Health and Other Legislation Amendment Bill 2018

Explanatory Notes

Short title

The short title of the Bill is the Health and Other Legislation Amendment Bill 2018 (the Bill).

Policy objectives and the reasons for them

The Bill amends Health and other portfolio Acts to implement policy initiatives and improve the operation of the legislation. The Bill will:

- repeal the *Public Health (Medicinal Cannabis) Act 2016* (Medicinal Cannabis Act), and make consequential amendments to the *Health Act 1937*, to significantly streamline the regulatory framework for prescribing medicinal cannabis in Queensland;
- amend the *Public Health Act 2005* to:
  - establish the Notifiable Dust Lung Disease register and require prescribed medical practitioners to notify the chief executive of Queensland Health about cases of notifiable dust lung disease;
  - enable the chief executive to require a person responsible for causing a pollution event to publish a pollution notice to inform the public of potential risks to public health;
  - enable the standard that a person must comply with when manufacturing, selling, supplying or using paint to be prescribed by regulation rather than in the Act;
- amend the *Radiation Safety Act 1999* to provide that certain persons are deemed to have a use or transport licence;
- amend the *Transplantation and Anatomy Act 1979* to:
  - clarify the provisions about research that involve removing tissue from adults and children;
  - ensure pathology laboratories can access tissue-based products that are necessary for diagnostic and quality control purposes;
  - remove the requirement that a post-mortem examination of a body conducted in a hospital only be held in the hospital mortuary;
- amend the *Births, Deaths and Marriages Registration Act 2003*, the *Coroners Act 2003* and the *Cremations Act 2003* to enable human body parts used at a school of anatomy for the study and practice of anatomy to be lawfully cremated without a corresponding death certificate or the approval of an independent doctor;
- amend the *Retirement Villages Act 1999* to clarify a recent amendment in relation to timely payment of exit entitlements at retirement villages and make associated amendments to the *Duties Act 2001*.

Public Health (Medicinal Cannabis) Act 2016* and *Health Act 1937

The Medicinal Cannabis Act provides a state-based regime for patients to access medicinal cannabis products. It was developed when medicinal cannabis was a schedule 9 prohibited substance. Other schedule 9 substances include heroin, LSD and a range of other strictly prohibited substances.

The Medicinal Cannabis Act sets up a robust system of approvals by the chief executive of Queensland Health and other controls to ensure medicinal cannabis is only prescribed by suitable medical practitioners for patients with conditions where there is evidence of its efficacy. Queensland's medicinal cannabis framework was designed to operate in the absence of any other controls on access to medicinal cannabis at the Commonwealth level.

By the time the Medicinal Cannabis Act commenced in March 2017, the Therapeutic Goods Administration (TGA) had rescheduled medicinal cannabis to schedule 8, meaning it joined a range of other medicines that can be accessed for therapeutic use with strict controls under existing frameworks. Other schedule 8 drugs include methadone, morphine and fentanyl. There are well-established pathways for accessing schedule 8 and schedule 4 drugs. The TGA has also made administrative changes to improve its access regimes for medicinal cannabis.

Approvals for medicinal cannabis

Most medicinal cannabis products are not included on the Australian Register of Therapeutic Goods, meaning they are known as unapproved therapeutic goods. The Commonwealth *Therapeutic Goods Act 1989* provides that access to unapproved therapeutic goods must occur through one of the TGA's access pathways. These include the Special Access Schemes, which are intended for use for individual patients, and the Authorised Prescriber Scheme, under which medical practitioners can be granted authority to prescribe a specified unapproved good to specified recipients or classes of recipients. A medical practitioner must currently comply with both the Queensland and TGA frameworks to prescribe medicinal cannabis in Queensland.

The changes that have taken place at the Commonwealth level mean that in practice, Queensland's medicinal cannabis approval process duplicates the TGA approval process for access to medicinal cannabis. Queensland and the TGA run the same checks on:

- the doctor, for example, checking their registration with the Australian Health Practitioner Regulation Agency, ensuring there are no conditions on the registration and that they are a suitable specialist in the relevant field to prescribe or support the prescribing by a general practitioner;
- the condition, for example, considering if there is scientific evidence for the use of medicinal cannabis to treat the condition and whether the patient has already used conventional treatments for the condition; and
- the proposed product, for example, whether the proposed product and dose comply with the *Guidance for the use of medicinal cannabis in Australia* and the *Standard for medicinal cannabis*, published by the TGA.

Having two approval processes assessing the same matters introduces the potential for Queensland and the TGA to reach different conclusions about applications, which may weaken confidence in the regulatory framework. The current TGA approval for access to medicinal cannabis is considered adequate to assess these matters.

Pharmacists

Currently, each individual pharmacist who dispenses medicinal cannabis in Queensland must have a dispensing approval. Dispensing approvals are site specific so a pharmacist working at multiple pharmacies requires an approval for each pharmacy they work in. Pharmacists applying for a dispensing approval must provide details of their registration with the Australian Health Practitioner Regulation Agency, professional qualifications and any conditions or limitations on their registration.

While this level of rigour was appropriate for a schedule 9 drug, pharmacies already have controls in place to manage the risks associated with storing and dispensing schedule 8 medicines. Queensland is the only state that requires pharmacists to have an approval to dispense medicinal cannabis. There are more than 4,000 pharmacists in Queensland. Dispensing approvals are burdensome for both pharmacists and Queensland Health.

Clinical trials

Currently, the Medicinal Cannabis Act requires researchers undertaking a clinical trial in Queensland to hold a clinical trial approval in addition to the trial having TGA authorisation.

The TGA has two clinical trials pathways for unapproved therapeutic goods:

- the Clinical Trial Notification (CTN) scheme, in which the Australian clinical trial sponsor must notify the TGA they intend to sponsor a clinical trial involving an 'unapproved' therapeutic good, before starting to use the goods; and
- the Clinical Trial Exemption (CTX) scheme, in which a sponsor applies to the TGA seeking approval to supply unapproved therapeutic goods in a clinical trial. The CTX route is designed for high-risk or novel treatments.

As the TGA pathways provide an appropriate safeguard for clinical trials, the Queensland approval process is no longer considered necessary.

Public Health Act 2005

Notifiable Dust Lung Disease Register

In May 2017, the Coal Workers' Pneumoconiosis Select Committee of the Queensland Parliament (the Select Committee) tabled its final report: *Black lung white lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland*. The report was the culmination of the Select Committee's extensive inquiry into coal worker's pneumoconiosis, also known as 'black lung', a preventable disease arising from working in the coal industry.

Coal mine dust lung diseases is the collective term for the various respiratory diseases caused by long-term occupational exposure to high concentrations of respirable coal dust. Coal worker's pneumoconiosis is the most commonly known form of coal mine dust lung disease.

The Select Committee recommended that cases of coal worker's pneumoconiosis and other coal mine dust lung diseases identified or diagnosed by medical professionals should be compulsorily reported to the Chief Health Officer as a notifiable disease under the Public Health Act.

Chapter 3, part 2 of the Public Health Act provides that diagnoses of notifiable conditions are required to be notified to the chief executive and recorded on the notifiable conditions register. Notifiable conditions prescribed in the *Public Health Regulation 2018* include communicable diseases such as measles, Hendra virus and hepatitis. Under section 64(2) of the Public Health Act, a condition can only be prescribed as a notifiable condition if the Minister is satisfied the condition is a significant risk to public health. Coal mine dust lung diseases typically only affect coal miners through occupational exposure and are not considered to pose a significant risk to public health within the framework established by the Public Health Act.

Therefore, the Bill amends the Public Health Act to establish a separate framework for notification of particular occupational dust lung diseases, including coal mine dust lung diseases.

In addition, there has recently been a sudden spike in the number of confirmed cases of silicosis for workers in the engineered stone benchtop manufacturing industry. There are high levels of silica in engineered stone, which can be breathed in as dust when cut dry. The Queensland Government has issued a safety warning for workers and employers to cease dry cutting of engineered stone benchtop manufacturing.

Pollution events

Under the Public Health Act, authorised persons have a range of powers. This includes issuing a public health order that states the remedial action required at a place to remove or reduce the public health risk associated with a pollution event, or prevent it from recurring.

However, the Public Health Act does not specifically empower Queensland Health to require a person responsible for pollution to notify the public of any health risk arising from the pollution. This can result in delays in the public receiving notice of the public health risks caused by a pollution event.

Poisons Standard

The Public Health Act requires the manufacture, sale, supply or use of paint to occur in accordance with a standard, being the prescribed part of the *Standard for the Uniform Scheduling of Drugs and Poisons* dealing with paint, compiled by the Australian Health Ministers' Advisory Council and published by the Commonwealth. The name of the Standard has changed to the *Standard for the Uniform Scheduling of Medicines and Poisons*. The reference in the Public Health Act requires updating.

Radiation Safety Act 1999

The Radiation Safety Act prohibits a person from using a radiation source or transporting a radioactive substance unless they hold a use licence or a transport licence, respectively. In some circumstances, persons required to hold these licences have already been assessed under another process as being suitable to use the radiation source or transport the radioactive substance. This can include, for example, through a professional registration process or an equivalent licence granted in another jurisdiction.

The Bill amends the Radiation Safety Act to create a new category of licensee, being persons or classes of person who are prescribed in regulation as a prescribed licensee. A prescribed licensee is deemed to have a use or transport licence, and is therefore subject to the same

requirements, standard conditions and penalties for contravention as other licensees. A prescribed licensee will be able to have their licence suspended or cancelled in the same way as any other licensee. The Bill provides for the register of licensees to include prescribed licensees whose licences have been suspended or cancelled.

Transplantation and Anatomy Act 1979

Tissue removal for research purposes

The Transplantation and Anatomy Act provides a regulatory framework for the removal and donation of tissue from adults and children.

A significant number of paediatric oncology patients receive treatment through a clinical trial. These patients receive either the current best practice treatment or an experimental treatment that is considered likely to be better than the current practice. Clinical trials have been particularly successful for children. As child enrolment in clinical trials has improved, the overall survival rate for children with cancer has increased from 15 per cent to over 80 per cent.

There has been uncertainty among some clinical researchers about the application of the Transplantation and Anatomy Act to the removal of tissue, other than blood, from children for use in research, including in clinical trials, as the research provisions do not specifically apply to children.

Exemptions for trade in tissue

The Transplantation and Anatomy Act generally prohibits the trading of human tissue. However, the Act enables the Minister to issue a permit that authorises trade in tissue in special circumstances.

To carry out routine diagnostic activities and to attain accreditation through national accreditation schemes, pathology laboratories must purchase reagents, reference materials and control materials that are derived wholly or in part from human tissue.

Section 4 of the Transplantation and Anatomy Act excludes from the definition of *tissue* 'laboratory reagents, or reference and control materials, derived wholly or in part from pooled human plasma'. Some of the tissue required by pathology laboratories is captured by this exclusion, and may therefore be purchased. However, since the exclusion was inserted in the Act in 1993, tissue types derived other than from pooled human plasma have come to be used as reagents, reference materials and control materials, and accordingly also for quality assurance purposes. These tissue types include whole blood, red blood cells, cerebrospinal fluid, bone marrow cells and cardiac enzymes.

Given these advances in technology, quality assurance program providers and pathology laboratories must apply to the Minister for a permit before they can purchase some of the types of tissue they legitimately require.

Location of post-mortem examinations conducted in hospitals

The Transplantation and Anatomy Act provides that a post-mortem examination conducted in a hospital must be carried out in the hospital mortuary.

Post-mortem examinations not only advance medical knowledge, particularly in relation to new or unusual conditions or the efficacy of emerging treatments, but may also identify hereditary and other conditions of importance to relatives of the deceased. However, in the past 10 to 15 years, there has been a significant decline in consensual post-mortems, largely attributed to changed community attitudes regarding invasive procedures and the retention of organs and other tissue for testing purposes.

A traditional surgical examination constitutes best practice in the conduct of post-mortems. However, use of imaging equipment can complement a traditional post-mortem, for example, by facilitating guided needle biopsies. Imaging may also be used as a full or partial non-invasive alternative to a surgical examination. Hospital mortuaries are typically not equipped with machinery to undertake X-rays, CT scans, and magnetic resonance imaging, which are available in radiology departments. Confining hospital post-mortems to mortuaries places a significant limitation on the form they can take and does not reflect contemporary approaches to post-mortems.

Births, Deaths and Marriages Registration Act 2003, Coroners Act 2003* and *Cremations Act 2003

The Coroners Act prohibits the preparation of a human body for burial or cremation, and the burial or cremation of a body, without a cause of death certificate. Similarly, the Cremations Act provides that, other than human remains that are the subject of a coronial autopsy, human remains must not be cremated without an approval issued by an independent doctor. An independent doctor must not issue an approval unless the application for the approval is accompanied by a cause of death certificate. Both the Cremations Act and the Coroners Act contain an exemption from the requirement for a death certificate for body parts taken during an autopsy.

The Transplantation and Anatomy Act establishes schools of anatomy and authorises the donation and use of the bodies of deceased persons for anatomical examination or the study and teaching of human anatomy. It also requires donor bodies to be cremated or buried as soon as possible after the period for which the body is authorised to be retained, or as soon as possible after the body has been used for the purpose for which it was retained. This includes part of a body.

Schools of anatomy possess death certificates for bodies donated under their body donor programs, and are lawfully able to cremate these bodies if an independent doctor issues an approval under the Cremations Act. However, during dissection of donor bodies it is not always practicable to collect and store parts of donor bodies on a per-donor basis for later cremation. This makes it onerous for an independent doctor to match each individual body part with a cause of death certificate and issue an approval.

There are also circumstances where a school of anatomy may possess human body parts for which cause of death certificates are not available. For example:

- historical specimens of unknown identity, such as skeletons donated by the estates of deceased general practitioners; and
- tissue imported from overseas body donor programs for which identifying information may not be provided for reasons of confidentiality.

Retirement Villages Act 1999

In a retirement village, a resident typically receives their exit entitlement when their unit is sold. The exit entitlement is usually the resale value of the unit, less any exit fee and other charges payable to the scheme operator. In many older villages, resale may take many months, or even years. This could result in significant hardship for those residents needing the sale proceeds to fund their next accommodation move.

In 2017, amendments were made to the Retirement Villages Act which ensured that where a unit remains unsold, a resident would receive their exit entitlement no later than 18 months after the termination of their right to reside within the village.

Depending on the terms of the residence contract, a retirement village resident may occupy their unit on a range of tenure types such as freehold, leasehold or licence. The policy intent of the 2017 amendment was to apply the new payout timeframe to all tenure types to improve consumer protections. However, as different tenure types such as freehold may have payment mechanisms which do not involve the payment of an 'exit entitlement', there has been uncertainty about whether the protections afforded by the 2017 amendments apply in all circumstances.

The Department of Housing and Public Works, which administers the Retirement Villages Act, estimates there are 2,201 freehold retirement village units in Queensland, representing approximately 7.4 per cent of all units.

The Bill amends the Retirement Villages Act to clarify that a resident is entitled to payment for their unit 18 months after they terminate their right to reside in the village, regardless of their tenure type. This will include new processes for the mandatory purchase of unsold freehold units by the operator so residents receive their funds in a timely manner after they have left a village. This ensures that protections apply fairly for all residents across the retirement village sector. It will also apply to existing contracts in a retirement village so as not to create different protections for new and existing residents. The mandatory purchase provides certainty for residents and improves financial security to enable them to fund their move to their next accommodation.

Achievement of policy objectives

Public Health (Medicinal Cannabis) Act 2016

The Bill repeals the Medicinal Cannabis Act and amends the Health Act to include medicinal cannabis in the scope of the Health Act. To ensure that medicinal cannabis can be regulated under the Health Act and the *Health (Drugs and Poisons) Regulation 1996*, the Bill amends definitions of *article*, *drug*, and *poison* in the Health Act to ensure they capture medicinal cannabis. These changes mean that medicinal cannabis will be regulated under the Health (Drugs and Poisons) Regulation and will be treated the same as other schedule 8 or schedule 4 medicines depending upon its composition.

Public Health Act 2005

Notifiable dust lung disease register

The Bill establishes a framework for notification of particular occupational dust lung diseases under the Public Health Act.

The Bill provides that the notification framework applies to certain medical practitioners for occupational dust lung diseases prescribed in regulation. Notified cases will be recorded in the new Notifiable Dust Lung Disease Register.

Many cases of notifiable dust lung disease already come to the attention of the Queensland Government through the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999*. A small number of cases may also be identified through notifications under the *Work Health and Safety Act 2011* and the *Workers' Compensation and Rehabilitation Act 2003*.

To avoid duplication, the Bill provides that a prescribed medical practitioner does not need to notify the chief executive of Queensland Health if the medical practitioner has given information about the notifiable dust lung disease to:

- the chief executive, or a public service employee, of the department in which the Coal Mining Safety and Health Act is administered; or
- another medical practitioner, who is authorised under an Act prescribed by regulation, to provide a health assessment about the person.

The Bill also enables the chief executive of Queensland Health to request information from the chief executive of a relevant agency, which includes the chief executive of the department that administers the Coal Mining Safety and Health Act and the chief executive that administers the Workers' Compensation and Rehabilitation Act, about cases of notifiable dust lung disease.

The Bill expressly provides that giving information as required under the new notification framework does not contravene any existing confidentiality requirements, either in legislation or otherwise. It is intended the information provided by prescribed medical practitioners and shared between agencies will be limited to data identifying the patient and the nature of their disease, and will not include clinical information.

The Bill requires the chief executive of Queensland Health to report annually to the Minister about the number of notifications received and the actions Queensland Health has taken to implement the purposes of the register. The Minister must table the report.

Pollution events

The Bill will also amend the Public Health Act to give the chief executive new powers to deal with public health risks caused by pollution events. A *pollution event* is defined broadly in the Bill to mean the release or dispersal of a pollutant or contaminant that may adversely affect public health. This definition captures both man-made and naturally-occurring substances.

Where a pollution event occurs, the Bill empowers the chief executive to direct a person responsible for the pollution event to publish a pollution notice. A pollution notice will identify

the nature and extent of the pollution event and any action required to remove or reduce the effect of the pollution event.

The chief executive will have the power to specify the content of the pollution notice, and when and how the notice is published. This will ensure that the notice is disseminated to impacted persons or entities and that the content of the notice is appropriate.

Before giving a pollution direction, the Bill requires the chief executive to consult with any relevant public service officer having the necessary expertise and experience to provide advice to the chief executive about the pollution event. Depending on the pollution event, this could include officers from the Department of Environment and Science, the Department of Natural Resources, Mines and Energy, the Department of Transport and Main Roads, the Department of Agriculture and Fisheries and Workplace Health and Safety Queensland. The provisions will enable Queensland Health to ensure there is timely, accurate and appropriate advice to the public about the health risks arising from the pollution, while ensuring other agencies can continue to lead any remedial actions required to respond to pollution events.

The Bill will also empower the chief executive to publish the pollution notice, where the person responsible for the pollution event cannot be identified or otherwise cannot comply, or the pollution event is naturally-occurring. This notice will contain the same type of information in a pollution notice issued by a polluter under a direction from the chief executive.

The Bill will allow a person who suffers loss because of exercise of the new pollution event powers to claim compensation from the State. However, compensation will only be available for loss arising from an accidental, negligent or unlawful act or omission.

For non-compliance with a pollution direction, the Bill provides a penalty of 200 penalty units. This is consistent with a number of other penalties in the Public Health Act including the offence of failing to comply with a public health order.

Poisons Standard

The Bill amends the Public Health Act to prescribe the standard in regulation so any future changes, such as to the name of the national standard, can be applied without amending the Act. The *Public Health Regulation 2018* will prescribe the relevant standard.

Radiation Safety Act 1999

The Bill amends the Radiation Safety Act to create a new category of licensee, being persons or classes of person who are prescribed in regulation as a prescribed licensee. A prescribed licensee is deemed to have a use or transport licence, and is therefore subject to the same requirements, standard conditions and penalties for contravention as other licensees.

Prescribed use licensees will be identified in the *Radiation Safety Regulation 2010* by their qualification, registration status or training. Prescribed transport licensees may be identified in the Radiation Safety Regulation by the type of radioactive substance, how the radioactive substance must be transported and the amount of substance they can transport.

Before prescribing a person or class of persons as a prescribed licensee, the amendments require the Minister to consult with the Radiation Advisory Council and consider any recommendations made by the Council.

Transplantation and Anatomy Act 1979

Tissue removal for research purposes

The Bill will amend the Transplantation and Anatomy Act to expressly outline the circumstances in which tissue can be taken from adults and children for research purposes. This will provide clinical researchers with certainty, and give family members and carers comfort, that the Transplantation and Anatomy Act enables children to participate in clinical trials.

The Bill provides that tissue can be removed from both adults and children for clinical research studies, provided this is done in compliance with existing protections in the *National Statement on Ethical Conduct in Human Research* regarding consent and for research that is conducted in accordance with the *Australian Code for Responsible Conduct of Research*.

For children, the amendments include additional safeguards. Tissue may only be taken in three circumstances:

- the research is for the benefit of the child; or
- the tissue is removed during a procedure that is for the benefit of the child, and a medical practitioner is satisfied that removal of the tissue is not likely to prejudice the health of the child; or
- a medical practitioner is satisfied that removal of the tissue will involve a negligible or low risk of harm and minimal discomfort to the child.

Exemptions for trade in tissue

The Bill will amend the Transplantation and Anatomy Act to ensure all laboratory reagents, or reference, control and quality assurance materials, derived wholly or in part from any human tissue, are not captured by the prohibition on the trade in tissue. This will significantly reduce the administrative burden on pathology laboratories who currently must apply to the Minister for a permit before they can purchase some of the types of tissue they require.

Location of post-mortem examinations conducted in hospitals

The Bill will amend the Transplantation and Anatomy Act to remove the requirement for a post-mortem conducted at a hospital to be held in the hospital mortuary. A post-mortem will be able to be conducted in any suitable location within the hospital approved by the medical superintendent of the hospital. This will allow for imaging equipment to be used in post-mortem examinations.

Births, Deaths and Marriages Registration Act 2003, Coroners Act 2003* and *Cremations Act 2003

The Bill amends the Coroners Act and Cremations Act to include an exemption from the requirements for burial or cremation under those Acts for part of a body used at a school of anatomy for the study and practice of anatomy.

Under the Births, Deaths and Marriages Registration Act, the person who disposes of a body in certain circumstances must give notice of this to the registrar-general. This requirement does not apply to a school of anatomy when disposing of a human body given to the school. However, the exemption does not apply to disposal of a part of a body.

Notifying every occasion of disposal of a part of a body is onerous. For consistency with the amendments to the Coroners Act and Cremations Act, the Bill amends the Births, Deaths and Marriages Registration Act to extend the existing notification exemption to parts of a human body donated to a school of anatomy under part 5 of the Transplantation and Anatomy Act.

Retirement Villages Act 1999* and *Duties Act 2001

The Bill will amend the Retirement Villages Act to provide processes to ensure that residents with an interest in freehold tenure receive payment for their retirement village unit 18 months after they leave a retirement village. Given the difference in tenure between freehold and other unit types, the amendment requires the scheme operator to effectively 'buy back' the unsold unit from the outgoing resident after 18 months by entering into a contract with the resident to purchase the property.

The purchase must generally be completed 18 months after the termination date of the resident's right to reside in the village. However, allowances are made for certain circumstances. The scheme operator may also make an application to the Queensland Civil and Administrative Tribunal for an extension of time if the operator is likely to suffer financial hardship as a result of the transaction.

The Bill sets out the requirements for the timing of the purchase. It also states how the purchase price for the freehold property is decided for the mandatory purchase and seeks to be consistent with existing requirements in the Retirement Villages Act as they relate to valuation of units with other tenure types.

The Bill allows the operator to pass on reasonable legal expenses relating to the purchase to the former resident, but seeks to prohibit the operator or an associated entity charging the former resident a sales commission on the mandatory purchase. As an additional consumer protection measure, it also seeks to restrict the timing of the payment of the exit fee by the resident and allows the exit fee to be deducted from the proceeds of sale.

Where a former resident has died or otherwise terminated their right to reside, the Bill maintains the protections afforded to a relative of the former resident who continues to reside in the unit under section 70B and adjusts the commencement date of the 18 month period to allow for appropriate arrangements to be made.

The Bill includes a head of power to prescribe required and prohibited terms in the sale contract by regulation or introduce an approved form of the contract. It also includes the power to make a regulation that makes temporary amendments to the Retirement Villages Act which are of a transitional or savings nature to facilitate the transition to the amended Act where there is insufficient provision in the Act for sections related to the 18-month payment to operate.

As the Bill compels the mandatory purchase of a property by the scheme operator and transfer duty may apply to the transaction, the Bill amends the Duties Act to provide a transfer duty exemption.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives of the Bill.

Estimated cost for government implementation

The costs to government associated with the implementation of amendments in the Bill will be minimal and met from existing budget allocations.

Consistency with fundamental legislative principles

Disclosing confidential information

- *Public Health Act 2005*

Clause 22 potentially breaches the principle that legislation must have sufficient regard to individuals' rights and liberties (*Legislative Standards Act 1992*, section 4(3)(a)) as it allows disclosure of personal information in limited circumstances.

Notification to the chief executive

Clause 22 inserts new sections 279AF and 279AG in the Public Health Act, which compel prescribed medical practitioners to notify the chief executive about a notifiable dust lung disease they diagnose and to provide further information to the chief executive if requested.

The information must be notified in an approved form (section 279AF(3)). The type of information to be included will be the name of the person diagnosed, date of birth, type of dust lung disease diagnosed and place of exposure. However, it will not include clinical information such as the patient's treatment or prognosis.

The Bill provides that persons who give information under these provisions who would otherwise be required to maintain confidentiality under another Act, oath, rule of law or practice do not contravene that Act, oath, rule of law or practice and are not liable for disciplinary action for providing the information. The Bill also provides that these persons cannot be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct in complying with the Act.

Appropriate safeguards have been included to protect the personal information. New section 279AL of the Public Health Act creates an offence for disclosing confidential information unless permitted under the Act. The maximum penalty for breach of this requirement is 50 penalty units. This is consistent with other provisions relating to disclosing confidential information in the Public Health Act, which relate to confidentiality of information for the Notifiable Conditions Register.

The Notifiable Dust Lung Disease Register is not a public register and cannot be accessed by members of the public or employers. The purpose of the register is for Queensland Health to monitor and analyse the incidence of notifiable dust lung diseases, and exchange information about notifiable dust lung diseases with other entities of the State (section 279AC).

Disclosure by relevant chief executives

Clause 22 permits disclosure of confidential information received under the Act as amended, without consent, in certain circumstances.

Section 279AH enables the chief executive of Queensland Health to request from a relevant chief executive information that they, or their employee, have been given about a notifiable dust lung disease. The relevant chief executive must give the information to the chief executive of Queensland Health. *Relevant chief executive* is defined in section 279AA to mean either the chief executive of the department in which the Coal Mining Safety and Health Act is administered, the chief executive of the department in which the Workers' Compensation and Rehabilitation Act is administered, or another chief executive prescribed by regulation.

Requesting information from a relevant chief executive will enable Queensland Health to have a complete register of all diagnosed cases, including those that come through other government agencies such as the Department of Natural Resources, Mines and Energy or the Office of Industrial Relations.

This potential breach of the fundamental legislative principles is considered justified as it will provide greater clarity about the rates of occupational dust lung disease in Queensland. As noted above, it will be an offence for the chief executive of Queensland Health to disclose the information obtained from other chief executives unless authorised. The information being disclosed to the chief executive is limited to the information needed to accurately maintain the register.

Disclosure under an agreement to an entity of the State, or a corresponding entity of another State or the Commonwealth

Section 279AO allows the chief executive to disclose confidential information to an entity of the State, another State (including Territories) or the Commonwealth, if the disclosure is required or permitted under an agreement between the chief executive or the State, and the other entity. The agreement must be prescribed by regulation.

This provision will ensure that Queensland Health can disclose information to other government entities if appropriate in the future. For example, the provision would enable Queensland Health, or the State, to enter into an agreement:

- with another Queensland government department, to enable the disclosure of information about diagnosed cases to that entity, to assist the entity in responding to incidents of dust lung disease;
- to another State or Territory department, to facilitate sharing of information about cases diagnosed in one jurisdiction where caused by exposure in the other jurisdiction; or
- with the Commonwealth, to facilitate information sharing for the purposes of a national register if established.

Information sharing between entities enables the government to take a coordinated approach to managing occupational dust lung disease cases. The Bill provides safeguards for information sharing between agencies. The agreement must be prescribed in the regulation. A government entity that receives confidential information under an agreement must not disclose the information to any other entity unless required or permitted to do so under the agreement, or permitted in writing by the chief executive. The government entity must ensure the confidential information is used only for the purpose for which it was disclosed under the agreement. It will be an offence for a person who receives information under section 279AO to disclose the information unless permitted, with a maximum penalty of 50 penalty units.

Disclosure under other circumstances

Clause 22 inserts other provisions that allow disclosure of confidential information in other circumstances.

- Section 279AN enables disclosure to a person contracted to the department to analyse, monitor or evaluate public health. From time to time Queensland Health may contract entities to undertake analysis of data. The disclosure is only for a limited purpose. The person must be approved by the chief executive of Queensland Health in writing to receive the information.
- Section 279AP allows the chief executive to disclose information if the coroner is investigating the death of a person. This will ensure that if there is information on the register that is relevant to the person's death, Queensland Heath can disclose it to the coroner or a police officer helping the coroner to investigate the death.

These potential breaches of the fundamental legislative principles are justified as they allow disclosure of confidential information in limited circumstances, and with safeguards as noted above. The provisions will enable disclosure in circumstances that are consistent with the overall purpose of the register, which is to monitor and analyse the incidence of notifiable dust lung diseases, and exchange information about notifiable dust lung diseases with other entities of the State. As noted above, the information on the register will be limited and will not include, for example, information about a patient's prognosis or treatment.

Research

Clause 23 amends the definition of *health information held by a health agency*. This amendment ensures that chapter 6, part 4 of the Public Health Act, which provides a framework for researchers to apply to Queensland Health for access to health information for research purposes, will apply to information from the notifiable dust lung disease register. *Research* is defined in section 280 of the Public Health Act to mean systematic investigation for the purpose of adding to knowledge about human health and well-being and includes a biomedical study, a clinical and applied study, an epidemiological study, an evaluation and planning study, and a monitoring and surveillance study.

Under section 282 of the Public Health Act, a person may apply to the chief executive of Queensland Health to be given health information for research. The chief executive may only grant the application if the chief executive is satisfied:

- the giving of the health information is in the public interest having regard to the opportunities the research will provide for increased knowledge and improved health outcomes and the privacy of individuals to whom the health information relates; and
- the identification of any person by the information is necessary for the relevant research.

Section 288 of the Public Health Act provides the chief executive must establish a register of granted approvals and under section 289 the chief executive must give a person access to the register. The register must include the type of information to be given for the research, a description of the research, the name of the person or entity conducting the research, and the period for which the application has been granted.

The potential breach of fundamental legislative principles is justified given the strict criteria for the approval processes. These amendments will ensure appropriate research can be

undertaken into occupational dust lung diseases, while protecting the confidentiality of the information.

Matters to be prescribed in regulation

Clauses 22, 31, 38 and 46 potentially breach the principle that legislation must have sufficient regard to the institution of Parliament as they allow matters to be prescribed by regulation (Legislative Standards Act, section 4(3)(a)).

- *Public Health Act 2005*

New section 279AF of the Public Health Act, to be inserted by clause 22 of the Bill, requires prescribed medical practitioners to notify the chief executive of notifiable dust lung disease diagnoses. New section 279AA defines *prescribed medical practitioner* and *notifiable dust lung disease* by prescribing the medical practitioners and dust lung diseases in regulation.

This potential breach of fundamental legislative principle is justified as it will enable the types of occupational lung diseases required to be reported, and the medical practitioners required to report them, to be changed if new types of occupational dust lung diseases emerge, or changes in clinical practice make it appropriate to require other types of medical practitioners to notify diagnoses to Queensland Health.

- *Radiation Safety Act 1999*

Clause 31 of the Bill inserts new section 103K of the Radiation Safety Act. This new section provides that a regulation may prescribe persons who are taken to hold a use or transport licence. However, this power is limited. The regulation must state for a prescribed use licence the qualifications, professional registration or training that must be held by the prescribed licensee. Prescribed transport licensees may be identified in the Radiation Safety Regulation by the type of radioactive substance, how the radioactive substance must be transported and the amount of substance they can transport.

Clause 31 provides safeguards by inserting section 103L in the Radiation Safety Act, which requires the Minister to consult with the Radiation Advisory Council and consider any recommendations made by the Council before making a regulation under section 103K. It also requires the Minister to be satisfied that making the regulation will be consistent with the radiation safety, protection and security principles.

- *Retirement Villages Act 1999*

Clause 38 of the Bill creates the power to prescribe and/or prohibit terms to be included in a sale contract for the mandatory purchase of a freehold tenured unit in a regulation rather than the primary legislation.

The use of a head of power to make a regulation is justified due to the detailed and technical nature of contracts of sale for retirement village units and the potential need to adapt to rapidly changing business practices and innovations in the retirement village sector.

Similarly, clause 46 of the Bill includes a transitional regulation-making power which may make a provision of a saving or transitional nature to temporarily amend the Act where it is

necessary to do so to transition from the operation of the pre-amended Act to the amended Act and the Act does not make provision or sufficient provision.

This provision mirrors transitional provisions in the *Housing Legislation (Building Better Futures) Amendment Act 2017* and is justified to manage the risk of issues that may emerge after the amendments commence and the complexity of differing tenure types and contracts of sale. Concerns are further mitigated by the inclusion of a one-year sunset clause on both the empowering provision and any regulation made under it.

Regulations made under the above provisions will be subject to potential disallowance by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992.*

New offences

The Bill includes new offence provisions which potentially breach the principle that legislation must have sufficient regard to individual's rights and liberties (Legislative Standards Act 1992 section 4(3)(a)).

- *Public Health Act 2005*

Clause 14 inserts new section 313E to the Public Health Act requiring a person to publish a pollution notice if directed by the chief executive. The maximum penalty for noncompliance with this provision is 200 penalty units. This potential breach of fundamental legislative principles is justified as it will encourage compliance with the direction, ensuring the person responsible for a pollution event provides timely advice to the public about the health risks of the pollution. The maximum penalty of 200 penalty units is consistent with the penalty for not complying with a public health order under section 23 of the Public Health Act.

Clause 22 inserts:

- new section 279AF of the Public Health Act, creating an offence for not notifying the chief executive of notifiable dust lung diseases unless the practitioner has a reasonable excuse. The maximum penalty is 20 penalty units; and
- new section 279AG of the Public Health Act, creating an offence for not providing the chief executive with additional information. The maximum penalty is 20 penalty units.

Both of these provisions are necessary to ensure the register can be established and maintained. The penalties are consistent with the penalties for failing to notify the chief executive or failing to provide further information under the cancer notification provisions of the Public Health Act and are considered a sufficient deterrent for non-compliance.

Clause 22 also inserts new section 279AL which creates an offence for disclosing confidential information unless permitted under the Act. The maximum penalty is 50 penalty units. This is consistent with other provisions relating to disclosing confidential information in the Public Health Act, such as the confidentiality of information for the Notifiable Conditions Register and is considered a sufficient deterrent for non-compliance.

- *Retirement Villages Act 1999*

Clause 38 inserts a new penalty for scheme operators who do not complete the mandatory purchase within the required timeframe, noting that where an operator would suffer financial

hardship as a result of the mandatory purchase, they may apply to the Queensland Civil and Administrative Tribunal for an extension of time.

This penalty mirrors the penalty which applies to the required timing for payment of exit entitlements in other tenure types. It is justified to maintain equity among tenure types and to discourage scheme operators from attempting to abrogate their obligation to purchase the unit.

Retrospectivity

- *Retirement Villages Act 1999*

As the amendments seek to ensure that the same protections apply equally to all retirement village residents regardless of their tenure type, it is necessary for the amendments to apply retrospectively from the passing of the Housing Legislation (Building Better Futures) Amendment Act. The retrospective operation of clause 46 raises a potential breach of fundamental legislative principles because it applies to contracts entered into by scheme operators and retirement village residents prior to commencement of the amendments.

The provisions in the Housing Legislation (Building Better Futures) Amendment Act requiring operators to pay a former resident's exit entitlements 18 months after they leave a village apply retrospectively to existing contracts, but with a prospective focus. This means that for residents holding leasehold or licence tenure who had left a village before the commencement of those provisions on 10 November 2017, the 18-month period started on the date of assent, rather than the date of departure.

It is considered that retrospectivity of the provisions requiring operators to purchase a former resident's freehold unit 18 months after they leave a village is also justified to maintain the original intention of the Housing Legislation (Building Better Futures) Amendment Act and to ensure there is equity between freehold tenure residents and residents with other kinds of retirement village tenure, as well as between existing residents and new residents. This will allow the first payments to be made to freehold residents on the same date they are made to residents holding leasehold or licence tenure. To do otherwise would provide a two-tiered system of protections for residents, leaving freehold residents at a disadvantage.

Compared to other tenure types offered in retirement villages, freehold tenure is relatively uncommon at approximately seven per cent of units in Queensland. However, owners of units held under freehold face the same difficulties and frustrations about being unable to access their capital as other retirement village residents.

These amendments provide clarity about the intent of the 2017 amendments and give certainty to all retirement village residents about the maximum length of time they must wait before they receive their funds. Retrospective application of the amendments is justified in circumstances where a former resident has not been able access what may be their only capital for an 18-month period. While the process is different to reflect the differences applying to each tenure type, the end result and the delivery of the policy will be the same for all retirement village residents.

Consultation

The chief executives of Queensland's Hospital and Health Services, Royal Australasian College of Physicians, Royal Australian College of General Practitioners (RACGP), Australian

Medical Association Queensland (AMAQ), Australian College of Rural and Remote Medicine and Health Consumers Queensland (HCQ) were consulted on the proposed amendments.

- *Medicinal Cannabis Act*

Targeted consultation was undertaken with a range of representative bodies for health practitioners and consumers, including the RACGP, AMAQ, HCQ, Pharmacy Guild of Australia, and members of the Queensland Medicinal Cannabis Expert Advisory Panel.

The feedback received was supportive of the proposed repeal of the Medicinal Cannabis Act.

- *Public Health Act 2005 – Notifiable Dust Lung Disease Register*

The Thoracic Society of Australia and New Zealand, Royal Australian and New Zealand College of Radiologists and the Australasian and New Zealand Society of Occupational Medicine were also consulted on the proposed notifiable dust lung disease register.

The proposed amendments relating to coal worker's pneumoconiosis and coal mine dust lung diseases were discussed with the Coal Mine Safety Health Advisory Committee, a tripartite committee with a membership comprising of industry, worker representative groups and the Resources Safety and Health regulator. The committee is chaired by the Commissioner of Mine Safety and Health and advises the Minister for Natural Resources, Mines and Energy on the safety and health of coal mine workers.

The CFMEU Mining & Energy Queensland was consulted.

The feedback received was supportive of the establishment of a Notifiable Dust Lung Disease Register.

- *Public Health Act 2005 – pollution notices*

The Local Government Association of Queensland (LGAQ) including the Queensland Water Directorate, Seqwater, and Public Health Units within Hospital and Health Services were consulted on the proposed amendments to require a polluter to publish a pollution notice.

LGAQ including the Queensland Water Directorate queried whether the existing powers in the Public Health Act were sufficient for notifying the public of pollution events. It is considered that a specific power regarding pollution notices is required because the existing powers are focused on responding to the event itself, such as requiring site remediation, rather than notifying the public.

LGAQ also suggested the chief executive of Queensland Health be required to consult with the relevant local government before issuing a notice. The need for broader consultation before issuing a notice must be weighed against the risk to public health and the public's right to know, in a timely manner, that a pollution event has occurred. Incorporating a more extensive consultation process would delay the publication of a pollution notice at a time when there could be a significant risk to public health. For this reason, a requirement to consult with local government has not been included as priority has been given to ensuring pollution notices are issued as soon as possible.

- *Radiation Safety Act 1999*

The Radiation Advisory Council, Australian Dental Association (Queensland Branch) (ADAQ), and the Transport Workers Union were consulted on the amendments to the Radiation Safety Act and Regulation. The Radiation Advisory Council and ADAQ responded supporting the amendments.

- *Retirement Villages Act 1999*

On 1 November 2018, the Department of Housing and Public Works forwarded details about the proposed amendments to the Retirement Villages Act to the Consultative Group established to support the implementation of the Housing Legislation (Building Better Futures) Amendment Act. Members of the Consultative Group with an interest in the Retirement Villages Act include the Association of Residents of Queensland Retirement Villages (ARQRV), Queensland Retirement Villages and Parks Advisory Service (QRVPAS – formerly the Park and Village Information Link), COTA (formerly Council on the Ageing), Leading Age Services Australia (LASA), National Seniors Australia, Property Council of Australia (PCA), and Queensland Law Society. Feedback was requested by 5 November 2018.

The proposed amendments were strongly supported by resident advocates. ARQRV stated they were happy to see freehold villages and villages included in the provisions. Similarly, QRVPAS supported the proposed amendments to clarify resident rights and believe it is unfair for residents of freehold villages to be treated differently from other retirement village residents. QRVPAS confirmed that in their experience residents of freehold villages have been adversely affected by the uncertainty under the current legislation.

Industry representatives opposed the amendments. PCA submitted that the change will add to the significant financial liability operators are carrying for payment after 18 months of exit entitlements for lease and licence villages. They opposed, in principle, a provision which would require a private company to compulsorily acquire another's property, stated their view that the amendment was never expected to be applied to freehold units and strongly opposed its retrospective application.

Department of Housing and Public Works met with the PCA and industry representatives including Minter Ellison lawyers and retirement village operators Lendlease and Aveo. These stakeholders shared PCA's concern about the buy-back policy applying to freehold property and noted that no equivalent compulsory purchase requirement could be identified. These stakeholders also expressed a view that the 18 month period for the mandatory buy-back should commence from the date on which the property is reinstated, ready for sale and when a resale price has been agreed. These stakeholders also emphasised concerns about the financial implications and the adverse impacts on resident and operator flexibility and suggested that if the government was intent on pursuing this course of action, that alternative models should be considered.

LASA submitted that freehold units are fundamentally different to other tenure types and freehold unit holders should understand the consequences of ownership, as a superior tenure type, when entering into these arrangements. LASA further submitted that it would be highly inappropriate to require a freehold village operator to effectively act as a guarantor of a sale when they serve a role more akin to a body corporate community manager. LASA recommended a 'wait and see' approach, to ascertain whether the absence of a buy-back provision becomes a significant issue justifying legislative intervention.

Queensland Law Society advised they were unable to provide comment given the short consultation period.

- *Transplantation and Anatomy Act 1979*

In October 2018, representatives from the Queensland Children's Hospital, Mater Research Institute and Centre for Clinical Research at the University of Queensland, Research Pathology Queensland, Queensland Institute of Medical Research, Griffith University and HCQ were consulted on the draft amendment to the Transplantation and Anatomy Act about the removal of tissue for clinical research studies. The feedback received was supportive of the amendments.

Pathology Queensland, Royal College of Pathologists of Australasia, Red Cross Blood Bank, Mater Hospital and targeted pathologists and laboratories were consulted on the amendments to the Transplantation and Anatomy Act that ensure pathology laboratories can access the necessary tissue-based products for diagnostic and quality control purposes. The feedback received was supportive of the amendments.

- *Births, Deaths and Marriages Registration Act 2003*, *Coroners Act 2003* and *Cremations Act 2003*

Two crematoriums and the 12 schools of anatomy managed by Queensland universities were consulted on the amendments to enable cremation of body parts used by schools of anatomy. The feedback received was supportive of the amendments.

Consistency with legislation of other jurisdictions

Generally, the amendments are specific to the State of Queensland.

Several Australian jurisdictions, including New South Wales and Victoria, now treat medicinal cannabis in a similar way to other schedule 8 medicines.

Queensland is the only state that requires:

- doctors to seek a state approval to prescribe schedule 4 medicinal cannabis products;
- pharmacists to have a dispensing approval;
- researchers to have a state-based approval for clinical trials involving medicinal cannabis; and
- patients from other jurisdictions and overseas to also have a state-based approval.

The repeal of the Medicinal Cannabis Act will remove these inconsistencies with other Australian jurisdictions.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Act will be the *Health and Other Legislation Amendment Act 2018*.

Commencement

Clause 2 provides for the commencement of the Act.

Part 2 Amendment of Births, Deaths and Marriages Registration Act 2003

Act amended

Clause 3 provides that part 2 amends the *Births, Deaths and Marriages Registration Act 2003.*

Amendment of s 32 (Notifying about disposal of a deceased person's body)

Clause 4 inserts 'or a part of the body' after 'human body' in section 32(1)(a) of the Births, Deaths and Marriages Registration Act. This will mean that the notice requirements regarding disposal of a body in section 32 will not apply schools of anatomy disposing of a human body or part of the body that was donated to a school of anatomy under the *Transplantation and Anatomy Act 1979*.

Part 3 Amendment of Coroners Act 2003

Act amended

Clause 5 provides that part 3 amends the *Coroners Act 2003.*

Amendment of s 95 (Authorising burial of body etc.)

Clause 6 replaces section 95(3)(b) of the Coroners Act. New section 95(3)(b) provides that section 95 does not apply to part of a human body taken during a medical procedure, or used at a school of anatomy for the study and practice of anatomy.

Clause 6 also inserts a definition of *school of anatomy* in section 95(4).

Part 4 Amendment of Cremations Act 2003

Act amended

Clause 7 provides that part 4 amends the *Cremations Act 2003.*

Amendment of s 4 (Cremations this Act does not apply to)

Clause 8 replaces section 4(b) of the Cremations Act. New section 4(b) provides that the Act does not apply parts of a body taken during a medical procedure or used at a school of anatomy for the study and practice of anatomy.

Clause 8 also inserts a definition of *school of anatomy* in section 4(2).

Part 5 Amendment of Duties Act 2001

Act amended

Clause 9 provides that part 5 amends the *Duties Act 2001*.

Insertion of new s 141A

Clause 10 inserts new section 141A, which provides a transfer duty exemption for a dutiable transaction under new section 63A of the *Retirement Villages Act 1999*.

Part 6 Amendment of Health Act 1937

Act amended

Clause 11 provides that part 6 amends the *Health Act 1937*.

Amendment of s 5 (Interpretation)

Clause 12 amends the definitions of *article*, *drug*, and *poison* in section 5 to remove the parts of each definition that exclude medicinal cannabis.

Part 7 Amendment of Public Health Act 2005

Division 1 Preliminary

Act amended

Clause 13 provides that part 7 amends the *Public Health Act 2005*.

Division 2 Amendments commencing on assent

Insertion of new ch 7A

Clause 14 inserts new chapter 7A (Pollution events) after chapter 7 of the Public Health Act.

New section 313A provides the purpose of chapter 7A is to enable the chief executive to take action to respond to a pollution event in a way that informs the public of the potential risk to public health and, where appropriate, any actions necessary to avoid or reduce the effect of the pollution event on public health.

New section 313B inserts definitions for chapter 7A.

New section 313C defines the term *pollution event*.

New section 313D defines the term *pollution notice* in relation to a pollution event.

New section 313E provides that the chief executive may, if satisfied of the matters in (1)(a) to (c), direct a person to publish a pollution notice by a stated date, in a stated way, and in the stated area that is, or may be, affected by the pollution event. The person must publish the pollution notice in compliance with the direction, unless the person has a reasonable excuse. Failure to comply with the direction is an offence with a maximum penalty of 200 penalty units.

New section 313F enables the chief executive to publish a pollution notice if the chief executive is satisfied that the person responsible for the pollution event cannot be identified or would not be able to comply with a direction given under section 313E. The chief executive can also publish a pollution notice if a direction has been given to a person under section 313E but the person does not publish a pollution notice by the directed date or does not otherwise comply with the direction, or the pollution event is, or is caused by, a naturally-occurring event.

Under section 313F the chief executive may publish a pollution notice if the person responsible for the pollution event cannot be found. For example, the owner/manager responsible for a water asset may not be responsible for a pollution event occurring at the water asset. Section 313F does not put an obligation on the chief executive to publish a notice in these cases. In these cases, the chief executive can decide how to manage notifying the public. The chief executive and the owner/manager may agree that the owner/manager voluntarily notifies the public of the health risk. If the owner/manager does not agree, the chief executive may arrange for Queensland Health to notify the public, for example, by way of a media release rather a pollution notice under section 313F.

New section 313G provides the steps the chief executive must take if the chief executive is considering giving a direction under 313E or publishing a notice under section 313F. Before giving a direction, the chief executive must consult with, and consider advice given by, a relevant public service officer about the contaminant or pollutant that has caused, or may have caused, the pollution event and any other matters the chief executive considers relevant. New subsection (3) defines the term *relevant public service officer*.

New section 313H provides for when a person may claim compensation from the State due to incurring loss arising from the chief executive exercising, or purporting to exercise a power under this chapter. This section also provides the matters a court must have regard to in considering whether to order compensation.

Amendment of sch 2 (Dictionary)

Clause 15 inserts new definitions contained in chapter 7A into schedule 2 of the Public Health Act.

Division 3 Amendments commencing by proclamation

Replacement of s 60 (Person must comply with standard)

Clause 16 replaces section 60. New section 60 provides that the standard for manufacturing, selling, supplying or using paint is to be prescribed. This amendment will enable the standard to be easily updated in response to future updates through an amendment to the *Public Health Regulation 2018*, rather than an Act amendment.

Amendment of s 76 (Definitions for div 3)

Clause 17 omits the definition *entity of the State* from section 76. Clause 23 inserts a definition of entity of the State in the schedule 2 dictionary.

Amendment of s 219 (Definitions for div 4)

Clause 18 omits the definition *entity of the State* from section 219. Clause 23 inserts a definition of entity of the State in the schedule 2 dictionary.

Amendment of s 228H (Definitions for div 4)

Clause 19 omits the definition *entity of the State* from section 228H. Clause 23 inserts a definition of entity of the State in the schedule 2 dictionary.

Amendment of s 237 (Definitions for div 3)

Clause 20 omits the definition *entity of the State* from section 237. Clause 23 inserts a definition of entity of the State in the schedule 2 dictionary.

Amendment of s 251 (Definitions for pt 3)

Clause 21 omits the definition *entity of the State* from section 251. Clause 23 inserts a definition of entity of the State in the schedule 2 dictionary.

Insertion of new ch 6, part 3A

Clause 22 inserts new part 3A (Notifiable dust lung diseases) into chapter 6 of the Public Health Act.

New section 279AA inserts definitions for part 3A.

New section 279AB provides that the chief executive must keep a register of the notifications about notifiable dust lung diseases received by the chief executive under part 3A. The register must include the details stated in the notification for each person, including each deceased person for whom a notification has been given.

New section 279AC provides that the purposes of the register are to monitor the incidence of notifiable dust lung diseases and to exchange information about notifiable dust lung diseases with other State entities.

New section 279AD provides that the chief executive may approve a person to keep the register on behalf of the chief executive.

New section 279AE provides that an obligation under new division 3 includes an obligation to give information for a deceased person.

New section 279AF provides an obligation on prescribed medical practitioners to notify the chief executive of a diagnosis of a notifiable dust lung disease within a prescribed time, unless the practitioner has a reasonable excuse. A maximum of 20 penalty units applies for failure to comply with the section. This requirement does not apply if the medical practitioner has already given information about a notifiable lung disease to the chief executive, or a public service

employee, of the department that administers the *Coal Mining Safety and Health Act 1999* or another medical practitioner, who is authorised under an Act prescribed by regulation, to provide a health assessment about the person.

New section 279AG provides that a chief executive may give the prescribed medical practitioner or another health practitioner who the chief executive believes has information about the notifiable dust lung disease a notice to provide further information to ensure the accuracy or completeness of the register. Subsection (4) provides that a person who is given a notice must comply unless they have a reasonable excuse. The maximum penalty for failure to comply with the requirement is 20 penalty units.

New section 279AH provides that if a relevant chief executive has been given information about a notifiable dust lung disease, the chief executive of Queensland Health may request that information and the relevant chief executive must provide the information.

New section 279AI provides that a person who gives information in compliance with the division who would otherwise be required to maintain confidentiality about the information does not contravene another Act, oath, rule of law or practice and does not breach any professional or accepted standards in relation to the disclosure.

New section 279AJ requires the chief executive to give a report to the Minister not later than 30 September each year. This section sets out the information that must be included in the report. The Minister must table the report as soon as is practicable after receiving the report in the Legislative Assembly.

New section 279AK provides definitions for the purposes of new division 5, which provides for confidentiality of information.

New section 279AL provides that a relevant person must not use or disclose confidential information to anyone else, other than as required by this part. A maximum penalty of 50 penalty units applies for breach of this provision.

New section 279AM provides the circumstances where a person who would otherwise be required to maintain confidentiality about the information may disclose the information.

New section 279AN provides that the chief executive or another relevant person authorised by the chief executive may disclose confidential information to a person contracted by the department to analyse, monitor or evaluate public health.

New section 279AO provides for the disclosure of confidential information to an entity of the State or a corresponding entity if the disclosure is required or permitted under an agreement and the agreement is prescribed by regulation. Subsection (3) defines *corresponding entity* to include a department of the Commonwealth or another State, or an entity established, under an Act of the Commonwealth or another State, for a public purpose.

New section 279AP provides that the chief executive may disclose confidential information to a coroner, or a police officer helping the coroner, if the coroner is investigating the death of a person.

Amendment of sch 2 (Dictionary)

Clause 23 amends the dictionary in schedule 2 to include new definitions and information under new chapter 6, part 3A.

Part 8 Amendment of Radiation Safety Act 1999

Act amended

Clause 24 provides that part 8 amends the *Radiation Safety Act 1999*.

Amendment of s 49 (Who may apply for Act instruments)

Clause 25 inserts a note in section 49 to refer to section 103K, which provides for persons who are taken to hold a use licence or a transport licence.

Amendment of s 74 (Terms)

Clause 26 inserts a new subsection, which provides that, for a licence held by a prescribed licensee, the term of the licence continues until the licence is suspended or cancelled.

Amendment of s 78 (Application of div 3)

Clause 27 replaces section 78(a). New section 78(a) refers to a licence, other than a licence held by a prescribed licensee. This excludes prescribed licensee from the provisions of division 3, which relate to the renewal of certain Act instruments.

Amendment of s 87 (Return of cancelled Act instrument to chief executive)

Clause 28 amends section 87 to exclude a prescribed licensee from returning a cancelled licence. As a prescribed licensee is deemed to have a licence under section 103K no licence is issued and therefore there is no licence to return if it is cancelled. Amendments to section 207 require that a person be included on the register if their prescribed licence has been cancelled.

Amendment of s 94 (Application of div 6)

Clause 29 replaces section 94(a). New section 94(a) excludes a prescribed licensee from division 6, which relates to conditional Act instruments.

Amendment of s 99 (Surrender of Act instruments)

Clause 30 amends section 99(3) to exclude a prescribed licensee from the requirement to surrender a licence. Prescribed licensees will not have an issued licence, so there is no licence to surrender.

Insertion of new pt 7, div 11

Clause 31 inserts new division 11 in part 7 about particular persons taken to hold use and transport licences.

New section 103K provides that a regulation may prescribe persons, or a class of persons, who are taken to hold a use licence or a transport licence. Section 103K(2)-(4) provides what the regulation may include for each type of licence.

New section 103L provides that before making a regulation under section 103K the Minister must consult with and consider any recommendations made by the Radiation Advisory Council. The Minister must also be satisfied that making the regulation will be consistent with the radiation safety, protection and security principles.

Amendment of s 207 (Register to be kept)

Clause 32 amends section 207(1)(a) to exclude a prescribed licensee from being included on the register. As a prescribed licensee is deemed to have a licence under section 103K no licence is issued and the chief executive does not have information on each individual who is a prescribed licensee. However, section 207(1)(f) is amended to provide that if a prescribed licensee's licence is suspended or cancelled, the register must include the person on the register as having a suspended or cancelled prescribed licence.

Insertion of new pt 14, div 6

Clause 33 inserts a transitional provision for the *Health and Other Legislation Amendment Act 2018*. A use licence or transport licence in effect immediately before commencement and held by a person who is, on commencement, a prescribed licensee, is taken to have expired on the commencement. The person will, as a prescribed licensee, be deemed to hold a licence.

Amendment of sch 2 (Dictionary)

Clause 34 inserts a definition of *prescribed licensee*.

Part 9 Amendment of Retirement Villages Act 1999

Act amended

Clause 35 provides that part 9 amends the Retirement Villages Act.

Amendment of s 10 (What is a *residence contract*)

Clause 36 makes a consequential amendment which reflects the new definition of a freehold property of a resident in new section 11A.

Insertion of new s 11A

Clause 37 inserts new section 11A, which provides a definition of *freehold property* of a retirement village resident or former resident. A unit is a freehold property where ownership is held directly or indirectly by the resident, and the resident has a 'right to reside' in that unit. The definition is worded broadly to include situations where ownership is held indirectly by the resident, such as through a trust, a corporation or through a child or family member who isn't the retirement village scheme operator.

With respect to a former resident, there is a freehold interest in an accommodation unit where the freehold interest is held by the former resident or by another person but not the scheme operator and the former resident had a right to reside in the accommodation unit that has been terminated under the Retirement Villages Act.

Insertion of new ss 63A-63I

Clause 38 inserts new sections 63A-63I into the Retirement Villages Act.

New section 63A requires a scheme operator to enter into a contract to buy a resident's freehold interest in their unit at a time set in new section 63B unless the scheme operator has a reasonable excuse. Failure to comply with this section is subject to penalty of 540 penalty units.

A reasonable excuse includes where the operator has made all reasonable efforts to complete the contract, but a former resident has not made necessary arrangements, for example arrangements for the release of a mortgage; or where an application is made to the Queensland Civil and Administrative Tribunal (QCAT) about a dispute relating to the contract; or where a private contract for the sale has been entered into by the resident.

New section 63B which sets out the timing for when a purchase under section 63B must be completed by. The purchase must be completed by the latest of 3 dates:

- 18 months after the termination date for the resident's right to reside;
- if the former resident has died – the day that is 14 days after the operator is shown the probate of the former resident's will or letters of administration of the former resident's estate;
- the day fixed by the tribunal, where the scheme operator has made an application to postpone payment under section 171A.

New section 63C creates a head of power to enable prescription of required or prohibited terms for the contract of sale. It will also require the contract be in an approved form where one exists, or otherwise be in terms which are agreed by the scheme operator or former resident or decided by QCAT.

New section 63D sets out how the purchase price for the freehold property is determined. Unless the resident and scheme operator agree otherwise, the resale value must be the most recent agreed resale value of the freehold property. If the parties have not agreed on the resale value within the previous 3 months, the operator must obtain a valuation of the freehold property which is taken to be the agreed value.

New section 63E allows the scheme operator to reclaim the cost of legal expenses reasonably incurred by the scheme operator in the process of facilitating the purchase.

New section 63F provides that a resident subject to a purchase under section 63A is not required to pay sales commission to the operator on the purchase.

New section 63G provides that an exit fee to a scheme operator is not payable until the completion of the purchase.

New section 63H provides that where a relative of a former resident meets criteria under section 70B for a right to reside, the mandatory purchase provisions will not apply during that time.

New section 63I provides that the specified sections of the *Body Corporate and Community Management Act 1997* and the *Property Occupations Act 2014* do not apply to a contract under section 63A.

Amendment of s 90C (Responsibility of former resident for capital improvement)

Clause 39 is a consequential amendment.

Amendment of s 104 (Working out and paying general services charges and maintenance reserve fund contributions for former residents)

Clause 40 amends section 104 to clarify that a reference to a former resident in the section is a resident whose right to reside has terminated, not a resident who has merely vacated the unit.

Amendment of s 105 (General services charges and maintenance reserve fund contributions for unsold right to reside in accommodation units)

Clause 41 is a consequential amendment.

Amendment of s 167 (Application for reference of dispute)

Clause 42 amends section 167 to include a new principle of a mandatory purchase dispute and makes these disputes exempted from dispute resolution procedures so that parties may apply to QCAT even if the parties have not first attempted to resolve the dispute through negotiation and mediation.

Replacement of s171A (Operator may apply for extension of time to pay exit entitlement)

Clause 43 amends section 171A to ensure that a scheme operator may apply to QCAT for an extension on the 18-month payment for a freehold unit if payment is likely to cause the operator to suffer undue financial hardship.

Amendment of s 195 (Tribunal order under section 171A)

Clause 44 is a consequential amendment.

Amendment of s 227AA (Requirements about approved forms for residence contracts and other documents)

Clause 45 extends the chief executive's power to make approved forms under section 227AA to include mandatory purchase contracts under section 63A.

Insertion of new pt 15, div 4

Clause 46 provides for transitional amendments. New section 237Q sets out the date from which the mandatory purchase requirements apply depending on when the termination date for a unit was, and what date these amendments commence.

New section 237R is a transitional regulation-making power which allows for a regulation to make a provision of a saving or transitional nature where it is necessary to facilitate transition from the pre-amended Act to the amended Act. The transitional regulation may operate retrospectively but this power, and any regulation made under this power, will expire one year after the commencement of the section.

Amendment of schedule (Dictionary)

Clause 47 amends the dictionary to the Retirement Villages Act to define *freehold property* by reference to new section 11A.

Part 10 Amendment of Transplantation and Anatomy Act 1979

Clause 48 provides that part 10 amends the *Transplantation and Anatomy Act 1979.*

Amendment of long title

Clause 49 amends the long title after 'transplantation' to insert 'and other medical and scientific purposes' to reflect that the Transplantation and Anatomy Act also provides for medical and scientific purposes.

Amendment of s 4 (Interpretation)

Clause 50 omits from section 4(1) the definition of *dental practitioner* as a consequence of amendments to section 49, which omit the only reference to dental practitioner in the Act.

Replacement of s 12A (Blood transfusions not subject to this division)

Clause 51 replaces section 12A. New section 12A clarifies that nothing in this division prevents the removal under division 4 of blood from a child's body, or the removal under division 6 of tissue from a child's body.

Amendment of s 21A (Definitions for div 6)

Clause 52 inserts in section 21A definitions for *approved research* and *Australian Code* and updates the definition of *National Statement* to provide for the latest version.

Replacement of s 21B (Authorised donations)

Clause 53 replaces section 21B. New section 21B provides that the removal of tissue from an adult's body is authorised if it is done for the purpose of approved research, and consent is given as required under the National Statement.

Clause 53 also inserts new section 21C to specifically provide when the removal of tissue from a child's body is authorised for research. This includes the requirements for adults under new section 21B. In addition, one or more of the following must apply:

- the approved research is for the benefit of the child;

- the removal of the tissue occurs during a procedure that is for the benefit of the child and a medical practitioner is satisfied the removal of the tissue for approved research is not likely to prejudice the health of the child;
- a medical practitioner is satisfied the removal of the tissue will involve a negligible or low risk of harm and minimal discomfort to the child.

Section 21C also requires the medical practitioner to make a record if they are satisfied of these matters.

Amendment of s 30 (Conditions of performance of post-mortem)

Clause 54 replaces section 30(2)(a)(ii). New section 30(2)(a)(ii) provides that a post-mortem examination, in addition to taking place in the hospital mortuary, can take place in:

- another place in the hospital approved by the medical superintendent of the hospital as being suitable for the making of an examination;
- the mortuary of another hospital that is suitable for the making of the examination.

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

Clause 55 inserts a new provision at section 42AA(1)(c) that excludes from the prohibition in the trade of tissue in sections 40, 41 and 42 of the Act any exempt material derived wholly or in part from tissue. Clause 53 also inserts new section 42AA(2) to provide a definition for *exempt material*.

Amendment of s 49 (Disclosure of information)

Clause 56 amends section 49(2)(c) to omit the words 'the medical practitioner or dental practitioner' and inserts 'to the person'. This ensures that the restriction on disclosing information about a person from whom tissue has been removed applies to any person who removes the tissue.

Part 11 Repeal

Repeal

Clause 57 repeals the *Public Health (Medicinal Cannabis) Act 2016*.