Mental Health and Other Legislation Amendment Bill 2007

Explanatory Notes

Title of the Bill

Mental Health and Other Legislation Amendment Bill 2007

Objectives of the Bill

The main objective of the Bill is to:

- amend the *Mental Health Act 2000* to give effect to a number of major recommendations from the Final Report of the Review of the Mental Health Act 2000, *Promoting Balance in the Forensic Mental Health System*, conducted by Mr Brendan Butler AM SC (the Butler Report); and
- make minor or consequential amendments to various other Health legislation, including the *Nursing Act 1992*, the *Food Act 2006* and the *Public Health Act 2005*.

Reasons for the Bill

On 23 May 2006, the Minister for Health, the Honourable Stephen Robertson MP, announced in Parliament that the Government would conduct a review of the *Mental Health Act 2000*. Concerns had been raised by members of the public about the level of consultation that occurs with victims and their families in deciding to grant or approve limited community treatment to patients under a forensic order.

The Butler Report was provided to the Queensland Government on 8 December 2006. The recommendations address:

- provision of information and support to victims;
- forensic mental health legal processes;
- intellectual disability and forensic processes;
- risk management practices in relation to forensic patients; and

- community awareness.

Specifically, the Butler Report found that victims of offences often felt that their experiences were not acknowledged by the forensic mental health processes and they reported that they were often treated with disrespect by public officials in the mental health system and the criminal justice system. The Butler Report found the victims generally felt "unacknowledged, unsupported, uninformed and unable to meaningfully contribute to the process." (Butler 2006, p.42).

Consequently, the Butler Report's primary focus in the recommendations is on the establishment of a victims support service whose primary role will be to assist victims with the mental health processes. The Butler Report stressed the importance of the victims support service as the conduit for information to victims.

On 11 December 2006, the Premier and Minister for Health announced the Act would be amended to create a clearer focus on victims, as one of the Government's first legislative actions in 2007. Consequently, amendments to recognise the particular position of victims in the forensic mental health system were included in the *Health and Other Legislation Amendment Act 2007*, which was passed on 24 May 2007. The amendments commenced on 1 July 2007 and implemented 10 of the 106 recommendations of the Butler Report.

Twenty-nine of the remaining recommendations require legislative amendment to implement.

In addition to the legislative amendments, a victims support service is to be established and other mechanisms put in place as recommended in the Butler Report. The amendments in this Bill support those endeavours.

The Bill also amends a number of other health portfolio Acts to ensure the effective operation of the portfolio's extensive legislative base.

Achievement of the Objectives

In implementing the remaining 29 recommendations for legislative amendment, the Bill will:

- provide the legislative framework needed to allow victims and approved persons to receive certain limited information about forensic and classified patients. The amendments create authority for the Director of Mental Health (the director) to issue Classified Patient Information Orders, and for the Mental Health Review Tribunal (the

tribunal) to issue Forensic Patient Information Orders. The Information Orders will provide for the giving of certain limited information about a classified or forensic patient to victims. A new state-wide Victim Support Service is to be established within Queensland Health in accordance with the recommendations of the Butler Report to manage the disclosure of this information to victims through registers;

- streamline forensic legal processes through, for example, providing for the Director of Public Prosecutions to make decisions about legal proceedings involving involuntary patients charged with offences rather than the Attorney-General;
- enhance risk management processes by the creation of a new sub-category of forensic patients called Special Notification Forensic Patients, being those forensic patients charged with particular violent offences or offences resulting in death. New provisions concerning the decisions to be made about such patients are designed to enhance the mechanisms for ensuring public safety;
- align requirements for victims' and concerned persons' statements to proceedings of the tribunal with those of the Mental Health Court. In addition the tribunal will be required to provide a statement of reasons for taking or not taking into account statements of victims and concerned persons submitted to the tribunal; and
- in particular, the amendments will provide for victims to receive certain limited information about classified or forensic patients and to receive notices on various decisions. To ensure this communication is appropriate and best supports the needs of victims, all notices and information provided under the Act will be provided firstly to the director who will give the information to the victims through the victims support service.

The specific recommendations to be implemented in the Bill are:

- recommendations 3.2 – 3.9, 3.34 – 3.38, 3.40 and 3.50 relating to classified patient and forensic patient information orders;
- recommendations 3.44 and 3.45 relating to victims' and concerned persons' statements;
- recommendations 4.3 and 4.6 – 4.10 relating to the forensic legal processes; and

- recommendations 6.1 – 6.5 and 6.7 relating to risk management processes.

The full content of the recommendations can be found in the Butler Report.

The Bill amends the following health portfolio Acts:

- *Food Act 2006* to ensure that current food businesses are required to comply with food safety supervisor and food safety program requirements on commencement of those provisions and to delay enforcement of the offence provisions until 1 July 2008;
- *Medical Practitioners Registration Act 2001* to deem an interstate medical practitioner who is required to perform an autopsy in Queensland at the direction of a coroner, to be registered in the category of registration corresponding to his or her interstate registration;
- *Nursing Act 1992* to give the Minister the same legislative power to direct the Queensland Nursing Council where it is in the public interest as currently exists for the Health Practitioner Registration Boards;
- *Health Quality and Complaints Commission Act 2006* to remove reference to 'commissioner' in section 93(2) of this Act which was inappropriately retained from the *Health Rights Commission Act 1991*;
- *Health Services Act 1991* to update the functions of the Chief Health Officer in light of Machinery of Government changes, make minor amendments to the membership of community health councils, make minor amendments to the operation of Quality Assurance Councils and minor changes to smoking prohibitions on health services premises;
- *Public Health Act 2005* to provide greater clarity about the circumstances under which a facility that provides declared health services will be exempt from having an Infection Control Management Plan (ICMP) under Chapter 4 (Infection control for health care facilities) of the Act; and
- *Tobacco and Other Smoking Products Act 1998* to make minor clarifying and correcting amendments.

The Bill also amends the *Coroners Act 2003* to define 'health service employee' for the purposes of section 25 of this Act to include health

service employees and health service executives, as defined in the *Health Services Act 1991*.

Alternative Ways of Achieving Policy Objectives

There are no alternatives considered appropriate for achieving these policy objectives.

Estimated Cost for Government Implementation

On 30 May 2007 the Premier, the Deputy Premier and Treasurer and the Minister for Health announced that the budget had been approved and included significant funding for mental health services. The budget announcement included $53.48 million ($13 million in 2007-08) for implementation of the Butler Report recommendations, including implementation of the amendments to the *Mental Health Act 2000* included in this Bill.

Implementation costs associated with the amendments to other Acts will be minor and will be sourced from existing operational budgets.

Consistency with Fundamental Legislative Principles

Mental Health Act 2000

Many of the amendments to the *Mental Health Act 2000* included in the Bill concern the way in which the forensic mental health system accommodates the needs and rights of victims of alleged offences. The amendments seek to provide greater clarity and support for victims and their families and in some instances, greater access to information and services. The *Mental Health Act 2000* is primarily (and properly) focussed upon the needs of involuntary mental health patients. Consequently, the provision of greater access to information and greater protection to support the needs of victims, necessarily impacts upon some rights of patients.

However, the Butler Report's fundamental premise was the imbalance between the rights and needs of victims and the rights and needs of patients. In addition, the Butler Report highlighted the state, national and international approaches to victims in other judicial settings and sought to bring victims' rights in the Queensland forensic mental health system in line with the rights of victims in other areas.

Consequently, the Butler Report recommended that information concerning classified patients be disclosed to victims for the first time. The

recommendations also included a new approach to deciding applications for information about forensic patients. In deciding to recommend the disclosure of information concerning classified patients, the Butler Report discussed the distress victims often experience in the delays that can occur leading up to the patient's hearing at the Mental Health Court. In addition, the Butler Report highlighted that victims in the justice system have relatively unfettered access to equivalent information about people charged with offences.

Allowing victims and others (such as immediate family members, people with sufficient personal interest, etc) to have greater access to limited information concerning classified and forensic patients infringes upon the rights of patients to have their information remain confidential. However, this right of patients must be balanced with the rights and needs of victims of alleged crimes to feel safe and to be kept informed of matters relevant to the movements of the alleged perpetrator of the offence. The amendments will not permit the disclosure of health or treatment information, merely information pertaining to the movements and status of forensic or classified patients.

The Butler Report also found that the test used by the tribunal when determining whether a person should be able to receive information about a forensic patient, unduly favoured the views and needs of the patient to the detriment of victims. Consequently, the amendments remove the requirement to seek the patient's views on an application for the disclosure of information. This may impact negatively on the patient's rights to have input into determinations about information concerning the patient. However, the tribunal will still be required to ensure that any approval to release information will not endanger the health or safety of the patient.

The Butler Report recommendations also seek to add the application for a Forensic Patient Information Order (currently Notification Orders) in relation to forensic patients to the list of matters for which a Confidentiality Order may be made. This recommendation primarily seeks to protect the identity of the applicant in situations where there is a real concern for the safety or health of the applicant should the patient become aware of the application. Confidentiality orders prohibit the release of matters for which the confidentiality order applies to the patient. The test for granting a confidentiality order in favour of matters related to Notification Orders previously made by the tribunal will also be amended to provide a more balanced consideration of the adverse impact to the applicant as well as risks to the patient.

As the needs of victims to feel safe apply equally to the systems concerning classified patients, the amendments also include discretion for the director to not inform a classified patient of an application to receive information about the patient. The test the director must apply before deciding not to inform the patient is the same test that must be applied by the tribunal in deciding to issue a confidentiality order.

These changes better reflect the rights of victims and only relate to specified information concerning the movements of patients and judicial processes (as opposed to treatment and diagnosis information). Therefore, the breaches to patient rights are considered justified. In all decisions the tribunal and the director are still to consider any serious risks to the health or safety of the patient and others and the need for effective treatment for patients will remain paramount.

Specific possible breaches of fundamental legislative principles are addressed below.

Lack of publication or notification requirements for policies and practice guidelines

Under the new provisions the director will be required to issue policies and practice guidelines for the treatment and care of forensic patients and special notification forensic patients. These policies and guidelines must be taken into account by administrators and treating psychiatrists. However, the provisions will not provide for how the director is to publish or notify of the creation or amendment of a policy or guideline. It may be perceived that these requirements and the lack of guidance for publication do not have sufficient regard to the institute of Parliament as required by the *Legislative Standards Act 1992,* s 4(2).

The Bill minimises any discord with this fundamental legislative principle in a number of ways. Under the amendments included in the Bill, the policies and guidelines are not given undue weight and include a statement to the effect that any discrepancies between the operation of the Act and adherence with any policies or guidelines issued by the director is to be resolved in favour of the Act. This will ensure that the policies or guidelines do not inadvertently amend the operation of the Act and subvert the authority of Parliament.

With respect to publication, there are no specific requirements for legislation to detail the mechanisms for publication of policies and guidelines referred to in an Act. As with all publications produced by government agencies and officials, it will be the responsibility of the author

(in this instance the director) to ensure that those who must comply with the policies or guidelines are given sufficient notice of, and access to, the documents. The mechanism for publishing may vary depending upon the intended audience and, therefore, it is not practicable to prescribe publication in the Act. For instance, the director may issue guidelines for the treatment of forensic patients across Queensland which should be readily available through, for example, the Queensland Health intranet site. The director may also issue guidelines that are relevant to only one particular authorised mental health facility that do not require publication to the broader community. Administrative arrangements will ensure that the director has an appropriate procedure for publishing such policies and guidelines according to good public sector management standards.

Broad decision making discretion for patient information orders

The amendments include a broad discretion for the director to grant 'Classified Patient Information Orders' to 'eligible persons' who apply. 'Eligible persons' is defined to mean victims, family members of deceased victims, parents of child victims and persons receiving information about a classified patient under the Corrective Services register. The discretion to grant the order is limited only by a restriction on granting orders where granting the order may cause serious harm to the health of the patient, or jeopardise the safety of a person.

This lack of criteria for the director could raise an issue as to whether the director will have sufficient regard to the rights and liberties of either the patient or the eligible person who is applying for an order as required by the *Legislative Standards Act 1992*, s 4(2).

The Butler Report sought to put in place a mechanism for victims of crime to be able to access information about classified and forensic patients that was consistent with the access to information victims of crime in the criminal justice system currently have. Under the *Corrective Services Act 2006* and the *Criminal Offences Victims Act 1995* there is little or no criteria other than eligibility criteria prescribed for the decision makers. The Butler Report found that victims of crime felt essentially 'victimised' again by the need to justify their right to information about a forensic patient. The Butler Report therefore aimed to remove the impediments currently in place for victims to be able to receive information about classified and forensic patients.

In addition, the information that may be provided under a classified patient information order is very limited and would not reveal any personal details about the patient or the patient's family, nor any information about the

diagnosis, care or treatment of the patient. The information is limited to information primarily about the classified status of the patient and any limited community treatment authorised.

The director will assess the implications of issuing an order in consultation with the Victim Support Service and the relevant patient's treatment team.

Given the emphasis in the Butler Report on the need to remove impediments to victims receiving information, and the limited nature of the information, the director will have a broad discretion to decide applications from victims. Safeguards are included in the amendments that will require the director to refuse an application if it is likely that the provision of information will cause serious harm to the patient.

Similar concerns also apply to the discretion for the director to revoke an existing order.

There are no grounds for revocation included in the Bill. The director has a broad discretion for the initial granting of the order and it would be inconsistent with that discretion to then have limitations on the authority to revoke an order. However, to ensure a level of natural justice is accorded to victims, the Bill's provisions will require the director to give the reasons for a revocation to the victim and give the victim a reasonable opportunity to provide a submission on the proposed revocation.

Procedures for the review of decisions of the director are to be dealt with administratively, consistent with the recommendations of the Butler Report. The administrative arrangements will provide for an independent review of the director's decisions to be undertaken by a suitably qualified independent psychiatrist.

Examples of the types of issues that may lead to a revocation include such things as a public disclosure of information obtained by the victim under a classified patient information order or an inappropriate contact by the victim with the patient or the patient's family resulting from the disclosure of information received under the order.

Similar issues are also raised in relation to the powers of the tribunal to issue and revoke 'Forensic Patient Information Orders'. The tribunal does not have discretion to refuse an order for victims, relatives of deceased victims or parents of child victims. Others with sufficient personal interest may also apply for a forensic patient information order, but do not have an automatic right to be granted the order. The Bill provides criteria for the tribunal to consider when deciding if a person has sufficient personal interest.

The Butler Report was concerned with the current processes for granting Notification Orders to victims. In particular, the Butler Report found that victims often feel the process is overly supportive of patients to the detriment of victims. The report also found that victims of offences committed by forensic patients did not have similar rights to information accorded to victims of offences committed by people in the criminal justice system.

Consequently, the Butler Report has recommended an automatic right for people who sufficiently identify themselves as victims, immediate family members of deceased victims or parents of child victims. As with classified patient information orders the patient's health is safeguarded by provisions that require the tribunal to refuse to grant an order if the disclosure of information under an order would cause serious harm to the health of the patient.

Underlying the entire *Mental Health Act 2000* are the purpose and the principles for administering the Act found in sections 5, 8 and 9 of the Act. These provisions require decision makers in the mental health system to balance the needs of patients with the needs of the community more broadly and to have due regard to such things as the rights of patients, confidentiality, the appropriate provision of treatment and maintenance of supportive relationships. It is expected that the director and the tribunal will have due regard to these provisions when making any decisions under the Act, including decisions regarding the provision of information to victims under information orders.

Public Health Act 2005

The Bill also introduces a new regulation making head of power into the *Public Health Act 2005* to enable a regulation to be made that specifies health care facilities or types of facilities that will not be required to have an infection control management plan (ICMP) as currently required in the Act for all health care facilities.

It has become apparent that an increasing number of professional associations have established practice standards and accreditation processes aimed at ensuring services are provided to clients in accordance with 'best practice' principles about the quality and safety of health care. Where it is determined that these accreditation processes adequately address infection control concerns, it is appropriate that accredited practitioners be exempt from also having to have an ICMP (for example, a medical practitioner who has been awarded a general practice accreditation from Australian General Practice Accreditation Limited or Quality in

Practice Pty Ltd; or GPA ACCREDITATION plus from General Practice Australia).

The inclusion of these amendments raises the issue of whether they have 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 required by the *Legislative Standards Act 1992,* s4(2). However, potential failure to conform with this fundamental legislative principle is minimised by including criteria to which the chief executive must have regard before allowing a health care facility to be exempt from the legislative requirement for an ICMP. The criteria will ensure that health facilities still maintain a high level of infection control. In addition, while exempt facilities may not require an ICMP they will still be subject to the general obligation under the *Public Health Act 2005* to minimise the risk of infections to other persons.

Consultation

Consultation was undertaken with the following stakeholders during the development of the Bill:

- The Mental Health Court;
- The Mental Health Review Tribunal;
- The Director of Mental Health;
- The Commissioner for Children and Young People and Child Guardian;
- The Queensland Public Advocate;
- Mr Brendan Butler AM SC;
- The Queensland Nursing Council;
- The Australian Medical Association Queensland;
- The Medical Board of Queensland;
- The State Coroner; and
- The Director of Public Prosecutions.

The majority of stakeholders consulted were supportive of the introduction of the Bill.

The following Government Departments were consulted during the development of the Bill and are supportive of introduction:

- The Department of the Premier and Cabinet;
- Queensland Treasury;
- The Department of Justice and Attorney-General;
- The Department of Corrective Services;
- The Department of Communities;
- Disability Services Queensland; and
- The Queensland Police Service.

Notes On Provisions

Clause 1 sets out the short title of the Act which is the *Mental Health and Other Legislation Amendment Act 2007*.

Clause 2 provides for the commencement arrangements of the provisions in the Act.

Part 2 Amendment of the Mental Health Act 2000

Clause 3 specifies that this part and the schedule amend the *Mental Health Act 2000* ('the Act').

Clause 4 amends section 70 of the Act to enable the Director of Mental Health (the director) to notify anyone the director reasonably believes may apply for a classified patient information order under section 318C. This provision will ensure that victims and other relevant persons are aware that the person has become a classified patient and that the victims are eligible to apply for a classified patient information order.

Clause 5 amends section 124 to provide that, for a forensic patient, the patient's treatment plan must also include a risk management plan. The treatment plan must be prepared having regard to any relevant policies and practice guidelines about the treatment and care of patients issued by the

director under the Act. Specifically, the director is required under new section 309A (clause 25) to issue policies and practice guidelines about the treatment and care of forensic patients. The administrator of an authorised mental health service will be responsible for ensuring that policies and practice guidelines issued under the Act by the director are given effect (clause 34, section 498A).

Clause 6 amends section 129 to specify that the approval given by the director under subsection 2(b) authorising limited community treatment may be given subject to any reasonable conditions the director decides. Clause 6 also provides that the director may withdraw the approval for limited community treatment if an event mentioned in subsection 3 occurs or if the director is satisfied there is an unacceptable risk of an event mentioned in subsection 3 occurring. The director must have regard to the matters outlined in subsection 4 in deciding whether to withdraw the approval for limited community treatment.

Clause 7 amends section 203 to include a reference to new section 203A.

Clause 8 inserts a new section 203A into the Act to provide that the tribunal may order a special notification forensic patient to submit to an examination by a stated psychiatrist who is not an authorised psychiatrist for the patient's treating health service. The order must state the matters on which the stated psychiatrist must report on to the tribunal. The new section also requires the stated psychiatrist to give a written report on the examination to the tribunal. The tribunal must not revoke an order until it has obtained a report from the psychiatrist.

Although section 457 empowers the tribunal to order a psychiatric assessment of a patient, it does not require that the assessment be by a psychiatrist other than the one responsible for the patient's treatment. This new section will emphasise the need to consider a second examination before revoking a forensic order for special notification forensic patients. 'Special Notification Forensic Patient' is defined in a new section 305A inserted by clause 24.

Clause 9 omits Chapter 6, Part 5 (Notification orders) from the Act. The current notification orders are to be replaced with new information orders for classified and forensic patients. A new chapter, Chapter 7A is being inserted by clause 27 to create the new information orders.

Clause 10 amends section 235 to insert a definition for 'original psychiatrist's report'.

Clause 11 inserts a new section 235A to clarify that a reference in this chapter to the director of public prosecutions includes a person who is authorised in writing by the director of public prosecutions to exercise the director of public prosecutions' powers under this chapter.

Clause 12 inserts a new section 237A. The new section provides that, on receiving notice under section 237(2), the administrator may ask the commissioner of the police service or the director of public prosecutions to give the administrator information included in the definition of 'brief of evidence' in the schedule, excluding exhibits, related to the offence. The purpose of the information is to assist the assessing psychiatrist to assess the mental state of the person and provide a report required to be submitted to the director by the administrator of the authorised mental health service under section 239.

The commissioner of the police service or the director of public prosecutions must comply with the request as soon as practicable to ensure that the administrator is able to provide a report on the initial psychiatric assessment to the director of mental health within the 21 day time frame specified in section 239. The requirement to comply with the request only applies to information within the possession of the commissioner of the police service or the director of public prosecutions as the case may be, at the time of the request.

The section provides for the information that is not subject to be given to the administrator under subsection (2).

Clause 13 amends section 239 to define 'original psychiatrist's report' to mean the report from the initial examination of the patient under section 238.

Clause 14 inserts a new section 239A to enable the director, after considering the original psychiatrist's report on the examination, to arrange for the patient to be examined by another psychiatrist, and obtain a report from the other psychiatrist on the examination.

Clause 15 amends section 240 to change the references to Attorney-General to the director of public prosecutions. The clause also includes any psychiatrist's report obtained under new section 239A as a matter available to the director to consider when deciding to refer a matter.

The clause amends the timeframe for the director to make a reference to take account of the time needed to obtain a further psychiatrist's report under section 239A.

The clause replaces subsection (4) to provide that, if the patient is charged with an indictable offence, the director of mental health may refer a matter to the director of public prosecutions if the director is satisfied that the offence is of a serious nature having regard to any damage, injury or loss caused, and reasonably believes that the patient is fit for trial and was not of unsound mind when the alleged offence was allegedly committed.

The new subsection still provides for the director to refer a matter to the director of public prosecutions, if the patient is charged with an indictable offence, and the director is satisfied, having regard to any damage, injury or loss caused, that the offence is not of a serious nature. This reference may be regardless of whether the director considers that the patient is fit for trial or was not of unsound mind when the alleged offence was allegedly committed.

Clause 16 amends section 241 to enable the director of mental health to further defer referring a matter for another two months from the time the director forms the reasonable belief that a person is not fit for trial. The total deferment can only amount to a maximum total of four months.

Clause 17 amends section 242 to include that the reference to the director of public prosecutions is to be accompanied by the director of mental health's assessment of the patient's condition in addition to the original psychiatrist's report and any subsequent psychiatrists report requested by the director of mental health under new section 239A. The assessment is to include any recommendations the director of mental health believes may assist the director of public prosecutions in making a decision under section 247.

Clause 18 inserts a new section 245B, which provides a definition of 'psychiatrist's report' for Chapter 7, part 3 of the Act.

Clause 19 amends section 247 to change references to the Attorney-General to the director of public prosecutions and to require the director of public prosecutions to have regard to the director of mental health's assessment provided under section 242.

Clause 20 amends section 249 to state simply that a notice must be accompanied by a copy of the psychiatrist's report which is defined in new section 245B (clause 18).

Clause 21 inserts a new section 252A to require a classified patient whose proceedings have been continued by the director of public prosecutions to be taken before the court within 7 days of the director of public prosecution's decision.

Clause 22 amends section 253 to provide that for a classified patient whose proceedings have been continued, the classified status ceases upon that patient being returned to court.

Clause 23 amends section 264 of the Act to provide that the director of mental health may give written notice of the reference to a victim of the alleged offence to which the reference relates. This is to ensure that anyone who may be eligible to apply for a forensic patient information order is made aware that the person who allegedly committed the alleged offence has been referred to the Mental Health Court and consequently may have a forensic order made concerning them.

Clause 24 inserts new section 305A into the Act. The new section defines the new category of special notification forensic patient as a forensic patient where the offence leading to the making of the forensic order is an offence against one of the specified provisions of the Criminal Code. These include murder, manslaughter, attempted murder, rape or assault with intent to rape, and dangerous driving causing death.

Clause 25 inserts new section 309A into the Act to require the director to issue policies and practice guidelines about the treatment and care of a forensic patient. Specific policies and guidelines must also be issued for the treatment and care of special notification forensic patients. Treatment plans prepared under section 124 (clause 5) of the Act must be prepared having regard to any policies or guidelines issued by the director under this section or under the general function in section 493A (clause 33). The administrator of an authorised mental health service must ensure that any relevant policies or guidelines issued by the director are given effect to (section 498A, clause 34).

Clause 26 renumbers section 318A as 318ZC.

Clause 27 inserts a new Chapter 7A into the Act titled Classified patient information orders and forensic patient information orders.

Chapter 7A Classified patient information orders and forensic patient information orders

Part 1 Classified patient information orders

Division 1 Interpretation

New section 318A defines specific terms for part 1.

New section 318B clarifies that in this part, a reference to a person for whom a classified patient information order about a classified patient is made is a reference to a person who has successfully applied for the order under new section 318C(1).

Division 2 Making of Classified patient information orders

New section 318C enables the director, on application made to the director by an eligible person, to make an order (to be known as a classified patient information order) about a classified patient, that the eligible person be given notice of the classified patient information listed in new subsection 318C(1) and excluding information detailed in subsection 318B(2). In deciding whether or not to grant an application the director may consider any matters the director consider appropriate. For example, the director may take into account the length of time the patient is likely to be a classified patient, and the nature and seriousness of the alleged offence.

An application for a classified patient information order must be accompanied by a declaration stating that the applicant will not disclose for public dissemination, any classified patient information relating to the classified patient disclosed to the applicant under the Part.

The applicant may nominate another person to receive information on their behalf. The nominee must also sign a declaration stating that the nominee will not disclose, for public dissemination, any classified information relating to the classified patient disclosed to the nominee under the Part.

'Eligible person' is defined to mean a direct victim of an alleged offence allegedly committed by the classified patient, or the parent or guardian of a direct victim who is a minor or has a legal incapacity, or a relative of a deceased direct victim.

The definition of eligible person also includes a person who, immediately before the patient becoming a classified patient, was an eligible person in relation to the patient under the *Corrective Services Act 2006*. The inclusion of these people is to ensure that a person who is registered to receive information from the chief executive of corrective services under the relevant Act continues to receive relevant information once the prisoner becomes a classified patient.

New section 318D enables the director to make an order in favour of a minor if the director is satisfied that it is in the best interests of the minor for the child to be granted an order.

In deciding what is in the best interests of the minor, the director is not restricted in the matters which the director reasonably believes may be relevant to consider. Relevant matters for determining the best interests of a minor may include, for example, the age and maturity of the minor, the impact of receiving the information on the minor's health or safety, the wishes of the minor and the harm suffered by the minor during the commission of the alleged offence.

In deciding what is in the best interests of the minor, the provision specifies that the director must consult, where appropriate, with the minor's parents or guardians. Examples of where consultation may not be appropriate may include circumstances involving an older teenager who is estranged from his or her parents and has sufficient maturity to understand the nature of the application.

The provision also specifies that where the applicant who is a minor, is applying in the capacity of a parent of another minor who was the direct victim of the alleged offence, the director is not required to consider the best interests of the applicant (that is the parent) regardless of the fact that the applicant is a minor.

'Minor' is not defined in the Act and is considered to be an individual who is under the age of 18 years in accordance with the *Acts Interpretation Act 1954, s 36.*

New section 318E requires the director to refuse to grant an application for a classified patient information order if the director reasonably believes the disclosure of information to the applicant is likely to cause serious harm to the patient's health or put the safety of the patient or someone else at serious risk.

The section does not limit the reasons for which the director may refuse to grant an application for a classified patient information order. For example, in addition to the restrictions mentioned in the Act, the director may decide not to grant an application to a person if the director considers the application to be vexatious or frivolous, or if the director believes that a prisoner in the custody of corrective services is only going to be a classified patient for a very short time to receive treatment for a mental illness unrelated to the offence for which the prisoner has been convicted.

New section 318F provides that before deciding on an application for a classified patient information order, the director must give the classified patient a reasonable opportunity to make a submission to the director about the matters mentioned in section 318E. However, the director is not required to comply with subsection (1) if the director reasonably believes that the patient, being aware that the application has been made is likely to have an adverse effect on the health of the applicant or patient or put the safety of the applicant, patient or someone else at risk.

New section 318G specifies the people the director must notify of his or her decision on an application for a classified patient information order. However, the director is not required to notify the patient or the patient's allied person if the director reasonably believes that notifying the patient is likely to have an adverse effect on the health of the applicant or the patient, or put the safety of the applicant, the patient or someone else at risk.

New section 318H enables a person for whom a classified patient information order has been made to nominate another person to receive the information under the order on their behalf. For the nomination to be effective it must be accompanied by a declaration signed by the nominee stating that the nominee will not disclose, for public dissemination, any classified patient information relating to the classified patient disclosed to the nominee under the Part.

Division 3 Revocation of classified patient information orders

New section 318I provides for the circumstances in which the director must revoke a classified patient information order.

New section 318J provides for the director to revoke a classified patient information order on other grounds as long as the person in whose favour the order has been made is given the reasons for the proposed revocation and a reasonable opportunity to provide a submission about the proposed revocation. Examples of reasons for which the director may consider it appropriate to revoke an order may include the person or their nominee disclosing information for public dissemination, or the person inappropriately contacting the patient.

New section 318K requires the director to notify certain people about a revocation of an order. However, the director is not required to notify the patient or the patient's allied person of the revocation of an order if the director did not notify the patient of the original decision to grant the order under section 318G.

Division 4 Miscellaneous

New section 318L specifies that for section 62B of the *Health Services Act 1991*, the disclosure of information under a classified patient information order is a disclosure permitted by an Act.

Part 2 Forensic patient information orders

Division 1 Interpretation

New section 318M provides the definitions for certain terms used in Part 2.

New section 318N clarifies that a reference in Part 2 to a person for whom a forensic patient information order about a forensic patient is made is a

reference to a person who has successfully applied under section 318O(1) for the order.

Division 2 Making of forensic patient information orders

New section 318O enables the tribunal, on application made to it by a person, to make an order (called a forensic patient information order) about a forensic patient that the person may be given notice of the information concerning that patient listed in subsection (1) excluding any information listed in subsection (2).

An application for a forensic patient information order must be accompanied by a declaration stating that the applicant will not disclose for public dissemination, any forensic patient information relating to the forensic patient disclosed to the applicant under the Part.

The applicant may nominate another person to receive information on their behalf. The nominee must also sign a declaration stating that the nominee will not disclose, for public dissemination, any forensic patient information relating to the forensic patient disclosed to the nominee under the Part.

The tribunal must grant the application if it is made by an eligible person, subject to the restrictions on granting an application in section 318S.

Eligible person is defined in subsection (7) to mean a direct victim of an alleged offence allegedly committed by the forensic patient, or the parent or guardian of a direct victim who is a minor or has a legal incapacity, or a relative of a deceased direct victim.

New section 318P enables the tribunal to make an order in favour of a minor if the tribunal is satisfied that it is in the best interests of the minor for the minor to be granted an order.

In deciding what is in the best interests of the minor the tribunal is not restricted in the matters which the tribunal may reasonably consider may be relevant. Relevant matters for determining the best interests of a minor may include, for example, the age and maturity of the minor, the impact of receiving the information on the minor's health or safety, the wishes of the minor and the harm suffered by the minor during the commission of the alleged offence.

In deciding what is in the best interests of the minor, the provision specifies that the tribunal must consult, where appropriate, with the minor's parents or guardians. Examples of where consultation may not be appropriate may include circumstances involving an older teenager who is estranged from his or her parents and has sufficient maturity to understand the nature of the application.

The provision also specifies that where the applicant who is a minor, is applying in the capacity of a parent of another minor who is the direct victim of the alleged offence, the tribunal is not required to consider the best interests of the applicant (that is the parent) regardless of the fact that the applicant is a minor.

'Minor' is not defined in the Act and is considered to be an individual who is under the age of 18 years in accordance with the *Acts Interpretation Act 1954*.

New section 318Q enables the tribunal to grant an application for an order to a person who is not an eligible person as defined in section 318O(7) but who the tribunal is satisfied has a sufficient personal interest in being given notice of patient information under a forensic patient information order about a forensic patient.

The matters the tribunal must consider when determining if an applicant has a sufficient personal interest in being given notice of information is listed at subsection (3) and includes any other matters the tribunal considers appropriate. Other matters the tribunal considers appropriate may include, for example, the effect on the applicant if the application is not granted.

New section 318R states that the application for an order may be decided by either the tribunal constituted by the president on written material and submissions, without the applicant or forensic patient attending a hearing of the application, or the tribunal during a review carried out for the patient or at a hearing for the application.

New section 318S requires the tribunal to refuse to grant an application for a forensic patient information order if the tribunal is satisfied that the application is frivolous or vexatious or the tribunal reasonably believes the disclosure of information to the applicant is likely to cause serious harm to the patient's health or put the safety of the patient or someone else at serious risk.

New section 318T provides that the tribunal may impose conditions on the forensic patient information order.

New section 318U requires the tribunal to give notice of its decision on an application, and reasons for a refusal of an application to the people listed in subsection (5). The section also requires the director of mental health to give the notices to the applicant.

Giving notices to the patient is subject to any confidentiality order made under section 458 (clause 28) about the application. The allied person may only receive the information provided to the patient.

New section 318V enables a person for whom a forensic patient information order has been made to nominate another person to receive the information under the order on their behalf. For a nomination to be effective it must be accompanied by a declaration signed by the nominee stating that the nominee will not disclose, for public dissemination, any forensic patient information relating to the forensic patient disclosed to the nominee under this Part.

Division 3 Changing conditions of forensic patient information orders

New section 318W enables the tribunal to vary a forensic patient information order on its own initiative without an application from any person. Before deciding to change a condition, the tribunal must give written notice of the proposed decision to change a condition, with an invitation to provide a submission on the proposed decision to each relevant person as defined in the section.

However for the person for whom the forensic patient information order has been made, the tribunal is to give the notice and the invitation to submit to the director who is to give it to the person.

The tribunal is to give notice of its decision to change a condition to the people listed in subsection (5) within seven days of making the decision. The director is to give a notice of the decision to the person for whom the forensic patient information order has been made, within 21 days of receiving the notice from the tribunal.

Giving notices to the patient is subject to any confidentiality order mentioned in section 318U(7). The allied person may only receive the information provided to the patient.

New section 318X enables a relevant person, as defined in subsection (11), to apply to the tribunal to change the conditions of a forensic patient information order about a forensic patient imposed under section 318T or division 3.

Before deciding an application from a relevant person, the tribunal must give all other relevant persons a copy of the application and an invitation to make submissions to the tribunal within a reasonable time about the application.

For the person for whom a forensic information order is made, the tribunal must give the copy of the application and the invitation to the director who is to give them to the person.

If the tribunal subsequently decides to grant the application, the tribunal must give written notice of the decision to the people listed in subsection (5) and subsequently the director must give the notice to the person for whom the order is made within 21 days of receiving the notice from the tribunal.

Giving notices to the patient is subject to any confidentiality order mentioned in section 318U(7). The allied person may only receive the information provided to the patient.

Division 4 Revocation of forensic patient information orders

New section 318Y provides for the circumstances in which the tribunal must revoke a forensic patient information order.

New section 318Z provides for the circumstances in which the tribunal may revoke a forensic patient information order and requires the tribunal to give the person in whose favour an order has been made, a reasonable opportunity to provide a submission about the revocation.

New section 318ZA provides that the tribunal must give written notice of a decision to revoke an order to the people listed in subsection (1). The director is to subsequently give the notice to the person for whom the order was made.

Giving notices to the patient is subject to any confidentiality order mentioned in section 318U(7). The allied person may only receive the information provided to the patient.

Division 5 Miscellaneous

New section 318ZB specifies that, for section 62B of the *Health Services Act 1991*, the disclosure of information under a forensic patient information order is a disclosure permitted by an Act.

Clause 28 amends section 458 to enable the tribunal to issue a confidentiality order in respect of an application for a forensic patient information order. The confidentiality order may be in respect of the entire application, and therefore the existence of the application would not be disclosed to the patient, or may be in respect of the identity of the applicant or material before the tribunal.

The tribunal may issue a confidentiality order for any of the information listed in subsection (2A) only if the tribunal is satisfied that the disclosure would have an adverse effect on the health of the applicant or patient, or would put the safety of the applicant, patient or someone else at risk.

Clause 29 amends section 463 to remove the limitation on the length of time for which the President may adjourn a proceeding. This amendment is to provide flexibility for the tribunal when it is required to seek a second psychiatrists report for a special notification forensic patient where the second report may take longer than 61 days to be completed by the psychiatrist.

Clause 30 amends section 464 to require all submissions to the tribunal by victims or concerned persons to be sworn.

The clause also amends the section to provide that a submission may be accompanied by a document nominating another person to receive the reasons mentioned in section 465 on behalf of the person making the submission.

Clause 31 replaces section 465 and requires the tribunal to give reasons to a victim or concerned person on how and why a submission by the victim or concerned person was or was not taken into account in a hearing.

The tribunal is to give the reasons to the person's nominee if one is nominated under new section 464(5). However, if the submission is from a person for whom a forensic patient information order has been made, and another person is not nominated under section 464(5), the tribunal is to give the reasons to the director who is to then give them to the person. This is to ensure that where the director is giving the person the decision of the

tribunal under the forensic patient information order, it is also accompanied by the reasons given by the tribunal under this section.

In giving reasons the tribunal is not to give any of the information listed in subsection 465(5).

The tribunal is to continue to give the reasons to parties to the proceedings if the party or parties asks for the reasons.

A confidentiality order of the tribunal may displace the requirement to give the reasons to the person the subject of the proceedings.

Clause 32 amends section 489 to specify that it is a function of the director to monitor and audit compliance with the Act.

Clause 33 inserts a new section 493A to provide that the director may issue policies and practice guidelines for the treatment and care of patients. The section specifies that any inconsistency between a policy or guideline and the Act is to be resolved in favour of the Act.

This function is in addition to new section 309A (clause 25) that requires the director to issue policies and practice guidelines about treatment and care of forensic patients.

Clause 34 inserts a new section 498A to require the administrator of an authorised mental health service to ensure that policies and guidelines issued by the director are given effect.

Clause 35 inserts a new chapter 16, part 3.

Part 4 Transitional provisions for Mental Health and Other Legislation Amendment Act 2007

New section 594 inserts definitions for part 4.

New section 595 provides that if a notification order for a person about a forensic patient was made under section 221 of the pre-amended Act and is in force immediately before commencement of the amended Act, a forensic patient information order is taken to have been made under section 318O on commencement of the amended Act with all the conditions imposed on the original notification order in effect immediately prior to commencement.

Any confidentiality orders in place about the notification order immediately prior to commencement are taken to have been made in relation to the forensic patient information order.

New section 596 provides that if an application is made for a notification order about a forensic patient made under section 221 of the pre-amended Act and has not been decided on commencement of the amended Act, then the application is taken to be an application for a forensic patient information order about the forensic patient under the amended Act.

New section 597 provides that an application to change the conditions of a notification order about a forensic patient made under section 228(1) of the pre-amended Act and not decided on commencement of the amended Act, is taken to be an application under section 318X(1) of the amended Act to change the conditions of a forensic patient information order about the patient.

New section 598 provides that an application to revoke a notification order about a forensic patient made under 228(1) prior to commencement and not decided at commencement is to be decided under the pre-amended Act as if the amendments had not commenced.

New section 599 clarifies that outstanding references to the Attorney-General on commencement of the amended Act, are taken to be references under chapter 7, part 2, division 2, to the director of public prosecutions.

New section 600 provides that if, under section 464(1) of the pre-amended Act, a victim of the alleged offence to which a proceeding before the tribunal relates or a concerned person submits material to the tribunal, and a decision has not been made, then sections 465(2) and (3) of the Act continue to apply as if the amended Act had not commenced.

New section 601 provides that if a victim of an alleged offence to which a proceeding before the tribunal relates or a concerned person submits material to the tribunal under section 464(1) of the pre-amended Act, and the tribunal has made its decision in the proceeding before commencement of the amended Act, then sections 465(2) and (3) of the pre-amended Act continue to apply to the person who submitted the material as if the amended Act had not commenced.

Clause 36 amends schedule 2 to amend and insert certain definitions.

Part 3 Amendment of Coroners Act 2003

Clause 37 specifies that this part amends the *Coroners Act 2003*.

Clause 38 makes a consequential amendment to the *Coroners Act 2003* to define 'health service employee' for the purposes of section 25 to include health service employees and health executives, as defined in the *Health Services Act 1991*.

Part 4 Amendment of Food Act 2006

Clause 39 specifies that this part amends the *Food Act 2006*.

Clause 40 inserts new sections 297 and 298 into the *Food Act 2006*.

New clause 297 will require food businesses already in existence on 23 February 2008 to have a food safety program, food safety supervisor and to have notified local government of the food safety supervisor by 1 July 2008. This will remedy a drafting oversight which, if uncorrected, would have resulted in the food safety program and food safety supervisor provisions in the Act (which are to commence on 23 February 2008) applying only to new food businesses applying for a licence from 23 February 2008 onwards.

New section 297 also provides that such a licensee is not liable for an offence against section 99(1) committed before 1 July 2008. This provision gives effect to a transitional implementation period for licensees to comply with new food safety program requirements.

New section 298 provides that new licensees from 23 February 2008 will not be liable for an offence against the food safety supervisor and food safety program requirements committed before 1 July 2008. As indicated above, this is to give effect to a transitional period for implementation of food safety program and food safety supervisor requirements.

Part 5 Amendment of Health Quality Complaints Commission Act 2006

Clause 41 specifies that this part amends the *Health Quality and Complaints Commission Act 2006*.

Clause 42 makes a consequential amendment to section 93 to remove a reference to 'commissioner' which was inappropriately retained from the *Health Rights Commission Act 1991*.

Part 6 Amendment of Health Services Act 1991

Clause 43 specifies that this part amends the *Health Services Act 1991*.

Clause 44 amends section 2 of the *Health Services Act 1991* to omit the definition of 'designated smoking area', as this term is no longer used in the Act.

Clause 45 amends section 28N of the *Health Services Act 1991* to allow the Minister to appoint up to two additional members to a Health Community Council, provided the Minister is satisfied that the expansion of membership will substantially improve the Council's capacity to perform its functions (for example, by ensuring appropriate community representation).

Clause 46 amends section 37 of the *Health Services Act 1991* to require Quality Assurance Committees to give specified information to the chief executive, rather than the chief health officer.

Clause 47 amends section 51 of the *Health Services Act 1991* to omit the term 'designated smoking area' in section 51(1) and 51(2)(b) and replace it with the term 'nominated smoking place'. Section 51(4) is amended to reflect the use of the term 'nominated smoking place'. This provision also inserts a definition of 'nominated smoking place' in section 51(5) to mean a place nominated as a smoking place by the chief executive and designated by signs erected by the chief executive. The use of the term 'nominated smoking place' is consistent with the Queensland Health Smoking

Management Policy, implemented in July 2006 to manage smoking at public health care facilities in Queensland.

Clause 48 amends section 57C of the *Health Services Act 1991* to modernise how the functions of the Chief Health Officer (CHO) are set out in the legislation. The amendments do not, in anyway, change the functions of the CHO, rather they clarify that the CHO:

- is responsible for providing high level medical advice to the Chief Executive and the Minister on health issues, including policy and legislative matters associated with the health and safety of the Queensland Public; and
- is required to perform other functions given to the CHO under this or another Act (eg *Private Health Facilities Act 1999*).

Part 7 Amendment of Health Services Amendment Act 2006

Clause 49 specifies that this part amends the *Health Services Amendment Act 2006*.

Clause 50 omits section 22 from the *Health Services Amendment Act 2006*. Section 22 was introduced to amend the functions of the Chief Health Officer in section 57C of the *Health Services Act 1991* in light of machinery of government changes announced following the 2006 State Government Election. However, as a consequence of the amendments being made to section 57C by clause 49, these amendments are now redundant.

Part 8 Amendment of Medical Practitioners Registration Act 2001

Clause 51 specifies that this part amends the *Medical Practitioners Registration Act 2001*.

Clause 52 amends section 270(1) of the *Medical Practitioners Registration Act 2001* to provide that a medical practitioner registered interstate, who is required to perform an autopsy in Queensland at the direction of a coroner under section 19 of the *Coroners Act 2003*, is taken to be registered in the category of registration corresponding to his or her interstate registration. The amendment will apply only to general and specialist registrants.

Part 9 Amendment of Nursing Act 1992

Clause 53 specifies that this part amends the *Nursing Act 1992*.

Clause 54 inserts a new section 42A into the *Nursing Act 1992* to confer on the Minister a reserve power to give the Queensland Nursing Council a direction in the public interest. However, the provision expressly excludes: the giving of a direction about registration or enrolment; taking disciplinary action; the suspension or cancellation of a registration or enrolment; authorisation of, or refusal to authorise a person to practice nursing or midwifery; a decision to accredit or refuse to accredit, or cancel the accreditation of a nursing course; or a decision about preferring a charge against a person and referring it to the tribunal.

This provision provides a means for the Minister to seek reports to ensure that the legislation is being administered appropriately and to give directions as to how the legislation should be administered. The Minister could also use this power to require a matter to be investigated. In order to ensure the Minister exercises the powers under this section appropriately, information about any direction given to the council must be included in the council's annual report.

Part 10 Amendment of Public Health Act 2005

Clause 55 specifies that this part amends the *Public Health Act 2005*.

Clauses 56 to 58 amend sections 149, 153 and 154 of the Act respectively.

Section 149 defines a health care facility for the purpose of chapter 4 of the Act to be a facility at which a declared health service is provided. A declared health service is a service provided to a person that is intended to maintain, improve, or restore a person's health, and involves the performance of an invasive procedure or an activity that exposes a person to blood or other bodily fluid.

Under chapter 4, certain health care facilities are required to have an infection control management plan (ICMP). An ICMP is a documented plan to prevent or minimise the risk of infection to persons receiving declared health services at the facility, persons employed or engaged at the facility, and other persons at risk of infection at the facility. It was intended that subsection 149(3) of the definition for 'health care facility' would clarify which health care facilities would not be required to have an ICMP and for these facilities to be prescribed under regulation. However, following implementation of the legislation it has been determined that the wording of subsection (3) is deficient.

In order to address this situation, the Bill omits subsection 149(3) and inserts a new provision in sections 153 and 154 respectively. These provisions replace the regulation making head of power in subsection 149(3) with a new regulation making head of power. This power will enable a regulation to be made that specifies if a health care facility or type of health care facility is not required to have an ICMP. While these facilities will not be required to have an ICMP, persons involved in the provision of declared health services at the facilities will still be subject to the general obligation under chapter 4 to minimise the risk of infections to other persons.

Part 11 Amendment of Tobacco and Other Smoking Products Act 1998

Clause 59 specifies that this part amends the *Tobacco and Other Smoking Products Act 1998*.

Clause 60 amends section 15A of the *Tobacco and Other Smoking Products Act 1998* to increase the penalty units from 20 penalty units to 40 penalty units, for the offence against a supplier of smoking products who

does not take prevention measures (in relation to employees of the supplier) to prevent the supply of smoking products to children. A similar offence in section 9A of the *Tobacco and Other Smoking Products Act 1998* was amended in 2004 to increase the penalty units to 40 penalty units. This provision corrects the oversight that the penalty units in section 15A were not increased at that time.

Clause 61 amends section 26S of the *Tobacco and Other Smoking Products Act 1998* to insert a definition for 'no smoking sign', which is currently not defined in the Act, and to include in the definition a power for the form of the no smoking sign to be prescribed in a regulation.

Clause 62 amends the schedule (Dictionary) of the *Tobacco and Other Smoking Act Products 1998* to clarify the definitions for 'quit smoking sign' and 'tobacconist'.

The definition of 'quit smoking sign' clarifies that the form of a quit smoking sign must comply with the requirements prescribed under a regulation.

The definition of 'tobacconist' clarifies that, in order to obtain a smoking product display area of three square metres, 80% or more of the average gross turnover of the whole business must be derived from the retail sale of smoking products. This ensures that most retail outlets are restricted to one square metre, with only the specialised tobacco stores having the option to use a display area of three square metres.

Schedule Consequential amendments of Mental Health Act 2000

Clauses 1 – 8 make minor consequential amendments to give effect to the amendments to the Mental Health Act.