

Health Legislation Amendment Bill (No. 3) 2025

Statement of Compatibility

Prepared in accordance with part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Timothy Nicholls MP, Minister for Health and Ambulance Services make this statement of compatibility with respect to the Health Legislation Amendment Bill (No. 3) 2025 (Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends eight health portfolio Acts to advance the health of Queenslanders, improve governance of the health system and ensure relevant legislation operates effectively. The Bill amends the:

- *Assisted Reproductive Technology Act 2024* (ART Act) to support the implementation of the regulatory framework for assisted reproductive technology (ART) services in Queensland by clarifying provisions, promoting equitable outcomes and where appropriate, introducing a pathway for case-by-case decision-making so the administration of the Act does not result in undue hardship;
- *Hospital and Health Boards Act 2011*, *Health and Wellbeing Queensland Act 2019*, *Pharmacy Business Ownership Act 2024* and *Hospital Foundations Act 2018* to allow the following office holders to be removed by Governor in Council with or without grounds:
 - Hospital and Health Board (HHB) members;
 - Health and Wellbeing Queensland (HWQ) Board members and Chief Executive Officer (CEO);
 - Queensland Pharmacy Business Ownership Council (PBOC) members and CEO; and
 - Hospital Foundation Board (HFB) members;
- *Private Health Facilities Act 1999* to:
 - clarify the head of power to specify types of private health facilities that must comply with standards of accreditation to provide a mechanism for requiring facilities that provide cosmetic surgery to comply with the National Safety and Quality Cosmetic Surgery Standards (Cosmetic Surgery Standards) and support the safe delivery of cosmetic surgery in Queensland; and
 - enable a regulation to prescribe information sharing agreements with Queensland Government entities about information collected under the Act;

- *Transplantation and Anatomy Act 1979* to maximise opportunities for organ donation in cases of circulatory death by providing a framework for consent to be given to conduct interventions on a potential donor, before life-sustaining measures are withdrawn, to better determine suitability and matching of organs, and improve organ viability; and; and
- *Public Health Act 2005* to make a minor consequential amendment to require occupational respiratory diseases to be notified in accordance with proposed changes to Commonwealth legislation.

Human Rights Issues

Human rights relevant to the Bill (part 2, division 2 and 3 *Human Rights Act 2019*)

I have considered each of the rights protected by part 2 of the Human Rights Act. In my opinion, the human rights that are relevant to the Bill are:

- Recognition and equality before the law (section 15, Human Rights Act);
- Right to protection from torture and cruel, inhuman or degrading treatment (section 17, Human Rights Act);
- Right to take part in public life (section 23, Human Rights Act);
- Right to property (section 24, Human Rights Act);
- Right to privacy and reputation (section 25, Human Rights Act);
- Right to protection of families and children (section 26, Human Rights Act); and
- Right to health services (section 37, Human Rights Act).

Further analysis of human rights that are limited by the Bill is provided below.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Amendments to the Assisted Reproductive Technology Act 2024

Providing for case-by-case chief executive approvals for certain uses of gametes despite Act requirements and clarifying consent requirements

The Bill provides for the chief executive to give a case-by-case approval, on reasonable grounds, for use of gametes despite the information collection requirements not being met or the 10-family limit on use of donor gametes having been exhausted. The Bill also aligns the terminology in the current chief executive approval provisions relating to using gametes that exceed the 15-year time limit and destruction of records with the new chief executive approval powers.

Currently, the ART Act requires consent from a gamete donor prior to use of their donated material in an ART procedure. The gamete donor's consent must include the maximum number of families that can be created using the donor's material as well as the maximum time period for the material to be stored, within the legislated limits.

The Bill provides that donor consent is not required to the extent that donated material is used under a chief executive approval to use a gamete that exceeds the 10-family limit or the 15-year storage limit.

The case-by-case approvals enable ART providers to perform actions that would otherwise be an offence under part 2 the ART Act. The amendments also provide for internal review of decisions relating to the family limit, time limit on use, information collection requirements or destruction of records, ensuring natural justice.

The case-by-case approvals engage and may limit the following human rights under the Human Rights Act:

- the right to privacy (section 25, Human Rights Act); and
- the right to protection of families and children (section 26, Human Rights Act).

(a) the nature of the right

Right to privacy

The right to privacy (section 25 of the Human Rights Act) provides that a person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The scope of the right is very broad and extends to protections against interference with a person's physical and mental integrity and their family and home. Limitations on the right to privacy must be proportionate and not capricious, unpredictable, unjust and unreasonable.

The Bill clarifies the interaction between existing donor consent requirements in the ART Act and the chief executive approval powers by providing that the chief executive approval can operate despite the donor consent requirements. This may limit the right to privacy as it interferes with a person's autonomy to make decisions about their body and family.

Right to protection of families and children

Section 26 of the Human Rights Act says that families are the fundamental group unit of society and are entitled to protection. The right prohibits a public entity from unlawfully or arbitrarily interfering with a person's family. Section 26 also provides that every child has the right to be protected, which means that the best interest of the child should be taken into account in all actions affecting a child. The rights extend beyond non-interference; they are a guarantee of institutional protection of family and positive measures for the protection of children by society and the State.

The Bill provides the ability for the chief executive to approve, on reasonable grounds, the use of gametes to create or expand a family despite the information collection requirements not being met or the 10-family limit having been reached. The chief executive approvals limit the right to protection of families for donor-conceived people as it potentially enables use of gametes despite the information collection requirements not being met. This may limit the information available to a donor-conceived person about the donor, impacting their ability to obtain information about their genetic heritage and family background. Additionally, the chief executive approval, despite the 10-family limit, may increase the number of donor-related

families created using a particular donor, therefore expanding a donor-conceived person's family without their knowledge or consent.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitations imposed by the Bill are to prevent undue hardship for people using ART services by providing the chief executive the ability to approve, in limited circumstances, and with justifiable reasons, the use of gametes despite the information collection requirements not being met in full or despite the use resulting in more than 10 donor-related Australian families.

The amendments ensure the chief executive powers under the ART Act operate as intended and clarify the interaction of the chief executive powers and donor consent provisions. This includes, for example, by allowing use of gametes that may exceed the 10-family limit despite the donor originally consenting to the gametes being used to create up to 10 families. The amendments are consistent with a free and democratic society based on human dignity, equality and freedom as it ensures people using ART services are not harshly restricted in creating or expanding their family.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitations on the right to protection of families for donor-conceived people and the right to privacy achieves its purpose of preventing undue hardship for people using ART services by allowing the relevant ART provider to apply to the chief executive to approve use of gametes despite particular requirements in the Act. Without the limitation on those rights, the relevant offence provisions would be unnecessarily strict and could result in harsh adverse outcomes for people seeking to start or extend their family using specific gametes.

Without the chief executive approval in relation to the information collection requirements, the absence of a single piece of information, such as the donor's place of birth, would prevent a family from using that donor's material, even where all other required information has been collected. While the chief executive approval limits the rights to protection of family for donor-conceived people, without the limitation, the right to protection of families could be significantly affected for people using ART services, for example where a patient already has a donor-conceived child using the same donor. It could also undermine the right to protection of every child, as the psychosocial impacts of having a sibling with different genetic origins, where a full genetic sibling could be born, can be significant.

Currently in relation to the family limit, if a couple with a donor-conceived child separate, and one partner wishes to use the same donor again, this would be considered a separate family. Where the 10-family limit has been exhausted, a person would be prohibited from using the donor, despite the potential psychosocial benefits to the existing child of having a genetic sibling. Further, the impact on any further donor-conceived child born is likely to be minimal, given they would likely be raised as part of the same family seeking to use the donated material, reducing the risk of potential consanguineous relationships. Overall, the limitation on the right to protection of families and children for donor-conceived people achieves the purpose of

ensuring people using ART services are not harshly restricted in creating or expanding their family, while still achieving the overall intention of the ART Act.

Similarly in relation to the right to privacy, as consent is required from the donor prior to use of the gamete and this consent includes the number of families that may use the donated gamete, there are likely to be circumstances where there is an inconsistency between the donor consent and the approval from the chief executive, noting that the chief executive approval powers are intended to provide discretion for use beyond the restrictions provided for in the ART Act. The Act does not allow the donor to formally consent, at the time of donation, to the creation of more families above the maximum limit set by the Act. As the chief executive approval is only sought after the maximum limit is reached, the interaction between the consent provisions and chief executive approval needs to be clear. Accordingly, the limitation on the donor consent allows for the chief executive to grant approval for use of gametes that might otherwise be restricted under the ART Act.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The amendments for case-by-case approvals are the least restrictive way to achieve the purpose of the Bill. They also ensure consistency with other provisions in the ART Act that require chief executive approval. There is no reasonably available alternative that would strike a fair balance between ensuring the limitations in the Act are not applied unduly and the overall intent of the ART Act. By providing case-by-case approval power, the chief executive is able to exercise discretion if presented with particular circumstances where application of the limitations imposed by the ART Act would result in undue hardship or unintended consequences.

The failure to strictly adhere to the information collection provisions may be due to circumstances entirely outside the ART provider's control. In circumstances of donated gametes from international donor banks which may be unable or unwilling to provide certain information, such as the donor's place of birth, this is particularly the case. The circumstances surrounding non-compliance with the information collection provisions or requests to exceed the 10-family limit is entirely within the knowledge of the ART provider and their relevant patients. It is appropriate that they provide the evidence to support any application to the chief executive for approval to use the gametes or embryos.

In relation to the donor consent, an additional amendment in the Bill requires an ART provider to seek consent from a gamete provider prior to obtaining their gametes, in addition to the provisions already in place in relation to seeking consent from the donor prior to use of the gametes. This consent provision promotes the right to protection from medical treatment without consent.

To mitigate the impact on the human right, the chief executive, when considering an application to approve use of donor gametes above the legislated limits, must be satisfied that the donor has consented to the application being made, or alternatively, that reasonable steps have been taken to obtain the consent of the gamete provider. The decision-making criteria aims to ensure that the gamete provider's wishes are considered, and that appropriate consent has been obtained from them. Further, if the donor has explicitly consented to a lower family limit or time limit (for example, they only wanted their donated material used to create five families or

for the next 10 years), it would be expected that the ART provider would contact the donor to ascertain if they were willing to consent to an increased limit within the legislated maximum. If the donor was unwilling or continued to expressly not consent to an increase in their initial consent, or did not consent to the application, then this would be a relevant consideration in the decision-making process to determine whether there are reasonable grounds for using the donated material. This would be balanced against the other circumstances of the case to determine whether use of the donated material should be approved.

Case-by-case approvals allow for a degree of flexibility in non-compliance with certain requirements in the Act while ensuring that any such non-compliance does not harshly affect people seeking to complete their family with the same donated material.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation on the rights to privacy and protection of families and children is reasonable and justified on balance.

The limitations strike a fair balance between supporting the overarching intent of the ART Act to protect the welfare and interests of donor-conceived people by ensuring appropriate information is being collected and the 10-family limit is not being unreasonably exceeded, with the rights of people who seek to start or extend their family with certain gametes, for example, in the case of people wanting to conceive genetic siblings for an existing donor-conceived child.

The case-by-case approvals aim to operate in a way that promotes the right to protection of families for people seeking to start or extend their family, while acknowledging the right to protection of families of donor-conceived people may be limited. The Bill requires chief executive approvals to be given on reasonable grounds, taking into account a range of considerations, including the donor's consent, and subjects decisions to refuse to internal review, ensuring natural justice.

To limit the impact on donor-conceived people, all decisions of the chief executive are underpinned by a robust decision-making process. Decision-making includes consideration of all key matters in the ART Act and consideration of the impact of any approved use on donor-conceived people (both existing children of the family seeking to use the material and broader donor-conceived people who are part of other families contributed to by the donor), recipient parents, and donors. The chief executive should also have regard to the objects of the ART Act, including the principle that the welfare and interests of people who are born as a result of ART are, throughout their lives, of paramount importance in the administration of the Act.

The Bill also includes safeguards to ensure that attempts are made to obtain the appropriate consent from the donor in support of an application for a chief executive approval. While acknowledging the information collection requirements and 10-family limit are key protections in the ART Act for donor-conceived people, the limitations strike a balance between the rights of donor-conceived people and people using ART services to start or extend their family by allowing the approval in limited and reasonable circumstances to prevent undue hardship or unintended consequences. The chief executive's approval discretion promotes the right to

protection of families for people using ART services and is consistent with a free and democratic society based on human dignity, equality and freedom.

The limitation ensures the ART Act does not operate in an unduly restrictive way that can lead to adverse outcomes for people seeking to start or extend their family and on balance, is fair and reasonable.

(f) any other relevant factors

Nil.

Clarifying transitional provisions that prohibit use of donated gametes or embryos under certain circumstances

The Bill expands the transitional provisions in the Act to provide that, despite the limitations on the use of donated gametes and embryos provided for in the Act, a person, their spouse or recipient parent/s can use remaining donated gametes or embryos allocated to them prior to commencement of the Act to extend their family. Previously, the transitional provisions only allowed this for the person who previously became pregnant using the allocated gametes or embryos. Extending the transitional provisions to recognise other family arrangements may engage the following rights under the Human Rights Act:

- Right to health services (section 37, Human Rights Act); and
- Recognition and equality before the law (section 15, Human Rights Act).

Right to health services

Section 37 of the Human Rights Act provides that every person has the right to access health services without discrimination.

Recognition and equality before the law

The right to recognition and equality before the law in section 15 of the Human Rights Act may be relevant when a policy or statutory provision, while stated in neutral terms, has the potential to have a disproportionate impact on a group in the community or members of the community who have a particular attribute.

The intent of the transitional provisions was to ensure that individuals and couples may continue to access ART services to have children who are genetic siblings, despite the prohibitions on use under the Act. While the intention of these provisions was to promote the right to protection of families and children, it inadvertently limited the rights to health services under section 37 of the Human Rights Act and recognition and equality before the law under section 15 of the Human Rights Act. The current transitional provisions disproportionately impact same sex female couples, persons or couples wishing to use surrogacy, and persons who had a former spouse who was pregnant using the donated gametes.

The amendments to the transitional provisions remedy this by expanding the potential use of the gametes to not only the person that was pregnant, but their spouse, or former spouse (at the time the gametes or embryos were allocated or embryo was created) (including use of a surrogate). The amendments protect and promote the rights to health services and recognition and equality under the law. They seek to enable individuals and couples, or those who use

surrogacy services, to access ART services to start or extend their intended family using the same donor as well as supporting those wanting to conceive genetic siblings. The Bill ensures access to the same health services, without disproportionate barriers.

Accordingly, the proposal does not limit but promotes the human rights to health care services and recognition and equality under the law.

Broadening of inspector power to require information

The Bill amends the existing inspector power in section 111 of the ART Act, which requires a person to give an inspector information where there is a reasonable belief an offence against the Act has been committed. The Bill broadens the power to enable an inspector to request information, by notice given to the person, where a person may be able to give information about a licensed provider's compliance with the ART Act and the information is necessary to support the inspector's function to investigate, monitor and enforce compliance with the Act.

The licensing framework is a key regulatory tool in the ART Act. Non-compliance with licence obligations, including compliance with licensing conditions, improvement notices and prohibition notices, are not offences under the Act.

Similarly, notification of serious adverse events is a key component of the Act to support oversight by Queensland Health, but there is currently no power to investigate a serious adverse event unless it is indicative of a breach of the Act.

The amendment to broaden the existing inspector powers in section 111 of the Act engages and may limit the right to privacy (section 25, Human Rights Act).

(a) nature of the right

Section 25 of the Human Rights Act provides that a person has the right not to have their privacy or reputation arbitrarily or unlawfully interfered with. The scope of the right is broad and includes the protection of personal information and data collection. Any interference with privacy that is unreasonable, unnecessary or disproportionate would limit the right to privacy.

The amendment to broaden the ability for inspectors to require information limits the right to privacy. Currently, the ability for an inspector to require information is limited to circumstances where the inspector reasonably believes an offence against the ART Act has been committed, and that a person may be able to give information about the offence in question. To enable proactive investigation and monitoring activities, the Bill broadens the power to enable inspectors to require information from a person if they reasonably believe that the information relates to a licensed provider's compliance with the ART Act and that the information is necessary to support the inspector's function to investigate, monitor and enforce compliance with the ART Act. The amendment supports a focus on compliance monitoring targeted at preventing harm and driving continuous improvement and increased safety across the ART sector.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to privacy is to protect the welfare and interests of people using ART services and people born as a result of ART services. The amendments ensure inspectors have the appropriate powers to fulfil their functions to investigate, monitor and enforce compliance with the Act. The amendment ensures that inspectors can appropriately perform their regulatory functions in a manner that is proactive, comprehensive, and in the best interests of people who use ART, and those who are born as a result. This approach is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right to privacy achieves the purpose. By allowing inspectors to obtain information about a licensed provider's compliance with the ART Act, inspectors can fulfil their function to investigate, monitor and enforce compliance with the Act, which ensures greater protection of the welfare and interests of people using ART services and those born as a result of ART services. The amendment enables proactive investigation and monitoring activities to be undertaken, allowing inspectors to more readily identify non-compliance and risk of harm, and address it in a manner which best reflects the welfare and interests of people who use ART and those born as a result.

The expanded inspector powers also align with community expectations as to how the ART industry should be regulated, ensuring the protection of the safety and welfare of people using services and those born as a result. Proactive regulation of compliance with the ART Act assists with identifying any areas where there could be potential for future harm and addressing those identified issues in advance of harm occurring. Limiting the right to privacy by proactively requiring information enhances the operation of the ART Act.

The current powers are reactive and only allow inspectors to require information where they reasonably believe that an offence has been committed against the ART Act and that a person is able to provide information about the offence. In isolation, this power limits the ability for inspectors to investigate and monitor compliance, as the power is only enlivened if there is a reasonable belief that an offence has already occurred, which could also mean harm has already occurred.

The licensing framework and notification of serious adverse events are key components of the Act to support oversight by Queensland Health. Currently, there is no power to monitor compliance with licence obligations, such as licensing conditions, improvement notices and prohibition notices, as non-compliance with these obligations are not offences under the Act. Similarly, there is no power to investigate a serious adverse event, or to undertake compliance monitoring in response to a serious adverse event, unless it is indicative of a breach of the Act.

By broadening the power to require information to support compliance with the Act more generally, the limitation on the right to privacy enables inspectors to take proactive investigation and monitoring measures, in alignment with their legislative function and to ensure the main objects of the ART Act are met. The amendment achieves the purpose of

ensuring the welfare and interests of people using ART services and those born as a result of ART services are appropriately protected.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There is no less restrictive or reasonably available way to achieve the purpose of the amendment. For inspectors to appropriately fulfil their function of investigating, monitoring and enforcing compliance with the ART Act it is critical that their ability to require information is not restricted to where there is a reasonable belief that an offence has already occurred. As noted above, there are many critical pillars of the ART Act where compliance is essential to the operation of the Act but where non-compliance is not a breach of the Act. There is also not a reasonably available way to enable proactive compliance, which would leave the powers as entirely reactive and undermine the goal of limiting, and where possible, preventing harm to users of ART services and persons born from ART services.

While the amendment to inspector powers limits the right to privacy, the impact of this limitation is mitigated in several ways. Despite broadening the ability for inspectors to require information, this ability is appropriately limited to circumstances where the inspector reasonably believes the information relates to a licensed provider's compliance with the Act and is necessary for the inspector to perform their legislative functions. Where this power is used, inspectors are also required to provide notice to the person before information may be required, supporting transparency and procedural fairness. Requests to provide information are also subject to the ART Act's existing protection against self-incrimination, which provides that it is a reasonable excuse to not give information required by an inspector if it may tend to incriminate the individual or expose them to penalty. Additionally, inspectors are provided with an extensive suite of operating procedures and guiding principles to ensure their power is appropriately utilised and the right to privacy is only limited to the extent necessary to fulfill functions under the ART Act in a proportionate and appropriate manner.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the amendment to broaden inspector powers represents lawful interference with a person's right to privacy. The amendment allows inspectors to obtain information from any person about a licensed provider's compliance with the ART Act if it is necessary for the inspector to meet their functions of investigating, monitoring and enforcing compliance with the ART Act. The amendment strikes a fair balance between a person's right to privacy and the inspector's function to investigate, monitor and enforce compliance with the ART Act. The extent of the limitation is mitigated as the power is appropriately limited in scope, requires notice be provided to the person and is subject to protection against self-incrimination.

(f) any other relevant factors

Nil.

Amendments to the *Hospital and Health Boards Act 2011*, *Health and Wellbeing Queensland Act 2019*, *Pharmacy Business Ownership Act 2024* and *Hospital Foundations Act 2018*

Removal of office holders with or without grounds

The amendments in the Bill to allow the Governor in Council to remove office holders with or without grounds, for HHB members, HWQ Board members and CEO, PBOC members and CEO, and HFB members, potentially engage and may limit the following rights under the Human Rights Act:

- Right to take part in public life (section 23, Human Rights Act); and
- Privacy and reputation (section 25, Human Rights Act).

(a) the nature of the right

Right to take part in public life

The right to take part in public life (section 23 of the Human Rights Act) provides that 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.

Discrimination, under the Human Rights Act, captures the attributes included in section 7 of the *Anti-Discrimination Act 1991*, which includes attributes such as sex, relationship status, parental status, age, race, impairment, religious and political beliefs, gender identity and sexuality. The concept of discrimination also captures attributes that are not listed in the Anti-Discrimination Act, including attributes such as criminal record discrimination.

Participation in the conduct of public affairs is a broad concept that covers all aspects of public administration. Individuals participate in the conduct of public affairs when they are members of legislative bodies or hold executive office. The right protected by section 23 of the Human Rights Act has been interpreted by the United Nations Human Rights Committee as providing a right of access, on general terms of equality, to positions in both the public service and public office.

The Bill engages the right to take part in public life because it relates to the removal of office holders from statutory positions.

Privacy and reputation

The right to privacy and reputation (section 25 of the Human Rights Act) provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have the person's reputation unlawfully attacked.

The human right relating to privacy and attacks on reputation is contained in article 17 of the International Covenant on Civil and Political Rights. Article 17 provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation. In addition, it provides that everyone has the right to the protection of the law against such interference or attacks.

The scope of the right to privacy is very broad and protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. It extends to a person's private life more generally,

including protecting the individual against interference with their home. Therefore, the right in section 25(a) of the Human Rights Act has been interpreted as including the right to work, because it relates to the person's ability to provide for their family and home.

The Bill potentially engages this right because it may impact on the removal of office holders from statutory positions.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Right to take part in public life

The purpose of the limitation on the right to take part in public life is to uphold high standards of performance, behaviour, integrity and effectiveness for the following office holders:

- HHB members under the Hospital and Health Boards Act;
- HWQ Board and CEO under the Health and Wellbeing Queensland Act;
- PBOC members and CEO under the Pharmacy Business Ownership Act; and
- HFB members under the Hospital Foundations Act.

Privacy and reputation

Similarly, the purpose of the limitation on the right to privacy and reputation is to ensure persons appointed to these statutory positions uphold high standards of performance, behaviour, integrity and effectiveness.

The office holders under each of these Acts play a vital role in the leadership, governance, service delivery and regulation of the public health system. Given the importance of their roles and the significant budgets and funding they administer, upholding high standards of performance, behaviour, integrity and effectiveness is consistent with a free and democratic society.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Right to take part in public life

The limitation on the right to take part in public life is necessary to achieve the purpose of ensuring high standards of performance, behaviour, integrity and effectiveness are maintained. Broadening the basis on which an office holder can be removed by the Governor in Council helps to ensure that office holders are held to these standards and that they can be removed from office if the Government has lost confidence in them.

The Bill does not make any changes which relate to the attributes included in section 7 of the Anti-Discrimination Act, or in relation to other specific attributes not listed in the Anti-Discrimination Act. Therefore, any limit on a person's right to take part in public life is not based on discrimination.

The legislation under which the office holders are appointed already contain various grounds for removing them or disqualifying them from continuing in office. This demonstrates that a person's right to participate in public life is not absolute. Broadening the grounds for removal from office does not prevent people from participating in public life, but provides an avenue for ensuring they are effective in the important leadership roles they hold in the public health system.

Privacy and reputation

The limitation on the right to privacy and reputation of an office holder is required to ensure office holders maintain high standards of performance, behaviour, integrity and effectiveness. The circumstances under which the power would be expected to be exercised by the Governor in Council would need to be sufficiently important that there would be a consensus decision made through Government consultation processes that the office holder should be removed. This ensures the office holder remains accountable for the leadership role they take in the public health system and requires them to maintain appropriate governance and performance measures for the statutory body they oversee.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

Right to take part in public life, and privacy and reputation

There are no less restrictive, reasonably available alternatives to achieve the desired policy outcome of ensuring office holders maintain high standards of performance, behaviour, integrity and effectiveness.

The approach of having prescriptive criteria as grounds for removal is not considered sufficiently responsive to ensure confidence is maintained in office holders in the broad range of circumstances that arise in overseeing the service delivery, governance and regulation of the public health system. Therefore, it is considered adopting a prescriptive approach would not achieve the purpose of the Bill.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Right to take part in public life, and privacy and reputation

The amendments in the Bill to enable the Governor in Council to remove office holders without cause does not provide any significant limits on participation in public life or a person's privacy and reputation. The rights of the individuals must be balanced against the rights of the public and the community to ensure that leadership, governance, service delivery and regulation of the public health system is effective.

One of the safeguards included in the amendments is that decision-making must be made through the Governor in Council process. Governor in Council decisions are subject to formal consultation processes across government.

The office holders are appointed to key roles within the public health system where they are responsible for leadership, governance, service delivery and regulation. They administer and

oversee significant expenditure and funding within the public health system. Given the critical nature of these roles, it is considered upholding high standards of performance, behaviour, integrity and effectiveness outweighs the modest limitations on human rights.

(f) any other relevant factors

Nil.

Amendments to the *Private Health Facilities Act 1999*

Power to prescribe standards of accreditation for facilities that provide particular health services

The amendment to clarify the head of power to require licensed private health facilities that provide a particular health service to comply with standards of accreditation that are prescribed potentially would engage and may limit the right to property under the Human Rights Act (section 24).

(a) the nature of the right

Section 24 of the Human Rights Act states that all persons have the right to own property alone or in association with others and must not be arbitrarily deprived of their property. Case law suggests that ‘arbitrary’ in this context refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are not proportionate to a legitimate aim that is sought.

‘Property’ includes all real and personal property interests recognised under general law (for example, interests in land, contractual rights, money and shares) and may include some statutory rights such as the right to use, licence and restrict access to a thing.

The amendment clarifying the head of power potentially limits the right to property by requiring licensees of facilities that provide particular health services to comply with standards of accreditation prescribed by regulation. This creates an additional licensing condition when additional standards of accreditation are prescribed, such as for those private health facilities that provide cosmetic surgery when the Cosmetic Surgery Standards are prescribed.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on property rights is to protect the health and safety of people who undergo procedures in private health facilities by strengthening safety and quality standards by having the ability to prescribe additional standards of accreditation.

The Private Health Facilities Act currently includes a head of power which provides that a licence for a private health facility must be issued on the condition that the licensee must comply with an accreditation scheme that relates to safety and quality matters and is prescribed by regulation. Section 8 of the *Private Health Facilities Regulation 2016* prescribes the Australian Health Service Safety and Quality Accreditation Scheme (AHSSQAS), incorporating the National Safety and Quality Health Service (NSQHS) Standards made by the Australian Commission on Safety and Quality in Health Care (Commission). This means that all private health facilities must comply with the NSQHS Standards to protect the public from

harm and to improve the quality of health services. The requirement to comply with the NSQHS Standards is not intended to change. However, there are other standards of accreditation that have been made under the AHSSQAS that are not prescribed, such as the Cosmetic Surgery Standards.

The amendment clarifies the head of power to ensure licenced private health facilities that provide a particular health service can be required to comply with a standard of accreditation that is prescribed. This allows a regulation to be made to provide that it is a condition of a licence for a private health facility that provides cosmetic surgery to also comply with the Cosmetic Surgery Standards. Promoting the safe provision of cosmetic surgery is consistent with a free and democratic society based on human dignity, equality and freedom. It also gives effect to the commitment from Australian Health Ministers to improve the quality of cosmetic surgery in Australia and protect the public from harm.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on property rights under the Bill achieves the purpose of improving public safety and the quality of health services, including cosmetic surgery in Queensland. Regulatory schemes with licensing requirements are widely used in settings where there is risk of harm to the public. Queensland Health currently administers a range of licensing schemes to regulate industries with risks to the health and safety, including the manufacture and sale of medicines and poisons, use of pesticides, radiation and food safety. There is also already a significant licensing scheme in place for private health facilities.

The limitation ensures that private health facilities that provide cosmetic surgery meet safety and quality standards that are specific to the provision of cosmetic surgery. Those facilities that do not meet these standards will no longer be able to provide cosmetic surgery.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There were no alternative ways identified that would achieve the intended purpose. While there is some overlap with the NSQHS Standards, which apply across all health services provided at private hospitals and day hospitals, the Cosmetic Surgery Standards were developed by the Commission specifically to protect the public from harm and improve the quality of cosmetic surgery in Australia and were approved by the Australian Health Ministers.

The limitation on the right to property is necessary to ensure private health facilities that provide cosmetic surgery comply with the Cosmetic Surgery Standards. This is to ensure the safe provision of cosmetic surgery and enhance the health and safety of the public.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill ensures that licensees of private health facilities ensure the facilities comply with the standards relevant to the health services they provide. For example, the Cosmetic Surgery Standards are intended to only apply to private health facilities that provide cosmetic surgery services, because the Cosmetic Surgery Standards contain requirements that are unique to these

facilities. An accreditation module has been developed for the Cosmetic Surgery Standards which highlights the unique requirements for those facilities already accredited to the NSQHS Standards. In addition, the accreditation process for these facilities is planned to be undertaken at the same time as the general accreditation process for the NSQHS Standards to minimise administrative burden and cost to the facilities.

Private health facilities are already subject to a significant number of regulatory and compliance checks. However, it is considered appropriate for private health facilities, whether they are private hospitals or day hospitals, to be required to meet the nationally agreed Cosmetic Surgery Standards to improve the safety and quality of cosmetic surgery procedures. The standards are expected to protect the public from harm in a sector that has been identified as having the potential to cause significant harm if appropriate safeguards are not in place.

It is considered that any impact on the right to property is proportionate to the objective of protecting public health and safety.

(f) any other relevant factors

Nil.

Amendments to the *Private Health Facilities Act 1999*

Power to share private hospital data with other Queensland Government entities under an agreement

The amendment in the Bill to allow for confidential information obtained under the Act to be disclosed to other Queensland Government entities under an agreement prescribed by regulation potentially engages and may limit the right to privacy under the Human Rights Act (section 25).

(a) the nature of the right

Section 25 of the Human Rights Act provides that a person has the right not to have their privacy or reputation arbitrarily or unlawfully interfered with. The scope of the right is broad and includes the protection of personal information and data collection. Any interference with privacy that is unreasonable, unnecessary or disproportionate would limit the right to privacy.

The Bill potentially limits the right to privacy by enabling the chief executive to share confidential information obtained under the Private Health Facilities Act with other Queensland State entities under an agreement prescribed by regulation. The right to privacy is already limited under the current provisions of the Act, as information sharing with Queensland government agencies is already permitted in certain circumstances, but the Bill introduces a more efficient process.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation on the right to privacy is to facilitate a timely and comprehensive approach to information sharing by Queensland Health with other Queensland Government entities about private health care information. This assists other Queensland Government

entities to conduct thorough analysis of relevant issues for which data or information about patients who receive health care in private facilities is relevant.

The sharing of data and information with other government agencies who have a legitimate interest in investigating and responding to issues of public harm is consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves the purpose by providing for timely information sharing with other Queensland Government entities by making the process for sharing information more efficient. The current process requires the chief executive to provide written authorisation for each disclosure and reporting information in the Queensland Health annual report. By enabling information to be shared through a prescribed agreement, it will be possible for information about both public and private health care to be shared with other government agencies at the same time. This enables a more comprehensive approach to considering issues by other government departments.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive, reasonably available alternatives to the proposal.

The Act currently allows for disclosure of confidential information to other Queensland Government entities on a case-by-case basis, if the chief executive considers it is in the public interest. In contrast, the Act also allows for disclosure to the Commonwealth, another State, or their entities by agreement if the chief executive is satisfied it is in the public interest. The proposal brings other Queensland State entities in line with these provisions, as well as provisions under the *Hospital and Health Boards Act 2011* and *Public Health Act 2005*, which provide for the disclosure of confidential information about public health care to be disclosed to other Queensland Government entities under an agreement prescribed by regulation.

The Bill does not change the nature or extent of the confidential information that is currently disclosed with written approval of the chief executive and reported in the Queensland Health annual report. It also maintains the appropriate test for disclosure, being that the information must only be disclosed if the chief executive is satisfied that the disclosure is in the public interest.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill strikes a fair balance between the policy objectives and the impact on the right to privacy. The proposal does not change the nature or extent of the confidential information that is disclosed, but creates a more efficient and effective process for disclosure.

In addition, prescribed agreements for the disclosure of information are drafted to ensure that each agreement contains appropriate obligations for continued compliance with the *Information Privacy Act 2009* and Queensland privacy principles. This ensures that confidential and personal information is stored, handled, accessed, amended, managed,

transferred, used and disclosed appropriately. With these safeguards in place, the disclosure of information is considered to have appropriate regard to the right to privacy of persons whose information is shared.

(g) any other relevant factors

Nil.

Amendments to the *Transplantation and Anatomy Act 1979*

Establish framework for consent to be given for ante-mortem interventions to be undertaken on a potential donor to support organ donation following circulatory death.

Organ donation saves and improves lives, but it is only possible in a very small number of people who die in hospital because specific criteria must be met for organ transplantation to occur. Part 3 of the Transplantation and Anatomy Act provides the process for a person's next of kin to consent to organ and tissue donation following the death of the person. For the purposes of donation, a person is considered deceased when all brain function has irreversibly ceased (known as brain death) or the circulation of the blood through the body has irreversibly ceased (known as circulatory death).

For successful organ donation, certain treatments and investigations (known as 'interventions') may need to be carried out on the potential donor to determine suitability for donation, enable organ matching with suitable recipients and maintain or improve organ function and viability. Interventions include performing blood tests, administering medication to prevent blood clots or conducting x-rays or other scans.

The Transplantation and Anatomy Act does not expressly set out the process for the next of kin of a person to consent to these interventions to be undertaken on a person in cases of donation following circulatory death because the person is on life-sustaining measures and legally still alive when these interventions need to be undertaken. The current framework results in a lack of certainty about who can consent to these interventions that has the potential to result in missed opportunities for life saving and life changing donations.

To remove the current uncertainty, the Bill amends the Transplantation and Anatomy Act to provide a framework for consent to be given by a person's next of kin for ante-mortem interventions to be undertaken on a potential organ donor to support organ donation following circulatory death.

The amendment engages and may limit the following human rights under the Human Rights Act:

- right to protection from torture and cruel, inhuman or degrading treatment (section 17, Human Rights Act); and
- right to privacy (section 25, Human Rights Act).

(a) The nature of the right

Right to protection from torture and cruel, inhuman or degrading treatment

Section 17 of the Human Rights Act prohibits three distinct types of conduct: torture; cruel, inhuman or degrading treatment or punishment; and medical or scientific experimentation or

treatment without consent. The amendments in the Bill engage the last type of conduct, namely the right to protection from medical treatment without the person's full, free and informed consent. This right has been limited by Queensland law in situations including, for example, where consent is provided by another person, such as a court, doctor or parent in certain situations or where a person is incapable of giving consent.

Right to privacy

The right to privacy (section 25 of the Human Rights Act) provides that a person has the right to not have their privacy unlawfully or arbitrarily interfered with. The scope of the right is very broad and extends to protections against interference with a person's physical and mental integrity. Limitations on the right to privacy must be proportionate and not capricious, unpredictable, unjust and unreasonable.

The amendments to the Transplantation and Anatomy Act to provide a framework for a person's next of kin to give consent to ante-mortem interventions being undertaken on the person may limit the rights to privacy and to not be subjected to medical treatment without the person's full, free and informed consent.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation to be imposed by the Bill is to enhance opportunities for lifesaving and life-changing organ donations by providing a statutory framework for obtaining consent from a person's next of kin so that ante-mortem interventions can be undertaken on a potential organ donor. Ante-mortem interventions are vital to the success of organ transplantation and providing a clear framework for consent for these interventions to be undertaken enhances the opportunities for successful organ donation.

Although the amendments in the Bill limit the rights to privacy and to not be subjected to medical treatment without the full, free and informed consent of the person who is receiving the medical treatment, the amendments in fact seek to give effect to section 17 of the Human Rights Act by providing a suitable substitute decision-maker to provide full, free and informed consent in circumstances where the person lacks capacity.

The Bill provides the substitute decision-maker is the person's next of kin as defined in the Transplantation and Anatomy Act. In the case of an adult who lacks capacity, this is likely to be their spouse and then their child, parent or sibling in that order. In the case of a child, this is likely to be their parent or guardian. By making the substitute decision maker the person's next of kin, it ensures that the decision is made by someone close to the person who will act to ensure the person's wishes are upheld. It also ensures that the right to privacy is not arbitrarily interfered with.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The amendment achieves the purpose to enhance opportunities for successful organ donation by providing a consent framework for vital ante-mortem interventions to be conducted on a

potential donor. The consent framework provides clarity and security in the decision-making process around organ donation.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

The amendment relates to consent for treatment in circumstances where the person is unable to provide their own consent as they are unconscious, have an injury incompatible with life and are usually on life-sustaining therapy in an intensive care unit. As the person is still alive, the consent structures provided for under the *Powers of Attorney Act 1998* and the *Guardianship and Administration Act 2000* were considered. Both options would also limit the rights to privacy and to not be subjected to medical treatment without full, free and informed consent as they also provide for a substitute decision-maker to provide consent.

Under the Powers of Attorney Act, a general power of attorney would not permit someone to consent on behalf of someone else in relation to ante-mortem interventions as they do not deal with health matters. The only clear option under the Powers of Attorney Act would be for consent to be provided under an enduring power of attorney or advance health directive that was made at the time when the person had capacity and included ante-mortem interventions. While there might be some circumstances where this does occur, it does not achieve the purpose of the limitation to maximise opportunities for organ donation in all circumstances of circulatory death.

Under the Guardianship and Administration Act, an advance health directive or appointment of a statutory health attorney may cover some, but not all ante-mortem interventions. Further, the Queensland Civil and Administrative Tribunal would be unlikely to appoint a guardian for this type of decision. An amendment to the Guardianship and Administration Act to expressly include provisions relating to ante-mortem interventions could achieve the purpose of the limitation, however, it would still require legislative amendments and would be equally restrictive. Further, the overall framework of the Guardianship and Administration Act is centred around and exists for the benefit of the adult and the amendments are ultimately for the benefit of others receiving the organ transplantation.

Amending the Transplantation and Anatomy Act is the more suitable option. The amendments provide for the person's next of kin to consent to ante-mortem interventions in circumstances of donation following circulatory death. The amendments in the Bill provide a clear framework to enhance the opportunities for successful organ donation. Accordingly, there is no other less restrictive and reasonably available way to achieve the purpose of the limitation.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any limitation on a person's right to privacy and to not be subjected to medical treatment without their consent is reasonable and justified when balanced against the public benefit in creating more opportunities for successful organ donation, which enhances the right to life. The limitation is mitigated by the fact that the amendments provide for a person's next of kin to provide the appropriate consent.

(f) any other relevant factors

Nil.

Conclusion

In my opinion, the Health Legislation Amendment Bill (No. 3) 2025 is compatible with human rights under the Human Rights Act because it limits the identified human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

THE HONOURABLE TIMOTHY NICHOLLS
MINISTER FOR HEALTH and AMBULANCE SERVICES

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