Parliamentary Committees



Debt Reduction and Savings Bill 2021

Report No. 8, 57th Parliament
Economics and Governance Committee
May 2021

Economics and Governance Committee

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Acknowledgements

The committee acknowledges the assistance provided by Queensland Treasury; the Department of State Development, Infrastructure, Local Government and Planning; the Queensland Police Service; and Queensland Health.

All web address references are current as at 10 May 2021.

Contents

Abbreviations

ADII	Australian Digital Inclusion Index
AgForce	AgForce Queensland
AIA	*Acts Interpretation Act 1954*
ALA	Australian Lawyers Alliance
AMA Queensland	Australian Medical Association Queensland
ASBEC	Australian Sustainable Built Environment Council
ATG	Australian Tattooists Guild
BQ	Building Queensland
BQ Act	*Building Queensland Act 2015*
CAC	compliant analysis certificate
CEO	chief executive officer
CPI	consumer price index
CTP	compulsory third party
Debt Retirement Fund	Queensland Future (Debt Retirement) Fund
DSDILGP	Department of State Development, Infrastructure, Local Government and Planning
FA Act	*Financial Accountability Act 2009*
FLP	fundamental legislative principle
FTE	full time equivalents
FW Act	*Fair Work Act 2009* (Cth)
GIR	government indexation rate
HRA	*Human Rights Act 2019*
IP Act	*Information Privacy Act 2009*
Land Act	*Land Act 1994*
LGAQ	Local Government Association of Queensland
Licenced Tattooists Group	New South Wales and Queensland Licenced Tattooists Group
LSA	*Legislative Standards Act 1992*
LT Act	*Land Title Act 1994*

Medicines and Poisons Act	*Medicines and Poisons Act 2019*
MSDS	material safety data sheets
NDE	National Data Exchange
NIISQ	National Injury Insurance Scheme, Queensland
NIISQ Act	*National Injury Insurance Scheme (Queensland) Act 2016*
NIISQ Agency	National Injury Insurance Agency, Queensland
NSW	New South Wales
OBPR	Office of Best Practice Regulation
operator	Queensland Titles Registry Pty Ltd/Registry Co
OPRTR	Office of Productivity and Red Tape Reduction
OQPC	Office of the Queensland Parliamentary Counsel
PoQA	*Parliament of Queensland Act 2001*
PS Act	*Public Service Act 2008*
PSA Act	*Police Service Administration Act 1990*
PSAQ	Pharmaceutical Society of Australia, Queensland Branch
PSBA	Public Safety Business Agency
PSBA Act	*Public Safety Business Agency Act 2014*
PSBA board	Public Safety Business Agency Board of Management
QCA	Queensland Competition Authority
QCA Act	*Queensland Competition Authority Act 1997*
QCPA	Queensland Country Press Association Inc.
QFES	Queensland Fire and Emergency Services
QFF Act	*Queensland Future Fund Act 2020*
QIC	Queensland Investment Corporation
QIPP Act	*Queensland Industry Participation Policy Act 2011*
QLS	Queensland Law Society
QPC	Queensland Productivity Commission
QPC Act	*Queensland Productivity Commission Act 2015*
QPC Regulation	Queensland Productivity Commission Regulation 2015
QPS	Queensland Police Service
Registry	Queensland Titles Registry

Registry Co	Queensland Titles Registry Pty Ltd/operator
RTPM	real time prescription monitoring
SGS	State Government Protective Security Service
Titles Registry	Queensland Titles Registry
Together Queensland	Together branch of the Australian Services Union
Treasurer	Hon Cameron Dick MP, Treasurer and Minister for Investment
Treasury	Queensland Treasury
UN	United Nations
Water Act	*Water Act 2000*

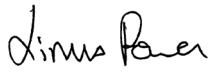
Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Debt Reduction and Savings Bill 2021.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those individuals and organisations who made written submissions and provided evidence at the committee's public hearing. I also thank our Parliamentary Service staff and officials from Queensland Treasury; the Department of State Development, Infrastructure, Local Government and Planning; Queensland Health; and the Queensland Police Service for their assistance.

I commend this report to the House.



Linus Power MP

Chair

Recommendations

The committee recommends the Debt Reduction and Savings Bill 2021 be passed.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility are:

- Premier and Cabinet, and Trade
- Treasury and Investment
- Tourism Industry Development, Innovation and Sport.

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation, the application of fundamental legislative principles (FLPs), and the compatibility of the legislation with the *Human Rights Act 2019* (HRA).[2]

1.2 Inquiry process

The Debt Reduction and Savings Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee for examination on 25 March 2021. The committee was required to report to the Legislative Assembly on the Bill by 14 May 2021.

During its examination of the Bill, the committee:

- invited written submissions on the Bill from the public, identified stakeholders and email subscribers, and received 15 submissions and one supplementary submission (a list of submitters is provided at Appendix A)[3]
- received a written briefing on the Bill from Queensland Treasury (Treasury), prior to a public briefing from departmental officials from Treasury, the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP), Queensland Health, and the Queensland Police Service (QPS) on 12 April 2021 (a list of officials who appeared at the briefing is provided at Appendix B)
- requested and received written advice from the departments on issues raised in submissions and other matters
- held a public hearing with stakeholders on 27 April 2021 (a list of the witnesses who participated in the hearing is provided at Appendix C).

The submissions, written advice, and transcripts of the briefing and hearing are available on the committee's webpage.[4]

1.3 Policy objectives of the Bill

The stated objectives of the Bill are to:

- support the State's contribution to the Queensland Future (Debt Retirement) Fund (Debt Retirement Fund), established under the *Queensland Future Fund Act 2020* (QFF Act), by providing for the transfer of the Queensland Titles Registry (Titles Registry) to a newly formed company that will be contributed to a trust within the Debt Retirement Fund structure

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1 *Parliament of Queensland Act 2001* (PoQA), s 88 and Standing Order 194.

2 PoQA, s 93; *Human Rights Act 2019* (HRA), s 39.

3 The committee issued its call for submissions on 29 March 2021 and required submissions to be provided by 5pm, 15 April 2021. To publicise the inquiry and call for submissions, the committee contacted over 1,100 email subscribers and 260 identified stakeholder organisations and individuals, as well as publishing inquiry information on its website and issuing a media release and social media posts.

4 https://www.parliament.qld.gov.au/work-of-committees/committees/EGC/

- introduce a fee unit model to streamline the annual process of indexing regulatory fees
- abolish Building Queensland (BQ) and the BQ board, and integrate BQ's staff, assets, records, resources and liabilities into DSDILGP[5]
- change the governance structure of the National Injury Insurance Agency, Queensland (NIISQ Agency), by abolishing the board of the NIISQ Agency and appointing the insurance commissioner as chief executive officer (CEO) responsible for the management of the National Insurance Injury Scheme, Queensland (NIISQ)
- repeal the *Public Safety Business Agency Act 2014* (PSBA Act) so that machinery of government changes may reintegrate the Public Safety Business Agency (PSBA) into public safety entities
- abolish the Queensland Productivity Commission (QPC) and integrate its functions into Treasury and the Queensland Competition Authority (QCA)
- mandate that legislation that requires or authorises print advertising or publication by government agencies shall be satisfied by online advertising or publication, subject to appropriate exemptions
- make technical amendments to the *Medicines and Poisons Act 2019* (Medicines and Poisons Act) to clarify head of power issues, improve the operation of proposed regulations, and require a compliant analysis certificate for the use or provision of tattoo ink.[6]

1.4 Government consultation on the Bill

The explanatory notes to the Bill detail a range of consultation actions undertaken by relevant government departments prior to the introduction of the Bill.[7]

For two key sets of amendments, this incorporated both a government and community consultation component.

Specifically, in relation to the amendments providing for the Titles Registry to be transferred and recognised as an asset contributing to the state's Debt Retirement Fund:

- the Department of Resources engaged with relevant departments including the Department of Justice and Attorney-General and the Department of the Premier and Cabinet[8]
- an exposure draft of the provisions was released for targeted community consultation in early 2021, with key stakeholders invited to provide feedback on the draft provisions, and that feedback subsequently 'considered and incorporated … where appropriate'.[9]

In relation to the proposed amendments to the Medicines and Poisons Act to regulate tattoo inks,[10] the explanatory notes state:

- the QPC was consulted in respect of regulatory impact statement requirements

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5 Explanatory notes, pp 1-2.

6 Explanatory notes, pp 1-17, 73; Hon Cameron Dick MP, Treasurer and Minister for Investment (Treasurer), Queensland Parliament, Record of Proceedings, 25 March 2021, p 832.

7 Explanatory notes, pp 33-36.

8 Explanatory notes, p 33. The explanatory notes also advise that the Office of Best Practice Regulation (OBPR) was consulted regarding regulatory impact analysis requirements and 'advised that no further assessment was required'.

9 Explanatory notes, p 33. See also Queensland Treasury (Treasury), correspondence, 8 April 2021, p 2. (Treasury advised that the Queensland Law Society (QLS) provided comments on a consultation draft of the amendments.)

10 The explanatory notes state that no stakeholder consultation was undertaken on the other proposed amendments to the *Medicines and Poisons Act 2019* (Medicines and Poisons Act) as 'they are considered technical and minor amendments', and 'a wide range of stakeholders were consulted during the development of the Medicines and Poisons Bill' and during consideration of the Bill by the relevant parliamentary committee in 2019. See explanatory notes, p 36.

- Queensland Health consulted the Australian Tattooists Guild (ATG) and Aesthetics Practitioners Advisory Network in 2019, and stakeholder views were further aired in respect of 'equivalent provisions regulating the supply of tattoo inks' that were contained in draft regulations tabled with the 2019 bill that became the Medicines and Poisons Act.[11]

For other amendments, Treasury outlined consultation processes undertaken exclusively with affected government departments and statutory entities, including for:

- the proposed amendments relating to the introduction of a fee unit model
- the proposed recognition of online advertising or publication as a satisfactory means of print publication where such publication is mandated by legislation
- the proposed amendments relating to BQ
- the proposed amendments relating to the QPC[12] (though it was noted that Together branch of the Australian Services Union (Together Queensland) was consulted in relation to the proposed transition of former QPC employees to Treasury).[13]

Treasury also confirmed that no general community consultation was undertaken in relation to the Bill's structural reforms of BQ, the QPC, the NIISQ Agency or the PSBA, due to 'the nature' of the proposed amendments,[14] which – in reference to BQ and the QPC in particular – only impact the 'internal operations and governance structure of public sector entities', with 'no material impact on the community'.[15]

During the inquiry, a number of stakeholders commented on these consultation processes as applicable to various different aspects of the Bill. This commentary is examined in the sections of the report in which those amendments are considered.

1.5 Should the Bill be passed?

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

Recommendation 1

The committee recommends the Debt Reduction and Savings Bill 2021 be passed.

11 Explanatory notes, p 36-37.

12 Explanatory notes, pp 34-35. See also Treasury, correspondence, 8 April 2021, pp 3, 4.

13 Explanatory notes, p 35. See also Treasury, correspondence, 8 April 2021, p 3.

14 Explanatory notes, pp 34, 35.

15 Explanatory notes, pp 34, 35.

2 Examination of the Bill

2.1 Overview

On 7 September 2020, as part of its COVID-19 Fiscal and Economic Review, the Queensland Government affirmed its commitment to implementing a Savings and Debt Plan intended to deliver $3 billion in budgetary savings over the 4-year period from 2020-21 to 2023-24, to support Queensland's economic recovery from the effects of COVID-19.[16] Key aspects of this plan included:

- the establishment of a new special purpose investment fund, the Queensland Future Fund, to help pay down government debt
- a commitment to undertake a number of reviews of whole-of-government resources and agency functions, to ensure funds are being effectively utilised and 'directed to where they are needed most'.[17]

The legislative framework for creating and administering the Queensland Future Fund was already in place at that time, having been established with the August 2020 enactment of the QFF Act, which also instituted the first sub-fund in the Debt Retirement Fund.[18] The government undertook to formally give effect to the Debt Retirement Fund by contributing assets, including those associated with the Titles Registry and other investments, to seed the fund by 30 June 2021.[19]

Treasury has advised that since that time comprehensive due diligence processes have been undertaken in relation to these identified assets to establish valuations for the assets, confirm their suitability for inclusion, and ensure that appropriate mechanisms are in place to facilitate their transfer to the Debt Retirement Fund.[20]

Further, in respect of the planned evaluation and streamlining of public sector resource use, the Treasurer and Minister for Investment, the Hon Cameron Dick MP (Treasurer), has advised that the government has been engaged in a 'significant amount of work reviewing the functions and structures across the public sector to focus on core tasks'.[21]

The Bill is intended to progress these elements of the state's approach to managing debt and public service delivery efficiencies, including by effecting 'a range of measures to implement the outcomes of some of those reviews' and providing 'the legislative changes to enable these measures to occur'.[22]

That is, as well as providing for the commercial value of the Titles Registry to be included in the Debt Retirement Fund to improve the state's debt-to-revenue ratio, the Bill provides for:

> … the Public Safety Business Agency to be reintegrated into frontline services Queensland Fire and Emergency Services and the Queensland Police Service; the functions of the National Injury Insurance Scheme Queensland, NIISQ, reporting to the insurance commission; a new Office of Productivity and Red Tape Reduction to be created

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16 Queensland Government, *COVID-19 Fiscal and Economic Review*, September 2020, p 19. See also Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

17 Queensland Government, *COVID-19 Fiscal and Economic Review*, September 2020, p 19; Hon Cameron Dick MP, Treasurer and Minister for Infrastructure and Planning, 'Queensland economy fighting back against COVID-19', media statement, 7 September 2020.

18 Queensland Future Fund Bill 2020, explanatory notes, p 1; Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

19 Queensland Government, *COVID-19 Fiscal and Economic Review*, September 2020, p 20; Treasurer, public hearing transcript, Budget Estimates 2020-21, 7 December 2020, p 84; Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, pp 829, 832-333.

20 Mr Leon Allen, Deputy Under Treasurer, Economics, Fiscal and Commercial, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 8. The explanatory notes advise that financial, commercial, legal and probity advisors were retained 'as part of the due diligence of the Titles Registry', with associated expenses funded by QIC as part of the costs of establishing the Debt Retirement Fund. See explanatory notes, p 19.

21 Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

22 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

> within Queensland Treasury to integrate the productivity and regulatory reform work of the Queensland Productivity Commission into the economic function of Treasury to support the government's economic recovery policy efforts, noting that the commission's competitive neutrality functions will be resumed by the Queensland Competition Authority; and Building Queensland's staff, assets, resources and records to be integrated into the Department of State Development, Infrastructure, Local Government and Planning.[23]

In addition, the Bill proposes to 'lock in' other identified savings measures[24] through further amendments to:

- introduce a new fee unit model for regulatory fees which, according to Treasury, 'will save considerable time by streamlining the processes for indexing of fees'
- allow online advertising to replace print advertising for government agencies, subject to some exemptions, including an exemption to allow for continued support of regional newspapers.[25]

In introducing the Bill, the Treasurer advised that collectively, the decisions to integrate entities and their functions within existing government departments and agencies 'are expected to achieve savings of over $2.6 million per annum … while maintaining the current functions delivered by these entities'.[26] When taken together with other measures proposed in the Bill, the sum effect on the Queensland balance sheet is expected to be up to $3 million in direct savings per year and 'significant further indirect savings'.[27]

Whilst acknowledging that these are modest amounts when considered within the context of the broader $3 billion Savings and Debt Plan, Treasury advised the committee that the measures and initiatives within the Bill 'signal the intent to continually reform and improve the management of public finances and the optimal structures for the functions the government undertakes'.[28]

In respect of the structural reforms in particular, the Treasurer stated:

> Public servants across the Queensland government demonstrated how flexible and adaptive they could be during COVID …
>
> [E]xamples were repeated all across the Public Service as workers quickly adapted to the new reality and the new demands. What that experience has shown is that streamlining the structures of government enables people and resources to be directed at the most pressing priorities and problems. That is a benefit that we intend to continue to maximise with the abolition of a number of statutory bodies and boards.[29]

In addition to these debt reduction and savings measures, the Bill proposes to also make a number of primarily 'technical and minor amendments' to the Medicines and Poisons Act, ahead of the 27 September 2021 commencement of certain postponed provisions of the Act.[30] The amendments, which were identified during the development of supporting regulations for the Act, are intended to 'enable the regulations to be drafted in a clearer and simpler way'.[31] This includes the incorporation of new offence

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23 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, pp 2-3.

24 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

25 Mr Leon Allen, Treasury, public briefing transcript, Brisbane. 12 April 2021, p 3.

26 Queensland Parliament, Record of Proceedings, 25 March 2021, p 831.

27 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

28 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 2. The Treasurer also stated that the bill 'sends a strong signal' to the people of Queensland and all who work for the people of Queensland in the public service that 'in the post-COVID world … we can and must do things differently'. See: Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

29 Queensland Parliament, Record of Proceedings, 25 March 2021, p 828.

30 The Medicines and Poisons Act received assent on 26 September 2019. While some of the Act's provisions commenced on assent, the commencement date of others was fixed by proclamation at 1 May 2020 (by Subordinate Legislation No. 58 of 2020 – Proclamation No. 1 – Medicines and Poisons Act 2019 (commencing certain provisions)); and the Medicines and Poisons (Postponement) Regulation 2020 (SL No. 150 of 2020) postponed the automatic commencement of the uncommenced provisions until 'the end of 26 September 2021'. See explanatory notes, p 5; Medicines and Poisons (Postponement) Regulation 2020, s 2.

31 Explanatory notes, p 5.

provisions relating to the supply of tattoo inks, which aim to minimise possible public health risks by 'ensuring tattoo inks do not contain any substances that could be harmful to health'.[32]

Each of these key sets of amendments is addressed in turn in the sections of this chapter that follow.

2.2 Transfer of the Queensland Titles Registry to the Debt Retirement Fund

As previously noted, the QFF Act established a framework for creating individual Queensland Future Funds to be administered by the Treasurer as special purpose accounts. This included providing for the creation of the first such fund, the Debt Retirement Fund, for the purpose of quarantining funding to reduce the state's debt.[33]

The Titles Registry was among the first of the publicly-owned assets to be earmarked for contribution to the Debt Retirement Fund,[34] with the proposed transfer to enable the Titles Registry's estimated $4.2 billion value to be recognised on the state's balance sheet for the first time.[35] Treasury explained of the proposed transfer and recognition of these assets, which would serve to 'more accurately reflect the government's debt position':[36]

> … to the extent that we have surplus assets that could be appropriately recognised in the overall calculation of our debt-to-revenue ratio, the surplus being recognised in the Future Fund allows us to, in effect, offset a rating agency's calculation of our debt-to-revenue ratio, so it is utilising those assets in a different way.[37]

The Bill would give effect to the transfer by providing for the transmission of Titles Registry assets, liabilities, rights, responsibilities, obligations, operations and employees to the 'operator' (Queensland Titles Registry Pty Ltd or 'Registry Co'), a newly formed company that would be contributed to a Queensland Investment Corporation (QIC) managed trust within the Debt Retirement Fund structure.[38]

In introducing the Bill, the Treasurer stated that the inclusion of the Titles Registry and other planned investments in the Debt Retirement Fund would 'improve our debt-to-revenue ratio by approximately nine per cent when taken into account by rating agencies when assessing Queensland's debt burden'.[39] In addition, the Treasurer stated that the Fund's activation would 'provide a buffer between actuals and notional rating agency triggers for the review of the state's credit rating'.[40]

2.2.1 Establishment of the 'operator' and transfer arrangements

The Titles Registry, which currently forms part of the Department of Resources, principally manages and maintains:

- the registration of all land related transactions associated with the purchase and sale of freehold land and properties in Queensland under the *Land Title Act 1994* (LT Act);

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32 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 833.

33 *Queensland Future Fund Act 2020* (QFF Act), s 9; Queensland Future Fund Bill 2020, explanatory notes, p 1.

34 Hon Cameron Dick MP, Treasurer and Minister for Infrastructure and Planning, 'Update on fiscal position', media statement, 23 July 2020, https://statements.qld.gov.au/statements/90253.

35 Explanatory notes, p 2. See also Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 833, regarding the 'preliminary valuation of $4.2 billion for the Titles Registry', following a previous estimate of $4 billion reported in July 2020 (Hon Cameron Dick MP, Treasurer and Minister for Infrastructure and Planning, 'Update on fiscal position', media statement, 23 July 2020, https://statements.qld.gov.au/statements/90253).

36 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 8.

37 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 4.

38 Explanatory notes, p 1.

39 Queensland Parliament, Record of Proceedings, 25 March 2021, p 833. During the public briefing, Treasury further advised the projected 9% drop in the debt-to-revenue ratio was determined as an average based on estimates of 8½% using credit agency Standard and Poors' methodology, and 'the 9.6 per cent used by Moody's in their 2021 assessments, noting that each agency is using a slightly different measure of debt and revenue to come up with that calculation'. See: Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 8.

40 Queensland Parliament, Record of Proceedings, 25 March 2021, p 832.

- the non-freehold land register under the *Land Act 1994* (Land Act); and
- the water allocations register under the *Water Act 2000* (Water Act).[41]

The registrar of titles heads the Titles Registry and also holds the office of the registrar of water allocations under the Water Act.[42]

The Bill proposes to enable the proposed Registry Co to operate and maintain the Titles Registry via delegations from the registrar of titles (and the registrar of water allocations). Registry Co would be required to subdelegate its delegated functions to appropriately qualified employees of the new company and to keep a register of subdelegations available for inspection.[43] Treasury advised:

> These delegated statutory functions will include the exclusive ability to register all land related transactions associated with the purchase and sale of freehold lots and thereby afford proprietors the benefits of indefeasible title. Registry Co will also manage and maintain the non-freehold land register and the water allocations register.[44]

In introducing the Bill, the Treasurer provided an assurance that, following the transition, 'all current services will be preserved, and there will be performance requirements in place to ensure that important quality and service delivery standards continue to be met'.[45]

Key provisions within the Bill would:

- enable Registry Co to perform registry functions delegated to it under a Titles Registry Act[46]
- enable Registry Co to decide, collect and keep Titles Registry fees and charges[47]
- transfer assets and liabilities and anything else necessary to facilitate the operation of the operator in a way that achieves the main purpose of the Bill, that is, to support the State's contribution to the Debt Retirement Fund[48]
- transfer eligible employees[49] to the operator, constituting a 'transfer of business' under the *Fair Work Act 2009* (Cth) (FW Act).[50]

In terms of the transfer of liabilities, the Bill proposes to give a person employed by Registry Co protection from civil liability for an act done or omission made honestly and without negligence when exercising certain statutory functions.[51] (The general protection afforded to public servants under section 26C of the *Public Service Act 2008* (PS Act) would not apply to a Registry Co employee.[52])

Further, according to the explanatory notes, it is intended that transfer provisions set out in chapter 1 of the Bill will effect the transfer of the employment relationship in such a way as to enliven the operation of the 'transfer of business' provisions of the FW Act.[53] Relevantly, part 6-3A of the FW Act, which applies to a transfer of business from a non-national system employer that is a state public sector employer to a national system employer, provides for the transfer of 'copied State instruments'. That is, under the 'transfer of business' from the Titles Registry to Registry Co, the award arrangements for employees will

41 Explanatory notes, p 2.

42 Explanatory notes, p 2.

43 Treasury, correspondence, 8 April 2021, p 1.

44 Treasury, correspondence, 8 April 2021, p 1.

45 Queensland Parliament, Record of Proceedings, 25 March 2021, p 833.

46 Bill, cl 8.

47 Bill, cls 8, 11.

48 Bill, cls 19-23.

49 Bill, cls 24-28.

50 Bill, cls 29-38; explanatory notes, pp 8-9.

51 Treasury, correspondence, 8 April 2021, p 1.

52 Explanatory notes, p 9.

53 Explanatory notes, p 8.

be a copied state award that will come into operation immediately after the employees' employment with the Titles Registry is terminated, and will operate for a minimum of 5 years unless a new federal enterprise agreement covering the affected employees is made.[54]

Treasury also advised that the Bill will permit eligible employees to elect to return to the public service within 12 months after the transfer.[55]

Various elements of the proposed amendments, including the protection from liability for employees and the employment arrangements generally, together with provisions for information exchange between the operator and registrars, are examined further in chapter 3 of this report, regarding FLP issues.

2.2.2 Stakeholder views and the department's response

A key theme of stakeholder commentary regarding the proposed Titles Registry transfer was an emphasis on the valuable services that the Titles Registry provides, and importance of ensuring those services continue to be delivered without interruption, and for the benefit of the Queensland public.[56]

AgForce Queensland (AgForce) submitted that it did not endorse the proposal to transfer the Titles Registry to a new company, noting the 'vast complexity' and importance of the land tenure and leasehold arrangements that provide Queenslanders with secure rights to access necessary natural capital including land and water, which are essential to a successful agricultural business sector.[57] AgForce expressed concern that the changes to the Titles Registry proposed by the Bill may alter these 'long-standing and proven management arrangements', and that 'the commercial imperative to shareholders will increasingly drive decision making in this area, potentially over the interests of the public good'.[58]

AgForce submitted:

> The risks of outsourcing are difficult to articulate and foresee however, we believe that these secure title arrangements are so important to the Queensland economy that these should be directly managed by the government as a public service.[59]

Together Queensland and the Queensland Law Society (QLS) were less opposed to the move to transfer the Titles Registry to Registry Co, with both organisations commending the government's decision to retain public ownership of the Titles Registry, in contrast to moves by other state jurisdictions (including New South Wales (NSW)) to privatise their equivalent registries.[60] Mr Alex Scott, State Secretary, Together Queensland, stated that Together members 'are cognisant of the need for government to manage the savings and debt issue' and 'are clear that the ability to show the full value of the Titles Registry in a corporatised structure is a significant benefit rather than the alternative privatisation method'.[61]

Together Queensland further submitted in respect of privatisation:

> … We understand that restructuring as per this legislation is a regular and normal occurrence, and is not intended to change the public ownership and operation of public services. However, considering the treatment of the Titles Registry in other states in Australia, we wish to emphasise our strong opposition to the partial or complete privatisation of any government services such as the Titles Registry. These services are for the benefit of the community and must be operated as such by the Government, with no private profit motive.[62]

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54 Explanatory notes, p 8.

55 Treasury, correspondence, 8 April 2021, p 2.

56 See, for example: QLS, submission 7, pp 1-2; AgForce Queensland (AgForce), submission 11, pp 1-2; public hearing transcript, Brisbane, 27 April 2021, pp 1-4.

57 Submission 11, pp 1-2.

58 Submission 11, p 2.

59 Submission 11, p 2.

60 QLS, public hearing transcript, Brisbane, 27 April 2021, pp 1, 2; Together Queensland, submission 8, p 2.

61 Public hearing transcript, Brisbane, 27 April 2021, p 4.

62 Submission 8, p 2.

The QLS, in expressing similar 'considerable concerns' about the prospect of full privatisation based on the experiences of the profession interstate,[63] also advised that it welcomed 'the commitments made when introducing this Bill that the Titles Registry will remain in public hands', given the 'Titles Registry is a vital service to the Queensland public'.[64] Further, the QLS expressed general support for a number of aspects of the Bill on the basis of their being 'consistent with the ongoing operation of the Titles Registry for the benefit of the Queensland public'.[65]

In response to stakeholder commentary about the 'corporatisation' of the Titles Registry, or privatisation of registries generally, Treasury provided the following assurances:

> All current services of the Titles Registry will be preserved and there will be performance requirements imposed on Queensland Titles Registry (Registry Co).
>
> …
>
> Service levels for the performance of registry functions (including accuracy) will be specified under contractual arrangements which govern the delivery of title registry functions while undertaken by Registry Co.
>
> The Bill provides the State with step in and directional rights, which would only be exercised in exceptional circumstances, such as to ensure the accuracy of a titles register.[66]
>
> Registry Co will be contributed to a trust managed by QIC Limited, the Queensland Government-owned investment manager. Units in the trust will be held by a number of State-owned entities. This will mean Registry Co will be held by State entities through the asset ownership structure.[67]

Further stakeholder comments regarding particular aspects of the provisions and their implementation, and the responses from Treasury, are outlined below.

2.2.2.1 Performance of Titles Registry functions under delegated authority

The QLS highlighted a concern that the Bill would permit the new operator of the Titles Registry, or a person to whom Registry Co has subdelegated a Titles Registry function, to act under the name or title of the registrar of titles or registrar of water allocations when performing a Titles Registry function – an approach the QLS submission considered to be potentially confusing or misleading.[68] QLS President, Ms Elizabeth Shearer, further elaborated on this concern at the committee's public hearing:

> There will be a number of decisions made in the registry about the acceptance of documents. For example, if I were to lodge a caveat over a property, that is something the registry has to scrutinise and make a decision on whether it is accepted. That decision, when made, will be on behalf of the Registrar of Titles. That is a relatively clear-cut one. Nevertheless, we think it appropriate that that decision be signed by the Registrar of Titles and then have a notation that it is the operator exercising its delegation—just so there is complete clarity.
>
> There are other decisions that might affect people's legal or administrative law rights that might be made by the operator that are not decisions on behalf of the Registrar of Titles, so it should be apparent on the face of that decision that it is being made by the operator in its own right. We just think there is a whole range of decisions that could be made in this entity and there should be clarity about when it is a decision of the entity solely on its own behalf and when it is a decision of the entity on behalf of the Registrar of Titles.[69]

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63 Ms Elizabeth Shearer, President, QLS, public hearing transcript, Brisbane, 27 April 2021, p 2.

64 Submission 7, p 1. The QLS stated: 'The Titles Registry is the safeguard of the integrity of land ownership for all Queenslanders as registration of title gives legal ownership under our Torrens system. The considerable data about land and individuals held by the Titles Office must continue to be held securely for the benefit of the public.'

65 QLS, submission 7, p 2.

66 Treasury, correspondence, 22 April 2021, p 17.

67 Treasury, correspondence, 22 April 2021, p 15.

68 Submission 7, p 2; Ms Elizabeth Shearer, QLS, public hearing transcript, Brisbane, 27 April 2021, pp 1, 2.

69 Public hearing transcript, Brisbane, 27 April 2021, p 2.

In response to comments from the QLS regarding the wording engaged in clause 30 of the Bill, Treasury advised that the Bill:

> … provides that when the operator (or the operator's subdelegate) is performing a titles registry function it (or its subdelegate) is performing the function for the official, irrespective of whether the operator uses the title of the official or the operator's name. The use of the title of the official continues the existing practice under section 393(5) and (6) of the *Land Act 1994*.[70]

Treasury also pointed to commentary in the explanatory notes, which explains: 'The clause makes clear that it does not prevent the operator (or a person subdelegated a titles registry function) from acting under the name of the operator'.[71]

2.2.2.2 Employee protections

Together Queensland expressed concern that the protection from civil liability for Titles Registry employees may be 'significantly' reduced under the Bill, submitting that the Bill's proposed clause 45(1) protection for employee acts or omissions done honestly and without negligence represents a lower standard than the protection currently provided under the PS Act (section 26C).[72]

Together Queensland State Secretary, Mr Alex Scott, explained:

> There is a recognition from the employer that there is a very different set of words around 45(1) of the proposed legislation compared to 26C in that 26C is a quite broad indemnity policy that talks about anything that you do. Clearly, given outrageous behaviour by an individual, it does not mean you are guaranteed for everything. There are some limitations in a broad sense, but they are quite limited. Therefore, public servants have well-established case law and employer behaviour in that if they are doing things with the best of intentions they will covered.
>
> The problem with 45(1) really deals with the fact that it is quite specific about what issues are being covered by your behaviour. If you are an employee of the titles registry, if we call it that, you are only covered within delegated performance issues but are not necessarily covered if you do something that is not. Because it defines what part of your job you are covered for, potentially there are other parts of your job that you are not covered for.
>
> … Our view at the moment, in terms of the proposed legislation, is that there will be a range of things potentially that you could be doing in your job that would not fall into the definition provided by 45(1); therefore, you would not be covered automatically by indemnity for those actions. The employer still has a common law indemnity issue but, in terms of our members' view of it in relation to a legislative base, the movement from the broad Public Service to a narrower definition means there are some parts of the work that are exposed to not being caught by that narrower definition of what work you are doing.
>
> We are in discussions with the employer through QIC—we had discussions as late as Friday afternoon—as to whether there is a way of overcoming it in a non-legislative sense. If those things fail to address our concerns in a meaningful way, we think the sort of wording in 26C, which is 'engaging in any official capacity', should be replicated.[73]

Together Queensland further emphasised:

> On a daily basis, Registry employees make decisions that directly impact thousands of real estate transactions, the vast majority valued in the hundreds of thousands of dollars and some valued in the tens or even hundreds of millions of dollars. Accordingly, protection from personal liability is of the utmost importance to members.[74]

In response to these comments, Treasury emphasised that employees of Registry Co will no longer be public servants, such that the PS Act 'does not apply to their employment'; however:

> Clause 45 of the Bill operates such that employees of Registry Co will not be civilly liable for any act done or omission made honestly and without negligence in performing a titles registry function delegated to

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70 Treasury, correspondence, 22 April 2021, p 13.

71 Explanatory notes, p 43.

72 Submission 8, pp 2-3.

73 Public hearing transcript, Brisbane, 27 April 2021, p 5.

74 Submission 8, p 3.

> Registry Co or where Registry Co is acting as the State's agent. Liability in this case will instead attach to the State. This is consistent with the protection currently provided in the *Land Titles Act 1994*.[75]

Additionally, Treasury advised:

> Consultation is ongoing with the Together Union and Titles Registry staff in relation to employment conditions for transferring staff, including in relation to immunity and indemnity. The Government is committed to protecting employees.[76]

2.2.2.3 Implementation and other considerations

The QLS sought to highlight some key strategies or future actions to support the effective transfer and ongoing operation of Titles Registry functions, and address broader system challenges. In particular, the QLS suggested that:

- further consideration be given to strategies for long term retention of key staff after the transfer, recognising the 'critical importance of retaining the corporate knowledge of current registry employees'
- a stakeholder reference group be established to work with Treasury and Registry Co during the transition process, to 'provide the opportunity for early identification and resolution of concerns'[77]
- in light of the growing use of automated systems to make decisions, consideration be given to commencing a review of legislation (including the LT Act) for which automated decision-making might be employed, 'to ensure that the legislation is appropriately updated and responsive'.[78]

Treasury noted the suggestion of QLS that consideration be given to reviewing legislation in relation to which automated decision making might be employed, but stated that such an endeavour is 'beyond the scope of the Bill's policy objectives'.[79] Given time constraints, Treasury did not have an opportunity to address the other QLS proposals, which were outlined in a supplementary submission.

The committee also received a late submission from university student Lachlan Jones, who suggested an additional amendment to the LT Act be included in the Bill, to enable fee free access to survey plans and title documents for secondary and tertiary students 'for strictly non-commercial research purposes'.[80] The committee noted Mr Jones' proposal, which was drawn to the attention of Treasury, but did not seek a formal response to Mr Jones' submission, recognising it is beyond the scope of the Bill.

2.3 Introduction of the fee unit model

Currently, public sector fees and charges are primarily administered in accordance with the government's *Principles for fees and charges policy*.[81] This document outlines the Queensland Government indexation policy applying to fees set by departments and statutory bodies, which is intended to maintain the value of fees over time relative to anticipated increases in associated costs.[82]

The Bill proposes to amend the *Acts Interpretation Act 1954* (AIA) to introduce a fee unit model which would result in state government agencies' regulated fees being displayed as a number of fee units.[83] This would

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75 Treasury, correspondence, 22 April 2021, p 15.

76 Treasury, correspondence, 22 April 2021, p 15.

77 Submission 7 (supplementary), p 1.

78 Submission 7, p 4.

79 Treasury, correspondence, 22 April 2021, attachment, p 13.

80 Submission 15, p 1.

81 Explanatory notes, p 3. See also Queensland Treasury, 'Principles for fees and charges', https://www.treasury.qld.gov.au/resource/principles-fees-charges/.

82 Explanatory notes, p 3.

83 Treasury, correspondence, 8 April 2021, p 5.

enable the annual process of indexing regulatory fees to be carried out by indexing the fee unit, rather than individually indexing each of the very large number of individual fees.[84]

Queensland Treasury advised:

> Currently, annual indexation requires agencies to amend hundreds of pages of regulation to reflect the new dollar value of their fees. The process is resource intensive, taking up to three months for some agencies to implement these changes for hundreds of fees and charges. Additionally, associated time is required each year for [the Office of the Queensland Parliamentary Counsel] to prepare the necessary fee regulations (mostly between April and June).[85]

On introducing the Bill, the Treasurer stated that the proposed changes would 'realise substantial financial savings across government as hundreds of hours of staff time and effort can be fully redirected to focus on higher value service delivery'.[86]

To give effect to the new fee unit model, the Bill proposes to amend the AIA to:

- enable regulated fees to be displayed as a number of fee units
- insert a new part in the AIA, to be administered by the Treasurer (ensuring administrative responsibility for fees and charges policy continues to sit with the Treasurer), which includes all provisions relating to the fee unit model – including providing for how the amount of a fee or other amount is to be calculated when expressed as a number of fee units
- establish a regulation making power, to enable the Treasurer's introduction of a new regulation in which the fee unit value would be published and amended each year in line with the government indexation rate (GIR), which is the current mechanism for indexing regulated fees.[87]

In respect of the GIR, Treasury's Mr Leon Allen, Deputy Under Treasurer, Economics, Fiscal and Commercial, advised that he anticipated a new GIR figure for fee unit increases would be determined at the end of the March quarter and applied from the beginning of the July quarter as per the current indexation process,[88] with the next update due as part of the 2021-22 Queensland Budget. In terms of the methodology underpinning the GIR, Mr Allen advised that while previously some agencies have used a point-in-time index (as at the March quarter) to calculate increases for the financial year ahead, GIR is now determined as a 'forecast consumer price index escalation of fees and charges'.[89]

The Bill would not affect how the GIR is determined,[90] and Mr Allen also emphasised that the proposed fee unit model would have 'no impact on the fees that people are required to pay' – rather, it would serve as 'a mechanism to improve the efficiency to which those fees are indexed on a regular basis'.[91]

Further, while all regulated fees would be required to be expressed as a number of fee units (rather than dollar amounts), the following exemption categories apply:

- intra and inter-departmental charges
- fees and charges of an ad hoc nature

84 Explanatory notes, p 3.

85 Treasury, correspondence, 8 April 2021, p 5.

86 Queensland Parliament, Record of Proceedings, 25 March 2021, p 832.

87 Explanatory notes, pp 16, 57-58; Treasury, correspondence, 8 April 2021, p 5. See also Bill, ch 2, pt 1 (cls 149-151).

88 Public briefing transcript, Brisbane, 12 April 2021, p 8.

89 Public briefing transcript, Brisbane, 12 April 2021, p 8. Mr Allen noted that the use of a forecast CPI figure to determine the GIR replaced 'the previous government's policy of an indexation rate of 3.5 per cent per annum which had been in place since 2013-14'.

90 Treasury, correspondence, 8 April 2021, p 5.

91 Public briefing transcript, Brisbane, 12 April 2021, p 5.

- fees or charges where legislation or existing government policy establishes a separate basis for determination (eg actuarial assessment)
- nationally agreed fees.[92]

In regard to commencement of the proposed model, the Treasurer advised:

> … from 1 January 2022 all in scope agencies will be required by government policy to display their regulated fees as a fee unit not a dollar amount, unless they have received an exemption. This will require all agencies with regulated fees to amend their relevant regulations to reflect the change, ready for when the next fee indexation is due to occur, being 1 July 2022 for most agencies, or for those with an alternative indexation date their first occurrence post 1 July 2022.[93]

The proposed fee unit model was not explicitly addressed in stakeholder submissions or other commentary.

2.4 Repeal of the *Building Queensland Act 2015* and integration of Building Queensland functions

BQ is a statutory body established under the *Building Queensland Act 2015* (BQ Act). Its functions include:

- providing independent expert advice to the state government about infrastructure, based on rigorous analysis
- developing frameworks for assessing the costs and benefits of infrastructure projects
- providing assistance to government agencies in the preparation of infrastructure proposals
- evaluating proposals for investment in new infrastructure or enhancements of existing infrastructure
- preparing business cases for infrastructure proposals
- preparing and maintaining the infrastructure pipeline document, which states the stage of development and estimated cost of each infrastructure proposal or project BQ considers to be a priority for the state
- leading the procurement or delivery of particular infrastructure projects
- publishing information – including summaries of infrastructure proposals, cost benefit analyses and the infrastructure pipeline – and promoting awareness of BQ's functions.[94]

BQ is governed by a board of 8 members comprising 5 non-permanent members from the private sector and 3 permanent members from the public sector.[95]

The Bill proposes to:

- repeal the BQ Act to abolish BQ and the BQ board
- provide for the integration of BQ's staff, assets, records, resources and liabilities into DSDILGP, including by providing transitional arrangements under the *Queensland Industry Participation Policy Act 2011* (QIPP Act) to facilitate the transfer of BQ's business to DSDILGP.[96]

2.4.1 Transfer arrangements

Under the proposed amendments, on commencement:

- BQ and its board would be abolished, with each member of the board going out of office[97]

92 Treasury, correspondence, 8 April 2021, p 5.

93 Queensland Parliament, Record of Proceedings, 25 March 2021, p 832.

94 *Building Queensland Act 2015* (BQ Act), ss 9-18.

95 Building Queensland, *Annual Report 2019-20*, p 12.

96 Explanatory notes, pp 1, 16; Treasury, correspondence, 8 April 2021, p 3. See Bill, ch 2, pt 2.

97 Bill, cl 156 (*Queensland Industry Participation Policy Act 2011* (QIPP Act), proposed s 18).

- the contract of employment for BQ's CEO would end[98]
- there would be no compensation payable to the board members or CEO; however, they would retain any accrued benefits or entitlements (including termination benefits).[99]

All other employees of BQ would, at that time, also cease to be employed by BQ; these employees would all be taken to be public service employees of DSDILGP.[100] Queensland Treasury advised there would be no forced redundancies resulting from the restructure.[101]

In terms of the operations of BQ moving forward, following the repeal of the BQ Act and the integration of BQ into DSDILGP, Treasury advised that DSDILGP would use a 'reformed approach' to assist agencies 'to deliver good quality [infrastructure] proposals' and enable 'more strategic oversight of proposal development at a much earlier time'.[102] Fundamental elements of the reformed approach are as follows:

- Agencies would take on a lead role for infrastructure proposal development, applying the best-practice business case development and assurance frameworks developed by BQ.
- DSDILGP would support agencies with expert, scalable assistance and assurance for proposal development where needed and would work with agencies more broadly to improve their proposal development capabilities.
- Infrastructure proposals would remain subject to independent third-party assurance, with expert advice continuing to inform decision-making. DSDILGP would undertake a centralised role in overseeing and supporting those assurance functions, while remaining independent of the project proponents and investment decisions that follow robust infrastructure proposal assessment.
- DSDILGP would take a more active role in early planning, before proposals are locked in, to assist agencies to develop stronger capital plans that consider whole-of-government economic and social priorities, including changing regional and sectoral needs.[103]

Additionally, BQ's infrastructure pipeline reporting function would be incorporated into the government's existing capital program reporting to produce a single 'efficient infrastructure pipeline' that reports 'what is funded and on the way, and what significant potential State investments have commenced business cases'.[104] The Auditor-General has previously observed that BQ's infrastructure pipeline reporting 'creates duplicate reporting requirements for agencies', given the same proposals are incorporated in pipeline reporting for the State Infrastructure Plan.[105]

Treasury advised that the integration of BQ functions into DSDILGP would provide savings of approximately $700,000 per year.[106] The explanatory notes state that 'transitional implementation during 2020-21, including some one-off implementation costs, will result in savings generally being realised from 2021-22'.[107]

98 Bill, cl 156 (QIPP Act, proposed s 19).

99 Bill, cl 156 (QIPP Act, proposed ss 18-19). Proposed s 19(4) states that the CEO's accrued benefits would become payable on commencement 'as if the person's contract of employment had been terminated on that day according to its terms and other than by the person'. See also explanatory notes, p 28; statement of compatibility, p 5.

100 Bill, cl 156 (QIPP Act, proposed s 27); explanatory notes, p 1.

101 Treasury, correspondence, 8 April 2021, p 3.

102 Treasury, correspondence, 8 April 2021, p 3.

103 Treasury, correspondence, 8 April 2021, pp 3-4.

104 Queensland Treasury, correspondence, 8 April 2021, p 4.

105 Auditor-General, Report to Parliament No. 14: 2019-20—*Evaluating major infrastructure projects,* May 2020, pp 9, 29.

106 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 5.

107 Explanatory notes, p 19.

On introducing the Bill, the Treasurer outlined expected benefits of the structural change and the reformed approach:

> Taking a more active role in early planning, before proposals are locked in, will assist agencies develop stronger capital plans that consider whole-of-government economic and social priorities, including changing regional and sectoral needs. This will ensure the government is building the right infrastructure at the right time.[108]

In developing the amendments and reformed approach, consultation has been undertaken with the Department of Premier and Cabinet, Treasury, BQ, and 'key infrastructure line agencies', in addition to DSDILGP's 'regular' engagement with BQ staff 'on planning for the transition of employees, accommodation and IT, which commenced in parallel with the process to repeal the BQ Act'.[109] Treasury also advised: 'Further consultation will be undertaken with these stakeholders over the coming months to finalise the mechanisms and arrangements needed to support the approach'.[110]

2.4.2 Stakeholder views and the department's response

The Australian Sustainable Built Environment Council (ASBEC), Consult Australia and Engineers Australia objected to the Bill's proposed abolition of BQ and integration of its functions into DSDILGP, with all three stakeholders emphasising the importance of the infrastructure body's independence from government.[111]

ASBEC submitted in this regard that the provision of independent, expert and transparent advice to the Queensland government is an essential function of BQ, and that:

> A governance and reporting structure that enables BQ to provide advice independent of perceived, potential or actual political influence is critical to BQ's credibility both in the eyes of the public and for decision makers. Additionally, the provision of best practice governance that reflects broad industry expertise helps build certainty for investors in a strong long-term infrastructure pipeline that can be credibly supported across electoral cycles.[112]

Consult Australia, similarly, cautioned that bringing functions of BQ into DSDILGP 'immediately compromises the first component of good infrastructure governance, that being independence'.[113] Consult Australia submitted:

> … independent infrastructure bodies such as Building Queensland are essential to realise the benefit from infrastructure investments by:
>
> - Removing the politics from infrastructure development by establishing long-term strategic plans.
> - Providing independent and expert advice about current and future infrastructure needs.
> - Creating a pipeline for the … roll-out of infrastructure projects that will deliver jobs and growth.
> - Making infrastructure decision-making transparent and evidence based.[114]

Additionally, in terms of BQ's design and operating framework, Consult Australia considered:

> That concept and structure … of establishing an independent board with a CEO, with an organisation behind that CEO who are expert at devising business cases and also looking at the prioritisation of projects arising out of that, again give best bang for buck to the state. All of that independence, all of that scrutiny being applied, is lost by merely abolishing the board and the CEO position.[115]

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108 Queensland Parliament, Record of Proceedings, 25 March 2021, p 830.

109 Treasury, correspondence, 8 April 2021, p 4.

110 Treasury, correspondence, 8 April 2021, p 4.

111 ASBEC, submission 5; Consult Australia, submission 3; Engineers Australia, submission 10.

112 Submission 5, p 1.

113 Submission 3, p 4.

114 Submission 3, p 3.

115 Ms Nicola Grayson, CEO, Consult Australia, public hearing transcript, Brisbane, 27 April 2021, p 9.

Further, Consult Australia warned that 'the influence of politics and election cycles on infrastructure projects amongst state/territory governments has been an ongoing issue',[116] and highlighted the need for transparency of decision making regarding the priority given to projects:

> Significant consideration also needs to be given to the infrastructure project prioritisation process … and actual versus perceived independence. Without an independent infrastructure body, the project prioritisation process, interrelationship and coordination with Infrastructure Australia will be unclear to agencies and the infrastructure sector. This has the potential to erode transparency and create uncertainty. Pipeline visibility is a key requirement for the infrastructure sector to ensure the ability to deliver, inform resourcing strategies and skills development, and industry sustainability.[117]

Treasury concurred that the 4 core components of infrastructure governance cited by Consult Australia (independence, planning, assessment and prioritisation) are necessary, and advised:

> … many jurisdictions, including Queensland, achieve these outcomes through a variety of mechanisms, not just through an infrastructure body (iBody) such as BQ. For example, Queensland's long-term infrastructure strategies and plans are an existing responsibility of DSDILGP and not BQ.
>
> …
>
> Work is underway to design and implement refreshed governance arrangements that are best suited to the Queensland context. This includes ensuring appropriately robust and independent project assessment arrangements are in place and that agencies are supported to mature and uplift their project capability over time (including extending beyond BQ's existing proposal reach).[118]

Engineers Australia, in response to these comments, stated that it is 'unclear what benefit the government sought by timing the abolition of the existing governance function prior to even designing the revised governance arrangements and associated functions':[119]

> The decision to abolish the Building Queensland Act and the independent governance functions within it prior to designing the new governance arrangements unnecessarily exposes Queensland to a period without independent governance arrangements in place and uncertainty regarding what governance arrangements will be in place. This timing places significant risk on the Queensland people and provides negligible benefits.
>
> … the timing of this gap in governance raises concerns. A large number of infrastructure projects are being planned post COVID, including infrastructure for the Olympic Games. Large capital infrastructure projects are highly correlated with larger and more frequent cost overruns, and hosting the Olympics frequently results in significant infrastructure cost overruns and financial losses for government. Proper governance needs to be in place.[120]

Further, in the context of economic recovery, Consult Australia also emphasised the importance of continuity of reliable analysis and advice for project selection and project outcomes:

> At a time where there is a desire to fast-track the delivery of projects to help boost the economy, it is important that robust analysis is undertaken for project selection. … Importantly, where Building Queensland business case analysis has determined that a project is not viable, Building Queensland has demonstrated independence in providing advice to government. This independent advice has ensured that funding is directed to projects that enhance the productive capacity of the Queensland economy and achieve sustainable social and environmental outcomes.[121]

In respect of these comments, Treasury advised:

> The Queensland Government remains committed to robust infrastructure assessment and good quality decision making. DSDILGP will provide a centralised function at arm's length to project proponents to help achieve robust infrastructure assessment that supports making the right investment decisions at the right time.

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116 Submission 3, p 6.

117 Submission 3, p 9.

118 Treasury, correspondence, 22 April 2021, attachment, p 9.

119 Mr Laurie Bowman, Principal, Synchrony Projects; Member and Committee Member, College of Leadership and Management, Engineers Australia, public hearing transcript, Brisbane, 27 April, p 8.

120 Mr Laurie Bowman, Engineers Australia, public hearing transcript, Brisbane, 27 April, p 8.

121 Submission 3, p 9.

> DSDILGP will leverage the extensive learnings and expertise from BQ and draw on existing government processes, such as the Gateway Review process.[122]

Further:

> Although announced as part of the Queensland Government's Savings and Debt Plan, the structural reform of BQ affords real opportunity to ensure the Government utilises its resources efficiently to reinforce and strengthen its infrastructure investment and planning capability.
> …
> BQ's involvement in business cases has also usually come at a point where proposals are considerably progressed, and where significant investment has already been made or committed. While BQ has sought to address sectoral challenges in the context of individual business cases, BQ's statutory functions and focus on business case development and capability has provided limited opportunity to address major infrastructure planning challenges in key sectors, such as health and water. [123]

Consult Australia contested the notion that BQ 'comes too late to the party' in the assessment of business cases, citing circumstances in which BQ has provided advice to the government not to proceed with projects, 'which in Consult Australia's opinion demonstrates that Building Queensland can and does influence outcomes'.[124]

> The first example was in 2017 on the Townsville Eastern Access Rail Corridor – measures such as corridor preservation to de-risk the project in the future were later included in line with the advice Building Queensland provided. The second example is the Nullinga Dam in 2019.
>
> Further, as explored as part of Building Queensland's Strategic Plan, Building Queensland has sought to engage with agencies in early project development stages noting one element of the strategy is being to collaborate with agencies in the early stages of infrastructure assessment to shape the state's infrastructure priorities.
>
> Through Building Queensland's Infrastructure Pipeline Report process they also identified infrastructure priorities at all three stages of the business case framework, including the earlier preliminary business case stage.[125]

Engineers Australia also noted that there was a review of BQ in 2017, and that the limitations cited by Treasury were not raised during the review: 'It said that Building Queensland was meeting and exceeding expectations'.[126] Additionally, Engineers Australia pointed to a 2020 Grattan Institute report, *The rise of mega projects: counting the costs*,[127] which included the below data in respect of the timing of BQ assessments of projects relative to that of equivalent bodies nationally.

Large Business Case Timing	**Queensland**	**Australia**
At time of commitment	3	8
Assessed later	3	11
None assessed or published	2	13
Total	**8**	**32**
Percentage assessed at time of commitment	**37.5%**	**25.0%**

Source: Engineers Australia, correspondence, 30 April 2021.

In reference to this analysis, Engineers Australia stated:

> … between 2017 and 2020 Queensland had performed above average in governance in that proper assessment and independent assessment had been performed on business cases before commitments were

122 Treasury, correspondence, 22 April 2021, p 9.

123 Treasury, correspondence, 22 April 2021, p 8.

124 Consult Australia, correspondence, 30 April 2021.

125 Consult Australia, correspondence, 30 April 2021. Footnotes omitted from original.

126 Engineers Australia, correspondence, 30 April 2021.

127 Grattan Institute, *The rise of megaprojects: counting the costs,* November 2020, https://grattan.edu.au/wp-content/uploads/2020/11/The-Rise-of-Megaprojects-Grattan-Report.pdf.

> being made, so it is that timing that is an indicator of good governance and slightly above the Australian average between 2017 and 2020.[128]

Treasury further advised of the proposed structural reform:

> Integrating BQ's deep and detailed business case knowledge with DSDILGP's existing infrastructure planning and strategy functions presents a range of opportunities to strengthen infrastructure strategy, planning and delivery in Queensland. These opportunities are particularly evident where deep project knowledge (acquired through involvement in business cases) can be used to inform strategic planning and infrastructure advisory.
>
> Efforts will be focused on not only continuing the good work of BQ in improving infrastructure proposal development and decision making, but also taking a more strategic and holistic approach to the State's most significant infrastructure lever – the capital program.
>
> … This approach enables the Queensland Government to plan for a coordinated, whole-of-government infrastructure program that is optimising economic outcomes.[129]

More specific stakeholder comments, and the responses from Treasury (as lead agency), are outlined below.

2.4.2.1 Reformed approach and transitional arrangements

As previously noted, a key function of BQ is the provision of infrastructure advice about the business cases it develops and the projects that agencies propose – processes that have been carried out under BQ's business case development framework.[130]

Engineers Australia and Consult Australia both expressed concerns that the proposed amendments and associated changes to the administration of BQ functions would diminish the rigour of the business case development process.

Engineers Australia submitted:

> BQ provided a rigorous framework for business case development that, through its independent board, provided a real or perceived independence of process and decision making. …
>
> Will the business case development process be leaner and less rigorous as a result of this change? There does not currently seem to be direction on how these guidelines will [change], and whether they will be updated. Given this, there is a risk that we may lose the current rigorous processes we follow and the credibility/strength of business cases undertaken, particularly during the transition period, may be questioned.[131]

Ms Nicola Grayson, CEO, Consult Australia, stated:

> The assurance process run by Building Queensland ensures there is a level of consistency across the state agencies in their approach to business cases, particularly as capability across agencies varies. Whilst the government's intention is to bring these skills in-house to continue to build that capacity, once those skills go in-house there is no transparency provided to industry or the community about the ongoing priority given to that function.[132]

Queensland Treasury provided the following assurances in response:

> Agencies will take on a lead role for infrastructure proposal development, with the best-practice Business Case Development Framework (BCDF) and assurance frameworks developed by BQ continuing to be applied.

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128 Engineers Australia, correspondence, 30 April 2021.

129 Treasury, correspondence, 22 April 2021, pp 8-9.

130 Auditor-General, Report to Parliament No. 14: 2019-20—*Evaluating major infrastructure projects,* May 2020, pp 2, 4. See also BQ, 'Business case development framework – Release 3 now available', *News*, 20 April 2020, https://buildingqueensland.qld.gov.au/news/business-case-development-framework-release-3-now-available/

131 Submission 10, p 2.

132 Ms Nicola Grayson, Consult Australia, public hearing transcript, Brisbane, 27 April 2021, p 7.

> The reform brings the skills and experience from BQ into central government, where DSDILGP will support agencies with expert, scalable assistance and assurance for proposal development where needed and will work with agencies more broadly to improve their proposal capabilities.
>
> DSDILGP and BQ worked together to handover business cases underway during the transition period from BQ to the relevant project owners, ensuring there are no negative impacts on the time, cost or quality of the business cases. DSDILGP remains actively engaged on these projects by providing targeted assistance to the project owners.[133]

Engineers Australia also queried what governance processes were proposed to provide for 'project assurance processes and the competency of the personnel involved'.[134]

Queensland Treasury advised:

> Infrastructure proposals will remain subject to independent third-party assurance, with expert advice continuing to inform decision-making. This is consistent with Infrastructure Australia's, *Infrastructure Decision-making principles*, which advises that 'project proposals should be independently assessed by an appropriate third party organisation, through structured and transparent review processes.'[135]

2.4.2.2 Employment provisions

In respect of the employment arrangements and conditions for transferred BQ employees, Together Queensland submitted that:

> … there should be no reduction in FTE [full time equivalents], and no reduction in conditions or pay that should result from this legislative change. Per the Government's commitment to maintenance of staffing levels, and their employment security policy, we submit there should be a guarantee of no detriment to the conditions or wages of those public servants affected by the abolition of Building Queensland … [136]

Treasury confirmed in response that there 'will be no reduction in FTE as a result of the BQ integration into DSDILGP', with the exception of the position of the CEO of BQ.[137] Treasury advised:

> Both BQ and DSDILGP staff are employed under the provisions of the Public Service Act 2008 and the State Government Entities Certified Agreement 2019. Therefore, there will be no reduction in conditions or pay for BQ employees.
>
> A detailed 'People change management plan' has been developed which outlines the activities and nominal timing of those activities for the transition of BQ staff into DSDILGP. This includes consultation with BQ staff on how the proposed change will be implemented and any subsequent impacts for staff. [Together Queensland] has also been consulted on the proposed change process, and consultation will continue with [Together Queensland] through the DSDILGP Agency Consultative Committee.[138]

2.4.2.3 Reform savings

In reference to the cited savings rationale for the proposed abolition of BQ and integration of its functions, Consult Australia submitted:

> The infrastructure sector, of which our members are a part, is a key contributor to the economic recovery of Queensland. In 2020, the Queensland Government announced a $13.9B infrastructure investment to unlock economic recovery. The abolishment of Building Queensland and its Board is equating to a saving of little more than $1M per annum. An annual investment of $1M to ensure a robust governance structure to support the $13.9B investment in infrastructure, is a solid investment in the future of the State, and not an area for cost cutting. $1M savings to the state could easily be achieved by reducing the state's reliance on obtaining

133 Treasury, correspondence, 22 April 2021, p 10.

134 Submission 10, p 2.

135 Treasury, correspondence, 22 April 2021, p 9.

136 Submission 8, p 1.

137 Treasury, correspondence, 22 April 2021, p 15.

138 Treasury, correspondence, 22 April 2021, p 15.

> external legal advice to amend/revise/bespoke its contracts across its infrastructure portfolio and instead adopting standardised forms of contract for the delivery.[139]

ASBEC, similarly, stated:

> In the context of the Queensland Government announcement of a $14.8B capital program for 2020-21 and a total infrastructure program of $56B over the next four years, the allocation of around $1M per annum to support best-practice governance in infrastructure advice and decision making represents a modest and sound investment in Queensland's infrastructure future.[140]

Treasury stated in response:

> Although announced as part of the Queensland Government's Savings and Debt Plan, the structural reform of BQ affords real opportunity to ensure the Government utilises its resources efficiently to reinforce and strengthen its infrastructure investment and planning capability.[141]

2.4.2.4 Consultation process

As previously noted, in developing the proposed amendments the government undertook consultation with key government departments and infrastructure line agencies, as well as engaging regularly with BQ staff regarding arrangements for transfer.[142] However, the government did not undertake community consultation on the repeal of the BQ Act as it considered 'the structural reform of BQ only impacts the internal operations and governance structure of public sector entities and there is no material impact on the community'.[143]

Consult Australia contested this assessment of the BQ reform impacts, and the decision not to consult the community on the proposed amendments, submitting:

> It is not correct to say there will be no material impact of the loss across the community. The loss of that independence and transparency of Building Queensland will indeed have a very material impact on the future infrastructure decision-making in the state, so this is very tangible and measurable in terms of impact on the community. It is disappointing also that organisations like ours and the community were not consulted. Consult Australia has invested time, as have our members and many other organisations, in engaging with Building Queensland.[144]

Engineers Australia also called for stakeholder consultation on the proposals:

> A change of this magnitude requires consultation among stakeholders. The limited consultation and information about the new governance processes adds to the uncertainty and reduces confidence in the short, medium and long term. We propose that this matter be revisited before the change is formally implemented.[145]

Treasury advised:

> A comprehensive suite of communication and guidance materials is being prepared to support the repeal of the BQ Act and brief government, industry and the community on the reformed functions for DSDILGP when they come into effect.[146]

2.5 Restructure of the National Injury Insurance Agency Queensland

Established from 1 July 2016 under the *National Injury Insurance Scheme (Queensland) Act 2016* (NIISQ Act), the NIISQ funds necessary and reasonable treatment, care and support for people who sustain an eligible serious personal injury in a motor vehicle accident in Queensland. The NIISQ Agency, which was

139 Submission 3, p 3.

140 Submission 5, p 1.

141 Treasury, correspondence, 22 April 2021, p 8.

142 Treasury, correspondence, 8 April 2021, p 4.

143 Explanatory notes, p 34.

144 Ms Nicola Grayson, Consult Australia, public hearing transcript, Brisbane, 27 April, p 7.

145 Mr Laurie Bowman, Engineers Australia, public hearing transcript, Brisbane, 27 April, p 8.

146 Treasury, correspondence, 8 April 2021, p 4.

also established under the NIISQ Act, administers and pays for treatment, care and support for scheme participants, and manages and monitors the provision of these services. A levy on registered vehicles funds the NIISQ Fund.[147]

The Bill proposes to amend the NIISQ Act to abolish the board of the NIISQ Agency and transfer responsibility for management of the NIISQ Agency to a CEO.[148] Transitional provisions[149] provide for the insurance commissioner under the *Motor Accident Insurance Act 1994*, who oversees Queensland's compulsory third party (CTP) motor accident injury compensation scheme, to be appointed as CEO on commencement of the provisions, with future appointments to be made by the Governor in Council.[150] The CEO will be appointed under the NIISQ Act and not the PS Act, and the Governor in Council may appoint a person who is a public service officer to hold the office of CEO in conjunction with the person's public service office.[151]

These changes to the governance structure of the NIISQ Agency are intended 'to drive greater efficiencies and provide stronger alignment of the governance of motor accident personal injury schemes'.[152]

2.5.1 Transfer arrangements

The proposed amendments to the NIISQ Act would result in the current CEO and board members of the NIISQ Agency going out of office on commencement. As per arrangements for the BQ CEO and the board members of the abolished BQ board (report chapter 2.4), the explanatory notes advise that the Bill does not affect the accrued entitlements of the NIISQ CEO or NIISQ board members under their terms of appointments.[153] Treasury further advised the committee that 'NIISQ Agency staff will remain employed under existing arrangements in the NIISQ's current premises'.[154]

In terms of the continuity of NIISQ board functions and operations on its abolition, the Bill contains a range of provisions reassigning responsibilities and key tasks.

The functions of the NIISQ board, as set out in current section 67(1) of the NIISQ Act, are to:

(a) manage the agency; and

(b) ensure the agency performs its functions in a proper, effective and efficient way; and

(c) develop strategies and policies about the performance of the agency's functions; and

(d) set investment objectives for the fund or part of the fund and establish investment strategies and policies to achieve the objectives.

The Bill sets out new functions of the CEO to replicate these functions with the exception of (d).[155] This function, to 'set investment objectives for the fund or part of the fund and establish investment strategies and policies to achieve the objectives', is to be transferred to the NIISQ Agency;[156] and the Bill also inserts new provisions which would allow the NIISQ Agency to appoint an entity to perform, or advise the agency

147 *National Injury Insurance Scheme (Queensland) Act 2016* (NIISQ Act); National Injury Insurance Agency Queensland (NIISQ Agency), *Annual Report 2019-20*, August 2020, pp 1-2. Under an agreement with Queensland workers' compensation insurers, the NIISQ Agency also administers eligible workers' treatment, care and support on their behalf.

148 Bill, ch 2, pt 3, cls 159-178.

149 Bill, cl 177.

150 Bill, cl 164.

151 Bill, cl 164 (NIISQ Act, proposed s 81) and cl 166 (NIISQ Act, proposed s 83). Replacement s 83 sets out the CEO's conditions of employment, including that remuneration and allowances are decided by the Governor in Council.

152 Explanatory notes, p 4.

153 Explanatory notes, p 28.

154 Treasury, correspondence, 8 April 2021, p 5.

155 Bill, cl 167 (NIISQ Act, proposed s 84(1)).

156 Bill, cl 161 (NIISQ Act, proposed s 58(1),(2)).

about performing, the function.[157] Any entity appointed under these provisions must be an entity nominated by the Treasurer, or if the Treasurer has not nominated an entity, the State Investment Advisory Board established under section 10 of the *Queensland Treasury Corporation Act 1988*.[158]

In addition to the functions outlined above, the Bill provides for the new functions of the CEO to also include any other function given to the CEO under the NIISQ Act.[159] Further, the CEO would take on former board responsibilities, to:

- give to the Treasurer quarterly reports about the agency's financial position and performance[160]
- immediately inform the Treasurer of an issue which may significantly affect the agency's financial position or the ability of the agency to perform its functions, and provide a written report and any other information about the issue to the Treasurer[161]
- comply with a requirement by the Treasurer to report to the department[162]
- approve forms for use under the NIISQ Act.[163]

Additionally, the Bill transfers the responsibility for preparing draft strategic plans and draft operational plans, and for obtaining written agreement from the Treasurer for modifications to those strategic and operational plans, from the board to the NIISQ Agency.[164]

Regarding the effect of the Bill on the NIISQ and the entitlements, care and support services provided to NIISQ participants who have been seriously injured in motor vehicle accidents, the Treasurer stated, in introducing the Bill:

> The Palaszczuk Labor government remains fully committed to the NIISQ and the social policy principles underlying its establishment, and this bill in no way changes the fundamentals of the scheme or the rights and entitlements of NIISQ participants. Rather, this bill makes changes to the governance structure of the statutory body overseeing this scheme and follows a review of functions and structures across the public sector as part of the government's savings and debt plan.
>
> … This change in the NIISQ governing model will drive operational efficiencies and provide stronger alignment in the governance of motor accident personal injury schemes and streamline our management of long-tail accident insurance arrangements.[165]

2.5.2 Stakeholder views and the department's response

The Australian Lawyers Alliance (ALA) endorsed the changes to the governance structure of the NIISQ Agency, submitting:

> The ALA believes that the decision to overhaul the governance of NIISQ as part of the *Debt Reduction and Savings Bill 2021* is an excellent outcome for participants of the NIISQ scheme who have encountered difficulties in recent years with the NIISQ Agency and should be supported.[166]

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157 Bill, cl 161 (NIISQ Act, proposed ss 58(3) and 58(4)).

158 Bill, cl 161 (NIISQ Act, proposed ss 58(4)). In its *2019-20 Annual Report*, the NIISQ Agency reported that it had been developing an agreement with the State Investment Advisory Board and the QIC to manage NIISQ Fund investments on behalf of the board of the NIISQ Agency to 'provide for improved performance reporting and monitoring of the NIISQ Fund, enhancing the ability of the Board to monitor the long-term financial health of the Scheme'. See: NIISQ Agency, *Annual Report* 2019-20, August 2020, p 5.

159 Bill, cl 167 (NIISQ Act, proposed s 84(2)).

160 Bill, cl 168.

161 Bill, cl 169.

162 Bill, cl 170.

163 Bill, cl 174

164 Bill, cls 171, 172.

165 Queensland Parliament, Record of Proceedings, 25 March 2021, p 830.

166 Submission 9, p 2.

The ALA's support was based on a number of observations about the operation of the NIISQ. Specifically, ALA submitted:

- the NIISQ and its governance was sound when it commenced in 2016 and initially 'worked effectively and fairly'
- the NIISQ Agency and the NIISQ structure overall has become 'less responsive and less sensitive to the needs of scheme participants' over time and with changes to the governance and leadership of the NIISQ Agency
- the independence of the NIISQ Agency has led to a lack of accountability, 'leaving Government unable to respond to stakeholder concerns'
- the NIISQ has become 'closer to a highly bureaucratised long-tail scheme' that is 'unresponsive', 'often leaving participants with few options but to go to Court or elsewhere to seek an appropriate determination of their matter', causing distress for NIISQ participants and their families.[167]

The ALA submitted that the amendments will restore the original intent of NIISQ:

> … ensuring that NIISQ upholds its responsibility to ensure genuine choice and control for scheme participants, and end more recent practices that are not only insensitive and unresponsive to those needs, but also extend beyond its permitted legislative remit.[168]

The ALA also supported the amendments as a savings measure that 'will lead to less money being spent on unnecessary litigation, poor stakeholder management and bureaucracy',[169] and endorsed the appointment of the current insurance commissioner as the CEO of the NIISQ Agency, pointing to the Commissioner's successful oversight of Queensland's CTP scheme and of the NIISQ Agency for an interim period when the NIISQ commenced.[170]

Together Queensland submitted that staff numbers, employment conditions, or wages of public servants should not be reduced as a result of changes to the governance arrangements of the NIISQ Agency proposed by the Bill.[171]

Treasury advised that NIISQ staff 'will remain employed under existing arrangements in the NIISQ's current premises'.[172]

2.6 Repeal of the *Public Safety Business Agency Act 2014* and integration of Public Safety Business Agency functions

Initially created through administrative arrangements in November 2013, the PSBA was formally established by the PSBA Act in May 2014,[173] in response to recommendations made following a police and community safety review undertaken by former Australian Federal Police Commissioner Mike Keelty.[174] The PSBA's functions include:

- providing support services to public safety agencies (namely the QPS, the Queensland Fire and Emergency Services (QFES) and the Office of the Inspector-General Emergency Management)

167 Submission 9, p 3.

168 Submission 9, p 4.

169 Submission 9, p 4.

170 Submission 9, p 4.

171 Submission 8, p 1.

172 Treasury, correspondence, 8 April 2021, p 5.

173 Treasury, correspondence, 8 April 2021, p 9.

174 Mike Keelty AO APM, *Sustaining the unsustainable: Police and Community Safety Review – final report,* August 2013; Treasury, correspondence, 8 April 2021, p 9.

- holding and maintaining infrastructure, fleet and communication technology assets for public safety entities.[175]

At the time of its establishment under the PSBA Act, the PSBA was authorised to perform additional functions, including the operation and management of declared public safety entities, which extended to the administration of the then State Government Protective Security Service (SGS), Queensland Government Air Services, and Blue Card Services.[176] However, the PSBA's functions changed substantially following the government's endorsement of recommendations made in the Public Service Commission's *Review of the Public Safety Business Agency* report, tabled on 17 February 2016.[177] That report cited stakeholder concerns and frustrations arising from a lack of clarity around role responsibility and the scope, purpose and functions of the PSBA, recommending (with the agreement of partner agencies) that a range of PSBA functions be returned to QFES and QPS or transferred to other relevant agencies.[178]

As a result, Blue Card Services were transferred to the Department of Justice and Attorney-General, SGS to the QPS, and 11 other functions to the QPS and QFES, under a series of administrative changes and some later legislative amendments effected by the *Public Safety Business Agency and Other Legislation Amendment Act 2016.*[179] That Act also established the PSBA Board of Management (PSBA board), comprising the police commissioner, the fire commissioner and an independent, external member appointed by the Governor in Council on the Minister's recommendation.[180]

A second review into the operations of the PSBA was conducted in 2018, led by Mr Alan MacSporran QC. Discussing the performance of the PSBA, the Treasurer stated that the 2018 review 'again raised the same consistent and continuing concerns about the efficiency and efficacy of the agency':[181]

> Adjusting the operating model for the Public Safety Business Agency has not overcome an inherently flawed model established by the Newman LNP government. The Public Safety Business Agency has not succeeded in its original purpose of reducing waste and duplication through providing corporate service capabilities for public safety agencies.[182]

Noting these cited issues, on launching the Savings and Debt Plan in September 2020, the Treasurer flagged the abolition of the PSBA and reintegration of its functions as one of the plan's anticipated efficiency and savings measures, reporting an expected implementation date of June 2021.[183]

The Bill proposes to deliver on this reform by repealing the PSBA Act (and dissolving the PSBA board), so that machinery of government changes can reintegrate the PSBA into the QPS and QFES.[184]

2.6.1 Transfer arrangements

The Bill proposes that, on commencement, the PSBA board members would no longer be board members and the PSBA's acting chief operating officer's appointment would end. No compensation would be payable to these individuals – though any benefits or entitlements accrued before the commencement would not be limited or affected.[185]

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175 *Public Safety Business Agency Act 2014* (PSBA Act), s 7; explanatory notes, p 4.

176 Treasury, correspondence, 8 April 2021, p 9.

177 Treasury, correspondence, 8 April 2021, pp 9-10.

178 Public Service Commission, *Review of the Public Safety Business Agency,* November 2015, pp 5-9.

179 Treasury, correspondence, 8 April 2021, p 10.

180 PSBA Act, s 8C.

181 Queensland Parliament, Record of Proceedings, 25 March 2021, p 831.

182 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 831.

183 Queensland Parliament, Record of Proceedings, 25 March 2021, p 831.

184 Explanatory notes, p 4. Regarding the PSBA board, see also Bill, cl 193 (*Police Service Administration Act 1990* (PSA Act), proposed s 11.23).

185 Bill, cl 193 (PSA Act, proposed s 11.24)

In terms of PSBA staff, permanent full-time or part-time PSBA employees would be employed by the department to which the relevant functions have been assigned, with no interruption to their continuity of service or right to accrue long service leave.[186] A person's secondment to the PSBA would end upon the dissolution of the PSBA (with the employee to resume their substantive position in government).[187] The reintegration of PSBA staff into frontline service agencies is to be conducted in accordance with the government employment security policy,[188] and 'overseen by an implementation project team comprised of stakeholder agencies'.[189]

Treasury advised in this respect:

> The apportionment of staff to the relevant agencies has progressed through Functional Working Groups, with all relevant agencies represented, and has been approved by the PSBA Board. This phase has seen PSBA staff aligned with the agencies that they service, including reporting directly to managers within these agencies. This measure will enable a more seamless transition for these agencies when the PSBA is disestablished.[190]

In terms of the QPS specifically, Deputy Commissioner Doug Smith APM advised, in reference to previous structural reforms:

> … strategy, recruitment, and education and training et cetera … were functions that were returned to the Queensland Police Service back on 1 July 2016. Those functions have long been absorbed into the overall operating model of the Queensland Police Service. With respect to any of the changes that we need to make internally in the Police Service as a result of the disestablishment of PSBA from 1 July this year, we already have structures in place where they will be absorbed into our day-to-day business.[191]

The integration of the PSBA within the QPS and QFES is expected to deliver 'efficiency gains'[192] that would contribute to savings of 'at least $300,000' per annum.[193] The QPS advised in respect of these 'gains':

> The main efficiency that we were seeking to achieve by the disestablishment of PSBA— there were two parts to the main problem we were trying to address. One was the operation of a separate governance structure for what are largely mission critical functions, so there are no bankable savings from that. It was about the achievement of a more efficient governance structure. The second main issue that we were looking at achieving was—and human resource management is probably the best example—integrating the overall management of our people into the operational governance. I think … you would understand quite well what happens when not managing your people when you are trying to manage a significant 24-hour operational organisation.[194]

Treasury, further, confirmed:

> Any expenditures caused through the transition of PSBA functions to the QPS and QFES will be met through existing budget allocations. In relation to savings, consultation with relevant finance staff has revealed that the savings to be realised by minimising duplication through disestablishing the PSBA will be substantiated when frontline service agencies absorb the PSBA and deliver their future service models through business optimisation processes.[195]

Treasury advised of the proposed amendments that 'extensive consultation' had been undertaken with 'employees and their respective unions through the functional working groups', which were established

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186 Bill, cl 193 (PSA Act, proposed s 11.25); explanatory notes, p 64.

187 Bill, cl 193 (PSA Act, proposed s 11.25(1)(b), (2)(b)).

188 Treasury, correspondence, 22 April 2021, p 14.

189 Treasury, correspondence, 8 April 2021, p 12.

190 Treasury, correspondence, 8 April 2021, p 12.

191 Mr Doug Smith APM, Deputy Commissioner, Strategy and Corporate Services, Queensland Police Service (QPS), public briefing transcript, Brisbane, 12 April 2021, p 6.

192 Mr Doug Smith APM, QPS, public briefing transcript, Brisbane, 12 April 2021, p 6.

193 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 5.

194 Mr Doug Smith APM, QPS, public briefing transcript, Brisbane, 12 April 2021, p 6.

195 Treasury, correspondence, 8 April 2021, p 12.

'to integrate the existing functions of the PSBA into the QPS and QFES'.[196] Widespread community consultation was not undertaken 'due to the nature of the proposed amendments'.[197]

2.6.2 Stakeholder views and the department's response

With regard to PSBA employees, Together Queensland submitted that there should be no reduction in FTE positions or in the conditions or wages of public servants affected by the repeal of the PSBA Act.[198]

Treasury affirmed:

> … there would be an adherence to the government employment security policy, … there will be no job losses to permanent staff, and employment arrangements for staff employed on a temporary contract or secondment will be reviewed on a case by case basis.[199]

Stakeholders did not otherwise address the proposed reforms in respect of the PSBA.

2.7 Repeal of the *Queensland Productivity Commission Act 2015* and integration of Queensland Productivity Commission functions

The QPC is an independent statutory body operating under the *Queensland Productivity Commission Act 2015* (QPC Act). The functions of the QPC include:

- facilitating and promoting productivity in Queensland, and promoting public understanding of matters relating to productivity, economic development and industry
- undertaking inquiries about matters relating to productivity, economic development and industry in Queensland as directed by the responsible Minister
- advising the Minister about matters relating to productivity, economic development and industry in Queensland as requested by the responsible Minister
- conducting research and analysis on matters relating to productivity, economic development and industry in Queensland
- advising government agencies about complying with the principle of competitive neutrality and receiving, investigating and reporting on complaints about the alleged failure of government agencies to comply with the principle of competitive neutrality (competitive neutrality function)
- conducting research and analysis of, and making recommendations about, regulatory matters as directed by the responsible Minister (regulatory review function).[200]

The QPC is governed by the QPC board consisting of the principal commissioner and up to 2 other commissioners appointed by the Governor in Council.[201]

The Bill proposes to abolish the QPC and its board and integrate the QPC's staff, assets and liabilities into Treasury.[202] The Bill would achieve those objectives by:

- repealing the QPC Act and the Queensland Productivity Commission Regulation 2015 (QPC Regulation)
- transferring the QPC's assets, liabilities and staff to Treasury
- transferring the competitive neutrality functions of the QPC to the QCA.[203]

196 Treasury, correspondence, 8 April 2021, p 13.

197 Treasury, correspondence, 8 April 2021, p 13.

198 Submission 8, p 1.

199 Treasury, correspondence, 8 April 2021, p 12.

200 *Queensland Productivity Commission Act 2015* (QPC Act), s 9.

201 QPC Act, s 16.

202 Statement of compatibility, p 4. See Bill, ch 2, pt 5.

203 Explanatory notes, pp 16-17.

The stated underlying aim of the integration of the QPC into Treasury is to 'provide an additional focus on productivity and regulatory reform as part of the government's economic recovery policies':[204]

> Productivity growth is the main driver of living standards in the long term. Productivity growth will also be important in helping to drive Queensland's economic recovery. The integration of the Queensland Productivity Commission into Treasury will enable the commission's economic experts to directly focus on recovery and productivity growth related projects and to work closely with other Treasury and government officials to develop innovative policy solutions.[205]

In terms of the transfer of the competitive neutrality functions of the QPC to QCA, Treasury noted that these functions were undertaken by the QCA prior to the establishment of the QPC, such that the QCA would effectively be resuming responsibility for its former function under the proposed amendments.[206]

2.7.1 Transfer arrangements

The Bill provides that on commencement, the QPC and its board are abolished and 'the principal commissioner goes out of office'.[207] Although the QPC does not have a CEO, it does have an executive director, whose position would also be abolished on the abolition of the QPC.[208]

The QPC's productivity and regulatory review functions are to be integrated into a newly established Office of Productivity and Red Tape Reduction (OPRTR) within Treasury,[209] with the assets and liabilities of the QPC immediately before commencement to 'become assets and liabilities of the State held in the department'.[210] Treasury advised that the new OPRTR would 'be the Government's primary regulatory review provider with its work being based on similar principles as at present'.[211] When introducing the Bill, the Treasurer stated of the change:

> This integration and co-location with Treasury will enable the Office of Productivity and Red Tape Reduction's advice to be aligned with the government's economic strategy and give the new office significant practical influence.[212]

All QPC employees are to be transferred into Treasury under their current employment arrangements, with the exception of persons employed as an executive manager[213] or on a casual basis.[214] Treasury advised that 'there will be no forced redundancies for staff as a result of these structural reforms',[215] and that both the principal commissioner and executive director 'will be offered positions in Queensland Treasury on similar terms and conditions'.[216] It was also acknowledged, however, that 'some roles may change'.[217] The Treasurer stated that the government expects the continuity of staffing to 'enable the new office to hit the ground running with a well-qualified and expert workforce'.[218]

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204 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

205 Treasurer, Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

206 Treasury, correspondence, 8 April 2021, p 2.

207 Bill, cl 210 (*Queensland Competition Authority Act 1997* (QCA Act), proposed s 259).

208 Treasury, correspondence, 27 April 2021, p 3.

209 Explanatory notes, p 4.

210 Bill, cl 210 (QCA Act, proposed s 261).

211 Treasury, correspondence, 8 April 2021, p 2.

212 Queensland Parliament, Record of Proceedings, 25 March 2021, p 829.

213 'Executive manager' is defined in the Bill as 'a senior executive employee with responsibility for managing the commission, subject only to the direction of the board'. See Bill, cl 210 (QCA Act, proposed s 265).

214 Bill, cl 210 (QCA Act, proposed s 265).

215 Treasury, correspondence, 8 April 2021, p 3.

216 Treasury, correspondence, 22 April 2021, p 3.

217 Treasury, correspondence, 8 April 2021, p 3.

218 Queensland Parliament, Record of Proceedings, 25 March 2021, p 830.

In respect of the QPC's responsibility for the state's competitive neutrality function, the Bill would insert a new part 4 into the *Queensland Competition Authority Act 1997* (QCA Act) to provide for the return of this function to the QCA.[219] The principle of competitive neutrality is that 'a public sector business, or agency, should not have a competitive advantage (or disadvantage) over the private sector solely due to their government ownership'.[220] The QPC has been responsible for receiving complaints, undertaking investigations, and providing recommendations to government in respect of competitive neutrality matters, with its process set out in the *Competitive Neutrality and Queensland Government Business Activities* policy prescribed by the QPC Regulation.[221]

To support the QCA's resumption of this function, the Bill proposes to allow the responsible Minister to approve a guideline (to replace the QPC policy) which sets out the process for dealing with competitive neutrality complaints to be followed by the QCA, and which is to be published on the QCA website.[222]

Treasury advised that the overall savings effect of the Bill's reforms in respect of the QPC, when taken together with the proposed changes to the NIISQ Agency's governance arrangements (see chapter 2.5 of this report), is expected to be in the order of $1.6 million per year.[223] Citing reduced 'governance, accommodation and administrative costs' as a result of the changes,[224] Treasury stated:

> These savings reflect the rationalisation of the QPC's existing accommodation and increased usage of 1 William Street, and ongoing administrative and operational efficiencies from the new Office being part of the larger scale Treasury.[225]

The explanatory notes further advise that 'transitional implementation during 2020-21, including some one-off implementation costs, will result in savings generally being realised from 2021-22'.[226]

Treasury advised that the government:

- consulted with the QPC, the QCA, the Department of the Premier and Cabinet, the Public Service Commission, the Department of Education, DSDILGP, the Office of Industrial Relations and QSuper about the repeal of the QPC Act and related amendments[227]
- consulted with Together Queensland about the proposed transition of employees to Treasury[228]
- did not undertake community consultation on the structural reform of the QPC, as it considered the decision concerned the 'internal operations and governance structure of public sector entities' with 'no material impact on the community'.[229]

2.7.2 Stakeholder views and the department's response

AgForce expressed concerns about the proposal to abolish the QPC and integrate its functions – including those of the QPC's Office of Best Practice Regulation (OBPR), which administers the state's regulatory impact statement system and other regulatory review requirements – into Treasury and the QCA.[230]

219 Bill, cl 203 (QCA Act, proposed pt 4).

220 QPC, 'Competitive neutrality', www.qpc.qld.gov.au/competitive-neutrality/.

221 QPC, 'Competitive neutrality', www.qpc.qld.gov.au/competitive-neutrality/.

222 Bill, cl 203 (QCA Act, proposed s 43). See also explanatory notes, p 67.

223 Mr Leon Allen, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 5.

224 Treasury, correspondence, 8 April 2021, p 2.

225 Treasury, correspondence, 8 April 2021, p 2.

226 Explanatory notes, p 19.

227 Explanatory notes, p 35.

228 Explanatory notes, p 35.

229 Explanatory notes, p 35.

230 Submission 11, p 2.

Agforce submitted:

> Independence is critical to the success of both the [Q]PC and highly successful OBPR which have worked without fear in assessing and providing scrutiny on Queensland legislation on behalf of Queensland, including particularly on issues such as vegetation management in Queensland and regulation of our sector. The Bill's proposal to abolish and reform these agencies under Treasury will hamper their ability to undertake independent review and provide frank advice to Government – and in doing so, provide transparency.[231]

Together Queensland called for assurances that existing staff levels and employment conditions should be maintained for all public servants affected by the abolition of the QPC and transfer of its functions.[232]

In response to AgForce's comments regarding the importance of the transparency and independence of advice, Treasury stated:

> The release of analysis and material produced by the new Office of Productivity and Red Tape Reduction will be subject to Departmental and Cabinet consideration as part of the usual policy process. However, the new Office will still have the ability to undertake public inquiries, and these could involve stakeholder or public consultation, depending on the terms of reference.
>
> …
>
> … the Queensland Competition Authority … will maintain transparency when it undertakes its competitive neutrality functions, including updating its website to provide public information on competitive neutrality and the process for competitive neutrality investigations.[233]

In relation to the administration of regulatory review requirements, Treasury advised:

> The Office [of Productivity and Red Tape Reduction] will continue to be the Government's primary regulatory review provider. The Office will apply the same principles as the Queensland Productivity Commission in its assessment of regulatory proposals.
>
> Arrangements for the transparency of regulatory advice will continue to include providing publicly available information on the regulatory review process, guidance for policy makers and public release of Regulatory Impact Statements.[234]

Finally, in response to Together Queensland's call for employment security for QPS staff, Treasury stated:

> All Queensland Productivity Commission employees will be employed in the new Office of Productivity and Red Tape Reduction on terms and conditions consistent with their current employment arrangements. The intent of the legislation is that no employee is disadvantaged as a result of the transition to the Office.
>
> The Bill specifically provides that the change in employer from the Queensland Productivity Commission to the department does not affect total remuneration, interrupt continuity of service, or prejudice accruing rights to superannuation or leave, for the term of the employee's current employment contract.[235]

2.8 Transition to online publication for government notification requirements

The Queensland Government has legislated requirements to inform Queenslanders of certain actions it has taken or is contemplating via print advertising or publication. The Bill refers to this requirement as the 'print requirement'.[236] Public notification supports government transparency and accountability, informing not only the individual or entity directly affected, but also the general public. This is intended to enable citizens to make well-informed decisions and provides 'the opportunity for the public to influence governing bodies and allows the public to be an active participant in a democratic society'.[237]

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231 Submission 11, p 2.

232 Submission 8, p 1.

233 Treasury, correspondence, 22 April 2021, p 19.

234 Treasury, correspondence, 22 April 2021, p 19.

235 Treasury, correspondence, 22 April 2021, p 14.

236 'Print requirement' is defined in the cl 219 of the Bill (*Financial Accountability Act 2009* (FA Act), proposed s 88D).

237 Public Notice Resource Center, 'About Public Notice', https://www.pnrc.net/about-2/about-public-notice/

The Bill proposes to amend the *Financial Accountability Act 2009* (FA Act) to insert a new part 5A to mandate that, subject to certain exemptions, the print requirement must be met by online advertising or publication either on a government website, in an online version of a newspaper, or on a different website if appropriate, rather than in a printed newspaper.[238] The explanatory notes advise that the purpose of the proposed amendments is 'to reduce costs and red tape to further implement the Government's Savings and Debt Plan, and to modernise requirements to publish government information'.[239]

On introducing the Bill, the Treasurer further advised of the proposed amendments that, in the context of a rapidly changing media landscape, 'thousands of Queenslanders now have no daily newspaper available to them' and 'more Queenslanders source their news online or from social media than from a printed newspaper'.[240] The Treasurer stated: 'those Queenslanders deserve to be able to hear from their government … and this bill puts the obligation on government to use the medium that is available to the most Queenslanders.[241]

Treasury advised of the savings expected from the amendments:

> In 2019-20 the government spent roughly $1 million on the types of publications that are discussed in this bill, the majority of which are in South-East Queensland. We would expect savings of somewhere in the hundreds of thousands from this particular initiative.[242]

2.8.1 Application and exemptions

The proposed online publication measure would apply to Ministers, departments and statutory bodies, including government owned corporations and their subsidiaries.[243] However, Treasury advised that it would not apply to a range of agencies, such as:

(a) the Office of the Governor;

(b) Legislative Assembly and parliamentary service;

(c) professional oversight bodies (for example, Queensland Law Society);

(d) universities; and

(e) local governments and agencies that local governments have an interest in, such as Queensland Urban Utilities.[244]

In addition, the following publication or advertising requirements are outside the scope of the proposed new part 5A and would also be excluded from the online publication requirement:

- publication in the *Queensland Government Gazette*
- a requirement of general application, that is, a print requirement that applies to entities other than government entities[245]
- a requirement imposed under a national scheme law, that is, a state law that is substantially uniform with or corresponds to a law of the Commonwealth or another state
- tabling documents in the Legislative Assembly.[246]

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238 Bill, ch 2, pt 6; explanatory notes, pp 1, 69-70.

239 Explanatory notes, p 5.

240 Queensland Parliament, Record of Proceedings, 25 March 2021, p 831.

241 Queensland Parliament, Record of Proceedings, 25 March 2021, p 831.

242 Dr Graham Fraine, Deputy Under Treasurer, Policy Performance and Corporate, Treasury, public briefing transcript, Brisbane, 12 April 2021, p 4.

243 Treasury, correspondence, 8 April 2021, p 6. See Bill, cl 219 (FA Act, proposed s 88C(1),(2)).

244 Treasury, correspondence, 8 April 2021, p 6. See Bill, cl 219 (FA Act, proposed s 88E).

245 Clause 219 of the Bill (FA Act, proposed s 88C) cites the following example of a general application provision*:* 'A provision that applies to a land owner applies to a statutory body in relation to land owned by the statutory body in the same way the provision applies to another person who owns the land'.

246 Explanatory notes, p 69; Bill, cl 219 (FA Act, proposed ss 88C(3) and (4)).

For those agencies whose publication requirements fall within the scope of proposed new part 5A, the Bill also provides 4 categories of exemptions to the online publication measure, where:

- the purpose of the print publication includes information about, or prevents or lessens, a serious risk to life, health or safety[247]
- the print publication is required to be displayed at a particular place, or sent to a person[248]
- the publication relates to the courts or tribunals, the Public Trustee dealing with unclaimed property or the administration of estates, or public housing developments under the *Planning Act 2016*[249]
- the publication is in a regional newspaper.[250]

Additionally, the Bill provides a 2-year transitional regulation-making power under which further exemptions may be prescribed.[251]

In relation to the proposed exemption in respect of regional newspapers, and the manner in which 'regional' would be defined, the Treasurer explained:

> … wherever regional newspapers continue to operate, we will continue to ensure government can support them. For this purpose, a regional newspaper is a newspaper circulating in a regional area of the state that is not a statewide or national newspaper. Regional areas are described using the ABS's remoteness index as areas outside major cities—generally speaking, this means areas outside Greater Brisbane, Ipswich, the Gold Coast and the Sunshine Coast.[252]

The Queensland Country Press Association (QCPA) provided the committee with a list of 28 free and 18 paid print published independent newspapers distributed in regional Queensland, which serve approximately 433 Queensland regions or communities, with a combined circulation of in excess of 457,000 and an estimated combined audience of over one million readers.[253] Of those 46 regional newspapers, 31 were published weekly. The majority of them also published an online edition, and most had a Facebook presence.[254] The QCPA also advised the committee of 22 digital-only regional newspapers servicing Queensland communities, with an estimated 1.1 million unique visitors to those news sites via desktop and mobile platforms.[255] All of these online papers also had a Facebook presence, with in excess of 500,000 Facebook followers between them (and significant further web visitors and Facebook followers for some northern NSW and Northern Territory publications also servicing Queensland communities).[256]

The exemptions from the online publication measure are discretionary, as the Treasurer stated: 'The relevant government entities may choose whether or not to publish in print and/or online to ensure the appropriate audience is reached, depending on applicable circumstances'.[257]

Treasury advised that in exercising this discretion, it is intended that 'entities would consider factors such as the reach of the relevant communication channels and the likely audience for the kind of publication concerned'.[258]

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247 Bill, cl 219 (FA Act, proposed s 88I).

248 Bill, cl 219 (FA Act, proposed s 88J).

249 Bill, cl 219 (FA Act, proposed s 88K); explanatory notes, p 70.

250 Bill, cl 219 (FA Act, proposed s 88H).

251 Bill, cl 219 (FA Act, proposed s 88L); explanatory notes, p 70.

252 Queensland Parliament, Record of Proceedings, 25 March 2021, p 832.

253 Queensland Country Press Association (QCPA), correspondence, 27 April 2021 (1), pp 1-15. The QCPA advised that the estimated print audience 'exceeds 1.2 million'. See also: QCPA, correspondence, 27 April 2021 (2), p 1.

254 QCPA, correspondence, 27 April 2021 (1), pp 2-15.

255 QCPA, correspondence, 27 April 2021 (1), p 1.

256 QCPA, correspondence, 27 April 2021 (1), pp 16-24.

257 Queensland Parliament, Record of Proceedings, 25 March 2021, p 832.

258 Treasury, correspondence, 8 April 2021, p 6.

The explanatory notes indicate that all Queensland Government departments were consulted on the proposed measure.[259] Treasury stated that it worked with 'government departments during the drafting phase of the Bill to define the scope of the measure and to identify exemptions where appropriate'.[260] The explanatory notes do not address whether any community consultation on the proposed amendments to the FA Act was undertaken.

2.8.2 Stakeholder views and the department's response

The QCPA objected to the proposed online publication measure, arguing that the Bill may diminish transparency by reducing public access to important information, and that publication in regional newspapers should be a legislated preference, rather than a 'discretionary' exemption.[261]

The LGAQ, in contrast, called for the extension of the online publication measure, to 'incorporate local government advertising requirements'.[262]

These stakeholders' comments, and Treasury's responses to those comments, are set out below.

2.8.2.1 Transparency and access to public notices

The QCPA warned of a potential 'lack of transparency in advising the general public of important issues given limited general public ready access to online sites'.[263] The QCPA submitted:

> … the major concern is the risk of Government transparency around sensitive decisions, such as land use, mining leases, etc., where Departments and corporations could opt to place notices online, where they would fundamentally be "hidden" from general gaze.
>
> The proposed changes to "digital advertising" lack any detail about what that actually means and ignores the fact that news websites or Government online portals don't have dedicated "public notice" sections. The principle behind advertising important government and corporate "public notices" … is to bring those decisions to the attention of the public, not bury them away in some newly created and hard-to-find section of a website.[264]

At the public hearing on the Bill, QCPA representative Mr Damian Morgan further stated:

> We have our own websites and they do not have public notice sections. We would say this is a very big step backwards with regard to putting important information in front of the people who need to see it, and the people who are most likely not to see this information are the most vulnerable—the ones with the least access via knowledge and resources to these places where the notices have been published—and we think on those grounds it is a disappointing proposal.[265]

In response to the QCPA's comments about a potential lack of transparency or visibility of notices published under via online publication, Treasury advised:

> The measure in no case removes the requirement for government agencies to publish information where required to do so by legislation. It only modifies the channel in which notices placed by government agencies are to be published.
>
> Notices published online are transparent – there are key advantages to online in so far as they are timely, often available online for extended period and discoverable by online search.[266]

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259 Explanatory notes, p 35.

260 Treasury, correspondence, 8 April 2021, p 5. See also explanatory notes, p 35.

261 Mr Damian Morgan, Publisher Member and Consultant, QCPA, public hearing transcript, Brisbane, 27 April 2021, p 11; Submission 6, p 1.

262 Submission 1, pp 1-2.

263 Submission 6, p 1.

264 Submission 6, p 2.

265 Mr Damian Morgan, QCPA, public hearing transcript, Brisbane, 27 April 2021, p 11.

266 Treasury, correspondence, 22 April 2021, pp 2-3.

Additionally, in respect of the notification of sensitive government decisions in particular, Treasury emphasised:

> The measure does not apply to State laws of general application as outlined in the new section 88C(3)(b) of the *Financial Accountability Act 2009*. That is, when the requirement or authority to publish information does not specifically apply to a government agency but applies generally to anyone in the public or private sector.
>
> By way of example, the measure does not apply to the following matters, as the relevant provisions apply to any person or organisation.
>
> - Notices about proposed mining leases which are made by applicants under the *Mineral Resources Act 1989*.
> - Notices about property development applications under the *Planning Act 2016* and the *Development Assessment Rules* which are made by the relevant landowner applying for development approval (or their assessment manager).
> - Notices by the airport lessee or port operator regarding land use plans under the *Airport Assets (Restructuring and Disposal) Act 2008* and *Transport Infrastructure Act 1994*.
>
> However, notices concerning land use plans under the *Economic Development Act 2012* and *Queensland Reconstruction Authority Act 2011* may appear in regional newspapers at the discretion of the relevant agency. Here, the relevant provisions apply only to the particular government agency.[267]

2.8.2.2 Exemptions for regional newspapers

The QCPA objected to publication in regional newspapers being a discretionary exception to the online publication measure, 'instead of being the legislated preference'. The QCPA submitted:

> … that the proposed wording of the legislation be amended to mandate that in regional areas where a printed newspaper is published that statutory public notices be placed in that publication, with the option to advertise notices online should no relevant print publication exist.[268]

Challenging the stated loss of newspapers in regional areas, the QCPA stated:

> … there are very few major towns—and there is not one that I am aware of in Queensland—that does not have its own regional newspaper. Many of those towns service the satellite centres around them, which they have done in the past. The argument that there is no choice, I think, is one that we need to really scrutinise because I would say it is without basis.[269]

The QCPA continued:

> At a time when the regional newspaper industry is being reinvigorated and reinstating many of the 1000+ jobs lost from NewsCorp, the Government is withdrawing the very advertising requirements which provide revenue.[270]

In this regard, the QCPA further stated:

> All revenue counts. Our argument is not necessarily that it should be about propping up regional newspapers; it is primarily around government transparency. … In the spirit of government using regional newspapers for what they do well, I would say whatever revenue there is should be protected if possible for independent publishers.[271]

Regarding the exemption from the online publication measure for publication in regional newspapers, Treasury advised:

> Broadly, this exemption allows government agencies to choose the preferred and best means of communications (for example, publish on the relevant department's website, publish in a print regional newspaper or both).

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267 Treasury, correspondence, 22 April 2021, p 3.

268 Submission 6, pp 1-2.

269 Mr Damian Morgan, QCPA, public hearing transcript, Brisbane, 27 April 2021, p 13.

270 Submission 6, 1.

271 Mr Damian Morgan, QCPA, public hearing transcript, Brisbane, 27 April 2021, p 13.

> The Bill does not describe how the discretion will be exercised. It is intended that government agencies would consider factors such as the reach of the relevant communication channels and the intended audience.
>
> This exemption ensures that regional newspapers can continue to benefit from Queensland Government publishing in print newspapers.[272]

The Local Government Association of Queensland (LGAQ) sought an amendment to the AIA to extend the online publication measure to incorporate local government advertising requirements, because 'the demise of the physical distribution of newspapers in many regions' has led to councils needing to publish and advertise elsewhere to meet statutory requirements.[273] The LGAQ submitted:

> For example, tenders and land acquisitions are required to be advertised in a newspaper which is physically circulating daily within the area. For many Queensland communities, the migration of local print papers to online formats has resulted in no local newspapers being physically circulated daily. Consequently, councils have been compelled to use the services of larger, statewide newspapers that do not have the same penetration within their community. Indeed, these papers are also reducing their physical circulation footprint in many regional areas.
>
> It is suggested legislation be amended to allow advertising to occur in online newspapers, provided they are circulating daily (or near to daily) within the relevant local government area. It maintains relevance to the regional areas, retains expenditure within the regions (rather than bleeding advertising expenses to Brisbane) and assists with promoting local content.[274]

The LGAQ stated that other forms of online engagement could be used to meet local government print requirements:

> Greater use of social media and other forms of digital communications could also be a more cost effective, modern and user-friendly method for councils to communicate these notices to their local communities. To be clear, local governments are not advocating to remove current processes of transparency or community notification, however the statute books need to keep pace with the current media market and modern forms of communication.[275]

Noting the LGAQ proposal to extend the provisions in the Bill to apply to publishing and advertising by local governments, Treasury advised:

> The Queensland Government … is open to consulting with the LGAQ about a future extension of the proposed online publication measure to local government.
>
> However, it is not proposed to extend the measure at this stage, due to the need to undertake analysis and consultation about this proposal.[276]

2.9 Amendments to the *Medicines and Poisons Act 2019*

2.9.1 Technical and clarifying amendments

The Bill proposes amendments to the Medicines and Poisons Act, ahead of the commencement of certain provisions of that Act on 27 September 2021.[277] The primary purposes of the Act, which received assent on 26 November 2019, are:

(a) to ensure particular substances are made, sold, used and disposed of in an appropriate, effective and safe way;

(b) to ensure health risks arising from the use of the substances are appropriately managed;

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272 Treasury, correspondence, 22 April 2021, p 2.

273 Submission 1, p 1.

274 Submission 1, pp 1-2.

275 Submission 1, p 2.

276 Treasury, correspondence, 22 April 2021, p 2.

277 On 14 August 2020, the Medicines and Poisons (Postponement) Regulation 2020 postponed the automatic commencement of the un-commenced provisions of the Medicines and Poisons Act until 27 September 2021. See also Treasury, correspondence, 8 April 2021, p 7.

(c) to ensure persons who are authorised to carry out activities using the substances have the necessary competencies to carry out the activities safely.[278]

The Bill would omit and replace section 41, one of the uncommenced provisions. Existing section 41 makes it mandatory for prescribers and dispensers of monitored medicine to check the monitored medicines database before taking a proposed action (ie prescribing, supplying, dispensing or giving a treatment dose of a monitored medicine to a person).[279]

According to the statement of compatibility, new section 41 is 'substantially the same as existing section 41, but has been re-drafted for improved clarity'.[280] The Bill proposes to make the following changes:

- replace the term 'proposed action' with 'proposed dealing'
- replace the terms 'prescriber' and 'dispenser' with 'relevant practitioner'.[281]

'Relevant practitioner' is defined to mean a health practitioner prescribed by regulation to be a relevant practitioner for section 41.[282] The explanatory notes advise that 'relevant practitioner' will be specified in a regulation because there may be changes from time to time in which practitioners are authorised to prescribe, dispense or give treatment doses of monitored medicines under regulations.[283]

The maximum penalty of 20 penalty units ($2,669) for a failure to check the monitored medicines database remains unchanged from existing section 41.[284]

The Bill would also amend section 226 of the Medicines and Poisons Act, another uncommenced provision.[285] The amendment would require information providers to give the chief executive 'relevant information' for the monitored medicines database at the time and in the way prescribed by regulation unless the information provider has a reasonable excuse.[286] An 'information provider' is an entity prescribed by regulation to be an information provider for section 226.[287] The 'relevant information' to be given to the chief executive will be prescribed in regulations, instead of it being the information set out in section 225 of the Medicines and Poisons Act.

The Bill would also replace section 42 of the Medicines and Poisons Act, an uncommenced provision which makes it an offence to dispose of waste from an S8 medicine,[288] unless the person disposes of the waste by giving it to an appropriate person, disposes of the waste in the authorised way, or has a reasonable excuse. The offence carries a maximum penalty of 200 penalty units ($26,690).[289] The Bill extends section 42 to apply this offence to the disposal of waste from all 'diversion-risk medicines'. Diversion-risk medicines are to be prescribed by regulation and will include medicines with a higher risk of being diverted

278 Medicines and Poisons Act, s 3.

279 Bill, cl 229.

280 Statement of compatibility, p 9.

281 Explanatory notes, pp 71-72.

282 Bill, cl 229 (Medicines and Poisons Act, proposed s 41(4)).

283 Explanatory notes, p 72. See also statement of compatibility, p 9.

284 Explanatory notes, p 30.

285 Bill, cl 244.

286 Statement of compatibility, p 9.

287 Medicines and Poisons Act, s 226(2).

288 S8 medicines are medicines listed in schedule 8 of the Poisons Standard (Cth) (described as 'controlled drugs'), which 'should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence'.

289 See Bill, cl 230.

for illicit use – including all S8 medicines, and some S4 medicines,[290] such as anabolic steroidal agents, growth hormones, codeine and barbiturates.[291] The maximum penalty remains unchanged.[292]

Other amendments to the Medicines and Poisons Act include:

- clarifying that a fumigation activity, as defined in section 19(2), includes the preparation or use of a substance to carry out another activity prescribed by regulation to be a fumigation activity[293]
- providing that 'regulated activity', as defined in section 20(b), includes asking or directing another person to carry out a pest management activity (so the regulations can specify that a person can ask or direct another person to carry out a pest management activity, such as laying baits provided this occurs under appropriate supervision)[294]
- widening the definition of 'manufacture' in section 21 to include supply for administration to an animal[295]
- inserting new offences relating to the preparation of compliant analysis certificates for tattoo ink (discussed in report chapter 2.9.2 below)[296]
- amending the heading in section 51 (Agents and carers) to include the words 'supplying or administering medicines'[297]
- replacing section 54(2) to continue to allow the regulated activity for which a class of persons is prescribed to be made by reference to the circumstances in which, or the purposes for which, the regulated activity may be carried out by the class of persons, and extend it to also provide that, without limiting section 54(1), the regulated activity with the regulated substance for a class of persons may be prescribed by reference to:
    - the direction or supervision under which the regulated activity may be carried out by the class of persons, or
    - an extended practice authority that applies to the class of persons[298]
- replacing section 232(4) to provide that an extended practice authority must be approved by regulation and takes effect on the day it is approved, or if a later day is stated in the authority, on the later day[299]
- amending section 233 to provide that the chief executive may make a departmental standard in relation to matters regulated under the Medicines and Poisons Act, and to provide that a departmental standard must be approved by regulation and takes effect on the day it is approved (or if a later day is stated in the standard, on the later day)[300]

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290 S4 poisons are medicines listed in schedule 4 of the Poisons Standard (Cth), which covers prescription only medicines or prescription animal remedies – that is, substances 'the use or supply of which should be by or on the order of persons permitted by State or Territory legislation to prescribe and should be available from a pharmacist on prescription'.

291 Explanatory notes, p 30. Note that S4 and S8 medicines are defined in s 11 of the Medicines and Poisons Act by reference to the relevant Poisons Standard.

292 Explanatory notes, p 31.

293 Bill, cl 223; explanatory notes, p 71.

294 Bill, cl 224; explanatory notes, p 71.

295 Bill, cl 225; explanatory notes, p 71.

296 Bill, cl 234; explanatory notes, pp 73-74.

297 Bill, cl 235; explanatory notes, p 74.

298 Explanatory notes, p 74; Bill, cl 236.

299 Bill, cl 245; explanatory notes, p 76.

300 Bill, cl 246; explanatory notes, p 77.

- replacing section 238 to provide that the chief executive may delegate certain of their functions which relate to the monitored medicines database to an appropriately qualified person.[301] The effect of the amendment would be that delegations regarding the monitored medicines database will no longer be limited to persons who are health service employees or public service employees.

With respect to the amendments to the Medicines and Poisons Act, the explanatory notes advise:

> The amendments … were identified during drafting of the supporting regulations and will enable the regulations to be drafted more clearly and simply. They are intended to make the regulations more user-friendly for stakeholders and the department. The amendments are technical or minor in nature and relocate provisions to the Medicines and Poisons Act instead of the regulations, clarify head of power issues and will improve the operation and readability of the regulations.[302]

Regarding the inclusion of the proposed amendments to the Medicines and Poisons Act within the Bill, Treasury advised:

> The Debt Reduction and Savings Bill 2021 was identified as the most appropriate legislative vehicle to ensure the amendments progress through the usual Parliamentary process, including consideration by a Parliamentary Committee.[303]

2.9.1.1 Stakeholder views and the department's response

The Pharmaceutical Society of Australia Queensland Branch (PSAQ) was supportive of the intention of the Bill to make relevant regulations under the Medicines and Poisons Act clear, simple and user-friendly.[304]

The PSAQ also expressed support for the proposed amendments relating to the monitored medicines database;[305] and had 'no objections' to the amendments in the Bill relating to:

- offence provisions applying to checking the monitored medicines database and the disposal of diversion-risk medicine wastes
- the clarification of relevant practitioners required to check the database
- ensuring each extended practice authority is approved by regulation.[306]

The Australian Medical Association Queensland (AMA Queensland) was supportive of the following aspects of the Bill:

- the inclusion of S8 and some S4 medicines in amended section 42 (Offence to dispose of waste from diversion-risk medicines)[307]
- the amendment of section 226, specifying the nature of 'relevant information' to be provided to the chief executive for the monitored medicines database, to be prescribed in regulations[308]
- the clarification of section 51, relating to the supplying or administering of medicines by agents and carers for the therapeutic treatment of a patient.[309, 310]

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301 Bill, cl 247; explanatory notes, p 77.

302 Explanatory notes, p 17.

303 Treasury, correspondence, 8 April 2021, attachment, p 8.

304 Submission 13, p 1.

305 The PSAQ acknowledged the intention of the amendments to facilitate the future interoperability of the monitored medicines database with equivalent databases operated by other states and territories. The PSAQ advised that it has, for many years, 'advocated for a national real-time prescription monitoring system which 'overcomes' interoperability issues'. See submission 13, p 1.

306 Submission 13, p 1.

307 Bill, cl 230.

308 Bill, cl 244.

309 Bill, cl 235.

310 Submission 2, p 3.

With respect to the amendment to the extended practice authority, AMA Queensland supported it except where it provides authority for a regulated substance to be carried out under direction or supervision, such as 'allowing a pharmacy assistant to be authorised under the regulations to sell an S2 medicine if they do so under the direct supervision of a pharmacist'.[311] AMA Queensland was of the view that 'only approved providers should prescribe and/or dispense regulated substances'.[312]

AMA Queensland supported the amendments to section 54 (Authorisation of prescribed classes of persons),[313] but sought clarification from Queensland Health of the circumstances under which a regulated substance may be provided under direction or supervision and supported by an extended practice authority.[314]

AMA Queensland expressed concern about the following provisions in the Bill:

- the changes to section 238 relating to the delegation by the chief executive to an appropriately qualified person of administrative power relating to the monitored medicines database,[315] and the associated risks from outsourcing monitoring responsibilities associated with the database to third parties
- the definition of 'relevant practitioners' required to check the monitored medicines database for particular dealings with monitored medicines,[316] and the practicalities of the application of the provision for medical practitioners working in residential aged care facilities, in accident and emergency departments or ward rounds in public and private hospitals.[317]

In relation to the proposed amendments to the delegations power (to 'appropriately qualified persons'), Dr Brett Dale, CEO, AMA Queensland, advised:

> Firstly, AMA Queensland is concerned that the proposed amendment allows Queensland Health to outsource the monitoring responsibilities associated with the medicines database to third parties. This provision implies that Queensland Health will no longer be responsible for monitoring of the database, including the enforcement of penalties for breaches of the act. AMA Queensland cannot see how outsourcing this essential task will strengthen the operations of the database nor reduce the level of intentional and unintentional harm from some of the S4 and S8 medicines in Queensland.[318]

In reference to the amendments to the definition of 'relevant practitioners', AMA Queensland submitted:

> … it seems to provide Queensland Health with the flexibility of changing the regulations to suit the government's policy of supporting task substitution where non-medical practitioners are provided with the authority to undertake tasks previously done by medical practitioners.[319]

Dr Dale described a trend of continuing extension of the scope and powers being delegated by relevant authorities from medical practitioners to non-medical practitioners, expressing concern that this is not being done 'on the basis of need'.[320] Dr Dale stated:

> If you were in communities where those professions did not exist, we would tend to support those recommendations. The reality is that across metropolitan areas we have on hand clinicians who are qualified to prescribe and dispense but we have allied health professionals doing it. We believe it compromises the

311 Submission 2, p 3.

312 Public hearing transcript, Brisbane, 27 April 2021, p 14.

313 Bill, cl 236.

314 Submission 2, p 3.

315 Bill, cl 247.

316 Bill, cl 229.

317 Submission 2, pp 1-3.

318 Bill, cl 229.

319 Submission 2, p 3.

320 Public hearing transcript, Brisbane, 27 April 2021, p 15.

> health of patients, particularly where there is an oversupply of those particular qualifications in and around metropolitan areas.[321]

Treasury advised in response to AMA Queensland's comments about the operation of the extended practice authority provisions in respect of regulated substances that:

> The amendments are technical in nature and do not change activities already authorised under the *Health (Drugs and Poisons) Regulation 1996* (HDPR). Pharmacy assistants are currently authorised to sell schedule 2 medicines in a pharmacy under the personal supervision of a pharmacist.[322]

Acknowledging AMA Queensland's concerns regarding the delegation of administrative power by the chief executive to an 'appropriately qualified person', Treasury stated in response:

> This amendment includes the safeguard that before delegating any functions or powers for the monitored medicines database, the chief executive must be satisfied that the delegate is 'appropriately qualified'. Before delegating these powers, the chief executive will consider all circumstances including the scope of the power to be delegated, the expertise or experience needed to exercise the power and any training and qualifications required, before deciding on the appropriate delegates.
>
> The limitation on the chief executive not being able to delegate their powers under section 127 of the Medicines and Poisons Act will be retained as an appropriate safeguard, given section 127 deals with making a statement of warning to the public about contraventions of the Medicines and Poisons Act or potential unlawful conduct.[323]

Finally, in response to AMA Queensland's comments regarding the amendment of the definition of 'relevant practitioners', and its provision for potential task substitution by non-medical practitioners who may be required to check the monitored medicines database (via the QScript portal), Treasury stated:

> QScript will be accessible via mobile and tablet devices, which will support medical practitioners working in environments such as residential aged care facilities, emergency departments and hospital wards to check QScript when required. Health practitioners will be supported as they integrate QScript into their practice and become familiar with their legislative responsibilities.
>
> Over the last two decades there has been an expansion in the classes of health professionals who may prescribe or give a treatment dose of monitored medicines to patients to include doctors, dentists, nurse practitioners, midwives and podiatrists – these were nationally-agreed decisions. The current wording of section 41 refers to broad terms such as prescriber and dispenser. The proposed changes to section 41 require that a regulation specify the classes of approved persons (that is, health professionals) to whom the offence applies. Any change to the regulation will be progressed via the usual legislative processes making any such change in Queensland law transparent for stakeholders and the community.[324]

2.9.2 Compliant analysis certificate for supply or use of tattoo ink

The proposed technical amendments to the Medicines and Poisons Act also include the insertion of a new requirement and associated offence provisions relating to the supply or use of a tattoo ink. Specifically, the Bill would:

- require a person who provides a tattoo ink to someone else to ensure a compliant analysis certificate (CAC) has been prepared for the tattoo ink at the time of providing the ink (offence with a maximum penalty of 100 penalty units ($13,345) applicable to manufacturers and suppliers of tattoo inks) [325]
- require a person to be 'reasonably satisfied' that a CAC has been prepared for a tattoo ink before using the ink for tattooing (offence applicable to individual tattooists or businesses, with a maximum

[321] Public hearing transcript, Brisbane, 27 April 2021, p 15.

[322] Treasury, correspondence, 22 April 2021, p 7.

[323] Treasury, correspondence, 22 April 2021, p 5.

[324] Treasury, correspondence, 22 April 2021, p 6.

[325] Bill, cl 234 (Medicines and Poisons Act, proposed s 48A(1)).

penalty of 50 penalty units ($6,672.50)).[326] The Bill includes the following as examples of ways for a person to be 'reasonably satisfied':

- asking the provider of the tattoo ink for a copy of a compliant analysis certificate for the ink
- downloading a compliant analysis certificate for the tattoo ink from the provider's website.[327]

A CAC is defined as a certificate that states the results of an analysis of the substances contained in the tattoo ink, and which confirms that the tattoo ink does not contain substances above the concentration levels specified in the departmental standard (shortly to be finalised).[328] As an example, the draft departmental standard that Queensland Health has issued for consultation requires the concentration of arsenic and certain other metals in tattoo inks to be less than 0.5 parts per million.[329] Additionally, under the draft standard all analysis of the substances contained in tattoo inks for these purposes would be required to be carried out by an accredited laboratory, with CACs only able to be issued by accredited laboratories in relation to ink manufactured within 2 years from the date of issuing of the certificate.[330] Queensland Health also advised that a statement of the content of inks 'will need to be published by the manufacturers on their websites'.[331]

The draft departmental standard would be required to be approved by regulation in order for the proposed new offence provisions to take effect.[332]

Professor Keith McNeil, Acting Deputy Director-General, Prevention Division, Queensland Health, advised that the aim of the proposed new CAC requirement and offence provisions is to regulate what goes into tattoo inks used in Queensland, aligning to regulatory requirements for chemical composition imposed in Europe, from where most of the tattoo ink used in Queensland originates.[333] Professor McNeil explained that tattoo ink is generally made up of dye and pigment elements that may be associated with certain health risks:

> The dye elements are chemicals which can be broken down. If the wrong dyes are used, those chemicals that are broken down can be carcinogenic. Similarly, some of the pigments contain heavy metals, for instance cadmium or lead, which are also carcinogenic.[334]

Treasury advised that the amendments represent a 'proactive approach' to addressing these risks, 'following the approach set by Europe'.[335] Treasury stated:

> Currently, there is no nationally uniform legal framework with specific controls for regulating the body art and cosmetic tattoo inks industry.
>
> There are approximately 20 suppliers of body art tattoo inks, 10 suppliers of cosmetic tattoo inks and no commercial tattoo ink manufacturers in Australia.

326 Bill, cl 234 (Medicines and Poisons Act, proposed s 48A(2).

327 Bill, cl 234 (Medicines and Poisons Act, proposed s 48A(2) (see note).

328 Bill, cl 234 (Medicines and Poisons Act, proposed s 48A(3).

329 Queensland Health, *Departmental Standard: Tattoo inks*, consultation version, April 2021, p 9, https://www.health.qld.gov.au/__data/assets/pdf_file/0024/1037076/ds-tattoo-inks.pdf.

330 Queensland Health, *Departmental Standard: Tattoo inks*, consultation version, April 2021, p 13.

331 Professor Keith McNeil, Acting Deputy Director-General, Prevention Division, Queensland Health, public briefing transcript, Brisbane, 12 April 2021, p 6.

332 Explanatory notes, p 33.

333 Public briefing transcript, Brisbane, 12 April 2021, p 6.

334 Public briefing transcript, Brisbane, 12 April 2021, p 6.

335 Treasury, correspondence, 8 April 2021, p 14.

> In Europe and the USA, over 270 tattoo ink products have been recalled due to serious health risks. Excessive levels of carcinogenic chemicals, heavy metals and bacterial contamination were detected in these products. Some of the recalled product brands are also available in the Australian market.[336]

Additionally:

> Tattoo inks products marketed by overseas suppliers (for example, from China) are available for online purchase. There have been reports of young people purchasing these products online for use in backyard do-it-yourself tattooing in Queensland. Provisions under the Act may be used to recall or remove tattoo inks that do not have a compliant analysis certificate from the market.[337]

The explanatory notes state that the proposed offences were originally to be included in the supporting subordinate legislation to the Medicines and Poisons Act. However, during the drafting of the supporting regulations, it was determined that it was 'more appropriate' for the provisions to be included in the Act.[338]

2.9.2.1 Stakeholder views and the department's response

AMA Queensland submitted that it agreed with the introduction of a mandatory CAC for all tattoo inks in Queensland, 'to help ensure that inks used in Queensland do not contain substances that could be harmful to a person's health'.[339] AMA Queensland also supported the associated offence provisions, given that non-compliant inks could contain harmful substances and 'could cause serious harm or risk of infection'.[340]

Tattoo industry submitters, in contrast, all opposed the proposed amendments, questioning the evidence base for the proposals, identifying a number of issues with significant implications for implementation, and expressing concerns about a lack of certainty regarding the contents of the departmental standard that will underpin the CAC requirement.[341]

In terms of the rationale for the amendments, the Professional Tattooing Association of Australia (PTAA) and the NSW and Queensland Licenced Tattooists Group (Licenced Tattooists Group) submitted that the majority of professional tattoo artists in Queensland use pigments manufactured in the USA, European Union and United Kingdom, already compliant to regulations in those locations.[342] The PTAA and Licenced Tattooists Group stated of the proposed provisions: 'There has been no credible science or evidence presented that warrants this proposed action. No peer-reviewed studies over a prolonged period that indicate any public health risk have been presented'.[343]

Mr Craig Goss, owner of Method Tattoo Coffee Bar, Brendale, also submitted that the health and wellbeing of clientele is always a priority, but that 'there is no conclusive evidence based research that shows that tattooing these inks has carcinogenic effects'.[344]

Mr Chris Llewellyn, National Treasurer, PTAA and Founder, Licenced Tattooists Group, further stated:

> It is a fact that professional tattooists only buy reputable brands from established, reliable supply companies. The pigment manufacturers rely heavily on their reputation for being safe and stable. They are already regulated in other territories. They supply material safety data sheets, batch numbers, ingredient lists and expiry dates.[345]

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336 Treasury, correspondence, 8 April 2021, pp 14-15. Treasury advised that Queensland Health does not hold any personal information in relation to individuals that have been tattooed.

337 Treasury, correspondence, 8 April 2021, p 15.

338 Explanatory notes, p 17.

339 Submission 2, p 2.

340 Submission 2, p 2.

341 See submissions 4, 12, and 14; public hearing transcript, 27 April 2021, pp 16-23.

342 Submission 4, p 1.

343 Submission 4, p 1.

344 Submission 14, p 1.

345 Mr Christiaan Llewellyn, National Treasurer, Professional Tattooing Association of Australia (PTAA); Founder, NSW and Queensland Licenced Tattooists Group (Licenses Tattooists Group), public hearing transcript, Brisbane, 16 April 2021, p 16.

The ATG noted that material safety data sheets (MSDS), which include the colour index number of the pigment used within the ink, are already familiar to the tattoo industry. The ATG recommended that the existing MSDS compliance system become the mechanism for compliance for all inks within the standard, as opposed to the CAC requirement proposed by the Bill.[346]

Ms Tashi Edwards, Vice-President, ATG, stated that the proposed CAC requirement would likely be unworkable for industry, 'due to the fact that CACs are not readily available' for a variety of reasons, including 'issues of jurisdictional compliance and inconsistencies within individual testing regimes in the country of origin':[347]

> When we look at compliance across the board, we know that under ResAP[348] there are countries that require manufacturers to produce the CAC; however, when it comes to the supplier sourcing that it is just not available.[349]

Mr Mick Hayes of Protat Professional Tattoo Supplies further explained that while over the last 5 years he had sought to negotiate with manufacturers to obtain CACs ('and on our website we have as many of the certificates as we can get'), manufacturers do not always provide them, or do not do so in a timely manner:

> … to my knowledge it seems that the certificates can be outdated by six months to up to a year while they wait for it to be certified over in the EU, so they are always late. They seem to be outdated a bit. The manufacturers are not overly keen with the Australian market. They are a little bit wary of us with all of these things happening with our jurisdiction and the way we are doing things at the moment … We have been working very hard to make sure they are all in date.[350]

Mr Llewellyn also noted that manufacturers may be reluctant to provide CACs as the requirement for them to publish ink content information 'will infringe upon their intellectual property by giving away trade secrets, thereby enabling their recipe to be reproduced'.[351]

Given the cited challenges in obtaining CACs, the ATG submitted that the Bill places an 'unnecessary and unfair' burden on suppliers:[352]

> A requirement for Australian suppliers to make available CAC for inks they sell into Queensland places a burden on the supplier to be constantly requesting the certificates if they are not immediately available from the manufacturer, or requesting an updated certificate if they have expired. This means requesting a new certification in cases of expiration, which has associated costs incurred to the manufacturer.
>
> Australia is a small portion of the international ink market, and there are currently no domestic ink manufacturers in Australia, rendering the industry entirely dependent on foreign manufacturers for ink. There are major concerns that if compliance with Australian standards becomes a burden for manufacturers, then they will leave the Australian market. This will have dire effects on the Australian tattoo industry as it is impossible to trade without ink.[353]

The PTAA and Licensed Tattooists Group also considered that the Bill may not be 'fit for purpose',[354] with Mr Llewellyn outlining similar concerns about the compliance burden in reference to the offence proposed to apply to tattoo artists:

> This proposal puts the onus of pigments on artists, who could face huge fines, and not manufacturers as there are no Australian manufacturers. It will cause immense economic harm and increased health risks not only to

346 Submission 12, pp 10, 14.

347 Public hearing transcript, Brisbane, 27 April 2021, p 18.

348 Council of Europe, *Resolution, ResAP (2008) 1 on requirements and criteria for the safety of tattoos and permanent makeup*, adopted on 20 February 2008.

349 Public hearing transcript, Brisbane, 27 April 2021, p 21.

350 Public hearing transcript, Brisbane, 27 April 2021, p 21.

351 Public hearing transcript, Brisbane, 27 April 2021, p 16.

352 Ms Tashi Edwards, Vice-President, ATG, public hearing transcript, Brisbane, 27 April 2021, p 18.

353 Submission 12, pp 8-9.

354 Submission 4, p 1.

> the Queensland tattoo industry but also to the general public of Queensland. Our informed judgement is that overseas pigment manufacturers are extremely unlikely to incur the costs to conform and continuously update the Queensland compliant analysis certificate as the Queensland market is relatively small in global supply terms, leaving Queensland tattooists with no ink to legally tattoo with.[355]

Additionally, the ATG warned that with licensed professionals unable to remain in the market, there would be a greater likelihood of 'unlicensed amateurs picking up the clientele of closed tattoo studios, using inferior and unsafe ink when tattooing the public'.[356]

The PTAA and NSW and Queensland Licenced Tattooists Group noted in this regard that these 'backyard operators' operate outside the regulatory regime, and may continue to use inferior tattoo inks sold on e-bay and other e-commerce platforms, which are made in countries that have no quality control or minimum requirements for material safety.[357]

Further, the ATG considered that the proposed penalty units 'are excessive and disproportionate to the proposed offences'.[358]

In response to stakeholder commentary about a lack of evidence regarding health risks associated with tattoo inks in Australia, Treasury advised:

> During 2014 and 2018, the Commonwealth Department of Health undertook surveys which revealed that some tattoo inks available in Australia contain hazardous substances as the inks are not manufactured to food or therapeutic standards.
>
> Several adverse health effects arising from the use of tattoo inks have been reported in Europe and USA, such as dermatitis, photosensitivity and skin sensitization. Allergic reactions to tattoo inks have also been reported in Australia.
>
> Hazardous substances found in some tattoo inks also have the potential to cause cancer.[359]

Further, Treasury advised that:

> Under the European Commission Regulation (EU) 2020/2081, the European Parliament has introduced contemporary laws prescribing maximum permissible concentration levels of hazardous substances in tattoo inks.
>
> The Queensland tattoo industry largely sources inks manufactured in or supplied to Europe. The inks will therefore be required to comply with the European laws.[360]

The proposed CAC, Treasury stated, would serve to implement the European requirements – something that could not be achieved through reliance on MSDS:

> Material Safety Data Sheets are not able to replace CACs. Material Safety Data Sheets are information sheets prepared by manufacturers to provide users with information on how to use the inks safely, including a list of some of the ingredients in the inks.
>
> To ensure the laws are effectively implemented, tattooists and tattoo businesses must ensure a CAC is available for inks that are being used in Queensland.[361]

Treasury also advised: 'As the Queensland provisions are harmonised with the European laws, there is likely to be a minimal impost on the Queensland tattoo industry'.[362]

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355 Mr Christiaan Llewellyn, PTAA and Licensed Tattooists Group, public hearing transcript, Brisbane, 27 April 2021, p 16.

356 Submission 12, p 9.

357 Mr Brenton Eldridge, NSW State Representative, PTAA; Administrator, Licenced Tattooists Group, public hearing transcript, Brisbane, 27 April 2021, p 20.

358 Submission 12, p 5.

359 Treasury, correspondence, 22 April 2021, p 11.

360 Treasury, correspondence, 22 April 2021, p 11.

361 Treasury, correspondence, 22 April 2021, p 21.

362 Treasury, correspondence, 22 April 2021, p 12.

Further stakeholder commentary regarding the consultation undertaken in respect of the amendments and accompanying departmental standard and the timeframe for implementing the provisions, together with Treasury responses to those comments, are outlined below.

2.9.2.2 Consultation process and implementation

Despite its support for the proposed CAC requirement and offences, AMA Queensland queried the consultation with the tattoo industry on the proposed amendments, declaring the process, as described in the explanatory notes to the Bill, as 'unclear'.[363]

The PTAA and Licenced Tattooists Group and the ATG confirmed that they considered the consultation process to have been insufficient, with the former organisations stating: 'Consulting with one minor organisation and a single supplier does not constitute adequate consultation'.[364]

Mr Llewellyn advised the committee that of the companies supplying Australian professional tattooists:

> So far, our feedback has been that they are not even aware of the current proposal as most of their Australian distributors are also totally in the dark over this situation. Three of the largest suppliers—Brett Stewart, Justat and Tatsup—had no idea until I contacted them, demonstrating the need for more consultation with these stakeholders and their product manufacturers before this action should be undertaken.[365]

These stakeholders were also concerned that as at the time of the committee's public hearing on the Bill, the draft departmental standard was yet to be released (though this has subsequently occurred). The ATG submitted that the proposed amendment were premature, given 'the departmental standard that they correspond to not yet being consulted on with industry, drafted or developed as legislation or finalised'.[366] The PTAA and Licenced Tattooists Group submitted that neither a departmental standard or 'an explanation of how to comply with the vague Compliance Analysis Certificate' have been provided.[367] The ATG asserted that this limited the ability of its organisation to 'clearly evaluate and respond to proposals for compliance, penalties and other measures'.[368]

The ATG recommended the proposed amendments be withdrawn from the Bill, and 're-drafted and re-introduced to Parliament once the proposed departmental health standard has been consulted on by stakeholders, developed and finalised';[369] suggesting 'a three-year lead time on the implementation of both the Departmental standard and any accompanying compliance regulations'.[370]

Ms Tashi Edwards, Vice-President, ATG, elaborated on the ATG's suggestion of a 3-year implementation of the regulations:

> I think Queensland Health is going to have to put in a lot of energy and money into educating tattooists in how to understand certificates of analysis. Surely there is a reason for making this a compliance measure. What is the value in it for the tattooer? There is no value in it for the tattooer. All the tattooer wants to know is what the ingredients are, that it is safe, that the expiry date is there and that it is compliant. I would submit that giving an individual a large list of chemical analyses is not helpful for anybody.[371]

363 Submission 2, p 2.

364 Submission 4, p 1.

365 Mr Christiaan Llewellyn, PTAA and Licensed Tattooists Group, public hearing transcript, Brisbane, 16 April 2021, p 16.

366 Submission 4, p 1.

367 Submission 12, p 4.

368 Public hearing transcript, Brisbane, 27 April 2021, p 18.

369 Submission 12, p 4.

370 Submission 12, p 5.

371 Public hearing transcript, Brisbane, 27 April 2021, p 21.

AMA Queensland also recommended a moratorium for tattoo artists before CACs become mandatory, but only for 6 months.[372] AMA Queensland submitted that in addition to engaging with industry operators:

> … it will also be important for Queensland Health to communicate to the general public (once these technical amendments become law), that all tattoo parlours must have a compliant analysis certificate which states that all of their tattoo inks meet the Queensland regulations, and if a member of the public is going to get a tattoo, they should be able to sight the tattoo artist's compliant analysis certificate (in the same way they ask to see a builder's licence if they are getting work done on their place of residence), before the tattoo is provided.[373]

In response to stakeholders' comments regarding the consultation process, Treasury stated:

> During the consultation process, industry representatives sought consistency with ink standards used overseas, in particular Europe, due to the small size of the Australian market and the high cost of analysis if different standards are adopted in Australia.
>
> Aesthetics Practitioners Advisory Network has indicated its support for proposed regulatory measures to ensure that cosmetic tattoo inks used in Queensland are safe for human use.[374]

Treasury acknowledged stakeholders' expressed concerns that proposed provisions were premature as the departmental standard has not been drafted, developed or consulted on with the industry, and advised:

> The Departmental Standard on tattoo inks and the details required in a CAC will be made available to the industry and members of the public during consultation on the supporting regulations, which is due to commence in late April/May 2021.[375]

Further, in relation to the proposed timeframe for implementation, Treasury advised:

> Queensland Health will continue to work with the industry during the consultation period and during the twelve-month transitional period prior to commencement to ensure smooth implementation including education and support.
>
> Clause 249 of the Bill (new section 279A of the Medicines and Poisons Act) provides a one-year transitional period for the tattoo ink provisions, which allows industry sufficient time to comply with the new scheme.[376]

Committee comment

The committee notes that the Departmental Standard for tattoo inks was released for consultation on 28 April 2021, following the committee's public hearing on the Bill.

Recognising that the CAC requirements established by the Bill's proposed amendments, and the extent to which they will achieve their objectives, will largely hinge on the contents of the Departmental Standard, the committee encourages Queensland Health to engage closely with stakeholders in relation to these requirements in the coming months.

[372] Submission 2, p 2.

[373] Submission 2, p 2.

[374] Treasury, correspondence, 22 April 2021, p 22.

[375] Treasury, correspondence, 22 April 2021, p 11.

[376] Treasury, correspondence, 22 April 2021, p 22.

3 Compliance with the *Legislative Standards Act 1992*

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 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
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill.

The committee considers that the Bill raises several potential issues of FLP with respect to both the rights and liberties of individuals and the institution of Parliament. The committee's consideration of these issues is outlined below.

3.1 Rights and liberties of individuals – privacy

As set out in chapter 2.2 of this report, in providing for the transfer of the Titles Registry to the new 'operator' Registry Co, the Bill includes 2 provisions permitting or mandating information sharing between the 'operator' and an 'official'. An official is either the registrar of titles under the LT Act or the registrar of water allocations under the Water Act.[377]

The Bill provides that an official is permitted to share information with the operator if it is connected with the functions of the operator to:

- perform Titles Registry functions delegated to the operator, or other functions given to the operator, under a Titles Registry Act
- decide, collect and keep titles registry amounts
- under an 'agency arrangement',[378] act as the agent for the state or an official in respect of legal proceedings relating to the titles register, the functions of the official under the Electronic Conveyancing National Law (Queensland), or another matter relating to a titles register.[379]

The exchange of information between the operator and an official in connection with these functions may occur as follows:

- an official is authorised to give information requested by the operator if the information is relevant to the operator performing one of the functions listed above
- the operator is authorised to give information requested by an official if the information is relevant to the operator performing a function of function of the official
- an official is authorised to give information to the operator in relation to providing for the transfer of assets, liabilities, rights, responsibilities, operations and employees to the operator.[380]

The Bill also states, 'to remove any doubt', that the use and disclosure of personal information within the meaning of section 12 of the *Information Privacy Act 2009* (IP Act) is authorised.[381]

377 Bill, cl 7; sch 2 (dictionary).

378 Bill, cl 46.

379 Bill, cl 43, in reference to the functions of the operator set out in cl 8(1)(a)-(c).

380 Bill, cl 43(1)-(4); cl 3(2)(b).

381 Bill, cl 43(5). Section 12 of the *Information Privacy Act 2009* (IP Act) states that the meaning of personal information is 'information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identify is apparent, or can reasonably be ascertained, from the information or opinion'.

In terms of mandated information sharing, the Bill provides that the operator has a duty to disclose to the official, all information in the possession or control of the operator about a matter relating to a titles registry function performed by the operator for an official, if:

- the matter is the subject of a proceeding, or
- the operator believes, or ought to reasonably believe, the matter may become the subject of a proceeding.[382]

However, the requirement does not apply in relation to a matter that is the subject of a proceeding to which the operator is a party.[383]

The duty to disclose continues until:

- if the matter is or becomes the subject of a proceeding, the proceeding is finally decided or otherwise ends, or
- otherwise, the matter is no longer in effect or the operator reasonably believes it will otherwise no longer become the subject of a proceeding.[384]

Issue of fundamental legislative principle

These provisions raise an issue of FLP relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy with respect to their personal information.

In relation to the provision permitting the exchange of information, the explanatory notes state that any breach of FLP is justified:

> … as the transfer … to the operator cannot be completed within the required timeframes without authorising the flow of information between the official and the operator in relation to the initial transfer and in the future to enable the operator and the official to properly perform their respective functions. The provision is essential in ensuring a smooth transition of the titles registry functions from the Registry to the operator.[385]

Regarding the provision mandating an operator's disclosure of information to the official (in respect of matters that are or may be the subject of a proceeding), the explanatory notes acknowledge the FLP breach.[386] However, the notes emphasise:

> … the need to balance the protection of an individual's privacy with the interests of entities, such as the State's (through the official) in a matter the subject of a proceeding.[387]

The explanatory notes state that in this instance:

> … the information that would be shared would be information that would assist the official in a matter the subject of a proceeding; or a matter that the operator believes, or ought to reasonably believe, may become the subject of a proceeding.[388]

Further, the notes state that the Bill provides 'adequate safeguards' in imposing limits on the circumstances in which information may be shared:

> … chapter 1 of the Bill provides adequate safeguards to ensure the information requested is only used or disclosed for the purposes of the operator performing a function or an official performing a function of the official under a titles registry Act.[389]

382 Bill, cl 44(1), (3).

383 Bill, cl 44(2).

384 Bill, cl 44(4).

385 Explanatory notes, p 27.

386 Explanatory notes, pp 27-28.

387 Explanatory notes, pp 27-28.

388 Explanatory notes, pp 27-28.

389 Explanatory notes, p 28.

The explanatory notes do not otherwise expand on this statement, and the Bill does not appear to contain any further, specific safeguards aimed at preventing the storage, use or disclosure of private information outside the lawful framework. However, the explanatory notes do emphasise that the operator will be subject to the IP Act in respect of its performance of titles registry functions.[390] The explanatory notes continue:

> It is also intended that through other arrangements, the operator will comply with the IP Act in carrying out activities beyond the performance of a titles registry function. Application of the IP Act will ensure that the operator complies with the IPP [Information Privacy Principles] principles and only uses or discloses personal information as authorised under that Act or another Act.[391]

Committee comment

The committee recognises the necessity of providing for the exchange of certain information between the operator and Titles Registry officials, to support the effective transfer of the Titles Registry and the continuity of its operations and functions.

The committee also acknowledges the importance of ensuring the operator provides officials with any relevant information in respect of current or anticipated proceedings, up until the time the matters are concluded or no longer in effect.

Noting the limits on the purposes for which information may be shared, together with the application of the IP Act to the sharing of personal information in respect of titles registry functions, the committee is satisfied that the provisions are appropriate in the circumstances.

3.2 Rights and liberties of individuals – general rights and liberties

The Bill contains provisions clarifying the effects on legal relationships of certain actions taken in respect of the transfer to the operator of the titles registry's assets, instruments, liabilities and other matters.

Among other things, the Bill deems the advice of a person to have been obtained, and the consent or approval of a person to have been given unconditionally, if the advice, consent or approval would have been necessary to achieve certain matters relevant to the transfer of the registry to the operator.[392]

Issue of fundamental legislative principle

The provision raises an issue of FLP relating to the rights and liberties of individuals, as in providing for the consent of third parties to be deemed to have been obtained, it effectively overrides the rights of those third parties.

The reasonableness and fairness of the treatment of these individuals is relevant to the determination of whether the legislation has sufficient regard to the rights and liberties of individuals.[393]

The explanatory notes offer the following justification for the provision, based in part on a view that to negotiate to obtain all necessary consents would not be practicable in the desired timeframe:

> If chapter 1 of the Bill did not override some third parties' rights, it would not be possible to ensure the transfer of the Registry's assets, instruments and liabilities to occur or for the transfer to be completed within the State's proposed timeframe to achieve its financial objective.
>
> It is considered impractical to negotiate commercial arrangements between third parties and the State for all matters within the required timeframes. Furthermore, it is considered that the rights of third parties under commercial arrangements will not be greatly affected. … [the clause] assists in providing certainty to the parties involved in the transfer of those functions.[394]

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390 Explanatory notes, p 28. See Bill, cl 41(1)(b).

391 Explanatory notes, p 28.

392 Bill, cl 22(2).

393 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: The OQPC Notebook* (FLP Notebook), January 2008, p 133.

394 Explanatory notes, p 24.

Queensland Treasury provided the following examples of specific commercial arrangements associated with the transfer of the titles registry:

- agreement between the State and a third party under which the third party provides Automated Titles System support and development services;
- agreement between the State and a telecommunications services provider under which On Demand Call Centre support services are provided; and
- eLodgement agreements (of which there are over 650 agreements) under which third parties are permitted to upload documents to the Titles Registry. These contracts are entered into, and expire, on a regular basis in the ordinary course of business.[395]

Queensland Treasury added:

> Material contracts such as these:
>
> - are governed by the laws of the State of Queensland;
> - will be transferred to the Operator by way of transfer notice, in accordance with the statutory transfer mechanism in the Bill, the effective date of which is expected to be in or about late June 2021; and
> - are, in the department's view, indicative of the circumstances in which clause 22 of the Bill may be engaged.
>
> Provisions of this nature are commonplace in enabling legislation enacted to facilitate large scale government restructures and institutional reforms. For example, comparable provisions exist under the following Queensland legislation:
>
> - *Airport Assets (Restructuring and Disposal) Act 2008*;
> - *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*;
> - *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*; and
> - *Queensland Rail Transit Authority Act 2013*.
>
> Such provisions are considered to afford a level of administrative efficiency and legal certainty.
>
> The department considers that the rights of third parties under relevant commercial arrangements, such as those outlined above, will not be greatly affected. This is principally because the Operator will be contributed to a trust managed by Queensland Investment Corporation, the units in which will be held by a number of State owned entities. In that sense, third parties may consider that there is no significant increase in legal or financial risk under ongoing commercial arrangements, as a result of the transfer.[396]

Committee comment

The committee recognises that the transfer of the registry to the operator will improve Queensland's debt-to-revenue ratio when assessed by ratings agencies. The committee also recognises the timing imperative for the transfer and hence the need for efficient methods of providing for the transfer.

As the Treasurer stated in his explanatory speech:

> In July 2020, I announced that the Titles Registry would be contributed to the [Debt Retirement] fund, subject to due diligence. In September 2020, the government confirmed its intention to contribute the Titles Registry to the Debt Retirement Fund, along with other investments, by 30 June 2021.[397]

The Bill provides that the Minister may not act under the transfer provisions (part 4 of chapter 1) on or after 1 July 2022.[398]

395 Treasury, correspondence, 27 April 2021, pp 1-2.

396 Treasury, correspondence, 27 April 2021, p 2.

397 Treasurer, Queensland Parliament, Record of proceedings, 25 March 2021, p 832.

398 Bill, cl 21.

The committee is reassured by the advice from Treasury that the rights of third parties will not be greatly affected by the transfer because the planned ownership arrangements will not significantly increase the legal or financial risk under ongoing commercial arrangements.

As a result, the committee is satisfied that any breach of FLPs as it relates to the rights and liberties of third parties is justified.

3.3 Rights and liberties of individuals – reasonableness and fairness of treatment of individuals

The Bill contains a range of similar provisions dealing with the transfer of employees of the various agencies abolished or otherwise changed, to the government departments or entities into which they are being incorporated, and terminating the boards and CEO positions within these agencies.

Under the provisions:

- employees of the Titles Registry would be transferred to new operator Registry Co,[399] and would become employees of the operator and cease being employed as public service employees[400] (although employees will have the opportunity to return to being public service employees within 12 months after the commencement,[401] and the employees' employment conditions and rights will be preserved)[402]
- employees of BQ would be transferred to the DSDILGP, with conditions of employment effectively remaining the same;[403] however, the BQ board members and CEO would be removed from office without compensation[404]
- employees of the PSBA would become employees of the QPS or QFES;[405] with the PSBA board to be dissolved and the acting CEO appointment concluding without compensation[406]
- employees of the QPC would become employees of Treasury and be subject to a fixed term contract as a temporary employee;[407] with the QPC board and the principal commissioner removed from office[408]
- the board of the NIISQ agency would be abolished.[409]

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant to determining whether legislation has sufficient regard to the rights and liberties of individuals.[410]

399 See Bill, cl 7.

400 Bill, cl 25.

401 Bill, cl 27.

402 Bill, cl 26.

403 Bill, cl 156 (QIPP Act, proposed s 27).

404 Bill, cl 156 (QIPP Act, proposed ss 18, 19). The provisions do not limit or otherwise affect the CEO's or a board member's right to an accrued benefit or entitlement. The CEO may receive compensation as expressly provided for under the CEO's contract of employment. The CEO is also entitled to any right or benefit that was accruing.

405 Bill, cl 193 (PSA Act, proposed s 11.25). See also Treasury, correspondence, 8 April 2021, p 11.

406 Bill, cl 193 (PSA Act, proposed ss 11.23, 11.24). The provisions do not limit or otherwise affect the CEO's or a board member's right to an accrued benefit or entitlement.

407 Bill, cl 210 (QCA Act, proposed s 265). See also Treasury, correspondence, 8 April 2021, p 3.

408 Bill, cl 210 (QCA Act, proposed s 259). Note, however, that the current occupants of the positions of executive director and principal commissioner (the QPC Board currently consists of the principal commissioner) will be offered positions in Treasury on similar terms and conditions: Treasury, correspondence, 27 April 2021, p 3.

409 Explanatory notes, p 16; Bill, cl 163.

410 OQPC, FLP Notebook, January 2008, p 133.

Under the proposed amendments, employees or the CEO or board members of the above entities would be required to change employers or would have their positions abolished without their consent, and not by their choice. In the case of employees of the Titles Registry, they would no longer be public service employees. The CEOs and board members of BQ, the PSBA and the QPC, and the board members of the NIISQ Agency would be deprived of income and their roles, with direct effects on their rights.

In relation to the transfer of Titles Registry employees, the explanatory notes state:

> … any potential breach is balanced by the protections offered to eligible employees who are transferred under chapter 1, part 5. For instance, the transfer of an eligible employee does not materially affect the employee's benefits, entitlements or remuneration; or prejudice the employee's existing or accruing rights to superannuation or recreation, sick, long service or other leave.
>
> Also, an employee may, within 12 months, after the commencement, elect to return to the public service by giving notice to the chief executive officer of the operator. On return to the public service:
>
> - the employee is taken not to have stopped being a public service employee;
> - the employee's service as a public service employee is taken to have continued while the employee was employed by the operator; and
> - the employee's terms of employment are the same terms of employment that applied to the employee before the employee's transfer, subject to any changes in relevant laws or industrial instruments applying to the employee's employment.[411]

As noted in chapter 2.2 of this report, Together Queensland advised that its members are concerned that their protection from liability would be significantly reduced if the Bill is passed as it is currently drafted, contrasting the coverage offered by the existing protection in section 26C of the PS Act with the 'materially decreased' and more limited protection in clause 45(1) of the Bill.[412] Together Queensland submitted:

> In particular, the distinction can be seen below:
>
> - Clause 45(1) of the Bill provides that employees of Queensland Titles Registry Pty Ltd are not civilly liable for an act done or omission made honestly and without negligence <u>in performing a function of the operator</u> (Queensland Titles Registry Pty Ltd).
> - Section 26C of the Public Service Act provides that a State employee does not incur civil liability for <u>engaging in conduct in an official capacity</u>, with that liability instead attaching to the State. However, if liability does attach to the State in lieu of an employee, the State may recover from the employee any damages it had to pay if the employee engaged in conduct other than in good faith and with gross negligence.[413]

Together Queensland advised that it is continuing to have discussions with 'the employer, through QIC as the future employer as well as Queensland Treasury and Natural Resources as the current state government employer'.[414] With respect to the issue of indemnity, the union advised:

> … From our perspective, if the negotiations at the enterprise bargaining and policy level do not come up with a satisfactory conclusion, we would be seeking that the legislation be amended to ensure there is no loss of conditions, in a practical sense or in a theoretical sense, in relation to what that indemnity looks like.[415]

In relation to the transfer of QPC employees to Treasury, Treasury advised:

> The QPC Board currently consists of the Principal Commissioner. The QPC does not have a CEO, although it does have an Executive Director. Both of these positions will be abolished as a consequence of the abolition of the QPC. Both of the occupants will be offered positions in Queensland Treasury on similar terms and conditions.

411 Explanatory notes, p 25.

412 Submission 8, pp 2-3.

413 Submission 8, pp 2-3. Underlining in original.

414 Public hearing transcript, Brisbane, 27 April 2021, p 4.

415 Public hearing transcript, Brisbane, 27 April 2021, p 4.

> The intent of the legislation is that no employee is disadvantaged as a result of the transition to the Office. As such, all Queensland Productivity Commission staff will be offered employment terms and conditions in the Office of Productivity and Red Tape Reform in Queensland Treasury consistent with their current contracts.
>
> Transferred QPC staff are currently employed on fixed term Employment Service Agreements under the QPC Act. In order to maintain the employees' current terms and conditions, the Bill deems them to be employed as fixed term temporary employees in the department and for their contract of employment with the Commission to be a contract of employment with the chief executive of the department.
>
> As these existing Employment Service Agreements expire, each employee may be offered employment with Treasury as a public servant in a temporary or permanent capacity under the Public Service Act.[416]

The explanatory notes state the provisions transferring QPC employees to Treasury are justified 'as they are designed to ensure the smooth transition of the QPC's employees to Treasury and ensure continuity of the provision of services'.[417]

Treasury, in relation to the removal of the board and CEO of BQ, stated:

> The chief executive officer and Board member positions will be abolished as a consequence of the abolition of Building Queensland. The Bill does not affect the CEO or Board Members' existing rights in relation to benefits and entitlements that have accrued under the terms of their appointment. DSDILGP is respectfully engaging with the Board and CEO to ensure a smooth and collaborative transition to the new governance model.[418]

The explanatory notes state that the changes regarding the removal of the CEO and board from the NIISQ Agency are consistent with FLPs as 'the Bill does not affect their entitlements under their terms of appointments'.[419]

Treasury added:

> … While it is acknowledged that the Agency's board members and chief executive officer are impacted by the policy decision, the ability to terminate without reason is consistent with standard contractual arrangements and current provisions within the NIISQ Act. Queensland Treasury is respectfully engaging with the Board and affected Executive to ensure a smooth and collaborative transition to the new governance model.[420]

Committee comment

The committee recognises that the transfer of employees to new entities, and the removal of certain CEO and board positions will impact the rights of individuals. On balance, however, the committee was satisfied that the provisions are justified. This is because of the benefits expected to arise from the changes to the various agencies, the protections in the Bill for transferring employees (such as retention of their existing benefits, entitlements and remuneration, and that employees transferred to the operator may elect to return to the public service), and that it has been made clear that certain board members and CEOs retain their accrued benefits and entitlements.

The committee is pleased that Together Queensland and the relevant entities are working to resolve certain outstanding issues relating to the rights of employees affected by the proposed transfer of the Titles Registry.

3.4 Rights and liberties of individuals – proportionality and relevance of penalties

As noted in chapter 2.9.1 of this report, the Bill proposes to replace section 41 and 42 of the Medicines and Poisons Act. The proposed amendments do not change the maximum penalties for offending against those provisions.

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416 Treasury, correspondence, 27 April 2021, pp 3-4.

417 Explanatory notes, p 29.

418 Treasury, correspondence, 27 April 2021, p 4. See also explanatory notes, p 28.

419 Explanatory notes, p 28.

420 Treasury, correspondence, 27 April 2021, p 3.

As also discussed earlier (report chapter 2.9.2), the Bill also proposes to insert:

- new section 48A(1), to make it an offence for a person to provide tattoo ink to someone else without ensuring a CAC has been prepared for the tattoo ink. The offence is designed to apply to manufacturers and suppliers of tattoo ink. A maximum penalty of 100 penalty units ($13,345) applies for noncompliance.
- new section 48A(2), which makes it an offence for a person to use tattoo ink for tattooing unless the person is reasonably satisfied that a compliant analysis certificate has been prepared for the ink. The offence is designed to apply to individual tattooists or businesses. A maximum penalty of 50 penalty units ($6,672.50) applies for noncompliance.[421]

Issue of fundamental legislative principle

The creation of new offences and penalties affects the rights and liberties of individuals.

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.[422] A penalty should be proportionate to the offence:

> In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.
>
> … Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[423]

The committee considered the two new offence provisions that the Bill proposes to introduce.[424] In addition, while the Bill does not introduce new offences into sections 41 and 42 of the Medicines and Poisons Act,[425] it does change the language (and application) of the previous offence provisions and therefore the committee considered it prudent to consider whether the penalties in those provisions are relevant and proportionate the offence.

In relation to new section 41 (which contains requirements for checking the monitored medicines database), the explanatory notes advise:

> The provision has been redrafted to provide improved clarity … The maximum penalty for the offence remains the same as for the existing offence at 20 penalty units. The penalty is considered appropriate for the seriousness of the offence and is equivalent to other similar offences in the scheme.[426]

In relation to new section 42 (which extends the current offence provision relating to the disposal of an S8 medicine[427] to all 'diversion-risk medicines'[428]), the explanatory notes state:

> … the unsafe disposal of waste may pose a risk to public health and safety if, for example, the waste contaminates the environment or, in the case of substances that are valuable on the illicit drug market, the

421 Bill, cl 234; explanatory notes, p 73.

422 OQPC, FLP Notebook, January 2008, p 120.

423 OQPC, FLP Notebook, January 2008, p 120.

424 Bill, cl 234.

425 Bill, cls 229, 230.

426 Explanatory notes, p 30.

427 S8 medicines are medicines listed in schedule 8 of the Poisons Standard (Cth) (described as 'controlled drugs'), which 'should be available for use but require restriction of manufacture, supply, distribution, possession and use to reduce abuse, misuse and physical or psychological dependence'.

428 Diversion-risk medicines are to be prescribed by regulation and will include medicines with a higher risk of being diverted for illicit use – including all S8 medicines, and some S4 medicines, such as anabolic steroidal agents, growth hormones, codeine and barbiturates. See explanatory notes, p 30. (S4 poisons are medicines listed in schedule 4 of the Poisons Standard (Cth), which covers prescription only medicines or prescription animal remedies – that is, substances 'the use or supply of which should be by or on the order of persons permitted by State or Territory legislation to prescribe and should be available from a pharmacist on prescription'.)

> waste comes into the possession of an unauthorised person. Improper disposal may allow a person to collect residual amounts from used containers and use it for unauthorised dealings. The concerns about improper disposal apply to diversion-risk medicines in the same way as for S8 medicines. Ensuring that waste from diversion-risk medicines is disposed of correctly helps to prevent it becoming available for sale illegally and being used inappropriately.[429]

The explanatory notes provide the following justification for the penalty:

> The penalty is considered appropriate for all diversion-risk medicines, as all of those substances may be used for illicit purposes. The maximum penalty of 200 penalty units is considered proportionate to the seriousness of the conduct it applies to. As a maximum penalty, the particular circumstances of the offence and the type of medicine involved would be taken into account when deciding the appropriate penalty to apply to a particular case.[430]

The present sections 41 and 42 were contained in the Medicines and Poisons Bill. The explanatory notes for that Bill provided some comparisons between the penalty contained in section 42 and similar penalty provisions in other legislation: 'Similar offences, also carrying a penalty of 200 penalty unit[s], are included in, for example section 296 and 297 of the *Waste Reduction and Recycling Act 2011*'.[431]

The committee notes that the relevant portfolio committee, in its report on the Medicines and Poisons Bill, considered a range of penalty provisions in the Bill, including those in sections 41 and 42. That committee concluded:

> Given that the primary objective of the Bill is to ensure that any activity performed with a substance must be performed in an authorised manner, the committee considers that the various offences and associated penalties are reasonable and proportionate and relevant to the conduct being proscribed.[432]

In relation to the new requirements for CACs for tattoo inks,[433] the explanatory notes provide:

> … Ingredients in tattoo inks are often manufactured to industrial quality and not to standards required for therapeutic purposes or for human use. Tattoo inks may also contain high levels of impurities, as they are often designed for applications such as house paints and printing. By requiring a compliant analysis certificate to be in place for all tattoo inks will help to ensure that inks used in Queensland do not contain substances that could be harmful to a person's health.[434]

Regarding the new offence of failing to ensure a CAC has been prepared for tattoo ink when *providing* the tattoo ink to someone else,[435] the explanatory notes state:

> The offence … carries a maximum penalty of 100 penalty units, which is a higher penalty as it will apply to manufacturers and suppliers. The relatively high penalty of 100 penalty units is considered appropriate because a tattoo ink that is supplied without a compliant analysis certificate may contain substances harmful to health if used in tattooing and could cause serious harm or risk of infection.[436]

Regarding the offence of *using* tattoo ink for tattooing someone else without being reasonably satisfied that a CAC has been prepared, the explanatory notes state:

> The offence … will apply to individual tattooists or businesses, so it carries a lower maximum penalty of 50 penalty units. A penalty of 50 penalty units is considered appropriate to ensure that individual tattooists or

429 Explanatory notes, p 30.

430 Explanatory notes, p 31.

431 Medicines and Poison Bill 2019, explanatory notes, p 63.

432 State Development, Natural Resources and Agricultural Industry Development, Report No. 32, 56th Parliament – *Medicines and Poisons Bill 2019*, July 2019, p 38. Footnote in original omitted.

433 Bill, cl 234.

434 Explanatory notes, p 31.

435 Bill, cl 234.

436 Explanatory notes, p 31.

businesses have an obligation to make sure the tattoo ink they are using has a compliant analysis certificate before using it, due to the risk of serious harm or infection.[437]

The explanatory notes advise that the penalties contained in the new offence provisions are generally consistent with other penalties contained in the Medicines and Poisons Act, '… such as the penalty in section 37 for supplying an animal medicine to humans of 100 penalty units and the penalty in section 48 for giving or keeping false, misleading or incomplete information or records of 50 penalty units'.[438]

Committee comment

The committee is satisfied that the amended and new offences, and associated penalties, are reasonable, proportionate and relevant to the conduct to which they relate, given the comparable offences and the behaviour they address.

Regarding the penalties in sections 41 and 42 of the Medicines and Poisons Act, the committee notes the Bill does not propose to change the penalty amounts. In addition, the committee acknowledges that the proposed changes to section 41 of the Medicines and Poisons Act are intended to aid its operability; and the proposal to widen the range of medicines covered by the offence in section 42 is to prevent those medicines being used unsafely.

With respect to the new offences relating to CACs for tattoo inks, the committee applauds the intent of the provision, which is to make tattooing safer for people who choose to be tattooed. The committee notes departmental advice that the level of penalties contained in relevant clauses of the Bill are consistent with the overall approach taken to other offences in the Medicines and Poisons Act.

3.5 Rights and liberties of individuals – delegation of administrative power

The Bill provides for the delegation of administrative power in relation to land registry functions and the monitored medicines database.

Land registry functions

The Bill proposes to authorise the registrar to delegate their functions under various Acts to Titles Registry operator Registry Co. It would also create new, and supplement existing, powers in those Acts to delegate functions to appropriately qualified public service employees.[439]

Monitored medicines database

The Medicines and Poisons Act provides that the chief executive may delegate their functions and powers under the Act to an appropriately qualified person 'who is a health service employee or public service employee'.[440] The Bill proposes to amend section 238 to provide that the chief executive may delegate certain of their functions which relate to the monitored medicines database to an 'appropriately qualified person'.[441] The effect of the amendment is that delegations regarding the monitored medicines database will no longer be limited to persons who are health service employees or public service employees.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation allows for the delegation of administrative power only in appropriate cases and to appropriate

437 Explanatory notes, p 31.

438 Explanatory notes, p 31.

439 See Bill, cls 58, 71, 89, 99 and 128. In the case of the *Foreign Ownership of Land Register Act 1988* (s 15) and the *Land Act 1994* (s 393) the current power of delegation is to 'an officer or employee of the department.'

440 Medicines and Poisons Act, s 238. Other than under the power in s 127 of the Medicines and Poisons Act for the chief executive to make a public statement about particular matters.

441 See Bill, cl 247.

persons.[442] The question is whether the various delegations in these amendments allow for delegation of administrative power to appropriate persons.

'Appropriately qualified' is defined in the AIA as having the qualifications, experience or standing appropriate to perform the function or exercise the power.[443] Powers should be delegated only to appropriately qualified officers or employees.[444]

The appropriateness of a limitation on a delegation depends on a range of factors including the nature of the power, its consequences, and whether its use appears to require particular expertise or experience.[445]

Land registry functions

In relation to the delegation of the registrar's functions to operator Registry Co, the explanatory notes provide the following explanation and justification:

> The delegations are considered essential for transferring (and enabling the operator to carry out) the titles registry functions, and giving effect to the policy intent of delegating most of the statutory functions and powers of the registrar to the operator. It is considered that any potential breach of fundamental legislative principles is justified on the basis that chapter 1 of the Bill will provide the necessary checks and balances on the delegations to ensure the operator exercises its delegated functions and powers appropriately.[446]

In relation to the delegation of functions to appropriately qualified employees, the explanatory notes provide:

> … chapter 1 of the Bill will require the operator to subdelegate its delegated titles registry functions to only appropriately qualified employees. Furthermore, the operator may impose conditions on a subdelegation that are not inconsistent with the conditions to which the delegation to the operator is subject. … In line with the AIA, the registrar's delegation may also be subject to conditions and may be revoked. Similarly, a delegation may be revoked (wholly or in part) by the delegator.[447]

Monitored medicines database

AMA Queensland expressed concern about the outsourcing to third parties of monitoring responsibilities associated with the database.[448] The organisation stated:

> … AMA Queensland cannot see how outsourcing this essential task will strengthen the operations of the database nor reduce the level of intentional and unintentional harm from some of the S4 and S8 medicines in Queensland.[449]

The explanatory notes justify the amendment to the delegations under the Medicines and Poisons Act on the basis that some functions of the monitored medicines database may need to be delegated to third party providers for operational purposes. The notes state:

> This amendment has been made to facilitate the future interoperability of the monitored medicines database with equivalent databases operated by other States and Territories. The Australian Government is putting in place administrative arrangements for interoperability of these databases and some responsibilities related to the database may need to be delegated to third party providers to ensure the database operates as intended.[450]

442 LSA, s 4(3)(c).

443 AIA, sch 1.

444 OQPC, FLP Notebook, January 2008, p 33; AIA, s 27A contains extensive provisions dealing with delegations.

445 OQPC, FLP Notebook, January 2008, p 33.

446 Explanatory notes, p 26.

447 Explanatory notes, p 26.

448 Submission 2, p 1.

449 Public hearing transcript, Brisbane, 27 April 2021, p 14.

450 Explanatory notes, pp 29-30.

In addition, the explanatory notes advise that the amendment:

> … includes the safeguard that before delegating any functions or powers for the monitored medicines database, the chief executive must be satisfied that the delegate is 'appropriately qualified'. Before delegating these powers, the chief executive will consider all circumstances including the scope of the power to be delegated, the expertise or experience needed to exercise the power and any training and qualifications required, before deciding on the appropriate delegates.[451]

Committee comment

Land registry functions

Given that the delegations contained in these amendments relating to the land registry functions are similar to provisions which are commonplace, the committee is satisfied that these delegations are appropriate and that any potential FLP breach is justified in the circumstances.

Monitored medicines database

With respect to delegations concerning the monitored medicines database, the committee notes that the term 'appropriately qualified' means that a function or power can only be delegated to someone 'having the qualifications, experience or standing appropriate to perform a function or exercise a power' as required under the AIA.[452] The explanatory notes suggest a range of matters the chief executive would likely consider before making such a delegation;[453] but the committee also notes this list is largely irrelevant, as the committee's task is to consider the possible impact of the actual provisions of the Bill itself on FLPs, and not only the manner in which it is expected to operate.

At the same time, given that the monitored medicines database is part of a national scheme to regulate the prescribing and dispensing of prescription medicines that may be subject to misuse, the committee recognises that there may be some instances in which certain responsibilities may need to be delegated to third parties to ensure the databases of the various jurisdictions integrate successfully.

On balance, the committee is satisfied that any FLP breach in this instance is justified.

3.6 Rights and liberties of individuals – immunity from proceedings

As noted in chapter 3.3 of this report, clause 22 of the Bill is intended to establish new protections from civil liability for Title Registry employees transferred to the new Registry Co. The provisions state:

> Nothing done under this part—
>
> (a) makes a relevant entity liable for a civil wrong or contravention of a law, including for a breach of a contract, confidence or duty; or
>
> (b) makes a relevant entity in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information …[454]

A relevant entity means the state or the operator (Registry Co), and includes an officer, employee or agent of the state or Registry Co.[455]

As observed in the explanatory notes: 'The protection from liability provided to the State … and the operator … under [clause 22] will also apply to action taken under a transfer notice (clause 20)'.[456]

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451 Explanatory notes, p 30.

452 AIA, sch 1.

453 'Before delegating these powers, the chief executive will consider all circumstances including the scope of the power to be delegated, the expertise or experience needed to exercise the power and any training and qualifications required, before deciding on the appropriate delegates': explanatory notes, p 30.

454 Bill, cl 22(1)(a),(b).

455 Bill, cl 22(4).

456 Explanatory notes, p 24.

Other clauses contain immunity provisions similar to those in clause 22, protecting the state (and agents and employees of the state) for a civil wrong, contravention of a law or for a breach of contract or confidence. In particular:

- clause 156, which would insert section 28 in the QIPP Act, conferring immunity for acts done relating to the abolition of BQ, including dealing with the board, CEO, staff, assets and liabilities and contracts
- clause 193, which would insert section 11.33 in the PSA Act, conferring immunity for acts done relating to the abolition of the PSBA, including dealing with the board, CEO, employees and records
- clause 210, which would insert section 267 in the QCA Act, conferring immunity for acts done relating to the abolition of QPC, including dealing with existing competitive neutrality complaints and investigations and proceedings, whether current or not yet started.[457]

Further, the clauses provide that specified entities will not be in breach of any instrument, including an instrument prohibiting, restricting or regulating the assignment, novation or transfer of a right or liability or the disclosure of information.

Clause 45 (one of the amendments regarding the Titles Registry) provides:

- A person employed by Registry Co is not civilly liable for an act done or omission made honestly and without negligence in performing a Titles Registry function in the person's capacity as an employee of Registry Co.
- An administrator appointed under section 34 is not civilly liable for an act done or omission made honestly and without negligence in performing specified functions of the administrator.
- If clause 45 prevents civil liability attaching to a person, the liability attaches to the state.
- The PS Act, section 26C does not apply to an employee of Registry Co or an administrator appointed under section 34.[458]

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.[459] The Office of the Queensland Parliamentary Counsel (OQPC), in its *Fundamental legislative principles: The OQPC Notebook* (FLP Notebook), advises:

> … persons who commit 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.
>
> If protection is needed for persons administering Queensland legislation, the preferred provision provides immunity for actions done honestly and without negligence … and if liability is removed from a person it is usually declared to be shifted to the State.[460]

[457] The amendments effected by clauses 156 and 193 do not expressly extend immunity to cover a breach of duty.

[458] As noted in report chapter 2.2, section 26C of the PS Act deals with civil liability of state employees when acting in their official capacity and is in broadly similar terms to clause 45. Under section 26C, in general terms, a state employee does not incur civil liability for actions when acting in their official capacity. Where this prevents liability attaching to a state employee, the liability generally attaches instead to the state.

[459] LSA, s 4(3)(h).

[460] OQPC, FLP Notebook, January 2008, p 64.

Committee comment

One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding that position, committees have recognised that conferral of immunity is appropriate in certain situations.[461]

In relation to clause 45, the explanatory notes state: 'It is considered that chapter 1 of the Bill balances the conferral of the immunity from civil liability by attaching to the State the liability that would otherwise apply to the operator's employees or the administrator'.[462]

The explanatory notes advise that the the immunity in the Bill in relation to the Titles Registry is similar to the immunity currently provided in section 193 of the LT Act.[463]

The committee considers, on balance, that any potential breaches of FLP by clause 45 are justified, noting that the clause applies only to actions acts done honestly and without negligence, and do not extinguish liability entirely, but instead shift liability to the State.

In considering the question of justification for the potential breach of FLP in relation to clause 22, the explanatory notes state that any potential breaches are justified on the basis that the protection from liability provided under the clause 'will provide parties involved in the transfer with certainty.'[464]

In respect of clauses 156, 193 and 210, Treasury advised:

> The justification for any inconsistency with the fundamental legislative principle identified in section 4(3)(h) of the *Legislative Standards Act 1992* is that the conferred immunity from a civil wrong or deemed third party consent effects a seamless and efficient transition from the abolished entities to the new governance arrangements. It also ensures commercial and operational certainty for third parties dealing with the entities and their successors.[465]

The committee is satisfied that the immunity provided in clauses 22, 156, 193 and 210 is justified. It will enable third parties to deal confidently with the entities and their successors.

3.7 Institution of Parliament – delegation of legislative power

The Bill proposes to amend the general regulation making power in the Medicines and Poisons Act to add categories of activities that can be covered by regulation.[466] The Medicines and Poisons Act currently lists 8 matters about which regulations can be made. The Bill would add the following matters:

- buying and possessing S2 medicines (pharmacy medicines) and S3 medicines (pharmacist only medicines)
- disposing of waste from medicines to which section 42 of the Medicines and Poisons Act does not apply[467]
- dealing with S5 and S6 poisons[468]
- refunds of fees.[469]

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461 Scrutiny of Legislation Committee, *Alert Digest 1 of 1998*, p 5, para 1.25; OQPC, FLP Notebook, January 2008, p 64 (and also more generally the discussion that follows at pp 64-73).

462 Explanatory notes, p 25.

463 Explanatory notes, p 25.

464 Explanatory notes, pp 24-25.

465 Treasury, correspondence, 28 April 2021, p 1.

466 Bill, cl 248. See also Medicines and Poisons Act, s 240.

467 Section 42 relates to disposal of waste from S8 (controlled drug) medicines.

468 S5 medicines are those contained in schedule 5 of the Poisons Standard, which are be treated with caution (S5 medicines are 'Substances with a low potential for causing harm, the extent of which can be reduced through the use of appropriate packaging with simple warnings and safety directions on the label'). S6 medicines, as listed in schedule 6 of the Poisons Standards, are described as 'poison' ('Substances with a moderate potential for causing harm, the extent of which can be reduced through the use of distinctive packaging with strong warnings and safety directions on the label').

469 Note that fees for applications and other matters under the Medicines and Poisons Act are already a matter about which a regulation can be made – see s 240(2)(g) of the Medicines and Poisons Act.

As discussed above in relation to a different aspect of FLPs, the Bill proposes to replace section 41 of the Medicines and Poisons Act, which currently requires 'prescribers' and 'dispensers' to check the monitored medicines database before prescribing, supplying, dispensing or giving a treatment dose of a monitored medicine to a person. It would amend the section to refer instead to 'relevant practitioners' (who are to be prescribed by regulation).[470]

The Bill also proposes to amend section 226 of the Medicines and Poisons Act to require information providers to give the chief executive 'relevant information' for the monitored medicines database at the time and in the way prescribed by regulation.

Issues of fundamental legislative principle

Whether a Bill has sufficient regard to the institution of parliament depends on whether the Bill, for example, allows the delegation of legislative power only in appropriate cases and to appropriate persons.[471] This question is concerned with the level at which delegated legislative power is used.

> For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.[472]

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

The significance of dealing with matters other than by legislation is that, since the relevant document is not an Act of Parliament or subordinate legislation, it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Committee comment

In regard to the clause which would add categories of activities that can be covered by regulation,[473] the explanatory notes state:

> These are technical matters that are appropriate to be set out in regulations and addressing the way these substances are dealt with is consistent with the policy objectives of the Medicines and Poisons Act…
>
> All regulations will be tabled in the Legislative Assembly and will be subject to Parliamentary scrutiny and disallowance procedures.[474]

Specifically, in relation to adding the category of 'refunds of fees', the explanatory notes provide:

> This is appropriate subject matter to be included in regulations, as matters relating to fees and refunds are generally provided for in regulations.[475]

Although the explanatory notes characterise the amendments to the regulation-making power as 'minor clarifying amendments',[476] the effect is to add matters to an already existing list of matters that can be dealt with by regulation rather than an Act of Parliament. This is, perhaps, more of an issue in this case because contravention of a regulation made under that section can result in a maximum penalty of up to 100 penalty units.[477]

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470 Bill, cl 229.

471 LSA, s 4(4)(a).

472 OQPC, FLP Notebook, January 2008, p 154.

473 Bill, cl 248.

474 Explanatory notes, pp 31-32.

475 Explanatory notes, p 32.

476 Explanatory notes, p 31.

477 See Medicines and Poisons Act, s 240(3).

The committee notes that the principal means for creating offences should always be through Acts of Parliament rather than in delegated legislation. The committee also notes that in considering the original regulation-making power provision in its report on the Medicines and Poisons Bill, the relevant portfolio committee concluded:

> Given the complexity of this legislation and of the Health portfolio the committee considers the use of regulations necessary and appropriate. The committee notes that the regulations will be tabled in the Legislative Assembly and subject to parliamentary scrutiny and disallowance.[478]

In relation to the clause which requires 'relevant practitioners', as prescribed by regulation, to check the monitored medicines database,[479] the explanatory notes offer a justification for the provision based on a need for flexibility, stating:

> As the arrangements about which practitioners are authorised to prescribe, dispense or give treatment doses of monitored medicines may change over time, it is appropriate for the regulations to specify the practitioners required to check the database to keep this in line with any changes to the arrangements for prescribing, dispensing or giving treatment doses.[480]

In relation to the clause which requires information providers to give the chief executive 'relevant information' for the monitored medicines database at the time and in the way prescribed by regulation,[481] the explanatory notes offer a justification based on a need for certainty, providing:

> The 'relevant information' to be given to the chief executive will be prescribed in regulations for each information provider, rather than the more general description of information currently in section 225. The regulations will specify the detail of the information that each type of information provider must include in the monitored medicines database. This will provide more certainty to each information provider required to use the monitored medicines database about their obligations and the exact type of information they must provide. Also, as it is possible the database may evolve over time, it is appropriate for this detail to be provided in the regulations.[482]

In light of the above considerations, the committee is satisfied that these clauses of the Bill that would delegate legislative power have sufficient regard to the institution of Parliament.

The committee notes that in addition to the clauses considered above, there are other clauses in the Bill that are identified in the explanatory notes as raising the issue whether the Bill has sufficient regard to the institution of Parliament. Those clauses make amendments to provisions in the Medicines and Poisons Bill regarding certain extrinsic documents (being extended practice authorities and departmental standards).[483] As a result of amendments in the Bill, those documents will need to be approved by regulation before taking effect.

The Medicines and Poisons Act requires these documents to be made available on the department's website,[484] and the explanatory notes state that Queensland Health has committed to table each departmental standard and extended practice authority so that Parliament may consider these documents at the same time as the corresponding regulations.[485] However there does not appear to be any legislative requirement to table these documents. By contrast, there are legislative regimes under which the external documents are required to be tabled (such as codes of practice made under the *Nature Conservation*

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478 State Development, Natural Resources and Agricultural Industry Development, Report No. 32, 56th Parliament – *Medicines and Poisons Bill 2019*, July 2019, p 64.

479 Bill, cl 229; (Medicines and Poisons Act, s 41).

480 Explanatory notes, p 32.

481 Bill, cl 244 (Medicines and Poisons Act, s 226).

482 Explanatory notes, p 32.

483 See generally Medicines and Poisons Act, ss 232-236.

484 Medicines and Poisons Act, s 236.

485 Explanatory notes, pp 32-33.

Act 1992[486] and compliance codes made under the *Biodiscovery Act 2004*[487]), which arguably increase parliamentary scrutiny and public visibility of the documents.

The committee is satisfied that these clauses enhance regard for the institution of Parliament,[488] but it considers that it would further assist Parliament in discharging its duty to consider the regulations if the relevant extended practice authorities and departmental standards were required by law to be tabled.

3.8 Institution of Parliament – delegation of legislative power and scrutiny by the Legislative Assembly

Setting of registry fees by the operator

The Bill provides that the operator, Registry Co, must decide the amount for Titles Registry fees.[489] Registry Co must give written notice of the amount of each Titles Registry fee for the financial year and must publish the fees on the operator's website. Registry Co may also publish the fees in another way that it considers appropriate.[490]

Revoking of delegations of titles registry functions

The Bill proposes to permit each official to revoke all delegations of Titles Registry functions given to Registry Co. It also provides that the Minister administering the LT Act has the power to declare by gazette notice that all delegations of Titles Registry functions given by each official to Registry Co have been revoked.[491]

Actions taken by Minister to assist performance of the operator's functions

The Bill would also provide that the Minister, by gazette notice, may undertake a range of actions for the purpose of an arrangement under section 19 of the proposed Debt Reduction and Savings Act.[492] Under section 19, the Minister may decide the arrangements that are to apply to the state and Registry Co to help achieve the main purpose of the Act through the performance of Registry Co's functions. The actions that may be undertaken for the purpose of an arrangement under section 19 include:

- transferring shares in the operator to a stated entity
- transferring an asset or liability of the state to Registry Co
- making provision about the consideration for shares or an asset or liability transferred for the assets of liabilities mentioned above.

Regulation making powers (Titles Registry)

The Bill contains a general regulation-making power enabling regulations to be made under the proposed Debt Reduction and Savings Act.[493] A regulation may provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

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486 See *Nature Conservation Act 1992,* s 174A.

487 See *Biodiscovery Act 2004*, s 44.

488 Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill sufficiently subjects the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly – LSA, s 4(4)(b).

489 Bill, cl 13.

490 Bill, cl 14.

491 Bill, cl 15.

492 Bill, cl 20.

493 Bill, cl 47.

The Bill also provides for a transitional regulation-making power, enabling provisions to be made regarding:

- a matter that relates to Titles Registry functions of an official that has been or is to be delegated to the Registry Co and provides for the transition of a matter to allow or facilitate the performance of the function by Registry Co under the function and is not provided, or sufficiently provided for, by chapter 1 of the Bill or a titles registry Act, or
- a matter that allows or facilitates the doing of anything to achieve the transition from the operation of a former provision of a Titles Registry Act to the operation of a new provision of a Titles Registry Act and is not provided, or sufficiently provided for, by chapter 1 of the Bill or a Titles Registry Act.[494]

Power to approve forms is vested in the registrar

The Bill proposes to amend various Acts to vest the power to approve certain forms in the registrar of titles[495] and the registrar of water allocations.[496]

Issue of fundamental legislative principle

As noted earlier, whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, it allows the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[497]

3.8.1 Setting of registry fees by the operator

Under the Bill, the power to determine fees is given to the operator, a private company, rather than to the executive.[498] The fees might not come to the attention of, or be subject to scrutiny, of the Parliament to the same extent as if fees were fixed by regulation, which would be tabled and be subject to disallowance by the parliament. In this way, the setting of fees by the operator could be seen to be an inappropriate delegation of legislative power and as not having sufficient regard for the institution of Parliament.

The explanatory notes provide the following justification: 'Empowering the operator to determine fees is considered essential in the transfer of the titles registry functions to the operator'.[499]

The explanatory notes state that the Bill strikes a proper balance in delegating the setting of fees to the operator by:

- the fees from 1 July 2021 being set by the Bill (schedule 1)
- only allowing an annual increase
- limiting fee increases to the level of consumer price index (CPI) rises
- requiring the operator to, at least 30 business days before it determines new fees (at the start of each financial year), provide each official with notice of the fee amounts and publish the fee amounts on the operator's website.[500]

The explanatory notes state: 'Importantly, the operator will not be able to introduce new titles registry fees unless Parliament amends the enabling legislation'.[501]

494 Bill, cl 51.

495 Bill, cls 54, 56, 60, 91, 121 and 124.

496 Bill, cl 133.

497 LSA, ss 4(4)(a) and 4(4)(b).

498 Bill, cl 13.

499 Explanatory notes, p 21.

500 Bill, cls 13, 14.

501 Explanatory notes, p 22.

Committee comment

Noting that the Bill limits fee increases by the operator to annual CPI increases in line with CPI movements, and that the base fees are set by the Bill itself, the committee considers that the legislature is retaining control over the fee levels – arguably even more so than is the case with other fees prescribed by regulation. Therefore, the committee is satisfied that the fees scheme demonstrates sufficient regard for the institution of Parliament.

3.8.2 Revoking of delegations of Titles Registry functions

The Bill proposes to provide the Minister with the power to declare, by gazette notice, that all delegations by each official of titles registry functions to the operator have been revoked.[502] This could be seen to be an inappropriate delegation of power that has insufficient regard to the institution of Parliament.

The explanatory notes state the delegation is considered justified:

> … as the power is only intended to be used as a one-off where the operator's operatorship of the titles registry function has been terminated or [has] come to end (that is, the term of the arrangement has ended). It is not intended that the operator would be delegated functions again by an official once the operatorship ends and this declaration has been made.[503]

Committee comment

On the basis that the power to revoke all delegations of titles registry functions by each official to the operator is only intended to be used if the arrangement with the operator with respect to the Titles Registry function has been terminated or has come to an end, the committee is satisfied that the power is justified and demonstrates sufficient regard for the institution of Parliament.

3.8.3 Actions taken by Minister to assist performance of the operator's functions

Given that the transfer notice made by the Minister may include actions which may be more appropriately dealt with by legislation, the actions taken by the Minister could be seen to be inconsistent with the FLP that legislation should have sufficient regard to the institution of Parliament.

The explanatory notes respond to this concern:

> … it is considered that any potential breach is outweighed by the fact that the transfer notice provides the State with the simplest and the most effective, efficient and timely means of transferring the assets, liabilities, instruments, rights, responsibilities, obligations and operations of the Registry to the operator, which will be contributed to a QIC managed trust within the Debt Retirement Fund structure. It is also relevant to note that the operator is identified in chapter 1 of the Bill and is an entity in which the State has a financial interest. Chapter 1 of the Bill (clause 22) will also protect the State and the operator from liability for things done under chapter 1, part 4.[504]

Committee comment

The committee considers the power given to the Minister to take certain actions to help achieve the purposes of the Bill is appropriate. The conferral of this power is justified given there are safeguards within the Bill, such as identification of the operator.

3.8.4 Regulation-making powers (Titles Registry)

The Bill provides for a general power to make regulations and for a transitional regulation-making power. These raise concerns as to whether there is an inappropriate delegation of legislative power.

The explanatory notes do not address clause 47 (the general regulation-making power), but such a general regulation-making power is commonplace and provides flexibility.

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502 Bill, cl 15

503 Explanatory notes, p 22.

504 Explanatory notes, p 23.

Regarding clause 51, the explanatory notes state:

> The inclusion of the clause is considered to be justified in that it has been framed to apply in a narrow manner and is intended to be a temporary measure to address any potential or unforeseen transitional issues. Importantly, any potential contravention of fundamental legislative principles is mitigated by chapter 1 of the Bill providing for the expiry of the power within one year after commencement.[505]

Committee comment

The committee is satisfied that the regulation-making powers demonstrate sufficient regard for the institution of Parliament. The committee notes that the general regulation-making power is common to many Acts. The committee also notes that the transitional regulation-making power is restricted to certain matters, and that any regulations made under the transitional regulation-making power will expire within a year of the commencement of the proposed Act.

3.8.5 Vesting power to approve forms with the registrar

The Bill would amend various Acts to remove the power of the Governor in Council to make regulations in relation to Titles Registry forms and to instead vest the power to approve those forms with the registrar of titles and the registrar of water allocations.

The removal of the power from the Governor in Council could be seen to have insufficient regard for the institution of Parliament.

The explanatory notes provide the following justification:

> … the Registrar's powers (and the operator's powers as the registrar's delegate) will be limited to the titles registry forms. Further, the amendment is considered to be consistent with current drafting practice, which allows for forms to be approved by an officer, such as a chief executive and for forms to be subject to section 48A of the AIA. The ability for the registrar to approve forms will allow the operator greater flexibility to approve forms as a delegate, rather than requiring forms to be approved by regulation.[506]

Committee comment

The committee is satisfied that the transfer of power to approve forms from the Governor in Council to the land titles registrar and the registrar of water allocations is justified in this instance given that the power is limited to certain forms.

3.9 Explanatory notes

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

Explanatory notes were tabled with the introduction of the Bill. While the notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins, the committee identified some matters for which it considered additional detail or examples would serve to clarify and further explain the necessity for and operation of the provisions. Accordingly, the committee wrote to Treasury seeking clarification and further information in relation to certain matters as set out in the explanatory notes. Treasury's response is available on the committee's inquiry webpage.[507]

[505] Explanatory notes, p 23.

[506] Explanatory notes, p 24.

[507] Treasury, correspondence, 28 April 2021 (see the 'Related Publications' tab of the inquiry webpage).

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether or not the Bill is compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[508]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.[509]

The HRA protects fundamental human rights drawn from international human rights law.[510] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

4.1 Human rights compatibility

The committee has examined the Bill for human rights compatibility. The committee notes that the Bill contains a range of amendments that will affect certain human rights to varying degrees. This includes, for example, provisions which are intended to:

- support the state's contribution to the Debt Retirement Fund, through the transfer of the Titles Registry
- introduce a fee unit model to streamline the annual process of indexing regulatory fees
- abolish BQ and the BQ board
- change the governance structure of the NIISQ Agency
- repeal the PSBA Act
- abolish the QPC.

The committee considers that these amendments either do not raise significant human rights concerns, or if there are human rights concerns, that they have been sufficiently addressed in the statement of compatibility.

The analysis below is focused on the implications of clause 219 (electronic advertising) and clauses 229 and 244 (monitored medicines database) of the Bill. The latter raises issues relating to sensitive health data.

4.1.1 Electronic advertising

As noted in chapter 2.8 of this report, the Bill proposes to insert new part 5A (Requirement to publish particular information online) in the FA Act.[511] It would:

- mandate that legislation which requires or authorises print advertising or publication by government agencies shall be satisfied by digital/electronic advertising or publication, subject to appropriate exemptions. This requirement will override other provisions in state Acts requiring print advertising or publication.
- include a transitional regulation making power to provide for further exemptions in appropriate circumstances.[512]

508 HRA, s 39.

509 HRA, s 8.

510 The human rights protected by the HRA are set out in ss 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included (see HRA, s 12).

511 Bill, cl 219.

512 Explanatory notes, p 17.

Section 23 of the HRA provides:

> (1) Every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.
>
> (2) Every eligible person has the right, and is to have the opportunity, without discrimination –
>
> (a) to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and
>
> (b) to have access, on general terms of equality, to the public service and to public office.[513]

The United Nations (UN) Human Rights Committee has given the concept of participation in public affairs a broad meaning, stating: 'The conduct of public affairs … covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels'.[514]

The purpose of the Bill's limitation on the right to take part in public life is to modernise notification requirements and achieve cost savings from placing relevant government information online, rather than expending public funds in printing those documents.[515] With respect to the relationship between internet access and the right of persons to obtain government information and participate in public debates, the statement of compatibility states:

> It is foreseeable that limiting some individuals' access to online government publications and advertising might limit their ability to participate in policy formulation and implementation either directly, or through their elected representatives. Further, it may limit some individuals' ability to access government information and services.
>
> However, *the number of individuals that will be affected is limited by the high rate of internet penetration in Australian households*, and the fact that online compliance with advertising and publication requirements is balanced by specific exemptions and the ability to provide for further exemptions as appropriate...[516] (emphasis added)

As noted in report chapter 2.8, the cited exemption provisions (in proposed sections 88H-88K) include:

- provision for an exemption from the online publication measure where the print publication is to take place in a regional newspaper[517]
- provision for an exemption from the online publication measure where the purpose of the print publication includes information about, or prevents or lessens, a serious risk to life, health or safety
- provision for an exemption from the online publication measure where the print publication is required to be displayed at a particular place, or sent to a person
- provision for special exemptions from the online publication measure where the print publication relates to the courts or tribunals, the Public Trustee dealing with unclaimed estates, or public housing developments under the *Planning Act 2016*.

Further, new section 88L contains a 2-year transitional regulation-making power under which further exemptions to the online publication measure can be prescribed.

These exemptions, together with provisions in proposed sections 88C(3) and (4) of the FA Act which limit the scope of application of the proposed new part 5A, are intended to help achieve balance between the right to participate in public life and the limitation on the right:

> Mandating online publication is reasonable as it aims to reflect contemporary practices and support cost reductions and business efficiencies for government …

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513 HRA, s 23.

514 UN Human Rights Committee, General Comment No. 25, [5].

515 Treasury, correspondence, 8 April 2021, p 6.

516 Statement of compatibility, p 7.

517 For this purpose, a regional newspaper is a newspaper circulating in a regional area of the state, but is not a state-wide or national newspaper.

> There are no less restrictive reasonable ways to reduce the cost of publication requirements on government agencies. The impact of this measure is subject to appropriate exemptions and the ability to provide for further exemptions, where appropriate. On balance, the identified limits are outweighed by the benefits of the amendments to the FA Act.[518]

Committee comment

The proposed amendment in the Bill that would enable the Minister, accountable officers and statutory bodies to meet notification requirements by publishing online instead of in print, except in certain circumstances, may impact on the ability of some individuals to participate in public life.

The committee considers that this limitation on the right to take part in public life is reasonable given the likely cost savings of the proposed measures, the high rate of internet penetration in Australia, and the exclusions from, and exemptions to, the requirement.

The exclusions ensure that core government information (eg information required to be published in the government gazette) does not have to comply with the online print requirement. Also, there is recognition of the fact that certain cohorts do not have equal access to the internet (by exempting publication of information in regional newspapers from the online printing requirement). The committee recognises the importance of regional newspapers to many of these communities, and encourages the relevant Ministers to ensure appropriate exemptions are engaged.

4.1.2 Real time prescription monitoring

4.1.2.1 Background

The Medicines and Poisons Act requires the chief executive to keep an electronic database (the monitored medicines database) to record information about the prescription and supply of monitored medicines.[519] These medicines include those listed in schedule 8 (S8) of the Poisons Standard (eg oxycodone, morphine, methadone, ketamine)[520] because these 'carry the greatest risk of misuse'.[521]

Dr Jeannette Young, Queensland Chief Health Officer and Deputy Director-General, Queensland Health, spoke about the misuse of prescription medicines at the State Development, Natural Resources and Agricultural Industry Development Committee's public hearing for its inquiry into the Medicines and Poisons Bill 2019:

> Misuse of pharmaceutical opioids is an increasing concern for our community. Unlike illicit opioid drugs, access to pharmaceutical opioids is enabled by the writing of a prescription. In Australia, there is considerable evidence of the widespread misuse of prescription opioids. Levels of prescription opioid overdose, including accidental overdose, are at record levels in Australia and internationally.
>
> In Queensland we are seeing an increase in cases of prescription opioid related overdoses and deaths, an increase in people on treatment programs, increased referrals to alcohol and drug treatment services, and more evidence of these drugs entering into illicit markets.[522]

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518 Statement of compatibility, p 6.

519 Medicines and Poisons Act, s 224.

520 Medicines and Poisons Act, sch 1; Medicines and Poisons (Monitored Medicines Database Testing) Regulation 2020, ss 4, 5; Health (Drugs and Poisons) Regulation 1996, s 5, appendix 9. The Poisons Standard February 2021 is made under section 52D(2) of the *Therapeutic Goods Act 1989* (Cth).

521 Queensland Health, 'Frequently asked questions about schedule 8 drug reporting', https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/s8-drug-reporting/frequently-asked-questions.

522 State Development, Natural Resources and Agricultural Industry Development Committee, Medicines and Poisons Bill 2019, public briefing transcript, Brisbane, 27 May 2019, p 4.

At present, Queensland has a prescription drug monitoring program that collects information about certain dispensed prescription drugs on a weekly basis and provides a telephone enquiry service for doctors.[523]

To enable practitioners to access real-time information regarding a patient's medication history with respect to specific high-risk drugs, Queensland Health plans to implement real time prescription monitoring (RTPM). The RTPM will be part of a nationally implemented system, and be known in Queensland as 'QScript'.[524]

The goals of RTPM are to:

- identify patients who are at risk of harm due to dependence or misuse of controlled medicines
- identify patients who may be diverting these medicines
- limit 'prescription shopping' — visiting several doctors for the same prescriptions of a controlled medicine
- provide state and territory regulators with data to detect prescribers who are not complying with regulations.[525]

The RTPM system consists of two components:

1. A National Data Exchange (NDE), which captures information from state and territory regulatory systems, prescribing and dispensing software, and a range of external data sources.
2. Regulatory systems within each state or territory, which manage the authorities or permits for controlled medicines in each state and territory.[526]

Each Australian state and territory has introduced, or is working to introduce, legislation to provide for a monitored medicines database to support the implementation of the NDE.[527]

The Australian Department of Health advises:

> The personal information in the NDE will be securely stored (using a range of technical features) and will be accessible by prescribers, dispensers and state and territory regulators. Personal information of a patient in the NDE may be disclosed:
>
> - to prescribers and dispensers in the state or territory where the patient resides
> - to prescribers and dispensers in another state or territory in certain circumstances (such as where the patient requires a controlled medicine while out of their state or territory of residence)
> - to the relevant state or territory regulator
> - when it is required or authorised by law.[528]

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523 Queensland Health, 'Real-time reporting of monitored medicines', https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/real-time-reporting; Queensland Health, 'Enquiry service for clinicians, https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/drugs-of-dependence/clinician-enquiry; Queensland Health, 'Schedule 8 drug reporting requirements', https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/s8-drug-reporting/weekly-reporting; Queensland Health, 'Frequently asked questions about schedule 8 drug reporting', https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/s8-drug-reporting/frequently-asked-questions. Note that after 10 May 2021, S8 data from certain pharmacies will be provided to Queensland Health in real time.

524 Queensland Health, 'Real-time reporting of monitored medicines', https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/medicines/real-time-reporting.

525 Australian Government, Department of Health, 'National Real Time Prescription Monitoring (RTPM), https://www.health.gov.au/initiatives-and-programs/national-real-time-prescription-monitoring-rtpm.

526 Australian Government, Department of Health, 'National Real Time Prescription Monitoring (RTPM), https://www.health.gov.au/initiatives-and-programs/national-real-time-prescription-monitoring-rtpm.

527 Australian Government, Department of Health, 'National Real Time Prescription Monitoring (RTPM), https://www.health.gov.au/initiatives-and-programs/national-real-time-prescription-monitoring-rtpm.

528 Australian Government, Department of Health, 'National Real Time Prescription Monitoring (RTPM), https://www.health.gov.au/initiatives-and-programs/national-real-time-prescription-monitoring-rtpm.

The statement of compatibility provides further details about the protections in Queensland relating to the NDE:

> Registered health practitioners are bound by their professional obligations for maintaining confidentiality of patient information, which will help to ensure privacy. Apart from the automated 'upload' of dispensing data by dispensers, the monitored medicines database will be read-only for registered health practitioners and they will not be able to record information in the database. Under section 227 of the Medicines and Poisons Act, the chief executive may also impose a condition on a user for accessing or using information from the database. Access to the database can also be removed.
>
> Health practitioners will be required to accept the terms of access and use when registering to use the database. The terms will include limits and controls on how information from the database can be accessed and used. There will be a verification and multi-factor authentication process to ensure that only authorised users can obtain access to the database. Education, training and support materials are being developed to set out the requirements for access and use of information and to assist practitioners to comply with their obligations. Routine monitoring and auditing of access and use of the database will be undertaken, to ensure only authorised users have access, and protocols for investigating reported breaches will be established. Inappropriate use is an offence under the *Criminal Code Act 1899*, such as the offence in section 408E (Computer hacking and misuse) which carries a maximum penalty of 2 years' imprisonment.[529]

4.1.2.2 Proposed amendments

As noted in report chapter 2.9.1 (and chapter 3.4), the Bill proposes to omit and replace section 41 of the Medicines and Poisons Act, which makes it mandatory for prescribers and dispensers of monitored medicine to check the monitored medicines database before prescribing, supplying, dispensing or giving a treatment dose of a monitored medicine to a person (proposed actions).[530] Existing section 41, along with a number of other provisions in the Medicines and Poisons Act, has not yet commenced.[531]

According to the explanatory notes, new section 41 is 'substantially the same as existing section 41, but has been re-drafted for improved clarity'.[532] The Bill proposes to make the following changes:

- replace the term 'proposed action' with 'proposed dealing'
- replace the terms 'prescriber' and 'dispenser' with 'relevant practitioner'.[533]

'Relevant practitioner' is defined to mean a health practitioner prescribed by regulation to be a relevant practitioner for section 41.[534] The explanatory notes advise that there may be changes from time to time in which practitioners are authorised to prescribe, dispense or give treatment doses of monitored medicines under regulations.[535]

The maximum penalty of 20 penalty units ($2,669) for a failure to check the monitored medicines database remains unchanged from existing section 41.

The Bill would also amend section 226 of the Medicines and Poisons Act.[536] This would require information providers to give the chief executive 'relevant information' for the monitored medicines database at the time and in the way prescribed by regulation unless the information provider has a reasonable excuse.[537]

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529 Statement of compatibility, pp 9-10.

530 Bill, cl 229.

531 The automatic commencement of these provisions was postponed to 27 September 2021: see Medicines and Poisons (Postponement) Regulation 2020.

532 Statement of compatibility, p 9.

533 Explanatory notes, pp 71-72.

534 Bill, cl 229 (Medicines and Poisons Act, proposed s 41(4)).

535 Explanatory notes, p 72. See also statement of compatibility, p 9.

536 Bill, cl 244. Existing section 226 has not yet commenced.

537 Statement of compatibility, p 9.

The 'relevant information' to be given to the chief executive will be prescribed in regulations, instead of it being the information set out in section 225 of the Medicines and Poisons Act.

4.1.2.3 Right to privacy

The monitored medicines database places limitations on an individual's privacy by providing for the recording of personal information in the database about instances when an individual has been prescribed, dispensed or given a treatment dose of a monitored medicine.

The right to privacy protected by section 25 of the HRA includes respect for private and confidential information. This is designed to particularly protect the storage, use and sharing of such information.[538] The UN Human Rights Committee has indicated (in its General Comment on the Right to Privacy) that a law which authorises interference with privacy must be precise and circumscribed.[539]

Privacy is highly contextual. Thus, whether an interference with privacy is permissible will depend on whether there is a reasonable expectation of privacy in the circumstances. For example, a person will have a greater expectation of privacy in relation to their personal health information, which is sensitive personal data.

Committee comment

The committee notes that the Bill proposes to make fairly minor amendments to the provisions in the Medicines and Poisons Act relating to the monitored medicines database. The purpose of the amendments is to improve the clarity and operation of the regulations.[540]

The personal information included in the monitored medicines database is primarily required to assist medical and pharmaceutical personnel avoid harm to patients. The statement of compatibility elaborates on the expected benefits:

> … a real-time prescription monitoring system will aid clinical decision-making by allowing registered health practitioners access to real-time information about instances of use of monitored medicines before they prescribe, dispense or give a treatment dose of dependence-forming medicines for a patient. The monitored medicines database is intended to provide lifesaving benefits to patients, assistance for registered health practitioners in clinical decision-making, minimise over-prescription and reduce doctor shopping.[541]

The committee considers that the proposed amendments are a reasonable limitation on the right to privacy. As discussed above, the problems relating to misuse of prescription medicine include overdoses and deaths. The committee endorses the view expressed in the statement of compatibility that there does not appear to be a less restrictive and reasonably available way to achieve the purpose of the amendments.

The committee also considers that the proposed amendments are sufficiently precise and circumscribed. While personal information may be collected and accessed as part of the RTPM scheme, this information is directly related to a specified, limited purpose – that is, the prescription and giving of certain pharmaceutical drugs.

Further, as discussed above, there will be professional, technical, contractual and other protections in place to ensure that only permitted personnel access the information and only for authorised purposes.

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538 The UN Human Rights Committee, in its General Comment on the Right to Privacy, notes that every person should be able to ascertain which public authorities or private individuals or bodies control, or may control, their files. If such files contain incorrect personal data or have been processed contrary to legal provisions, every person should be able to request rectification or destruction. UN Human Rights Committee, *General Comment No. 16, Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation,* 8 April 1998 [10]. See also UN Human Rights Committee, *General Comment No. 34, Article 19, Freedoms of opinion and expression*, July 2011 [18].

539 UN Human Rights Committee, *General Comment No. 16, Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation,* 8 April 1988 [4].

540 See explanatory notes, pp 5, 17.

541 Statement of compatibility, p 9.

4.2 Statement of compatibility

Section 38 of the HRA provides that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

The statement of compatibility was tabled with the introduction of the Bill, and a sufficient level of information was provided in the statement to facilitate understanding of the Bill in relation to its compatibility with human rights.

Appendix A – Submitters

Sub #	Submitter
001	Local Government Association of Queensland
002	Australian Medical Association Queensland
003	Consult Australia
004	Professional Tattooing Association of Australia and New South Wales and Queensland Licenced Tattooists Group
005	Australian Sustainable Built Environment Council
006	Country Press Association
007	Queensland Law Society
007	Queensland Law Society (supplementary)
008	together Branch of the ASU
009	Australian Lawyers Alliance
010	Engineers Australia
011	AgForce Queensland
012	Australian Tattooists Guild
013	Pharmaceutical Society of Australia, Queensland Branch
014	Craig Goss, Method Tattoo Coffee Bar, Brendale
015	Lachlan Jones

Appendix B – Officials at public departmental briefing

Queensland Treasury

- Mr Leon Allen, Deputy Under Treasurer, Economics, Fiscal and Commercial
- Dr Graham Fraine, Deputy Under Treasurer, Policy, Performance and Corporate
- Mr Dennis Molloy, Head of Economics
- Mr William Ryan, Head of Fiscal
- Ms Sarah Amos, Head of Commercial
- Ms Cecelia Christensen, General Counsel
- Mr Neil Singleton, Insurance Commissioner

Department of State Development, Infrastructure, Local Government and Planning

- Ms Maree Parker, Deputy Director-General, Infrastructure and Economic Resilience
- Dr Caroline Smith, Executive Director, Economic and Policy Futures

Queensland Police Service

- Mr Doug Smith APM, Deputy Commissioner, Strategy and Corporate Services
- Mr Paul Friedman, Acting Executive Director, Policy and Performance
- Mr Anthony Brown, A/Director, Legislation Branch
- Acting Chief Superintendent Craig Weatherley, Organisational Capability Command

Queensland Health

- Professor Keith McNeil, A/Deputy Director-General, Prevention Division
- Dr Julie Stokes, Director, Healthcare Legislation Improvement Unit, Prevention Division
- Ms Uma Rajappa, Director, Environmental Hazards Unit, Prevention Division

Appendix C – Witnesses at public hearing

Queensland Law Society

- Ms Elizabeth Shearer, President
- Mr Matt Dunn, General Manager – Advocacy, Guidance and Governance
- Ms Wendy Devine, Principal Policy Solicitor

together Branch of the ASU

- Mr Alex Scott, State Secretary
- Ms Rosa Sottile, Political Organiser

Consult Australia *(via videoconference)*

- Ms Nicola Grayson, Chief Executive Officer

Engineers Australia

- Ms Stacey Rawlings, General Manager – Queensland
- Mr Laurie Bowman, Principal, Synchrony Projects, and Engineers Australia Member and Committee Member, Engineers Australia College of Leadership and Management

Queensland Country Press Association Inc *(via videoconference)*

- Mr Damian Morgan, Publisher Member and Consultant

Australian Medical Association Queensland

- Dr Brett Dale, Chief Executive Officer

Professional Tattooing Association of Australia Inc

- Mr Christiaan Llewellyn, National Treasurer of PTAA and Founder of New South Wales and Queensland Licenced Tattooists Group
- Mr Brenton Eldridge, NSW State Representative of PTAA and Administrator of New South Wales and Queensland Licenced Tattooists Group

Australian Tattooists Guild *(via videoconference)*

- Ms Tashi Edwards, Vice President
- Mr Alexander Cairnes, Head Consultant
- Mr Mick Hayes, Protat Professional Tattoo Supplies

Statement of Reservation

NON-GOVERNMENT STATEMENT OF RESERVATION

The Non-Government Members of the Economic and Governance Committee wish to make the following Statement of Reservations and concerns regarding the Debt Reduction and Savings Bill 2021.

The *Debt Reduction and Savings Bill 2021* may have the most misleading title to ever pass through this Parliament.

There is no real debt reduction proposed nor is there any significant savings to be identified.

It demonstrates a lack of understanding from the government about the fundamentals of the economy.

It also highlights their failure to understand a balance sheet. The debt reduction amounts to assigning an arbitrary value to the Titles Office of $4.1bn and then applying that to Gross Debt to reduce the Debt to Revenue Ratio after. The assumptions behind this figure have not been made available. When questioned during the public hearing the only response received from the Deputy Under Treasurer was that it was based on earnings. Given that the New South Wales Titles Office was valued at $2.6bn and Victoria's at $2.85bn – it is highly doubtful that the $4.1bn figure has been calculated using realistic assumptions.

By moving the "$4.1bn" into the Queensland Future Fund the government then proposes to use the "assets" to invest and get returns to pay down interest. Given Queensland's interest bill is north of $3bn per annum then the return on these assets must be going in to one of the greatest get-rich schemes of all time.

In relation to the $3bn over 4 years promised by the Treasurer in his first reading speech, the Committee was told there was only to $3m identified so far – quite a long way to go in a relative short space of time.

It should be noted that at the public hearing, no one from the business or economics community spoke to the Committee. This demonstrates what little impact this Bill will have on the Queensland economy.

Furthermore, the public briefing gave the Committee less than 50 minutes to consider the amendment or repeal of 18 acts of parliament.

Key areas of concern for Opposition Committee members include:

1. *Repeal of Queensland Productivity Commission Act 2015*

The Queensland Productivity Commission (QPC) has been an independent voice raising important public policy issues over the last 5 years.

The QPC has led important reviews in relation to the NDIS, imprisonment and recidivism, red tape reduction and electricity pricing. Notably, it has reported on the productivity decline across the Queensland economy since the election of the Labor government in 2015.

Now more than ever, Queensland needs independent voices challenging policy makers on all sides of Parliament and all layers of government.

2. *Amendment of Financial Accountability Act 2015*

In the first reading speech to the House the Treasurer stated several locations that no longer had a newspaper in print. This was his supposed justification for government

announcements to no longer be published in print. However, all the locations listed by the Treasurer have locally printed independent newspapers. These newspapers rely on varying sources of revenue to stay afloat and publication of public notices forms part of that revenue base.

As the Queensland Country Press Association stated at the public hearing *"The entire purpose of public notices regarding important decisions made by governments or mining companies or developers that impact the lives of ordinary citizens is that those notices need to be published in a public space. Given the choice not to do it and pay for doing it, it is pretty obvious what will be chosen. We do not see that as an asset; we see that as a liability. We see that as actually walking away from the long-held commitment to put these public notices in the public square…. I put it this way: it is not the predominant revenue; it is incremental revenue. However, we are in a world where delivering the important service of regional journalism is becoming increasingly difficult because of the fact that, as we have all heard, the rivers of gold have gone. The classified sections once were very lucrative for the corporates who owned them and that has gone. All revenue counts"*

Regional Queensland deserves to be supported by this government.

3. *Amendment of Medicines and Poisons Act 2019*

The proposed amendments place the burden of compliance on tattoo artists to ensure that every bottle of pigment comes with a certificate of analysis to ensure they comply with Queensland standards.

However, as all tattoo ink is manufactured overseas it is improbable that these manufacturers would provide a compliance certificate specifically to a small market such as Queensland. The details of the Queensland standard are yet to be provided.

Statements made by representatives of the tattoo community at the public hearing suggests that there was little consultation undertaken with key stakeholders. In their opinion, the amendments are impractical and would result in an increase in "backyard tattoo studios".

As Mr Christian Llewellyn of the Professional Tattooing Association of Australia stated at the public hearing *"Every tattooist I have spoken to over my extensive career puts the health of their clients and the general public as their No. 1 priority. No-one wants to tattoo with unsafe pigments. However, the proposed amendments to the act via the Debt Reduction and Savings Bill 2021 are definitely not the way forward. This proposal puts the onus of pigments on artists, who could face huge fines, and not manufacturers as there are no Australian manufacturers. It will cause immense economic harm and increased health risks not only to the Queensland tattoo industry but also to the general public of Queensland. Our informed judgement is that overseas pigment manufacturers are extremely unlikely to incur the costs to conform and continuously update the Queensland compliant analysis certificate as the Queensland market is relatively small in global supply terms, leaving Queensland tattooists with no ink to legally tattoo with….here is the justification for imposing a measure that could push one of the most heavily regulated tattoo industries in the world completely underground? If you are serious about being proactive in protecting the public health, stop tattoo supplies getting in the hands of the growing plague of backyard operators. Increase funding to prosecute those tattooing illegally—not force the whole industry to tattoo illegally."*

The amendment to the Act has not been thoroughly worked through and is impossible to comply with.

Ray Stevens
Deputy Chair of Economics and Governance Committee
State Member for Mermaid Beach

Michael Crandon
Member for Coomera

Dan Purdie
Member for Ninderry