

7 February 2022

Our ref: [BT:H&D]

Committee Secretary
State Development and Regional Industries Committee
Parliament House
George Street
Brisbane QLD 4000

By email: [REDACTED]

Dear Committee Secretary

Health and Other Legislation Amendment Bill 2021 – questions on notice

Thank you for the opportunity to appear at the State Development and Regional Industries Committee's (**Committee's**) Inquiry into the Health and Other Legislation Amendment Bill 2021 (the **Inquiry**). The Queensland Law Society (**QLS**) provides the following remarks in response to two questions taken on notice:

- How does a person come before the Mental Health Court in Queensland?
- Does QLS have a view on the opt-in rather than opt-out model in relation to medical records that was put forward by the Information Commissioner?

How does a person come before the Mental Health Court in Queensland?

The Mental Health Court is constituted by judges of the Supreme Court of Queensland, and is advised by two assisting psychiatrists. The Mental Health Court decides the state of mind of people charged with criminal offences, deciding whether an alleged offender was of unsound mind when they committed an offence and whether they are fit to stand trial. Section 21 of the *Mental Health Act 2016* (Qld) provides that:

- (1) The Mental Health Court decides whether a person charged with a serious offence or other particular offences was of unsound mind or, for the offence of murder, of diminished responsibility, when the offence was allegedly committed or is unfit for trial.
- (2) If the court decides a person was of unsound mind when the offence was allegedly committed, or is unfit for trial, the court may make a forensic order or treatment support order for the person.
- (3) The forensic order may be a forensic order (mental health) or a forensic order (disability).
- (4) The court must also decide the category of the order and, if the category is inpatient, any limited community treatment for the person.
- (5) If the court decides a person is unfit for trial and the unfitness for trial is not permanent, the person's fitness for trial is periodically reviewed by the Mental Health Review Tribunal.

A reference to the Mental Health Court may be made where a person is charged with a 'serious offence',¹ other than an offence against a law of the Commonwealth, and a 'relevant person' has reasonable cause

¹ Being 'an indictable offence, other than an offence that, under the Criminal Code, must be heard and decided summarily': *Mental Health Act 2016* (Qld) s 20(3).

to believe the person was either of unsound mind (or in the case of murder, was of diminished responsibility) when the offence was allegedly committed, is unfit for trial.²

A case is referred to the Mental Health Court by a 'relevant person',³ which includes the:

- alleged offender or their legal representative;
- Director of Public Prosecutions;
- Director of Mental Health, if the person is receiving treatment for a mental illness or intellectual disability;
- Chief Psychiatrist or Director of Forensic Disability;⁴
- Magistrates Court;⁵ or
- District or Supreme Court.⁶

A reference is made to the Mental Health Court by the filing of a notice of the reference in the approved form to the registry.⁷

The Court also hears appeals from the Mental Health Review Tribunal and inquiries into the lawfulness of a patient's detention in authorised mental health facilities.⁸ A person mentioned in schedule 2, column 2 of the *Mental Health Act 2016* (Qld) may appeal to the Mental Health Court a decision of the Mental Health Review Tribunal mentioned in schedule 2, column 1.⁹

Does QLS have a view on the opt-in rather than opt-out model in relation to medical records that was put forward by the Information Commissioner?

In the time available we have been unable to fully consider the opt-in model proposed by the Office of the Information Commissioner (OIC). However, the Society shares the OIC's concerns about the privacy and data security risks associated with expanding the range of allied health professionals who will have access to The Viewer. In particular, we are concerned there is no ability for patients to choose to restrict access to specific information, or categories of information, within their record in The Viewer (as they may currently do in their My Health Record).

Accordingly, the Society would support further consideration being given to the safeguards suggested by the OIC, where the opt-in model appears, on its face, to be a stronger model of individual patient consent and more in line with contemporary community expectations about the use of sensitive personal information.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully



Kara Thomson
President

² *Mental Health Act 2016* (Qld) s 110.

³ *Mental Health Act 2016* (Qld) s 110(5).

⁴ Under s 110 of the *Mental Health Act 2016* (Qld).

⁵ Under s 175 of the *Mental Health Act 2016* (Qld).

⁶ Under s 183 of the *Mental Health Act 2016* (Qld).

⁷ *Mental Health Act 2016* (Qld) s 111(1).

⁸ *Mental Health Act 2016* (Qld) s 29(b).

⁹ *Mental Health Act 2016* (Qld) s 539.