

# Health and Wellbeing Queensland Bill 2019

## Explanatory Notes

## FOR

## Amendments to be Moved During Consideration in Detail by the Honourable Steven Miles MP, Minister for Health and Minister for Ambulance Services

2/5/19

### Title of the Bill

Health and Wellbeing Queensland Bill 2019



### Objectives of the Amendments

The objectives of the amendments to the Health and Wellbeing Queensland Bill 2019 (Bill) to be moved during consideration in detail are to:

- clarify that the requirements in clause 45 for a person to provide notice of, and information about, being charged with an indictable offence is about the alleged offence;
- correct a grammatical issue in clause 47; and
- delay the commencement of enacted but uncommenced provisions of the *State Penalties Enforcement Amendment Act 2017*.

### Achievement of the Objectives

In March 2019, the Education, Employment and Small Business Committee asked the Minister for Health to address a potential breach of fundamental legislative principles in the Bill arising from the obligation of a board member or the chief executive officer (CEO) to provide notice of, and information about, being charged with an indictable offence to the Minister. The Committee requested further advice to justify the departure from the fundamental legislative principle that legislation must have sufficient regard to the rights and liberties of individuals to protect against self-incrimination. Requiring a person who has been charged to provide information about the alleged offence could incriminate the person.

The policy intent is to require disclosure of the existence of a charge, and information about the charge, for the Governor-in-Council to consider whether to suspend or remove a person from office. It is not intended that the person provides information to the Minister that may incriminate them.

To address the issue with the drafting of clause 45 raised by the Committee, the amendments in consideration in detail to clause 45 insert references to the provision of information relating to an “alleged offence” rather than “an offence”.

The objectives in relation to the amendments to clause 47 of the Bill are achieved as described in the notes on provisions below.

The *State Penalties Enforcement Amendment Act 2017* amends the *State Penalties Enforcement Act 1999* and other penalty debt related legislation to modernise the management of penalty debts in Queensland. The provisions of the *State Penalties Enforcement Amendment Act* commence by proclamation, except for a small number of the provisions that commenced on assent.

The remaining provisions of the *State Penalties Enforcement Amendment Act* are due to commence automatically on 20 May 2019. The amendments delay the commencement of the provisions of the *State Penalties Enforcement Amendment Act* to a future day to be fixed by proclamation.

## Alternative Ways of Achieving Policy Objectives

There are no alternative ways of achieving the policy objectives of the Bill.

## Estimated Cost for Government Implementation

There are no costs to government in implementing the amendments to clause 45 and 47 of the Bill. There are also no estimated direct administrative costs to government associated with implementing the proposed amendments to the *State Penalties Enforcement Amendment Act*.

## Consistency with Fundamental Legislative Principles

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

- *Failing to disclose being charged with, or convicted of, an indictable offence*

Section 4(3)(f) of the *Legislative Standards Act 1992* states that legislation must have sufficient regard to the rights and liberties of individuals to protect against self-incrimination. The amendment to clause 45 will ensure that there is protection against self-incrimination.

Clause 45 of the Bill will be amended to require a person to notify the Minister of:

- the existence of the charge or conviction relating to an indictable offence;
- details adequate to identify the offence committed, or alleged to have been committed, for which the person was charged or convicted;
- when the offence was committed or alleged to have been committed; and
- for a conviction, the sentence that was imposed.

A person charged with an indictable offence is required to give information about the charge and the circumstances of the *alleged* offence. The disclosure is about the fact of the existence of the

charge and information about the charge. It not intended to require the board member or the CEO to respond to the Minister about the charge. Nor it is intended to affect the board member's or CEO's right to present their case in response to the charge before the appropriate court.

The Bill includes safeguards to protect personal information by requiring the Minister, and others who may have access to the information, to keep the information confidential. Unauthorised use or disclosure of the information is an offence with a maximum penalty of 100 penalty units.

## **Consultation**

Due to the clarifying nature of the amendments to clauses 45 and 47, no public consultation has been undertaken.

Consultation was not undertaken for the amendments to the State Penalties Enforcement Amendment Act as they do not raise policy matters.

## **Consistency with legislation of other jurisdictions**

The amendments are specific to the State of Queensland.

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# NOTES ON PROVISIONS

## Amendment 1

*Amendment 1* amends clause 2 of the Bill to provide that the Act, other than part 7, division 4, commences on a day to be fixed by proclamation. As a consequence of this amendment, the provisions in the Bill which amend the *State Penalties Enforcement Amendment Act 2017* will commence on assent.

## Amendment 2

*Amendment 2* amends the Bill by omitting and replacing subclauses 45(b) and (c).

The amendments will clarify that where a person is charged or convicted with an indictable offence, they must immediately notify the Minister of the following information:

- a) the existence of the charge or conviction;
- b) details adequate to identify the offence committed or alleged to have been committed;
- c) when the offence was committed or alleged to have been committed;
- d) for a conviction – the sentence imposed on the person.

The disclosure is about the fact of the existence of the charge or conviction and information about the charge or conviction. It is not intended to require the board member or the CEO to respond to the Minister about the charge or conviction. Nor it is intended to affect:

- the board member's or CEO's right to present their case in response to the charge or conviction before the appropriate court; or
- the operation of clauses 20 or 34 of the Bill in relation to the circumstances where a person may be disqualified for appointment to, or continuing in, a particular office.

## Amendment 3

*Amendment 3* amends clause 47 of the Bill to make a grammatical correction by moving the second comma to after the word 'under'.

## Amendment 4

*Amendment 4* amends part 7 of the Bill to insert a new division 4 which amends the *State Penalties Enforcement Amendment Act 2017* to prevent the automatic commencement date of the enacted but uncommenced provisions of the Act and provide for their commencement on a date fixed by proclamation.

New clause 63 states that this division amends the *State Penalties Enforcement Amendment Act 2017*.

New clause 64 amends section 2 of the *State Penalties Enforcement Amendment Act 2017* to insert a new subsection (2) which provides that section 15DA of the *Acts Interpretation Act 1954* does not apply to the provisions of the Act that commence on a day to be fixed by

proclamation. This enables the remaining provisions of the Act to be commenced concurrently with the new SPER ICT functionality as originally intended.

### **Amendment 5**

*Amendment 5* amends the long title of the Bill to include the *State Penalties Enforcement Amendment Act 2017*.

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