Parliamentary Committees

Hospital Foundations Bill 2018

Report No. 3, 56th Parliament
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
March 2018

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

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Deputy Chair	Mr Mark McArdle MP, Member for Caloundra
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Acknowledgements

The committee acknowledges the work of the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee and the assistance provided by the Department of Health.

Contents

Abbreviations

Bill	Hospital Foundations Bill 2018
committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
department	Department of Health
DM Act	*Drugs Misuse Act 1986*
FLP	Fundamental legislative principle
HF Act	*Hospitals Foundations Act 1982*
LS Act	*Legislative Standards Act 1992*
Minister	Minister for Health and Minister for Ambulance Services
POQA	*Parliament of Queensland Act 2001*
Standing Orders	Standing Rules and Orders of the Legislative Assembly

Note: All Acts are Queensland Acts, unless specified otherwise.

Chair's foreword

This report presents a summary of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's examination of the Hospital Foundations Bill 2018.

The Bill proposes to:

- repeal and replace the *Hospitals Foundations Act 1982* to streamline the legislation, remove unnecessary prescription and ensure the legislation reflects Hospital Foundations' current operational practices, and
- amend the *Drugs Misuse Act 1986* to enable industrial cannabis seeds to be grown for human consumption in Queensland.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

The committee's inquiry was helped by the work of the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament, which considered and reported on a previous version of the Bill. The former committee's endeavours gave this committee an excellent platform to work from.

I would like to thank my fellow committee members for their contributions to this inquiry – our first as a new committee.

On behalf of the committee, I thank the submitters who commented on the Bill. I also thank the committee's secretariat and the Department of Health for their assistance.

I commend this Report to the House.

Aaron Harper MP

Chair

Recommendations

The committee recommends the Hospital Foundations Bill 2018 be passed.

1 Introduction

1.1 Role of the committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (committee) is a portfolio committee of the Legislative Assembly.[1] The committee's areas of portfolio responsibility are:

- Health and Ambulance Services
- Communities, Women, Youth and Child Safety
- Domestic and Family Violence Prevention, and
- Disability Services and Seniors.

The committee is responsible for examining each Bill in its portfolio areas to consider the:

- policy to be given effect by the legislation, and
- application of fundamental legislative principles.[2]

Further information about the committee's work can be found on its webpage.

1.2 Bill referral

On 15 February 2018, the Minister for Health and Minister for Ambulance Services, Hon Dr Steven Miles MP (the Minister), introduced the Hospital Foundations Bill 2018 (the Bill) into the Legislative Assembly. The Bill was referred to the committee on 15 February 2018, with the committee required to report to the Legislative Assembly by 15 March 2018.

1.2.1 Inquiry into the Hospital Foundations Bill 2017

The Bill is substantially the same as the Hospital Foundations Bill 2017 (the 2017 Bill), referred to the former Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the former committee).[3]

The former committee examined the 2017 Bill and reported to the Legislative Assembly on 13 October 2017.[4] The Bill lapsed when the Parliament was dissolved on 29 October 2017, before the second reading debate. The former committee recommended:

- the 2017 Bill be passed, and
- during the 2017 Bill's second hearing, the then-Minister for Health and Minister for Ambulance Services clarify some of the 2017 Bill's provisions.

1.2.2 Inquiry process

During its examination of the Bill, the committee:

- had regard to the former committee's report on the 2017 Bill

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1 The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (the committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001*, s 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Order 194).

2 Schedule 6, Standing Rules and Orders.

3 Department of Health, correspondence, 20 February 2018, cover letter.

4 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 46, 55th Parliament: Hospital Foundations Bill 2017*, Queensland Parliament, October 2017.

- invited submissions from stakeholders. The two submissions received and accepted by the committee, including one late submission, are listed in Appendix A, and
- requested, and received, written advice from the Department of Health (the department).

As the department provided a written briefing setting out that the Bills were substantially the same[5], and given the small number of submissions received on the Bill, the committee decided not to hold a public briefing or a public hearing on the Bill.

The material published on this inquiry is available here.

1.3 Policy objectives of the Hospital Foundations Bill 2018

The objectives of the Bill are to:

- repeal and replace the *Hospitals Foundations Act 1982* (HF Act) to streamline the legislation, remove unnecessary prescription and ensure the legislation reflects hospital foundations' current operational practices, and
- amend the *Drugs Misuse Act 1986* (DM Act) to enable industrial cannabis seeds to be grown for human consumption in Queensland.

1.4 Government consultation on the Bill

The explanatory notes to the Bill provide the same information on the consultation undertaken as the explanatory notes to the 2017 Bill, which is that:

- Hospital Foundations and Hospital and Health Services (HHSs) were given consultation drafts of the Bill for comment. Hospital Foundations were supportive of the Bill, and
- the Department of Agriculture and Fisheries held a forum with a range of industry stakeholders to discuss the proposed amendments to the DM Act. Stakeholders supported the proposed amendments.[6]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives which it will achieve and consideration of the information provided by the department and from submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Hospital Foundations Bill 2018 be passed.

5 Department of Health, correspondence, 20 February 2018, cover letter.

6 Hospital Foundations Bill 2018, explanatory notes, p 17.

2 Examination of the Hospital Foundations Bill 2018

The former committee examined the 2017 Bill thoroughly, as the new committee has done with the 2018 Bill. Given the close similarities between the Bills, the committee does not consider it necessary to duplicate the former committee's work. Instead, the former committee's report on the 2017 Bill is attached at Appendix B for reference.

Issues raised in submissions are discussed below, as is the department's response to those issues and its response to the former committee's recommendation for clarification on two matters.

2.1 Risk that funds raised by a Hospital Foundation may not go to the associated Hospital and Health Service

Darling Downs HHS expressed concern that the Bill may not prevent money raised by Hospital Foundations being used for purposes other than supporting the local HHS, such as for broader public health services or in other geographical areas.[7] Darling Downs HHS submitted that if this was the case, people who make donations to a Hospital Foundations because they believe their money will be made available to the associated HHS may be misled.

Darling Downs HHS suggested that such an outcome could occur partly because the Bill proposes to reduce the number of HHS staff on Hospital Foundations' boards from a minimum of three to one.

The department's response

Risk of diversion of funds

The department advised that the Bill makes clear that a Hospital Foundation operates for the benefit of a particular HHS (or a particular part of an HHS, such a specific hospital) or for the benefit of the Queensland public health system generally. This is consistent with the Act which provides that a Hospital Foundation's objects may include 'to do anything, relevant to the fields of medicine or health care, that is likely to be to the betterment of health services generally or the administration of an associated hospital'.

Most Hospital Foundations raise funds for the benefit of their associated HHS. However, Hospital Foundations may also be established for broader purposes, including to support public health generally. For example, the PA Research Foundation raises funds to support lifesaving research that benefits all Queenslanders and the Children's Hospital Foundation has a state-wide remit to support children's health services across the State.[8]

Risk of the community being misled

The department does not consider there is a risk the community will be misled into donating to a Hospital Foundation. It highlighted that a Hospital Foundation's objects must be included on the department's website as part of the register of Hospital Foundations and all Hospital Foundations will be required to update their registered objects within three months of the new legislation commencing, to ensure they reflect the objects set out in clause 7. This will ensure the community is aware of where a Hospital Foundation may apply its funds. The Hospital Foundation's board is required to ensure the Hospital Foundation pursues its registered objects effectively and efficiently.

The department also noted that Hospital Foundations are statutory bodies and all existing Hospital Foundations are registered entities under the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). Accordingly, their activities are subject to oversight and scrutiny by both the Queensland and Commonwealth Governments. For example, as statutory bodies, Hospital Foundations must submit an annual report to the Minister for Health for tabling in the Legislative Assembly under section 63 of the *Financial Accountability Act 2009*. This report allows for scrutiny of a Hospital Foundation's

[7] Darling Downs Hospital and Health Service, submission 2, p 1.

[8] Department of Health, correspondence, 7 March 2018, p 2.

activities during the financial year. As registered entities under the *Australian Charities and not-for-profits Commission Act 2012* (Cth), Hospital Foundations have a responsibility to pursue their purposes and use donations effectively and efficiently and are subject to oversight by the Australian Charities and Not-for-profits Commission.[9]

Board membership

The department advised that the Act is prescriptive in its membership requirements for Hospital Foundations and that the Bill removes these requirements to improve flexibility. The associated HHS will continue to have a representative on the board, either the Hospital and Health Board (HHB) chair or their nominee, who must also be an HHB member. The Minister must consult with the relevant HHB chair before recommending an appointment to a Hospital Foundation's board.[10]

Committee comment

The committee considers that the department's advice addresses the Darling Downs HHS's concerns.

2.2 Composition of Hospital Foundation Boards

The Queensland Nurses and Midwives' Union (QNMU) provided the same submission as for the 2017 Bill. It suggested that removing the requirement to have an employee of a hospital within an HHS or an employee of a university or other educational institution could lead to a Hospital Foundation board having no member with a health background, particularly with nursing or midwifery experience.[11]

The department's response

The department stated that the Bill removes the specific membership requirements contained in the HF Act 1982 to improve flexibility. The Bill provides that, when nominating members to the board, the Minister may have regard to whether the person has:

- a sufficient understanding, or can acquire understanding, of legislation applying to Hospital Foundations, and
- the skills, experience or expertise the Minister considers relevant or necessary to support the board.

The Bill does not include a requirement for the board to include members with particular expertise or from particular backgrounds, as this can result in the board not being properly constituted in the event a person with that expertise or background is not available. Flexibility to appoint a range of members is particularly significant in regional and remote areas.

A significant part of a Hospital Foundation's work is the raising of funds to support its HHS in a variety of ways. The Bill allows members to come from a variety of backgrounds and have a range of skills to support a Hospital Foundation's operations, including its fundraising activities.

The Bill will ensure members have the necessary skills and experience to govern the Hospital Foundation while enabling members to be drawn from a cross-section of the community. Where appropriate, this may include members with health expertise. The Bill requires that Hospital Foundation members include the chair or other member of the HHB for the Hospital Foundation's associated HHS, to help ensure the board has strong linkages with, and understands the needs of, its associated HHS.[12]

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9 Department of Health, correspondence, 7 March 2018, p 2.

10 Department of Health, correspondence, 7 March 2018, p 3.

11 Queensland Nurses and Midwives' Union, submission 1, February 2018, pp 2 – 3.

12 Department of Health, correspondence, 7 March 2018, p 1.

Committee comment

The committee considers that the department's advice addresses the QNMU's concerns.

The committee notes that a key role of Hospital Foundations is to raise money, which is a task often undertaken by people with a fundraising or commercial background. The committee also considers that if Hospital Foundation boards comprise people from a medical, nursing or midwifery background there is the potential for such staff to unduly influence where money raised is spent.

2.3 Clarification of clauses in the 2017 Bill in response to the former committee's recommendations

The former committee recommended clarification of the following items during the then-Minister's second reading speech for the 2017 Bill:

- the policy rationale of not requiring a Hospital Foundation to obtain Ministerial approval to acquire a business by way of a gift, but requiring Ministerial approval to acquire a business by other means, and
- the intended interaction between clause 66 of the Bill in relation to property invested in a Hospital Foundation and the provisions of clause 52 and 53 in relation to obtaining Ministerial approval for certain special financial arrangements.[13]

The Bill lapsed before it reached the second reading stage. In recent correspondence, the department addressed the former committee's recommendations.

2.3.1 Not requiring Ministerial approval to acquire a business by way of a gift

The department's response

The department advised that acquiring a business is considered a high-risk financial transaction and is not a transaction routinely entered into by Hospital Foundations. The Minister's approval is currently required before a Hospital Foundation can acquire a business, given the risks to it.

Exempting Hospital Foundations from obtaining ministerial approval, if a business is acquired by gift, is based on practicality and an assessment of the risk involved. In practice, it may be impossible or impracticable for a Hospital Foundation to seek the Minister's approval before acquiring an asset by gift. Without the exception in clause 53(2)(a), the Hospital Foundation would breach its obligations under the Bill through no fault on its part. It is also considered there is less financial risk associated with acquiring a business by gift, as the Hospital Foundation is not using its own resources for the acquisition.[14]

2.3.2 Intended interaction between clause 66 and clauses 52 and 53

The department's response

The department advised that while both clauses 53 and 66 relate to circumstances where a Hospital Foundation obtains property by gift, they deal with different aspects of the process.

Clause 53 makes clear that the Minister's approval is not required before a Hospital Foundation can acquire or dispose of particular property received by gift. Clause 66 applies to any property that is subject to a condition or trust and provides that a Hospital Foundation may dispose of property that is subject to a condition or trust if the property is unfit for purpose, not required, or of insufficient value. Both clauses 53 and 66 alleviate the administrative burden for Hospital Foundations when dealing with assets.

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13 Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 46, 55th Parliament: Hospital Foundations Bill 2017*, Queensland Parliament, October 2017, p iv.

14 Department of Health, correspondence, 20 February 2018, p 2.

While a Hospital Foundation can refuse to accept property that is subject to a condition or trust, there are circumstances in which a Hospital Foundation may only determine the property is unfit or not required, or of insufficient value, after accepting the property subject to a condition or trust. Clause 66 allows the Hospital Foundation to dispose of the property despite the condition or trust.

A similar power enabling Hospital Foundations to dispose of property despite a condition or trust is contained in section 55 of the HF Act. However, the Hospital Foundation must obtain the Governor in Council's approval to do so. This is a significant administrative burden for Hospital Foundations.[15]

Committee comment

The committee appreciates the department clarifying the matters included in the former committee's report and considers the department's advice sufficiently addresses the issues.

[15] Department of Health, correspondence, 20 February 2018, p 2.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to the:

- rights and liberties of individuals, and
- institution of Parliament.

The committee is satisfied that the potential FLP issues in the Bill were addressed in the former committee's report, which is attached at Appendix B. The committee has not identified any further potential FLP issues.

3.2 Explanatory notes

Part 4 of the LS Act requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The explanatory notes are fairly detailed and contain the information required by Part 4 of the LS Act and a reasonable level of background information and commentary to aid understanding of the Bill's aims and origins.

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Nurses and Midwives' Union
002	Darling Downs Hospital and Health Service

Appendix B – Former committee's report on the Hospital Foundations Bill 2017

Parliamentary Committees

Hospital Foundations Bill 2017

Report No. 46, 55th Parliament
Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
October 2017

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Chair	Ms Leanne Linard MP, Member for Nudgee
Deputy Chair	Mr Mark McArdle MP, Member for Caloundra
Members	Mr Sid Cramp MP, Member for Gaven
	Ms Leanne Donaldson MP, Member for Bundaberg
	Mr Aaron Harper MP, Member for Thuringowa
	Dr Mark Robinson MP, Member for Cleveland

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Acknowledgements

The committee acknowledges the assistance provided by the Department of Health and the Department of Agriculture and Fisheries.

Contents

Abbreviations

Act	*Hospitals Foundations Act 1982*
Bill	Hospital Foundations Bill 2017
Board	The governing board of a Hospital Foundation
chief executive	Chief executive of Queensland Health
committee	Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee
DM Act	*Drugs Misuse Act 1986*
DAF	Department of Agriculture and Fisheries
department	Department of Health
Foundations	Hospital Foundations
HHB	Hospital and Health Board
HHS	Hospital and Health Service
Minister	Minister for Health and Minister for Ambulance Services
POQA	*Parliament of Queensland Act 2001*
Standing Orders	Standing Rules and Orders of the Legislative Assembly
THC	Tetrahydrocannabinol (delta-9-tetrahydrocannabinol)

Note: All Acts are Queensland Acts, unless specified otherwise.

Chair's foreword

On behalf of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee of the 55th Parliament, I present this report on the committee's examination of the Hospital Foundations Bill 2017.

The Bill proposes to:

- repeal and replace the *Hospitals Foundations Act 1982* to streamline the legislation, remove unnecessary prescription and ensure the legislation reflects hospital foundations' current operational practices, and
- amend the *Drugs Misuse Act 1986* to enable industrial cannabis seeds to be grown for human consumption in Queensland.

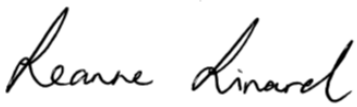
The committee's task was to consider the policy to be given effect by the Bill, and whether the Bill has sufficient regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. The fundamental legislative principles include whether legislation has sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

This report summarises the committee's examination of the Bill, including the information provided by the Department of Health and Department of Agriculture and Fisheries and the views expressed in the submission received by the committee.

The committee has recommended that the Bill be passed.

I would like to thank my fellow committee members for their contributions, and the committee secretariat for their support during the examination of the Bill.

I commend the report to the House.



Leanne Linard MP
Chair

Recommendations

Recommendation 1 **2**

The committee recommends that the Hospital Foundations Bill 2017 be passed.

Recommendation 2 **11**

The committee recommends that the Minister for Health and Minister for Ambulance Services clarifies during the second reading debate:

- the policy rationale of not requiring a Hospital Foundation to obtain Ministerial approval to acquire a business by way of a gift, but requiring Ministerial approval to acquire a business by other means, and
- the intended interaction between clause 66 of the Bill in relation to property invested in a Hospital Foundation and the provisions of clause 52 and 53 in relation to obtaining Ministerial approval for certain special financial arrangements.

1 Introduction

1.1 Role of the committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (committee) is a portfolio committee of the Legislative Assembly.[1] The committee's areas of portfolio responsibility are:

- health and ambulance services
- communities, women, youth and child safety
- domestic and family violence prevention, and
- disability services and seniors.[2]

The committee is responsible for examining each Bill in its portfolio areas to consider:

- the policy to be given effect by the legislation, and
- the application of fundamental legislative principles.[3]

Further information about the committee's work can be found on its webpage.[4]

1.2 Referral and inquiry process

On 22 August 2017, the Minister for Health and Minister for Ambulance Services, Hon Cameron Dick MP (the Minister), introduced the Hospital Foundations Bill 2017 (the Bill) into the Legislative Assembly. The Bill was referred to the committee on 22 August 2017, and the committee was required to report to the Legislative Assembly by 13 October 2017.

During its examination of the Bill, the committee:

- invited submissions from stakeholders; the one submission received and accepted by the committee is at **Appendix A**
- held a public briefing on 6 September 2017. A list of the witnesses who appeared at the briefing is at **Appendix B**, and
- requested, and received, written advice from the Department of Health (the department) and the Department of Agriculture and Fisheries (DAF) on the Bill and issues raised in submissions.

The material published relating to this inquiry is available on the committee's webpage.[5]

1 The committee was formerly the Health and Ambulance Services Committee, which was established on 27 March 2015, under the *Parliament of Queensland Act 2001* (the POQA) and the Standing Rules and Orders of the Legislative Assembly (Standing Orders). On 16 February 2016, the Parliament amended the Standing Orders, renaming the committee and expanding its areas of responsibility.

2 POQA, s 88 and Standing Orders, Standing Order 194 and schedule 6.

3 POQA, s 93 (1).

4 http://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC.

5 http://www.parliament.qld.gov.au/work-of-committees/committees/HCDSDFVPC.

1.3 Policy objectives of the Bill

The Bill proposes to:

- repeal and replace the *Hospitals Foundations Act 1982* (the Act) to streamline the legislation, remove unnecessary prescription and ensure the legislation reflects hospital foundations' (Foundations) current operational practices, and
- amend the *Drugs Misuse Act 1986* (DM Act) to enable industrial cannabis seeds to be grown for human consumption in Queensland.[6]

1.4 Consultation on the Bill

The department advised that consultation drafts of the Bill were provided to Foundations and Hospital and Health Services (HHSs) for comment at various stages throughout the drafting process.

Foundations were supportive of the Bill, noting that it modernises and simplifies the legislative framework governing Foundations. Foundations and HHSs raised minor drafting issues on an early draft of the Bill. The department advised that some of these issues were addressed through changes to the Bill.[7]

In relation to the proposed amendments to the DM Act, the department advised that DAF had invited Queensland cannabis licensed growers, researchers, a denaturer[8] and the Australian Industrial Hemp Alliance to a forum to discuss the proposed amendments.

The department advised that attendees were supportive of the key aspects of the proposed amendments, especially allowing cannabis to be grown for food. Two additional licence holders participated in a teleconference on the proposed amendments and were supportive of the amendments to the DM Act.[9]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend the Bill be passed.

After examination of the Bill, including the policy objectives it aims to achieve, and consideration of the information provided by the department and submitters, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends that the Hospital Foundations Bill 2017 be passed.

6 Department of Health (Department), *Correspondence – written briefing*, 30 August 2017, pp 1 and 4.

7 Hospital Foundations Bill 2017, explanatory notes, (explanatory notes) p 17.

8 With respect to cannabis, a denaturer processes industrial cannabis seeds to prevent seed germination. Denatured seeds are used in manufacturing seed or oil products. Source: Queensland Government, 'Industrial cannabis production', *Business Queensland*, 3 July 2017.

9 Explanatory notes, p 17.

2 New legislative framework for Hospital Foundations

2.1 Background

The Act establishes and regulates hospital foundations (Foundations) in Queensland. Foundations have existed in Queensland for around 35 years.

The Foundations help their HHS and support improvements to the public health system by raising funds to purchase medical equipment, upgrade health service facilities, support educational and training opportunities for staff and fund research. In 2015-16, Foundations collectively raised around $70m for HHSs.[10] The Foundations also work closely with local communities to deliver outcomes for local public health services.[11]

There are 13 Foundations in Queensland, which vary significantly in size and scope.[12] Foundations are statutory bodies, and in 2015-16 employed around 150 full-time staff, with an estimated volunteer workforce of around 4,000.[13]

The department advised that the Act has not undergone a substantial review since its introduction.[14] The department stated that the Act also does not reflect the nature of modern financial transactions.[15] In particular, the department stated that:

- the drafting of the Act creates confusion
- the Foundations themselves wanted the Act to be modernised, and[16]
- a key reason for change is for Foundations to have an Act that can be understood.[17]

The department advised that the Bill would replace the Act with legislation that reflects contemporary drafting standards, which streamline the legislation by removing unnecessarily prescriptive provisions.[18] The department explained that the Bill would not significantly impact on the operations of existing Foundations.[19]

10 Hon. Cameron Dick MP, Minister for Health and Minister for Ambulance Services (Minister), Queensland Parliament, *Record of Proceedings*, 22 August 2017, p 2287.

11 Department, *Correspondence – written briefing*, 30 August 2017, p 1.

12 The 13 health foundations are: Bundaberg Health Services Foundation; Children's Hospital Foundation Queensland; Far North Queensland Hospital Foundation; Gold Coast Hospital Foundation; HIV Foundation Queensland; Ipswich Hospital Foundation; Mackay Hospital Foundation; The PA Research Foundation; The Prince Charles Hospital Foundation; Royal Brisbane and Women's Hospital Foundation; Sunshine Coast Health Foundation; Toowoomba Hospital Foundation; and Townsville Hospital Foundation.

13 Department, *Correspondence – written briefing*, 30 August 2017, p 1.

14 Kathleen Forrester, Department, *Public briefing transcript*, 6 September 2017, p 2.

15 Minister, Queensland Parliament, *Record of Proceedings*, 22 August 2017, p 2287.

16 Kathleen Forrester, Department, *Public briefing transcript*, 6 September 2017, p 4.

17 Kathleen Forrester, Department, *Public briefing transcript*, 6 September 2017, p 3.

18 Explanatory notes, p 2.

19 Kathleen Forrester, Department, *Public briefing transcript*, 6 September 2017, p 3.

2.2 Establishment of Foundations

If the Bill is passed, Foundations will continue to be established as bodies corporate. Foundations will also be considered 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 2009*.[20]

The Bill aims to modernise the process of establishing a new Foundation by enabling any person to apply to the Minister to establish a Foundation.[21] The Bill provides that an application to the Minister must state:

- the proposed name of the Foundation
- the objects for which the Foundation will hold and manage property, and
- the name of the HHS with which the Foundation will be associated.[22]

The Minister may request information from the applicant, and would have the discretion as to whether or not to approve an application to establish a new Foundation. In making this decision, the Minister may have regard to:

- the financial standing of the applicant
- whether the applicant has a sufficient understanding of the governance arrangements that apply to Foundations, and
- any other matter the Minister considers relevant.[23]

A new Foundation would be established by regulation made by the Governor in Council. The Bill provides that existing Foundations would continue in place on commencement of the new Act.[24]

2.3 Objects of Foundations

The Bill would replace the existing 11 prescriptive objects for which Foundations may apply property with six broad objects.[25] The new objects would provide that a Foundation may hold and deal with property to:

- support, improve or promote an existing public sector hospital, health service facility or health service (eg buying medical equipment and funding building improvements)
- support or promote a proposed public sector hospital, health service facility or health service
- give financial support for the education, training or development of the employees of an HHS or persons working as volunteers for an HHS (eg funding educational or professional development courses)
- give financial support for persons studying or teaching medical or health science, allied health or health administration

20 Bill, cl 13, 23 and 24

21 Bill, cl 8.

22 Bill, cl 9.

23 Bill, cl 10 and 11.

24 Bill, cl 12 and 86; explanatory notes, p 4.

25 *Hospitals Foundations Act 1982* (the Act), s 13.

- give financial support for research in medical or health science or to promote the results of that research (eg funding research centres or research projects), and
- do anything else that is likely to support, improve or promote public health (eg funding a preventative health program).[26]

The department advised that:

> *These objects are broad and designed to capture all current work of foundations. The Bill recognises that foundations may operate for the benefit of a particular HHS (or a particular part of a HHS, such as a specific hospital) or for the benefit of the Queensland public health system generally.*[27]

A Foundation's registered objects must be consistent with the broad objectives prescribed in the Bill. The Bill also provides for a register of foundations, which would include Foundations' current objects. The register of foundations must be made publicly available on the department's website.[28]

Any changes to a Foundation's registered objects must be approved by the Minister.[29] In addition, to ensure that existing Foundations' objects align with the new provisions, existing Foundations will be required to update their objects within three months of the Bill's commencement.[30]

2.4 Governing boards

2.4.1 Establishment and functions of boards

Currently, the Act provides that Foundations are administered by members appointed by the Governor in Council, and the chairperson of the Hospital and Health Board (HHB) for the Foundation's HHS or the chairperson's nominee. The Act does not currently require Foundations to have a governing board.[31]

The Bill provides that a Foundation must have a governing board (the Board). Boards are to comprise of seven members. The Board's functions are to:

- manage the Foundation generally
- ensure the Foundation achieves its registered objects effectively and efficiently, and
- set strategies and policies for property managed by the Foundation.

The Board would also have any other function given to it under the Bill or other legislation.[32]

The department advised that:

> *These changes are not expected to alter the functions or duties of existing foundations or their members but will ensure that the legislation better reflects the structure of foundations in practice.*[33]

The Bill makes transitional provisions to provide that existing Foundation members become board members upon commencement of the Act.[34]

26 Bill, cl 7.
27 Explanatory notes, p 3.
28 Bill, cl 79.
29 Bill, cl 22; explanatory notes, p 3.
30 Bill, cl 88; explanatory notes, p 3.
31 Act, s 18.
32 Bill, cl 27 and 28.
33 Explanatory notes, p 4.
34 Bill, cl 89; explanatory notes, p 4.

2.4.2 Board membership

The Bill provides that a Foundation's board must comprise of at least seven members:

- at least six people recommended by the Minster to the Governor in Council for appointment, and
- one person who is either the chairperson of the HHB for the Foundation's associated HHS, or the HHB member nominated by the chairperson.[35]

The Bill removes the existing membership requirements in the Act, which include that members must include a university employee and employees of a hospital within the associated HHS.[36]

Instead, the Bill provides that in recommending a person for appointment to the Board, the Minister may have regard to whether the person has:

- a sufficient understanding, or ability to acquire an understanding of, the legislation that applies to the Foundation, and
- the skills, experience or expertise in business, financial management, marketing, communications, health, law or another area the Minister considers relevant or necessary to support the Board in performing its functions.

In addition, the Bill requires the Minster to consult with the relevant HHB chairperson before recommending a board appointment.[37]

The Governor in Council must appoint a chairperson of the Foundation, and the Board must appoint a member as the deputy chairperson.[38]

As is currently the case, board members are to hold office for a term, not longer than five years (but may be re-appointed). However, unlike the Act, the Bill provides that a board member, including the chairperson or deputy chairperson, continues in office after their term expires until their successor is appointed to the position.[39]

The department advised that this approach would '… ensure business continuity for foundations where delays arise in appointment or reappointment processes'.[40]

2.4.3 Disqualification and removal from office

The Bill modernises the existing provision relating to the disqualification of a board member from office. The Bill provides that a person is disqualified from becoming a board member, if they:

- have a conviction, other than a spent conviction, for an indictable offence
- do not consent to the chief executive requesting a report about their criminal history (a criminal history report)
- are insolvent under administration
- are disqualified from managing corporations, or
- are employed by the Foundation.[41]

35 Bill, cl 30; explanatory notes, p 5.

36 Act, s 18.

37 Bill, cl 30; explanatory notes, p 5.

38 Bill, cl 31.

39 Bill, cl 32.

40 Explanatory notes, p 5.

41 Bill, cl 33.

In addition, the Bill provides that the Governor in Council may remove a board member from office, in the following circumstances, if:

- the member would have been disqualified from becoming a member
- the member consented to the borrowing of an amount that the Foundation is not lawfully authorised to borrow, or
- the Minister recommends the removal of the member, because they are satisfied the member:
  - is not acting in the Foundation's interests
  - is incapable of performing their functions
  - has neglected their functions or performed their functions incompetently
  - has displayed inappropriate or improper conduct in a private capacity that reflects adversely on the Board or Foundation, or
  - has been absent from three consecutive meetings without the Board's permission and without reasonable excuse.[42]

The Bill provides that the chief executive may, with the written consent of the person concerned, ask the Police Commissioner for a written criminal history report about the person to help determine whether a person should be disqualified from becoming a member or be removed from office.[43]

The Bill also requires a board member to immediately disclose any convictions during their appointment, unless they have a reasonable excuse. Non-compliance with this requirement is an offence attracting a maximum penalty of 100 penalty units.[44]

To ensure criminal history information remains confidential, the Bill provides that departmental officers must not unlawfully disclose criminal history information - an offence attracting a maximum penalty of 100 penalty units. The chief executive is also required to destroy criminal history information as soon as practicable after it is no longer needed.[45]

Submitter's views and department's response

The Queensland Nurses and Midwives' Union (QNMU) expressed concern that the proposed provisions do not require board members to have a background in health. The QNMU suggested that if the Board does not have a member from the nursing or midwifery fields, it may prevent the Board undertaking nursing and/or midwifery initiatives.[46]

The department advised that the proposed changes to board membership aim to improve flexibility, as specific requirements can result in the Board not being properly constituted, if an appropriately qualified person is not available. The department stated that flexibility to appoint a range of members is particularly significant in regional and remote areas. The department noted that the Foundation's role is to raise funds to support HHSs, and it is important that the Bill allow Boards to have expertise in this area. The department noted that the Bill does not prevent health representation being appointed to Boards, where possible and appropriate. It also highlighted that the Bill requires the Minister to consult with the chair of the HHB for the Foundations' associated HHS about appointments.[47]

42 Bill, cl 34.

43 Bill, cl 36.

44 Bill, cl 37.

45 Bill, cl 38; explanatory notes, p 6.

46 Submission 1, Queensland Nurses and Midwives' Union, p 2.

47 Department of Health, *Response to issues raised in submissions*, 20 September 2017, p 2.

2.4.4 Members' obligations and protections

The Act provides that board members must act honestly in the exercise of their powers and in the discharge of their functions, and provides that a member is not personally liable where they have acted in good faith.[48]

The Bill modernises these provisions, providing that board members are required to act impartially and in the best interests of the Foundation in performing their functions.[49] The department stated that 'Failing to do so may result in the Minister recommending to the Governor in Council that the board member be removed [from office]'.[50]

The Bill provides that a board member is not civilly liable for an act done, or omission made, honestly and without negligence.[51]

2.4.5 Board business and meetings

The Bill makes provision for the disclosure of interests by board members and the holding of committee meetings, including the keeping of minutes, quorum and voting rules and procedures.[52]

2.5 Administration and staffing arrangements

The Act requires each Foundation to have a secretary who must be a senior officer of a hospital associated with the Foundation.[53] The department advised that '… most of the foundations have established themselves as modern corporate entities with a managing executive officer or equivalent in place'.[54]

The Bill provides that a Foundation:

- must employ a managing executive officer – who is responsible for carrying out the Board's directions, and
- may employ other staff the Board considers appropriate to perform its functions or exercise its powers.

The managing executive officer will be employed by the Foundation and will be entitled to remuneration and allowances decided by the Board.

In addition, a Foundation may, with the agreement of the chief executive of the HHS, arrange for HHS staff to be made available to the Foundation and use HHS premises and facilities. [55]

The department stated that 'The Bill better reflects Foundations' current practices and provides for a conduit between the Foundation and the board by requiring each Foundation to have a MEO [managing executive officer]'.[56]

48 Act, s 25A.

49 Bill, cl 46.

50 Explanatory notes, p 8.

51 Bill, cl 81.

52 Bill, cl 39 to 45.

53 Act, s 37.

54 Explanatory notes, p 6.

55 Bill, cl 18 to 20.

56 Explanatory notes, p 6.

2.6 Foundations' functions and powers

The Bill provides that the functions of a Foundation are:

- to pursue the registered objects of the Foundation
- to manage property held by the Foundation, and
- another function given to the Foundation under this Act or another Act.[57]

The department advised that:

> *The HF Act [the Act] takes a prescriptive approach, listing the powers of the foundations in detail. While the Bill will not limit the current powers of a foundation, modernised provisions provide that a foundation has all the powers of an individual. This is consistent with other Acts establishing statutory bodies.*[58]

Examples of Foundations' powers include entering into contracts and agreements, holding and managing property and establishing and administering trust funds. The Bill provides, however, that Foundations' banking and borrowing powers are limited to those prescribed under the *Statutory Bodies Financial Arrangements Act 1982*.[59]

2.7 Financial provisions

The department stated that 'The provisions [in the Act] relating to financial transactions have been refined to modernise the requirements and better reflect the nature of foundations and their day-to-day operations'.[60]

The department advised that Foundations will no longer need Ministerial approval for transactions that are not associated with a high level of risk and that Foundations are considered to have the financial expertise to manage without oversight, for example:

- holding or disposing of shares or other similar financial assets, and improving, developing or leasing a Foundation's land or buildings
- dealing with property received as a gift, devise or bequest, and
- selling, exchanging or disposing of property vested in a Foundation, subject to a condition or trust that it is either unfit for purpose or is *property of insufficient value.*[61]

The Bill also proposes to disapply section 64 of the *Financial Accountability Act 2009*, which requires a Foundation to obtain the Treasurer's approval to divest themselves of an investment gifted or bequeathed to them.

The *Statutory Bodies Financial Arrangements Act 1982* requires a statutory body to seek the Treasurer's approval to appoint a funds manager. However, the Bill disapplies this provision, as appointing a funds manager to manage investments is part of a Foundation's operations. It is not, therefore, considered necessary for Foundations to require the Treasurer or Minister's approval to appoint a funds manager.

However, Ministerial approval would be required before a funds manager can enter into a financial transaction, on a Foundation's behalf, for which the Foundation would otherwise need to seek approval. This is because a funds manager is only empowered to exercise financial powers that the

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57 Bill, cl 14.

58 Department, *Correspondence – written briefing*, 30 August 2017, p 3.

59 Bill, cl 16 and 17.

60 Explanatory notes, p 7.

61 Bill, cl 52 and 53; The term *property of insufficient value* is defined as property that is of no value or the cost of sale would likely exceed any proceeds – Bill, cl 66.

Foundation is empowered to exercise. A funds manager cannot perform transactions outside the scope of services that the Foundation has engaged it to perform.[62]

The Bill provides that Ministerial approval would be required for 'higher risk transactions'. For example, a Foundation would need Ministerial approval before it:

- acquires the whole, or part of, a business
- enters into a joint venture or partnership
- acquires or issues bonds, debenture, inscribed stock, shares stock or other securities
- acquires foreign currency
- funds prizes over a particular amount - $5,000 or such other amount prescribed by regulation
- disposes of land, an interest in land or a building
- enters into a derivative transaction – Foundations would also be required to comply with reporting requirements when undertaking derivative transactions, and
- borrows money or operates an account with an overdraft facility.[63]

The Bill provides that the Minster can grant Foundations either a general or a specific approval to undertake financial transactions.

A general approval would allow the Foundation to exercise their powers to undertake financial transactions without the need to seek approval in every instance. The Minister may approve a general approval applying to all of Foundation's powers or limit an approval to a particular power. The general approval may also be limited in its application by reference to specified exceptions or factors.[64]

Funds managers are taken to have been given Ministerial approval for any financial transaction for which the Foundation has received Ministerial approval.[65]

The Bill provides that it is an offence for a person to give the Minister false or misleading documents when applying for an approval for a special financial arrangement or a derivative transaction – attracting a maximum penalty of 100 penalty units.

However, the offence does not apply if the applicant, when providing the document, explains how the document is false or misleading to the best of their ability and provides the correct information if they are reasonably able to obtain it.[66]

Committee comment

The committee notes that clause 53 provides that a Foundation may enter into certain special financial arrangements without Ministerial approval. Such arrangements include acquiring by way of gift, devise or bequest, the whole or part of a business. The committee notes, however, that clause 52 provides that a Foundation would require Ministerial approval to acquire the whole or part of a business by other means, eg purchasing a business.

In addition, clause 66 makes provision about the sale, exchange or disposal of property vested in the Foundation that is unfit or not required for a Foundation's purposes or is *property of insufficient value*.

62 Explanatory notes, p 7.

63 Bill, cl 52 to 55; explanatory notes, p 7.

64 Bill, cl 56.

65 Bill, cl 64.

66 Bill, cl 63.

The committee seeks clarification from the Minister in relation to the policy rationale of not requiring Ministerial approval to acquire a business by way of a gift, but requiring Ministerial approval for a business acquired by other means. The committee also seeks clarification from the Minister about how the provisions at clause 66 in relation to property invested in a Foundation are intended to interact with clauses 52 and 53 of the Bill.

Recommendation 2

The committee recommends that the Minister for Health and Minister for Ambulance Services clarifies during the second reading debate:

- the policy rationale of not requiring a Hospital Foundation to obtain Ministerial approval to acquire a business by way of a gift, but requiring Ministerial approval to acquire a business by other means, and
- the intended interaction between clause 66 of the Bill in relation to property invested in a Hospital Foundation and the provisions of clause 52 and 53 in relation to obtaining Ministerial approval for certain special financial arrangements.

2.8 Ministerial oversight of Foundations and Boards

The department advised that under the Act, the Minister has limited powers to inquire into a Foundation's operations or remedy serious governance issues.[67] The department referred to the recent example of 'the Redcliffe Hospital Foundation [which] did face some challenges and was subsequently wound up'.[68]

To ensure greater transparency, the Bill includes new powers to ensure the Minister has appropriate oversight where there are concerns about a Foundation's governance or financial viability.

2.8.1 Notice of matters raising significant concerns

The Bill provides that a Board must give the Minister notice of a matter that raises a significant concern about:

- the financial viability of the Foundation (eg, if the Foundation is the subject of legal proceedings that may result in a significant amount of damages or legal costs), or
- the administration or management of the Foundation (eg, if the Foundation has allocated funds held by it to a matter that is outside its objects).[69]

2.8.2 Ministerial request for information or documents

The Bill provides that the Minister may, if he or she has concerns about the financial viability of the Foundation or the administration or management of a Foundation, ask the Board to give information or documents relating to the Board's functions. The Board must comply with such a request.

Unless there are exceptional circumstances, the Minister must consult the Board about the information or documents that may be sought before giving a formal notice to the Board for the information.

The Minister may provide the documents to another entity, such as the department or an independent auditor, to help the Minister assess the Foundation's financial viability or governance.[70]

67 Explanatory notes, p 8.

68 Mr David Harmer, Director, Legislation Policy Unit, Strategy, Policy and Planning Division, Department, *public briefing transcript*, 6 September 2017, p 4.

69 Bill, cl 47; explanatory notes, p 9.

70 Bill, cl 48; explanatory notes, p 9.

2.8.3 Dismissal of the Board and appointment of an administrator

The Bill enables the Governor in Council, on the Minister's recommendation, to remove all board members of a Foundation.

The Minister may only make a recommendation to the Governor in Council, if he or she is satisfied it is in the public interest to do so, having regard to the Minister's consideration of the Foundation's financial viability and/or administration. No compensation is payable to a Board Member on removal from office.[71]

Where a Foundation has no board members, the Governor in Council may, on the recommendation of the Minister, appoint a qualified person to act as the Board of the Foundation (the administrator).

The administrator has the same functions and powers to administer the Foundation as the Board would have, and must administer the Foundation's affairs for the term of their appointment.[72] The department advised that this ensures that, where necessary, an administrator can manage the affairs of the Foundation before dissolution.[73]

2.8.4 Dissolution and winding-up of Foundations

The department advised that the Act currently '… sets out prescriptive requirements for winding up and dissolving Foundations.[74]

The Bill removes these requirements, and provides that a Foundation may apply to the Minister for its entry in the register to be removed.

The Governor in Council may, by gazette notice, order that a Foundation's entry be removed from the register either because the Foundation has applied to have its entry removed from the register or because the Governor in Council is satisfied it should be dissolved.

A regulation may dissolve the Foundation, where its entry has been removed from the register.[75]

71 Bill, cl 49.

72 Bill, cl 50 and 51; explanatory notes, p 9.

73 Explanatory notes, pp 9 – 10.

74 Act, s 57; explanatory notes, p 9.

75 Bill, cl 72 to 77.

3 Amendments to the *Drugs Misuse Act 1986*

3.1 Background

In recent years, foods made from hemp seeds – which are grown by the cannabis plant – have increased in popularity due to their purported health properties.

Hemp-based food products such as seeds, oils and powders contain protein, dietary fibre and polyunsaturated fats, particularly omega-3 fatty acids. Such food products contain very low levels of tetrahydrocannabinol (THC), the psychoactive component of cannabis.[76]

Cannabis-based food products are expected to grow in popularity – an August 2016 report from Technavio (a technology research and advisory company) estimated that the global market for hemp-based foods was around $215.8 million. It also forecast that this would grow by around 20 per cent per annum from 2016 – 2020.[77] This report also suggested that the Asia-Pacific would emerge as the leading market in this period and that Queensland would have the potential to compete in that market.[78]

The *Australia and New Zealand Ministerial Forum on Food Regulation* recently agreed that from 12 November 2017, hemp seed can be sold, as food or a food ingredient, in Australia. This means that selling hemp seed foods will be legal in Queensland from that date.[79]

While the DM Act permits industrial cannabis to be grown for fibre or seed, the department advised that:

> *Queensland industry is currently unable to produce seeds for such foods as the DM Act [Drugs Misuse Act 1986] does not authorise the production of industrial cannabis for this purpose.*[80]

Without legislative change, hemp seed would need to be purchased from overseas or interstate and Queensland businesses would be prevented from participating in this market.[81]

3.2 Growing of industrial cannabis for food

The Bill amends Part 5B of the DM Act (Commercial production of industrial cannabis) to remove restrictions which prevent industrial cannabis seeds being grown for the purpose of human consumption.[82]

The DM Act generally requires industrial cannabis seed to be 'denatured' – cracked, de-hulled, heated or treated in another way that prevents growth.[83]

To facilitate the food supply chain and manage associated risks, the Bill will replace the current authorisation of *seed denaturers* and *seed suppliers,* with a *seed handler licence* (see section 3.2.1 of this report).

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76 Minister, Queensland Parliament, *Record of Proceedings*, 22 August 2017, p 2287.

77 Department, *Correspondence – written briefing*, 30 August 2017, p 4; Minister, Queensland Parliament, *Record of Proceedings*, 22 August 2017, p 2287.

78 Kathleen Forrester, Department, *Public briefing transcript*, 6 September 2017, p 8.

79 Kathleen Forrester, Department, *Public Briefing Transcript*, 6 September 2017, p 3.

80 Department, *Correspondence – written briefing*, 30 August 2017, p 4.

81 Minister, Queensland Parliament, *Record of Proceedings*, 22 August 2017, p 2287.

82 Bill, cl 97 and 98.

83 Explanatory notes, p 10.

3.2.1 New licensing arrangements

The DM Act provides that a person may apply to the chief executive for one or more of the following licenses:

- a category 1 researcher licence – use of a cannabis plant that has in its leaves or flower heads a THC concentration of three per cent or more
- a category 2 researcher licence – use of a cannabis plant that has in its leaves or flower heads a THC concentration of more than 1 per cent, but less than 3 per cent, and
- a growers licence.[84]

The department advised that:

> *The level of scrutiny of applications of all licence types is currently similar despite there being more significant risk associated with the activities undertaken under a research licence that allows the growing of high-THC cannabis varieties.*
>
> *The Bill will tighten the regulatory control of researchers, and reduce the licensing threshold for growers.*[85]

The Bill replaces the existing licenses for which a person may apply to the chief executive. The new categories of licence are:

- **grower licences** – authorises the licensee to:
  - possess industrial cannabis plants and seed
  - produce industrial cannabis plants and seeds from *planting seeds* (derived from cannabis plants with a THC concentration in their leaves and flowering heads of up to 0.5 per cent), and
  - supply industrial cannabis seed to a researcher, grower or other persons specified by regulation.
- **researcher licences** – authorises a licensee to possess, produce and supply for research purposes:
  - Class A cannabis seeds and plants – cannabis plant that has in its leaves or flower heads a THC concentration of three per cent or more, and
  - Class B cannabis seeds and plants – cannabis plant that has in its leaves or flower heads a THC concentration of more than 1 per cent, but less than 3 per cent.
- **seed handler licenses** – authorises a licensee to possess industrial cannabis seed for:
  - denaturing, and supplying denatured seed to a person authorised to possess processed cannabis
  - supplying industrial cannabis seed to a licensed grower, researcher or seed handler or another person authorised to possess the seed, and
  - the purpose of cleaning, drying, grading and/or storing the seed for supply.[86]

Seed handlers will also be able to act as wholesale intermediaries for whole viable seed. The department advised that this may assist the development of a food supply chain because seed for

84 *Drugs Misuse Act 1986* (DM Act), s 49.

85 Explanatory notes, p 10.

86 Bill, cl 118 to 121 amend s 49, 50 and 52 of the DM Act.

food will ideally be kept cool, and away from light, with the outer shell intact as long as possible to maintain taste and nutritional quality.[87]

The Bill replaces current provisions in the DM Act, which provide for the matters the chief executive must have regard to when deciding whether a person is a fit and proper person to hold a licence. In deciding whether an applicant is a fit and proper person to hold a licence, the chief executive must have regard to:

- whether the applicant has held a licence or permit that was suspended or cancelled
- the applicant's criminal history report, and
- any other matter the chief executive considers relevant.

The Bill provides that in deciding whether an applicant is a fit and proper person for a researcher licence, the chief executive must have regard to other matters, than those specified for growers and seed handler licences. This includes the criminal history of an applicant's *close associates* (eg a person who holds a financial interest in the applicant's business and is able to exercise a significant influence over the conduct of that business).

In support of these provisions, the Bill amends the DM Act to provide that the chief executive may ask the Police Commissioner for a criminal history report on a close associate of an applicant for a researcher licence. [88]

In addition, the department stated that researchers often contract out the growing of cannabis, including high-THC varieties, to licensed industrial cannabis growers. The Bill will require all future applicants for a researcher licence to submit a plan outlining proposed risk management strategies, including supervision of contracted growers.[89]

3.2.2 Charging for the monitoring of licence holders' activities

The Bill clarifies that a regulation, made by the Governor in Council, may prescribe one or more fees for the monitoring of activities of licence holders. Monitoring activities include:

- auditing of a licence holder's records
- the inspection of a licence holder's facilities, and
- taking samples of cannabis plants for testing for THC concentrations.

A fee may not, however, be more than the reasonable costs of the monitoring activity.[90]

3.2.3 Breaches of the *Drugs Misuse Act 1986*

Currently, a person who does not comply with the DM Act may be guilty of a drug offence under the Criminal Code. The department advised, however, that:

> *… criminal prosecution may not be timely or justified for minor breaches of industry regulation. The current grounds for cancelling or suspending a licence are limited, principally where the holder has been convicted of an offence.*[91]

The department stated that the Bill provides for more flexible options to respond to breaches of the DM Act, including specific offences for:

- a breach of a record-keeping requirement, and

87 Explanatory notes, 9.

88 Bill, cl 102 and 103 amend s 57 and 61 of the DM Act.

89 Explanatory notes, p 11.

90 Bill, cl 128 inserts new s 110G into the DM Act.

91 Explanatory notes, p 11.

- a breach of a notification requirement or a licence condition without a reasonable excuse – maximum penalty of 100 penalty units.

The Bill also broadens the grounds for cancelling and suspending a licence to include a breach of a licence condition.

In addition, the Bill enables an inspector to issue a compliance notice, eg if a licence holder has breached a condition, which is capable of being rectified, and provides that it is an offence to fail to comply with such a notice – maximum penalty of 100 penalty units.[92]

3.2.4 Amendments to the Drugs Misuse Regulation 1987

The Bill also makes consequential amendments to the Drugs Misuse Regulation 1987 to make provisions:

- to prescribe record-keeping requirements for licence holders
- about the definition of *planting seed* in the DM Act
- to prescribe the information that must be included in a research plan relating to an application for a researcher licence, and
- about conditions to be placed on a licence.

92 Explanatory notes, p 10.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following provisions to the attention of the House.

4.1.1 Rights and liberties of individuals

4.1.1.1 Clauses 33 and 36 to 38 – criminal history

Clause 33 provides that a person will be disqualified from becoming a board member, if the person has a conviction (other than a spent conviction) for an indictable offence, or does not consent to the chief executive requesting a criminal history report about the person.

Clause 36 allows the chief executive, with the written consent of the person concerned, to ask the Police Commissioner for a criminal history report about the person to determine if they are disqualified from becoming or continuing as a board member.

Clause 37 provides that if a board member is convicted of an indictable offence they must (absent reasonable excuse) immediately give notice of the conviction to the chief executive. The notice must include information about when the offence was committed, details adequate to identify the offence and the sentence imposed. A failure to comply with this requirement is an offence attracting a maximum penalty up to 100 penalty units.

The provisions raise potential fundamental legislative principles issues under section 4(2)(a) of the *Legislative Standards Act 1992* in relation to an individual's right to privacy in respect of their personal information.

The explanatory notes state that the provisions:

> *… are considered necessary to ensure that persons appointed to foundation boards are suitable and reflect the high standards expected of board members. These provisions are found in other legislation that establishes statutory bodies, for example the Grammar Schools Act 2016.*[93]

The Bill contains the following safeguards to protect the privacy of persons about whom criminal history information is obtained.

Clause 36 provides that a criminal history report may be obtained only with the written consent of the person to whom it relates. The report cannot include information about spent convictions, which are excluded from the definition of *criminal history*. Clause 38 provides that a criminal history report must be destroyed as soon as practicable after it is no longer needed for its original purpose. In addition, clause 38 provides that it is an offence to disclose criminal history information except in specified circumstances.

Committee comment

The committee considers that clauses 33 and 36 to 38 contain sufficient safeguards. In addition, the committee notes that a person who does not want their criminal history to be accessed or disclosed

93 Explanatory notes, p 12.

can refuse to provide consent and voluntarily vacate their position or withdraw their application to be a board member.

Accordingly, the committee considers that, on balance, the provisions have sufficient regard to the rights and liberties of individuals.

4.1.1.2 Clause 102 – criminal history

The DM Act provides that in deciding whether an applicant is a suitable person to hold a licence, the chief executive must consider whether the applicant's close associates are of good repute having regard to character, honesty and integrity. This may involve the chief executive asking the Police Commissioner for a criminal history report about an applicant's *close associate.*[94]

A close associate of an applicant includes a person who holds any relevant financial interest in the business of the applicant and is able to exercise a significant influence over the conduct of that business.[95]

Clause 102 replaces section 57 to 60 of the DM Act to provide that in deciding whether an applicant is a fit and proper person to hold a researcher licence, the chief executive must have regard to the criminal history of an applicant's *close associates*.

The provisions raise potential fundamental legislative principles issues under section 4(2)(a) of the *Legislative Standards Act 1992* in relation to an individual's right to privacy in respect of their personal information.

It may also be argued that an applicant should not be penalised by having an application refused or a licence cancelled by virtue of the actions of another person.

The explanatory notes state:

> *That the consideration of this information is proportionate to the risks associated with dealing with high-THC cannabis varieties that are permitted under a research licence. New section 57 will provide assurances to the community that a researcher licence applicant's close association with persons who have a criminal history involving illicit dealings in high-THC cannabis will be assessed before a licence is granted that might provide the close associates with relatively easy access to high-THC cannabis.*
>
> And
>
> *New section 57 reduces the likelihood that the criminal history of close associates of applicants for other licence types will be considered. New section 57 allows the chief executive to have regard to any other matter the chief executive considers relevant, which might include the criminal history of close associates of applicants for a grower licence. However, it will not be mandatory… .*

In addition, the explanatory notes state that the criminal history of close associates is considered in all licensing decisions in other Australian jurisdictions, including under the *Hemp Industry Act 2008* (NSW), which requires consideration of the criminal history of close associates of applicants even for the equivalent of a grower licence.[96]

Committee comment

On balance, the committee considers clause 102 has sufficient regard to the rights and liberties of applications and their close associates.

94 DM Act, s 57 to 61.

95 DM Act, s 46.

96 Explanatory notes, p 14.

In reaching this view, the committee had regard to the overarching policy objective of preventing the diversion of high-THC cannabis for unlawful purposes by an applicant's close associates. The committee also noted the existing safeguards in the DM Act, which provide that it is an offence, attracting a maximum of 100 penalty units, to disclose a person's criminal history unless authorised, and that a person's criminal history report must be destroyed as soon as practicable after it has been considered.[97]

4.1.1.3 Clause 128 – Administrative power

Clause 128 inserts new section 110G into the DM Act to provide that the chief executive may decide to impose a monitoring fee, to be prescribed by regulation, for monitoring a particular licence holder's activities to ensure compliance with the DM Act.

The Bill provides that a fee prescribed in relation to a monitoring activity must not be more than the reasonable costs of the monitoring activity.

Section 4(3)(a) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The explanatory notes state that:

> *The chief executive's discretion to impose a fee is reasonable as it provides flexibility in recovering costs as the industry develops. Some monitoring, such as sampling and testing the THC levels in a crop so the seed from that crop can be used as planting seed, is directly linked to the particular licence holder monitored.*
>
> *However, some monitoring activities, for example, random checks on a proportion of licence holders each year, might be more appropriate to recover via licence application fees to ensure that the proportion of licence holders who are the subject of the random checks do not bear the full cost of activities that are directed at maintaining the integrity of controls for the industry as a whole. It is proposed for a policy to provide for when a prescribed monitoring fee should be imposed so this can be varied as the industry develops and the monitoring system matures.*[98]

Committee comment

The committee considers that, on balance, the provisions have sufficient regard to the rights and liberties of individuals.

In reaching this view, the committee notes that the ability for the chief executive to impose a fee, helps maintain the integrity of the licensing framework. The committee also notes that the fee prescribed by regulation must not be more than the reasonable costs of the monitoring activity.

4.1.1.4 Clauses 70 and 71 – reverse onus of proof

Clause 70 provides that a purported signature of the Minister, a board member or a Foundation's managing executive officer is evidence of the signature it purports to be. Similarly, clause 71 provides that a certificate purporting to be signed by the Minister, chief executive or the chairperson of the Board of a Foundation which states an (administrative) matter, is evidence of that matter.

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

The committee notes that it has been argued that provisions that state something is evidence, without requiring it to be proved, assist one party in the making of their case, to the detriment of the other party (usually, in criminal matters, evidentiary provisions assist the prosecution by not requiring it to

97 DM Act, s 62.

98 Explanatory notes, p 15.

lead evidence to prove all aspects of its case). Such provisions effectively reverse the onus of proof by requiring the defendant to lead evidence themselves, if they wish to dispute the evidence that is led by the Crown under an evidentiary provision.

The explanatory notes state that 'these provisions are considered appropriate to remove unnecessary administrative burden and ensure efficient record management'. The explanatory notes also state that similarly evidentiary provisions are contained in other Acts, eg *Hospital and Health Boards Act 2011*.[99]

Committee comment

The committee notes that clauses 70 and 71 are evidentiary aids, which do not remove the right of a party to present evidence to rebut the presumptions. The committee, therefore, considers that the provisions have sufficient regard to the rights and liberties of individuals.

4.1.1.5 Clause 81 – Immunity from proceedings

Clause 81 of the Bill provides that a board member is not civilly liable for an act done, or omission made, honestly and without negligence under the Act. Where the immunity prevents a civil liability attaching to a board member, the liability attaches instead to the State.

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

The Office of the Queensland Parliamentary Counsel's Notebook states that:

> *… a person who commits a wrong when acting without authority should not be granted immunity. Generally, a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence … and if liability is removed, it is usually shifted to the State.*[100]

Committee comment

The committee notes that immunity clauses, such as clause 81, are fairly standard in legislation. Such provisions serve to allow public servants, officials and statutory officers to make decisions and exercise powers and functions without being unduly concerned that they may be held personally liable for acts done or omission, providing that those actions or omissions are made honestly and without negligence or malice.

The committee also notes that the proposed shifting of liability to the State for actions or omissions of board members provides that aggrieved persons may make a claim against the State for loss or damage suffered because of actions taken by board members under this Act.

Accordingly, the committee considers that the provisions have sufficient regard to the rights and liberties of individuals.

4.1.1.6 Clause 151 – Compulsory acquisition of property

Clause 151 replaces schedule 8 of the Drugs Misuse Regulation 1987. New schedule 8 provides that a *researcher*, whose licence is subject to a condition prohibiting them from dealing with class A cannabis plants and seed (high-THC cannabis), must allow an inspector to destroy, or supervise the destruction of, cannabis plants in their possession that have a concentration of THC in their leaves and flowering heads of three per cent or more.

99 Explanatory notes, 13.

100 Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 64.

In addition, clause 151 provides that a *grower* must allow an inspector to destroy, or supervise the destruction of, cannabis plants in the grower's possession that have been found to have a concentration of THC in their leaves and flowering heads of more than one per cent.

Section 4(3)(i) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation provides for the compulsory acquisition of property only with fair compensation.

Committee comment

The committee notes that the clause provides for a legislatively authorised act of interference with a person's property without any provision for compensation.

However, the committee notes that the provisions would only apply in circumstances when cannabis plants have a THC concentration which exceed the permissible limits under the DM Act, and where it would be inappropriate for the researcher or grower to continue to possess the plants.

Accordingly, the committee considers that the provisions have sufficient regard to the rights and liberties of individuals.

4.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information the explanatory notes should contain.

Explanatory notes were tabled with the introduction of the Bill. The explanatory notes are fairly detailed and contain the information required by Part 4 of the *Legislative Standards Act 1992* and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Nurses and Midwives' Union

Appendix B – List of witnesses at public briefing

Department of Health

- Ms Kathleen Forrester, Deputy Director-General, Strategy, Policy and Planning Division, and
- Mr David Harmer, Director, Legislative Policy Unit, Strategy, Policy and Planning Division.

Department of Agriculture and Fisheries

- Ms Marguerite Clarke, Director, Regulatory Policy and Reform.