe, that:

- the event involves a blameworthy act, which is defined under section 36I to mean an intentionally unsafe act, deliberate patient abuse or conduct that constitutes a criminal offence; or
- the capacity of a person who was directly involved in the provision of the ambulance service to safely and effectively provide the service during which the reportable event happened was impaired by alcohol or drugs.

An RCA may also be stopped if the commissioner, Queensland Ambulance Service becomes aware that a relevant entity has started an investigation of the reportable event. Relevant entity is defined for the purposes of section 36J to mean: the Health Quality and Complaints Commission, a coroner, a board under the *Health Practitioner (Professional Standards) Act 1999*, the Queensland Nursing Council, the commissioner of the police service or another entity that has the power under an Act of the State, the Commonwealth or another State to deal with the event. The commissioner may consult any of these bodies prior to giving a notice to the RCA team to stop an RCA under section 38N(3).

In addition, the commissioner, Queensland Ambulance Service must stop the RCA if the commissioner comes to the view that the event, the basis of the appointment of the RCA team, is not a reportable event.

If the RCA team reasonably believes that an RCA should be stopped under section 36J, the team will be required to stop its conduct of the RCA and give notice to the commissioner to this effect. Such notice must be in a form approved by the chief executive but must not contain any information about why the RCA team stopped its conduct of the RCA.

If the commissioner determines that an RCA should be stopped under section 36J, the commissioner will be required to give notice to the RCA team to this effect. Such notice must be in a form approved by the chief executive.

Sections 36L to 36U set out the circumstances under which information gathered during the conduct of an RCA may be disclosed or released.

Section 36M makes it an offence for an RCA team member to disclose to someone else information acquired by the person as a member of the RCA team other than for the following authorised purposes:

- the conduct of an RCA of the reportable event
- the preparation of an RCA report or chain of events document
- the giving of an RCA report or chain of events document to the commissioner as required by 36G
- the giving of a notice to the commissioner that the RCA team reasonably believes that the RCA should be stopped as provided for by section 36I

Section 36M also imposes a similar duty of confidentiality on the relevant person for an RCA team. As defined in section 36A, a relevant person for an RCA team may be either:

- a person who provides administrative or secretarial services to the team; or
- a person who advises the RCA team about the conduct of an RCA or the preparation of an RCA report or chain of events document.

Section 36N makes it an offence for the commissioner to disclose information contained in, or release, an RCA report or chain of events documents, unless permitted or required under new sections 36P to 36S; or the information in the RCA report is to be used for the preparation and giving of a safety and quality report. However, this restriction does not apply if the disclosure is necessary or incidental to the exercise of the

commissioner's powers under Part 4A. This exception will ensure that the commissioner can provide information to a relevant person who may provide administrative or secretarial services to assist the commissioner under Part 4A or to a relevant person who has been nominated to advise an RCA team about the conduct of an RCA; or

Section 36N also makes it an offence for the commissioner to disclose the identity of an RCA team member or disclose information which could identify an RCA team member.

In addition, section 36N makes it an offence for a relevant person for a commissioning authority to disclose information other than for the purpose of helping the commissioner to exercise the powers of this office under Part 4A. However, this restriction does not apply if the disclosure is for the purpose of helping the commissioner to exercise his or her powers under Part 4A.

Section 36O imposes a statutory obligation on the commissioner to provide the Health Quality and Complaints Commission (the HQCC) with a copy of the RCA report prepared at the conclusion of an RCA of a reportable event as well as details of the place where the reportable event to which the report relates happened. The legislation provides for information to be given to the HQCC in accordance with the Commission's statutory responsible for overseeing and reviewing the quality of health services.

Section 36P enables an RCA report, chain of events document and other specified information to be given to the medical director of the Queensland Ambulance Service. The medical director is responsible for the planning, implementation, management and evaluation of safety initiatives and programs for the Queensland Ambulance Service. The medical director will use the material to: improve safety (for example: by improving clinical practices used by paramedics in providing patient care); identify, monitor and manage risks to patients and paramedics; develop training material; and report aggregate data within the service and in appropriate national forums.

Section 36P makes it an offence for the medical director:

- to give a copy of an RCA report or chain of events document to anyone else, other than a person that performs functions for the medical director;
- disclose any information contained in the report or document to anyone else other than for the authorised purpose for which it was given; and

- use the copy of the report or document other than for the authorised purpose for which it was given.

Section 36P also imposes a similar duty of confidentiality on a person who performs functions relating to the authorised purposes for the medical director.

Section 36Q imposes a statutory obligation on the commissioner to give a copy of an RCA report to a coroner or police officer if a coroner is investigating the death of a person and the death is a reportable event for which an RCA may be conducted.

In addition, section 36Q clarifies that the commissioner must respond to a query made by a coroner or police officer to determine whether an RCA is being, or has been, conducted in relation to the death. If the commissioning authority has advised a coroner or police officer that an RCA is being conducted but the RCA is subsequently stopped under section 36J or 36K, the commissioner must advise the coroner or police officer of this occurrence.

The obligations under section 36Q also apply to an RCA report of an event a coroner considers may be relevant to the death under investigation.

Section 36R specifies that a commissioner must comply with a request of the Minister or chief executive to confirm whether an RCA report has been prepared for a reportable event and to provide a copy of the RCA report given to the commissioner by the RCA team.

Section 36S enables the commissioner to give a copy of the RCA report or disclose information contained in an RCA report to a person the commissioner reasonably believes has a sufficient personal or professional interest in the reportable event to which the report relates.

An important step in managing events where a person receiving a health service has been unintentionally harmed is effective communication. It is therefore intended that the RCA report may be communicated to persons with a personal interest in a reportable event – for example, a patient, a patient’s family or a patient’s carer.

It is also essential that the information contained in an RCA report be communicated to persons with a professional interest in a reportable event. For example, the staff on duty at the time a reportable event occurred, as well as any other staff affected by the proposed recommendations need to understand why an event occurred and how it is proposed that future occurrences be prevented.

Section 36T prohibits information obtained during the conduct of an RCA, and documents created solely for the purposes of an RCA, from being given or produced in a proceeding, or in compliance with a requirement under an Act or legal process. This prohibition ensures that RCA team members, the commissioner, a relevant person for an RCA team, a relevant person for the commissioner or a person who performs functions for the medical director, Queensland Ambulance Service, cannot be called upon to give information or produce documents that they have obtained as a result of the conduct of an RCA. An exception to this prohibition has been included to enable information to be accessed for proceedings for an alleged offence against the new Part 4A.

Section 36U prohibits a person who gives information to an RCA team for the conduct of an RCA from being compelled to divulge or communicate such information in a proceeding, or in compliance with a requirement under an Act or legal process. Specifically such persons cannot be required to give information about:

- whether or not the person gave information to an RCA team for its conduct of an RCA
- information the person gave an RCA team for its conduct of an RCA
- information the person was given, or questions the person was asked, by an RCA team during its conduct of an RCA.

Sections 36V to 36Z also provide additional protections from liability and reprisal to RCA team members as well as persons who give information to the RCA team.

Section 36V provides a protection from civil liability for RCA team members and relevant persons for an RCA team who acts honestly and without negligence as required of them under Part 4A. The protection includes specific protection from actions for defamation and breach of confidentiality, as well as liability for disciplinary action. The section also indemnifies RCA team members and relevant persons should proceedings be commenced relating to a liability for which the person is protected under this section.

Section 36W provides a protection from liability for persons who honestly and on reasonable grounds give information to an RCA team, or relevant person for an RCA team, during the conduct of an RCA. The protection extends to actions for defamation and breach of confidentiality, as well as liability for disciplinary action. In addition, a person cannot be held to have breached any code of professional ethics or departed from accepted standards of professional conduct.

Section 36X establishes that it is unlawful for anyone to take reprisal against a person for provides assistance to an RCA team for the conduct of an RCA. The provision also establishes a test for determining when unlawful reprisal has taken place.

Section 36Y establishes that a person who takes an unlawful reprisal against anyone who assists with conduct of an RCA commits a misdemeanour.

Section 36Z enables any person who suffers reprisal for assisting with the conduct of an RCA to sue for damages. The provision also specifies the powers of the Court to grant an appropriate remedy and specifies that if the matter is to go to trial in the Supreme Court or the District Court, it must be decided by a Judge sitting without a jury.

Section 36ZA provides that the provisions of part 4A apply where the commissioner purports to appoint an RCA team and it later transpires that the event the subject of the appointment of the team is not a reportable event.

Section 36ZB specifies that an RCA report is not admissible as evidence in any proceedings. However, an RCA report given to a coroner under section 36Q may be admitted into evidence in an inquest into the death of the person to whom the report relates.

Section 36ZC states that the Minister must within 2 years of the commencement of provisions under Part 4B, start a review of Part 4A to ensure that it is adequately meeting community expectations and that its provisions remain appropriate. As soon as practicable after the review is completed, the Minister will be required to present a report of the outcome of the review to the Legislative Assembly.

Clause 51 amends section 50 of the Act (Proceedings for offences) to specify that the existing requirement under the Act that offences under the Act be dealt with summarily is subject to the limitations set out in new section 50B.

Clause 52 inserts new sections 50A and 50B.

Section 50B requires that summary proceedings for indictable offences, or for the examination of witnesses for a charge for an indictable offence, must be heard before a magistrate. It also specifies the limited jurisdiction that may be exercised if a proceeding is brought before a justice who is not a magistrate.

Section 50B establishes procedures for proceedings for indictable offences, including the election available to the prosecution to proceed summarily or

by indictment for indictable offences and the circumstances where a magistrate is not permitted to hear an indictable offence summarily.

Clause 53 amends the regulation making head of power in section 54 as a consequence of the insertion of the new Part 4A (Root cause analyses). The amendment will enable regulations to be made about the procedures to be followed by an RCA team in its conduct of an RCA of a reportable event.

Clause 54 inserts RCA definitions in the dictionary of the Act.

## **Part 7**                      **Amendment of *Freedom of Information Act 1992***

Clause 55 specifies that this part amends the *Freedom of Information Act 1992*.

Clause 56 inserts a new s 11CA into the *Freedom of Information Act 1992*, which exempts certain RCA documents under *Ambulance Service Act 1991* or the *Health Services Act 1991* from the operation of the *Freedom of Information Act 1992*.

Without this exemption, the *Freedom of Information Act 1992* could be used to undermine the objectives of the confidentiality requirements under the proposed root cause analyses provisions in the *Ambulance Service Act 1991* or the *Health Services Act 1991*.