

19 March 2026

Our ref: [KS:MC]

The Director
Legislative Policy Unit
Strategy, Policy & Reform Division
Queensland Health

By email: [REDACTED]

Dear Mr Mahler

Health Legislation Amendment Bill 2026

Thank you for the opportunity to provide feedback on the Health Legislation Amendment 2026 Consultation paper (**the Consultation paper**).

This response has been informed by members of the QLS Health and Disability Law and Planning and Environment Law Committees.

Our comments are limited to the matters outlined below.

Proposed changes to the *Mental Health Act 2016 (MHA)*

Proposal: Insert a clear legal authority to detain a person, for the time needed to complete an examination, or for up to three days, whichever is shorter, for the purpose of completing a psychiatrist's report directed by the Chief Psychiatrist.

Currently, the Mental Health Court can order examination of a person (court examination order) who is subject of proceedings before it. This order may authorise transport, but only if satisfied there is no other reasonably practicable way to ensure a thorough examination (s 670(3) MHA). The order authorises detention in the authorised mental health service for 3 days to conduct the examination, unless otherwise stated (s 670(4) MHA).

Although the proposed authority to detain for Chief Psychiatrist-initiated examination is similar, there are more safeguards before a court examination order can be made, including the ability to make submissions (s 669) and legal representation before the court. The power to detain is significant, given limits to a person's autonomy, rights to liberty, and other adverse effects detention can have on a person's life.

In addition, there are powers to detain if the person is so unwell as to warrant involuntary examination and treatment.

The right to liberty and security of person is protected by the *Human Rights Act 2019*. In our view, further evidence or practice examples are needed to ascertain why the proposed detention power is reasonable and necessary. Further consideration should also be given to whether there are less restrictive ways to achieve the intended purpose, including any additional safeguards which should be incorporated.

Such reports can apply to anyone charged with a serious offence and will assist in determining whether the person was of unsound mind at the time of the alleged offence or is unfit for trial. The person should be informed of their purpose and encouraged to participate in the examination.

Possible safeguards could include:

- An express requirement to explain the purpose and effect of a Chief Psychiatrist - initiated examination to the person. See for example s 89 MHA in relation to other psychiatrist report directions;
- Considering whether the person could consent to the examination (presuming they have capacity), before exercising an authority to detain;
- Allow the person to be supported by another person to understand the purpose and effect of the examination;
- If the person lacks capacity, explain the purpose and effect of the examination to the person's nominated support persons, guardian or attorney.

Proposal: Insert an express authority which allows officials under the Mental Health Act, including staff of an authorised mental health service, to disclose relevant personal information and provide assistance to authorised Commonwealth officers operating under federal migration and extradition laws.

We note this proposal is intended to provide clear legislative authority for staff to share personal information (as defined by the MHA), with authorised Commonwealth officers to assist with planning of a person's removal, extradition or deportation.

Sharing information of this type is necessary to ensure fair and equitable treatment of the person by considering their mental state and health needs, and to guard against discrimination. However, sharing of this information significantly impedes a person's privacy.

Given the sensitivity of the information being shared, QLS recommends that any legislative authority should come with appropriate safeguards such as:

- The consent of (or at least notification to), the person that the information is being shared, to who and for what purpose;
- Clear specification in the legislation the purpose for which information can be shared (therefore setting limits on the power); and
- Ensuring the authority to share the information is set at the appropriate level of authority.

Proposed changes to the Hospital and Health Boards Act 2011 (HHB)

Proposal: Amend the Hospital and Health Boards Act 2011 to authorise Queensland Health to directly acquire land compulsorily for health and ambulance services and related purposes, in accordance with the Acquisition of Land Act 1967, and enable the Minister for Health and Ambulance Services to approve the taking of land for these purposes.

QLS notes the purpose of the compulsory acquisition power will be for "health and ambulance services and related purposes". The Consultation paper provides several examples of such purposes on pages 27 to 28.

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The legislation should provide clarity as to what is meant by "related purposes". For consistency, we suggest similar language as that provided in Schedule 1 of *the Acquisition of Land Act 1967* (Qld) should be included in the drafting.

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 [REDACTED] [REDACTED]

Yours faithfully

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Peter Jolly
President