

# Hospital Foundations Bill 2018

## Explanatory Notes

### FOR

## Amendments to be moved during consideration in detail by The Honourable Steven Miles MP, Minister for Health and Minister for Ambulance Services

### Title of the Bill

Hospital Foundations Bill 2018

### Objectives of the amendments

The principal objectives of the amendments to the Hospital Foundations Bill 2018 to be moved during consideration in detail are to:

- amend the *Mental Health Act 2016* to:
  - clarify that the period of detention a person serves in an authorised mental health service under the Mental Health Act is counted as a period of imprisonment or detention and retrospectively apply the operation of this amendment to 5 March 2017
  - enable government agencies to share information about the pre-sentence custody of an inpatient in an authorised mental health service in certain circumstances
- amend the *Justice and Other Information Disclosure Act 2008* and the *Penalties and Sentences Act 1992* to:
  - include a representative from a Hospital and Health Service (HHS) as part of the review team that supports the re-established Queensland Drug and Alcohol Court
  - include a HHS as a treatment order agency to enable information sharing with other treatment order agencies in administering treatment orders by the Queensland Drug and Alcohol Court
  - enable the chief executive of a HHS to share information about treatment orders with other chief executives of treatment order agencies, and
- amend the *Hospital and Health Boards Act 2011* to enable the chief executive of a HHS to delegate his or her functions under any Act.

## Achievement of policy objectives

### Amendments to the *Mental Health Act 2016*

The Mental Health Act commenced on 5 March 2017 and repealed the *Mental Health Act 2000* (the repealed Act). The Mental Health Act provides a regulatory framework for the management of people who do not have the capacity to make decisions about their own treatment and care, balancing treatment needs with the protection of the community.

The Mental Health Act continues the arrangements under the repealed Act where a person in custody, such as a watch-house or prison, may be transferred to an authorised mental health service if they become acutely unwell and require assessment or treatment in an authorised mental health service. These arrangements are given effect by way of a classified patient admission.

Section 543 of the repealed Act specified that detention in an authorised mental health service for classified patients, forensic patients and patients detained under specified court orders was to be counted toward any period of imprisonment under the Penalties and Sentences Act, the *Corrective Services Act 2006* or the *Youth Justice Act 1992*. There was no policy intention to discontinue counting periods of detention in an authorised mental health service. However, section 543 of the repealed Act was not retained in the Mental Health Act. The amendments include new section 797A in the Mental Health Act, which is similar to section 543 of the repealed Act.

New section 797A provides for new types and categories of orders that were not included in the repealed Act. For example, treatment support orders may be made by the Mental Health Court or the Mental Health Review Tribunal for a person charged with a serious offence. Treatment support orders provide for the involuntary treatment and care of a person and can only be made if the Court or Tribunal determines it is necessary to protect the safety of the community in circumstances where a forensic order is not warranted. A treatment support order is a less intensive form of order that is used, for example, where a person's role in an offence is relatively minor.

The Mental Health Act also introduced a new community category for forensic orders and treatment support orders. A community category can be made for a forensic order only if the Court is satisfied that there is not an unacceptable risk to the safety of the community because of the person's mental condition. A community category order can be made for a treatment support order, unless there is a need to detain the person as an inpatient to enable the provision of treatment and care and to ensure the safety of the person and the community. A person subject to a forensic order (community) and treatment support order (community) may receive treatment and care while living in the community. This time spent in the community will be treated as similar to time on bail, that is, it is not counted as a period of imprisonment or detention.

The amendments clarify that the time a person spends on the new community category orders under the Mental Health Act is not counted as a period of imprisonment or detention. New section 797A(1)(b) provides that it only applies to a period on particular types of orders if the category of the order is inpatient.

To ensure the appropriate government agency has the necessary information to calculate the period of detention as an inpatient for persons captured by section 797A(1)(b), new sections 479A and 497B provide a process for information sharing.

### **Amendment to support the Queensland Drug and Alcohol Court**

The re-established Queensland Drug and Alcohol Court commenced operations on 29 January 2018. The Court can make a drug and alcohol treatment order as a sentencing order under the Penalties and Sentences Act. The order is designed to punish the offender and also facilitate their rehabilitation by addressing their severe substance use disorder.

A treatment order consists of a term of imprisonment of up to four years wholly suspended while the offender completes a two year treatment program. This program requires compliance with core conditions and completion of the treatment program.

The Court is supported by a multidisciplinary review team that includes representatives from a range of areas, including Queensland Corrective Services, Department of Justice and Attorney-General, Legal Aid Queensland and the Queensland Police Service. Under the Justice and Other Information Disclosure Act, chief executives of treatment order agencies can make treatment order information available to chief executives of other treatment order agencies, to support the Court's operation. Information sharing is critical to the Court's operation as it enables the team to track the person's progress on the treatment program.

A health team to support the Court based in Brisbane is employed through Metro South HHS. The definition of *review team* under the Penalties and Sentences Act includes the Department of Health but does not include a representative from a HHS. The definition of *treatment order agency* in the Justice and Other Information Disclosure Act includes the Department of Health but not a HHS.

The amendments:

- provide that the review team must include a representative from a HHS
- enable the Queensland Drug and Alcohol Court to consult with, and be assisted by, the Department of Health rather than the Department being part of the review team
- enable HHSs to share information with other treatment order agencies, and
- ensure chief executives of HHSs can delegate their functions to share information to appropriately qualified health service employees.

### **Alternative ways of achieving policy objectives**

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

### **Estimated cost for government implementation**

There are no costs for government in implementing the amendments.

## Consistency with fundamental legislative principles

### *Amendments to the Mental Health Act*

Clause 164 inserts new section 864 into the Mental Health Act. Section 864 is a transitional provision that applies section 797A retrospectively to the commencement of the Mental Health Act.

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation should not adversely affect rights and liberties of individuals, or impose obligations, retrospectively. Section 864 potentially breaches this fundamental legislative principle. However, this potential breach is justified as section 864 is beneficial and does not adversely affect the rights and liberties of a person.

Since the commencement of the Mental Health Act, Queensland Corrective Services has continued to count time spent in an authorised mental health service as a period of imprisonment or detention. Section 864 clarifies that counting of this time as a period of imprisonment or detention is taken to be, and to have always been, time served as part of a sentence or in pre-sentence custody.

### *Amendments to support the Drug and Alcohol Court*

Clause 157 amends section 34(1) of the Hospital and Health Boards Act to provide that the chief executive of a HHS can delegate his or her functions under another Act. This will enable the chief executive of a HHS to delegate their function as a treatment order agency under the Justice and Other Information Disclosure Act.

This potentially breaches the fundamental legislative principle in section 4(3)(c) of the *Legislative Standards Act 1992*, which provides that legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons. This potential breach is justified as section 34(1) of the Hospital and Health Board Act only allows the health service chief executive to delegate functions to an appropriately qualified (a) employee of the HHS; or (b) health service employee employed in the Department and working for the HHS. Section 34(3) of the Hospital and Health Boards Act provides that *appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

There is a general power of delegation for chief executives of departments in section 103 of the *Public Service Act 2008*. This enables chief executives of other treatment order agencies to delegate their functions to an appropriately qualified person. However, a chief executive of a HHS is not a chief executive within the meaning of the Public Service Act and the delegation power in section 103 of the Public Service Act is not available to them.

The power of delegation in the Public Service Act is not limited to chief executives of departments but extends to heads of certain public service offices listed in the *Public Service Regulation 2008*. This does not include chief executives of HHSs.

HHS chief executives oversee large statutory bodies. It is appropriate to enable HHS chief executives to delegate their functions under any legislation, consistent with the approach taken to other heads of entities, such as department chief executives.

## **Consultation**

Due to the urgency and nature of the amendments, no public consultation has been undertaken. The amendments clarify the intended operation of the legislation. The information sharing arrangements are internal to government.

## **Consistency with legislation of other jurisdictions**

The amendments are specific to the State of Queensland.

## Notes on provisions

### **Amendment 1      Clause 2 (Commencement)**

*Amendment 1* amends clause 2 of the Bill to provide for the commencement of new divisions 5 to 8 in the Bill on assent. Divisions 5 to 8 amend the *Hospital and Health Boards Act 2011*, the *Justice and Other Information Disclosure Act 2008*, the *Mental Health Act 2016*, and the *Penalties and Sentences Act 1992*.

### **Amendment 2      After clause 155**

*Clause 156* provides that division 5 amends the Hospital and Health Boards Act.

*Clause 157* amends section 34(1) of the Hospital and Health Boards Act to provide that the chief executive of a Hospital and Health Service (HHS) can delegate their functions under another Act. This will enable the chief executive of a HHS to delegate their function as a treatment order agency under the Justice and Other Information Disclosure Act.

*Clause 158* provides that division 6 amends the Justice and Other Information Disclosure Act.

*Clause 159* amends the definition of *chief executive*, of a treatment order agency to include a health service chief executive under the Hospital and Health Boards Act. Clause 159 also amends the definition of *treatment order agency* to include a HHS established under the Hospital and Health Boards Act.

These amendments will enable the chief executive of a HHS to share information about a person on a drug and alcohol treatment order with another treatment order agency.

*Clause 160* provides that new division 7 amends the Mental Health Act.

*Clause 161* inserts new sections 497A and 497B into the Mental Health Act.

Sections 497A and 497B are information sharing provisions that only apply to a person on a forensic order or treatment support order, that is, a person charged with a serious offence who has been found temporarily unfit for trial by the Mental Health Court. If the Mental Health Review Tribunal decides the person is now fit for trial, the forensic order or treatment support order ends when a matter is brought back to court for mention under section 497(2).

New section 497A requires the prosecuting authority to give notice to the chief psychiatrist that the order has ended, within seven days of the order ending.

New sections 497B(1) and (2) require the chief psychiatrist to give the chief executive (justice) notice of the period the person was an inpatient. The chief psychiatrist must provide the notice within seven days of receiving the notice of the order ending under section 497A.

New sections 497B(3) provide that within seven days of receiving the notice, the chief executive (justice) must give the information about the period the person was an inpatient to the director of the public prosecutions. The director of public prosecutions is responsible for

giving the court a pre-sentence custody certificate under the Penalties and Sentences Act.

To ensure the appropriate agency has information to calculate the period of imprisonment or detention, the chief executive (justice) must also pass the inpatient information to the chief executive (corrective services) if the person has been in corrective services custody for the offence. If the person is a child, the chief executive (justice) must pass the inpatient information to the chief executive (youth justice).

Section 497B(4) sets out the definitions for section 497.

*Clause 162* inserts new section 797A.

New section 797A is similar to section 543 of the repealed Act. It provides that the period certain persons are detained in an authorised mental health service is taken to be a period of imprisonment or detention.

Section 797A(1) provides that this section applies to a period a person is a classified patient for an offence; subject to a forensic or treatment support order for an offence, if the category of order is inpatient; or subject to specified judicial orders, including a court examination order that they be detained in an authorised mental health service.

Section 797A(2) provides for how the period is to be taken into account under the Penalties and Sentences Act, the Corrective Service Act and the Youth Justice Act.

Section 797A(3) provides that the period a person is granted bail for the offence is not counted as imprisonment or detention under subsection (2).

*Clause 163* amends the heading for chapter 20 to Transitional provisions for Act No.5 of 2016.

*Clause 164* inserts new chapter 21 (Transitional provisions for Hospital Foundations Act 2018). New section 864 provides that section 797A applies since the Mental Health Act commenced on 5 March 2017.

*Clause 165* provides division 8 amends the Penalties and Sentences Act.

*Clause 166* amends the definition of *review team* in section 151B of the Penalties and Sentences Act to provide that a representative of one HHS must be part of the review team.

Clause 166 also amends the definition of *treatment order agency* to provide that a HHS replaces the Department of Health as a treatment order agency. The Department of Health will not be part of the review team or a treatment order agency. Instead, clause 167 amends section 151T to provide for consultation with the Department of Health.

*Clause 167* amends section 151T to enable the Court and the review team to consult with and be assisted by the chief executive of the Department of Health.

**Amendment 3      Long title**

*Amendment 3* amends the long title of the Bill to provide that amendments to the Hospital and Health Boards Act, the Justice and other Information Disclosure Act, the Mental Health Act, and the Penalties and Sentences Act are included in the Bill.

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