

Health Transparency Bill 2019

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

Health Transparency Bill 2019

Objectives of the Amendments

Amendments to Health portfolio legislation

Under section 20(3) of the *Hospital and Health Boards Act 2011* (HHB Act), all Hospital and Health Services (HHSs) may employ health executives and senior health service employees. A HHS that is prescribed as having employment powers under section 20(4) of the HHB Act (Prescribed Employer HHS) may also employ other health service employees (non-executive health service employees). In practice, if a HHS is not a Prescribed Employer HHS, its employees are employed by the Director-General in the Department of Health and seconded to the HHS.

In 2014, the *Hospital and Health Boards Regulation 2012* (HHB Regulation) was amended to prescribe eight HHSs as Prescribed Employer HHSs. The eight HHSs prescribed under the HHB Regulation are Children's Health Queensland, Gold Coast, Metro North, Metro South, North West, Sunshine Coast, Townsville and West Moreton.

The amendments are required to put beyond doubt that a regulation may be made under the HHB Act to remove a HHS's employment powers under section 20(4) of the Act.

Amendments to Corrective Services, Police and Youth Justice portfolio legislation

The amendments will assist with the practical management of children who are prisoners of the court. The changes will ensure the proper officer of the court can request assistance as appropriate.

The changes will address anomalies in legislation to ensure that officers from Queensland Corrective Services (QCS) and the Department of Youth Justice (DYJ) have powers in relation to how children are managed in the court precinct. The powers will be those that currently apply in youth detention centres, and that are relevant for the court cells context: powers in relation to management of behaviour, restraints, and searches.

QCS, Queensland Police Service (QPS), DYJ officers, and QPS civilian ‘watch house officers’ will have statutory powers to use when necessary to manage children who are prisoners of the court. This involves when young people are in the court cells, or being escorted while in the court precincts. The police officers and watch house officers have powers under the *Police Powers and Responsibilities Act 2000*.

The changes will also give the police commissioner the flexibility to provide watch house officers, as well as police officers, to assist the proper officer to manage adult prisoners; and to use watch house officers for other prisoner management functions.

Achievement of the Objectives

Amendments to Health portfolio legislation

The amendments put beyond doubt that a regulation may be made to amend the HHB Regulation to remove a HHS’s employment powers under section 20(4) of the Act.

The amendment to section 20 of the HHB Act clarifies that a regulation made under section 20(4) to prescribe a HHS as having employment powers may be amended or repealed to revoke a HHS from being prescribed under section 20(4).

Part 5, division 4 of the HHB Act makes provision for the transfer of health service employees from the Department of Health to a Prescribed Employer HHS. New section 80D provides that, to remove any doubt, it is declared part 5, division 4 of the HHB Act does not prevent the revocation of a HHS from being prescribed under section 20(4).

The amendments to section 282 of the HHB Act clarify that a regulation may be made about transitional arrangements as a result of removing a HHS’s employment powers under section 20(4). A regulation may deal with issues such as: the transfer of non-executive health service employees from a HHS to the Department of Health; the continuation of accrued rights, benefits and entitlements of non-executive health service employees; and proceedings related to the employment of non-executive health service employees.

Section 10(2) of the HHB Act provides that health service employees employed by HHSs or the Department of Health are employed on the same terms and conditions. As a result, if a regulation removes a HHS’s employment powers, it would have no impact on the terms and conditions of employment of non-executive health service employees.

Amendments to Corrective Services, Police and Youth Justice portfolio legislation

The amendments will ensure that:

- the *Youth Justice Act 1992* will set out the role of the proper officer of the court in relation to children, and provide powers for DYJ and QCS officers to manage children in custody

- in court cells;
- under the *Corrective Services Act 2006*, the Commissioner of Police will have the discretion to provide either police officers or authorised watch house officers if QPS is called upon to provide assistance in the management of adults in court cells; and
- the *Police Powers and Responsibilities Act 2000* will provide authority for watch-house officers to transport persons in custody between watch-houses, correctional facilities and courthouses.

Alternative Ways of Achieving Policy Objectives

There are no alternative ways to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no additional costs to Government associated with the amendments.

Consistency with Fundamental Legislative Principles

Amendments to Health portfolio legislation

The amendments to the HHB Act potentially breach the fundamental legislative principle that a Bill has sufficient regard to the institution of Parliament if it authorises the amendment of an Act only by another Act.

Section 20(4) of the HHB Act provides that HHSs prescribed by regulation may employ non-executive health service employees. This means regulations already specify which HHSs have these powers. The amendments to insert new sections 20(6) and 80D of the HHB Act put beyond doubt that a regulation may be made to remove a HHS's employment powers under section 20(4). The amendments are clarifying in nature as demonstrated by use of the phrase 'to remove any doubt' in both new sections. It is considered appropriate for any change to which HHSs have employment powers to be dealt with by regulations.

The amendments to section 282 clarify that a regulation may be made about transitional arrangements as a result of removing a HHS's employment powers. It is not uncommon for transitional arrangements to be made by regulations. The details of any transitional arrangements will be specified in regulations, which will be tabled in Parliament and subject to Parliamentary scrutiny and disallowance.

The transitional arrangements would relate to technical matters about the transfer of non-executive health service employees from Prescribed Employer HHSs to the Department of Health, such as continuing employees' accrued rights, benefits and entitlements.

As stated above, section 10(2) of the HHB Act provides that health service employees employed by HHSs or the Department of Health are employed on the same terms and conditions. As a result, a regulation that removes a HHS's employment powers would not impact on the terms and conditions of employment of non-executive health service employees. Specifying the transitional arrangements in regulation will provide further legal certainty for employees that their

entitlements would be continued and not be affected. In the circumstances, it is considered appropriate for these transitional matters to be dealt with by regulations.

Amendments to Corrective Services, Police and Youth Justice portfolio legislation

Section 4(2) of the *Legislative Standards Act 1992* (LSA) requires that legislation has sufficient regard to the rights and liberties of individuals. In particular, section 4(3)(g) of the LSA provides that “the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.”

The constraints of the court cells environment, the need to protect the safety and security of the cells and the persons in them, together with the need to protect the wider community, justifies the need for the amendments. It is widely recognised that a custodial environment is one where the operation of many rights and liberties enjoyed in the general community cannot be reasonably expected to be enjoyed by detained persons.

The amendments include provision for powers to be exercised in relation to children who are prisoners of the court: in particular, powers in relation to use of force to manage behaviour; searches; and restraints. These powers, and accompanying safeguards, are drawn from powers and safeguards already in place for the detention centre environment.

Consultation

Consultation external to Government has not been undertaken as the proposed amendments are technical and clarifying in nature.

Consistency with legislation of other jurisdictions

The legislation is specific to Queensland.

NOTES ON PROVISIONS

Amendment 1

Amendment 1 makes a drafting amendment to update the heading for part 6 of the Bill.

Amendment 2

Amendment 2 inserts clause 68A in the Bill to amend section 20 of the *Hospital and Health Boards Act 2011* (HHB Act). Amendment 1 also inserts a new clause 68B in the Bill which inserts a new section 80D in the HHB Act.

Clause 68A inserts a new section 20(6) in the HHB Act to clarify that a regulation made under section 20(4) of the HHB Act may be amended or repealed to revoke a Hospital and Health Service (HHS) from being prescribed under section 20(4).

Clause 68B inserts a new section 80D in the HHB Act. New section 80D provides that, to remove any doubt, it is declared part 5, division 4 of the HHB Act does not prevent the revocation of a HHS from being prescribed under section 20(4). Part 5, division 4 makes provision for the transfer of health service employees from the Department of Health to a HHS that is prescribed as having employment powers under section 20(4) (Prescribed Employer HHS).

Amendment 3

Amendment 3 inserts a new clause 69A in the Bill. The new clause 69A amends section 282 of the HHB Act, which is the regulation-making power of the Act.

Clause 69A(1) inserts new section 282(6A) to clarify the regulation-making power includes a power to make a regulation about a matter if it is necessary or convenient to make provision for the matter to allow or facilitate the transition of a HHS from being a Prescribed Employer HHS to a HHS that is no longer prescribed under section 20(4). The regulation may make provision for a matter if the HHB Act, *Industrial Relations Act 2016* or *Public Service Act 2008* do not make provision, or sufficient provision, for a matter.

This amendment will clarify that a regulation may be made about transitional arrangements as a result of removing a HHS's employment powers. A regulation may deal with issues such as: the transfer of health service employees (other than health executives and senior health service employees) from a HHS to the Department of Health; the continuation of accrued rights, benefits and entitlements of these employees; and proceedings related to the employment of non-executive health service employees.

Clause 69A(1) also inserts a new section 282(6B) to clarify that the regulation-making power under new section 282(6A) (to be renumbered as section 282(7)) includes power to make transitional arrangements by stating the way in which a provision of the HHB Act, *Industrial Relations Act* or *Public Service Act* applies for the purposes of new section 282(7)(a).

Clause 69A(2) renumbers sections 282(6A) to 282(7) as sections 282(7) to (9).

Amendment 4

Amendment 4 inserts a new part 7 in the Bill, titled ‘Other amendments of legislation’.

Amendments to the Corrective Services Act 2006

Clause 76 states that division 1 amends the *Corrective Services Act 2006*.

Clause 77 amends section 308 of the *Corrective Services Act*.

Subclause (1) amends s308(2)(a) and (b) to allow for the Queensland Corrective Services (QCS) chief executive to provide QCS officers, or the Queensland Police Service (QPS) Commissioner to provide police officers or watch-house officers when the proper officer of the court requests them. This is to ensure that the QPS Commissioner has greater flexibility to send either police officers or watch-house officers when the proper office requests assistance.

Subclause (2) inserts new sections 308(6) to (8). These new provisions address the nature of powers, use of force, and types of help a watch-house officer can exercise when helping the proper officer of the court.

Amendments to the Police Powers and Responsibilities Act 2000

Clause 78 states that division 2 amends the *Police Powers and Responsibilities Act 2000*.

Clause 79 omits section 640(2) from the *Police Powers and Responsibilities Act*. This change is supported by clause 82, which inserts a definition of ‘court cell’ in schedule 6.

Clause 80 amends the heading of section 653 by omitting the words ‘court cell or other place’ and inserting ‘holding place’. The clause also amends section 653 to provide that it is lawful for a watch-house officer who is authorised by a watch-house manager for the purpose to transfer a person in custody to use reasonably necessary force to:

- transfer a person in custody from a holding place to another holding place;
- ensure a person in custody at a court precinct appears before a court and is transferred to a holding place after their appearance, provided the person is not released;
- ensure a person in custody does not escape from lawful custody while the person is being transferred to a holding place or being held in a holding place under this section.

Clause 80 also inserts definitions of ‘court precinct’ and ‘holding place’ for section 653.

Clause 81 amends section 659(a) to omit ‘court cell’ and insert ‘holding place under section 653(1)’.

Clause 82 amends schedule 6 to insert a definition of ‘court cell’ as a place attached to or near a court that is used for detaining prisoners of the court and other persons.

Amendments to the Youth Justice Act 1992

Clause 83 states that division 3 amends the *Youth Justice Act 1992* (YJ Act).

Clause 84 inserts a note after section 56 referring to part 5A in relation to a child who remains a prisoner of a court.

Clause 85 inserts a new part 5A into the YJ Act. Part 5A relates to the management of children who are prisoners of a court and consists of new sections 59B to 59I.

New section 59B inserts definitions of ‘corrective services officer’, ‘watch-house officer’ and ‘youth justice staff member’ for new part 5A.

New section 59C describes the circumstances in which a child may be considered in the custody of the proper officer of a court.

New section 59D gives the proper officer of a court powers under the YJ Act equivalent to that of the Youth Justice Chief Executive, solely in relation to children who are prisoners of the court.

New section 59E allows the proper officer to ask the Youth Justice Chief Executive to provide Youth Justice staff, the Corrective Services Chief Executive to provide corrective services officers, or the Queensland Police Commissioner to provide police officers or watch-house officers in order to help the proper officer manage children who are prisoners of the court. The proper officer of a court may only ask for youth justice officers to be supplied in places prescribed by regulation (see division 4 for amendments to the *Youth Justice Regulation 2016*).

New section 59F provides for powers a youth justice staff member, corrective services officer or watch-house officer may exercise when helping the proper officer of a court manage children under powers set in the Youth Justice Regulation. Under this section, corrective services officers and watch-house officers may exercise powers as if they were a Youth Justice staff member. This allows for consistency of powers across agencies in relation to children who are prisoners of a court.

New section 59G allows for the proper officer to delegate functions and powers under this part. It is intended that the proper officer may delegate functions and powers to officers from the Department of Youth Justice, Queensland Corrective Services, and Queensland Police Service as appropriate from time to time to ensure clear and functional governance for court cells.

New section 59H describes the management of the court cell, and circumstances in which a child who is not a prisoner of the court may be detained in a court cell.

New section 59I provides a head of power for conditions or requirements to be included in a regulation.

Clause 86 amends schedule 4 of the YJ Act to insert definitions of ‘corrective services officer’, ‘court cell’, ‘prisoner of a court or prisoner of the court’, ‘watch-house officer’, and ‘youth justice staff member’.

Amendments to the Youth Justice Regulation 2016

Clause 87 states that division 4 amends the *Youth Justice Regulation 2016*.

Clause 88 inserts a new part 4A titled ‘Children who are prisoners of a court’.

New section 43A prescribes places where a youth justice staff member may help the proper officer of a court for section 59E(2) as the Brisbane Magistrates Court building and QEII Courts of Law.

New section 43B prescribes the following powers for detention centre employees for section 59F of the YJ Act:

- section 43B(a)(i) – to give an instruction or use reasonable force;
- section 43B(a)(ii) – to use approved restraints;
- section 43B(a)(iii) – to conduct a search; and
- section 43B(a)(iv) – to help a doctor to conduct a search.

Section 43B(b) provides these powers are to be exercised as provided under division 2.

Division 2 deals with how powers may be exercised by persons helping the proper officer of the court.

New section 43C prescribes how each relevant officer – youth justice staff member, corrective services officer, or watch house officer – may exercise powers under section 59F of the YJ Act.

New section 43D provides definitions for this division.

New section 43E provides a relevant officer can only exercise a power if relevant conditions and requirements are met and complied with.

New section 43F provides that only the proper officer can authorise the exercise of a power that, in a detention centre context, would require the chief executive's authorisation. This is consistent with the arrangement in section 308(4)(c) of the *Corrective Services Act 2006*, which provides that only the proper officer (not the corrective services chief executive) can authorise certain searches in the court cells. It is intended that the proper officer may delegate functions and powers to officers from the Department of Youth Justice, Queensland Corrective Services, and Queensland Police Service as appropriate from time to time to ensure clear and functional governance for court cells.

New section 43G ensures that safeguards in the YJ Act or Regulation will be applied in court precincts when powers are exercised.

New section 43H ensures that information and record keeping requirements in the YJ Act or Regulation will also apply.

New section 43I applies the same safeguards to property found during searches as apply in a detention centre.

Clause 89 inserts relevant definitions in the dictionary in schedule 2.

Amendment 5

Amendment 5 amends the long title of the Bill to include a reference to the *Corrective Services Act 2006*.

Amendment 6

Amendment 6 amends the long title of the Bill to include a reference to the *Police Powers and Responsibilities Act 2000*.

Amendment 7

Amendment 7 amends the long title of the Bill to include a reference to the *Public Health Act 2005*, the *Youth Justice Act 1992* and the *Youth Justice Regulation 2016*.