

Health Legislation Amendment Bill 2013

Report No. 33

Health and Community Services Committee

October 2013

Health and Community Services Committee

Chair	Mr Trevor Ruthenberg MP, Member for Kallangur
Deputy Chair	Mrs Jo-Ann Miller MP, Member for Bundamba
Members	Ms Ros Bates MP, Member for Mudgeeraba Dr Alex Douglas MP, Member for Gaven Mr John Hathaway MP, Member for Townsville Mr Jon Krause MP, Member for Beaudesert Mr Dale Shuttleworth MP, Member for Ferny Grove
Staff	Ms Sue Cawcutt, Research Director Ms Lee Archinal, Principal Research Officer (part-time) Ms Kathleen Dalladay, Principal Research Officer (part-time) Mr Karl Holden, Principal Research Officer (part-time) Ms Liz Sbeghen, Principal Research Officer (part-time) Ms Stephanie Cash, Executive Assistant
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director Mr Karl Holden, Principal Research Officer (part-time) Ms Marisa Ker, Principal Research Officer (part-time) Ms Tamara Vitale, Executive Assistant
Contact details	Health and Community Services Committee Parliament House George Street Brisbane Qld 4000
Telephone	+61 7 3406 7688
Fax	+61 7 3406 7070
Email	hcsc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/hcsc

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Abbreviations

AMAQ	Australian Medical Association Queensland
the Bill	Health Legislation Amendment Bill 2013
the committee	Health and Community Services Committee
the Council	Council of the Queensland Institute of Medical Research
the department	Department of Health
HHS	Hospital and Health Service
HHB Act	<i>Hospital and Health Boards Act 2011</i>
HLA Act	Health Legislation Amendment Act 2011
Public Health Act	Public Health Act 2005
QIMR	Queensland Institute of Medical Research
QIMR Act	Queensland Institute of Medical Research Act 1945
QMHC	Queensland Mental Health Commission
QMHC Act	Queensland Mental Health Commission Act 2013
QMPQC	Queensland Maternal and Perinatal Quality Council
the Quality Council	Queensland Maternal and Perinatal Quality Council
Transplantation and Anatomy Act	Transplantation and Anatomy Act 1979
WHO	World Health Organisation

Chair's foreword

On behalf of the Health and Community Services Committee of the 54th Parliament of Queensland, I present this report on Health Legislation Amendment Bill 2013 (the Bill).

The Bill was introduced into the Legislative Assembly by the Minister for Health on 10 September 2013. The committee was required to report to the Legislative Assembly by 22 October 2013.

The Bill amends a number of health portfolio Acts to implement policy changes that will result in improvements to the relevant legislation. None of the amendments in the Bill is contentious and none attracted significant comments from the public or stakeholder organisations.

In considering the Bill, the committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

On behalf of the committee, I thank those who made written submissions on this Bill. Thanks also to officials from the Department of Health who briefed the committee, the committee's staff and the Technical Scrutiny secretariat.

I commend the report to the House.

A handwritten signature in black ink, appearing to read 'T. Ruthenberg', with a stylized flourish at the end.

Trevor Ruthenberg MP

Chair

Recommendations

Recommendation 1 **2**

The committee recommends that the Health Legislation Amendment Bill 2013 be passed.

Recommendation 2 **8**

The committee recommends that the Minister inform the Legislative Assembly of what information about a maternal death a health professional will be obliged to provide to the chief executive under a proposed regulation.

1 Introduction

1.1 Role of the committee

The Health and Community Services Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012, and consists of government and non-government members.

Section 93 of the [Parliament of Queensland Act 2001](#) provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Bill, and
- the application of the fundamental legislative principles to the Bill.

1.2 Committee process

The Health Legislation Amendment Bill 2013 (the Bill) was referred to the committee on 10 September 2013, and the committee was required to report to the Legislative Assembly by 22 October 2013.

Officials from the Department of Health (the department) briefed the committee about the Bill on 20 September 2013. The transcript of the briefing provided by the department on 20 September 2013 is published on the committee's webpage.

The committee called for submissions by notice on its website, and wrote to stakeholder organisations to invite submissions. Four submissions were received (see list at Appendix A), which broadly supported the Bill. Submissions are published on the committee's webpage at www.parliament.qld.gov.au/hcsc.

The committee noted the consultation undertaken by the department (see Section 1.3 below). As the Bill does not implement significant policy changes and did not attract strong community interest, the committee decided that it was not necessary to hold a public hearing.

1.3 Consultation during development of the Bill

The Explanatory Notes describe the targeted consultation undertaken by the department, which included provision of a consultation draft of the Bill to key stakeholders. Suggestions made by the stakeholders, and the response to them, were outlined in the Explanatory Notes:

- a number of stakeholders sought clarification about wording in particular provisions of the *Public Health Act 2005* amendments, and their practical application. The Explanatory Notes say that clarification was provided by the department
- the Australian Medical Association Queensland expressed concern about the definition of 'maternal health' in the *Public Health Act 2005* amendments (see Section 5.4 of this report)
- some changes to wording of the *Transplant and Anatomy Act 1979* amendments were suggested and were incorporated as far as possible into the Bill
- some stakeholders considered that changes to the definition of *senior available next of kin* in the *Transplant and Anatomy Act 1979* could be further developed. The Explanatory Notes outline the department's position on the changes to the definition, and
- amendments about food business rating schemes were broadly supported; however, some local governments expressed concern about the potential lack of consistency between local governments. In response, the Explanatory Notes outline how consistency in food business rating can be achieved without legislation (see Section 3.2 of this report).¹

1 Health Legislation Amendment Bill 2013, Explanatory Notes, pp.11–12, available at <https://www.legislation.qld.gov.au/Bills/54PDF/2013/HealthLegAB13E.pdf>

2 Examination of the Bill and Explanatory Notes

2.1 Policy objectives of the Bill

The Bill amends six Acts in the health portfolio “to improve the effective operation of the Acts”.² The amendments are outlined in later chapters of this report. The Acts amended are the:

- *Health Legislation Amendment Act 2011* to stop the introduction of a statewide food business rating scheme under the [Food Act 2006](#)
- *Hospital and Health Boards Act 2011* regarding transfer of land and buildings between the department and Hospital and Health Services (HHSs) and between HHSs
- *Public Health Act 2005* to establish the Maternal Death Statistics Collection
- *Queensland Institute of Medical Research Act 1945* to change the terms of Council members and allow the Council to enter agreements without chief executive approval
- *Queensland Mental Health Commission Act 2013* to make minor amendments, and
- *Transplantation and Anatomy Act 1979* to address operational inefficiencies.³

2.2 Should the Bill be passed?

Standing Order 132(1)⁴ requires the committee to recommend whether the Bill should be passed. The committee considered the policy changes the Bill would implement, and the application of fundamental legislative principles.

After considering the Bill, a briefing by the department, the consultation described in the Explanatory Notes and the four submissions received by the committee, the committee has decided to recommend that the Bill be passed.

Recommendation 1

The committee recommends that the Health Legislation Amendment Bill 2013 be passed.

2.3 Explanatory Notes

The Explanatory Notes were tabled with the introduction of the Bill. The Explanatory Notes are detailed, contain the information required by Part 4 of the [Legislative Standards Act 1992](#), and provide a reasonable level of background information and commentary to facilitate understanding of the Bill’s aims and origins.

2 Explanatory Notes, p.1

3 *ibid.*

4 Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, available at <http://www.parliament.qld.gov.au/work-of-assembly/procedures>

3 Food business rating scheme – *Food Act 2006*

3.1 Introduction

The *Food Act 2006* provides for matters relating to the handling and selling of food, securing the safety and suitability of food, and applying standards for food.⁵ The Bill would amend the *Health Legislation Amendment Act 2011* (HLA Act) to remove amendments to the *Food Act 2006* to introduce a statewide voluntary food business rating scheme before they come into force.⁶

3.2 Removal of food business rating scheme

Clauses 4 to 7 omit provisions in the HLA Act which would have enabled the “establishment of a statewide model for food business rating schemes that local governments may choose to implement in their local area, for voluntary participation by licensed food businesses”.⁷

The Explanatory Notes state that the repeal of these provisions “accords with the Government’s regulatory reform agenda by avoiding the imposition of a new regulatory burden on local government”.⁸ Instead, local governments will be able to design and introduce food business rating schemes which consider the needs of their local community and food businesses.

The Explanatory Notes state that consistency between voluntary food business rating schemes can be achieved without legislation. When developing any food business rating schemes, local governments can consider national principles endorsed by the Implementation Sub-committee of the Food Regulation Standing Committee of the Australia and New Zealand Food Regulation Ministerial Council.⁹

4 Transfer of land and buildings – *Hospital and Health Boards Act 2011*

4.1 The current Act

The *Hospital and Health Boards Act 2011* (HHB Act) establishes local health and hospital services (HHSs) to deliver public sector and other health services. Each HHS is controlled by a Hospital and Health Board, which is responsible for the financial management of the HHS and management of its land, buildings and staff.¹⁰

The HHB Act also defines the role of the Department of Health, as system manager of the public sector health system, and provides mechanisms to fund and monitor the performance of the sector.¹¹

The Bill proposes to amend the HHB Act to enable land and buildings to be transferred between the Department of Health and HHSs, or between HHSs, on an ongoing basis.¹²

4.2 Transfer notices

4.2.1 Transfer by gazette notice

Clause 9 inserts a new division in part 12 of the HHB Act (new sections 273A to 273E) to provide for transfer notices for transfer of land and buildings.

5 *Food Act 2006*, s.8, available at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/F/FoodA06.pdf>

6 Explanatory Notes, p.12

7 *ibid.*, p.14

8 *ibid.*, p.2

9 *ibid.*, p.12

10 *Hospital and Health Boards Act 2011*, s.7, available at <https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/H/HHNA11.pdf>

11 *ibid.*, s.8, 8A and 9

12 Explanatory Notes, p.1

Proposed section 273A would enable the Minister to transfer freehold land, a lease or reserve under the [Land Act 1994](#) or any other interest¹³ in land by a gazette notice (a transfer notice). This would enable the:

- transfer of an interest held by the State to a HHS
- transfer of an interest held by a HHS to the State or other HHS
- transfer or grant of an associated interest to the State or another HHS, and
- varying of an associated interest held by the State or other HHS.¹⁴

The section also provides for a transfer notice to:

- amend or correct an error made in an earlier notice and can include conditions applying to something that was, or is to be, done under the notice
- reference another document where the Minister believes it would be inappropriate for a particular matter to be stated in the notice. The other document must be signed by the Minister and be available, at the place stated in the notice, for inspection by people to whom the matter relates, and
- come into effect on the date of publication in the government gazette, or the date stated in the notice, and may apply retrospectively, but not before the section commenced.

The Explanatory Notes state that using transfer notices, rather than agreements, enables transfers to be done efficiently, particularly where large numbers of properties are involved. The Explanatory Notes also state that the transfer provisions will allow the Minister to direct transfers in accordance with Government initiatives like the [Blueprint for Better Healthcare in Queensland](#) and provide for land and buildings to be transferred as future circumstances warrant.¹⁵

4.2.2 Registering a transfer notice

Section 273B, as inserted by clause 9, provides that a registrar of titles, or other person required or authorised by law to register or record transactions affecting assets or liabilities, must register or record a transfer under this part in order to give effect to the transfer.¹⁶

4.2.3 Transfer not open to review or appeal

Proposed section 273C provides that a decision relating to a transfer notice is final and conclusive, not open to challenge, review or appeal, and not subject to an order of a court.

4.2.4 Protections for the State

Proposed section 273D protects the State, or an employee or agent of the State, in relation to things done under a transfer notice. The protections include exemption from any civil wrong or contravention of a law, including a breach of contract, confidence or duty.

4.3 Potential fundamental legislative principles issues – regard to institution of Parliament and rights and liberties of an individual

The Explanatory Notes identify two potential breaches of the fundamental legislative principles. Proposed section 273A may have insufficient regard to the institution of Parliament “insofar as the power to transfer land and buildings is exercised by gazette notice than by regulation”.¹⁷ Proposed Section 273C may have insufficient regard to the rights and liberties of an individual, “insofar as transfer notice decisions are final and cannot be challenged, appealed or called into question and

13 Interest is defined in the [Acts Interpretation Act 1954](#) as a legal or equitable estate in land or other property, or a right, power or privilege over, or in relation to, the land or other property

14 Health Legislation Amendment Bill 2013, cl. 9, available at <https://www.legislation.qld.gov.au/Bills/54PDF/2013/HealthLegAB13.pdf>

15 Explanatory Notes, p.2

16 Health Legislation Amendment Bill 2013, cl. 9

17 Explanatory Notes, p.10

that the State or an employee agent of the State is not liable for civil action, including for breach of contract”.¹⁸

The committee considers that, on balance, clause 9 has sufficient regard to fundamental legislative principles. In reaching this view, the committee had regard to the following issues. The power to transfer land and buildings is limited to interests held by the State or a HHS, and applies only to publicly owned land and buildings. The power is to be used to effectively manage infrastructure and assets between two components of the Health portfolio – the department and HHSs. Decisions by the Minister to make a transfer notice will be notified in the gazette notice, and Members of the Legislative Assembly will have the opportunity to raise any concerns in Parliament.

The committee also notes that similar provisions can be found in other legislation, for example the [Infrastructure Investment \(Asset Restructuring and Disposal\) Act 2009](#) and [Airport Assets \(Restructuring and Disposal\) Act 2008](#). Sections 307 to 311 of the HHB Act (which expired on 30 June 2013) also contained similar transfer notice provisions.

5 Maternal Death Statistics Collection – *Public Health Act 2005*

5.1 Policy objective

In his explanatory speech, the Minister said that the Bill supports a number of government initiatives, and that establishment of the Maternal Death Statistics Collection:

*... supports the ‘mums and bubs’ policy, which aims to provide safe, sustainable choices and opportunities for Queensland women and their families to ensure that they are given the best possible start to life.*¹⁹

The Maternal Death Statistics Collection is to be established under the *Public Health Act 2005* (the Public Health Act). Its purpose is to assist in monitoring maternal mortality rates, analyse patterns of mortality and outcomes, and to research obstetric care.²⁰ The Explanatory Notes state “key outcome to be achieved through the collection of data about maternal deaths is the development of evidence-based best practice to prevent or minimise the risk of such deaths”.²¹

The amendments are largely in response to recommendations in the 2011 report of the Queensland Maternal and Perinatal Quality Council (the Quality Council). The Quality Council reports to the Patient Safety and Quality Executive Committee of the department. Its purposes are to:

- collect and analyse clinical information regarding maternal and perinatal mortality and morbidity in Queensland to identify statewide and facility-specific trends
- make recommendations to the Minister for Health on standards and quality indicators of maternal and perinatal clinical care, to enable health providers in Queensland to improve safety and quality, and
- assist with the adoption of such standards in both public and private sectors.

In its 2011 report, the Quality Council noted that there were significant barriers to gathering data regarding maternal deaths. It recommended amendments to the Public Health Act to add:

... a requirement for all deaths of women during pregnancy or within one year of the end of a pregnancy being reported via the Perinatal Data Collection Unit, ... [this] ... is

18 *ibid.*

19 Legislative Assembly of Queensland, *Hansard*, 10 September 2013, p.2876 (Hon. Lawrence Springborg MP, Minister for Health), available at <http://www.parliament.qld.gov.au/documents/tableOffice/BillMaterial/130910/Health.pdf>

20 Explanatory Notes, p.1

21 *ibid.*, p.9

*necessary to improve the quality of information available for review of the causation of deaths and the possible presence of avoidable factors.*²²

5.2 Existing statistical collections under the *Public Health Act 2005*

Currently, the Public Health Act provides for the collection of a range of health statistics, including the Notifiable Conditions Register, the Perinatal Statistics Collection, the Queensland Cancer Registry and the Pap Smear Register.

The statistical collections are used to monitor and improve the quality of services. For example, the existing Perinatal Statistics Collection is used to produce a variety of statistical publications, which are available at the Health Statistics Unit website at <http://www.health.qld.gov.au/hic/>.

Chapter 6 of the Public Health Act contains detailed provisions about the confidentiality of health information provided for registers, and the circumstances in which it can be disclosed and accessed for monitoring, quality assurance and research.

5.3 Amendments – Maternal Death Statistics Collection

5.3.1 Collection of maternal death statistics

Clause 13 inserts new Chapter 6, Part 1A (Maternal death statistics) into the Public Health Act. The amendments provide for the establishment of the Maternal Death Statistics Collection, notification of statistics and confidentiality and disclosure of data. The Explanatory Notes state that the amendments to establish the Maternal Death Statistics Collection are consistent with the approach taken in a number of other Australian jurisdictions.²³

Under the amendments, a health professional who has had primary care or treatment of a woman while she was pregnant, or within 365 days after the end of her pregnancy, and is aware of the *maternal death* of the woman, must notify the chief executive (the Director-General of the department) of the death. The information to be included in a notification to the chief executive is to be prescribed by regulation. If the chief executive considers further information is needed, the health professional may be required to provide the information in a reasonable time.

For the purpose of the amendments, a *health professional* who is obliged to notify the chief executive of a maternal death is a registered health practitioner (for example, medical practitioner, nurse or midwife) or another person who provides a health service. The data provided by the health professional will be collected in the Maternal Death Statistics Collection established by the Bill.

Transitional arrangements in clause 14 provide that information about maternal mortality received by the department before the Maternal Death Statistics Collection is established may be included in the new collection.

5.3.2 Confidentiality

The Explanatory Notes state that the data in the Maternity Death Statistics Collection will be subject to a strict duty of confidentiality. Proposed new sections 228I to 228S provide for similar confidentiality and disclosure arrangements as those already in place in the Public Health Act for other health statistical collections. The chief executive and staff responsible for the collection will be prevented from disclosing information unless authorised by the legislation.²⁴ Information from the collection can be disclosed, for example, for public health monitoring, quality assurance, management or evaluation of a health service, investigation of a death by the coroner and transfer of information to the Perinatal Statistics Collection. The amendments include provisions that afford

22 Queensland Maternal and Perinatal Quality Council, *Maternal and Perinatal Mortality and Morbidity in Queensland*, 2011, available at <http://www.health.qld.gov.au/chi/ais/docs/qmpqc-report-2011.pdf>

23 Explanatory Notes, p.3

24 *ibid.*, p.9

protection to a person giving information under specified circumstances that would otherwise be deemed confidential.

5.3.3 Other amendments

Clause 12 inserts two new sections into Chapter 6, Part 1 of the Public Health Act, about the Perinatal Statistics Collection. Proposed section 228A would allow disclosure of information from the collection for the purpose of investigation of a death by the coroner. Proposed section 228B provides for transfer of information from the Perinatal Statistics Collection to the new Maternal Death Statistics Collection.

5.4 Submissions

Two submissions commented on the proposed Maternal Death Statistics Collection. The Queensland Centre for Mothers and Babies (The University of Queensland) supports the proposed amendments, asserting that they will:

*... maximise the ability of QMPQC and other relevant agencies to gather the information required to review all maternal deaths and to exchange information between agencies (and) ... enhance the safeguards for women birthing in Queensland.*²⁵

The Australian Medical Association Queensland (AMAQ) supported the amendments and said they are uncontroversial. The AMAQ submission said it was disappointed that the Bill did not use the World Health Organisation (WHO) definition of *maternal death* and that different definitions are used in Tasmania and Western Australia.²⁶ The committee notes that the AMAQ raised the same issues with the department during development of the Bill.

The committee notes that the Explanatory Notes explain the definition of *maternal death* used in the Bill:

*The WHO defines 'maternal death' as the death of a woman while pregnant, or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy ... The definition of 'maternal death' in the Bill incorporates the WHO definition, and goes further to include 'late maternal deaths' (up to 365 days after the end of the pregnancy). Data regarding late maternal deaths provides valuable information that is important in planning obstetric health services and strategies to prevent or minimise maternal mortality. Maternal death quality committees in other Australian jurisdictions, New Zealand and the United Kingdom all look at both maternal deaths captured by the WHO definition, as well as so-called 'late maternal deaths'.*²⁷

The committee is satisfied that the definition of *maternal death* in the Bill is broader than the WHO definition and is appropriate for its purpose. The committee invites the Minister to comment, during the second reading debate, on the issue of national harmonisation of legislation and data collection.

5.5 Potential fundamental legislative principles issues

5.5.1 Rights and liberties of individuals – confidential information

The Explanatory Notes identify that clause 13 “may be considered to impact on a deceased woman’s right to privacy”.²⁸ It is normally accepted that in law, deceased persons have no privacy interests.²⁹ The committee considers, however, that clause 13 raises potential fundamental legislative principles issues about the collection and use of confidential, medical information about a deceased person.

25 Queensland Centre for Mothers and Babies, Submission 1, p.1

26 Australian Medical Association (Queensland), Submission 2, p.1

27 Explanatory Notes, p.11

28 *ibid.*, p.9

29 Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, ALRC Report 108, 12 August 2008 (Last modified on 10 January 2013), available at <http://www.alrc.gov.au/publications/report-108>

The committee notes that the content of a notification to the chief executive is to be prescribed in a regulation.³⁰ The committee invites the Minister to inform the Legislative Assembly about the proposed content of the regulation.

Recommendation 2

The committee recommends that the Minister inform the Legislative Assembly of what information about a maternal death a health professional will be obliged to provide to the chief executive under a proposed regulation.

The committee notes that rights and liberties of individuals are not absolute. The committee considers that clause 13 strikes an appropriate balance between the rights and liberties of a deceased woman and the public health benefits that may be achieved through the collection of data about maternal deaths. In reaching this view, the committee has had regard to strict confidentiality requirements that would apply to data collected about maternal deaths (see sections 228H to 228R).

5.5.2 Rights and liberties of individuals – immunity from proceedings and prosecution

Proposed section 228G(5) raises potential fundamental legislative principles issues, as it provides immunity from proceedings or prosecution to individuals. The Explanatory Notes state that section 228G(5) ensures individuals who provide confidential information to the chief executive are not breaching any duty or professional obligation.³¹

The Explanatory Notes state the provisions are justified as they ensure “... the data comprising the Maternal Death Statistics Collection is accurate and complete” and this “... is essential if it [the Collection] is to be relied upon to increase awareness of maternal death, analyse obstetric patterns and outcomes, facilitate research and help plan obstetric health services and strategies to prevent or minimise maternal mortality”.³² The Explanatory Notes also state that similar provisions apply to the collection of data for other health matters, for example the Notifiable Conditions Register, Queensland Cancer Register, Pap Smear Register and Perinatal Statistics Collection.³³

The committee considers that the conferral of immunity on individual providing confidential information to the chief executive in response to a request under section 228G is justified.

6 Council membership and agreements – *Queensland Institute of Medical Research Act 1945*

6.1 *Queensland Institute of Medical Research Act 1945*

The *Queensland Institute for Medical Research Act 1945* (QIMR Act) establishes the Queensland Institute of Medical Research (QIMR), with responsibility for research into any branch or branches of medical science, and the Council of the Queensland Institute of Medical Research (the Council), to control and manage the QIMR.³⁴

30 *Public Health Act 2005*, section 228F(3), as inserted by clause 13

31 Explanatory Notes, p.10

32 *ibid.*

33 *ibid.*

34 QIMR Act, s.3

The Bill proposes to amend the QIMR Act to “address two operational issues to enhance the efficient and effective operation” of the QIMR.³⁵

6.2 Council members’ terms of appointment

The QIMR Act provides for appointments to the Council. Clause 17 of the Bill replaces section 5B of the QIMR Act, to amend the term of a Council member from three to four years.³⁶ The amendments provide for a Council member to be re-appointed, providing that the total term of appointment for the member is not more than 12 years. Clause 17 allows a member to be appointed for more than 12 years, in special circumstances.³⁷

Clause 21 inserts a new part 4, division 3 into the QIMR Act, to provide that any appointment to the Council before the amendment to section 5B will expire as specified in the original instrument of appointment.³⁸

The Explanatory Notes state the amendments will ensure that the Council has the necessary expertise and skills to lead the QIMR over time and recognise that there may be extenuating circumstances which necessitate a member continuing to serve on the Council for more than 12 years (or three consecutive terms).³⁹

6.3 Council agreements

Section 9 of the QIMR Act provides for the Council to enter into agreements which accord with the purposes of the QIMR Act, with a range of specified entities. Currently those agreements must be approved by the chief executive of the department.

Clause 19 omits part of section 9(1) of the QIMR Act, which lists entities the Council may enter into agreements or arrangements with, including “other such bodies as the Council shall by resolution from time to time determine”. It also omits section 9(1A) which requires that all agreements and arrangements entered into by the Council are subject to the chief executive’s approval. The Explanatory Notes state that requiring the Institute to “obtain the approval of the chief executive imposes an unnecessary burden, as the QIMR is bound by the requirements of the [Statutory Bodies Financial Arrangements Act 1982](#) and the [Financial Accountability Act 2009](#)”.⁴⁰

6.4 Other amendments

The Bill also makes a number of minor amendments: clause 18 replaces the term chairperson with ‘chair’ in five sections of the QIMR Act; clause 20 corrects anomalies in the numbering of subclauses in section 15, which arose from earlier amendments.⁴¹

6.5 Stakeholders’ views

The QIMR supports the amendments as “further enhancements to support the Institute in its important work”.⁴²

35 Explanatory Notes, p.3

36 QIMR Act, s. 5B

37 Health Legislation Amendment Bill 2013, cl. 17

38 *ibid.*, cl. 21

39 Explanatory Notes, p.3

40 *ibid.*, p.4

41 *ibid.*, p.19

42 QIMR, Submission 4

7 Queensland Mental Health Commission Act 2013

The *Queensland Mental Health Commission Act 2013* (QMHC Act) establishes the Queensland Mental Health Commission to drive reform towards a “more integrated, evidence-based, recovery-orientated mental health and substance misuse system”.⁴³ The QMHC Act also establishes the Mental Health and Drug Advisory Council to advise the Commission on any mental health or substance misuse issue within the QMHC’s functions.

Clauses 22 and 23 replace the word chairperson with ‘chair’ in four sections of the QMHC Act.

8 Amendments to the *Transplantation and Anatomy Act 1979*

8.1 Introduction

Clauses 24 to 31 of the Bill propose amendments to the *Transplantation and Anatomy Act 1979* (the Transplantation and Anatomy Act) to address a number of “operational deficiencies” that are hampering effective implementation of the legislation.⁴⁴ The amendments in this Bill are intended to modernise the definition of *senior available next of kin*, and make other changes to assist in the implementation of the legislation.⁴⁵

8.2 Senior available next of kin

8.2.1 Policy objective

The Minister stated in his explanatory speech:

*The amendments to the Transplantation and Anatomy Act will modernise the definition of senior available next of kin ... [which] ... will reflect the greater diversity of family members evidenced in modern families, such as stepsiblings, and will ensure that contact with families will be able to be progressed in a more efficient and effective manner, as staff will have certainty they are acting in accordance with the legislation. Other amendments in the bill are operational in nature and will improve the effective operation of the acts they amend.*⁴⁶

Clause 25 amends definitions in section 4 to “better represent contemporary domestic and family arrangements”.⁴⁷

8.2.2 Current definition of senior available next of kin

The Transplantation and Anatomy Act currently provides that, if a person has not objected to donating tissue during their lifetime, the *senior available next of kin* may consent to removal of tissue for transplantation to another person or for other therapeutic, medical or scientific purposes.⁴⁸ The *senior available next of kin* is currently defined (in relation to an adult) as the first, in order of priority, of a list of people who is reasonably available. The list is: the spouse; a son or daughter who is 18 or older; a parent; a brother or sister who is 18 or older.⁴⁹

43 *Queensland Mental Health Commission Act 2013*, s.4

44 Explanatory Notes, p.1

45 *ibid.*

46 *Hansard*, 10 September 2013, p.2877 (Hon. Lawrence Springborg MP, Minister for Health)

47 Explanatory Notes, p.20

48 Transplantation and Anatomy Act, s.22

49 *ibid.*, s.4

8.2.3 Amendments

In the definition of *senior available next of kin* that applies to both children and adults for whom consent for tissue removal is given, *brother or sister* is replaced with *sibling*. A definition of *sibling* is inserted, to include a biological or adopted sibling, a sibling by surrogacy, a stepbrother or stepsister, and a person who under Aboriginal tradition, Island custom, or the cultural traditions of the person's community, is regarded as a sibling.

Where it applies to consent for tissue removal from an adult, the definition of *senior available next of kin* is amended to replace a *son or daughter* with a *child* and a new definition of *child* is inserted, which applies if descendancy rather than age is relevant. The definition of *child* in this context includes a biological, adopted or foster child, a stepchild, a child through surrogacy, and a person who under Aboriginal tradition, Island custom, or the cultural traditions of the person's community, is regarded as a *child*.

A definition of *parent* is also inserted in the Transplantation and Anatomy Act to include a stepparent, a person who under Aboriginal tradition, Island custom, or the cultural traditions of the person's community, is regarded as a parent, and another person with parental responsibility whether or not they are the legal guardian. The Explanatory Notes state that the amendment is intended to include "grandparents, or aunts or uncles who may be exercising parental responsibility".⁵⁰

8.3 Other operational amendments

8.3.1 Clarification of a person's intention to donate organs or tissue

Clause 26 amends section 22 to clarify that, if a person previously objected to donation and subsequently withdrew their objection, consent may be given to removal of organs or tissue.

8.3.2 Location of a post-mortem

Not all hospitals have a mortuary suitable for post-mortem examinations. The current wording of section 30 of the Transplantation and Anatomy Act is clarified by clause 27 so that it is clear that a post-mortem may occur at a hospital other than the hospital where a person died.

8.3.3 Definition of donated tissue

An amendment made by clause 29 allows the recovery of reasonable costs associated with removal, evaluation, processing storage and distribution of donated tissue, regardless of whether the tissue is removed under the Queensland Act or a corresponding law in another jurisdiction.

8.3.4 Authorisation of a school of anatomy

Currently, the Governor in Council may authorise a school of anatomy and appoint inspectors for those schools. Clause 28 amends sections 37 and 38 of the Transplantation and Anatomy Act to enable the chief executive of the department to make those decisions.

8.4 Stakeholders' views

Transplant Australia Ltd supports the amendments.⁵¹ Transplant Australia Ltd also highlighted the importance of encouraging Australians to register their informed consent to donation on the Australian Organ Donor Register.⁵²

⁵⁰ Explanatory Notes, p.20

⁵¹ Transplant Australia, Submission 3, p.1

⁵² *ibid.*, p.2

Appendices

Appendix A – List of Submissions

Sub #	Submitter
1	Queensland Centre for Mothers and Babies (The University of Queensland)
2	Australian Medical Association Queensland
3	Transplant Australia Ltd
4	Council of the Queensland Institute of Medical Research

Appendix B – Officials at public departmental briefing

Public briefing – 20 September 2013

Department of Health

- Dr Jeannette Young, Chief Health Officer and Acting Deputy Director-General
- Ms Rachel Welch, Director, Regulatory Instruments Unit
- Ms Helen Borradaile, Manager, Regulatory Instruments Unit