

Healthy Futures Commission Queensland Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Healthy Futures Commission Queensland Bill 2017 (the Bill).

Policy objectives and the reasons for them

The objective of the Bill is to establish the Healthy Futures Commission Queensland to:

- support the capacity of children and families to adopt a healthy lifestyle, and
- contribute to reducing health inequity for children and families.

As highlighted in the 2016 Chief Health Officer Report, *The health of Queenslanders* (the CHO Report), the health system continues to face a number of public health challenges including high overweight and obesity rates, a life expectancy gap for Indigenous Queenslanders, disparity in regional health outcomes and the adverse effect of socioeconomic factors.

Overweight and obesity are persistent challenges. The CHO Report indicates that one in four children and two in three adults in Queensland are overweight or obese. Overweight and obesity in children can lead to higher rates of asthma, bone and joint complaints, sleep disturbances and early onset of diabetes. In adulthood, overweight and obesity frequently results in chronic diseases such as Type 2 diabetes, heart disease and cancer. It is estimated that obesity cost \$8.6 billion nationally in 2015, equating to about \$1.72 billion in Queensland, of which health system costs comprised about 44 per cent.

Chronic health problems are often caused by lifestyle-related behaviours which in turn are influenced by a complex mix of societal, environmental, socioeconomic and biological factors that are embedded into everyday life. Most but not all Queenslanders have good health by national and international standards. Health inequity occurs when there are differences in health outcomes between different population groups that can arise from the social determinants of health, that is, the societal conditions in which people are born, grow, live, work and age.

Leading social determinants of health relevant to overweight and obesity, and other unhealthy behaviours include early years development, education, employment and working conditions, housing, and access to and use of health services. For example, education provides for the development of knowledge and skills for problem solving, and a sense of control and mastery over life circumstances. Education also increases an individual's work opportunities, security, satisfaction and income, which are all foundations of good health and wellbeing.

For Aboriginal and Torres Strait Islander populations, social determinants of health can include connection to family, community, country, language and culture, racism, early childhood development, education, employment and income, housing, environment and infrastructure, interaction with government systems and services, law and justice, health choices and food security.

A key challenge for Queensland is the significant health inequity that is related to a person's socioeconomic status, Indigenous status, and the remoteness of where they live. The CHO Report highlighted that as socioeconomic disadvantage increases so does the level of disease and injury burden, with 21 per cent of total disease and injury burden being associated with socioeconomic disadvantage. The disease and injury burden for Indigenous Queenslanders is 2.2 times the non-Indigenous burden. Remoteness is also a key factor in Queensland, with disease and injury rates 12 per cent higher in regional areas and 50 per cent higher in remotes areas compared with major cities.

There are also large differentials in the unhealthy behaviours that lead to diseases and premature death across the Queensland population. Obesity rates are:

- 76 per cent higher in socioeconomically disadvantaged areas of Queensland compared to advantaged areas
- 36 per cent higher in remote and very remotes areas of Queensland, compared to major cities, and
- 39 per cent higher among Indigenous Queenslanders than non-Indigenous Queenslanders.

Because childhood is critical in setting lifelong trajectories, it is important to maximise the opportunities for young people to live a healthy and prosperous life free of chronic diseases. Without early health promotion and prevention, infants and children will likely continue to become overweight or obese during childhood, adolescence and adulthood.

Preventing and reducing obesity requires more than a single intervention. Obesity prevention requires a multi-strategy approach and community partnerships, combined with action from the private sector, non-government organisations and academic institutions. In line with this approach, under *A Healthier Queensland Action Plan*, released during the 2015 State election, the Government made a commitment to:

- establish a statewide Queensland health promotion commission as an independent statutory body under legislation, and
- establish a Parliamentary Committee to review the evidence for effective strategies across government, industry and the community to promote health and wellbeing.

It was intended that the recommendations of the Parliamentary Committee review would guide the future direction of a Queensland health promotion commission.

In accordance with the second commitment above, on 16 September 2015, the Legislative Assembly referred an inquiry into the establishment of a Queensland health promotion commission to the then Health and Ambulance Services Committee for consideration.

The terms of reference for the inquiry were for the Health and Ambulance Services Committee to inquire and report to the Legislative Assembly on:

- the potential role, scope and strategic directions of a Queensland health promotion commission, and
- the effectiveness of collaborative, whole-of-government and systems approaches for improving and sustaining health and wellbeing, including models used in other jurisdictions (including specific agencies or whole-of-government policy frameworks) and population based strategies other than personal interventions delivered by telephone or ICT.

The Health, Communities, Disability Service and Domestic and Family Violence Prevention Committee (the Committee) subsequently assumed responsibility for the inquiry.

On 30 June 2016, the Committee tabled Report No. 21: *Inquiry into the establishment of a Queensland Health Promotion Commission* in the Legislative Assembly. The report contained one recommendation: that a Queensland health promotion commission be established. However, the Committee could not determine a model for the Commission.

In May 2016, the Government released *My health, Queensland's future: Advancing health 2026 (Advancing health 2026)*. This document outlines a strategy for how the Queensland health system can support Queenslanders to improve and maintain their health and wellbeing, serving to fulfil the Government's vision of making Queenslanders among the healthiest people in the world by 2026.

Under direction one of *Advancing health 2026*, promoting wellbeing, there is a focus on the need to improve the health of Queenslanders through concerted action to promote healthy behaviours, prevent illness and injury, and address the social determinants of health. Established headline measures of success include that by 2026 childhood obesity is reduced by 10 per cent and the level of adult physical activity for health benefit is increased by 20 per cent.

In line with direction one of *Advancing health 2026*, and to give effect to the Government's commitments outlined in *A Healthier Queensland Action Plan*, a Queensland health promotion commission known as the Healthy Futures Commission Queensland (the Commission) will be established. The Commission will be an independent statutory body focused on the health and wellbeing of children and families, providing a new opportunity to increase the number of healthy Queensland families.

The advantages of establishing the Commission under enabling legislation are that it will:

- act as an independent champion that is well placed to communicate with diverse sectors and foster the innovation thinking required to support individual, family and community changes needed to reduce health inequities
- help to strengthen linkages across sectors involved in preventive health, promote better alignment between federal, state and local jurisdictions and increase shared responsibility across the sectors, and
- facilitate the growing expectation for a new public health movement that focuses on building the capacity of people and families to be a key force for social change in matters of health and wellbeing.

Achievement of policy objectives

The Bill establishes the Commission as an independent statutory body to support the capacity of children and families to adopt a healthy lifestyle and to contribute to reducing health inequity for children and families.

It is intended that the Commission will foster the new thinking required to support individual, family and community changes needed to help reduce health inequity. The Commission will be a new way of working, by investing in innovative projects generated by local community partnerships to create environments that support the health and wellbeing of children and families. In particular, the Commission will:

- engage sectors outside the health system, identify key leverage points and facilitate new opportunities to improve health
- build capacity by developing individual skills, strengthening community action and enabling organisations to create healthy environments and empowered people, and
- reduce inequity through addressing the differences in health status in the community by recognising and responding to the needs of those groups whose health is poorest, and who are most likely to have limited opportunities to be healthy.

Functions

The Bill provides that the functions of the Commission will be to:

- support the capacity of children and families to adopt a healthy lifestyle, including by promoting healthy eating and regular physical activity
- contribute to reducing health inequity for children and families
- advocate for the necessary social conditions and environments to help children and families to adopt a healthy lifestyle and to reduce health inequity
- develop partnerships or other arrangements with entities such as businesses, industry, community organisations, academia and government bodies for the above functions
- provide grants to entities the Commission considers appropriate, such as businesses, industry, community organisations, academia and local governments, to undertake an activity related to any of the above functions, and
- consult with appropriate entities for any of the above functions.

When exercising these functions, the Commission must take into account:

- the social determinants of health and effects of the determinants on health inequity, and
- the views, needs and vulnerabilities of groups of persons experiencing health inequity, including:
 - Aboriginal and Torres Strait Islander communities
 - culturally and linguistically diverse communities
 - regional and remote communities, and
 - other communities affected by socioeconomic disadvantage.

The Commission's performance of these functions will contribute to the social change needed to provide a basis for children to achieve healthy weight in early childhood, thereby setting children up for healthier adolescence and adulthood.

Governance

The Commission will comprise a six-member board, a chief executive officer and up to 15 staff members.

Members of the board, including the chairperson and deputy chairperson, will be appointed by the Governor in Council for periods not exceeding four years and may be reappointed. Board members must be appropriately qualified to perform the functions of the board and may include persons with relevant qualifications or experience in business or financial management, law, leading and influencing partnerships to bring about change, and assessing the impact of social conditions and environments on health inequity including for sections of the community experiencing health inequity.

The board's primary functions will include:

- ensuring the proper, efficient and effective performance of the Commission's functions
- deciding the objectives, strategies and policies to be followed by the Commission
- ensuring the Commission complies with its strategic plan and operational plan under the *Financial Accountability Act 2009*, and
- reporting to the Minister about the performance of the Commission's functions.

The chief executive officer will be appointed by the board in consultation with the Minister for a term not exceeding four years and may be reappointed. The chief executive is responsible for the day-to-day administration of the commission and is subject to directions of the board.

The Commission will need to operate accountably, transparently and in partnership with a range of agencies and bodies. Accordingly, the Bill puts in place a range of governance measures including provisions relating to the appointment terms and conditions, responsibilities, powers and disqualification criteria for board members and the chief executive officer.

The Bill also includes provisions that ensure the smooth and effective operation of the Commission including the delegation of the powers of the Commission, the board and the chief executive officer, limitations on the protection of officials from liability for acts done or omissions made under the Act, and a requirement for an independent review of the Commission's performance of its functions.

To ensure the Commission will be held to a high standard of accountability in relation to control and expenditure of public funding and the public discharge of statutory functions, the Bill provides that:

- the Commission, through the board, is subject to directions of the Minister
- the Commission is a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*, and

- the Commission is a unit of public administration under the *Crime and Corruption Act 2001*.

The Bill requires that the Commission's annual report, which is prepared under the *Financial Accountability Act 2009*, must contain details of each direction given to the Commission by the Minister during the financial year to which the annual report relates and action taken by the Commission as a result of the direction.

The Bill also amends the *Public Service Act 2008* to provide that the Commission is a public service office and the chief executive officer is the head of the public service office. This will ensure that the Public Service Act and other legislation such as the *Public Sector Ethics Act 1994* will automatically apply to the Commission as if the Commission were a department.

Board committees

The Bill provides that the board may establish committees to help the board effectively and efficiently perform its functions by advising on matters referred by the board. A committee will comprise one board member, who will chair the committee, and other appropriately qualified individuals drawn from outside the Commission. The term of a committee and its terms of reference will be determined by the board.

Board committees may be time limited to provide advice on specific terms of reference, after which the Committee may then be dissolved. Board committees could also be established as ongoing working groups that include, for example, representatives from relevant government agencies.

Ministerial direction—special report

From time to time, it is envisaged the Minister may seek information from the Commission about the Commission's functions of supporting the capacity of children and families to adopt a healthy lifestyle and contributing to reducing health inequity for children and families. For this reason, the Bill provides that the Minister may give a direction to the Commission to prepare a report on a matter the Minister considers relevant to the Commission's functions. The Commission must comply with the Ministerial direction.

Healthy Futures Queensland Fund

To facilitate the grants and sponsorships role of the Commission, the Bill establishes a Healthy Futures Queensland Fund (the fund). The fund will comprise any amounts appropriated by Parliament for this legislation and any amount paid at the direction, or with the approval, of the Minister or the Treasurer.

In line with the Commission's remit to invest in innovative ideas and projects to create environments that support the health and wellbeing of children and families, the Bill specifies that the Commission must allocate at least 55 per cent of its total budget to the provision of grants for projects and sponsorships.

In addition, an annual project funding plan is required to be submitted to the Minister for approval each year, identifying the projects, grants, partnerships and other arrangements the Commission proposes to carry out for the year. Where specific grants or projects are not known, the annual project funding plan must include, to the extent reasonably practicable,

details of the nature of other relevant projects the Commission may carry out for the financial year.

Alternative ways of achieving policy objectives

The establishment of the Commission under an enabling Act is an election commitment. Legislation is required to establish the Commission as an independent statutory body with appropriate powers to appoint the board members and a chief executive officer. There are no alternative ways of achieving this policy.

Alternative delivery options for the role and functions of the Commission include non-statutory bodies, such as within a government department. However, this arrangement would not meet the election commitment and would also not deliver the same benefits as a statutory body, such as:

- enabling stronger accountability and transparency as a separate legal entity
- enabling a focus on long-term organisational goals
- providing control over its own funds
- an ability to develop projects in partnership with organisations from outside the government to provide for stronger governance
- enabling collective decision-making in the performance of its statutory functions, including potential participation from local governments and the Commonwealth and other state governments
- a level of separation from a single ministerial portfolio
- flexibility for resourcing, including attraction and retention of quality staff
- directly reporting to a responsible minister, and
- authority and leadership to engage a variety of stakeholders across government and the community with a common focus.

Estimated cost for government implementation

The Commission will be funded through a combination of base funding, reallocation of existing time-limited health promotion programs and projects, and election commitment funding.

Consistency with fundamental legislative principles

This Bill has been drafted with regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are addressed below.

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

A number of clauses may give rise to a breach of fundamental legislative principles with regards to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

Delegation of administrative powers

Section 4(3)(c) of the *Legislative Standards Act 1992* states that legislation should allow for the delegation of administrative power only in appropriate cases and to appropriate persons.

Clause 55 specifies the circumstances under which functions and powers may be delegated and subdelegated under the Act as follows:

- with the exception of deciding to give a grant, the Commission may delegate its functions under the Act to a board member or the chief executive officer
- the board may delegate its functions to a board member or the chief executive officer
- the chief executive officer may delegate any of their responsibilities to an appropriately qualified staff member of the Commission
- a board member may subdelegate a function delegated to them by the Commission or the board to the chief executive officer or an appropriately qualified staff member of the Commission, and
- the chief executive officer may subdelegate a function delegated to them by the Commission or the board to an appropriately qualified staff member of the Commission.

The Commission's board will comprise members who have been appointed by the Governor in Council on the recommendation of the Minister. The chief executive officer, appointed by the board, is accountable to the board and must comply with the written policies and directions of the board. Under clause 55, a function or power can only be delegated to an appropriately qualified member of the commission's staff. The functions and powers cannot be delegated outside of the Commission. Accordingly, it is considered that the delegation and subdelegation of administrative power in clause 55 is appropriate.

Criminal history

Clause 43 provides for the chief executive of the Department of Health to request a criminal history report from the Commissioner of the Police Service for the purposes of deciding if a person is disqualified from becoming a board member, may be removed as a board member, or is disqualified from becoming or continuing as chief executive officer.

The power to obtain criminal history information in relation to board members or the chief executive officer is considered necessary to ensure the suitability of individuals appointed to or employed by the Commission. Any potential breach of fundamental legislative principles is mitigated by the requirement that the request be made only with the person's consent.

The Bill also includes safeguards to protect the confidentiality of the information, including a prohibition on persons disclosing criminal history information except in specified

circumstances and a requirement that the criminal history information be destroyed as soon as possible after it is no longer needed (clause 45).

Penalty for offences

The Bill contains a number of new offences, which gives rise to consideration of whether the penalty is proportionate to the offence.

Clause 44 provides that it is an offence for a board member or the chief executive officer to fail to disclose changes in criminal history information, unless they have a reasonable excuse. This offence carries a penalty of 100 penalty units. Similar offences, also carrying a penalty of 100 penalty units, are included in, for example, the *Jobs Queensland Act 2015* and the *Grammar Schools Act 2016*. This penalty is considered necessary to encourage disclosure of changes in criminal history information, thereby helping to ensure the suitability of persons appointed to, or employed by, the Commission.

Clause 45 provides that it is an offence to disclose criminal history information to another person unless disclosure is permitted, also carrying a penalty of 100 penalty units. Similar offences with penalties of 100 penalty units are included in the *Jobs Queensland Act 2015* and the *Grammar Schools Act 2016*. Given the potential sensitivity of criminal history information, the penalty is considered justified.

Clause 47 provides that it is an offence for a person appointed to, or employed or engaged by, the Commission to disclose confidential information obtained in administering, or performing a function under, the Act. Similar offences are included across the Queensland statute book with varying penalties that align with the sensitivity and type of confidential information that may be disclosed. It is envisaged that the Commission may receive as part of its functions financial and personal information about persons or organisations applying for grants, and personal information obtained through consultation activities with individuals. Having regard to similar offences, and given the impacts on the privacy of individuals, or the potential for financial gain or loss that could be made from the kind of information the Commission may have access to, the penalty is considered appropriate.

Protection from liability

Section 4(3)(h) of the *Legislative Standards Act 1992* states that legislation should not confer immunity from proceeding or prosecution without adequate justification.

Clause 53 protects the Minister and a member of an advisory committee established by the board from personal liability for acts done, or omissions made, honestly and without negligence under the Act.

In this instance, protection from liability is only provided to persons performing statutory functions. The immunity is appropriately limited in scope, as it does not attach to acts done or omissions made that are reckless, unreasonable or excessive. Liability for the consequences of acts done, or omissions made, is not extinguished by the Bill but instead attaches to the State. Therefore, where persons consider themselves to have been injured by the actions or omissions of an officer of the Commission, legal redress remains open to them. On this basis, the protection from liability is considered justified.

Removal from office

Section 4(3)(a) of the *Legislative Standards Act 1992* states that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 21 provides that the Minister may recommend the removal of a board member from office if the member:

- is incapable of performing his or her functions
- has neglected his or her functions or performed them incompetently
- has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or Commission, or
- has been absent from three consecutive meetings of the board without the board's permission and without reasonable excuse.

It is considered the Minister's powers in relation to the recommendation to remove a board member are sufficiently clearly defined and subject to appropriate review as:

- the Minister must be satisfied that one of the grounds for removal exists before the statutory removal power is enlivened
- only the Governor in Council, not the Minister, may remove the member under clause 21, and
- the exercise of the suspension and removal powers is subject to review under the *Judicial Review Act 1991*.

Clause 36 provides that the office of chief executive officer becomes vacant if the chief executive officer completes a term of office and is not reappointed, resigns or becomes disqualified under clause 33 because the person:

- has a conviction, other than a spent conviction, for an indictable offence
- does not consent to the chief executive requesting a report about the person's criminal history under clause 43
- is an insolvent under administration
- is disqualified from managing corporations because of the Corporations Act, part 2D.6
- is a member of the board or a committee
- is a contractor of the commission, or
- contravenes clause 36, by not disclosing a conflict of interest.

These grounds for removal raise the issue of whether the Bill has sufficient regard for the rights of individuals through their consistency with natural justice principles. It is considered that, having regard to the chief executive officer's responsibilities, natural justice principles are not breached in this case. As the Bill explicitly provides that the chief executive officer's main functions include managing the Commission, the chief executive officer has primary responsibility for upholding the significant public trust invested in the body and should therefore be held to high standards of integrity and propriety.

Reverse onus of proof

Section 4(3)(a) of the *Legislative Standards Act 1992* provides that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

Clause 50 provides that a signature purporting to be the signature of a member of the board or the chief executive officer is evidence of the signature it purports to be. Clause 51 provides that a certificate stating particular matters that purports to be signed by the chairperson of the board is evidence of the stated matter. Clause 51 also provides that a statement in a complaint for an offence against the Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence the matter came to the complainant's knowledge on that day.

These provisions may be seen as breaching the principle that legislation should not reverse the onus of proof. However, they are considered appropriate to remove unnecessary administrative burden and ensure efficient record management. These provisions are consistent with similar evidentiary provisions in other legislation, such as sections 267 and 268 of the *Hospital and Health Boards Act 2011* and sections 67 and 68 of the *Cross River Rail Delivery Authority Act 2016*. The Office of the Queensland Parliamentary Counsel, through its publication, *Principles of good legislation: OQPC guide to FLPs*, advises that it is not uncommon for Queensland legislation to provide that a certificate signed by a person administering a law is evidence of a fact stated in the certificate.

Consultation

Community consultation was undertaken on the potential role, scope and strategic directions of a Queensland health promotion commission through the Committee's inquiry process conducted from September 2015 to June 2016. The Committee received 43 submissions from members of the public, universities, primary healthcare networks, medical and nursing professional colleges, community and not-for-profit organisations, Hospital and Health Services, and key medical and nursing professional associations, including the Australian Medical Association Queensland and the Queensland Nurses' Union.

The Committee's inquiry showed overall agreement for:

- the need for a government response to address the growing incidence of chronic illness and unfair burden of disease for some population groups
- the need for a multi-sector approach to identify and address key levers for system and policy change that lie outside the health sector, and
- the value of reducing fragmentation through work across government departments, coordination, collaborative research, and partnerships with many different sectors.

The submissions and the Committee's report were used to develop a model for the Commission. No further consultation was undertaken on the Bill.

Consistency with legislation of other jurisdictions

Victoria, South Australia and Western Australia are the only other jurisdictions to have established a statutory body to contribute to the function of health promotion. The models, budgets and functions differ between jurisdictions.

The Victorian Health Promotion Foundation (known as VicHealth) was established in 1987 under the *Tobacco Act 1987* (Vic). The primary focus of VicHealth is promoting good health and preventing chronic disease by creating and funding world-class interventions, conducting vital research to advance population health, producing and supporting public campaigns, and providing transformational expertise and insights to government. VicHealth works with all levels of government, communities, and a range of sectors across health, sports, research, education, the arts and media. VicHealth's work is overseen by a board and supported by an advisory framework consisting of expert panels, taskforces and assessment panels.

The Western Australian Health Promotion Foundation, known as Healthway, was originally established as an independent statutory body in 1991 under the *Tobacco Control Act 1990* (WA), but now operates under standalone legislation – the *Western Australian Health Promotion Foundation Act 2016*.

The statutory basis for Healthway is largely based on the VicHealth model, and the primary role of Healthway is to promote and facilitate good health and activities that encourage healthy lifestyles. Healthway funds sport, arts, community activities, health promotion projects and research in order to inspire West Australians, especially young people, to live healthier lives. Healthway also funds and works with organisations to create healthy activities and events and promote messages about good health at community events.

The South Australian Public Health Council was established in 2011 under the *South Australian Public Health Act 2011* (SA), as the successor body to the Public and Environmental Health Council established under the repealed *Public and Environmental Health Act 1987*.

The Council is tasked with the protection and promotion of public health, the development of public health plans, the promotion of public health research, and strategies to ensure a sufficiently trained and skilled workforce are in place. Although the Council is a statutory body, it is not independent from government and it does not administer funds. The Chief Public Health Officer, established under the *South Australian Public Health Act 2011* (SA), is the presiding member of the Council.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that, when enacted, the short title of the Bill will be the *Healthy Futures Commission Queensland Act 2017*.

Commencement

Clause 2 provides for the Bill to commence on a date fixed by proclamation.

Purpose

Clause 3 sets out the purpose of the Act, which is to establish the Healthy Futures Commission Queensland to support the capacity of children and families to adopt a healthy lifestyle, and contribute to reducing health inequity for children and families.

Act binds all persons

Clause 4 provides that the Bill, when enacted, will bind all persons including the State of Queensland. However, nothing in the Bill makes the State liable to be prosecuted for an offence.

Definitions

Clause 5 provides that definitions for particular terms used in the Bill are in the dictionary in schedule 1.

Part 2 Healthy Futures Commission Queensland

Division 1 Establishment

Establishment

Clause 6 provides that the Healthy Futures Commission Queensland (the Commission) is established.

Legal status

Clause 7 provides that the Commission has the legal status of a body corporate and may sue and be sued in its corporate name.

Commission represents the State

Clause 8 provides that the Commission represents the State and has the status, privileges and immunities of the State.

Division 2 Functions

Functions of commission

Clause 9 provides that the main functions of the Commission are to:

- (a) support the capacity of children and families to adopt a healthy lifestyle, including by promoting healthy eating and regular physical activity
- (b) contribute to reducing health inequity for children and families
- (c) advocate for the necessary social conditions and environments to contribute to reducing health inequity for children and families and to support the capacity of children and families to adopt a healthy lifestyle
- (d) develop partnerships or other arrangements with entities the Commission considers appropriate for performing a function mentioned in paragraphs (a) to (c)
- (e) give entities the Commission considers appropriate grants relating to the matters mentioned in paragraphs (a) to (d), and
- (f) consult with entities the Commission considers appropriate about a matter mentioned in paragraphs (a) to (d).

Examples of the types of entities the Commission may consider appropriate for the purposes of paragraphs (d) and (e) include an industry or community organisation, a university or other educational or research institution, an entity carrying on a business, a local government, or an instrumentality or agency of the Commonwealth, the State, another State or a local government.

This clause clarifies that the Commission's functions also include any other function given to it under the Act or another Act.

Clause 9 also provides that, in performing its functions under this Act, the Commission must take into account the social determinants of health and the effects of the determinants on health inequity; and the views, needs and vulnerabilities of groups of persons experiencing health inequity including Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities and regional and remote communities, and other communities affected by socioeconomic disadvantage.

The term *social determinants of health* is defined in clause 9 by reference to the *Rio Political Declaration on Social Determinants of Health*, adopted in 2011 by the World Health Assembly, of which Australia is a member.

Ministerial direction generally

Clause 10 provides that the Minister may give a written direction to the Commission about the Commission's functions. The Commission must comply with the direction. However, the Minister's direction must not be about the employment of a particular person.

Ministerial direction—special report

Clause 11 provides that the Minister may direct the Commission to prepare a special report on a matter the Minister considers relevant to the Commission's functions. However, the Minister may not give a Ministerial direction about the content of a special report.

The special report may contain recommendations about the matter to which it relates, and must be given to the Minister. The Minister may publish the special report in a way the Minister considers appropriate.

Division 3 Powers

Powers of commission

Clause 12 provides that the Commission has all the powers of an individual, such as entering into contracts, acquiring, holding, dealing with and disposing of property, employing staff, appointing agents and attorneys, engaging contractors, and doing anything else necessary or convenient to be done in performing its functions. The Commission also has any other powers given to it under the Act or another Act.

Part 3 Board

Division 1 Establishment, functions and powers

Establishment of board

Clause 13 establishes the board as the governing body of the Commission.

Functions of board

Clause 14 provides that the functions of the board are:

- to ensure the proper, efficient and effective performance of the Commission's functions
- to decide the objectives, strategies and policies to be followed by the Commission
- to ensure the Commission complies with its strategic and operational plans for a financial year under the *Financial Accountability Act 2009*
- to report to the Minister about the performance of the Commission's functions, and
- any other function given to it under the Act or another Act.

Powers of board

Clause 15 provides that the board has the power to do anything necessary or convenient in order to perform its functions. This includes giving a written direction to the chief executive officer about the performance of the chief executive officer's responsibilities. Anything done by the board, or with the board's authority, in the name of or for the Commission is taken to have been done by the Commission.

Division 2 Membership

Membership of board

Clause 16 provides that the board consists of six members appointed by the Governor in Council. The Minister may recommend a person for appointment as a board member only if the Minister is satisfied either that:

- the person has qualifications or experience in one of the following:
 - business or financial management
 - law
 - leading and influencing partnerships to bring about change
 - assessing the impact of social conditions and environments on health equity, including for sections of the community experiencing health inequity, or
- the person is otherwise appropriately qualified to perform the functions of a board member.

Chairperson and deputy chairperson

Clause 17 provides that the Governor in Council may appoint members of the board to be the chairperson and deputy chairperson of the board. These appointments may take place at the same time as the chairperson or deputy chairperson is appointed as a member of the board. A person holds office as chairperson or deputy chairperson for the term, ending not later than the person's term of appointment as a board member, stated in the person's appointment as chairperson or deputy chairperson.

Disqualification from becoming board member

Clause 18 provides the grounds on which a person is disqualified from becoming a member of the board. These grounds are that the person:

- has a conviction, other than a spent conviction, for an indictable offence
- does not consent to the chief executive requesting a report about the person's criminal history under clause 43
- is an insolvent under administration
- is disqualified from managing corporations because of part 2D.6 of the Corporations Act, or
- is the chief executive officer, a member of the Commission's staff or a contractor of the Commission.

Term of appointment

Clause 19 provides that a member of the board holds office for the term stated in the member's instrument of appointment. A term of appointment may be no longer than four years. A board member may be reappointed.

Conditions of appointment

Clause 20 specifies the conditions of appointment for board members. A board member is to be paid the remuneration and allowances decided by the Governor in Council. Where not provided by the Act, the board member holds office on the terms and conditions decided by the Governor in Council.

Removal from office

Clause 21 provides that the Governor in Council may remove a board member from office if:

- the member would be disqualified from becoming a member under section 18, or
- the Minister recommends the member's removal because the Minister is satisfied the member:
 - is incapable of performing their functions
 - has neglected their functions or performed the functions incompetently
 - has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the board or Commission, or
 - has been absent from three consecutive board meetings without the board's permission and without reasonable excuse.

Vacancy in office

Clause 22 provides that the office of a board member becomes vacant if the member completes their term of office and is not reappointed, resigns from office by giving a signed notice to the Minister, or is removed from office under clause 21.

Division 3 Board Meetings

Conduct of business

Clause 23 states that, subject to division 3 of part 3, the board may conduct its business, including its board meetings, in the way it considers appropriate.

Board meetings

Clause 24 provides that the chairperson may convene a board meeting. The chairperson must convene a board meeting:

- at least six times each year, and
- if asked in writing by either the Minister, or three or more other board members.

Presiding at board meetings

Clause 25 provides that the chairperson must preside at all board meetings at which the chairperson is present. If the chairperson is absent from a board meeting, the deputy chairperson is to preside. If neither the chairperson nor deputy chairperson are present, the members of the board are to choose a member to preside at the board meeting.

Quorum at board meetings

Clause 26 provides that a quorum for a board meeting constitutes a majority of the board members for the time being. However, if a member present at a board meeting is required under *clause 30* not to be present during board deliberations for a particular matter, or not to take part in any board decision for a particular matter, the remaining board members present at the board meeting constitute a quorum for the meeting.

Voting at board meetings

Clause 27 provides that a question at a board meeting is decided by a majority of the votes of the members present at the board meeting who are able to vote on the question. If the votes are equal, the presiding member at the board meeting also has a casting vote.

Minutes

Clause 28 requires the board to keep minutes of its board meetings.

Division 4 Board committees

Establishment and function of committees

Clause 29 provides that the board may establish committees to help the board effectively and efficiently perform its functions. A committee's function is to advise on matters referred to it by the board. A committee must consist of one board member, who is to chair the committee, and at least two appropriately qualified persons decided by the board. Board members, the chief executive officer and staff members and contractors of the Commission are not eligible to be appointed as the non-board members of committees.

The board must decide the term of the committee and its terms of reference. The board may also decide matters about a committee that are not provided for under the Act, such as how committee meetings are to be conducted.

Board committees may be time-limited to provide advice about specific terms of reference, after which the Committee may then be dissolved. Board committees could also be established as ongoing working groups that include, for example, representatives from relevant government agencies.

Division 5 Disclosure of interests

Disclosure of interests at board or committee meeting

Clause 30 prescribes requirements for the disclosure of interests at board and committee meetings. These requirements apply if a board or committee member has a material personal interest in a matter being considered, or about to be considered, at a board or committee meeting, and the material personal interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter.

A member has a *material personal interest* in the matter being considered, or about to be considered, at a board or committee meeting if any of the following stands to gain a benefit or suffer a loss, either directly or indirectly, because of the outcome of the consideration of the matter:

- the member
- the member's spouse
- a parent, child or sibling of the member
- an employer, other than a government agency, of the member, or
- an entity, other than a government agency, of which the member is an office holder.

As soon as practicable after the member becomes aware of the relevant facts, the member must disclose the nature of the material personal interest to the other board or committee members at the meeting. A disclosure made under this provision must be recorded in the minutes of the board or committee meeting. Any failure to disclose the nature of the material personal interest to the other members at the meeting does not, of itself, make the decision of the board or committee invalid.

A board or committee member who discloses an interest may continue to participate in the board or committee meeting only if a majority of the other members at the meeting vote in favour of the member's continued participation. However, the member cannot vote on the matter at the meeting.

Part 4 Staff of the commission

Division 1 Chief executive officer

Appointment

Clause 31 provides that the board must appoint a chief executive officer of the Commission, in consultation with the Minister. The chief executive officer is an employee of the Commission and is appointed under the Act, not the *Public Service Act 2008*.

Chief executive officer's responsibilities

Clause 32 provides that the chief executive officer is responsible for the day-to-day administration of the Commission, including employing staff and engaging contractors. The chief executive officer is accountable to the board and must comply with the written policies and directions of the board when carrying out the chief executive officer's responsibilities.

Disqualification as chief executive officer

Clause 33 provides that a person is disqualified from becoming, or continuing as, the chief executive officer if the person:

- has a conviction, other than a spent conviction, for an indictable offence
- does not consent to the chief executive requesting a report about their criminal history under clause 43
- is an insolvent under administration
- is disqualified from managing corporations because of part 2D.6 of the Corporations Act

- is a member of the board or a committee
- is a contractor of the Commission, or
- contravenes clause 37, which provides for conflicts of interest.

Clause 33 sets out the circumstances in which a person is disqualified from becoming, or continuing to be, the chief executive officer. The chief executive officer could also be removed from office for any reason under section 25 of the *Acts Interpretation Act 1954*, which provides that if an Act authorises a person or body to appoint a person to an office the power includes the power to remove or suspend, at any time, a person appointed to the office. If the chief executive officer is removed under the *Acts Interpretation Act 1954*, the office will become vacant.

Term of appointment

Clause 34 provides that the chief executive officer holds office for the term of their appointment as stated in the officer's instrument of appointment. A term of appointment may be no longer than four years. A chief executive officer may also be reappointed.

Conditions of appointment

Clause 35 specifies the conditions of appointment for the chief executive officer. The chief executive officer is to be paid the remuneration and allowances decided by the board, and holds office on the terms and conditions, not provided for by the Act or the chief executive officer's instrument of appointment, decided by the board.

Vacancy in office

Clause 36 provides that the office of the chief executive officer becomes vacant if the chief executive officer completes a term of office and is not reappointed, resigns from office by giving a signed notice to the board, or becomes disqualified under clause 33 from continuing as the chief executive officer.

Conflicts of interest

Clause 37 states that, if the chief executive officer has an interest that conflicts or may conflict with the discharge of their responsibilities, the chief executive officer must disclose the nature of the interest and conflict to the board as soon as practicable after becoming aware of the relevant facts. The chief executive officer must not take action, or further action, on a matter that is, or may be, affected by the conflict unless authorised to do so by the board.

Division 2 Other staff

Commission staff

Clause 38 provides that the Commission may employ other staff that it considers appropriate to perform its functions. The other staff employed by the Commission will be appointed under the *Public Service Act 2008*.

Division 3 Preservation of rights

Preservation of rights of public or health service employee appointed as commission employee

Clause 39 provides for the preservation of employment rights of:

- a person appointed as the chief executive officer who was a public service employee or health service employee immediately before taking up the appointment, and
- a person appointed as another employee of the Commission who was a health service employee immediately before taking up the appointment.

The person is entitled to retain all existing and accruing rights as if service as an employee of the Commission were a continuation of the person's service as a public service employee or health service employee. The person keeps all the person's existing and accrued rights relating to superannuation if the person was a member of the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*.

Preservation of rights of commission employee appointed as health service employee

Clause 40 provides for preservation of employment rights of a person appointed as a health service employee who was a Commission employee immediately before taking up the appointment. The clause provides that the person's service as a Commission employee must be regarded as service as a health service employee.

Part 5 Financial provisions

Healthy Futures Queensland Fund

Clause 41 establishes a fund, called the Healthy Futures Queensland Fund (the fund). Amounts payable into the fund comprise an amount appropriated by Parliament for this Act and an amount paid into the fund at the direction of, or with the approval of, the Minister or the Treasurer. Amounts payable from the fund will comprise grants made under clause 9(1)(e), and costs and expenses incurred by the Commission in the performance of its functions under this Act. The grant amounts paid in a financial year must make up at least 55 per cent of the total amount paid into the fund in that year.

Annual project funding plan

Clause 42 provides that, before 31 March each year, the Commission must give the Minister a plan (the *annual project funding plan*) for the next financial year that has been approved by the board. The annual project funding plan must include:

- if known to the Commission, details of each relevant project the Commission proposes to carry out in the next financial year, including the estimated costs and expenses likely to be incurred in carrying out the project, and
- otherwise, to the extent that it is reasonably practicable, details of the nature of each relevant project the Commission proposes to carry out in the financial year.

For the purposes of this clause, a *relevant project* means developing a partnership or other arrangement mentioned in clause 9(1)(d), or giving a grant mentioned in clause 9(1)(e).

The Minister must approve, or refuse to approve, an annual project funding plan as soon as practicable after receiving it. An annual project funding plan has no effect until it has been approved by the Minister.

Part 6 Administration

Division 1 Criminal history information

Criminal history report

Clause 43 enables the chief executive of the Department of Health to ask the Commissioner of the Queensland Police Service (the Police Commissioner) for a written criminal history report that includes a brief description of the circumstances of a conviction mentioned in the criminal history. The chief executive may request the criminal history information to assist the Minister or the board to decide whether a person is disqualified from becoming a member of the board under clause 18, may be removed as a member of the board under clause 21 or is disqualified from becoming or continuing as the chief executive officer under clause 33.

The chief executive may only make the request if the person has given the chief executive written consent for the request.

The Police Commissioner must comply with the request. However, the duty to comply only applies to information in the Police Commissioner's possession or to which the Police Commissioner has access.

Changes in criminal history must be disclosed

Clause 44 provides that if a person who is a board member or the chief executive officer is convicted of an indictable offence during the term of their appointment, the person must immediately give notice of the conviction to the chief executive of the Department of Health, unless the person has a reasonable excuse. The notice must include the existence of the conviction, details adequate to identify the offence, when the offence was committed, and the sentence imposed on the person. The maximum penalty for contravening this provision is 100 penalty units.

Confidentiality of criminal history information

Clause 45 applies to a person who possesses criminal history information because the person is or was an officer, employee or agent of the Department of Health or the Commission, or a member of the board.

A person must not, whether directly or indirectly, disclose the criminal history information to another person other than where disclosure is expressly permitted. Disclosure is expressly permitted:

- to the extent necessary to perform the person's functions under the Act
- if the disclosure is authorised under an Act or otherwise required or permitted by law
- if the person to whom the information relates consents to the disclosure
- if the disclosure is in a form that does not identify the person to whom the information relates, or

- if the information is, or has been, lawfully accessible to the public.

A maximum penalty of 100 penalty units applies for disclosing criminal history information in contravention of this provision.

The chief executive must also ensure that a document containing criminal history information is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

For the purposes of this clause, the term *criminal history information* is defined to mean a report given to the chief executive under clause 43 or a notice given to the chief executive under clause 44.

Division 2 Other information requirements

Provision of information by public sector unit to commission

Clause 46 provides that the Commission may, by notice, ask the head of a public sector unit it considers has information that the Commission requires to perform its functions to provide that information within a stated reasonable time.

The head of the public sector unit must provide the requested information unless its disclosure is prohibited under an Act or it is impracticable to provide the information. If the head of the public sector unit decides not to provide the information, they must advise the Commission of the reasons for not doing so. The Commission may enter into arrangements with the head of a public sector unit for the purposes of the public sector unit providing the Commission with the information required.

Use of confidential information

Clause 47 applies to a person who is, or has been, a board or committee member, the chief executive officer, or a Commission staff member or contractor and has obtained confidential information in administering, or performing a function under, the Act.

The person must not directly or indirectly disclose the confidential information unless the disclosure is:

- in the performance of a function under the Act
- with the consent of the person to whom the information relates, or
- authorised under an Act or otherwise required or permitted by law.

Confidential information is defined in the dictionary in schedule 1 to mean any information that:

- could identify an individual
- is about a person's current financial position or financial background, or
- would be likely to damage the commercial activities of a person to whom the information relates.

It does not include, however, publicly available information or statistical or other information that could not reasonably be expected to result in the identification of the individual to whom it relates.

A maximum penalty of 100 penalty units applies for a contravention of this provision.

Division 3 Evidentiary provisions

Offences against this Act

Clause 48 provides that a proceeding for an offence against the Act is to be heard and decided summarily. A proceeding for the offence must start within whichever is longer of the following:

- one year after the commission of the offence, or
- six months after the complainant becomes aware of the offence, but within two years after the commission of the offence.

Appointment and authority

Clause 49 states that, in a proceeding, the following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it:

- the appointment under the Act of a board member or the chief executive officer, and
- the authority of a board member, the chief executive officer, another member of the Commission's staff, or a contractor of the Commission to do anything under the Act.

Signatures

Clause 50 provides that a signature purporting to be of a board member or the chief executive officer is evidence of the signature it purports to be.

Other evidentiary aids

Clause 51 provides that in a proceeding, a certificate purporting to be that of the chairperson of the board stating any of the following matters is evidence of the matter:

- a stated document is an appointment made under the Act
- a stated document is a document made by, or given to, the Commission, and
- a stated document is a copy of a document mentioned above.

A statement in a complaint for an offence against the Act that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the fact the matter came to the complainant's knowledge on that day.

Part 7 Other matters

Application of other Acts to commission

Clause 52 provides that the Commission is a unit of public administration under the *Crime and Corruption Act 2001*, and a statutory body under the *Financial Accountability Act 2009*

and the *Statutory Bodies Financial Arrangements Act 1982*. Part 2B of the *Statutory Bodies Financial Arrangements Act 1982* sets out the way that Act affects the Commission's powers.

Protecting prescribed persons from liability

Clause 53 provides for protection against civil liability for the Minister and a member of a committee (a *prescribed person*). A prescribed person is not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Where this provision prevents civil liability attaching to a prescribed person, liability will instead attach to the State.

Protection from civil liability does not apply under this section to a prescribed person if the person is a *State employee* under section 26B(4) of the *Public Service Act 2008*. This is because a State employee acting in their official capacity is protected from civil liability under the division 3 of chapter 1 of the Public Service Act. Board members, the chief executive officer and Commission staff will also be protected from civil liability under the *Public Service Act 2008* when acting in their official capacity.

Annual report

Clause 54 outlines specific requirements regarding the Commission's annual report prepared under the *Financial Accountability Act 2009*. The annual report must not be prepared in a way that discloses confidential information, and must include:

- details of the functions performed by the Commission during the year
- information about how efficiently and effectively the Commission has performed its functions, and
- details of each direction given by the Minister under clause 10(1) during the relevant financial year and action taken by the Commission in response to the direction.

The board must approve the report before it is given to the Minister.

Delegations

Clause 55 outlines the delegations that may be made under the Act.

The Commission may delegate its functions under the Act, other than its function of deciding to give a grant mentioned in clause 9(1)(e), to a board member or the chief executive officer.

The chief executive officer may delegate any of their responsibilities to an appropriately qualified member of the Commission's staff.

Where a function has been delegated to a board member by the Commission or the board, the member may subdelegate that function to the chief executive officer or an appropriately qualified member of the Commission's staff.

Where a function has been delegated to the chief executive officer by the Commission or the board, the chief executive officer may subdelegate the function to an appropriately qualified member of the Commission's staff.

For the purposes of clause 55, *function* includes power.

Review of commission

Clause 56 provides that the Minister must ensure an independent review of the performance by the Commission of its functions is completed within five years after the commencement of the Act.

Regulation-making power

Clause 57 provides a general head of power for the making of a regulation under the Act.

Part 8 Amendment of Acts

Division 1 Amendment of this Act

Act amended

Clause 58 provides that division 1 of part 8 amends the Act.

Amendment of long title

Clause 59 amends the long title of the Act to omit a reference to amendment of the *Public Service Act 2008* by the Act. This will ensure the Act as in force from time to time only deals with the establishment, constitution and powers of the Commission, and does not include the consequential amendments made to the Public Service Act.

Division 1 Amendment of Public Service Act 2008

Act amended

Clause 60 provides that division 2 of part 8 amends the *Public Service Act 2008*.

Amendment of sch 1 (Public service offices and their heads)

Clause 61 amends schedule 1 of the *Public Service Act 2008* to prescribe the Commission as a public service office, and the chief executive officer as its head. This has the effect of applying the Public Service Act, and other Acts such as the *Public Sector Ethics Act 1994*, to the Commission as if the Commission were a department and the chief executive officer was the chief executive.

Schedule 1 Dictionary

Schedule 1 contains definitions for key terms used in the Bill.