

Debt Reduction and Savings Bill 2021

Statement of Compatibility

Prepared in accordance with part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, the Honourable Cameron Dick MP, Treasurer, Minister for Investment, make this statement of compatibility with respect to the *Debt Reduction and Savings Bill 2021* (Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Chapter 1: Queensland Future Fund (Titles Registry)

The objectives of chapter 1 of the Bill are to support the State's contribution to the Queensland Future (Debt Retirement) Fund (Debt Retirement Fund) established under the *Queensland Future Fund Act 2020* (QFF Act). Chapter 1 of the Bill addresses specific matters linked to the transfer of the operations of the Titles Registry (Registry) to the 'operator' (Queensland Titles Registry Pty Ltd ACN 648 568 101) a newly formed company that will be contributed to a Queensland Investment Corporation managed trust within the Debt Retirement Fund structure. In turn, the operator will carry out relevant functions of the Registry via delegations from the registrar of titles (registrar) and the registrar of water allocations.

As part of the 2019–20 Mid-Year Fiscal and Economic Review, the Queensland Government announced that to support its economic plan and, importantly, guarantee Queensland's future economic success, it would establish the Queensland Future Fund. The Queensland Future Fund was to be seeded with an initial \$5 billion investment, \$2 billion redirected from the Queensland Government's existing debt retirement plan and a further \$3 billion invested from the surplus in the defined benefit fund. The defined benefit fund would continue to remain in surplus.

The QFF Act commenced on 20 August 2020. It sets up a framework for creating individual Queensland future funds, which I as Treasurer administer under the *Financial Accountability Act 2009* (FA Act) as special purpose accounts. The QFF Act creates the first future fund—the Debt Retirement Fund—to hold State investments for future growth, which will be used to offset State debt to support Queensland's credit rating. The QFF Act's structure is modelled on the *Generations Funds Act 2018* (NSW) (GF Act) to reduce the possibility of rating agencies not recognising the Debt Retirement Fund when undertaking Queensland's credit rating assessments (rating agencies have already accepted the model established by the GF Act).

On 23 July 2020, the Queensland Government announced the Registry will be part of the initial tranche of publicly-owned assets to be transferred to the Queensland Future Fund, with an estimated value of at least \$4 billion.

A key aim of the Debt Retirement Fund is to support the State's credit rating by achieving recognition of the value of the fund by rating agencies against the State's debt. The Registry is

not currently recognised as an asset on the State's balance sheet. Transfer of the Registry to the operator into the Debt Retirement Fund will allow the value of the asset to be recognised.

The objectives of chapter 1 of the Bill are to:

- Authorise the delegation of statutory functions and powers of the registrar under various Acts, and the registrar of water allocations under the *Water Act 2000*, to the operator.
- Authorise the operator to determine (up to a specified cap linked to changes in the consumer price index (CPI)), collect and keep titles registry fees currently prescribed by regulations.
- Transfer public service employees of the Registry to the operator under conditions that do not materially affect the employee's benefits, entitlements and remuneration. In practical terms, this will constitute a transfer of business under the *Fair Work Act 2009* (Cth).
- Continue unchanged the underlying statutory compensation regime, in that the State will continue to hold the statutory obligation to make compensation payments to persons affected by fraud. However, the State and the registrar will have the ability to appoint the operator as an agent to manage any claims (subject to certain conditions).
- Provide that if employees of the operator are exercising a Registry function in their capacity as employees of the operator, they will receive protection from civil liability for an act or omission done honestly and without negligence.
- The following Acts will apply to the operator to the extent the operator is performing its Registry functions: *Crime and Corruption Act 2001*, HR Act, *Information Privacy Act 2009* (IP Act), *Public Records Act 2002* and *Right to Information Act 2009*.

To further support the above amendments, chapter 1 of the Bill will also amend various regulations to enable:

- consequential amendments to fee schedules to remove fees that are currently prescribed by the Governor in Council, which chapter 1 of the Bill will specify the operator will be able to determine, collect and keep as titles registry fees;
- consequential amendments to omit provisions relating to forms as chapter 1 of the Bill will enable the operator (through the instruments of delegation) to deal with Registry forms; and
- other relevant consequential amendments to ensure the ability to effectively delegate the functions necessary to operate the Registry to the operator and its employees.

Chapter 2, part 1: Fee units

Chapter 2, part 1 of the Bill amends the *Acts Interpretation Act 1954* to introduce a fee unit model to streamline the annual process of indexing regulatory fees. The amendments will provide for the indexation of the fee unit rather than amendments of hundreds of pages of agency regulation each year. By removing this administrative burden, government agencies and the Office of the Queensland Parliamentary Counsel officers will be freed up to focus on higher value work.

There is no change or increase in the regulatory burden on business or the community. The Queensland Government's indexation policy remains the same. The amendments seek to streamline the annual process of indexing regulatory fees in line with the indexation policy and regulate only internal government agencies. As such, the amendments in no way limit the human rights of an individual and no further consideration is required in respect of chapter 2, part 1 of the Bill.

Chapter 2, part 2: Repeal of Building Queensland Act 2015 and related amendments

The purpose of chapter 2, part 2 of the Bill is to give effect to the Queensland Government's announcement as part of the COVID-19 Fiscal and Economic Review (September 2020) (CFER) that Building Queensland (BQ) be abolished and BQ's employees and business be integrated into Queensland Treasury (Treasury). Following the making of the Administrative Arrangements Order (No 2) 2020, BQ will be integrated into the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP). This will result in the infrastructure and investment skills and capabilities of BQ augmenting the existing capabilities in DSDILGP. It will also streamline processes, reduce administrative overheads and provide co-ordinated infrastructure and advisory functions within the Queensland Government.

More specifically, chapter 2, part 2 of the Bill will:

- (a) abolish BQ and its board (BQ Board);
- (b) remove the BQ chief executive officer from office;
- (c) integrate BQ's staff, assets, resources and liabilities into DSDILGP by amending the *Queensland Industry Participation Policy Act 2011*; and
- (d) repeal the *Building Queensland Act 2015* (BQ Act) in its entirety.

Chapter 2, part 3: Amendment of National Injury Insurance Scheme (Queensland) Act 2016

As a measure to drive greater efficiencies in the National Injury Insurance Agency, Queensland (NIISQ Agency) and to provide stronger alignment of the governance of motor accident personal injury schemes, chapter 2, part 3 of the Bill proposes amendments to the *National Injury Insurance Scheme (Queensland) Act 2016* (NIISQ Act) to change the governance structure of the NIISQ Agency. Chapter 2, part 3 of the Bill proposes to abolish the board of the NIISQ Agency (NIISQ Board) and transfer the functions of the NIISQ Board to the chief executive officer, with the Insurance Commissioner to be appointed as the chief executive officer on commencement of chapter 2, part 3 of the Bill.

Chapter 2, part 4: Repeal of Public Safety Business Agency Act 2014 and related amendments

Chapter 2, part 4 of the Bill will repeal the *Public Safety Business Agency Act 2014* (PSBA Act). The PSBA Act established the Public Safety Business Agency (PSBA) which was created to deliver efficiencies through providing corporate services to public safety entities, namely the Queensland Police Service, the Queensland Fire and Emergency Services and the Office of the Inspector-General Emergency Management.

The range of services provided by the PSBA to public safety entities includes asset management, financial management, human resource management and information and communication technology. The PSBA also provides information and communication technology services to the Queensland Ambulance Service.

Although the PSBA was established to reduce waste and duplication, it has resulted in more complex business and service delivery arrangements leading to inefficiencies and greater costs to the agencies it services.

The repeal of the PSBA Act will allow machinery of government changes to reintegrate the functions of the PSBA into the Queensland Police Service and the Queensland Fire and

Emergency Services, promoting the ability of these agencies to efficiently deliver services to the community.

As no human rights have been identified as being limited by chapter 2, part 4 of the Bill, no further consideration is required in respect of chapter 2, part 4 of the Bill.

Chapter 2, part 5: Repeal of Queensland Productivity Commission Act 2015 and related amendments

The purpose of chapter 2, part 5 of the Bill is to give effect to the Queensland Government's announcement as part of the CFER that the Queensland Productivity Commission (QPC) will be abolished and the employees and business of the QPC will be integrated into the Office of Productivity and Red Tape Reduction (OPRTR) within Treasury. This integration will allow Treasury to focus on better driving productivity in the post COVID-19 economic recovery.

More specifically, chapter 2, part 5 of the Bill will:

- (a) abolish the QPC and its board;
- (b) integrate the QPC's staff, assets and liabilities into Treasury;
- (c) transfer the QPC's functions in relation to the principle of competitive neutrality to the Queensland Competition Authority; and
- (d) repeal the *Queensland Productivity Commission Act 2015* (QPC Act) and the *Queensland Productivity Commission Regulation 2015*.

Chapter 2, part 6: Amendment of Financial Accountability Act 2009

As a separate cost reduction measure, chapter 2, part 6 of the Bill amends the FA Act to mandate that legal requirements for print advertising or publication by government agencies are to be satisfied by online advertising or publication. However, this requirement will be subject to appropriate exemptions, such as advertising or publishing in regional communities. Further, chapter 2, part 6 of the Bill includes a transitional regulation making power to facilitate other exemptions, where appropriate.

Chapter 3: Amendment of Medicines and Poisons Act 2019

The *Medicines and Poisons Act 2019* (Medicines and Poisons Act) was assented to on 26 September 2019. Three supporting regulations are currently being drafted for the Medicines and Poisons Act:

- *Medicines and Poisons (Medicines) Regulation*;
- *Medicines and Poisons (Poisons and Prohibited Substances) Regulation*; and
- *Medicines and Poisons (Pest Management Activities) Regulation*.

During drafting of the regulations, technical and minor amendments to the Medicines and Poisons Act were identified to enable the regulations to be drafted in a clearer and simpler way. The amendments are intended to make the regulations more user-friendly for stakeholders and Queensland Health and are contained in chapter 3 of the Bill. The amendments relocate provisions to the Medicines and Poisons Act instead of the regulations, clarify head of power issues and will improve the operation and readability of the regulations.

Human Rights Issues

Human rights relevant to the Bill (part 2, divisions 2 and 3 of the *Human Rights Act 2019*)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights that are potentially relevant to the Bill are:

- Recognition and equality before the law (section 15 of the HR Act);
- Taking part in public life (section 23 of the HR Act);
- Property rights (section 24 of the HR Act);
- Privacy and reputation (section 25 of the HR Act);
- Liberty and security of person (section 29 of the HR Act); and
- Health services (section 37 of the HR Act).

Recognition and equality before the law (section 15 of the *Human Rights Act 2019*)

The right to recognition as a person before the law refers to the right to universal recognition of a legal personality by virtue of being a human, rather than by reference to some particular characteristic or membership of a particular social group. It protects individuals from discrimination. Discrimination under the HR Act includes (but is not limited to) direct and indirect discrimination as defined in the *Anti-Discrimination Act 1991* (Anti-Discrimination Act).

Chapter 2, part 2: Repeal of Building Queensland Act 2015 and related amendments

The provisions in chapter 2, part 2 of the Bill that dissolve BQ and remove the members of the BQ Board from office, remove the chief executive officer from office and end the contract of employment and transfer BQ's existing employees to DSDILGP affect individuals by reference to their current work arrangements with BQ. As BQ will no longer exist, the roles of the BQ Board members and the chief executive officer will end and the employees will become employees of DSDILGP.

The provisions do not affect individuals by reference to any relevant ground of discrimination under the Anti-Discrimination Act and all employees will retain their existing rights and entitlements. By transferring all existing BQ employees to DSDILGP, a smooth transition and continuity of the provision of services can be achieved. While the BQ Board members and chief executive officer will be affected by the termination of their appointments, the provisions do not remove or affect their existing rights in relation to termination under the terms of their appointment.

The proposed amendments will ensure employees retain employment within the public service, enable the integration of the infrastructure and investment skills and capabilities of BQ and its employees into DSDILGP, and implement a change to the governance structure for the functions performed by BQ.

On the basis of the above, there is no relevant limit on the right to recognition and equality before the law of the affected individuals.

Chapter 2, part 3: Amendment of National Injury Insurance Scheme (Queensland) Act 2016

The proposed amendments to the NIISQ Act affect a restructure of the governance arrangements for the NIISQ Agency which are directed at driving greater efficiencies and providing stronger alignment of the governance of motor accident personal injury schemes. Although the NIISQ Board will be abolished, and the appointment of the current chief executive officer will be ended, there is no relevant ground of discrimination under the HR Act. Accordingly, there is no relevant limit on the human right to recognition and equality before the law of the affected individuals.

Chapter 2, part 5: Repeal of Queensland Productivity Commission Act 2015 and related amendments

The abolition of the QPC does not affect the QPC board members or employees by reference to any ground of discrimination under the HR Act. Chapter 2, part 5 of the Bill affects a change to the organisational and governance structure for the functions performed by the QPC. There is no relevant limit on the right to recognition and equality before the law of the affected individuals.

Chapter 2, part 6: Amendment of Financial Accountability Act 2009

Mandating online publication is reasonable as it aims to reflect contemporary practices and support cost reductions and business efficiencies for government. The potential impact on individuals is being managed through appropriate exemptions, and a transitional regulation making power which may provide for future exemptions, where appropriate.

There are no less restrictive reasonable ways to reduce the cost of publication requirements on government agencies. The impact of this measure is subject to appropriate exemptions and the ability to provide for further exemptions, where appropriate. On balance, the identified limits are outweighed by the benefits of the amendments to the FA Act.

Taking part in public life (section 23 of the *Human Rights Act 2019*)

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It includes protection for all persons to make contributions to the political process and public governance, which embraces both the opportunity to participate in the formulation and implementation of public policy. It is connected with the right to freedom of expression. The right further protects the opportunity of individuals to have access, on general terms of equality and without discrimination, to the public service and to public office.

Chapter 2, part 2: Repeal of Building Queensland Act 2015 and related amendments

As set out above, the provisions in chapter 2, part 2 of the Bill that dissolve BQ and remove the members of the BQ Board from office and remove the chief executive officer from office have the effect of ending the current roles of those individuals in the provision of expert advice to the State on matters relating to infrastructure. The appointment of the BQ Board members and the chief executive officer under the BQ Act needs to be terminated in order to give effect to the change in governance structure that will result in the incorporation of the functions and employees of BQ into DSDILGP, and to enable the integration of the infrastructure and investment skills and capabilities of BQ and its employees into DSDILGP.

The provisions do not remove or affect the existing rights of the BQ Board members and the chief executive officer in relation to termination under the terms of their appointment. There is no relevant inequity for individuals in relation to accessing the public service or public office.

Chapter 2, part 2 of the Bill imposes no limit on affected individuals' human right to participation in public life.

Chapter 2, part 3: Amendment of National Injury Insurance Scheme (Queensland) Act 2016

As set out above, the implementation of changes to the governance structure of the NIISQ Agency are not discriminatory in any way that imposes a relevant limit on the human rights of the affected individuals.

Chapter 2, part 5: Repeal of Queensland Productivity Commission Act 2015 and related amendments

As set out above, there are no relevant grounds of discrimination in relation to the repeal of the QPC Act. There is no relevant inequity for employees, appointees or the public in relation to accessing the public service or public office. Chapter 2, part 5 of the Bill imposes no limit on affected individuals' human right to participation in public life.

Chapter 2, part 6: Amendment of Financial Accountability Act 2009

It is foreseeable that limiting some individuals' access to online government publications and advertising might limit their ability to participate in policy formulation and implementation either directly, or through their elected representatives. Further, it may limit some individuals' ability to access government information and services.

However, the number of individuals that will be affected is limited by the high rate of internet penetration in Australian households, and the fact that online compliance with advertising and publication requirements is balanced by specific exemptions and the ability to provide for further exemptions as appropriate. The purpose of the proposed amendments is legitimate and there are no less restrictive ways to achieve the identified purpose. The identified limits are outweighed by the benefits of the amendments to the FA Act.

Property rights (section 24 of the *Human Rights Act 2019*)

This right protects the right of all people to own property. It provides that a person must not be arbitrarily deprived of the person's property. The concept of arbitrariness in this context carries the meaning of capriciousness, unpredictability, injustice and unreasonableness – in the sense of not proportionate to the legitimate aim sought.

Chapter 1: Queensland Future Fund (Titles Registry)

The right to property may be said to be limited by the provisions that empower the operator to determine, collect and keep titles registry fees (which are currently prescribed by regulation) and other amounts, as any increase in titles registry fees may have the effect of depriving a person of additional money. However, it is considered that the limitation is justified as chapter 1 of the Bill will simply shift the power to determine fees from the Governor in Council to the operator subject to a set framework that ensures fees may only increase by a cap aligned with changes in the CPI, consistent with current Queensland Government policy. The revised fee will ensure that the provision of these services is appropriately resourced. In addition, the base amount for titles registry fees will be set by chapter 1 of the Bill, which will apply commencing on the 2021-22 financial year, and the operator will decide the amounts for the titles registry fees (which is not to exceed CPI) for subsequent financial years. Titles registry fees will only be able to be amended by the Parliament.

On balance, the importance of ensuring the titles registry fees facilitate the provision of these government services in a fiscally responsible way, outweighs the limitation on the right to property.

Chapter 2, part 2: Repeal of Building Queensland Act 2015 and related amendments

There are provisions in chapter 2, part 2 of the Bill, that make the State a party to any contract, agreement, undertaking, other arrangement and instrument to which BQ was a party or that otherwise applied to BQ, make the State a party to any proceeding to which BQ was a party that had not ended, and provide the effect of legal relationships in relation to matters effected by chapter 2, part 2 of the Bill.

These provisions could potentially be considered to engage human rights by limiting property rights by altering legal arrangements. However, in my opinion, property rights are not actually limited by these clauses. There is no foreseeable effect on, or arbitrary deprivation of, the property rights of affected individuals.

Chapter 2, part 5: Repeal of Queensland Productivity Commission Act 2015 and related amendments

Chapter 2, part 5 of the Bill will provide for the transfer of QPC's business to Treasury. This will affect third parties dealing with QPC because chapter 2, part 5 of the Bill will substitute Treasury for QPC in relation to QPC's assets and liabilities. For example, Treasury will replace QPC as a party to various contracts. Third parties will be in the same position other than they will be dealing with Treasury. Accordingly, there is no foreseeable effect on or arbitrary deprivation of the property rights of affected individuals.

Privacy and reputation (section 25 of the *Human Rights Act 2019*)

The right to privacy and reputation protects individuals from unlawful or arbitrary interferences and attacks upon their privacy, family, home, correspondence and reputation. The scope of the right to privacy includes the protection of personal information and data collection.

Chapter 2, part 2: Repeal of Building Queensland Act 2015 and related amendments

Chapter 2, part 2 of the Bill transfers BQ's employees to DSDILGP and will involve the transfer of personal information about relevant individuals from BQ to DSDILGP. The transfer of information is necessary to give effect to the continuity of employment for employees and ensure the smooth transition of the functions of BQ into DSDILGP.

The information transferred to DSDILGP will continue to be managed in accordance with the IP Act. There is no unlawful or arbitrary interference with the personal information or privacy of affected individuals. Accordingly, the amendments do not relevantly limit the human right to privacy and reputation in the HR Act.

Chapter 2, part 5: Repeal of Queensland Productivity Commission Act 2015 and related amendments

Chapter 2, part 5 of the Bill effects a transfer of personal information about employees and possibly third parties from QPC to Treasury. However, the transfer of information is necessary to give effect to the transfer of rights and liabilities of third parties and continuity of employment for affected employees. The transferred information will continue to be managed by Treasury in accordance with the IP Act. There is no unlawful or arbitrary interference with the personal information or privacy of affected individuals. Accordingly, the amendments do not relevantly limit the human right to privacy and reputation in the HR Act.

Chapter 3: Amendment of Medicines and Poisons Act 2019

Section 25 of the HR Act protects a person's right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked. It protects privacy in the sense of personal information, data

collection and correspondence. In the human rights context, ‘arbitrary’ refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

Section 224 of the Medicines and Poisons Act requires the chief executive to keep an electronic database known as the ‘monitored medicines database’ to record information about the prescription and supply of monitored medicines. The monitored medicines database is a real-time prescription monitoring system, to assist in managing the use of dependence-forming medicines.

The monitored medicines database places limitations on an individual’s privacy by providing for the recording of personal information in the database about instances when an individual has been prescribed, dispensed or given a treatment dose of a monitored medicine. However, a real-time prescription monitoring system will aid clinical decision-making by allowing registered health practitioners access to real-time information about instances of use of monitored medicines before they prescribe, dispense or give a treatment dose of dependence-forming medicines for a patient. The monitored medicines database is intended to provide life-saving benefits to patients, assistance for registered health practitioners in clinical decision-making, minimise over-prescription and reduce doctor shopping.

Chapter 3 of the Bill amends the existing section 41 of the Medicines and Poisons Act which requires prescribers and dispensers to check the monitored medicines database before prescribing or dispensing a monitored medicine. New section 41 is substantially the same as existing section 41, but has been re-drafted for improved clarity. Chapter 3 of the Bill clarifies which practitioners are required to check the monitored medicines database, by requiring that they be specified in regulations. As the arrangements about which practitioners are authorised to prescribe, dispense or give treatment doses of monitored medicines may change over time, it is appropriate for the regulations to specify the practitioners required to check the database to keep this in line with any changes to the arrangements for prescribing, dispensing or giving treatment doses.

The amendment to section 226 of the Medicines and Poisons Act will require information providers to give the chief executive ‘relevant information’ for the monitored medicines database at the time and in the way prescribed by regulation. The ‘relevant information’ to be given to the chief executive will be prescribed in regulations for each information provider, rather than the more general description of information currently in section 225 of the Medicines and Poisons Act. The regulations will specify the detail of the information that each type of information provider must include in the monitored medicines database. This will provide more certainty to each information provider required to use the monitored medicines database about their obligations and the exact type of information they must provide. Providing clarity about the type of information required to be recorded by each person using the monitored medicines database will help to provide greater consistency, which will ensure it is a practical information source for practitioners to access for clinical decision-making.

Registered health practitioners are bound by their professional obligations for maintaining confidentiality of patient information, which will help to ensure privacy. Apart from the automated ‘upload’ of dispensing data by dispensers, the monitored medicines database will be read-only for registered health practitioners and they will not be able to record information in the database. Under section 227 of the Medicines and Poisons Act, the chief executive may also impose a condition on a user for accessing or using information from the database. Access to the database can also be removed.

Health practitioners will be required to accept the terms of access and use when registering to use the database. The terms will include limits and controls on how information from the

database can be accessed and used. There will be a verification and multi-factor authentication process to ensure that only authorised users can obtain access to the database. Education, training and support materials are being developed to set out the requirements for access and use of information and to assist practitioners to comply with their obligations. Routine monitoring and auditing of access and use of the database will be undertaken, to ensure only authorised users have access, and protocols for investigating reported breaches will be established. Inappropriate use is an offence under the *Criminal Code Act 1899*, such as the offence in section 408E (Computer hacking and misuse) which carries a maximum penalty of 2 years' imprisonment.

The amendments in chapter 3 of the Bill do not fundamentally change the way the monitored medicines database is intended to operate and are considered to have minimal impacts on the right to privacy and reputation.

There are no less restrictive or reasonably available ways to achieve the purposes of the amendments. In order to ensure complete information is recorded in the monitored medicines database, it is appropriate to prescribe the 'relevant practitioners' required to check the database by regulation and to specify the exact information to be recorded in the database for each provider to provide clarity and certainty for users.

The development of a real-time prescription monitoring system has extensive support from governments and stakeholders across the health system. In April 2018, the Council of Australian Governments (COAG) Health Council supported the implementation of a national real-time reporting solution. The *National Drug Strategy 2017-2026* released by the Commonwealth Department of Health noted that implementation of real-time monitoring of prescription medicines such as pharmaceutical opioids could assist in reducing the supply of illicit and illicitly used drugs. The Queensland Office of the Health Ombudsman's 2016 report, *Undoing the knots constraining medicine regulation in Queensland* was also strongly supportive.

During the Parliamentary Committee consideration of the *Medicines and Poisons Bill 2019*, stakeholders including the Australian Medical Association Queensland, The Pharmacy Guild of Australia (Queensland Branch), Pharmaceutical Society of Australia and Australian College of Nurse Practitioners supported the development of a real-time prescription monitoring system.

The monitored medicines database is expected to provide life-saving benefits to patients, assistance for registered health practitioners in clinical decision-making, minimise over-prescription and reduce doctor shopping.

Chapter 3 of the Bill clarifies provisions of the Medicines and Poisons Act that deal with the monitored medicines database and these amendments do not have significant impacts on the right to privacy and reputation. As the implementation of the monitored medicines database will provide significant benefits to public health and safety, the benefits are considered to outweigh any potential impacts on individual privacy from the amendments in chapter 3 of the Bill.

Liberty and security of person (section 29 of the *Human Rights Act 2019*)

Section 29 of the HR Act provides that every person has the right to liberty and security, including the right not to be arrested or detained except in accordance with the law. The

creation of new offences or the amendment of existing offences potentially limits this human right, as a person who fails to pay a fine may potentially be subject to imprisonment.

Chapter 3: Amendment of Medicines and Poisons Act 2019

Chapter 3 of the Bill omits and replaces section 42 of the Medicines and Poisons Act and makes it an offence to dispose of waste from a diversion-risk medicine unless the waste is disposed in the authorised way or the person has a reasonable excuse. Section 42 currently only applies to disposal of waste from an S8 medicine, but chapter 3 of the Bill extends this section to apply to all diversion-risk medicines. Diversion-risk medicines will be prescribed by regulation and will include medicines with a higher risk of being diverted for illicit use and will include all S8 medicines, and some S4 medicines (for example, anabolic steroidal agents, growth hormones, codeine and barbiturates).

The unsafe disposal of waste may pose a risk to public health and safety if, for example, the waste contaminates the environment or, in the case of substances that are valuable on the illicit drug market, the waste comes into the possession of an unauthorised person. Improper disposal may allow a person to collect residual amounts from used containers and use it for unauthorised dealings. The concerns about improper disposal apply to diversion-risk medicines in the same way as for S8 medicines. Ensuring that waste from diversion-risk medicines is disposed of correctly helps to prevent it becoming available for sale illegally and being used inappropriately.

The offence is intended to apply primarily to health-care settings, such as hospitals, clinics, pharmacies, residential aged care facilities and other places where significant amounts of diversion-risk medicines may be stored or handled. It is particularly important for these facilities to dispose of waste in the authorised way, given the more significant amounts of waste involved and previous instances where diversion risk waste at such places has been targeted by criminals as a source of illicit drugs.

The revised offence in section 42 of the Medicines and Poisons Act is similar to the existing section 42 offence, except it applies to a broader range of diversion-risk medicines, instead of just S8 medicines. The offence is intended to ensure waste from these medicines is disposed of safely and in a way that causes the least impact on the environment. It also helps to ensure that the opportunistic access to diversion-risk medicines is minimised, as they can be valuable for criminals on the illicit drug market. These limitations support a main purpose of the Medicines and Poisons Act which is to ensure health risks arising from the use of substances are appropriately managed.

There are no less restrictive or reasonably available ways to achieve the purposes of the amendments. The new section 42(2) has been drafted to take into account that there are circumstances in which the offence would not apply and to provide recognition of instances when waste can be disposed of through alternative means. Under new section 42(2), the offence does not apply to a person who:

- discards waste by placing it under the control of a person authorised to dispose of waste under the Medicines and Poisons Act, such as returning the waste to a pharmacist for disposal in a ‘return unwanted medicines’ bin; or
- discards or destroys waste under another law, such as the holder of an environmental authority under the *Environmental Protection Act 1994* (EP Act) destroying waste in accordance with the authority.

New section 42(2) provides two potential methods by which individual consumers can dispose of waste from diversion-risk medicines. The ‘Return Unwanted Medicines’ or ‘RUM scheme’ is funded by the Australian Government to ensure unwanted or expired medicines can be disposed of safely. Under the RUM scheme, unwanted or expired medicines can be returned to any community pharmacy, free of charge. In 2015-16, pharmacists collected over 700,000 kilograms of unwanted medicines through the RUM scheme, with returned medicines disposed of by high-temperature incineration. Given the wide distribution of pharmacies in the community, consumers have easy access to dispose of medicines in a safe, free and environmentally acceptable way.

Consumers may also dispose of waste from diversion-risk medicines under another law. For example, the EP Act permits waste to be disposed of if it does not create an environmental hazard. This means provided a person living in a particular local government area is disposing of waste in accordance with waste requirements applying in their area, they would not be within the ambit of the offence.

The amendments to the offence for ensuring waste from diversion-risk medicines is not disposed of inappropriately helps to limit opportunistic access to medicines that may be valuable on the illicit drug market and minimises misuse of medicines. The availability of the RUM scheme for consumers helps to ensure unwanted or expired medicines are not stored at home where they can be the source of poisoning or confusion for other family members, particularly elderly or vulnerable persons, who may inadvertently use expired or unwanted medicines. The use of the RUM scheme (where disposal bins are inaccessible to the public) and other controlled disposal of diversion-risk medicines also reduces access for illicit use, and as a consequence, abuse, misuse and the societal impacts of criminal activity.

The amendments in chapter 3 of the Bill to the offence for inappropriate disposal of waste from diversion-risk medicines in section 42 of the Medicines and Poisons Act are considered a proportionate response to minimise opportunistic access to substances that are valuable on the illicit drug market and to minimise environmental impacts. Chapter 3 of the Bill also recognises that consumers have convenient and widely available methods for legally disposing of unwanted or unused medicines.

On balance, the identified limits are outweighed by the benefits of the amendments to the Medicines and Poisons Act.

Health services (section 37 of the *Human Rights Act 2019*)

Section 37 of the HR Act provides that every person has the right to access health services without discrimination and a person must not be refused emergency medical treatment that is immediately necessary to save the person’s life or to prevent serious impairment to the person.

Chapter 3: Amendment of Medicines and Poisons Act

The Medicines and Poisons Act introduced a new regulatory framework to modernise and streamline the regulation of medicines and poisons, which is intended to ensure requirements are easier for industry and the community to understand and apply in practice. The amendments in chapter 3 of the Bill promote the right to health services by enabling the supporting regulations to be drafted more clearly and simply and providing more certainty for practitioners and health consumers about the use of medicines in health care. The amendments in chapter 3 of the Bill do not limit, restrict or interfere with this human right.

Conclusion

In my opinion, the Bill is compatible with human rights under the HR Act because to the extent the Bill limits a human right, it only does so to the extent that is reasonable and justifiable in accordance with section 13 of the HR Act.

THE HONOURABLE CAMERON DICK MP

TREASURER

MINISTER FOR INVESTMENT

© The State of Queensland 2021