Health and Other Legislation Amendment Bill (No. 2) 2023

Explanatory Notes

Short title

The short title of the Bill is the Health and Other Legislation Amendment Bill (No. 2) 2023 (Bill).

Policy objectives and the reasons for them

The Bill makes amendments that support access to healthcare, promote quality improvement and patient safety in public health facilities and improve the operation of health legislation to support the health of Queenslanders.

The Bill amends the following legislation:

- the *Hospital and Health Boards Act 2011* to:
  - clarify that, for purposes of nurse-to-patient and midwife-to-patient ratios, a newborn baby should be counted as a patient when they are staying in a room on a maternity ward with their birthing parent;
  - require a Quality Assurance Committee (QAC) to disclose information about a health professional to the chief executive where the QAC reasonably believes the health professional poses a serious risk of harm to a person because of the health professional's health, conduct or performance;
  - clarify that the chief executive of Queensland Health may, after considering a report from a clinical review or health service investigation conducted in a Hospital and Health Service (HHS), take the action the chief executive considers appropriate in relation to the matters identified in the report; and
  - make clear that for root cause analysis reports, permitted disclosures of information contained in the report extend to the disclosure of recommendations that form part of the report; and
- the *Termination of Pregnancy Act 2018* and Criminal Code to:
  - allow additional health practitioners to perform an early medical termination of pregnancy through the use of a registered termination drug in response to recent changes in prescribing restrictions made by the Therapeutic Goods Administration;
  - make consequential amendments to the offence provision set out in the Criminal Code to align with the above change; and
  - replace references to 'woman' with 'person' in termination of pregnancy provisions to ensure legal access to termination of pregnancy services for all pregnant Queenslanders; and

- the *Public Health Act 2005* to exempt medical practitioners from duplicate reporting of dust lung diseases to the Queensland Notifiable Dust Lung Disease Register where there has been notification to the National Occupational Respiratory Disease Registry; and
- the *Mental Health Act 2016* to clarify how Mental Health Court expert reports and transcripts may be released and used.

Amendments to the *Hospital and Health Boards Act 2011*

Postnatal care ratios

The Hospital and Health Boards Act provides a framework for applying minimum nurse-to-patient and midwife-to-patient ratios to Queensland public health facilities, with the detail of the ratios contained in the *Hospital and Health Boards Regulation 2023*. Minimum midwife-to-patient ratios have not yet been implemented in Queensland as the wards that midwives work on are not prescribed under the Hospital and Health Boards Regulation.

The Bill aims to lay the groundwork for implementing these ratios.

Sharing of information by a Quality Assurance Committee

QACs are established under the Hospital and Health Boards Act and were created to improve the safety and quality of health care services in Queensland. Queensland has 17 QACs—13 operating state-wide and four established at the HHS level. Each QAC functions to improve and promote safe and effective care for patients and enhance health outcomes in the provision of public sector health services. They achieve this by assessing and evaluating the quality of health services, reporting and making recommendations about those services and monitoring the implementation of their recommendations. They also help clinical groups implement recommendations for care improvements and address systemic issues.

The Hospital and Health Boards Act currently restricts the disclosure of information acquired, and documents created, by QACs. A QAC or a person who is or was a member of a QAC must not disclose information acquired as a member of a QAC, except in limited circumstances.

The exceptions include the ability for a registered health practitioner who is a member of a QAC to notify the Health Ombudsman of a reasonable belief that another registered health practitioner has behaved in a way that constitutes *public risk notifiable conduct*. Public risk notifiable conduct is conduct by a registered health practitioner that places the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment or is practising the profession in a way that constitutes a significant departure from accepted professional standards. This exception does not capture all kinds of notifiable conduct that may pose a risk to the public, nor does it capture unregistered health professionals.

A consequence of these disclosure restrictions is that a QAC may become aware that a health professional poses a risk to patients or the public but may be prevented from sharing this information with the department or an HHS so the risk can be addressed. For example, a QAC would be unable to alert a health professional's clinical supervisor to reliable information that the health professional has been treating patients while intoxicated or has been engaging in other behaviours that could jeopardise patient safety. This can result in a delayed response to addressing potential patient safety and quality issues, which could result in further harm to patients.

The Bill aims to better facilitate rapid responses to address patient safety risks identified by a QAC by expanding the permitted disclosures for QACs.

Appropriate action by the chief executive

The Hospital and Health Boards Act allows the chief executive of Queensland Health to commission a clinical review or a health service investigation in the department or an HHS. Likewise, the Act allows a health service chief executive (HSCE) to commission a clinical review or health service investigation in their respective HHS.

A clinical review is a quality improvement technique. They are commissioned to consider potential clinical issues regarding patient safety. Health service investigations report on any matters relating to the management, administration, or delivery of public sector health services, including employment matters. The information contained in clinical review and health service investigation reports is used to further strengthen the clinical analysis process across Queensland Health to establish a shared understanding of local and state-wide gaps in clinical incident management and governance.

Where a clinical review or health service investigation has occurred in the department, the Hospital and Health Boards Act provides the chief executive with broad scope to take action in relation to matters raised in the report. However, where a clinical review and health service investigation is conducted in an HHS, the chief executive's actions are constrained to issuing a direction to the HHS. This constraint exists regardless of whether the chief executive commissioned the clinical review or health service investigation in the HHS, or it was commissioned by an HSCE and a copy of the report provided to the chief executive. The result is that the chief executive is only able take appropriate action in response to departmental reviews and investigations, and not ones that occurred in a HHS.

It is important for clinical care outcomes that the chief executive of Queensland Health is able to take any action appropriate in response to a clinical review or health service investigation, regardless of who commissioned the review or investigation and where the review or investigation was conducted. The Bill aims to address gaps in the Hospital and Health Boards Act to enable this to occur.

Sharing of information from Root Cause Analyses

Root cause analysis is an approach used in clinical incident management to improve clinical services and promote continuous improvement and learning. Root cause analyses identify the underlying causes of a serious clinical incident so that effective solutions can be identified and implemented. This approach can be used for more serious single adverse incidents as a report resulting from a root cause analysis report is confidential and legally protected under the Hospital and Health Boards Act. However, it is important that learnings from root cause analyses can be shared appropriately to avoid the reoccurrence of serious clinical incidents and prevent patient harm.

Under the Hospital and Health Boards Act, information acquired and compiled during a root cause analysis is afforded absolute privilege. The Hospital and Health Boards Act does not allow information, recommendations and outcomes of root cause analyses to be shared beyond a small number of exceptions. This restricts the ability of the department and HHSs to ensure recommendations are implemented and to effectively facilitate the sharing of important clinical learnings as broadly as needed to promote patient safety.

After a root cause analysis is finalised, relevant recommendations are shared with the local team responsible for implementing them. This can be within an HHS or within the department. However, there is a lack of clarity about whether the Hospital and Health Boards Act authorises key findings, recommendations and lessons learnt from root cause analyses to be shared more broadly across Queensland Health to promote patient safety and quality improvement.

The Bill aims to ensure the recommendations, key findings and lessons learnt can be shared for purposes of patient safety and quality improvement, while maintaining appropriate confidentiality of identifiable information.

Amendments to the *Termination of Pregnancy Act 2018* and Criminal Code

Early medical terminations of pregnancy

The objectives of the Termination of Pregnancy Act are to enable reasonable and safe access to terminations of pregnancy and to regulate the conduct of registered health practitioners in relation to terminations. Reasonable and safe access to termination-of-pregnancy services is a significant health issue that is important for patient autonomy and recognition of reproductive rights.

There are two different methods of termination of pregnancy, known as *medical termination* and *surgical termination* of pregnancy. Medical termination of pregnancy uses registered termination drugs to end a pregnancy. This method of termination is generally considered less invasive than surgical terminations, which involve a surgical procedure performed by a trained medical practitioner in a hospital or private clinic.

Currently, the Termination of Pregnancy Act and related provisions in the Criminal Code only allow medical practitioners to perform a termination of pregnancy, whether medically or surgically. This limits access to termination-of-pregnancy services, particularly for people living in rural and remote areas of Queensland. The limitations on access are particularly burdensome for Queenslanders seeking less invasive medical termination in the early stages of pregnancy.

In Queensland, early medical terminations are currently performed using the termination drug MS-2 Step, which is a Schedule 4 medicine approved in Australia for medical termination of pregnancy. However, there is only a short window of opportunity for pregnant persons to choose to have less invasive, early medical termination by taking MS-2 Step up to nine weeks' gestation.

A person seeking a termination after this time may have to be admitted to hospital for a more complex and psychologically challenging medical induction or surgical termination. For people living in rural and remote areas, this often involves the added social and financial burden of travelling long distances to access these services.

On 25 May 2023, the Senate Community Affairs References Committee reported on its inquiry into universal access to reproductive healthcare, *Ending the postcode lottery: Addressing barriers to sexual, maternity and reproductive healthcare in Australia* (Report). The Report found that access to termination services in Australia is limited and inequitable, with many individuals facing significant and intersecting financial, social, geographical and health provider hurdles to access necessary care. The Report recommended amendments to address barriers to accessing medical termination, including by allowing registered midwives, nurse practitioners and Aboriginal health workers to prescribe MS-2 Step.

On 1 August 2023, changes approved by the Therapeutic Goods Administration to the prescribing and dispensing restrictions for MS-2 Step took effect. The changes allow MS-2 Step to be prescribed by any health practitioner with appropriate qualifications and training, if the relevant State or Territory legislation authorises it. The decision by the Therapeutic Goods Administration to make this change was informed by expert advice from the Advisory Committee on Medicines, an independent committee with expertise in scientific, medical and clinical fields and including consumer representation.

The objective of the Bill is to give effect to the Therapeutic Goods Administration's prescribing changes for MS-2 Step. This will improve access to safe termination-of-pregnancy care across Queensland by increasing access to early medical termination of pregnancy and increase choice for pregnant persons, particularly those in remote and rural areas of Queensland.

Adopting inclusive language

The current drafting of the Termination of Pregnancy Act and associated provisions in the Criminal Code and *Powers of Attorney Act 1998* enables terminations to be performed on a 'woman'. However, not all pregnant persons are, or identify as, a woman. As such, the terminology is not inclusive of all persons who may seek or require termination-of-pregnancy services, for example, transgender men or non-binary adults who retain the capacity to fall pregnant.

Amendments to the *Public Health Act 2005*

Under the Public Health Act, Queensland Health operates the notifiable dust lung disease register (Queensland Register). This register monitors the instances of occupational dust lung diseases in Queensland.

Section 279AF of the Public Health Act requires medical practitioners to report to the Queensland Register instances of notifiable dust lung diseases.

In June 2023, the Australian Government introduced legislation to establish a National Occupational Respiratory Disease Registry (National Registry). If the legislation is passed by the Australian Parliament, it will duplicate reporting requirements for Queensland practitioners, who will need to report to both the Queensland Register and the National Registry. This is an unnecessary burden given information in the National Registry will be shared with state and territory health agencies.

The Bill amends the Public Health Act to exempt medical practitioners from these duplicative reporting requirements.

Amendments to the *Mental Health Act 2016*

The objective of the amendments to the Mental Health Act is to is to ensure that the Mental Health Act continues to adequately support the appropriate release, admission, use and storage of information used in, or related to, Mental Health Court proceedings.

Admissibility and release of Mental Health Court exhibits and transcripts in criminal proceedings

In some circumstances, a matter referred to the Mental Health Court may be returned to the criminal justice system to be dealt with by a criminal court. A matter being referred to, or

decided by, the Mental Health Court does not prevent a person from seeking to raise a defence of insanity (the basis for unsoundness of mind in the Criminal Code) in criminal proceedings for the same offence. In these circumstances, any expert reports or transcript of Mental Health Court proceedings may be highly relevant and appropriate for a criminal court to consider.

The Mental Health Act currently permits the use of expert reports received as evidence before the Mental Health Court in proceedings for the same offence before a criminal court for the limited purposes of:

- determining a person's unsoundness of mind;
- determining a person's fitness for trial; and/or
- consideration in sentencing the person.

These limitations on the use of expert reports are necessary to ensure that relevant evidence is available in criminal proceedings, while at the same time protecting the privacy of a person's health information and allowing a person to participate in Mental Health Court proceedings without fear of self-incrimination.

The Mental Health Act is specific in only allowing admission of expert reports for consideration where they relate to the same offence being determined by a criminal court. However, expert reports related to a different offence may still be of relevance for a criminally charged person. For example, a person may wish to have the criminal court consider an expert's opinion as to their psychiatric health and history. Limiting the admissibility and use of such evidence therefore deprives an individual of the ability to have their personal mental condition accounted for during trials.

Relatedly, despite allowing admission of expert reports in proceedings before a criminal court, the Mental Health Act does not provide for transcripts of Mental Health Court proceedings to be used in similar ways. Transcripts of Mental Health Court proceedings may contain information about a person which could be relevant to criminal proceedings. For example, it may provide details about the person's mental health and guidance as to how the Mental Health Court considered expert reports given in evidence in the proceedings.

The Bill aims to expand the current framework to allow for the admission of expert reports and transcripts for any offence being determined by the criminal court.

Use of expert reports prior to a Mental Health Court hearing

The Mental Health Act does not recognise that expert reports filed with the Mental Health Court registry may need to be used and disclosed in the lead up to a Mental Health Court hearing. Expert reports may need to be used and disclosed, for example, to plan for or deliver appropriate treatment and care, support the provision of further expert opinions to the Court, or to allow parties to undertake their functions to assist the Court. In addition, parties to a matter may wish to seek the Court's leave to use an expert report filed with the Court but not yet received in evidence for another purpose.

The ability for the Court to release expert reports which have not yet been received in evidence is essential to ensure that experts providing opinions for the Court can consider expert reports already before the Court when formulating their opinion and evidence. Expert reports are filed with and distributed to parties to a proceeding by the Mental Health Court registry in the lead up to a matter being listed and heard, but they are only received in evidence by the Court when

it is constituted to hear the matter.

The availability of relevant expert reports filed with the Mental Health Court benefits patients by ensuring that the planning and delivery of treatment and care is informed by all relevant information. For persons who are existing patients of authorised mental health services, expert reports which have not yet been received in evidence may be relevant to ensuring that a patient's treatment and care is appropriately managed prior to their Mental Health Court hearing. Expert reports generally contain recommendations regarding a person's management which are relevant to managing any risk posed by a person's mental condition. Expert reports relating to persons who are not existing patients of authorised mental health services may recommend that a person be seen by a service or contain material which highlights a potential need for involuntary treatment and care. For these reasons, authorised mental health services require access to expert reports to allow them to deliver appropriate treatment and care prior to a Mental Health Court hearing.

The Bill aims to allow for access to expert reports filed with the Mental Health Court registry, provided leave of the court is obtained. This will also allow these reports to be used to plan for, or deliver, treatment and care and assist authorised mental health services to provide meaningful evidence in Mental Health Court proceedings about how a person's treatment and care needs can best be satisfied following consideration of all relevant information.

Achievement of policy objectives

Amendments to the *Hospital and Health Boards Act 2011*

Postnatal care ratios

To lay the groundwork for introducing minimum midwife-to-patient and baby ratios in maternity wards, the Bill amends section 138B of the Hospital and Health Boards Act to clarify that a baby should be counted as a separate patient when they are staying in a room on a maternity ward with their birthing parent. This change will make Queensland the first jurisdiction in Australia to count every baby as a separate patient.

The amendment also ensures that there is a sufficient head of power to prescribe midwife-to-patient ratios in the future. The amendments to count babies as separate patients will also apply in circumstances where a newborn baby is not born alive and the baby remains on the maternity ward for a period of time requiring services from a midwife.

Counting newborn babies as a separate patient to their parent will ensure midwives can provide safer, more comprehensive and more compassionate care to families. A nurse or midwife will be taken to be engaged in delivering a health service only if directly involved in providing care to one or more patients.

Sharing of information by a Quality Assurance Committee

The Bill introduces a new reporting obligation for QACs that will ensure HHSs and private health facilities can be alerted to, and take prompt action to address, concerns that a health professional is practising unsafely. Under new section 85A of the Hospital and Health Boards Act, where a QAC reasonably believes a health professional, in the practice of their profession, poses a serious risk of harm to a person because of the professional's health, conduct or performance, the QAC must disclose the basis for this belief and the professional's identity to

the health professional's chief executive. The chief executive who will receive the disclosure will depend on the employment arrangements of the health professional. This could be the chief executive of the department, the HSCE of an HHS, or the licensee of a private health facility.

The Bill restricts a chief executive from further disclosing this information, other than to the extent necessary to allow the chief executive to perform their functions under the Hospital and Health Boards Act or the *Public Sector Act 2022*, or for private health facilities, to perform their functions relating to the management of the facility. Under section 46 of the Hospital and Health Boards Act, the chief executive may delegate this power to an HSCE or another health service employee, such as those with primary responsibility for patient safety or clinical practice for medical services, nursing and midwifery services, allied health services or Aboriginal and Torres Strait Islander health services within an HHS. The Bill also allows the information from the QAC to be used to make a notification about the health professional under part 8, division 2 of the *Health Practitioner Regulation National Law (Queensland)*.

The new reporting obligation will allow for more rapid and direct responses to patient safety risks identified by QACs.

Appropriate action by the chief executive

The Bill amends the Hospital and Health Boards Act to clarify that the chief executive may take action they consider appropriate in response to matters identified in a clinical review report or a health service investigation report where:

- the clinical review or health service investigation was commissioned by the chief executive, whether in the department or in an HHS; or
- the clinical review or health service investigation was commissioned by an HSCE in an HHS, and a copy of the report is provided to the chief executive.

Sharing of information from Root Cause Analyses

The Hospital and Health Boards Act allows disclosure of a root cause analysis report to a prescribed patient safety entity. A person who is part of a patient safety entity must not further disclose information contained in the root cause analysis report other than for an authorised purpose for which the copy of the report was given.

The Bill amends section 112 of the Hospital and Health Boards Act to clarify that this permitted disclosure by a person who is part of a patient safety entity includes disclosure of information contained in the report, including the recommendations that form part of the report. The Bill also clarifies that disclosing information contained in a root cause analysis report includes giving another person access to this information for the authorised purpose by, for example, including the information in an information system.

These amendments are intended to remove any doubt that once a prescribed patient safety entity receives a root cause analysis report, they are able to disseminate the de-identified key findings, recommendations and lessons learnt, including to patient safety networks and Quality Assurance Committees. This can be done by, for example, entering information into Queensland Health's clinical incident management system or issuing a patient safety communique or advisory.

These clarifications will support more effective monitoring of the implementation of recommendations arising from root cause analyses and ensure learnings and recommendations

can be shared with relevant staff across Queensland Health who can use this information to implement quality improvements and enhance clinical safety.

The existing confidentiality protections in the Hospital and Health Boards Act will apply to the amendments in the Bill. This includes the requirements in section 112(6) that information contained in a disclosure must not contain information that may lead to the identification of patients or practitioners.

Amendments to the *Termination of Pregnancy Act 2018* and Criminal Code

Early medical terminations of pregnancy

The Bill amends the Termination of Pregnancy Act and Criminal Code to implement the Therapeutic Goods Administration's prescribing changes for MS-2 Step and facilitate greater access to termination services across Queensland. This will improve health equity and outcomes and increase autonomy and choice for pregnant people, especially in regional, remote and rural areas of Queensland.

The Bill inserts a new provision in the Termination of Pregnancy Act to allow additional registered health practitioners to perform an early medical termination through the use of a termination drug such as MS-2 Step. Specifically, the Bill allows for the performance of medical terminations by health practitioners registered in the midwifery and nursing health professions. It also includes a regulation-making power to allow additional types of registered health practitioners to be prescribed to perform early medical terminations of pregnancy in the future.

The Bill provides that these additional registered health practitioners may only perform terminations if the termination is a medical termination. The additional health practitioners may also only perform a medical termination to the extent they are authorised to do so under the *Medicines and Poisons Act 2019* and instruments made under that Act.

The Medicines and Poisons Act establishes the framework for management and use of regulated medicines in Queensland, including termination-of-pregnancy drugs such as MS-2 Step. The ability for health practitioners to prescribe, administer and give treatment doses of termination-of-pregnancy drugs to patients is regulated by instruments established under this framework including the *Medicines and Poisons (Medicines) Regulation 2021* and Extended Practice Authorities (EPAs).

The Medicines and Poisons (Medicines) Regulation outlines the activities that particular classes of persons, including nurses and midwives, are authorised to undertake in relation to regulated medicines. EPAs establish the circumstances in which the person may use a regulated medicine, the conditions on dealing with the regulated medicine, and the qualifications or training to deal with the regulated medicine.

The Medicines and Poisons (Medicines) Regulation and EPAs for registered nurses and midwives will be amended to support the amendments in the Bill. It is intended to update these EPAs to require that termination drugs used to perform an early medical termination of pregnancy must be given in accordance with the approved medicine information available from the Therapeutic Goods Administration. This includes the approved gestational limits for the safe use of termination drugs. Referring to approvals of the Therapeutic Goods Administration provides flexibility in the legislative framework to accommodate potential changes to restrictions based on clinical evidence. It will also allow for the use of other termination drugs,

if any are approved by the Therapeutic Goods Administration in the future.

The Bill also amends the Termination of Pregnancy Act to permit prescribed practitioners or students who are authorised to assist in the performance of a termination by a medical practitioner, such as Aboriginal and Torres Strait Islander health practitioners, to assist in medical terminations of pregnancy performed by other registered health practitioners authorised to provide medical terminations.

Finally, the Bill makes consequential amendments to section 319A of the Criminal Code to ensure the additional health practitioners who may lawfully perform a medical termination do not commit an offence. This ensures that the provisions of the Criminal Code about terminations continue to align with the Termination of Pregnancy Act.

Adopting inclusive language

The Bill amends the Termination of Pregnancy Act and relevant sections of the Criminal Code and Powers of Attorney Act to replace references to 'woman' with 'person'. This will ensure the legislation recognises and applies to people with gender-diverse identities who seek a termination of pregnancy.

Amendments to the *Public Health Act 2005*

The Bill amends section 279AF of the Public Health Act to exempt medical practitioners from the requirements to report notifiable dust-lung diseases to the Queensland Register where the practitioner has made a notification for purposes of the National Registry.

This will remove the duplicative reporting requirements on medical practitioners that will arise when the National Registry comes into operation.

As information in the National Registry will be shared with state and territory health agencies, Queensland Health will retain access to data vital to detecting new and emerging threats to the health of workers; enhancing early intervention and prevention activities to reduce worker exposure and disease; and planning, delivering and promoting health care and related services for occupational dust lung diseases.

Amendments to the *Mental Health Act 2016*

Admissibility and release of Mental Health Court exhibits and transcripts in criminal proceedings

The Bill amends the Mental Health Act to provide that transcripts of Mental Health Court proceedings are admissible at the trial of a person for the limited purpose of informing a criminal court's consideration of a person's soundness of mind or fitness for trial or for the purpose of sentencing a person. The Bill also provides that transcripts of Mental Health Court proceedings are admissible in proceedings before the Magistrates Court for the limited purposes of deciding whether to dismiss a complaint under section 172 or to adjourn the hearing of a complaint under section 173.

These amendments will allow the criminal courts and Magistrates Court to be in possession of all information relevant to a matter, including details about a person's mental health and guidance as to how the Mental Health Court considered expert reports given in evidence in Mental Health Court proceedings.

The Bill also clarifies that expert reports and transcripts are admissible at the trial of the person for the offence for which a reference to the Mental Health Court was made, as well as any other offence alleged to have been committed by the person, for the limited purpose of informing a criminal court's consideration of a person's soundness of mind or fitness for trial or for the purpose of sentencing a person, and that the Mental Health Court may release transcripts and expert reports for that purpose.

Use of expert reports prior to a Mental Health Court hearing

The Bill amends section 160 of the Mental Health Act to remove the requirement that an expert report must have been received in evidence by the Mental Health Court and instead provides that leave of the court may be granted for the release of an expert report which has been filed in the Mental Health Registry for a proceeding before the Mental Health Court. This amendment provides a clear basis for the Mental Health Court to release or allow the use of expert reports filed with the Court but not yet received in evidence. The amendments will allow, for example, experts who provide opinions or evidence to the Court to consider expert reports already before the Court when formulating their opinions and evidence. The amendments will also allow authorised mental health services to access expert reports to allow them to deliver appropriate treatment and care prior to a Mental Health Court hearing. This could be done, for example, by including a relevant expert report, obtained with leave of the Court, on a person's health record. The Consumer Integrated Mental Health and Addiction (CIMHA) application is the designated health record for the purpose of the Mental Health Act. Recording Mental Health Court records on a person's CIMHA health record will ensure that regardless of where a person presents to an authorised mental health service, relevant information is available due to the state-wide nature of the CIMHA application.

These amendments will ensure that, with leave of the Mental Health Court, expert reports not yet received in evidence can be stored on CIMHA and accessed and considered by authorised mental health service clinicians in the lead up to a Mental Health Court hearing to plan for or deliver appropriate treatment and care services and to inform the preparation of reports for the Mental Health Court.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Estimated cost for government implementation

The costs for government implementation are expected to be met from existing budget allocations.

The amendments to allow additional health practitioners to perform medical terminations will require updates to the existing safety framework supporting the safe provision of reproductive healthcare by health practitioners in Queensland. This will include updates to education and training, clinician regulatory processes, clinical pathways and frameworks, safety and quality monitoring, and clinical escalation. These will have administrative and operational costs for government. However, these costs are expected to be minimal and met from existing resources.

Any other costs associated with the amendments included in the Bill will be minimal and met from existing staffing levels and budget allocations.

Consistency with fundamental legislative principles

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

Amendments to the *Hospital and Health Boards Act 2011*

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

The Bill will allow for increased information sharing and disclosure of information relating to health professionals to allow patient safety issues to be addressed in a more timely way and to promote state-wide patient safety improvements and shared learning. Specifically, the amendments will allow:

- de-identified recommendations and other information contained in root cause analysis reports to be shared for an authorised purpose; and
- require a QAC to disclose information relating to a health professional to the professional's chief executive, where the QAC has identified a serious risk of harm to a person.

The right to privacy has generally been identified as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties under section 4(3) of the Legislative Standards Act.

As the amendments to the Hospital and Health Boards Act allow for increased disclosure of information, including personal information in relation to the QAC amendments, they may be considered a departure from the principle about the rights and liberties of individuals. However, the amendments are justified as they strike an appropriate balance between the rights and liberties of individuals and public health and patient safety benefits.

Additionally, several safeguards are included in the Bill and existing legislative framework to ensure that information is only disclosed in appropriate circumstances.

The amendments about disclosures relating to root cause analyses are appropriately limited. Such disclosures can only be made for an authorised purpose, as prescribed in regulation, and may not include information that can lead to the identification of a patient receiving a health service or a practitioner involved in providing the health service. Additionally, the process of sharing information will be governed by existing Queensland Health directives, policy and guidelines. With these safeguards in place, the disclosure of information is considered to have appropriate regard to the rights and liberties of persons whose information is shared.

The increased information sharing by a QAC is justified as it is necessary to balance the right to privacy against the right of patients in the public health system to receive safe care and be protected from harm. A QAC will only be required to disclose identifying information about an individual professional to the professional's chief executive where the QAC forms a reasonable belief that there is a serious risk of harm to a person because of the professional's health, conduct, or performance. The Hospital and Health Boards Act also requires QACs to have regard to the rules of natural justice (see section 83(1)). The high disclosure threshold and requirement to afford natural justice, which includes a duty of procedural fairness, is paired with a restriction on further disclosure of the information by the chief executive. The chief executive must not disclose this information, other than to the extent necessary for the chief

executive to perform their functions under the Hospital and Health Boards Act or the Public Sector Act, or for private health facilities, to perform their functions relating to the management of the facility.

With these important safeguards, the amendments have sufficient regard to the rights and liberties of individuals.

Amendments to the *Termination of Pregnancy Act 2018* and *Criminal Code*

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

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

The Bill will enable additional health practitioners, including nurse practitioners and endorsed midwives, to perform early medical terminations of pregnancy using a termination-of-pregnancy drug. The performance of such terminations will be subject to the requirements under the relevant EPAs for registered nurses and midwives. The Medicines and Poisons Act enables the chief executive to make EPAs that state the places or contexts an approved person may deal with a regulated substance, imposing conditions on dealing with the substance, or requiring a person to hold particular qualifications or training. Importantly, it is anticipated that the relevant EPAs will specify gestational limits for the safe use of termination drugs by registered nurses and midwives, in line with clinical evidence and Therapeutic Goods Administration approvals.

Relying on the chief executive to regulate these matters by means of an EPA, which sits outside the Medicines and Poisons legislation, can be characterised as a delegation of legislative power. This delegation is justified, however, by the detailed and clinical nature of the information contained in the EPA and the need to update this information in a timely way. Each EPA may contain a list of regulated substances that a relevant person will be able to administer, in what dose form, and for what length of time. These protocols are of a clinical nature based on the most up-to-date health and medicine information and decision-making. Specifying these matters in EPAs allows for timely amendments to accepted protocols, including the introduction of new approved medicines, including new termination drugs, or new or revised treatment regimens with existing medicines. The Medicines and Poisons Act contains appropriate safeguards for use of EPAs, including that an EPA made by the chief executive does not take effect until it is approved by regulation. These regulations are tabled in the Legislative Assembly, providing an opportunity for appropriate scrutiny. EPAs are also published on the Queensland Health website.

The Bill will also allow a regulation to prescribe additional health practitioners to perform medical terminations in the future, for example, Aboriginal and Torres Strait Islander Health Practitioners. This delegation of legislative power is considered justified and necessary to ensure the legislation is sufficiently flexible to allow increased access to medical terminations of pregnancy in the future, once the capability and training of a new category of health practitioners has been assessed as sufficient. The amendment will allow Queensland Health to be responsive to community needs for access to reproductive healthcare. It is appropriate for these matters to be dealt with in subordinate legislation, which must be made by the Governor in Council, tabled in Parliament and subject to disallowance and Parliamentary oversight.

Amendments to the *Mental Health Act 2016*

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

Release and use of Mental Health Court exhibits and transcripts

The amendments to the Mental Health Act provide that transcripts of Mental Health Court proceedings and expert reports are admissible before a criminal court and at the trial of a person for the limited purposes of informing a criminal court's consideration of a person's soundness of mind or fitness for trial or for the purpose of sentencing a person.

Allowing transcripts of Mental Health Court proceedings to be admissible for limited purposes may be considered to breach fundamental legislative principles as it will permit disclosure of private or confidential information. The right to privacy has generally been identified as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties under section 4(3) of the Legislative Standards Act.

The amendments clearly define the administrative power by limiting the purposes for which transcripts and expert reports can be used in trials and proceedings. Further, existing section 158 of the Mental Health Act applies to the admissibility of transcripts and expert reports, such that any oral or written statements made by the person who is the subject of a reference are not admissible in evidence in any civil or criminal proceedings against the person. This allows the person to participate fully in Mental Health Court proceedings without fear of self-incrimination. Further, the Mental Health Act contains strict confidentiality provisions, including providing that it is an offence to disclose personal information, other than where permitted under the Mental Health Act or other laws, without the consent of the person to whom the information relates. Transcripts of proceedings and expert reports can benefit both the criminal courts and the person before the criminal courts when used for the purpose of informing a criminal court's consideration of a person's unsoundness of mind or fitness for trial or for the purpose of sentencing a person.

The amendments will also clarify that the Mental Health Court can release and permit the use of expert reports filed in proceedings before they are formally received in evidence. The amendments will provide that, with leave of the Mental Health Court, parties to Mental Health Court proceedings may use or disclose expert reports in limited circumstances and subject to any conditions imposed by the Court.

Allowing expert reports to be released and used in specific circumstances may also be considered to breach fundamental legislative principles as it will permit disclosure of private or confidential information. The current inability to release expert reports before they have been received in evidence by the Mental Health Court can delay the use of this evidence by other Courts and may create a risk that health services may not have timely access to information which is relevant to delivering a person's treatment and care. The use of expert reports to plan for, or deliver, treatment and care not only benefits patients receiving care, but also the Mental Health Court, as it allows authorised mental health services to provide meaningful evidence in Mental Health Court proceedings about how a person's treatment and care needs can best be satisfied following consideration of all relevant information.

Accordingly, although the Bill will allow the release and disclosure of Mental Health Court transcripts and expert reports which contain personal and sensitive information in a broader range of situations, the proposed amendments are considered to have sufficient regard to the

rights and liberties of individuals as there are adequate controls in place within the legislative framework to ensure that information is only disclosed in limited and appropriate circumstances.

Consultation

In September 2023, over 100 stakeholders were given the opportunity to provide written feedback on consultation papers outlining the policy proposals to be included in the Bill. Consulted stakeholders included relevant unions, professional health practitioner bodies, HHSs, Hospital and Health Boards, the Queensland Health Ombudsman, legal organisations, entities representing health consumers, and the Queensland Human Rights Commission.

A number of targeted face-to-face and online consultation sessions on the policy proposals to be implemented by the Bill were also convened during September 2023.

A session on the amendments to the Termination of Pregnancy Act was convened with a broad range of external stakeholders including Queensland Nurses and Midwives Union, Children by Choice, the Royal Australian College of General Practitioners, Royal Australian and New Zealand College of Obstetricians and Gynaecologists and the Australian College of Midwives.

In addition, five consultation sessions on the amendments to the Mental Health Act were convened with relevant legal stakeholders and advocacy organisations including the President of the Mental Health Court, Legal Aid, the Director of Public Prosecutions, the Public Advocate, Queensland Law Society and the Mental Health Lived Experience Peak.

All stakeholder feedback was carefully considered. Some of the key issues raised by stakeholders are outlined below.

Amendments to the *Hospital and Health Boards Act 2011*

Stakeholders were largely supportive of the amendments to the Hospital and Health Boards Act relating to the disclosure of information contained in root cause analysis reports and allowing the chief executive to take appropriate action in response to a clinical review or health service investigation commissioned by an HSCE.

There was mixed feedback on the amendments to require a QAC member to disclose information about a health practitioner who has engaged in reportable conduct to their chief executive. Some stakeholders supported the inclusion of the amendments, noting the intent to improve the responsiveness of HHSs to patient safety issues. Some stakeholders raised concerns there may be a risk that health professionals who are the subject of an assessment and evaluation by a QAC may not wish to participate in some of the assurance processes if the information they provide may be disclosed. Stakeholders also noted that QACs should have a systems focus and are not the appropriate bodies to investigate and make findings about individual practitioners.

It is expected that QAC members will make these disclosures in the rare instances where they are confronted with very clear evidence of misconduct or poor performance that it would be irresponsible for them to ignore. The objective of the amendments is to ensure that when this conduct occurs, there are no legislative barriers to QACs disclosing this information in a way that enables the risk to be effectively mitigated while protecting the health professional's privacy to the extent reasonably practicable. It is considered that the benefits to patient safety

and quality improvement by disclosing this information outweigh the impacts of removing the protection that would be afforded to the information.

Amendments to the *Termination of Pregnancy Act 2018* and *Criminal Code*

Early medical terminations of pregnancy

Stakeholders were broadly supportive of the amendments to allow additional health practitioners to perform medical terminations.

However, some stakeholders, including some professional medical bodies, provided feedback in relation to the need for appropriate education, support and resources to support successful implementation of the amendments and to ensure patient safety. Queensland Health will undertake a gap analysis to identify elements of the framework that need to be enhanced or strengthened to ensure that additional health practitioners can safety perform early medical terminations of pregnancy. The gap-analysis will consider what support and resources are needed for the workforce delivering termination-of-pregnancy care, as well as information for consumers.

Adopting inclusive language

There was considerable variation in views about updating the terminology within the Termination of Pregnancy Act and Criminal Code to reflect Queensland's gender-diverse community.

Although consulted stakeholders supported the provisions applying equally with regard to all pregnant persons, several stakeholders expressed a strong conviction that references to 'woman' and 'women' should be retained in the legislation. Some of these stakeholders maintained that retaining specific references to 'women' carries cultural significance and is important in the provision of reproductive healthcare.

The intent of the amendments is to ensure the legislation applies equally and without discrimination to all pregnant persons in Queensland. This is best achieved by using language that is gender-neutral. The use of gender-neutral language also aligns with current legislative drafting practices and the amendments introduced in the *Births, Deaths and Marriages Registration Act 2023* to strengthen legal recognition of trans and gender-diverse people, which were passed by the Queensland Parliament on 14 June 2023.

Use of gender-neutral language in the legislation does not impact on health practitioners using a person's preferred gender descriptors when providing treatment and care to the person.

Amendments to the *Public Health Act 2005*

A communique was sent to the Office of Industrial Relations, Resources Safety and Health Queensland and industry practitioners who report to the Queensland Register. Stakeholders were advised that Queensland Health is exploring options to amend the Public Health Act to remove duplicate reporting requirements for occupational and respiratory disease specialists when the National Registry becomes operational.

No concerns were raised in response to the communique.

Amendments to the *Mental Health Act 2016*

Stakeholders were generally supportive of the proposed amendments to the Mental Health Act in relation to the release and use of Mental Health Court exhibits and transcripts. The President of the Mental Health Court provided feedback that leave of the court should continue to be required for any expert report to be made available for use in proceedings in a criminal court and that transcripts may only be admissible for extremely limited purposes. Several legal stakeholders who supported the amendments expressed that they would assist in criminal proceedings in a number of circumstances, including where legal aid funding is not available for a criminal matter. The majority of stakeholders supported a Court being in possession of all information relevant to a matter.

Some legal stakeholders raised concerns about the interaction of the amendments with the rules of evidence as they apply in criminal trials. The rules of evidence will continue to apply with Courts retaining their ability to admit evidence and consider the relevance of evidence tendered. The amendments clarify that transcripts and expert reports can be tendered in evidence, but they do not require a Court to admit that evidence or create any presumption as to its relevance or probative value.

Broadly, stakeholders also supported the use of expert reports prior to a Mental Health Court hearing but generally expressed that leave of the court should be required to prevent the unchecked use and distribution of sensitive reports for purposes which may not be directly relevant to the person's treatment and care or diversion from the criminal justice system. In response to this feedback, the Bill requires leave of the Mental Health Court to be granted to allow expert reports filed in the Mental Health Court Registry to be released for use before they have been formally received in evidence.

Stakeholders expressed concerns about the storage of information used in Mental Health Court proceedings on CIMHA. Legal stakeholders raised concerns about the volume and potentially sensitive nature of material that could be uploaded on to a person's CIMHA record in some instances. To respond to these concerns the Bill includes safeguards to ensure that information in expert reports is only used and disclosed in appropriate circumstances. The Bill amends the Mental Health Act to provide that an expert report filed in the Mental Health Court Registry may be given to and used by a person with leave of the Mental Health Court. In granting leave, the Mental Health Court will be able to impose any conditions it considers appropriate, which may include limiting the purposes for which and persons to whom the information in the report may be used and disclosed.

There will be an implementation period before the Mental Health Act amendments commence, to allow Queensland Health to finalise operational matters including through consultation with interested stakeholders.

Consistency with legislation of other jurisdictions

Amendments to the *Hospital and Health Boards Act 2011*

Postnatal care ratios

Several states, including New South Wales, Tasmania and Victoria, have established nurse-to-patient or midwife-to-patient ratios on maternity wards. Victoria is the only other Australian jurisdiction to legislate midwife-to-patient ratios on maternity wards. However, Victoria does not count newborns babies, except in limited circumstances, such as if the baby is being cared

for in a special care nursery or a neonatal intensive care unit. The amendments in the Bill will make Queensland the first jurisdiction in Australia to count every baby as a separate patient for the purposes of nurse-to-patient and midwife-to-patient ratios.

Sharing of information from Root Cause Analyses

There are varied arrangements across States and Territories regarding sharing of information from clinical incident management and analysis. However, a general objective of these analyses includes supporting system-wide quality improvements.

In South Australia there is a requirement under the South Australia Health Root Cause Analysis Policy Directive for a separate summary addendum report to be produced as part of a Root Cause Analysis that contains a short description of the adverse incident based on facts known independent of their investigation and recommendations for changes or improvements in relation to a procedure or practice associated with the incident. This report may be released publicly and is expected to be released to the affected patient or the patient's family, staff involved and health services.

Similarly, the New South Wales Health Incident Management Policy has a requirement to produce a separate recommendations report as an outcome of all serious adverse event reviews. New South Wales Health Services are able to share feedback on the lessons learned and proposed quality improvements with clinicians, managers and staff.

Amendments to the *Termination of Pregnancy Act 2018* and *Criminal Code*

Early medical terminations of pregnancy

The amendments to allow additional health practitioners to perform medical terminations of pregnancy align with recent changes approved by the Therapeutic Goods Administration regarding the prescribing and dispensing of MS-2 Step.

The amendments are also consistent with legislation and amendments being made in certain other States and Territories.

- Western Australia – On 21 September 2023, the Abortion Legislation Reform Bill 2023 (WA Bill) was passed by the Western Australian Parliament. The Bill will allow medical practitioners, other *prescribing practitioners*, and certain other registered health practitioners to perform medical terminations on a person not more than 23 weeks' pregnant. Nurse practitioners and endorsed midwives will be *prescribing practitioners* and able to prescribe termination drugs. Registered health practitioners will be prescribed by regulation and will be able to perform medical terminations under the direction of a directing practitioner, which is either a medical practitioner or a *prescribing practitioner*.

- South Australia – The *Termination of Pregnancy Act 2021* (SA) allows for registered medical practitioners and certain other registered health practitioners to perform early medical terminations in certain circumstances. A registered health practitioner may perform a termination by administering a prescription drug or by prescribing a drug provided that the registered health practitioner is acting within their scope of practice and the registered health practitioner is authorised to prescribe the drug under section 18 of the *Controlled Substances Act 1984* (SA).

Adopting inclusive language

States and Territories are at varying stages in their adoption of gender-neutral language across their legislation. However, the amendments in the Bill align with the approach to terminology used in New South Wales, South Australia, Western Australia and the Australian Capital Territory with regard to termination-of-pregnancy legislation.

Amendments to the *Public Health Act 2005*

The amendments to the Public Health Act contained in the Bill respond to legislation introduced by the Australian Government establishing a nation-wide register for reporting of dust lung diseases. The amendments prevent practitioners from duplicative reporting requirements, while maintaining State access to needed information on incidences of dust lung diseases.

Amendments to the *Mental Health Act 2016*

Victoria, South Australia and Tasmania provide comparable, but less restrictive, limitations on the use of evidence admitted in proceedings to determine a person's unsoundness of mind or fitness for trial. Victoria prohibits the admission of reports in civil or criminal proceedings but provides exceptions where a person has consented to their admission or where a court, tribunal or person acting judicially considers it is in the interests of justice for them to be admissible. South Australia and Tasmania prevent admission of evidence in criminal proceedings, but only when such evidence is being used against an accused person.

Tasmania also makes provision for the release of reports filed in its equivalent to Queensland's Mental Health Court proceedings. There is no requirement that the report has been received in evidence, just that it must have been filed with the Court.

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 (No. 2) 2023*.

Commencement

Clause 2 provides for the commencement of the Act.

It provides for the following parts and sections of the Act to commence on a day to be fixed by proclamation:

- part 2: amendments to the Criminal Code
- part 3, division 3: making certain amendments to the Hospital and Health Boards Act
- part 4: amendments to the Mental Health Act
- part 6: making certain amendments to the Termination of Pregnancy Act
- part 7 and schedule 1: other amendments to the Criminal Code and Termination of Pregnancy Act and amendments to the Powers of Attorney Act.

All other amendments commence on assent. These include the amendments to the Public Health Act in part 5 and certain amendments to the Hospital and Health Boards Act contained in part 3, division 2.

Part 2 Amendment of Criminal Code

Code amended

Clause 3 states that this part amends the Criminal Code.

Amendment of s 319A (Termination of pregnancy performed by unqualified person)

Clause 4 amends section 319A of the Criminal Code. Section 319A makes it a crime for an *unqualified person* to perform, or assist in the performance of, an intentional termination of pregnancy. Amendments to this section are made to ensure the amendments to the Termination of Pregnancy Act made in part 6 of this Act operate as intended.

Subclauses (1) to (3) set out amendments to section 319A to use gender-neutral language when referring a person who is pregnant. This will ensure the section applies equally and without discrimination with regard to all pregnant persons in Queensland.

Subclause (4) inserts a definition of *medical termination* into section 319A. A medical termination is an intentional termination of a pregnancy caused by use of a termination drug. This distinguishes medical terminations from surgical terminations, which involve a surgical procedure performed by a trained medical practitioner in a hospital or private clinic.

Subclause (5) amends the definition of *prescribed student*. Under section 319A, it is not a crime for a prescribed student to assist in the performance of a termination under the supervision of a medical practitioner. The amendments allow for such students to also assist in the performance of a termination under the supervision of other registered health practitioners, but only for medical terminations and only if those other registered health practitioners are authorised to perform medical terminations under the Termination of Pregnancy Act (see the relevant amendments to the Termination of Pregnancy Act at part 6).

Subclauses (6), (7) and (8) amend the definition of *unqualified person*. Under section 319A, it is a crime for an unqualified person to perform, or assist in the performance of, an intentional termination of pregnancy. The amendments allow for additional registered health practitioners to perform medical terminations (i.e. these additional registered health practitioners will not be considered *unqualified persons* for the purposes of performing a medical termination). The additional registered health practitioners are those recognised under new section 6A of the Termination of Pregnancy Act (see the relevant amendments to the Termination of Pregnancy Act at part 6). Further, the amendments provide that these additional registered health practitioners may also assist in the performance of a medical termination. Medical practitioners, prescribed students and other prescribed practitioners providing assistance in the practice of a prescribed health profession may also continue to assist in the performance of a termination.

Subclause (9) renumbers subparagraphs in the definition of unqualified person. Subclause (10) removes the definition of *woman* as the term is no longer used in the section.

Part 3 Amendment of Hospital and Health Boards Act 2011

Division 1 Preliminary

Act amended

Clause 5 states that this part amends the Hospital and Health Boards Act.

Division 2 Amendments commencing on assent

Amendment of s 135 (Reports by clinical reviewers other than to provide advice to investigator)

Clause 6 amends section 135 of the Hospital and Health Boards Act, which requires a clinical reviewer to prepare a report for each clinical review undertaken and to provide such report to the person that appointed the reviewer. The appointer may be either the chief executive of the department or an HSCE. After considering a clinical review report, section 135(8) allows the chief executive of the department or the HSCE to take the action they consider appropriate in relation to the matters identified in the report.

The amendments in this clause allow the chief executive of the department to also take the action they consider appropriate in relation to clinical reviews in an HHS where the reviewer was appointed by an HSCE. Copies of such clinical review reports can already be requested by the chief executive of the department under section 137 of the Hospital and Health Boards Act. However, prior to these amendments, the actions the chief executive of the department could

take after considering such clinical review reports were limited to issuing a direction to the HHS.

Amendment of s 199 (Reports by health service investigators)

Clause 7 amends section 199 of the Hospital and Health Boards Act, which requires a health service investigator to prepare a report for each investigation undertaken and to provide such report to the person that appointed the investigator. The appointer may be either the chief executive of the department or an HSCE. After considering the investigator's report, section 199(8) allows the chief executive of the department or the HSCE to take the action they consider appropriate in relation to the matters identified in the report.

The amendments in this clause allow the chief executive of the department to also take the action they consider appropriate in relation to health service investigations in an HSS where the investigator was appointed by an HSCE. Copies of such health service investigation reports can already be requested by the chief executive of the department under section 200 of the Hospital and Health Boards Act. However, prior to these amendments, the actions the chief executive of the department could take after considering such health service investigation reports were limited to issuing a direction to the HHS.

Insertion of new pt 13, div 8

Clause 8 inserts a transitional provision in new part 13, division 8 of the Hospital and Health Boards Act. The transitional provision relates to the amendments at clauses 6 and 7 of the Bill. The transitional provision provides that the amended sections 135 and 199 apply in relation to clinical reviews or health service investigations for which a report is provided after commencement of the amendments, whether the review or investigation started before or after the commencement.

This means that the chief executive of the department may take the action they consider appropriate in relation to a clinical review or health service investigation that started before commencement of the amendments, if the clinical review report or health service investigation report is provided to the chief executive after the commencement.

Division 3 Amendments commencing by proclamation

Amendment of s 84 (Disclosure of information)

Clause 9 amends section 84 of the Hospital and Health Boards Act to introduce a new exception to provide that a member of a QAC can disclose information they acquired as a member of a QAC to the chief executive under new section 85A, which is inserted by clause 10.

Insertion of new s 85A

Clause 10 inserts a new section 85A into the Hospital and Health Boards Act. This new section introduces a new obligation for Quality Assurance Committees (QACs) to disclose information in limited circumstances to allow rapid responses to identified patient safety issues.

QACs are established under the Hospital and Health Boards Act and were created to improve the safety and quality of health care services in Queensland.

New section 85A applies if a QAC forms a reasonable belief that a health professional, in the practice of their profession, poses a serious risk of harm to a person because of their health, conduct or performance. Once this reasonable belief is formed, the committee must disclose to the health professional's chief executive the information forming the basis of the belief and the identity of the health professional.

The relevant chief executive to whom disclosures should be made will depend on the employment arrangements for the health professional. If the professional is appointed as a health service employee or public service officer in the department, disclosures will be made to the chief executive of the department. If the professional is appointed as a health service employee in a service prescribed under section 20(4) of the Hospital and Health Boards Act, disclosures will be made to the chief executive of the prescribed service. And, if the professional is employed in a private health facility, disclosures will be made to the licensee of the health facility.

Subsection (4) of new section 85A restricts a chief executive from further disclosing the information provided by a QAC, other than to the extent necessary to allow the chief executive to perform their functions under the Hospital and Health Boards Act or Public Sector Act, or for private health facilities, to perform their functions relating to the management of the facility. New section 85A also allows the information from the QAC to be used to make a notification about the health professional under part 8, division 2 of the *Health Practitioner Regulation National Law (Queensland)*.

Under section 46 of the Hospital and Health Boards Act, the chief executive may delegate their power to an HSCE or another health service employee, such as those with primary responsibility for patient safety or clinical practice for medical services, nursing and midwifery services, allied health services or Aboriginal and Torres Strait Islander health services within an HHS.

The amendments are intended to enable more rapid responses to patient safety issues at a local level.

Amendment of s 112 (Giving of copy of RCA report—patient safety entity)

Clause 11 amends section 112 of the Hospital and Health Boards Act, which applies if an HSCE or the chief executive of the department commissions a Root Cause Analysis team. It requires the commissioning authority (the relevant chief executive) to give a copy of each root cause analysis report received by it and other relevant information to a prescribed patient safety entity for an authorised purpose for the entity. Section 112 then restricts use and further disclosures by the patient safety entity.

The amendments clarify that a person who performs functions for a patient safety entity may disclose information contained in the copy of the report and certain other details of the reportable event to which the root cause analysis report relates to another person for the authorised purpose for which the copy of the report was given. This information could include the recommendations from the report or other key findings or lessons learned. The amendments also clarify that the act of 'disclosing' information contained in a root cause analysis report includes giving access to this information, for example, by uploading the information in an information system.

The disclosure by the patient safety entity under these amendments must not include information that may lead to the identification of a person involved in providing the relevant health service or the relevant patient.

These clarifications are intended to support more effective monitoring of implementation of recommendations arising from root cause analyses and to ensure learnings and recommendations can be shared with relevant staff across Queensland Health who can use this information to implement quality improvements and enhance clinical safety.

Amendment of s 138B (Prescription of minimum nurse-to-patient and midwife-to-patient ratios)

Clause 12 amends section 138B of the Hospital and Health Boards Act, which provides a regulation-making power to prescribe nurse-to-patient and midwife-to-patient ratios with regard to the delivery of health services.

The amendment clarifies that, if a birth parent is receiving care in a maternity ward, the person's newborn baby is also counted as a patient receiving the service. The amendment includes a definition of *newborn baby*, modelled on established definitions under section 214 of the Public Health Act, which includes a baby who has shown no signs of life on being born. For purposes of calculating ratios, a nurse or midwife is considered to be engaged in delivering a health service only if they are directly involved in providing care to one or more patients receiving the service.

Under this amendment, a newborn baby will be counted as a separate patient in prescribed nurse and midwife-to-patient ratios when they are staying in a room on a maternity ward with their birthing parent.

Part 4 Amendment of Mental Health Act 2016

Act amended

Clause 13 states that this part amends the Mental Health Act.

Amendment of ch 5, pt 5, div 2 hdg (Admissibility and use of evidence)

Clause 14 amends the heading of chapter 5, part 5, division 2 of the Mental Health Act to clarify that the division also applies to the admissibility and use of transcripts.

Amendment of s 157 (Admissibility of expert's report at trial)

Clause 15 amends section 157 of the Mental Health Act, which deals with the admissibility and use of an expert's report received in evidence by the Mental Health Court on a reference at the trial of the person.

The amendments extend the section to cover the admissibility of a transcript of the proceeding of the Mental Health Court on the reference. The amendments also broaden the admissibility of expert's reports by providing they are also admissible at the trial of the person for any other offence alleged to have been committed by the person.

Under the amendments, an expert's report and transcript are admissible at the trial of the person for the offence in relation to the reference, or any other offence, but only for limited purposes

related to a criminal court's consideration of a person's soundness of mind, fitness for trial and sentencing.

The amendments recognise that expert reports and transcripts from a Mental Health Court proceeding can be relevant to criminal proceedings for other offences an individual is charged with in providing evidence of a person's diagnosed mental illness or intellectual disability or their mental state at a particular point in time. Removing barriers to using relevant reports and transcripts can benefit both the criminal courts and the person before the criminal courts when used for the purpose of informing a criminal court's consideration of a person's soundness of mind or fitness for trial or for the purpose of sentencing a person.

Section 158 of the Mental Health Act will apply with regard to the use of transcripts and expert's reports at trial, so that any oral or written statements made by a person who is the subject of a reference are not admissible in any civil or criminal proceedings against that person. This will continue to allow a person to participate fully in Mental Health Court proceedings without fear of self-incrimination.

Amendment of s 157A (Admissibility of expert's report in proceeding before Magistrates Court)

Clause 16 amends section 157A of the Mental Health Act, which deals with the admissibility of expert's reports received in evidence by the Mental Health Court on a reference in proceedings before the Magistrates Court.

The amendments extend the section to cover the admissibility of a transcript of the proceeding of the Mental Health Court on the reference. The amendments also broaden the admissibility of expert's reports by providing they are also admissible at a proceeding before a Magistrates Court for any other offence alleged to have been committed by the person.

Under the amendments, an expert's report and transcript are admissible in a proceeding before a Magistrates Court for the purpose of deciding whether to dismiss a complaint or to adjourn the hearing of a complaint.

Replacement of s 160 (Other use of expert's report)

Clause 17 replaces section 160 of the Mental Health Act, which deals with other uses of expert's reports.

The amendments clarify that the Mental Health Court can release and permit the use of expert reports filed in the Mental Health Court Registry for a proceeding before the reports are formally received in evidence. This can only occur with the leave of the Court, and the Court may grant the leave subject to any conditions it considers appropriate. These safeguards will ensure that the Mental Health Court is aware of the intended use of reports.

The ability for the Mental Health Court to release expert reports which have not yet been received in evidence is essential to ensure that other experts providing opinions for the Mental Health Court can consider expert reports already before the Mental Health Court when formulating their opinion and evidence. It is also important for a patient's treatment and care needs to ensure expert reports can be used before being used as evidence so as not to limit the value of the advice that can be given to assist the Mental Health Court in its decision-making.

This change is intended to allow, with leave of the Mental Health Court, information from an expert report filed in the Mental Health Court Registry to be recorded in a person's health record, as outlined below, and used or disclosed by a person to support timely access to mental health care for persons referred to the Mental Health Court and to facilitate cross-agency planning with respect to future management of a person to support positive and least restrictive outcomes for individuals.

Section 305 of the Mental Health Act requires that the Chief Psychiatrist make a policy regarding how records related to a patient under the Mental Health Act are kept. The current *Chief Psychiatrist Policy: Patient Records* provides that for the purposes of the Mental Health Act, the electronic state-wide system, the Consumer Integrated Mental Health and Addiction (CIMHA) application is the health record for the purposes of the Mental Health Act. The Policy provides that all Mental Health Act related documents must be stored within a patient's electronic file within the secure CIMHA application.

The amendments reflect that expert reports may contain clinically relevant information and recommendations about a person's treatment and care which should be considered by clinicians providing treatment and care to a person.

Insertion of new ch 21, pt 4

Clause 18 inserts a transitional provision into new chapter 21, part 4 of the Mental Health Act.

The transitional provision provides the amendments to the Mental Health Act apply in relation to an expert's report, or a transcript, for a proceeding for a reference if the reference is made after the commencement date of the amendments, regardless of when any offence is alleged to have been committed by the person to whom the report or transcripts relate.

Part 5 Amendment of Public Health Act 2005

Act amended

Clause 19 states that this part amends the Public Health Act.

Amendment of s 279AF (Obligation to notify chief executive)

Clause 20 inserts a new subsection (4)(d) into section 279AF of the Public Health Act.

Section 279AF requires prescribed medical practitioners to notify the chief executive of instances where the practitioner diagnoses a person as having a notifiable dust lung disease. In practice, practitioners make these notifications to the notifiable dust lung disease register operated by Queensland Health (Queensland Register). Subsection (4) sets out exceptions when this notification requirement does not apply, such as if the prescribed medical practitioner has given information about the dust lung disease to certain other persons.

The amendments add the chief medical officer for the Commonwealth Department of Health and Aged Care to subsection (4).

This amendment is being made in response to the introduction of legislation by the Australian Government to establish a National Occupational Respiratory Disease Registry (National Registry). If the legislation is passed by the Australian Parliament, it will duplicate the reporting requirements under section 279AF. This is an unnecessary burden given information

in the National Registry will be shared with state and territory health agencies. The amendments exempt medical practitioners from these duplicative reporting requirements by providing notifications are not required to be made to the Queensland Registry where there has been notification to the National Registry.

Part 6 Amendment of Termination of Pregnancy Act 2018

Act amended

Clause 21 states that this part amends the Termination of Pregnancy Act.

Insertion of new s 6A

Clause 22 inserts a new section 6A into the Termination of Pregnancy Act.

The new section allows health practitioners registered in the health professions of midwifery, nursing or another prescribed profession to perform a *medical termination* of pregnancy if the practitioner is authorised to do so under section 54 of the Medicines and Poisons Act. A medical termination is defined in the amendments at clause 25 to mean the termination of a pregnancy caused by use of a termination drug. A medical termination is distinguished from a surgical termination, which involves a surgical procedure performed by a trained medical practitioner in a hospital or private clinic.

The amendments clarify that a practitioner *performs* a medical termination if the practitioner prescribes, or gives a treatment dose of, a termination drug for use in a termination.

In contrast to medical practitioners, who may perform both medical and surgical terminations at any stage of a person's pregnancy, the amendments only authorise nurses, midwives and other prescribed practitioners to perform medical terminations, and only to the extent authorised under the Medicines and Poisons Act and instruments made under that Act.

The Medicines and Poisons Act establishes the framework for management and use of regulated medicines in Queensland, including termination drugs. The ability for registered health practitioners to prescribe, administer and give treatment doses of termination drugs to patients is regulated by instruments established under this framework. In particular, the *Medicines and Poisons (Medicines) Regulation 2021* outlines the activities that particular classes of persons are authorised to undertake in relation to regulated medicines. Additionally, registered nurses and midwives are subject to Extended Practice Authorities (EPAs) which establish the circumstances in which they may use a regulated medicine, the conditions on dealing with the regulated medicine, and the qualifications or training to deal with the regulated medicine.

Allowing additional registered health practitioners to perform medical terminations is in line with recent prescribing changes for the termination drug MS-2 Step. MS-2 Step is, at the moment, the only termination drug approved for use in Australia for early medical terminations. Allowing additional health practitioners to perform medical terminations will also improve health equity and outcomes and increase autonomy and choice for pregnant people, especially in regional, remote and rural areas of Queensland.

Amendment of s 7 (Registered health practitioners and students who may assist)

Clause 23 amends section 7 of the Termination of Pregnancy Act, which sets out who may assist in a termination of pregnancy.

The amendments will allow prescribed practitioners and students to assist in medical terminations performed by health practitioners authorised to perform medical terminations under the amendments at clause 22—that is, nurses, midwives and other prescribed practitioners who are authorised to perform medical terminations under the Medicines and Poisons Act.

Amendment of s 8A (Prescribed student with conscientious objection)

Clause 24 amends section 8A of the Termination of Pregnancy Act. The amendments are consequential to the amendments at clauses 22 and 23 that allow additional registered health practitioners to perform medical terminations.

Additionally, the amendments replace gendered language with gender-neutral language. This will ensure the section applies equally and without discrimination to all pregnant persons in Queensland.

Amendment of sch 1 (Dictionary)

Clause 25 inserts a definition of *medical termination* into the dictionary for the Termination of Pregnancy Act. A medical termination is a termination of a pregnancy caused by use of a termination drug.

Part 7 Amendment of legislation

Legislation amended

Clause 26 states that schedule 1 amends the legislation it mentions, which is the Criminal Code, the Powers of Attorney Act and the Termination of Pregnancy Act.

Schedule 1 Other amendments

Schedule 1 sets out amendments to section 313 of the Criminal Code and schedule 2, section 11 of the Powers of Attorney Act to use gender-neutral language when referring to a person who is pregnant.

Schedule 1 also sets out amendments to sections 3, 5, 6, 8, 9, 10, 13 and schedule 1 of the Termination of Pregnancy Act to replace gendered language with gender-neutral language.

These amendments will ensure the provisions apply equally and without discrimination with regard to all pregnant persons in Queensland. The changes are also intended to ensure the terminology used in the legislation is contemporary and appropriately acknowledges trans and gender-diverse people.