

I hereby certify that this PUBLIC BILL has finally passed the
Legislative Assembly of Queensland.



Legislative Assembly Chamber,
Brisbane,

M. R. R. S.
The Clerk of the Parliament.
14 March 2013

In the name and on behalf of the Queen, I assent to this Bill.

Penelope Wenlock
Government House,
Brisbane, *14 th March,* 2013



Queensland

No. *7* of 2013
A BILL for

An Act to establish the Queensland Mental Health Commission and for related purposes, and to amend this Act, the Mental Health Act 2000 and the Public Service Act 2008 for particular purposes



Queensland

Queensland Mental Health Commission Bill 2013

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2013

A Bill

for

An Act to establish the Queensland Mental Health Commission and for related purposes, and to amend this Act, the *Mental Health Act 2000* and the *Public Service Act 2008* for particular purposes

[s 1]

The Parliament of Queensland enacts—

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Queensland Mental Health Commission Act 2013*.

2 Commencement

This Act, other than part 9, commences on a day to be fixed by proclamation.

3 Act binds all persons

- (1) This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Division 2 Object of Act and guiding principles

4 Object

- (1) The object of this Act is to establish the Queensland Mental Health Commission to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system.
- (2) The object is mainly achieved by—

- (a) developing a whole-of-government strategic plan that—
 - (i) provides for coordinated action by relevant agencies involved in the delivery of relevant services; and
 - (ii) promotes the best interests of—
 - (A) people with mental health or substance misuse issues, and their families, carers and support persons; and
 - (B) people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues; and
 - (iii) drives innovation and best practice through knowledge sharing, research and evidence-based policy and practice; and
 - (iv) encourages integration of relevant services; and
- (b) monitoring, reviewing and reporting on issues affecting—
 - (i) people with mental health or substance misuse issues, and their families, carers and support persons; and
 - (ii) people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues; and
- (c) promoting prevention, early intervention and community awareness strategies.

5 Guiding principles

- (1) A person must have regard to the principles stated in this section when performing a function or exercising a power under this Act.
- (2) People with mental illness or who misuse substances—

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- (a) should have access to quality mental health or substance misuse services, care and support, wherever they live; and
 - (b) should be treated with respect and dignity; and
 - (c) should be supported to participate fully in community life and lead meaningful lives; and
 - (d) have the same right to privacy as other members of society.
- (3) Aboriginal or Torres Strait Islander people should be provided with treatment, care and support in a way that recognises and is consistent with Aboriginal tradition or Island custom and is culturally appropriate and respectful.
- (4) Carers, family members and support persons for people with a mental illness or who misuse substances—
- (a) are integral to wellbeing, treatment and recovery; and
 - (b) should be respected, valued and supported; and
 - (c) should be engaged, wherever possible, in treatment plans.
- (5) An effective mental health and substance misuse system is the shared responsibility of the government and non-government sectors and requires—
- (a) a coordinated and integrated approach, including across the areas of health, housing, employment, education, justice and policing; and
 - (b) a commitment to communication and collaboration across public sector and publicly funded agencies, consumers and the community; and
 - (c) strategies that foster inclusive, safer and healthier families, workplaces and communities.

Division 3 Interpretation

6 Definitions

The dictionary in the schedule defines particular words used in this Act.

7 Meaning of whole-of-government strategic plan

A whole-of-government strategic plan is a plan for the improvement of mental health and the limiting of harm associated with substance misuse that—

- (a) provides strategic guidance and direction about the intended outcomes of government funding of, and the development and implementation of policy in relation to, the mental health and substance misuse system; and
- (b) establishes benchmarks and performance measures for evaluating and reporting on the effectiveness of the mental health and substance misuse system; and
- (c) fosters the development and strengthening of partnerships and the integration of services across relevant agencies; and
- (d) fosters the development of evidence-based policy and promotes the uptake of innovation and evidence-based practice by relevant agencies; and
- (e) includes strategies for—
 - (i) increasing participation by relevant persons in the development, delivery and evaluation of policies, programs and services to the greatest extent possible; and
 - (ii) supporting and promoting the mental health and wellbeing of the community; and
 - (iii) supporting and promoting the prevention of, and early intervention in relation to, mental illness and substance misuse; and

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- (iv) supporting and promoting the general health and wellbeing of relevant persons; and
- (v) enhancing community awareness and understanding about mental health and substance misuse issues, including for the purpose of reducing stigma and discrimination; and
- (f) provides for other matters the commission considers necessary to exercise its functions under this Act.

Part 2 Queensland Mental Health Commission

Division 1 Establishment

8 Establishment of Mental Health Commission

The Queensland Mental Health Commission is established.

9 Commission represents the State

- (1) The commission represents the State.
- (2) Without limiting subsection (1), the commission has the status, privileges and immunities of the State.

10 Application of other Acts

- (1) The commission is—
 - (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
 - (b) a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

-
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B explains how that Act affects the commission's powers.

Division 2 Functions and powers

11 Commission's functions

- (1) The main functions of the commission are as follows—
- (a) to prepare a whole-of-government strategic plan;
 - (b) to monitor and report to the Minister on implementation of the whole-of-government strategic plan;
 - (c) to review the whole-of-government strategic plan;
 - (d) to review, evaluate, report and advise on—
 - (i) the mental health and substance misuse system; and
 - (ii) other issues affecting relevant persons; and
 - (iii) issues affecting community mental health and substance misuse;
 - (e) to promote and facilitate the sharing of knowledge and ideas about mental health and substance misuse issues;
 - (f) to undertake and commission research in relation to mental health and substance misuse issues;
 - (g) to support and promote strategies that—
 - (i) prevent mental illness and substance misuse; and
 - (ii) facilitate early intervention for mental illness and substance abuse;
 - (h) to support and promote the general health and wellbeing of people with a mental illness and people who misuse substances, and their families, carers and support persons;
 - (i) to support and promote social inclusion and recovery of people with a mental illness or who misuse substances;

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- (j) to promote community awareness and understanding about mental health and substance misuse issues, including for the purpose of reducing stigma and discrimination;
 - (k) to take other action the commission considers appropriate to address the needs of relevant persons.
- (2) In exercising its functions under this Act, the commission must—
- (a) focus on systemic mental health and substance misuse issues; and
 - (b) take into account comorbid issues including disability, chronic disease and homelessness; and
 - (c) take into account issues for people with mental health and substance misuse issues in the criminal justice system; and
 - (d) engage and consult with—
 - (i) people with mental health or substance misuse issues, and their families, carers and support persons; and
 - (ii) Hospital and Health Boards under the *Hospital and Health Boards Act 2011*; and
 - (iii) the government, non-government and private sectors; and
 - (iv) other members of the community to the extent the commissioner considers appropriate; and
 - (e) take into account the particular views, needs and vulnerabilities of different sections of the Queensland community, including—
 - (i) Aboriginal and Torres Strait Islander communities; and
 - (ii) culturally and linguistically diverse communities; and
 - (iii) regional and remote communities; and

- (iv) other groups at risk of marginalisation and discrimination; and
- (f) take into account contemporary evidence and relevant policy and strategic frameworks.

12 Commission's powers

- (1) The commission has all the powers of an individual, and may, for example—
 - (a) enter into contracts; and
 - (b) acquire, hold, deal with and dispose of property; and
 - (c) appoint agents and attorneys; and
 - (d) engage consultants or contractors; and
 - (e) do anything else necessary or convenient to be done in the performance of its functions.
- (2) Without limiting subsection (1), the commission has the powers given to it under this Act or another Act.

13 Ministerial direction

- (1) The commissioner is subject to the directions of the Minister in performing the commissioner's functions under this Act.
- (2) The commissioner must comply with a direction given by the Minister.
- (3) The commission must include in its annual report details of—
 - (a) any direction given by the Minister under subsection (1) during the financial year to which the report relates; and
 - (b) action taken by the commissioner as a result of the direction.

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Division 3 Membership of the commission

14 Membership of commission

The commission consists of—

- (a) the commissioner; and
- (b) the other staff of the commission.

Division 4 Staff of the commission

Subdivision 1 Commissioner

15 Commissioner

- (1) The commission is to have a Mental Health Commissioner.
- (2) The commissioner is appointed by the Governor in Council on the recommendation of the Minister.
- (3) The Minister may recommend a person for appointment only if the Minister is satisfied the person has the skills, knowledge, experience and public standing required to exercise the commission's functions effectively and efficiently.

16 Restriction on appointment

A member of the council must not be appointed as commissioner.

17 Commissioner employed under this Act

The commissioner is employed under this Act and not under the *Public Service Act 2008*.

18 Term of office

Subject to this subdivision, the commissioner holds office for the term of 3 years.

19 Functions and powers of commissioner

- (1) The main functions of the commissioner are as follows—
 - (a) to manage the commission in a way that ensures the commission performs its functions under this Act effectively and efficiently;
 - (b) to make recommendations to the Minister about any matter that—
 - (i) relates to the performance or exercise of the commissioner's or commission's functions or powers; and
 - (ii) may help the Minister in the proper administration of this Act.
- (2) The commissioner's functions also include any other function given to the commissioner under this Act or another Act.
- (3) The commissioner may exercise the powers of the commission and any other powers given to the commissioner under this Act or another Act.

20 Conditions of appointment

- (1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The commissioner holds office on the terms and conditions, not provided by this Act, that are decided by the Governor in Council.

21 Vacancy in office of commissioner

- (1) The office of the commissioner becomes vacant if the commissioner—

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- (a) resigns office by signed notice to the Minister giving at least 1 month's notice; or
 - (b) is convicted of an indictable offence; or
 - (c) is a person who is an insolvent under administration under the Corporations Act, section 9; or
 - (d) is removed from office by the Governor in Council under subsection (2); or
 - (e) is suspended by the Minister under subsection (4).
- (2) The Governor in Council may, at any time, remove the commissioner from office on the recommendation of the Minister.
- (3) The Minister may recommend the commissioner's removal only if the Minister is satisfied the commissioner—
- (a) has been guilty of misconduct; or
 - (b) is incapable of performing his or her duties; or
 - (c) has neglected his or her duties or performed them incompetently.
- (4) The Minister may suspend the commissioner for up to 60 days by signed notice to the commissioner if—
- (a) there is an allegation of misconduct against the commissioner; or
 - (b) the Minister is satisfied a matter has arisen in relation to the commissioner that may be grounds for removal under this section.

22 Preservation of rights of commissioner

- (1) This section applies if an officer of the public service is appointed as the commissioner.
- (2) The person keeps all rights accrued or accruing to the person as an officer of the public service as if service as the commissioner were a continuation of service as an officer of the public service.

- (3) At the end of the person's term of office or resignation as the commissioner the person's service as the commissioner is taken to be service of a like nature in the public service for deciding the person's rights as an officer of the public service.

23 Acting commissioner

The Minister may appoint a person, other than a member of the council, to act in the office of commissioner during—

- (a) a vacancy in the office of commissioner; or
- (b) any period, or all periods, when the commissioner is absent from duty, or can not, for another reason, perform the functions of the office.

Subdivision 2 Staff

24 Commission staff

- (1) The commission may employ the staff it considers appropriate to perform its functions.
- (2) The staff are to be employed under the *Public Service Act 2008*.

Part 3 Whole-of-government strategic plan and reporting by commission

25 Commission to develop whole-of-government strategic plan

- (1) As soon as practicable after the commencement of this Act, the commission must prepare a whole-of-government strategic plan and submit it to the Minister for approval.

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- (2) In preparing the whole-of-government strategic plan the commission must consult with relevant persons and relevant agencies.

26 Commission to facilitate implementation of, and report on, whole-of-government strategic plan

The commission must—

- (a) facilitate the implementation of the whole-of-government strategic plan; and
- (b) monitor and report to the Minister on its implementation.

27 Commission to review whole-of-government strategic plan

- (1) The commission must—
 - (a) review the whole-of-government strategic plan—
 - (i) at least once every 5 years; or
 - (ii) at an earlier time, if directed by the Minister; and
 - (b) prepare any appropriate amendments of the whole-of-government strategic plan and submit them to the Minister for approval.
- (2) In preparing amendments of the whole-of-government strategic plan the commission must consult with relevant persons and relevant agencies.

28 Commission must prepare special report if directed by the Minister

- (1) The commission must prepare a special report on any significant systemic issue affecting people who have mental health or substance misuse issues, if directed by the Minister.
- (2) The special report—
 - (a) must be given to the Minister; and

- (b) may contain recommendations about the issue the subject of the report; and
- (c) may include a recommendation that the report be made public.

29 Commission may prepare ordinary reports

- (1) The commission may, at any time, prepare a report on any of the following—
 - (a) the preparation or review of the whole-of-government strategic plan;
 - (b) the implementation of the whole-of-government strategic plan;
 - (c) a systemic issue relating to the mental health and substance misuse system or affecting people who have mental health or substance misuse issues;
 - (d) the funding of mental health and substance misuse services.
- (2) However, before preparing a report under subsection (1)(c) or (d), the commission must notify the Minister in writing.
- (3) In preparing a report under subsection (1)(c) or (d), the commission must consult with the relevant agencies and private sector agencies it considers may be significantly affected by the report.
- (4) In consulting with an agency under subsection (3), the commission must consider submissions by the agency.
- (5) A report may contain recommendations about the issue the subject of the report.

30 Ordinary report must be given to Minister

- (1) After completing an ordinary report, the commission must give it to the Minister.
- (2) The Minister must table a copy of the report in the Legislative Assembly as soon as practicable after receiving it.

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31 When commission must give copy of ordinary report to agency

If an ordinary report contains recommendations that relate to a particular relevant agency, the commission must give a copy of the report to the agency as soon as practicable after giving it to the Minister.

32 Agency must respond to commission's recommendation

- (1) This section applies if the commission makes a recommendation in an ordinary report that relates to a relevant agency.
- (2) The agency must respond to the commission in writing within a reasonable period—
 - (a) detailing the steps it has taken, or plans to take, in relation to the recommendation; or
 - (b) advising that it has decided not to take any action in relation to the recommendation.
- (3) If subsection (2)(b) applies, the agency must provide the commission with the reasons for its decision.

33 Details of reports to be included in annual report

The commission must include in its annual report details of—

- (a) each recommendation in an ordinary report by the commission during the financial year that relates to a relevant agency; and
- (b) action taken by the agency in response to the recommendation.

Part 4 **Cooperation between commission and public sector and publicly-funded agencies**

34 Cooperation between commission and relevant agencies

- (1) The commission and relevant agencies must work cooperatively in the exercise of their respective functions.
- (2) Relevant agencies must—
 - (a) have regard to the whole-of-government strategic plan and the guiding principles in exercising their functions; and
 - (b) consult with the commission on their activities, expenditure and initiatives as required under the whole-of-government strategic plan.
- (3) It is Parliament’s intention that this section be complied with.
- (4) However, the section is directory only and does not create rights or impose legally enforceable obligations on the State, a relevant agency or anyone else.

35 Regard to be had to whole-of-government strategic plan when negotiating service agreements

The chief executive under the *Hospital and Health Boards Act 2011* must take the whole-of-government strategic plan into account when negotiating service agreements under that Act to the extent the agreements relate to the delivery of mental health and substance misuse services.

36 Provision of information by public sector unit to commission

- (1) Subsection (2) applies if the commission considers a department or other public sector unit has information the commission requires to perform its functions.

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- (2) The commission may request the department or unit to provide the commission with the information within a stated reasonable time.
- (3) The department or unit must provide the information requested unless—
 - (a) its disclosure is prohibited under an Act; or
 - (b) it is impracticable to provide the information.
- (4) If the department or unit decides not to provide the information, the department or unit must advise the commission of its reasons for not providing the information.
- (5) The commission may enter into arrangements with a department or other public sector unit in relation to the provision by the department or unit of information that is required by the commission.

Part 5 **Queensland Mental Health and Drug Advisory Council**

Division 1 **Establishment and functions**

37 **Establishment of Queensland Mental Health and Drug Advisory Council**

The Queensland Mental Health and Drug Advisory Council is established.

38 **Functions of council**

The functions of the council are—

- (a) to provide advice to the commission on mental health or substance misuse issues—
 - (i) on its own initiative; or

- (ii) at the request of the commission; and
- (b) to make recommendations to the commission in relation to the commission's functions.

Division 2 Membership

39 Membership

- (1) The council consists of the number of persons appointed by the Minister that the Minister considers appropriate.
- (2) In making an appointment the Minister must ensure—
 - (a) the membership of the council reflects the diversity of the Queensland community; and
 - (b) that members have appropriate skills, knowledge or experience, for example, skills, knowledge or experience of mental health and substance misuse issues in relation to the following—
 - (i) service users and their families, carers, and support persons;
 - (ii) service providers;
 - (iii) people living in remote and regional communities;
 - (iv) members of culturally and linguistically diverse communities;
 - (v) Aboriginal and Torres Strait Islander persons.
- (3) Members are to—
 - (a) hold office for the term, not longer than 3 years, stated in the member's instrument of appointment; and
 - (b) be paid the fees and allowances decided by the Governor in Council.

40 Chairperson and deputy chairperson of council

- (1) The Minister may appoint—

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- (a) a member of the council to be chairperson of the council; and
- (b) another member to be deputy chairperson of the council.
- (2) A member may be appointed as the chairperson or deputy chairperson at the same time as the person is appointed as a member.
- (3) A vacancy arises in the office of chairperson or deputy chairperson if the person holding the office—
 - (a) resigns office by signed notice of resignation given to the Minister; or
 - (b) ceases to be a member; or
 - (c) is suspended by the Minister under section 41(3).
- (4) A person resigning the office of chairperson or deputy chairperson may continue to be a member.
- (5) The deputy chairperson is to act as chairperson—
 - (a) during a vacancy in the office of the chairperson; and
 - (b) during all periods when the chairperson is absent from duty or for another reason can not perform the duties of the office.

41 Vacancy in office of member

- (1) The office of a member of the council becomes vacant if the member—
 - (a) completes a term of office; or
 - (b) resigns office by signed notice to the Minister giving at least 1 month's notice; or
 - (c) is removed from office by the Minister under subsection (2); or
 - (d) is suspended by the Minister under subsection (3).
- (2) The Minister may remove a member from office if the Minister is satisfied the member—

- (a) has been guilty of misconduct; or
 - (b) is incapable of performing the member's duties; or
 - (c) has neglected his or her duties or performed them incompetently; or
 - (d) has been absent without permission of the chairperson from 3 consecutive meetings of which due notice was given.
- (3) The Minister may suspend a member for up to 60 days by signed notice to the member if—
- (a) there is an allegation of misconduct against the member; or
 - (b) the Minister is satisfied a matter has arisen in relation to the member that may be grounds for removal under this section.

Division 3 Conduct of business by council

42 Conduct of business by council

- (1) The council may conduct its business, including its meetings, in the way the chairperson of the council considers appropriate.
- (2) However, the chairperson must consult with the commissioner before deciding the way the council is to conduct its meetings.
- (3) The Minister may direct the council about the conduct of its business, including its meetings.
- (4) The commissioner is to attend all meetings of the council, unless excused by the chairperson.

43 Quorum

A quorum for a meeting of the council is one-half the number of its members, or if one-half is not a whole number, the next highest whole number.

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44 Presiding at meetings

- (1) The chairperson is to preside at all meetings of the council at which the chairperson is present.
- (2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.
- (3) If neither the chairperson nor deputy chairperson is present at a meeting, a member of the council chosen by the members is to preside.

45 Conduct of meetings

- (1) A question at a meeting of the council is decided by a majority of the votes of the members present.
- (2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.
- (3) A member present at the meeting who abstains from voting is taken to have voted for the negative.
- (4) The council may hold meetings, or permit members to take part in meetings, by using any technology that reasonably allows members to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

- (5) A member who takes part in a meeting of the council under subsection (4) is taken to be present at the meeting.
- (6) A resolution is validly made by the council, even if it is not passed at a meeting of the council, if—
 - (a) a majority of the council members gives written agreement to the resolution; and
 - (b) notice of the resolution is given under procedures approved by the council.

46 Minutes

- (1) The council must keep—
 - (a) minutes of its meetings; and
 - (b) a record of any resolutions made under section 45(6).
- (2) Subsection (3) applies if a resolution is passed at a meeting of the council by a majority of the members present.
- (3) If asked by a member who voted against the passing of the resolution, the council must record in the minutes of the meeting that the member voted against the resolution.

47 Committees

- (1) The council may establish committees of the council for effectively and efficiently performing its functions.
- (2) The term of a committee is decided by the council.
- (3) A committee may include a person who is not a member of the council.
- (4) The council is to decide the terms of reference of a committee in consultation with the commissioner.
- (5) The function of a committee is to consider and advise on matters referred to the committee by the council.

Part 6 Cooperation between commission and council

48 Commission must support council

The commission must support the council in performing its functions by providing information to the council about the performance by the commission of its functions—

- (a) at regular intervals; or

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- (b) when requested by the council.

49 Consultation on reports and whole-of-government strategic plan

The commission must consult with the council on the following before they are given to the Minister—

- (a) any special or ordinary reports;
- (b) the whole-of-government strategic plan.

50 Commission must respond to council's recommendation

- (1) This section applies if the council makes a recommendation about matters relating to a function of the commission.
- (2) The commission must respond to the council in writing within a reasonable period—
 - (a) detailing the steps it has taken, or plans to take, in relation to the recommendation; or
 - (b) advising that it has decided not to take any action in relation to the recommendation.
- (3) If subsection (2)(b) applies, the commission must provide the council with the reasons for its decision.

51 Details of recommendations to be included in annual report

The commission must include in its annual report details of—

- (a) each recommendation by the council to the commission during the financial year; and
- (b) action taken by the commission in response to the recommendation; and
- (c) any statement about the conduct of the council's business provided to the commission by the council for inclusion in the commission's annual report.

Part 7 Miscellaneous

52 Delegations

- (1) The commissioner may delegate his or her functions under this Act to an appropriately qualified staff member of the commission.
- (2) In this section—
appropriately qualified includes having qualifications, experience or standing appropriate for the function.
functions includes powers.

53 Protecting officials from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—
official means any of the following when performing a function or exercising a power under this Act—
 - (a) the Minister;
 - (b) the commissioner;
 - (c) a staff member of the commission;
 - (d) a member of the council;
 - (e) a member of a committee of the council.

54 Commission's guidelines

- (1) The commission may make guidelines (each a *commission guideline*), consistent with this Act, to provide guidance to persons about matters relating to the operation of the Act or the commission.

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- (2) A commission guideline may be amended or replaced by a later guideline made under this section.
- (3) The commission must—
 - (a) give a copy of a commission guideline to a person on request; and
 - (b) keep a copy of each guideline on the commission's website.

55 Review of commission

The Minister must arrange an independent review of the performance by the commission of its functions within 3 years after the commencement of this section.

56 Review of Act

- (1) The Minister must review the effectiveness of this Act as soon as practicable after the end of 3 years after the commencement of this section.
- (2) As soon as practicable after finishing the review, the Minister must table a report about its outcome in the Legislative Assembly.

57 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 8 Amendment of this Act

58 Act amended

This part amends this Act.

59 Amendment of long title

Long title, from ‘, and to’—
omit.

Part 9 Amendment of Mental Health Act 2000

60 Act amended

This part amends the *Mental Health Act 2000*.

61 Amendment of s 131 (What treatment plan must state for limited community treatment)

Section 131(1)—

insert—

‘(c) any monitoring condition required by the director under section 131A.’.

62 New ss 131A and 131B

After section 131—

insert—

‘131A Director may require monitoring condition for patient undertaking limited community treatment

‘(1) This section applies if the director considers that any of the following patients requires monitoring while undertaking limited community treatment—

- (a) a classified patient;
- (b) a forensic patient;
- (c) a patient for whom the Mental Health Court has made an order under section 273(1)(b).

[s 62]

- ‘(2) However, this section does not apply to a young patient.
- ‘(3) The director may, by written notice to the administrator of the patient’s treating health service, require that a condition that allows the treating health service to monitor the patient’s location while on limited community treatment (a **monitoring condition**) be included in the patient’s treatment plan under section 131.

Examples of patients whose treatment plan may include a monitoring condition—

1. a forensic patient who is undertaking limited community treatment for the first time
2. a classified patient who has previously attempted to abscond while on limited community treatment
3. a forensic patient who is transitioning from escorted to unescorted limited community treatment

Examples of monitoring conditions that may be included in a patient’s treatment plan—

1. that the patient telephone a stated person at the patient’s treating health service before moving from one location to another
2. that the patient provide a detailed plan of where they will be, and with whom they will be, while on limited community treatment
3. that the patient wear a device for monitoring the patient’s location while on limited community treatment

‘131B Confidentiality of information gained as a result of monitoring conditions

- ‘(1) This section applies to information obtained as a result of a monitoring condition included in a patient’s treatment plan under section 131.
- ‘(2) To remove any doubt, it is declared that the information is confidential information under the *Hospital and Health Boards Act 2011*.
- ‘(3) However, a designated person under the *Hospital and Health Boards Act 2011*, part 7, may disclose the information to—
 - (a) the Queensland Police Service for the purposes of an investigation or prosecution of an offence; or

(b) the Mental Health Court or the tribunal.’.

63 Amendment of s 191 (Decisions on review)

(1) Section 191(2)—

insert—

‘(d) an order amending or revoking a monitoring condition included in the patient’s treatment plan under section 131.’.

(2) Section 191(3), ‘subsection (2)’—

omit, insert—

‘subsection (2)(a) to (c)’.

64 Amendment of s 203 (Decisions on review)

Section 203(2)—

insert—

‘(f) an order amending or revoking a monitoring condition included in the patient’s treatment plan under section 131.’.

65 Amendment of s 204 (Restrictions on review decisions)

(1) Section 204(1), ‘either of’—

omit, insert—

‘any of’.

(2) Section 204(1)—

insert—

‘(c) amend or revoke a monitoring condition included in the patient’s treatment plan under section 131.’.

66 Amendment of s 437 (Jurisdiction)

Section 437—

[s 67]

insert—

‘(k) deciding appeals mentioned in section 493AH.’.

67 Amendment of s 447 (Members constituting tribunal for hearings)

Section 447(1)—

insert—

‘(h) an appeal under section 493AH against an order of the director to suspend limited community treatment for a patient.’.

68 Amendment of s 448 (When tribunal may be constituted by less than 3 members)

Section 448—

insert—

‘(f) for the hearing of an appeal under section 493AH against an order of the director to suspend limited community treatment for a patient—if the president is satisfied it is appropriate and expedient to do so.’.

69 Insertion of new s 454A

After section 454—

insert—

‘454A Right of appearance—appeal against director’s order to suspend limited community treatment

‘(1) The following persons may appear in person at the hearing of an appeal under section 493AH against an order of the director to suspend limited community treatment for a patient—

- (a) the patient;
- (b) the director.

- '(2) A person mentioned in subsection (1) may be represented at the hearing by a lawyer or, with the leave of the tribunal, an agent.
- '(3) If, at a tribunal hearing, the patient is not represented, the presiding member may appoint a person to represent the patient's views, wishes and interests.'

70 Amendment of s 489 (Functions)

Section 489(1)(a)—

omit, insert—

- '(a) to the extent that it is reasonably practicable, ensuring the protection of the rights of involuntary patients under this Act while balancing their rights with the rights of other persons;'

71 Amendment of s 491 (Independence of director)

Section 491—

insert—

- '(2) Despite subsection (1), the Minister may direct the director under division 1A.'

72 Amendment of s 492 (Delegation)

Section 492(2)—

omit, insert—

- '(2) However—
 - (a) the director must not delegate a power under part 2; and
 - (b) the director may delegate a power under division 1A only to a senior executive or a health executive within the department.
- '(3) In this section—

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health executive has the meaning given in the *Hospital and Health Boards Act 2011*.

senior executive has the meaning given in the *Public Service Act 2008*.’

73 Insertion of new ch 13, pt 1, div 1A

Chapter 13, part 1—

insert—

‘Division 1A Action by director where serious risk to person or public safety

‘493AC Minister may direct the director to investigate matter and consider taking appropriate action

- ‘(1) Subsection (2) applies if the Minister considers that—
- (a) a matter has arisen in relation to 1 or more patients (the *significant matter*); and
 - (b) there is a serious risk to the life, health or safety of a person or a serious risk to public safety because of the matter (the *related risk*).
- ‘(2) The Minister may direct the director to—
- (a) immediately undertake a review of the significant matter and related risk to decide—
 - (i) whether action is necessary to remove, or to control or manage, the related risk; and
 - (ii) whether there are systemic issues that need to be addressed to avoid the risk from recurring; and
 - (b) consider taking any of the actions mentioned in section 493AE to address the significant matter to prevent it from recurring; and
 - (c) report back to the Minister—
 - (i) on the outcome of the review; and

-
- (ii) if action is taken as a result of the review—on the action taken.
- ‘(3) To remove any doubt, it is declared that the Minister’s power under this section—
- (a) is limited to requesting the director to review and report on a significant matter and related risk; and
 - (b) does not allow the Minister to direct the director to take action, or any particular action, in relation to the significant matter or related risk.

‘493AD Director must consult before ordering suspension of limited community treatment

- ‘(1) Subsection (2) applies if the director is considering making an order under section 493AE(2)(a) in relation to a significant matter or related risk.
- ‘(2) Before making the order, the director must—
- (a) consult with the administrator of each authorised mental health service likely to be affected by the director’s order about—
 - (i) the likely impact of the order on the service’s operations; and
 - (ii) the likely impact of the order on patients the subject of the order; and
 - (iii) for a patient who is a child—the best interest and needs of the child; and
 - (b) notify the Attorney-General about the action proposed; and
 - (c) if action by the Queensland Police Service is likely to be required in relation to the order—consult the commissioner of the police service; and
 - (d) if the action proposed is likely to affect a young patient in the custody of the chief executive under the *Child Protection Act 1999*—notify the chief executive under

[s 73]

the *Child Protection Act 1999* about the action proposed.

‘493AE Action director may take for a significant matter and related risk

- ‘(1) Subsection (2)—
- (a) applies if the director considers there is a significant matter and related risk; and
 - (b) applies whether or not a direction has first been given to the director by the Minister under section 493AC.
- ‘(2) The director may do one of more of the following—
- (a) order the suspension of limited community treatment for a relevant patient or class of relevant patient;
 - (b) order an administrator to provide a report on the circumstances that led to the significant matter and related risk;
 - (c) review, or order an administrator to review and report back on, any treatment plans relevant to the significant matter or related risk or a possible similar matter or risk that might arise in the future;
 - (d) review any guidelines, policies and protocols about the use of limited community treatment;
 - (e) take any other action necessary to prevent a similar significant matter and related risk from arising again.
- ‘(3) A reference in subsection (2)(a) to limited community treatment includes limited community treatment ordered or approved by the Mental Health Court or the tribunal.

‘493AF What director’s order must contain

- ‘(1) Subsection (2) applies if the director makes an order under section 493AE(2)(a) in relation to a relevant patient or relevant patients.
- ‘(2) The director's order must include the following—

-
- (a) if the order relates to a particular relevant patient—the name of the patient;
 - (b) if the order relates to a class of relevant patient—sufficient detail to identify the class of patient to which the order applies;

Examples of classes of relevant patient for paragraph (b)—

- 1 all forensic patients in an in-patient facility within an authorised mental health service
 - 2 all forensic patients on limited community treatment who have been in the community for less than 3 months
 - 3 all classified patients treated by a stated psychiatrist
- (c) the period of the suspension of limited community treatment;
 - (d) if the order to suspend limited community treatment will require a relevant patient or class of relevant patient to return to an authorised mental health service—the name of the service and the time or date by which the patient must return to the service.

- ‘(3) For subsection (2)(d), the order may state an authorised mental health service other than the service in which the patient is usually detained.

‘493AG Director may vary period of order or end the order

‘The director may, for an order under section 493AE(2)(a), at any time before the period of the order ends—

- (a) extend the period of the order if the director reasonably believes the significant matter or related risk still exists;
or
- (b) end the order.

‘493AH Appeal against director’s order to suspend limited community treatment

- ‘(1) A patient to whom a director’s order to suspend limited community treatment applies may appeal to the tribunal

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against the order on the ground that the director incorrectly decided that—

- (a) there was a significant matter and related risk; or
 - (b) the patient was a patient of the class to which the order applied.
- ‘(2) If the tribunal decides that the director incorrectly decided that there was a significant matter and related risk, the tribunal must set aside the order.
- ‘(3) If the tribunal decides that the director incorrectly decided that the patient was a patient of the class to which the order applied, the tribunal—
- (a) must order that the director’s order does not apply to the patient; and
 - (b) may amend the order to more appropriately describe the class of patients to which the order applies or set aside the order.

‘493AI Persons to whom tribunal must give a copy of its decision

‘The tribunal must give a copy of its decision for an appeal under section 493AH to the following—

- (a) the parties to the appeal;
- (b) the allied person of the patient who appealed against the order;
- (c) the administrator of the patient’s treating health service;
- (d) if the appeal relates to a young patient in the custody of the chief executive under the *Child Protection Act 1999*—the chief executive under that Act.

‘493AJ Decision to be given effect

‘The director and the administrator of the patient’s treating health service must ensure the tribunal’s decision is given effect.’.

74 Amendment of s 508 (Taking patient to authorised mental health service)

Section 508(1)—

insert—

‘(d) a patient who has to return to an authorised mental health service because of an order of the director under section 493AE(2)(a).’.

75 Amendment of s 526 (Publication of information disclosing identity of parties to proceedings)

Section 526—

insert—

- ‘(3) However, a person does not commit an offence by publishing information mentioned in subsection (1) or (2) if the director has, in writing, authorised the publication.
- ‘(4) The director may authorise the publication only if the director believes, on reasonable grounds—
- (a) the publication is necessary to assist in lessening or preventing a serious risk to—
 - (i) the life, health or safety of a person, including the person to whom the information relates; or
 - (ii) public safety; or
 - (b) the publication is in the public interest.’.

76 Amendment of s 536 (Protection of officials from liability)

Section 536(3), definition *official*, paragraph (a), before ‘the director’—

insert—

‘the Minister,’.

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77 Amendment of schedule (Dictionary)

(1) Schedule—

insert—

‘monitoring condition see section 131A(3).

related risk see section 493AC(1)(b).

relevant patient means any of the following—

- (a) a classified patient;
- (b) a forensic patient;
- (c) a patient for whom the Mental Health Court has made an order under section 273(1)(b).

significant matter see section 493AC(1)(a).’.

(2) Schedule, definition *party*—

insert—

‘(ba) for an appeal under section 493AH against an order of the director to suspend limited community treatment for a patient—the appellant or the director; or’.

Part 10 Amendment of Public Service Act 2008

78 Act amended

This part amends the *Public Service Act 2008*.

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

Schedule 1—

insert—

‘Queensland Mental Health Commission commissioner under the
*Queensland Mental Health
Commission Act 2013*’.

Schedule Dictionary

section 6

annual report means the annual report prepared under the *Financial Accountability Act 2009*, section 63.

commission means the Queensland Mental Health Commission established under section 8.

commissioner means the Mental Health Commissioner appointed under section 15.

council means the Queensland Mental Health and Drug Advisory Council established under section 37.

human service means a service other than a mental health or substance misuse service.

human service agency means a department or government agency or publicly funded non-government agency that delivers human services that affect relevant persons or vulnerable persons.

Examples of human services delivered—

- public housing
- child safety services
- disability services
- emergency services
- law enforcement

mental health and substance misuse system means the network of policies, services and programs across human service agencies, service delivery agencies and the private sector that involve—

- (a) the provision of mental health or substance misuse services; and
- (b) the provision of support or respite services to families, carers and support persons of people with mental illness or who misuse substances; and

- (c) the provision of human services that affect people with mental health or substance misuse issues; and
- (d) the provision of mental health and substance misuse services and human services that affect vulnerable persons.

mental health service means a specialised clinical, non-clinical or rehabilitation service for the purpose of—

- (a) providing treatment and facilitating the recovery of people living with mental illness; or
- (b) delivering improved support for the families and carers of people living with mental illness.

ordinary report means a report prepared by the commission under section 29.

relevant agency means a human service agency or service delivery agency.

relevant persons means people with mental health or substance misuse issues, and their families, carers and support persons.

relevant service means a mental health service, substance misuse service or human service.

service delivery agency means the following to the extent they are involved in the provision of mental health or substance misuse services—

- (a) a department or government agency;
- (b) a publicly funded non-government agency.

special report means a report prepared by the commission under section 28.

substance misuse includes the improper use any of the following—

- (a) alcohol;
- (b) tobacco in so far as its improper use results in changes in perception, mood, consciousness, cognition and behaviour;

- (c) illegal drugs;
- (d) pharmaceutical and other substances that alter brain function, resulting in changes in perception, mood, consciousness, cognition and behaviour.

substance misuse service means a program or service for the purpose of detoxification, treatment or other related harm minimisation services for people who misuse substances.

vulnerable persons means people who are vulnerable to, or otherwise at significant risk of, developing mental health or substance misuse issues.

whole-of-government strategic plan see section 7.

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