

Mental Health Legislative Framework Analysis

Prepared by QPILCH for the Queensland Mental
Health Commission

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Introduction

People with mental illness and substance misuse issues are frequently confronted with a myriad of laws that impact on their rights or confer specific benefits to them. Many aspects of people's lives – housing, health care, social behaviour, decision-making etc - are governed by a complex framework of State and Commonwealth laws.

The complexity and sheer volume of laws in recent decades has made the legal system increasingly difficult to navigate for all citizens. This can be compounded for people suffering from mental health and substance misuse issues who frequently face economic, social and other disadvantages, in addition to health issues, which can bring them into greater contact with the agencies that enforce or administer laws. In addition to the laws, procedural issues and lack of services can make it difficult to navigate the system in order to enforce rights or claim benefits.

The purpose of this document is to assist consumers, carers, advocates, policy makers and others to understand the overarching framework of laws that are likely to impact directly or indirectly on significant numbers of people with mental illness or substance misuse issues or to a greater extent than on the general population.

The document identifies and provides a short overview of relevant State legislation. Many Acts considered in this document also have corresponding regulations, however, only those regulations with particular relevance have been included. Key pieces of Commonwealth legislation are also included where the State legislation is incomplete or cannot be understood without reference to the Commonwealth legislation (for example in the context of employment). In addition to this, a brief overview of relevant international instruments is provided and we have noted some examples of compliance and non-compliance with these instruments throughout the document. However, it should be noted that these examples are by no means exhaustive.

The legislation has been grouped into subject categories and is discussed in plain English for accessibility and understanding. Many of the Acts are quite lengthy and contain complex and technical provisions. This document is not intended to provide comprehensive legal analysis or advice on legislation but to provide a bird's eye view of the purpose and key provisions of the legislation. Each section contains a list of relevant agencies which may be able to provide expert advice on particular legislation.

The document attempts to highlight connections and linkages with relevant legislation and to highlight where one given set of facts or situation might invoke various different pieces of legislation.

From our research, it appears that no other jurisdiction in Australia has attempted to develop such a document. In that respect, it charts new territory. It is challenging to determine which legislation to include and which to exclude. We have attempted to identify the legislation which has direct relevance to people with a mental illness or substance misuse issue, as well as legislation that may have a significant indirect impact. However, the decision about which legislation to include is inevitably arbitrary. Some legislation included applies to all citizens equally and makes no specific reference to people with a mental health or substance misuse

issue, but has been included because of the indirect or unintended impact on this group of people. Other legislation has been enacted for the specific benefit of people with a mental illness or substance misuse issue (for example the *Mental Health Act 2000* (Qld)), or for a broader group of people of which this group may form a subset (for example Anti-Discrimination legislation).

The document is a snap shot in time of current State legislation and is not intended to be exhaustive. It is necessarily a 'living' document and will evolve over time as legislation changes and knowledge increases. There are a number of pieces of legislation that are currently under review by the State government and these reviews are noted in the relevant parts.

By way of caveat, it should be noted that in addition to legislation which may confer rights or benefits or impose obligations, the agency or government department that has responsibility for administering specific legislation will also have a vast set of formal and informal policies which govern how the law applies to a particular situation. In practice, policy can have as much impact on a person as the legislation itself. Sometimes, there is a gap between the legislative intent and the application of laws, particularly where the law allows the department or decision-maker considerable discretion, or where agencies are particularly under-resourced. Unfortunately, there is not scope within this document to address the policy framework which underlies each piece of legislation.

In addition to policy and resource issues, another issue of concern is the unequal impact of particular laws on people with mental illness and substance misuse issues. Australian governments operate in accordance with the Rule of Law which requires laws to be clearly articulated and accessible, knowable to all and applicable to all citizens. The latter principle is captured in the maxims that 'no-one is above the law' and 'equality before the law'. Nonetheless, in practice, the consequences of particular laws can fall unevenly on particular individuals or groups of people.

Increasingly, judicial officers and legislators recognise that equality before the law does not always mean same treatment under the law. The achievement of equality before the law will often require allowance for particular circumstances and disadvantage. People with mental health issues and substance misuse issues are among the most disadvantaged in our community. The document highlights some areas where special provisions apply and others where there is lack of special provisions which create particular difficulties for consumers.

Children

Although many laws impact both adults and children, it has only been relatively recently that laws specifically intended to protect the interests and rights of children have been introduced. Laws which provide children with additional protections are crucial because children are particularly vulnerable and limited in their ability to protect their interests. Those children who also have a mental illness or substance misuse problem, or who have a parent with either of these problems, are even more vulnerable and in need of further protection.

The *Convention on the Rights of the Child* (1989) (**CRC**)¹ recognises the need for child-specific protection and has now been ratified in almost every country, including Australia. More countries have ratified the Convention than any other human rights treaty in history. While some aspects of the CRC have been implemented in both federal and state laws, there is no single piece of legislation which reflects all of the principles outlined in the CRC.

This section discusses laws that apply specifically to children and issues that can arise under these laws for people (including children, or their parents), with a mental illness or substance misuse problem. However, many other laws can impact children, often to a disproportionate extent, even where they do not specifically apply to children, or are not intended to affect children differently from adults. For example, the *Mental Health Act 2000* (Qld) (**MHA**) applies to both adults and children. Although the MHA has sections within it that mention children, in general it applies to adults and children in the same way. It does not include a separate section for the treatment of children with a mental illness which reflects their significant vulnerability.

Relevant legislation

- *Adoption Act 2009* (Qld)
- *Child Protection Act 1999* (Qld)
- *Child Protection Regulation 2011* (Qld)
- *Commission for Children and Young People and Child Guardian Act 2000* (Qld)
- *Education (General Provisions) Act 2006* (Qld)
- *Youth Justice Act 1992* (Qld)
- *Youth Justice Regulation 2003* (Qld)

Case Example:

QPILCH received an enquiry from a hospital mental health team in relation to a client. The client was a father with a long-term mental illness. He was receiving treatment and his condition was stable, however he had been denied access to his child. The mental health team supported his claim and had determined he did not present a risk to his child. QPILCH referred him to Legal Aid for assistance.

¹ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

Adoption Act 2009 (Qld)

What is the Act about?

The *Adoption Act 2009* (Qld) (AA) outlines how and when a child may be adopted by families in Queensland. Families who wish to adopt a child from overseas must comply with the eligibility criteria in both the AA and any relevant laws in the home country of the child they are adopting.

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness may have difficulties in both consenting to their child being adopted and becoming an adoptive parent. People with a substance misuse problem may also have difficulties in becoming an adoptive parent, particularly if they have been charged or convicted of drug use offences.

A parent with a mental illness may be considered as lacking the capacity to consent to someone else adopting their child. In this case, the parent, or another concerned person, can apply to the Queensland Civil and Administrative Tribunal (QCAT) for a declaration that the parent has capacity to consent.² If a counsellor or the chief executive of Adoption Services Queensland (the **chief executive**) suspects the parent does not have capacity to consent, they must apply to QCAT for a declaration that the parent has the capacity to consent before the adoption can proceed.³ If a declaration is made by QCAT that the parent does not have the capacity to consent, a guardian must be appointed for the parent by QCAT under the *Guardianship and Administration Act 2000* (Qld).⁴ The parent's guardian will then be able to decide on their behalf whether to consent to the adoption.

Before a person is allowed to adopt a child, they must be assessed to determine whether they are suitable to be an adoptive parent. In particular, the chief executive must consider if the adoptive parent, or anyone in their household, would pose an unacceptable risk of harm to the child.⁵ The chief executive must be satisfied that the adoptive parent has 'good health' (including mental health) to provide stable and high level care for a child until adulthood.⁶ If an adoptive parent has a particular health condition, the chief executive must consider whether that condition will be likely to have a negative impact on the adopted child's wellbeing and best interests.⁷ Further, the chief executive must consider the person's capacity to be an adoptive parent more generally. This includes the person's psychological capacity and personal qualities.⁸

Key sections of the Act include:

- s 29 – declaration of tribunal whether an adult parent has capacity to consent;
- s 121 – unacceptable risk of harm;
- s 122 – health requirements; and

² *Guardianship and Administration Act 2000* (Qld) s 146.

³ *Adoption Act 2009* (Qld) s 29.

⁴ *Ibid* s 30.

⁵ *Ibid* s 121.

⁶ *Ibid* s 122.

⁷ *Ibid* s 122.

⁸ *Ibid* s 124.

- s 124 – capacity to be adoptive parent generally.

Which agency is responsible for administration of the Act?

- Department of Communities, Child Safety and Disability Services (Adoption Services Queensland)

Which judicial body is responsible for enforcement of the Act?

- Childrens Court
- Queensland Civil and Administrative Tribunal (QCAT)

Relationship with other Queensland Legislation

Child Protection Act 1999 (Qld) (CPA)

If a child's safety and wellbeing is put at risk by the child's adoptive parents, the CPA allows the Department of Communities, Child Safety and Disability Services (Child Safety Services) (CSS) to take action for the protection of the child.

Guardianship and Administration Act 2000 (Qld) (GAA)

A guardian may be appointed by QCAT under the GAA where a parent does not have the capacity to consent to an adoption.

Similar legislation in other jurisdictions

Each State or Territory has authority to make laws with respect to adoption within that jurisdiction. State and Territory governments also have responsibility for managing intercountry adoptions in compliance with agreements negotiated between the Australian Government and particular countries. Management of intercountry adoptions includes assessing the suitability of prospective adoptive parents.

Federal adoption laws

The Australian Government has indicated its intention to review federal adoption laws to make intercountry adoption easier.⁹

⁹ The Hon Tony Abbott MP, *Making Overseas Adoption Easier for Australian Families* (19 December 2013) Prime Minister of Australia < <https://www.pm.gov.au/media/2013-12-19/making-overseas-adoption-easier-australian-families>>.

Child Protection Act 1999 (Qld) and Child Protection Regulation 2011 (Qld)

What is the Act about?

The primary purpose of the *Child Protection Act 1999 (Qld) (CPA)* is to provide for the protection of children.¹⁰ The CPA recognises that the safety, wellbeing and best interests of a child are paramount¹¹ and that a child should be protected from the risk of harm.¹² The CPA also recognises the importance of family in both contributing to the child's upbringing and keeping him or her safe and encourages support of the family unit to ensure this occurs. Further, the CPA acknowledges the need to provide support to both the child and their family, if the child is removed, to allow the child to return home where this is appropriate.¹³

The CPA provides the Department of Communities, Child Safety and Disability Services (Child Safety Services) (CSS) with powers to investigate complaints of harm to children. A child will be in need of protection by CSS if he or she has suffered harm, is suffering harm, or is likely to suffer harm and does not have a parent who is able and willing to protect them.¹⁴ This includes harm to the child's physical, psychological or emotional wellbeing,¹⁵ which may be caused by physical, psychological, or emotional abuse or neglect, or sexual abuse or exploitation.¹⁶

CSS also has the power to apply for a temporary custody order,¹⁷ allowing CSS to take a child into custody for up to three days,¹⁸ generally so that a child protection order can be made, and child protection orders.¹⁹ Child protection orders may:²⁰

- require a parent to do or stop doing something that is affecting the child's protection;
- prevent a parent from having contact with the child; or
- grant custody of the child to a suitable person other than the child's parent.²¹

All child protection orders must state the date on which the order will end. Child protection orders that relate to guardianship of the child may be either short-term or long-term. Short-term orders of this kind last for a maximum of two years; however, long-term orders last until the child turns 18. Other child protection orders that do not relate to guardianship last for a maximum of one year.²²

¹⁰ *Child Protection Act 1999 (Qld)* s 4.

¹¹ *Ibid* s 5A.

¹² *Ibid* s 5b(a).

¹³ *Ibid* s 5B.

¹⁴ *Ibid* s 10.

¹⁵ *Ibid* s 9(1).

¹⁶ *Ibid* s 9(3).

¹⁷ *Ibid* s 51AC.

¹⁸ *Ibid* s 51AG.

¹⁹ *Ibid* s 54.

²⁰ *Ibid* s 61.

²¹ *Child Protection Regulation 2011 (Qld)* s 17.

²² *Child Protection Act 1999 (Qld)* s 62.

Are there particular concerns for people with a mental illness or substance misuse problem?

A person with a mental illness or substance misuse problem will not be considered a suitable person for custody or guardianship of a child where they pose a risk to the child's safety.²³

Although the guiding principles of the CPA emphasise the importance of family and the need to support the family unit, where a child is removed there is no clear and consistent understanding of what 'support' entails. Until recently, decisions of proceedings heard in the Childrens Court on child protection matters were not recorded. This made it difficult for a consistent meaning of 'support' to evolve through precedent cases. This has been compounded by the need to give priority to 'risk to the child' over family support in assessing whether an order under the CPA is necessary. CSS has a duty to ensure the safety of the child and is therefore obliged to act when the child is assessed as being at risk in the family environment, however additional 'support' to the family, in some circumstances, may be sufficient to alleviate the identified risk factors.

Key sections of the Act include:

- s 9 – what is *harm*;
- s 10 – who is a *child in need of protection*;
- pt 3AA – temporary custody orders; and
- s 61 – types of child protection orders.

Which agency is responsible for administration of the Act?

- Department of Communities, Child Safety and Disability Services (Child Safety Services)

Which judicial body is responsible for enforcement of the Act?

- Childrens Court
- Queensland Civil and Administrative Tribunal (QCAT)

Relationship with other Queensland legislation

Adoption Act 2009 (Qld) (AA)

The AA allows for the adoption of a child. If a child's safety and wellbeing is at risk by the child's adoptive parents, the CPA may allow CSS to take action for the protection of the child.

Commission for Children and Young People and Child Guardian Act 2000 (Qld) (CCYPCGA)

The Commission for Children and Young People and Child Guardian, established under the CCYPCGA, represents and provides assistance to children in Queensland. It provides assistance to children who have dealt with CSS.

Guardianship and Administration Act 2000 (Qld) (GAA)

While the CPA allows for decisions to be made on behalf of a child, the GAA allows for decisions to be made on behalf of adults who lack capacity.

²³ *Child Protection Regulation 2011* (Qld) s 17.

Commission for Children and Young People and Child Guardian Act 2000 (Qld)

What is the Act about?

The *Commission for Children and Young People and Child Guardian Act 2000 (Qld)* (CCYPCGA) aims to protect the rights and wellbeing of children. It also establishes the Commission for Children and Young People and Child Guardian (**the Commission**).²⁴ The Commission has numerous functions including:

- monitoring, investigating and resolving complaints about services provided to children;
- advocating for children and helping them to get the services and advice that they need;
- monitoring and reviewing laws that impact on children;
- administering a community visitor program (where members of the Commission visit children and young people in youth detention centres, foster care or other services to provide help and listen to any concerns they may have); and
- deciding whether people are suitable to work in places that deal with children.²⁵

People who work in places that deal with children are generally required to obtain a Positive Notice Blue Card (**blue card**). The Commission is responsible for deciding whether a person is eligible to work with children.²⁶ If a person has been charged or convicted with an offence however, they may not be allowed to get a blue card.²⁷

Are there particular concerns for people with a mental illness or substance misuse problem?

People who have been convicted of a serious offence, including trafficking,²⁸ supplying²⁹ or producing³⁰ dangerous drugs under the *Drugs Misuse Act 1986 (Qld)*,³¹ may not be able to get a blue card, similarly any criminal convictions for offences against children will generally preclude a person from getting a blue card.

If the Commission decides that there is an 'exceptional case', a person who has been charged or convicted of an offence may be able to get a blue card. In deciding whether the person's situation is exceptional, the Commission may consider a report about the person's mental health, or obtain information from the Mental Health Court or Mental Health Review Tribunal.³² Further, the Commission may request a person to have an examination by a registered health practitioner.³³

Key sections of the Act include:

- s 17 – commissioner's functions;
- s 225 – issuing prescribed notice to other persons;

²⁴ *Commission for Children and Young People and Child Guardian Act 2000 (Qld)* s 14.

²⁵ *Ibid* s 17.

²⁶ *Ibid* ch 8.

²⁷ *Ibid* ss 168, 174.

²⁸ *Ibid* s 5, 9D.

²⁹ *Ibid* s 6.

³⁰ *Ibid* s 8.

³¹ *Ibid* sch 2.

³² *Ibid* ch 8 pt 6 div 6-7.

³³ *Ibid* s 330.

- s 226 – deciding exceptional case if conviction or charge;
- ch 8 pt 6 div 6 – obtaining report about person’s mental health;
- ch 8 pt 6 div 7 – obtaining other information about person’s mental health; and
- sch 2 – current serious offences.

Which agency is responsible for administration of the Act?

- The Commission for Children and Young People and Child Guardian
- Health and Community Services Committee (**HCSC**). The HCSC is responsible for monitoring and reviewing the performance of the Commission.
- Queensland Child Protection Commission of Inquiry. The Queensland child protection system has recently been reviewed by the Honourable Tim Carmody QC (now his Honour Judge Carmody QC). The Carmody Report made 121 recommendations, 115 of which have been accepted by Government. The Queensland Government will develop an implementation plan to address issues by March 2014.

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (**QCAT**)

Relationship with other Queensland legislation

Child Protection Act 1999 (Qld) (**CPA**)

Under the CPA, the Department of Communities, Child Safety and Disability Services (Child Safety Services) (**CSS**) investigates complaints of harm to children and ensures the protection of children who are at risk of harm. The Commission supports the role of CSS and ensures that children get the support and assistance they need.

Drugs Misuse Act 1986 (Qld) (**DMA**)

The DMA sets out offences associated with the possession and use of drugs in Queensland. A criminal offence under the DMA will be used to determine whether a person should be eligible for a blue card.

Education (General Provisions) Act 2006 (Qld)

What is the Act about?

The *Education (General Provisions) Act 2006* (Qld) (**EGPA**) outlines the requirements of the State Education system, including the availability of free education for children within Queensland³⁴ and the requirement that children enrol and attend school. State schools are also required to provide approved educational programs that consider the age, ability, aptitude and development of students and promote their continual learning.³⁵

Attendance

Generally, children between the ages of six and a half years and 16 years will be required to attend school as they are considered to be of 'compulsory school age'. However, this does not apply if the child:

- has completed year 10;³⁶
- is registered for home schooling;³⁷
- is ill for less than ten days; or
- is unable to attend, or it would be unreasonable for the child to attend (for example due to illness) and an exemption has been granted.³⁸

Parents are responsible for ensuring their children enrol and attend school. If a parent fails to do so, without a reasonable excuse, they may be fined. A 'reasonable excuse' may include if the parent is unable to control their child's behaviour, or if the child lives with another parent who is not complying with the requirements.³⁹

Enrolment

A child may be unable to enrol at a school if the principal and chief executive of the Department of Education believe the child would pose an unacceptable risk to the safety and wellbeing of other people in the school.⁴⁰ If this happens, reasons must be provided detailing why the child poses an unacceptable risk and the child, or their parents, must be given the opportunity to respond.⁴¹ A second application for enrolment at the same school will not be permitted within one year if there is a finding that the child will pose an unacceptable risk.⁴² However, if the child's parents are unhappy with the decision, they may apply to have the application internally reviewed.⁴³ If they are still unhappy with the decision, an application may also be made to the Queensland Civil and Administrative Tribunal (**QCAT**) for an external review.⁴⁴

³⁴ *Education (General Provisions) Act 2006* (Qld) s 50.

³⁵ *Ibid* s 12.

³⁶ *Ibid* s 9.

³⁷ *Ibid* s 199.

³⁸ *Ibid* s 185.

³⁹ *Ibid* s 176.

⁴⁰ *Ibid* ss 156(2), 159.

⁴¹ *Ibid* s 159.

⁴² *Ibid* s 163.

⁴³ *Ibid* ss 390-392.

⁴⁴ *Ibid* s 394.

Children with a disability may apply for enrolment at a 'special school' if the school has the ability to provide for the student's educational needs.⁴⁵ Generally, children who are unlikely to reach their full potential without special education will be considered to have a disability.⁴⁶ If a child is refused enrolment at a special school, the child's parents may have this decision reviewed internally⁴⁷ and also externally at QCAT if they are unhappy with the result of the internal review.⁴⁸

Suspension and expulsion

A child may be suspended if they are disobedient or engage in misconduct.⁴⁹ Suspensions are usually for a period of less than five days, however, they may be ordered for a maximum of 20 days in more serious cases.⁵⁰ A child may also be expelled if they are disobedient or engage in misconduct and a suspension is an inadequate response to the child's behaviour.⁵¹

Are there particular concerns for people with a mental illness or substance misuse problem?

Children with a mental illness may require special support to ensure they reach their full educational potential. The EGPA allows children with a disability to receive special education when necessary.

There may also be concerns for children who have parents with a mental illness or substance misuse problem in regards to their schooling. .

Key sections of the Act include:

- s 9 – meaning of compulsory school age;
- s 50 – state education to be free;
- ss 155-167 – enrolment at state schools;
- s 176 – obligation of each parent;
- s 284 – grounds for suspension of student; and
- s 288B – grounds for expulsion of student by principal.

Which agency is responsible for administration of the Act?

- Department of Education, Training and Employment

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)

⁴⁵ Ibid ss 156, 166.

⁴⁶ Ibid s 165.

⁴⁷ Ibid ss 390-392.

⁴⁸ Ibid s 394.

⁴⁹ Ibid s 284.

⁵⁰ Ibid s 285.

⁵¹ Ibid s 288B.

Youth Justice Act 1992 (Qld) and Youth Justice Regulation 2003 (Qld)

What is the Act about?

The *Youth Justice Act 1992* (Qld) (YGA) sets out how police officers and courts can deal with children under the age of 17 who commit, or who are alleged to have committed, an offence. It also sets out how children charged with an offence can be managed without going through the court process. For example, a police officer can give the child a caution. Alternatively, a youth justice conference may be arranged if the child has admitted to committing the offence.⁵² A youth justice conference is a discussion between the child, the victim and other concerned people, such as family members and lawyers, about the offence and the appropriate response to it.⁵³

If the court process cannot be avoided, the child must be brought before the Childrens Court to be dealt with according to law. During the lead up to a court hearing, the child may be released with or without bail.⁵⁴ The child's parents will generally be required to attend court in support of the child.⁵⁵ If the child is found guilty, the court will have the power to make a variety of orders including a:

- reprimand;⁵⁶
- good behaviour order;⁵⁷
- fine;⁵⁸
- term at boot camp;⁵⁹
- community service order;⁶⁰ or
- imprisonment in a youth detention centre.⁶¹

Are there particular concerns for people with a mental illness or substance misuse problem?

A child who has been charged with an offence relating to substance misuse may attend a drug assessment and education session instead of going through the court process.⁶² At a drug assessment and education session, a qualified health service provider will ask the child to consider their use of illicit drugs and any problems they may be experiencing. Help will also be provided to the child so that they can develop a personal plan to help them address their substance misuse problem. If the child attends and completes the session, he or she will still be

⁵² *Youth Justice Act 1992* (Qld) s 11.

⁵³ *Ibid* s 30.

⁵⁴ *Ibid* ss 47, 50, 51, 55, 59.

⁵⁵ *Ibid* s 69-70.

⁵⁶ *Ibid* s 175.

⁵⁷ *Ibid* s 175.

⁵⁸ *Ibid* s 175.

⁵⁹ *Ibid* s 226B; the *Youth Justice Regulation 2003* (Qld) sets out areas within Queensland where a boot camp order may be carried out (s 9A).

⁶⁰ *Youth Justice Act 1992* (Qld) s 175.

⁶¹ *Ibid* s 175; the child may be detained at the Brisbane Youth Detention Centre or the Cleveland Youth Detention Centre: *Youth Justice Regulation 2003* (Qld) sch 1.

⁶² *Ibid* s 172.

found guilty of the offence, but no conviction will be recorded.⁶³ If the child fails to attend or complete the session however, they may be taken back to court for sentencing.⁶⁴

Key sections of the Act include:

- s 11 – police officer to consider alternatives to proceeding against child; and
- sch 1 – Charter of youth justice principles.

Which agency is responsible for administration of the Act?

- Department of Justice (Youth Justice)

Which judicial body is responsible for enforcement of the Act?

- Childrens Court (Queensland)

Status of the Act

The Youth Justice and Other Legislation Amendment Bill 2014 was introduced in February and aims to:

- allow repeat offenders' identifying information to be published;
- make it an offence to commit further offences while on bail;
- allow childhood findings of guilt for which no conviction was recorded to be admissible in court when sentencing adults;
- allow children aged 17 to be automatically transferred to adult prison facilities where they still have six months remaining on their prison sentence;
- allow imprisonment to be used as a sentence, other than as a last resort; and
- allow children who have escaped Sentenced Youth Boot Camps to be arrested and brought directly before a court for resentencing, without prior warning.

The Legal Affairs and Community Safety Committee is currently seeking submissions from the public on the Bill. Submissions must be made by 26 February 2014. A public hearing on the Bill will be held on 3 March 2014.⁶⁵

Relationship with other Queensland legislation

Mental Health Act 2000 (Qld) (MHA)

If there is a question of whether the child is fit for trial, or was of unsound mind at the time of the alleged offence, the MHA will apply to the child as it applies to adults.⁶⁶ The child may be brought before the Mental Health Court so that these issues can be determined.

⁶³ Ibid s 173.

⁶⁴ Ibid s174.

⁶⁵ Queensland Parliament, *Youth Justice and Other Legislation Amendment Bill 2014*, Queensland Parliament <<http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/current-inquiries/YouthJustice2014>>.

⁶⁶ *Youth Justice Act 1992* (Qld) s 61.

Further information and advice

Aboriginal and Torres Strait Islander Legal Service

Head Office

Office address: Level 5, 183 North Quay, BRISBANE QLD 4000
Postal address: PO Box 13035, George Street, BRISBANE QLD 4003
Telephone (toll free): 1800 012 255
Telephone: (07) 3025 3888
Fax: (07) 3025 3800

Regional Offices

Beenleigh: (07) 3804 5033
Bundaberg: (07) 4152 8044
Cairns: (07) 4046 6400
Charleville: (07) 4654 1721
Hervey Bay: (07) 4128 2488
Ipswich: (07) 3812 2772
Mackay: (07) 4953 4058
Maroochydore: (07) 5452 7633
Mount Isa: (07) 4744 0900
Murgon: (07) 4168 1944
Rockhampton: (07) 4927 5711
Southport: (07) 5532 6988
Strathpine: (07) 3205 1253
Thursday Island: (07) 4069 1091
Toowoomba: (07) 4659 7822
Townsville: (07) 4722 5111

Aboriginal & Torres Strait Islander Women's Legal and Advocacy Service

Office address: Unit 26 Milton Village, 43 Lang Parade, MILTON QLD 4064
Postal address: PO Box 5631, WEST END QLD 4101
Telephone (toll free): 1800 442 450
Telephone: (07) 3720 9089
Fax: (07) 3720 8892
Email: reception@atsiwl.com.au
Website: www.atsiwl.com.au

Cairns Community Legal Centre

Family Relationship Centre

Office address: 1st Floor, Suite 1, Main Street Arcade, 85 Lake Street, CAIRNS QLD 4870
Postal address: PO Box 7129, CAIRNS QLD 4870
Telephone (toll free): 1800 062 608
Telephone: (07) 4031 7688
Fax: (07) 4041 2134
Email: admin@cclc.org.au
Website: www.cclc.org.au

Caxton Legal Centre

Office address: 1 Manning Street, SOUTH BRISBANE QLD 4101

Telephone: (07) 3214 6333
Fax: (07) 3846 7483
Email: caxton@caxton.org.au
Website: www.caxton.org.au

Childrens Court Brisbane (Magistrates Court)

Office address: 30 - 40 Quay Street, BRISBANE QLD 4001
Postal address: GPO Box 1649, BRISBANE QLD 4001
Telephone: (07) 3235 9841
Fax: (07) 3235 9890
Email: brisbane.childrenscourt@justice.qld.gov.au
Website: www.courts.qld.gov.au/courts/childrens-court

Childrens Court of Queensland (District Court)

Office address: QEII Courts of Law Complex, 415 George Street, BRISBANE QLD 4000
Postal address: PO Box 15167, BRISBANE CITY EAST QLD 4002
Telephone: (07) 3247 4313
Fax: (07) 3247 5316
Website: www.courts.qld.gov.au/courts/childrens-court-of-queensland

Commission for Children and Young People and Child Guardian

General

Office address: Level 17, 53 Albert Street, BRISBANE QLD 4000
Postal address: PO Box 15217, BRISBANE CITY EAST QLD 4002
Telephone (toll free): **1800 688 275**
Telephone: (07) 3211 6700
Fax: (07) 3035 5900.
E-mail: info@ccypcg.qld.gov.au
Website: www.ccypcg.qld.gov.au/index.aspx

Blue Card Enquiries

Postal address: PO Box 12671, BRISBANE GEORGE STREET QLD 4003
Telephone: **1800 113 611**
Fax: (07) 3035 5910
Website: www.ccypcg.qld.gov.au/bluecard/index.html

Department of Communities, Child Safety and Disability Services

Adoption Services

Office address: Level 1, 111 George Street, BRISBANE QLD 4000
Postal address: GPO Box 806, BRISBANE QLD 4001
Telephone: (07) 3224 7415
Fax: (07) 3210 0350
Email: ads@communities.qld.gov.au
Website: www.communities.qld.gov.au/childsafety/adoption

Child Safety Complaints

Postal address: Child Safety Complaints Unit, GPO Box 806, BRISBANE QLD 4001
Telephone: 1800 080 464
Email: complaints@childsafety.qld.gov.au
Website: www.communities.qld.gov.au/childsafety

Child Safety Services

Office address: 111 George Street, BRISBANE QLD 4000

Postal address: GPO Box 806, BRISBANE QLD 4001

Telephone (toll free): 1800 177 135

Telephone: 13 74 68

Telephone (after hours): (07) 3235 9999

Fax: (07) 3405 6428

Email: info@chilidsafety.qld.gov.au

Website: www.communities.qld.gov.au/chilidsafety

Office of Youth

Office address: Neville Bonner Building, 75 William Street, BRISBANE QLD 4000

Postal address: GPO Box 806, BRISBANE QLD 4001

Telephone: (07) 3006 8865

Email: youth@communities.qld.gov.au

Website: www.communities.qld.gov.au/communityservices/youth

Department of Education, Training and Employment

Office address: 30 Mary Street, BRISBANE QLD 4000

Postal address: Department of Education, Training and Employment, PO Box 15033,
CITY EAST QLD 4002

Telephone: 13 74 68

Website: www.education.qld.gov.au

Department of Human Services - Centrelink

General

Postal address: Centrelink Reply Paid 7800, CANBERRA BC ACT 2610

Telephone: 132 468

Fax: 1300 786 102

Website: www.humanservices.gov.au/customer/dhs/centrelink

Child Support

Postal address: GPO Box 9815, MELBOURNE VIC 3001

Telephone: 131 272 & 131 107

Fax: 1300 309 949

Website: www.humanservices.gov.au/customer/themes/child-support-and-separated-parents

Families Support

Telephone: 136 150

Website: www.humanservices.gov.au/customer/themes/families

Student and Youth Support

Telephone: 132 490

Website: www.humanservices.gov.au/customer/themes/students-and-trainees

Department of Immigration and Citizenship

Office address: Ground Floor, 299 Adelaide Street, BRISBANE QLD 4000

Postal address: GPO Box 9984, BRISBANE QLD 4001

Telephone: 131 881
Website: www.immi.gov.au

Department of Justice and the Attorney General – Workplace Health and Safety

Young Workers Advisory Service
Telephone: 1800 232 000
Website: www.deir.qld.gov.au/workplace/young-workers/index.htm

Family Court of Australia

Office address: Brisbane Family Law Registry, Harry Gibbs Commonwealth Law Courts
Building, Corner North Quay and Tank Streets, BRISBANE QLD 4000
Postal address: GPO Box 9991, BRISBANE QLD 4001
Telephone: 1300 352 000
Email: enquiries@familylawcourts.gov.au
Website: www.familycourt.gov.au

Foster Care Queensland

Office address: Unit 2/25 Depot Street, BANYO QLD 4014
Telephone (General): (07) 3256 6166
Telephone (North QLD): (07) 4779 9513
Fax: (07) 3256 6037
Email: fcq@fcq.com.au
Website: www.fcq.com.au

Gold Coast Legal Service

Office address: 2/18 Bay Street, SOUTHPORT QLD 4215
Telephone: (07) 5532 9611
Fax: (07) 5532 9125
Email: citizens@advicebureau.org.au
Website: www.advicebureau.org.au

Kids Helpline

Office address: Suite 9, Lang Business Centre, 97 Castlemaine Street, MILTON QLD 4064
Postal address: PO Box 2000, MILTON QLD 4064
Telephone: 1800 551 800
Fax: (07) 3367 1266
Website: www.kidshelp.com.au

Legal Aid Queensland

Office address: 44 Herschel Street, BRISBANE QLD 4000
Postal address: GPO Box 2449, BRISBANE QLD 4001
Telephone (general): 1300 65 11 88
Telephone (mobile): (07) 3238 3444
Fax: (07) 3238 3014
Website: www.legalaid.qld.gov.au

Mackay Regional Community Legal Centre

Office address: Suite 4, City Court Arcade, 80 Victoria Street, MACKAY QLD 4740

Telephone: (07) 4953 1211
Fax: (07) 4953 1644
Email: admin@mrclc.com.au
Website: www.mrclc.com.au

Moreton Bay Regional Community Legal Service Inc.

Postal address: PO Box 284, WOODY POINT QLD 4019
Telephone: (07) 3883 3834
Fax: (07) 3883 3834
Email: office@mbrcls.org.au
Website: www.mbrcls.org.au

National Children's and Youth Law Centre (Lawmail)

Postal address: National Children's & Youth Law Centre, Law Building First Floor,
University of New South Wales, SYDNEY NSW 2052
Telephone: (02) 9385 9588
Fax: (02) 9385 9589
Email: admin@ncylc.org.au
Website: www.lawstuff.org.au/lawmail

North Queensland Women's Legal Service

Cairns Office

Postal address: PO Box 5986, CAIRNS QLD 4870
Telephone (toll free): 1800 244 504
Telephone: (07) 4041 0066
Fax: (07) 4041 0061
Website: www.nqwls.com.au

Townsville Office

Postal address: PO Box 2209, TOWNSVILLE QLD 4810
Telephone (toll free): 1800 244 504
Telephone: (07) 4772 5400
Fax: (07) 4772 5315
Website: www.nqwls.com.au

Office of the Information Commissioner QLD

Office address: Level 8, 160 Mary Street, BRISBANE QLD 4000
Postal address: PO Box 10143, Adelaide Street, BRISBANE QLD 4000
Telephone: (07) 3234 7373
Fax: (07) 3405 1122
Email: enquiries@oic.qld.gov.au
Website: www.oic.qld.gov.au/about/contact-us

Pine Rivers Community Legal Service

Office address: Shop 3, 481 Gympie Road, STRATHPINE QLD 4500
Postal address: PO Box 489, LAWNTON QLD 4501
Telephone: (07) 3205 2955
Fax: (07) 3881 2877
Website: www.pmc.org.au/legal

Post Adoption Support Queensland

Office address: 9 Wilson Street, WEST END QLD 4101
Telephone: (07) 3170 4600
Email: pass@benevolent.org.au
Website: www.benevolent.org.au/connect/post--adoption--support

Queensland Civil and Administrative Tribunal (QCAT)*

*Formerly Children Services Tribunal

Office address: Level 9, 259 Queen Street, BRISBANE QLD 4000
Postal address: GPO Box 1639, BRISBANE QLD 4001
Telephone: 1300 753 228
Email: enquiries@qcat.qld.gov.au
Website: www.qcat.qld.gov.au

Queensland Indigenous Family Violence Legal Service

General

Telephone (toll free): 1800 88 77 00
Email: help@qifvls.com.au

Far North Queensland Office

Office address: 59 McLeod Street, CAIRNS QLD 4870
Postal address: PO Box 4643, CAIRNS QLD 4870
Telephone: (07) 4030 0400
Fax: (07) 4052 1614

North Queensland Office

Office address: Level 1/62, Walker Street, TOWNSVILLE QLD 4810
Postal address: PO Box 2005, TOWNSVILLE QLD 4810
Telephone: (07) 4724 3666
Fax: (07) 4724 3660

Gulf and West Queensland Office

Office address: 19 Isa Street, MOUNT ISA QLD 4825
Postal address: PO Box 3073, MOUNT ISA QLD 4825
Telephone: (07) 4749 5944
Fax: (07) 4749 5955

Central Queensland Office

Office address: Suite 6/6 East Street, ROCKHAMPTON QLD 4700
Postal address: PO Box 690, ROCKHAMPTON QLD 4700
Telephone: (07) 4922 4557
Fax: (07) 4922 0551

Queensland Ombudsman

Office address: Level 17, 53 Albert Street, BRISBANE QLD 4000
Postal address: GPO Box 3314, BRISBANE QLD 4001
Telephone (toll free): 1800 068 908
Telephone: (07) 3005 7000
Fax: (07) 3005 7067
Email: ombudsman@ombudsman.qld.gov.au

Website: www.ombudsman.qld.gov.au

Registry of Births, Deaths and Marriages

Office address: 110 George Street, BRISBANE QLD 4000
Postal address: GPO Box 15188, BRISBANE CITY EAST QLD 4002
Telephone: 1300 366 430
Email: bdm-mail@justice.qld.gov.au
Website: www.justice.qld.gov.au/bdm

Robina Community Legal Centre Inc.

Office address: Level 5, Southport Central One, 56 Scarborough Street, SOUTHPORT QLD 4215
Postal address: PO Box 1310, SOUTHPORT QLD 4215
Telephone: (07) 5518 7777
Fax: (07) 5518 7776
Email: commlegalgc@gmail.com
Website: www.rclc.net.au

Roma Community Legal Service

Office address: 96 Arthur Street, ROMA QLD 4455
Postal address: PO Box 892, ROMA QLD 4455
Telephone: (07) 4622 4547
Fax: (07) 4622 4739
Email: madonnap@tpg.com.au
Website: www.romalegal.net

South West Brisbane Community Legal Centre

Office address: 28 Wirraway Parade, INALA QLD 4077
Postal address: PO Box 122, INALA QLD 4077
Telephone: (07) 3372 7677
Fax: (07) 3372 8925
Website: www.communitylegal.org.au

Stanthorpe Community Legal Service

Office address: 8 Corundum Street, STANTHORPE QLD 4380
Telephone: (07) 4681 3777
Fax: (07) 4681 4532
Email: [cgsinc@halenet.com.au](mailto:cdsinc@halenet.com.au)
Website: www.granitenet.com.au/groups/community/cds/legal

Women's Legal Service

Office address: 387 Ipswich Road (Corner Ponsonby St), ANNERLEY QLD 4103
Postal address: PO Box 119, ANNERLEY QLD 4103
Telephone (legal advice line): (07) 3392 0670
Telephone (administration): (07) 3392 0644
Telephone (outside Brisbane): 1800 677 278
Telephone (rural legal advice): 1800 457 117
Fax: (07) 3392 0658

Email: admin@wlsq.org.au

Website: www.wlsq.org.au

Youth Advocacy Centre

Office address: 196 Newmarket Rd, WILSTON QLD 4051

Telephone: (07) 3356 1002

Fax: (07) 3356 3002

Email: admin@yac.net.au

Website: www.yac.net.au

Youth and Family Service (Logan City)

General

Post address: PO Box 727, WOODRIDGE QLD 4114

Telephone: (07) 3826 1500

Email: yfs@yfs.org.au

Website: www.yfs.org.au

Kingston Road Office

Office address: 376 Kingston Road, SLACKS CREEK QLD 4127

Fax: (07) 3808 9416

Rowan Street Office

Office address: 2-4 Rowan Street, SLACKS CREEK QLD 4127

Fax: (07) 3208 8589

Crime

In Queensland, a crime can be an offence against either State or Commonwealth laws. The main criminal legislation in Queensland is the *Criminal Code Act 1899* (Qld) (**the Criminal Code**) and at the Commonwealth level the main statute is the *Criminal Code Act 1995* (Cth). However, the legislative framework which provides for crime is vast and criminal offences may be found in numerous other Queensland and Commonwealth Acts. Local council by-laws and regulations can also create offences which are quasi-criminal in nature.

At the heart of the criminal justice system is the concept of ‘criminal responsibility’. Whether a person will be legally responsible for a crime depends on many different factual issues as well as the application of established legal principles. In some cases the person’s ‘intent’ is relevant to responsibility, whereas for other offences intent is irrelevant. There may also be defences available to reduce responsibility, or to completely exonerate a person from responsibility for a criminal offence. Finally, if a person is not well enough to represent themselves in a criminal trial they may be ‘unfit to plead’ and the trial will not be able to proceed, or if they were ‘of unsound mind’ at the time of the offence they will not be held criminally responsible for the crime.

People living with a mental illness, substance misuse problem, or dual diagnosis represent a disproportionate percentage of those who are engaged in the criminal justice system.¹ The law attempts to distinguish between criminal acts that result from a mental health issue and those that result from criminal behaviour. There are laws and procedures which determine these issues. For example, both Queensland and Commonwealth legislation make provision for determining the criminal responsibility of people with a mental illness.² In the Criminal Code, it is a defence to some offences to be of ‘unsound mind’,³ or a person may have ‘diminished responsibility’ for their actions as a result of an ‘abnormality of mind’⁴ and receive a lower penalty.

Despite the mechanisms for reducing responsibility and providing treatment, there are sometimes unintended consequences or particular hardships caused by the application of the law to people with mental health or substance misuse issues. For example, currently there is no mechanism to raise capacity issues or fitness to plead issues for minor charges heard in the Magistrates Court in Queensland.

The rights of people with a mental illness are also affected by various international human rights conventions to which Australia is a signatory. These include the *International Covenant on Civil and Political Rights* (1966),⁵ the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984),⁶ and the *Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment* (1988).⁷ For example, principle 20 of the

¹ The Senate, *Select Committee on Mental Health: A National Approach to Mental Health – From Crisis to Community* (Commonwealth of Australia, 2006) Ch 13.

² Ibid.

³ *Criminal Code Act 1899* (Qld) s 27.

⁴ Ibid s 304A.

⁵ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁶ Opened for signature 10 December 1984, 39 UNTS 46 (entered into force 26 June 1987).

⁷ GA Res 43/173, UN GAOR, 76th plen mtg, UN Doc A/RES/43/173 (9 December 1988).

Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991)⁸ states that people with a mental illness who are imprisoned have a right to receive the best mental health care available.

Principles enshrined in international instruments are aspirational and are only enforceable if corresponding rights or obligations are enforced in State or Commonwealth legislation. For example, the *Drugs Misuse Act 1986* (Qld) makes illicit drug use and trafficking a criminal offence in Queensland, consistent with the *Declaration on the Guiding Principles of Drug Demand Reduction* (1998).⁹ The *Forensic Disability Act 2011* (Qld) (**FDA**) gives effect to various principles in the *Convention on the Rights of Persons with Disabilities* (2006), which requires that people with a disability have equal access to appropriate care and treatment¹⁰ and that they are not deprived of their liberty because of a disability.¹¹ While the FDA allows for the involuntary detention of people who are charged with an offence and who are suffering from a cognitive or intellectual disability, it promotes access to adequate care and treatment and prevents indefinite detention in prison.

Other human rights principles may not be directly enforceable in Queensland courts, but can be persuasive both in court and in negotiations with, for example, Queensland Corrective Services, by asserting international standards as a measure of how prisons in Australia should be managed. International instruments will usually also influence the development of government policy. For example, the *Standard Guidelines for Corrections in Australia*¹² has been developed by federal, state and territory governments based on the *Standard Minimum Rules for the Treatment of Prisoners* (1955).¹³ Other laws merely recognise international human rights standards or that Australia is a party to various UN Declarations without giving effect to more substantive and enforceable rights.¹⁴

This section aims to provide an overview of legislation with a direct impact upon people with a mental illness or substance misuse issue. It also seeks to provide an overview of legislation which has an indirect impact, as certain legislation or key provisions have a disproportionate impact upon this group compared with the wider community.

Relevant Legislation

Legislation with a direct impact

- *Drugs Misuse Act 1986* (Qld)
- *Drugs Misuse Regulation 1987* (Qld)
- *Forensic Disability Act 2011* (Qld)
- *Forensic Disability Regulation 2011* (Qld)
- *Police Powers Responsibilities Act 2000* (Qld)

⁸ GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/199 (17 December 1991).

⁹ GA A/S-20/4, UN GAOR, 1st mtg (8 June 1988).

¹⁰ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 25.

¹¹ *Ibid* art 14.

¹² Australian Institute of Criminology, *Standard Guidelines for Corrections in Australia: revised 2004* (2004) <http://www.aic.gov.au/media_library/aic/research/corrections/standards/aust-stand_2004.pdf>.

¹³ SC Res 663 C, UN ESC, UN Doc S/RES/663 (31 July 1957).

¹⁴ See, eg, the preamble to the *Domestic and Family Violence Protection Act 2012* (Qld).

Legislation with a potential indirect impact

- *Bail Act 1980 (Qld)*
- *Corrective Services Act 2006 (Qld)*
- *Corrective Services Regulation 2006 (Qld)*
- *Crime and Misconduct Act 2001 (Qld)*
- *Criminal Code Act 1899 (Qld)*
- *Domestic and Family Violence Protection Act 2012 (Qld)*
- *Peace and Good Behaviour Act 1992 (Qld)*
- *Penalties and Sentences Act 1992 (Qld)*
- *Penalties and Sentences Regulation 2005 (Qld)*
- *State Penalties Enforcement Act 1999 (Qld)*
- *State Penalties Enforcement Regulation 2000 (Qld)*
- *Summary Offences Act 2005 (Qld)*
- *Victims of Crime Assistance Act 2009 (Qld)*

Drugs Misuse Act 1986 (Qld) and Drugs Misuse Regulation 1987 (Qld)

What is the Act about?

The *Drugs Misuse Act 1986* (Qld) (**DMA**) makes trafficking in, supplying and receiving or possessing dangerous drugs a criminal offence in Queensland. The *Drugs Misuse Regulation 1987* (Qld) (**DMR**) provides an extensive list of the types of dangerous drugs that these offences apply to. The list includes, for example, cocaine, heroin, cannabis, methylamphetamine (commonly known as ice or crystal meth), lysergide (commonly known as LSD) and ecstasy.

Are there particular concerns for people with a mental illness or substance misuse problem?

Mental illness and substance misuse problems frequently coexist. Dual diagnosis is increasingly common with high rates of drug use among people with mental illness and high rates of mental illness among drug users. While it is often difficult to determine which issue, mental illness or substance misuse, came first, around 50 per cent of people with a mental illness also experience a drug or alcohol problem.¹⁵ Because of the interrelationship between substance misuse and mental illness it can be difficult to disentangle the legal issues from the health issues.

The DMA is primarily concerned with criminality rather than health issues or 'recovery'. Since people living with a mental illness experience drug misuse problems at a higher rate than the general public, they are at increased risk of being prosecuted and penalised for drug offences.

Although the focus of the DMA is to criminalise illicit drug related behaviour, there is limited recognition of the health and addiction issues commonly associated with drug use. People who are 'drug dependent' may be eligible for a lesser penalty for the offences of producing¹⁶ or possessing dangerous drugs.¹⁷ 'Drug dependent' means a person who has limited control over their continued use of dangerous drugs and is likely to suffer distress when they stop taking the drugs.¹⁸

Under the *Mental Health Act 2000* (Qld), a person who is alleged to have committed an indictable offence can be referred to the Mental Health Court (**MHC**) if there is an issue of 'unsoundness of mind' or 'fitness for trial'. The MHC will make a decision on whether the person was of unsound mind at the time of the offence, or whether the person is unfit for trial. The MHC can make a forensic order for the person to be detained for involuntary treatment if a decision is made finding that the person was of unsound mind or is unfit for trial.

Key sections of the Act include:

- s 5 – trafficking in dangerous drugs;
- s 6 – supplying dangerous drugs;

¹⁵ SANE Australia, *Drugs and mental illness*, (2010) SANE Australia
<<http://www.sane.org/information/factsheets-podcasts/203-drugs-and-mental-illness>> at 10 January 2014.

¹⁶ *Drugs Misuse Act 1986* (Qld) s 8(b)(i).

¹⁷ *Ibid* s 9(b)(i).

¹⁸ *Ibid* s 4.

- s 7 – receiving or possessing property obtained from trafficking or supplying;
- s 8 – producing dangerous drugs; and
- s 9 – possessing dangerous drugs.

Key sections of the Regulation include:

- sch 1 – dangerous drugs (offences associated with these drugs attract the most serious penalties); and
- sch 2 – dangerous drugs (lesser offences apply to these drugs).

Which agency is responsible for administration of the Act?

- Queensland Police Service

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court

The severity of the charge and quantity of illicit drugs in question determine the court in which the matter is prosecuted.

Relationship with other Queensland legislation

Commission for Children and Young People and Child Guardian Act 2000 (Qld) (**CCYPCGA**)

The Commission is responsible for assessing blue card applications. People who have committed an offence under the DMA may not be eligible for a blue card.

Criminal Code Act 1899 (Qld) (the **Criminal Code**)

The Criminal Code sets out other criminal offences in Queensland. A person may be charged under the DMA as well as the Criminal Code, depending on the criminal offence.

Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld) (**CLROA**)

The CLROA requires any person who has served a prison sentence of more than 30 months to disclose that offence in any future job applications.¹⁹ The CLROA also requires people to disclose any conviction that has been recorded upon indictment in the last five years, if the person was convicted as a child, or the last ten years, if the person was convicted as an adult.²⁰

Mental Health Act 2000 (Qld) (**MHA**)

Where a person is being prosecuted for an offence (such as a drugs misuse offence), the MHA allows the Mental Health Court to consider whether the person was of unsound mind at the time of the alleged offence or is unfit for trial because of a mental illness. If the person was of unsound mind, or is unfit for trial, they may be detained for treatment in an authorised mental health service, or the forensic disability service, instead of being detained in a jail.

Summary Offences Act 2005 (Qld) (**SOA**)

¹⁹ *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld) s 3.

²⁰ *Ibid* ss 3, 5.

The SOA sets out other minor offences in Queensland. A person may be more likely to commit offences under the SOA while they are under the influence of a dangerous drug. If a person has committed another offence they may be charged under the DMA as well as the SOA for the other offence. For example, a person may be charged with possessing dangerous drugs under the DMA and possessing implements in relation to particular offences, such as breaking into cars, under the SOA.

Transport Operations (Road Use Management) Act 1995 (Qld) (TORUM)

People who have been caught for driving while under the influence of alcohol or other drugs, which is an offence under the TORUM Act, may also be liable to be prosecuted for offences under the DMA such as for possessing illegal drugs.

Similar legislation in other jurisdictions

All other Australian jurisdictions have made it a criminal offence to traffic, supply or possess illegal drugs.²¹ The types and quantities of drugs regulated and the types and seriousness of offences associated with illegal drugs are similar throughout Australia.

²¹ *Customs Act 1901* (Cth) and *Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990* (Cth); *Drug Misuse and Trafficking Act 1985* (NSW); *Drugs, Poisons and Controlled Substances Act 1981* (Vic); *Misuse of Drugs Act 1981* (WA); *Controlled Substances Act 1984* (SA); *Poisons Act 1971* (Tas); *Misuse of Drugs Act 1990* (NT); *Drugs of Dependence Act 1989* (ACT).

Forensic Disability Act 2011 (Qld)

What is the Act about?

The *Forensic Disability Act 2011* (Qld) (**FDA**) allows a person to be detained against their will in the Forensic Disability Service (**FDS**) where the person:

- suffers from a cognitive or intellectual disability;²² and
- has been charged with a serious offence; and
- was of unsound mind at the time the offence was committed, for example, if the person was unable to understand what they were doing or was unable to control their actions because of a mental illness or intellectual or cognitive disability; or
- is currently unfit for trial, for example, if the person is unable to understand the nature of the court proceedings or is incapable of giving instructions to their representatives.²³

This is known as a forensic disability order (**FDO**), which may be made only by the Mental Health Court.²⁴

The FDA only applies to people with a cognitive or intellectual disability. A disability is defined generally as a condition that:

- is caused by an impairment, including an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment;
- reduces a person's capacity for communication, social interaction, learning, mobility, or self care;
- results in the person needing support; and
- is likely to be permanent.²⁵

A 'cognitive disability' is a cognitive impairment that fits within the above meaning²⁶ and an 'intellectual disability' is a condition that fits within the above meaning and:

- is characterised by significant limitations in intellectual functioning and adaptive behaviour; and
- originates in a person who is less than 18 years old.²⁷

While at the FDS, the person (**a forensic patient**) will be given therapy that is considered to be best for the particular person's disability and that best improves their chances of rehabilitation and reintegration into the community.²⁸ The FDS has the capacity to support a maximum of 10 people at a time.

If a FDO is made, the Mental Health Review Tribunal (**MHRT**) must review the order every six months.²⁹ A person on a FDO may appeal to the Mental Health Court if they are unhappy with a

²² *Forensic Disability Act 2011* (Qld) s 10.

²³ *Ibid* s 230; *Mental Health Act 2000* (Qld) s 288(1).

²⁴ *Forensic Disability Act 2011* (Qld) s 230; *Mental Health Act 2000* (Qld) s 288.

²⁵ *Forensic Disability Act 2011* (Qld) s 11.

²⁶ *Ibid*.

²⁷ *Ibid* s 12.

²⁸ *Ibid* s 3.

²⁹ *Ibid* s 131; *Mental Health Act 2002* (Qld) s 200.

decision made by the MHRT.³⁰ A person cannot be detained in the FDS if their FDO is revoked by the MHRT.³¹

Whilst the FDA regulates methods of behaviour control that can be used on people who are subject to an FDO, it also creates offences for people who breach these regulations.³²

Are there particular concerns for people with a mental illness or substance misuse problem?

Forensic patients may be detained and treated in prisons as well as in the FDS. People whose illness was not identified at the time of their trial and conviction, but become ill whilst in prison may be detained in a secure facility. People detained in the FDS or mental health service under a FDO are detained indefinitely until the Mental Health Review Tribunal determines that the patient does not represent an unacceptable risk to their own safety or the safety of others, having regard to the patient's mental illness or intellectual disability.³³

Key sections of the Act include:

- s 11 – what is a cognitive disability;
- s 12 – what is an intellectual disability; and
- ch 6 – regulation of behaviour control.

Which agency is responsible for administration of the Act?

- Department of Communities

Which judicial body is responsible for enforcement of the Act?

- Mental Health Court
- Mental Health Review Tribunal

Relationship with other Queensland legislation

Disability Services Act 2006 (Qld) (DSA)

The DSA acknowledges the rights of people with a disability, ensures services are safe, accountable and responsive, and safeguard the rights of people with disability.³⁴ The DSA ensures that if a person is detained against their will under the FDA that their rights are respected and the FDS is safe, accountable and responsive to their needs.

Mental Health Act 2000 (Qld) (MHA)

The FDA amends the MHA to allow the Mental Health Court to make a forensic order requiring a person to be detained in the FDS. Under the MHA, a person with a mental illness may also be detained in an authorised mental health service, rather than the FDS, if they require involuntary treatment for their mental illness.³⁵ Where appropriate, a forensic patient may be transferred to a mental health service.³⁶

³⁰ *Forensic Disability Act 2011 (Qld) s 135; Mental Health Act 2002 (Qld) ss 319-320.*

³¹ *Mental Health Act 2000 (Qld) s 207.*

³² *Forensic Disability Act 2011 (Qld) ch 6.*

³³ *Mental Health Act 2000 (Qld) s 204(1).*

³⁴ *Disability Services Act 2006 (Qld) s6.*

³⁵ *Mental Health Act 2000 (Qld) s 288.*

³⁶ *Forensic Disability Act 2011 (Qld) s 33.*

Personal Injuries Proceedings Act 2002 (Qld) (PIPA)

PIPA sets out time limits that must be followed when making a claim for damages for personal injury. These time limits are paused while a person is detained as a forensic disability patient under the FDA.

Similar legislation in other jurisdictions

Legislation in Victoria allows a person with an intellectual disability to be admitted to a residential treatment facility if they have been charged with an offence punishable by imprisonment.³⁷ Tasmania has also enacted legislation that enables a person deemed unfit for trial to be involuntarily detained and treated in a secure psychiatric facility.³⁸ However, other jurisdictions have not put in place secure psychiatric facilities for the detention of people found to be of unsound mind or unfit for trial. Instead, this group of people may be indefinitely detained in prison which is inconsistent with standards required by the *Convention on the Rights of Persons with Disabilities* (2006).³⁹

³⁷ *Disability Act 2006* (Vic) s 152.

³⁸ *Criminal Justice (Mental Impairment) Act 1999* (Tas).

³⁹ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

Police Powers and Responsibilities Act 2000 (Qld)

What is the Act about?

The *Police Powers and Responsibilities Act 2000* (Qld) (PPRA) sets out the powers and responsibilities that police officers have when investigating offences and enforcing the law in Queensland. The PPRA also outlines various rights and obligations that people have in relation to the performance of police powers.

Are there particular concerns for people with a mental illness or substance misuse problem?

Various parts of the PPRA may impact on people living with a mental illness or substance misuse problem. Some of the police powers and responsibilities that may be more relevant to this group of people are included below. A police officer may:

- ask a person to move on, because of the person's behaviour;⁴⁰
- stop and search a person without a warrant where they suspect the person has something illegal, such as drugs or stolen property;⁴¹
- arrest a person without a warrant, where it is likely the person has committed an offence and their identity needs to be established, or they need to be stopped from fleeing;⁴² and use reasonable force when performing their responsibilities under the PPRA.⁴³

People with a mental illness who are engaged in the criminal justice system commonly first have contact with the police, rather than mental health services. Police may deal with critical incidents involving people with a mental illness without assistance from mental health related professionals. This is particularly the case where incidents occur outside of business hours, in a regional area, or the situation is unsafe.⁴⁴

Police assistance with the assessment of a person's mental health

Police officers can also be called to assist authorised mental health practitioners, such as a doctor or psychiatrist, or to assist in taking a person to an authorised mental health service for assessment of their mental health. When doing so, a police officer has the power to enter a person's home and detain the person.⁴⁵ A police officer may also use reasonable force to exercise these functions.⁴⁶ It is an offence to disobey any requirement or direction given by a police officer.⁴⁷

Protections for people with an impaired capacity

⁴⁰ *Police Powers and Responsibilities Act 2000* (Qld) ss 46-48.

⁴¹ *Ibid* ss 29-30.

⁴² *Ibid* s 365.

⁴³ *Ibid* s 615.

⁴⁴ The Senate, *Select Committee on Mental Health: A National Approach to Mental Health – From Crisis to Community* (Commonwealth of Australia, 2006) ch 13.

⁴⁵ *Police Powers and Responsibilities Act 2000* (Qld) s 21.

⁴⁶ *Ibid* s 615.

⁴⁷ *Ibid* s 791.

The PPRA also protects certain rights of people, in particular those with an impaired capacity. A person has an 'impaired capacity' if they cannot look after or manage their interests properly, because of:

- an obvious or partial loss of their mental functions; or
- an obvious condition that affects their thought processes, perceptions of reality, emotions or judgment, or results in disturbed behaviour.⁴⁸

If a person has an impaired capacity, they will generally have the right to have a support person present during questioning, forensic procedures and searches. A support person is a parent or another adult who can provide support and look after the person's interests.⁴⁹

Investigations and questioning

Police officers have the power to hold a person so they can investigate or question the person about an indictable offence. Indictable offences include crimes and misdemeanours, but do not include less serious offences such as simple offences under the *Summary Offences Act 2005* (Qld) and regulatory offences under the *Regulatory Offences Act 1985* (Qld).⁵⁰ Generally, a person must not be held for longer than eight hours for this purpose.⁵¹ However, a person's mental capacity and condition must be considered when deciding the length of time that it is reasonable to hold them for questioning or investigation.⁵² Further, if a person has an impaired capacity, they must be allowed to speak to a support person in private, prior to being questioned by the police. The support person must also be present during the questioning.⁵³

Forensic procedures

A support person must also be present when a forensic procedure is requested of a person with an impaired capacity.⁵⁴ Forensic procedures involve conducting a physical examination of a person, or taking a sample from a person, for the purpose of an investigation.⁵⁵ For example, photographs may be taken of the person's body, or samples of their identifying materials may be taken, such as saliva or hair.⁵⁶ These identifying materials are usually destroyed if a person is found not guilty of an offence and does not have any other charges outstanding, or offences of which they were found guilty. However, if a person is found not capable of standing trial, because of a mental illness, the identifying materials do not need to be destroyed.⁵⁷

Searches

Generally, a person with impaired capacity must also have a support person present if they are going to be searched by a police officer. However, in some circumstances, such as if evidence may be destroyed, or a person's safety is at risk, a police officer may conduct the search without a support person present.⁵⁸

⁴⁸ Ibid sch 6 (definition of 'person with impaired capacity').

⁴⁹ Ibid sch 6 (definition of 'support person').

⁵⁰ Ibid s 403.

⁵¹ Ibid s 403 (2).

⁵² Ibid s 404.

⁵³ Ibid s 422.

⁵⁴ Ibid s 452.

⁵⁵ Ibid s 452.

⁵⁶ Ibid sch 6 (definition of 'forensic procedure').

⁵⁷ Ibid s 474.

⁵⁸ Ibid s 631.

Key sections of the Act include:

- s 404 – what is a reasonable time to detain a person for questioning or investigation;
- s 422 – questioning of persons with impaired capacity;
- s 452 – special requirement for people with impaired capacity;
- s 631 – special requirements for searching children and persons with impaired capacity;
- sch 6 – dictionary – ‘forensic procedure’;
- sch 6 – dictionary – ‘person with impaired capacity’; and
- sch 6 – dictionary – ‘support person’.

Which agency is responsible for administration of the Act?

- Queensland Police Service

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court

Relationship with other Queensland legislation*Corrective Services Act 2006 (Qld) (CRSA)*

The PPRA sets out the powers and responsibilities of police officers when detaining a person convicted of an offence in Queensland and dealing with people detained in Queensland corrective services. The CRSA also gives police officers additional power to arrest people who have escaped from prison.⁵⁹

Crime and Misconduct Act 2001 (Qld) (CMA)

The PPRA sets out the powers and responsibilities that police officers have when investigating offences and enforcing the law in Queensland. However, any abuse of these powers and responsibilities may be investigated by the Crime and Misconduct Commission (CMC), under the CMA. The CMC can also investigate major crime.

Criminal Code Act 1899 (Qld) (the Criminal Code)

The PPRA outlines the rights and powers that police officers may exercise when enforcing the Criminal Code.

Mental Health Act 2000 (Qld) (MHA)

The MHA sets out when a person may be taken to an authorised mental health service for involuntary assessment. Under the PPRA, a police officer may take a person to an authorised mental health service for assessment, or detain a person for examination by a doctor or mental health practitioner (either under a justices examination order or emergency examination order).

Summary Offences Act 2005 (Qld) (SOA)

The PPRA outlines the rights and powers that police officers may exercise when enforcing the SOA.

⁵⁹ *Corrective Services Act 2006 (Qld) s 112; Police Powers and Responsibilities Act 2000 s 366.*

Similar legislation in other jurisdictions

Other Australian jurisdictions provide for police powers and responsibilities in similar legislation, including: *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW); *Police Regulation Act 1958* (Vic); *Police Act 1982* (WA), *Police Administration Act 2013* (NT); *Police Act 1998* (SA); *Law Enforcement (Powers and Responsibilities) Act 2002* (Tas) and the *Crimes Act 1900* (ACT). Police powers may also be found throughout additional legislation in each jurisdiction.

Police may also assist in taking a person or detaining a person for the purpose of assessment of the person's mental health in other Australian jurisdictions.⁶⁰

⁶⁰ *Mental Health Act 1986* (Vic) ss 10-11; *Mental Health Act 2013* (Tas) ss15, 44B; *Mental Health Act 1996* (WA) ss 34, 41, 58, 71, 84, 89, div 2; *Mental Health Act 2007* (NSW) s 21; *Mental Health Act 2009* (SA) ss 56-57; *Mental Health (Treatment and Care) Act 1994* (ACT) ss 22A, 37; *Mental Health and Related Services Act* (NT) ss 10b, 163.

Bail Act 1980 (Qld)

What is the Act about?

Bail is a written promise by the person charged with a criminal offence that they will appear in court on a set date and allows the person to be conditionally released from detention in a police watch house or prison.⁶¹ The *Bail Act 1980 (Qld)* (**BA**) outlines the circumstances under which bail can be granted by a police officer or court and any special conditions which can be imposed. For example, reporting regularly to a police station or participating in a rehabilitation program.⁶² A person charged with a criminal offence will often be entitled to bail, depending on the seriousness of the offence.⁶³ If a person is granted bail, they are allowed to remain at home rather than in custody until their trial has ended.⁶⁴

Bail may be refused where a court or authorised police officer believes that there is an unacceptable risk the person will:

- break their promise to appear in court;
- commit another offence;
- endanger the safety or wellbeing of another person; or
- interfere with witnesses to the offence.⁶⁵

Bail may also be refused where the court or an authorised police officer believes it is necessary for the person's own protection.⁶⁶

The BA makes it an offence for a person to break their conditions of bail.⁶⁷ If a person does break their conditions of bail, the person may be fined or imprisoned for up to two years.⁶⁸

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness or substance misuse problem may be charged with a criminal offence as a result of behaviour associated with their condition. A person's mental illness or addiction may also be undiagnosed or unmentioned through the criminal justice process.

A person with an 'impairment of the mind' may be released without bail in certain circumstances.⁶⁹ 'Impairment of the mind' is defined as a disability caused by intellectual, psychiatric, cognitive, or neurological impairments which results in the person needing support and having a limited ability to communicate, interact socially, or learn.⁷⁰ A person may be released without bail and into the care of another person, or released independently if they:

- have an impairment of the mind;
- do not understand the effect of bail; and

⁶¹ *Bail Act 1980 (Qld)* s 20.

⁶² *Ibid* s 11.

⁶³ *Ibid* s 9.

⁶⁴ *Ibid* s 11.

⁶⁵ *Ibid* s 16.

⁶⁶ *Ibid*.

⁶⁷ *Ibid* s 29.

⁶⁸ *Ibid* s 35.

⁶⁹ *Ibid* s 11A.

⁷⁰ *Ibid* s 11A(7).

- would be released on bail if they did understand the effect of bail.⁷¹

People with a substance misuse problem may be given special bail conditions. For example, a magistrate may require the person to participate in rehabilitation, treatment or an intervention program while on bail.⁷² However, bail conditions may be difficult to meet for people experiencing such issues. Often people with a mental illness or substance misuse problem experience multiple and significant complications in their lives which may make it difficult to comply with their bail conditions, particularly if treatment is part of their bail conditions.⁷³

Key sections of the Act include:

- s 11 – conditions on release of bail;
- s 11A – release of a person with an impairment of the mind;
- s 29 – offence to breach conditions of bail; and
- s 16 – refusal of bail.

Which agency is responsible for administration of the Act?

- Queensland Police Service

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court
- Court of Appeal

Relationship with other Queensland legislation

Criminal Code Act 1899 (Qld) (**the Criminal Code**)

The Criminal Code sets out offences that a person may be charged with and which may lead to a grant of bail.

Summary Offences Act 2005 (Qld) (**SOA**)

The SOA sets out offences that a person may be charged with and which may lead to a grant of bail.

Similar legislation in other jurisdictions

Each State and Territory has its own laws governing the granting of bail. The Commonwealth government has responsibility for offences under Commonwealth laws, for example, drug importation, and for bail for people charged with Commonwealth offences.

⁷¹ Ibid s 11A(1).

⁷² Ibid s 11(9).

⁷³ E Sykes and T Begley, 'Concerns over Queensland's drug court trial: bail or jail', *ABC News* (online) 23 September 2013 <<http://www.abc.net.au/local/stories/2013/09/23/3854427.htm>>.

Corrective Services Act 2006 (Qld) and Corrective Services Regulation 2007 (Qld)

What is the Act about?

The *Corrective Services Act 2006* (Qld) (CRSA) establishes how people should be treated while detained in corrective services in Queensland. Further, the CRSA recognises that in some circumstances the special needs of a prisoner, such as those arising from a disability, may need to be considered.⁷⁴ The CRSA also creates the Parole Boards and sets out the requirements for prisoners applying for parole.⁷⁵

Are there particular concerns for people with a mental illness or substance misuse problem?

In 2012, 38 per cent of all people entering prison systems in Australia reported having a mental illness.⁷⁶ Factors which contribute to this include poverty, general disadvantage, unemployment, homelessness, substance misuse and a lack of services to address mental health concerns in the community.⁷⁷ Mental illnesses may also be exacerbated as a result of incarceration.⁷⁸

Prisoners with a mental illness or substance misuse problem may be required to undergo examination by a psychologist before a decision is made about:

- the prisoner's security classification;
- where to place the prisoner;
- whether to transfer the prisoner;
- the prisoner's suitability to participate in certain programs; or
- the prisoner's suitability for a leave of absence, early discharge or release.⁷⁹

Prisoners with a mental illness or substance misuse problem may be required to submit to a medical examination or treatment if a doctor considers that they need medical attention.⁸⁰

Prisoners with a mental illness or drug misuse problem may be considered more likely to harm themselves, or someone else, due to their illness. This can result in the prisoner being put on a safety order,⁸¹ or being categorised and moved into a higher level of security. A safety order imposes special conditions on the prisoner, which may include separating the prisoner from other prisoners, restricting the prisoner's access to phone calls and electronic communications and restricting the visitors they may receive.⁸² Under the CRSA, prisoners must also be

⁷⁴ *Corrective Services Act 2006* (Qld) s 3(3)(b).

⁷⁵ *Ibid* ch 5.

⁷⁶ Australian Institute of Health and Welfare, *The health of Australia's prisoners 2012* (2013).

⁷⁷ The Senate, *Select Committee on Mental Health: A National Approach to Mental Health – From Crisis to Community* (Commonwealth of Australia, 2006) Ch 13.

⁷⁸ D Kilroy, *Qld Alliance – Criminalising Illness? Mental Illness and the Prison System* (2005) <<http://www.sistersinside.com.au/media/MentalHealthLunchAugust2005.pdf>> 10 January 2014.

⁷⁹ *Corrective Services Act 2006* (Qld) s 21(3).

⁸⁰ *Ibid* s 21.

⁸¹ *Ibid* s 53.

⁸² *Corrective Services Regulation 2007* (Qld) s 8.

categorised according to a security classification. The following must be considered when a security classification is being determined:

- the nature of the offence for which the prisoner has been charged or convicted;
- the risk of the prisoner escaping, or attempting to escape;
- the risk of the prisoner re-offending; and
- the risk the prisoner poses to himself or herself and other persons.⁸³

Key sections of the Act include:

- s 3 – purpose;
- s 11 – prisoner to be informed of entitlements and duties;
- s 12 – prisoner security classification;
- s 21 – medical examination or treatment;
- s 53 – safety orders; and
- ch 5 – parole.

Which agency is responsible for administration of the Act?

- Department of Community Safety
- Queensland Corrective Services (QCS)
- The Geo Group Australia Pty Ltd (manages the privately run Arthur Gorrie Correctional Centre)
- Serco Australia Pty Ltd (manages the privately run Southern Queensland Correctional Centre)
- Queensland Parole Board
- Southern Queensland Regional Parole Board
- Central and Northern Queensland Regional Parole Board

Which judicial body is responsible for enforcement of the Act?

- Anti-Discrimination Commission Queensland
- Crime and Misconduct Commission
 - Can investigate complaints of official misconduct by officers, staff and management of correctional centres
- Supreme Court
 - The Supreme Court may undertake judicial review of certain decisions.

Relationship with other Queensland legislation

Anti-Discrimination Act 1991 (Qld) (ADA)

The ADA allows prisoners to make complaints about discrimination while detained in corrective service facilities in Queensland. However, the CRSA provides certain protections to corrective service providers and their staff. If a person has a discrimination complaint, the complaint must first be provided via the Complaints Management System in the Queensland Corrective Services, not the Anti-Discrimination Commission Queensland.⁸⁴ Furthermore, a term imposed on the person, or treatment given to the person, that otherwise would constitute discrimination under

⁸³ *Corrective Services Act 2006 (Qld)* s 12.

⁸⁴ *Ibid* s 319E.

the ADA will not be discrimination if it was reasonable in all the circumstances.⁸⁵ The following considerations may be taken into account when determining whether a term or treatment was reasonable:

- the cost of providing an alternative term or alternative treatment;
- the disruption to the corrective service provider that providing an alternative term or alternative treatment would cause;
- the budget and resources constraints of the corrective service provider;
- the need to respect the offender's dignity.⁸⁶

Coroners Act 2003 (Qld) (CA)

Any death that occurs while a person is in custody (under the CRSA) must be reported to and investigated by the State Coroner.⁸⁷

Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld) (CLROA)

The CLROA requires any person who has served a prison sentence of more than 30 months to disclose that offence in any future job applications.⁸⁸ The CLROA also requires people to disclose any conviction that has been recorded upon indictment in the last five years, if the person was convicted as a child, or the last ten years, if the person was convicted as an adult.⁸⁹

Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)

Any person who is considered to be a serious danger to the community, if there is an unacceptable risk that they will commit a serious sexual offence, such as rape, if released from prison, may be detained indefinitely for control, care and treatment, or may be released from custody subject to conditions to control their behaviour.⁹⁰

Judicial Review Act 1991 (Qld) (JRA)

The JRA allows people to apply for a statement of reasons or for judicial review of certain decisions made under the CRSA such as a decision to refuse bail. However, judicial review may not be sought for decisions about a prisoner's security classification⁹¹ or transfer decisions.⁹²

Mental Health Act 2000 (Qld) (MHA)

Under the MHA, a person may be detained in an authorised mental health service rather than a prison if they require treatment for a mental illness. The CRSA also allows for prisoners to be transferred to an authorised mental health service for medical or psychological examination or treatment, or for examination or treatment for a substance dependency.⁹³

Penalties and Sentences Act 1992 (Qld) (PSA)

The PSA sets out the guidelines a court must consider when sentencing a person convicted of an offence in Queensland.

⁸⁵ Ibid ss 319G-319H.

⁸⁶ Ibid.

⁸⁷ *Coroners Act 2003 (Qld)* ss 7-8, 45.

⁸⁸ *Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld)* s 3.

⁸⁹ Ibid ss 3, 5.

⁹⁰ *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld)* s 13.

⁹¹ *Corrective Services Act 2006 (Qld)* s 17.

⁹² Ibid ss 68, 71.

⁹³ Ibid s 68.

Police Powers and Responsibilities Act 2000 (Qld) (PPRA)

The PPRA sets out the powers and responsibilities of police officers when detaining a person convicted of an offence in Queensland and dealing with people detained in Queensland corrective services.

Right to Information Act 2009 (Qld) (RTIA)

The RTIA allows people to apply for access to personal or prison documents held by corrective service providers.

Relationship with Commonwealth legislation

Crimes Act 1914 (Cth)

This Act sets out the sentencing procedures for federal offences (for example, offences under the *Criminal Code Act 1995 (Cth)*).

Commonwealth discrimination legislation

Federal prisoners may make complaints about discrimination under Commonwealth discrimination legislation. These include the *Disability Discrimination Act 1992 (Cth)*, the *Age Discrimination Act 2004 (Cth)*, the *Racial Discrimination Act 1975 (Cth)* and the *Sex Discrimination Act 1984 (Cth)*.

Criminal Code Act 1899 (Qld)

What is the Act about?

The *Criminal Code Act 1899* (Qld) (**the Criminal Code**) defines criminal offences within Queensland, as well as defences that may limit a person's criminal responsibility for certain offences. The Criminal Code also includes procedural rules in relation to the arrest and trial of a person.

Although the Criminal Code was designed to incorporate all criminal laws in the State into one statute, over the last century criminal offences and quasi-criminal offences have been created in many other statutes. Other offences in Queensland include those created by the:

- *Drugs Misuse Act 1986* (Qld);
- *Summary Offences Act 2005* (Qld); and
- *Regulatory Offences Act 1985* (Qld).

In addition, other criminal offences are created under federal legislation, such as the *Criminal Code Act 1995* (Cth).

Are there particular concerns for people with a mental illness or substance misuse problem?

Capacity defences

People with a mental illness may lack the capacity to understand the consequences of their actions, or to control their actions. The Criminal Code includes the defences of insanity and diminished responsibility for people in these circumstances. Although there is a presumption of sanity for people charged with an offence,⁹⁴ where it appears that a person may be of unsound mind, the jury or the Mental Health Court will need to consider the matter and the person will be dealt with under the provisions of the *Mental Health Act 2000* (Qld). If the defence of insanity is found, the person will not be held criminally responsible for their actions.⁹⁵ The defence of insanity can be raised in relation to criminal offences, but not regulatory offences (under the *Regulatory Offences Act 1985* (Qld)) or summary offences (under the *Summary Offences Act 2005* (Qld)).⁹⁶ The partial defence of diminished responsibility only applies to a charge of murder and will reduce the charge to manslaughter.⁹⁷ Diminished responsibility means the offender will receive a lower sentence if convicted of murder.⁹⁸

Capacity to consent

Some acts will not be lawful unless one or both people involved in the act gave consent to that act. For example, the act of sexual intercourse will not be legal unless both people consented to that act. If one person did not consent, the other may be convicted of rape or sexual assault.⁹⁹ People with a mental illness or who are under the influence of alcohol or other drugs may be limited in their capacity to provide consent to certain actions. 'Consent' is defined in the Act as

⁹⁴ *Criminal Code Act 1899* (Qld) s 26.

⁹⁵ *Ibid* s 27.

⁹⁶ *Ibid* s 647.

⁹⁷ *Ibid* s 304A(2).

⁹⁸ *Ibid* s 304A.

⁹⁹ *Ibid* ch 32.

meaning 'consent freely and voluntarily given by a person with the cognitive capacity to give the consent'.¹⁰⁰

Lawful use of force on mentally ill persons

Any person may use reasonable force to prevent an act of violence being committed against another person or property, where the person is on an involuntary treatment order (ITO), or is a forensic disability client.¹⁰¹

Unlawful detainment of mentally ill persons

The Criminal Code makes it an offence to unlawfully detain a person on an involuntary treatment order. The procedures under the *Mental Health Act 2000* (Qld) and the *Forensic Disability Act 2011* (Qld) must be followed when detaining a person on an involuntary treatment order, or as a forensic disability client. If a person is found guilty of this offence, they are liable to imprisonment for two years.¹⁰²

Pre-trial directions

Parties to a criminal trial, including people with a mental illness, may apply for a pre-trial direction. A judge may also make this direction on their own initiative. A pre-trial direction is an order that is generally binding, made by the judge and directs the parties to take a certain action in relation to the conduct of the trial. For example, pre-trial directions may be given in relation to a psychiatric or medical examination of the accused; the exchange of medical, psychiatric or other expert reports; or deciding if the defence of insanity or diminished responsibility is to be raised in the trial and reference to the Mental Health Court.¹⁰³

Intoxication as a factor of intention

People with a substance misuse problem, such as alcoholism, may be found not guilty because they lack the 'intent' to commit certain offences under the Criminal Code. In some cases, intoxication (even if the intoxication is intentional) may be considered as a factor to determine whether or not the person had an intention to commit the offence.¹⁰⁴

Key sections of the Act include:

- s 1 – definitions – 'person with an impairment of the mind';
- s 27 – insanity;
- s 28 – intoxication;
- s 266 – prevention of crimes and offences for which an offender may be arrested without warrant;
- s 304A – diminished responsibility;
- s 348 – meaning of consent;
- s 358 – unlawful custody of particular persons;
- s 590AA – pre-trial directions and rulings;
- s 645 – accused person insane during trial; and

¹⁰⁰ Ibid s 348.

¹⁰¹ Ibid s 266.

¹⁰² Ibid s 358.

¹⁰³ Ibid s 590AA.

¹⁰⁴ Ibid s 28(3).

- s 647 – acquittal on ground of insanity.

Which agency is responsible for administration of the Act?

- Queensland Police Service (QPS)
- Office of the Director of Public Prosecutions (ODPP)

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court

Relationship with other Queensland legislation

Bail Act 1980 (Qld)

The Criminal Code sets out the offence that a person may be charged with and which may lead to a grant of bail.

Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld) (CLROA)

The CLROA requires any person who has served a prison sentence of more than 30 months to disclose that offence in any future job applications.¹⁰⁵ The CLROA also requires people to disclose any conviction that has been recorded upon indictment in the last five years, if the person was convicted as a child, or the last ten years, if the person was convicted as an adult.¹⁰⁶

Domestic and Family Violence Protection Act 2012 (Qld) (DFVPA)

Some acts of domestic violence, such as physical or sexual abuse, or stalking a person, under the DFVPA may also lead to prosecution under the Criminal Code.

Drugs Misuse Act 1986 (Qld) (DMA) and Drugs Misuse Regulation 1987 (Qld) (DMR)

The DMA sets out drug-related offences and penalties that apply in Queensland. The DMR lists the types of dangerous drugs to which these offences apply to.

Mental Health Act 2000 (Qld) (MHA)

The Mental Health Court may consider matters where a person is alleged to have committed an offence and:

- is or was mentally ill at the time of the offence; or
- there is an issue of unsoundness of mind, diminished responsibility, or fitness for trial.¹⁰⁷

A reference to the Mental Health Court can be made by the accused or their representative, the Director of Mental Health or the Director of Public Prosecutions.¹⁰⁸

Peace and Good Behaviour Act 1982 (Qld) (PGBA)

¹⁰⁵ *Criminal Law (Rehabilitation of Offenders) Act 1986 (Qld) s 3.*

¹⁰⁶ *Ibid* ss 3, 5.

¹⁰⁷ *Mental Health Act 2000 (Qld) s 256.*

¹⁰⁸ *Ibid* s 257.

The behaviour prohibited by the PGBA is quite narrow. Other offences such as stalking are covered under the Criminal Code.

Penalties and Sentences Act 1992 (Qld) (PSA)

The Criminal Code sets out more serious offences for which people may be sentenced, under the PSA.

Police Powers and Responsibilities Act 2000 (Qld) (PPRA)

The PPRA outlines the rights and powers that police officers may exercise when enforcing the Criminal Code.

State Penalties Enforcement Act 1999 (Qld) (SPEA)

SPER debts may arise in relation to offences committed under the Criminal Code.

Summary Offences Act 2005 (Qld) (SOA)

The SOA sets out less serious criminal offences in Queensland. A simple offence under the SOA may be connected with a more serious crime leading to prosecution under the Criminal Code.

Domestic and Family Violence Protection Act 2012 (Qld)

What is the Act about?

The *Domestic and Family Violence Protection Act 2012 (Qld)* (**DFVPA**) aims to provide safety and protection for people who are victims of domestic and family violence.

Domestic violence includes acts by one person, against another person, that:

- are physically or sexually abusive;
- are emotionally or psychologically abusive;
- are economically abusive;
- are threatening;
- are coercive; or
- controls or dominates the second person in a way that causes them to fear for their safety or wellbeing, or the safety or wellbeing of someone else.¹⁰⁹

The DFVPA protects people from this type of behaviour if they are in a 'relevant relationship'.

This includes people in:

- an intimate personal relationship such as a de facto relationship, an engagement relationship or a couple relationship;
- a family relationship such as relatives by blood or marriage; or
- an informal care relationship where one person is dependant on the other person for help in daily activities, where this is not a commercial arrangement.

The court can make a domestic violence order (**DVO**) to protect people (the **aggrieved**) from domestic violence.¹¹⁰ A DVO can also protect relatives or associates of the person for whom the DVO is made.¹¹¹ A DVO can be applied for by the aggrieved person, a person acting for them (such as a person authorised by them, or a guardian appointed under the *Guardianship and Administration Act 2000* (Qld)), or a police officer.¹¹² A DVO also requires that the respondent not commit domestic violence or expose children to domestic violence.¹¹³ The Court may also impose other conditions if they are necessary to protect the safety of the aggrieved person. For example, the respondent may be prevented from contacting or approaching the aggrieved person.¹¹⁴ If a person has a DVO made against them and they do not comply with it, they can be charged with committing an offence and may be liable for up to three years imprisonment.¹¹⁵

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness or substance misuse problem may be particularly vulnerable to domestic violence when the symptoms of their illness affect their capacity. An example of this is where one person coerces a second person to sign a power of attorney that allows the first

¹⁰⁹ *Domestic and Family Violence Protection Act 2012* (Qld) s 8.

¹¹⁰ *Ibid* s 23.

¹¹¹ *Ibid* s 24.

¹¹² *Ibid* s 25.

¹¹³ *Ibid* s 28.

¹¹⁴ *Ibid* ss 57-58.

¹¹⁵ *Ibid* ss 30, 177.

person to control their finances.¹¹⁶ However, people with a mental illness or substance misuse problem may also be the perpetrators of domestic violence.

Key sections of the Act include:

- s 8 – meaning of domestic violence;
- s 13 – meaning of relevant relationship; and
- s 32 – application for a protection order.

Which agency is responsible for administration of the Act?

- Queensland Police Service (QPS)

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- Children’s Court

Relationship with other Queensland legislation

Criminal Code Act 1899 (Qld) (the Criminal Code)

Some acts of domestic violence (such as physical or sexual abuse, or stalking a person) may also lead to prosecution under the Criminal Code.

Guardianship and Administration Act 2000 (Qld) (GAA)

The DFVPA allows a person’s guardian, appointed under the GAA, to make an application for a DVO on behalf of the person where he or she lacks the capacity to do so themselves.

Peace and Good Behaviour Act 1982 (Qld) (PGBA)

A person may apply for a protection order under the PGBA, instead of the DFVPA, if they do not have a domestic relationship with the person who threatens violence against them. Although the DFVPA applies to a narrower group of victims, namely spousal relationships and other intimate relationships, the type of violence covered is much broader than the PGBA. For example, the DFVPA includes emotional and economic abuse.

¹¹⁶ Ibid s 12.

Peace and Good Behaviour Act 1982 (Qld)

What is the Act about?

The *Peace and Good Behaviour Act 1982 (Qld)* (**PGBA**) aims to prohibit threatening behaviour and to protect people from harm. A person (the **complainant**) can make a complaint to a justice of the peace (**JP**) if they are in fear of another person (the **defendant**) and that person has threatened to:

- assault or injure them, or anyone in their care;¹¹⁷ or
- damage their property.¹¹⁸

The complaint must establish that they are either:

- in fear of the defendant;¹¹⁹ or
- fear that the defendant will destroy or damage their property.¹²⁰

If the JP is satisfied that the complainant has established the matters above, he or she may then:

- issue a summons that requires the defendant to appear before a magistrates court;
- issue a warrant for the defendant to be brought before a magistrates court'; or
- order the complainant to attend mediation, provided the JP has first obtained the complainant's consent.¹²¹

The Magistrate will determine if the complaint should be dismissed, or if an order should be made for the defendant to keep the peace and be of good behaviour for a set time.¹²² The order may contain additional stipulations or conditions where the magistrate feels that these are appropriate.¹²³

It is an offence to breach a peace and good behaviour order.¹²⁴ Any person who breaches a peace and good behaviour order may be given a penalty of up to one year of imprisonment or an \$11,000 fine.¹²⁵

Applications for a peace and good behaviour order are commonly made in the context of neighbour disputes and non-domestic situations. However, the PGBA does not cover harassment or verbal abuse.

Are there particular concerns for people with a mental illness or substance misuse problem?

Rarely, a person with a mental illness or substance misuse problem may threaten to injure another person, or damage their property, during a psychotic or delusional state. However

¹¹⁷ *Peace and Good Behaviour Act 1982 (Qld)* ss 4(1)(a)-(b).

¹¹⁸ *Ibid* ss 4(1)(c)-(d).

¹¹⁹ *Ibid* s 4(1).

¹²⁰ *Ibid* s 4(2).

¹²¹ *Ibid* ss 4(2A)-(3).

¹²² *Ibid* s 6.

¹²³ *Ibid* s 6(4).

¹²⁴ *Ibid* s 10.

¹²⁵ *Ibid* s 10(1).

people with a mental illness are more likely to be a victim of violence than the perpetrator.¹²⁶ Alternatively misunderstanding can also lead others to fear people with a mental illness and misinterpret people's behaviour.

Key sections of the Act include:

- s 4 – complaint in respect of breach of the peace; and
- s 6 – Magistrates Court may make order.

Which agency is responsible for administration of the Act?

- Justices of the Peace (JP)

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court

Relationship with other Queensland legislation

Criminal Code Act 1899 (Qld) (**the Criminal Code**)

The behaviour prohibited by the PGBA is quite narrow. Other offences such as stalking are covered under the Criminal Code.

Domestic and Family Violence Protection Act 1989 (Qld) (**DFVPA**)

A person may apply for a protection order under the DFVPA, instead of the PGBA, if they have a domestic relationship with the person who threatens violence against them. Although the DFVPA applies to a narrower group of victims, for example spousal relationships and intimate relationships, the type of violence covered is much broader than the PGBA. For example, the DFVPA includes emotional and economic abuse.

¹²⁶ SANE Australia, *Facts and Figures About Mental Illness*, <<http://www.sane.org/information/factsheets-podcasts/204-facts-and-figures>>.

Penalties and Sentences Act 1992 (Qld) and Penalties and Sentences Regulation 2005 (Qld)

What is the Act about?

The *Penalties and Sentences Act 1992 (Qld) (PSA)* sets out the range of penalties and sentences that a court may order for a person convicted of an offence in Queensland. It also requires the court to take the person's particular circumstances and history into consideration.¹²⁷ This includes the person's criminal history, the person's character, or the existence of any mental disability. This is intended to make sure that penalties and sentences are consistent, fair and appropriate for the punishment and rehabilitation of people who have committed an offence within Queensland.¹²⁸

Are there particular concerns for people with a mental illness or substance misuse problem?

People living with a mental illness or substance misuse problem are overrepresented in the criminal justice system and people convicted of criminal offences and imprisoned may have undiagnosed or untreated mental illness.¹²⁹ Offending behaviour may be the result of a mental illness which may or may not be brought to the court's attention. This is potentially problematic, as a court may take into account a person's criminal history when deciding an appropriate penalty or sentence for an offender.¹³⁰

A court must also consider the person's intellectual capacity¹³¹ or any relevant medical or psychiatric report¹³² in deciding on an appropriate penalty or sentence. The court may also decide not to record a conviction if this is appropriate given the offender's age and character and the extent of any impact a conviction would have on the offender's economic and social wellbeing.¹³³ For example, a court may decide not to record a conviction for someone who is living with a mental illness or substance misuse problem and is also facing other issues with unemployment and homelessness.¹³⁴

The PSA also allows a court to impose a minor penalty, such as a good behaviour order,¹³⁵ or order that no penalty or record of conviction be made at all, for a person who has committed a minor drug offence such as the possession of a small amount of drugs.¹³⁶ This type of order may help a person living with a substance misuse problem to deal with their problem and aid their rehabilitation, which would otherwise be hindered if they were forced into the criminal justice system. However, the court is less likely to make this type of order for a repeat offender.¹³⁷

¹²⁷ *Penalties and Sentences Act 1992 (Qld)* ss 9, 19.

¹²⁸ *Ibid* s 3.

¹²⁹ Select Committee on Mental Health, Commonwealth of Australia, *A National Approach to Mental Health – From Crisis to Community* (2006) 333.

¹³⁰ *Penalties and Sentences Act 1992 (Qld)* s 9(5)(g).

¹³¹ *Ibid* s 9(2)(f).

¹³² *Ibid* s 9(4)(j).

¹³³ *Ibid* s 12(2).

¹³⁴ *Ibid* s 12.

¹³⁵ *Ibid* s 19.

¹³⁶ *Ibid* s 15D.

¹³⁷ *Ibid* s 18.

The PSA also allows a court to make a variety of orders other than imprisonment. This is beneficial for people living with a mental illness or substance misuse problem as imprisonment can hinder the person's recovery and rehabilitation. Such orders include:

- Graffiti Removal Orders – require a person who has committed a graffiti offence (under the *Summary Offences Act 2005* (Qld)) to remove graffiti for a certain number of hours.¹³⁸
- Community Service Orders – require a person to perform unpaid community service for a certain number of hours.¹³⁹
- Intensive Correction Orders – require a person to serve a sentence of imprisonment through intensive correction in a community institution (such as psychiatric or psychological treatment, counselling and any other correction programs)¹⁴⁰ instead of in prison.¹⁴¹

Sometimes criminal justice responses are applied to people when their needs would better be addressed by a combination of other disability, rehabilitation, health and community responses.¹⁴² This lack of appropriate penalties and sentences leaves people at a greater risk of breaching strict requirements of their particular sentence or penalty, consequently fast-tracking them towards more serious penalties such as imprisonment.¹⁴³

Key sections of the Act include:

- s 9 – sentencing guidelines.

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court
- Children's Court (sentencing of child offenders).

Relationship with other Queensland legislation

Corrective Services Act 2006 (Qld) (CRSA)

While the PSA sets out potential sentences for people convicted of a criminal offence, the CRSA regulates how people are treated while they are detained in a corrective facility in Queensland.

Criminal Code Act 1899 (Qld) (**the Criminal Code**)

The Criminal Code sets out more serious offences for which people may be sentenced, under the PSA.

Mental Health Act 2000 (Qld) (**MHA**)

¹³⁸ Ibid ss 110A, 110B. See also *Penalties and Sentences Regulation 2005* (Qld) s 5 and sch 1 for the types and quantities of drugs covered.

¹³⁹ *Penalties and Sentences Act 1992* (Qld) ss 101-102.

¹⁴⁰ Ibid s 115.

¹⁴¹ Ibid ss 112-113.

¹⁴² Australian Human Rights Commission, *Access to justice in the criminal justice system for people with disability*, issue paper (April 2013) 6.

¹⁴³ Queensland Criminal Justice Centre, *Penalties and Sentences*, < <http://www.qcjc.com.au/information-for-legal-practitioners/#2072>>.

A sentencing court must be satisfied that an offender does not need to be referred to the Mental Health Court, to determine unsoundness of mind or diminished responsibility, before ordering an indefinite sentence for the offender.¹⁴⁴

Summary Offences Act 2005 (Qld) (SOA)

The SOA sets out simple offences in Queensland for which people may be sentenced, under the PSA.

¹⁴⁴ *Penalties and Sentences Act 1992 (Qld) s 163(3).*

State Penalties Enforcement Act 1999 (Qld) and State Penalties Enforcement Regulation 2000 (Qld)

What is the Act about?

The *State Penalties Enforcement Act 1999* (Qld) (**SPEA**) creates the State Penalties Enforcement Registry (**SPER**). SPER is responsible for collecting debts owed to the state, including: unpaid fines from infringement notices for offences such as speeding, parking illegally or toll evasion;¹⁴⁵ court-ordered penalties which include fines issued for minor criminal offences such as public nuisance and contravening a direction;¹⁴⁶ and financial assistance provided under the *Victims of Crime Act 2009* (Qld).

SPER may collect these debts from a person by issuing an enforcement order for the amount owed¹⁴⁷ if a fine is not paid, dealt with by a court,¹⁴⁸ or waived by the issuing agency.¹⁴⁹ An enforcement order will include an additional administrative fee of \$58.85.¹⁵⁰ If an enforcement order is received, the person may choose to:

- pay the full amount owed;
- apply to SPER to pay the amount in instalments;¹⁵¹
- apply to SPER for a fine option order (**FOO**), allowing them to do unpaid community service to pay off the debt,¹⁵² (this only applies to fines issued by courts, fines from an infringement notice, or fees payable under the SPEA);¹⁵³
- apply for a good behaviour order, which is an agreement not to commit any further offences or infringements for a certain period of time;¹⁵⁴
- apply to the Registrar of SPER to have the debt waived (only given in very limited circumstances); or
- challenge the order in court.¹⁵⁵

If the debt is not paid within 28 days of the date of the order and no other arrangements have been made for payment, SPER may issue an enforcement warrant, a fine collection notice or an arrest and imprisonment warrant.¹⁵⁶ These options allow SPER to take action to recover the debt, including:

- suspending the person's driver licence;¹⁵⁷
- immobilising the person's vehicle;¹⁵⁸

¹⁴⁵ *State Penalties Enforcement Act 1999* (Qld) s 13.

¹⁴⁶ *Ibid* s 8(2).

¹⁴⁷ *Ibid* s 38.

¹⁴⁸ *Ibid* s 22.

¹⁴⁹ *Ibid* s 28.

¹⁵⁰ *Ibid* s 35; *State Penalties Enforcement Regulation 2000* (Qld) s 29.

¹⁵¹ *State Penalties Enforcement Act 1999* (Qld) s 23.

¹⁵² *Ibid* s 43.

¹⁵³ *Ibid* s 46.

¹⁵⁴ *Ibid* s 118.

¹⁵⁵ *Ibid* s 51.

¹⁵⁶ *Ibid* s 52.

¹⁵⁷ *Ibid* div 7.

¹⁵⁸ *Ibid* div 7A.

- directing the person's employer or financial institution to take funds from their pay or bank account;¹⁵⁹
- registering an interest over the person's property;¹⁶⁰ or
- seizing and selling the person's property.¹⁶¹

Are there particular concerns for people with a mental illness or substance misuse problem?

Under the SPEA a person has 28 days to pay an amount stated in an enforcement order.¹⁶² This timeframe also applies to applications to pay a debt in instalments or to do unpaid community service instead of paying the debt.¹⁶³ People living with a mental illness or substance misuse issue may face difficulties in paying a debt within 28 days or in preparing an application within 28 days, especially if they are facing more immediate issues associated with their illness.

The SPEA does not address the issue of disadvantaged debtors; however, SPER has a Community Engagement Team (**CET**), which aims to ensure that vulnerable debtors are given special consideration due to their hardships. Categories of debtors that the CET will recognise as vulnerable include people who:

- are homeless;
- are in rehabilitation;
- suffer from a disability;
- have impaired decision making capacity; or
- lack the financial capacity to pay.

Key sections of the Act include:

- s 42 – application to pay by installments;
- s 43 – application for fine option order; and
- s 52 – default after time to pay.

Which agency is responsible for administration of the Act?

- State Penalties Enforcement Registry (**SPER**)
- Queensland Corrective Service – Probation and Parole (**QCS**)
The QCS supervises community service arrangements that may be permitted under a fine option order (as an alternative means of paying of a debt).
- SPER Community Engagement Team (**CET**)
The CET may allow certain people, including the homeless, people in rehabilitation, and people with disability or who have impaired decision making capacity, to be given special consideration by SPER.

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court

¹⁵⁹ Ibid s 75.

¹⁶⁰ Ibid s 65.

¹⁶¹ Ibid s 73C.

¹⁶² Ibid s 52(1).

¹⁶³ Ibid ss 42-43.

Enforcement orders may be challenged in the Magistrates Court.¹⁶⁴

Relationship with other Queensland legislation

Criminal Code Act 1899 (Qld) (**the Criminal Code**)

SPER debts may arise in relation to offences committed under the Criminal Code.

Judicial Review Act 1991 (Qld) (**JRA**)

Certain decisions made by SPER may be reviewed under the JRA.

Summary Offences Act 2005 (Qld) (**SOA**)

SPER debts may arise in relation to offences committed under the SOA.

Victims of Crime Assistance Act 2009 (Qld)

People who have been convicted of a crime of violence that has resulted in injury or death may be required to pay the Department of Justice and Attorney-General the amount of financial assistance provided to victims of the crime.¹⁶⁵ If this debt is not paid, it may be passed onto SPER.¹⁶⁶ In these circumstances, a FOO is not an available method for paying the debt.¹⁶⁷

¹⁶⁴ Ibid s 27.

¹⁶⁵ *Victims of Crime Assistance Act 2009* (Qld) s 109.

¹⁶⁶ Ibid ss 117, 191.

¹⁶⁷ *State Penalties Enforcement Act 1999* (Qld) s 46.

Summary Offences Act 2005 (Qld)

What is the Act about?

The *Summary Offences Act 2005* (Qld) (SOA) sets out minor offences in Queensland, especially offences committed in a public place that are dealt with by a judge or magistrate alone without a jury. For example, the SOA makes it illegal to beg,¹⁶⁸ urinate¹⁶⁹ or be drunk in a public place,¹⁷⁰ or to be a public nuisance.¹⁷¹

Are there particular concerns for people with a mental illness or substance misuse problem?

Where a person is charged with a simple offence only, issues of unsoundness of mind and fitness to plead may not be referred to the Mental Health Court. As a result, fitness to plead and unsoundness of mind issues may not be dealt raised or considered. Matters relating to a person's mental health may therefore be overlooked when determining whether to continue with the person's trial, or in determining the person's guilt or the appropriateness of a penalty or sentence for a summary offence. When a person's mental health is not duly regarded, they face the prospect of being punished for acts or behaviours over which they did not have full control or which could not reasonably be avoided due to their disadvantaged circumstances.

Key sections of the Act include:

- s 6 – public nuisance;
- s 7 – urinating in a public place;
- s 8 – begging in a public place;
- s 9 – wilful exposure;
- s 10 – being drunk in a public place;
- s 11 – trespass; and
- s 15 – possession of implement in relation to particular offences.

Which agency is responsible for administration of the Act?

- Queensland Police Service (QPS)

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court

Relationship with other Queensland legislation

Criminal Code Act 1899 (Qld) (the Criminal Code)

The Criminal Code sets out more criminal offences in Queensland. A simple offence under the SOA may be connected with a more serious crime leading to prosecution under the Criminal Code.

Penalties and Sentences Act 1992 (Qld) (PSA)

¹⁶⁸ *Summary Offences Act 2005* (Qld) s 8.

¹⁶⁹ *Ibid* s 7.

¹⁷⁰ *Ibid* s 10.

¹⁷¹ *Ibid* s 6.

The SOA sets out simple offences in Queensland for which people may be sentenced under the PSA.

Police Powers and Responsibilities Act 2000 (Qld) (PPRA)

The PPRA outlines the rights and powers that police officers may exercise when enforcing the SOA.

State Penalties Enforcement Act 1999 (Qld) (SPEA)

SPER debts may arise in relation to offences committed under the SOA.

Victims of Crime Assistance Act 2009 (Qld)

What is the Act about?

The *Victims of Crime Assistance Act 2009* (Qld) (**VCAA**) provides assistance to victims of acts of violence that result in injury or death.¹⁷² It does so by:

- making sure that government agencies investigating a crime respect the privacy of victims;¹⁷³
- providing victims with assistance and information about services to help them following a crime;¹⁷⁴
- providing victims of crime with financial assistance to aid their recovery from the psychological and physical effects of a crime;¹⁷⁵ and
- allowing victims to prepare a victim impact statement, discussing how they have been impacted by the crime, which may be read to a court before the offender is sentenced.¹⁷⁶

In some circumstances, assistance may be provided to a person who has suffered an act of violence, even where the offender has not been identified, arrested or prosecuted; or where the offender has not been found guilty of the offence, because of a justification, excuse or defence.

Are there particular concerns for people with a mental illness or substance misuse problem?

People living with a mental illness are more likely to be the victim of a crime than the rest of the community¹⁷⁷ and may suffer serious psychological consequences as a result of a crime committed against them. Providing assistance to victims of crime that have a pre-existing mental illness or vulnerability to mental illness is important to their recovery following a crime.

A person with mental illness or substance misuse problems may also be the perpetrator of a crime that causes death or injury. If a person who was a victim of a crime receives financial assistance, JAG may require the perpetrator to repay the amount of financial assistance that was paid to the victim of the crime.¹⁷⁸ If the amount is not paid, it may also be passed on to the State Penalties Enforcement Registry (**SPER**), which may take further enforcement action against the person to recover the debt.

Key sections of the Act include:

- ch 2 pt 2 – declaration of fundamental principles; and
- s 25 – meaning of act of violence.

Which agency is responsible for administration of the Act?

- Victim Assist Queensland

¹⁷² *Victims of Crime Assistance Act 2009* (Qld) s 25.

¹⁷³ *Ibid* s 9.

¹⁷⁴ *Ibid* s 10.

¹⁷⁵ *Ibid* ch 3.

¹⁷⁶ *Ibid* ss 15-15B.

¹⁷⁷ SANE Australia, *Facts and Figures About Mental Illness*, <
<http://www.sane.org/information/factsheets-podcasts/204-facts-and-figures>>.

¹⁷⁸ *Victims of Crime Assistance Act 2009* (Qld) s 109.

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court

Relationship with other Queensland legislation***Guardianship and Administration Act 2000 (Qld) (GAA)***

The VCAA allows a person's guardian appointed under the GAA to apply for victim assistance on behalf of the person if they lack the capacity to do so themselves.¹⁷⁹

Mental Health Act 2000 (Qld) (MHA)

A person may be referred to the Mental Health Court to determine whether they were capable of understanding what they were doing at the time of the crime, if their mental capacity is in doubt.¹⁸⁰ Where this happens, the victim may submit a statement, similar to a victim impact statement, about their views of the person's behaviour, the risk that the person poses to them or other people and how the person's behaviour has impacted them.¹⁸¹

Personal Injuries Proceedings Act 2002 (Qld) (PIPA)

People who have been the victim of a crime may be entitled to commence proceedings for personal injury. If so, they must comply with the procedures and time limits set out in PIPA.

Power of Attorney Act 1998 (Qld) (POAA)

The VCAA allows a person's attorney appointed under the GAA to apply for victim assistance on behalf of the person if they lack the capacity to do so themselves.¹⁸²

State Penalties Enforcement Act 1999 (Qld) (SPEA)

If a debt to JAG for victim's assistance is not paid, it may be passed on to SPER.¹⁸³ In these circumstances, a FOO is not an available method for paying the debt.¹⁸⁴

¹⁷⁹ Ibid s 51(4)(a).

¹⁸⁰ *Mental Health Act 2000 (Qld)* s 257.

¹⁸¹ Ibid s 284.

¹⁸² *Victims of Crime Assistance Act 2009 (Qld)* s 51(4)(c).

¹⁸³ *Victims of Crime Assistance Act 2009 (Qld)* ss 117, 191.

¹⁸⁴ *State Penalties Enforcement Act 1999 (Qld)* s 46.

Further information and advice

Victims of crime

BraveHearts

Postal address: PO Box 575, ARUNDEL BC QLD 4214
Telephone (toll free): 1800 272 831
Telephone: (07) 5552 3000
Email: admin@bravehearts.org.au

CentraCare

Office address: Cathedral House, Level 1, 229 Elizabeth Street, BRISBANE QLD 4000
Postal address: GPO Box 282, BRISBANE QLD 4001
Telephone: (07) 3324 3100
Fax: (07) 3324 3185
Email: centacare@bne.catholic.net.au

Courts Network

Brisbane

Office address: Court Network Office, The Queen Elizabeth II Courts of Law, Brisbane
Supreme and District Courts, Level 1, 415 George Street, BRISBANE QLD 4000
Telephone (toll free): 1800 267 672
Telephone: (07) 3227 7625
Email: queensland@courtnetwork.com.au

Cairns

Office address: 5D Sheridan Street, CAIRNS QLD 4870
Telephone: (07) 4048 1422
Fax: (07) 4048 1422
Email: cairns@courtnetwork.com.au

Townsville

Office address: 31 Walker Street, TOWNSVILLE QLD 4810
Telephone: (07) 4761 8305
Fax: (07) 4799 7092
Email: townsville@courtnetwork.com

Crime Stoppers

Telephone: 1800 333 000
Website: www.qld.crimestoppers.com.au

Department of Justice and Attorney-General

Justices of the Peace

Office address: Level 6, 154 Melbourne Street, SOUTH BRISBANE QLD 4101

Postal address: PO Box 5894, WEST END QLD 4101

Telephone: 1300 301 147

Fax: (07) 3109 1699

Email: jp@justice.qld.gov.au

Website: www.justice.qld.gov.au/justice-services/justices-of-the-peace

Youth Justice Conferencing Service Centres

Brisbane Youth Justice Conferencing Service Centre

Office address: 41 Murray Street, BOWEN HILLS QLD 4006

Telephone: (07) 3274 9911

Far North Queensland Youth Justice Conferencing Service Centre

Office address: 277 Mulgrave Road, CAIRNS QLD 4870

Telephone: (07) 4048 9801

Gold Coast Youth Justice Conferencing Service Centre

Office address: Shop 13, Pacific Square, 2540 Gold Coast Highway, MERMAID BEACH
QLD 4218

Telephone: (07) 5562 7157

Hervey Bay Youth Justice Conferencing Service Centre

Office address: 3/101 Beach Road, PIALBA QLD 4655

Telephone: (07) 4125 9220

Logan Youth Justice Conferencing Service Centre

Office address: 18 Blackwood Road, WOORDRIDGE QLD 4114

Telephone: (07) 3884 9760

Mackay Youth Justice Conferencing Service Centre

Office address: 41 Gordon Street, MACKAY QLD 4740

Telephone: (07) 4967 2360

North Coast Youth Justice Conferencing Service Centre

Office address: 21 Brisbane Road, MOOLOOLABA QLD 4557

Telephone: (07) 5470 9460

Rockhampton Youth Justice Conferencing Service Centre

Office address: 155 Alma Street, ROCKHAMPTON QLD 4700

Telephone: (07) 4924 1842

South West Youth Justice Conferencing Service Centre (Ipswich)

Office address: Level 1, 38 Limestone Street Centre, IPSWICH QLD 4305

Telephone: (07) 3280 1874

South West Youth Justice Conferencing Service Centre (Toowoomba)

Office address: 49 Neil Street, TOOWOOMBA QLD 4350

Telephone: (07) 4615 3444

Townsville Youth Justice Conferencing Service Centre

Office address: 109 Bamford Lane, KIRWAN QLD 4817

Telephone: (07) 4799 9200

DVConnect

Postal Address: PO Box 10575, Adelaide Street, BRISBANE QLD 4000

Email: mail@dvconnect.org

Womensline

Telephone: 1800 811 811

Mensline

Telephone: 1800 600 636

Immigrant Women's Support Service

Postal address: PO Box 5490, WEST END QLD 4101

Email: mail@iwss.org.au

Domestic Violence Program

Telephone: (07) 3846 3490

Sexual Assault Program

Telephone: (07) 3846 5400

Legal Aid Queensland

Office address: 44 Herschel Street, BRISBANE QLD 4000

Postal address: GPO Box 2449, BRISBANE QLD 4001

Telephone (general): 1300 65 11 88

Telephone (mobile): (07) 3238 3444

Fax: (07) 3238 3014

Website: www.legalaid.qld.gov.au

Maruma Li Mari Family Violence Legal Service

Office address: Roma Neighbourhood Centre, Corner Quinton & Bowen Streets, ROMA
QLD 4455

Postal address: PO Box 1028, ROMA QLD 4455

Telephone (toll free): 1800 185 950

Telephone: (07) 4624 0813

Fax: (07) 4622 1448

Protect All Children Today (PACT)

Child Witness Court Support & Advocacy

Postal address: PO Box 6011, LOGAL CENTRAL QLD 4114

Telephone: 1800 090 111 (Free call) or (07) 3290 0111

Email: pact@pact.org.au

Queensland Homicide Victims Support Group

Postal address: Brisbane PO Box 292, LUTWYCHE QLD 4030

Telephone (toll free): 1800 774 744

Telephone (Brisbane): (07) 3857 4744

Telephone (Townsville): (07) 4775 6051

Email: victim_support@health.qld.gov.au

Queensland Indigenous Family Violence Legal Service

General Office

Telephone: 1800 887 700

Email: help@qifvls.com.au

Website: www.qifvls.com.au/index.html

Far North Queensland Office

Office address: 59 McLeod Street, CAIRNS QLD 4870

Postal address: PO Box 4643, CAIRNS QLD 4870

Telephone: (07) 4030 0400

Fax: (07) 4052 1614

North Queensland Office

Office address: Level 1/62, Walker Street, TOWNSVILLE QLD 4810

Postal address: PO Box 2005, TOWNSVILLE QLD 4810

Telephone: (07) 4724 3666

Fax: (07) 4724 3660

Gulf and West Queensland Office

Office address: 19 Isa Street, MOUNT ISA QLD 4825

Postal address: PO Box 3073, MOUNT ISA QLD 4825

Telephone: (07) 4749 5944

Fax: (07) 4749 5955

Central Queensland Office

Office address: Suite 6/6, East Street, ROCKHAMPTON QLD 4700

Postal address: PO Box 690, ROCKHAMPTON QLD 4700

Telephone: (07) 4922 4557

Fax: (07) 4922 0551

Tablelands Sexual Assault Service

Postal address: PO Box 1294, ATHERTON QLD 4883
Telephone: (07) 4091 4036
Email: tsas@tsas.net.au

Victim Assist Queensland

Office address: Level 6, 154 Melbourne Street, SOUTH BRISBANE QLD 4101
Postal address: GPO Box 149, BRISBANE QLD 4001
Telephone: 1300 546 587
Fax: (07) 3109 1901
Website: www.justice.qld.gov.au/justice-services/victims-of-crime

Victims Counselling and Support Services (Relationships Australia)

Telephone: 1300 139 703
Email: generalenquiries@relateqld.com.au

Victim Information Register

Office address: Level 3, 243 Edward Street, BRISBANE QLD 4001
Postal address: GPO Box 806, BRISBANE QLD 4001
Telephone: (07) 3109 0551

Victims Register

Postal address: GPO Box 1054, BRISBANE QLD 4001
Telephone (toll free): 1800 098 098
Telephone: (07) 3227 7873
Email: victims.register@correctiveservices.qld.gov.au
Website: [www.correctiveservices.qld.gov.au/About Us/victims register/index.shtml](http://www.correctiveservices.qld.gov.au/About%20Us/victims_register/index.shtml)

Victims Support Service

Office of the Director of Public Prosecutions Victim Support Service

Office address: 50 Ann Street, BRISBANE QLD 4000
Postal address: GPO Box 2403, BRISBANE QLD 4001
Telephone (toll free): 1800 673 428
Telephone: (07) 3239 6840
Fax: (07) 3220 0035

Queensland Health Victim Support Service

Office address: Ground Floor, 15 Butterfield Street, HERSTON QLD 4006
Postal address: Brisbane GPO, Locked Bag 3411, BRISBANE QLD 4001
Telephone (toll free): 1800 208 005
Telephone: (07) 3328 9104
Fax: (07) 3328 9109

Email: Victim_Support@health.qld.gov.au

Working With People with Intellectual and Learning Disabilities

Victims of Crime Program

Postal Address: PO Box 495, LUTWYCHE QLD 4030

Telephone: (07) 3262 9877

Telephone: (07) 38624066

Email: info@wwild.org

Website: www.wwild.org

Accused

Aboriginal and Torres Strait Islander Legal Service

Head Office

Office address: Level 5, 183 North Quay, BRISBANE QLD 4000

Postal address: PO Box 13035 George Street, BRISBANE QLD 4003

Telephone: (07) 3025 3888

Telephone (toll free): 1800 012 255

Fax: (07) 3025 3800

Regional Offices

Beenleigh: (07) 3804 5033

Bundaberg: (07) 4152 8044

Cairns: (07) 4046 6400

Charleville: (07) 4654 1721

Hervey Bay: (07) 4128 2488

Ipswich: (07) 3812 2772

Mackay: (07) 4953 4058

Maroochydore: (07) 5452 7633

Mount Isa: (07) 4744 0900

Murgon: (07) 4168 1944

Rockhampton: (07) 4927 5711

Southport: (07) 5532 6988

Strathpine: (07) 3205 1253

Thursday Island: (07) 4069 1091

Toowoomba: (07) 4659 7822

Townsville: (07) 4722 5111

Bayside Community Legal Service

Office address: 29 Loraine Street, CAPALABA QLD 4157

Postal address: PO Box 271, CAPALABA QLD 4157

Telephone: (07) 3134 0843

Email: baysidelegal@optusnet.com.au

Cairns Community Legal Centre

Family Relationship Centre

Office address: 1st Floor, Suite 1, Main Street Arcade, 85 Lake Street, CAIRNS QLD 4870

Postal address: PO Box 7129, CAIRNS QLD 4870

Telephone (toll free): 1800 062 608

Telephone: (07) 4031 7688

Fax: (07) 4041 2134

Email: admin@cclc.org.au

Website: www.cclc.org.au

Caxton Legal Centre

Office address: 1 Manning Street, SOUTH BRISBANE QLD 4103

Telephone: (07) 3214 6333

Fax: (07) 3214 6363

Email: caxton@caxton.org.au

Website: www.caxton.org.au

CentraCare

Office address: Cathedral House, Level 1, 229 Elizabeth Street, BRISBANE QLD 4000

Postal address: GPO Box 282, BRISBANE QLD 4001

Telephone: (07) 3324 3100

Fax: (07) 3324 3185

Email: centacare@bne.catholic.net.au

Central Queensland Community Legal Centre

Office address: Community Legal Centre, Suite 5/67 East Street, ROCKHAMPTON QLD 4700

Postal address: PO Box 1393, ROCKHAMPTON QLD 4700

Telephone (toll free): 1800 155 121

Telephone: (07) 4922 1200

Fax: (07) 4922 1600

Email: admin@cqclc@org.au

Gold Coast Legal Service

Office address: 2/18 Bay Street, SOUTHPORT QLD 4215

Telephone: (07) 5532 9611

Fax: (07) 5532 9125

Email: citizens@advicebureau.org.au

Web site: www.advicebureau.org.au

Goondiwindi Community Legal Service

Office address: 56 Marshall Street, GOONDIWINDI QLD 4390
Postal address: PO Box 687, GOONDIWINDI QLD 4390
Telephone: (07) 4670 0716
Fax: (07) 4671 2469
Email: legal@caregoondiwindi.org.au
Website: www.caregoondiwindi.org.au

Junkuri Laka Wellesley Islands Aboriginal Law Inc.

Office address: 2 Lardil Street, Gununa, MORNINGTON ISLAND QLD 4870
Postal address: Post Office, Gununa, MORNINGTON ISLAND QLD 4870
Telephone: (07) 4745 7278
Email: junkurilaka@gmail.com
Website: www.junkurilaka.org

Legal Aid Queensland

Office address: 44 Herschel Street, BRISBANE QLD 4000
Postal address: GPO Box 2449, BRISBANE QLD 4001
Telephone (general): 1300 65 11 88
Telephone (mobile): (07) 3238 3444
Fax: (07) 3238 3014
Website: www.legalaid.qld.gov.au

Mackay Regional Community Legal Centre

Address: Suite 4, City Court Arcade, 80 Victoria Street, MACKAY QLD 4740
Telephone: (07) 4953 1211
Fax: (07) 4953 1644
Email: admin@mrclc.com.au
Website: www.mrclc.com.au

North Queensland Women's Legal Service

Townsville Office

Postal address: PO Box 2209, TOWNSVILLE QLD 4810
Telephone (toll free): 1800 244 504
Telephone: (07) 4772 5400
Fax: (07) 4772 5315
Website: www.nqwls.com.au

Cairns Office

Postal address: PO Box 5986, CAIRNS QLD 4870
Telephone (toll free): 1800 244 504
Telephone: (07) 4041 0066
Fax: (07) 4041 0061

Website: www.nqwls.com.au

Nundah Community Support Group Inc.

Office address: 14 Station Street, NUNDAH QLD 4012

Postal address: PO Box 386, NUNDAH QLD 4012

Telephone: (07) 3260 6820

Fax: (07) 3260 7127

Email: legaladmin@nundahcc.org.au

Website: www.nundahcc.org.au

Office of the Director of Public Prosecutions

Office address: Level 1 and 6, State Law Building, 50 Ann Street, BRISBANE QLD 4000

Postal address: GPO Box 2403, BRISBANE QLD 4001

Telephone (toll free): 1800 673 428

Telephone: (07) 3239 6840

Fax: (07) 3220 0035

Website: www.qgd.qld.gov.au

Pine Rivers Community Legal Service

Office address: Shop 3, 481 Gympie Road, STRATHPINE QLD 4500

Postal address: PO Box 489, LAWNTON QLD 4501

Telephone: (07) 3205 2955

Fax: (07) 3881 2877

Website: www.pmc.org.au/legal

Prisoners' Legal Service

Postal address: PO Box 5162, WEST END QLD 4101

Telephone (legal advice): (07) 3846 3384

Telephone (administration): (07) 3846 5074

Fax: (07) 3844 2703

Email: pls@plsqld.com

Website: www.plsqld.com

Queensland Public Interest Law Clearing House Incorporated

Postal address: PO Box 3631, SOUTH BRISBANE BC QLD 4101

Phone: (07) 3846 6317

Fax: (07) 3846 6311

Email: admin@qplich.org.au

Queensland Indigenous Family Violence Legal Service

Telephone (toll free): 1800 88 77 00

Email: help@qifvls.com.au

Far North Queensland Office

Office address: 59 McLeod Street, CAIRNS QLD 4870

Postal address: PO Box 4643, CAIRNS QLD 4870

Telephone: (07) 4030 0400

Fax: (07) 4052 1614

North Queensland Office

Office address: Level 1, 62 Walker Street, TOWNSVILLE QLD 4810

Postal address: PO Box 2005, TOWNSVILLE QLD 4810

Telephone: (07) 4724 3666

Fax: (07) 4724 3660

Gulf and West Queensland Office

Office address: 19 Isa Street, MOUNT ISA QLD 4825

Postal address: PO Box 3073, MOUNT ISA QLD 4825

Telephone: (07) 4749 5944

Fax: (07) 4749 5955

Central Queensland Office

Office address: Suite 6, 6 East Street, ROCKHAMPTON QLD 4700

Postal address: PO Box 690, ROCKHAMPTON QLD 4700

Telephone: (07) 4922 4557

Fax: (07) 4922 0551

Queensland Police Prosecution Corporation

General

Website: www.police.qld.gov.au

Beaudesert Office

Office address: 16-20 Johanna Street, JIMBOOMBA QLD 4280

Telephone: (07) 5547 9817

Fax: (07) 5546 0272

Bowen Office

Office address: 28 William Street, BOWEN QLD 4370

Telephone: (07) 4786 1333

Fax: (07) 4786 3299

Brisbane Office

Office address: Level 8, 40 Tank Street, BRISBANE QLD 4000

Postal address: GPO Box 1440, BRISBANE QLD 4001

Telephone: (07) 3234 2222

Fax: (07) 3234 2270

Bundaberg Office

Office address: 256 Bourbong Street, BUNDABERG QLD 4670

Postal address: PO Box 1214, BUNDABERG QLD 4670

Telephone: (07) 4153 9001

Fax: (07) 4153 9112

Caboolture Office

Office address: 34 King Street, CABOOLTURE QLD 4510

Postal address: PO Box 90, CABOOLTURE QLD 4510

Telephone: (07) 5495 0443

Fax: (07) 5495 7276

Cairns Office

Office address: 5 Sheridan Street, CAIRNS QLD 4870

Telephone: (07) 4030 7092

Fax: (07) 4030 7027

Charleville Office

Office address: 59 Alfred Street, CHARLEVILLE QLD 4470

Telephone: (07) 4654 1200

Fax: (07) 4654 3338

Cleveland Office

Office address: 11 Middle Street, CLEVELAND QLD 4163

Telephone: (07) 3824 9336

Fax: (07) 3286 7267

Dalby Office

Office address: 47 Drayton Street, DALBY QLD 4405

Postal address: PO Box 420, DALBY QLD 4405

Telephone: (07) 4669 9240

Fax: (07) 4662 4725

Emerald Office

Office address: Egerton Street, EMERALD QLD 4720

Postal address: PO Box 67, EMERALD QLD 4720

Telephone: (07) 4983 8100

Fax: (07) 4982 4132

Gladstone Office

Office address: Goondoon Street, GLADSTONE QLD 4680

Postal address: PO Box 1000, GLADSTONE QLD 4680

Telephone: (07) 4971 3246

Fax: (07) 4971 3261

Gold Coast Office

Office address: 96 Scarborough Street, SOUTHPORT QLD 4215

Telephone: (07) 5571 4383
Fax: (07) 5531 0540

Gympie Office

Office address: 40 Channon Street, GYMPIE QLD 4570
Postal address: PO Box 176, GYMPIE QLD 4570
Telephone: (07) 5480 1078
Fax: (07) 5480 1144

Hervey Bay Office

Office address: 142 Torquay Road, HERVEY BAY QLD 4656
Telephone: (07) 4218 5344
Fax: (07) 4128 5338

Holland Park Office

Office address: 1025 Logan Road, HOLLAND PARK QLD 4121
Telephone: (07) 3853 7128
Fax: (07) 3853 7133

Innisfail Office

Office address: 2 McGowan Drive, INNISFAIL QLD 4860
Postal address: PO Box 8, INNISFAIL QLD 4860
Telephone: (07) 4061 5719
Fax: (07) 4061 4871

Ipswich Office

Office address: Level 2, 37 Ellenborough Street, IPSWICH QLD 4305
Telephone: (07) 3437 2757
Fax: (07) 3437 2677

Kingaroy Office

Office address: 13 Alford Street, KINGAROY QLD 4610
Telephone: (07) 4160 4900
Fax: (07) 4162 5014

Logan Office

Office address: 3 Kent Street, BEENLEIGH QLD 4207
Telephone: (07) 3382 9666
Fax: (07) 3382 0854

Longreach Office

Office address: 40 Cornish Street, MUTTABURRA QLD 4372
Telephone: (07) 4658 7200
Fax: (07) 4658 7004

Mackay Office

Office address: 57-59 Sydney Street, MACKAY QLD 4740

Postal address: PO Box 261, MACKAY QLD 4740
Telephone: (07) 4968 3565
Fax: (07) 4968 3584

Mareeba Office

Postal address: PO Box 1126, MAREEBA QLD 4880
Telephone: (07) 4030 3350
Fax: (07) 4092 1856

Maryborough Office

Office address: Corner Lennox Street & Kent Street, MARYBOROUGH QLD 4650
Postal address: PO Box 220, MARYBOROUGH QLD 4650
Telephone: (07) 4123 8139
Fax: (07) 4132 8139

Mount Isa Office

Office address: 7-9 Isa Street, MOUNT ISA QLD 4825
Telephone: (07) 4744 1112
Fax: (07) 4744 1187

Murgon Office

Office address: 46 Stephens Street, MURGON QLD 4604
Telephone: (07) 4179 5222
Fax: (07) 4179 5299

Pine Rivers Office

Office address: 374 Gympie Road, STRATHPINE QLD 4500
Telephone: (07) 3490 4820
Fax: (07) 3490 4822

Redcliffe Office

Office address: Redcliffe Parade, REDCLIFFE QLD 4020
Postal address: PO Box 156, REDCLIFFE QLD 4020
Telephone: (07) 3283 0504
Fax: (07) 3284 3946

Richlands Office

Office address: Corner Old Progress Road & Archerfield Road, RICHLANDS QLD 4077
Telephone: (07) 3710 1199
Fax: (07) 3710 1190

Rockhampton Office

Office address: Corner Denham St & Bolsover St, ROCKHAMPTON QLD 4702
Telephone: (07) 4932 3711
Fax: (07) 4932 3719

Roma Office

Office address: 42 Queen Street, ROMA QLD 4455
Postal address: PO Box 474, ROMA QLD 4455
Telephone: (07) 4622 9370
Fax: (07) 4622 9385

Sandgate Office

Office address: 80-84 Brighton Road, SANDGATE QLD 4017
Telephone: (07) 3631 7011
Fax: (07) 3631 7055

Sunshine Coast Office

Office address: Level 2, 63 The Esplanade, MAROOCHYDORE QLD 4558
Postal address: PO Box 1175, MAROOCHYDORE QLD 4558
Telephone: (07) 5430 9900
Fax: (07) 5430 9920

Thursday Island Office

Office address: 160 Douglas Street, THURSDAY ISLAND QLD 4875
Postal address: PO Box 190, THURSDAY ISLAND QLD 4875
Telephone: (07) 4069 1520
Fax: (07) 4069 1432

Toowoomba Office

Office address: 161 Hume Street, TOOWOOMBA QLD 4350
Postal address: PO Box 144, TOOWOOMBA QLD 4350
Telephone: (07) 4631 6383
Fax: (07) 4631 6387

Townsville Office

Office address: 30 Stanley Street, TOWNSVILLE QLD 4810
Postal address: PO Box 1025, TOWNSVILLE QLD 4810
Telephone: (07) 4759 9814
Fax: (07) 4724 4363

Warwick Office

Office address: 86 Fitzroy Street, WARWICK QLD 4370
Telephone: (07) 4660 4414
Fax: (07) 4660 4460

Whitsunday Office

Office address: 2 Altmann Ave, CANNONVALE QLD 4802
Postal address: PO Box 315, ARLIE BEACH QLD 4802
Telephone: (07) 4948 8881
Fax: (07) 4948 8889

Wynnum Office

Office address: 82 Pine Street, WYNNUM QLD 4178

Telephone: (07) 3308 8190
Fax: (07) 3348 2375

Queensland Police Service – Weapons Licensing Branch

Postal address: GPO Box 892, BRISBANE QLD 4001
Telephone: (07) 3015 7777
Email: weaponslicensing@police.qld.gov.au
Website: www.police.qld.gov.au

Robina Community Legal Centre Inc.

Office address: Level 5, Southport Central One, 56 Scarborough Street, SOUTHPORT QLD 4215
Postal address: PO Box 1310, SOUTHPORT QLD 4215
Telephone: (07) 5518 7777
Fax: (07) 5518 7776
Email: commlegalgc@gmail.com
Website: www.rclc.net.au

Roma Community Legal Service

Office address: 96 Arthur Street, ROMA QLD 4455
Postal address: PO Box 892, ROMA QLD 4455
Telephone: (07) 4622 4547
Fax: (07) 4622 4739
Email: madonnap@tpg.com.au
Website: www.romalegal.net

South West Brisbane Community Legal Centre

Office address: 28 Wirrway Parade, INALA QLD 4077
Postal address: PO Box 122, INALA QLD 4077
Telephone: (07) 3372 7677
Fax: (07) 3372 8925
Email: admin@communitylegal.org.au
Website: www.communitylegal.org.au

Stanthorpe Community Legal Service

Address: 8 Corundum Street, STANTHORPE QLD 4380
Telephone: (07) 4681 3777
Fax: (07) 4681 4532
Email: [cgsinc@halenet.com.au](mailto:cdsinc@halenet.com.au)
Website: www.granitenet.com.au/groups/community/cds/legal

State Penalties Enforcement Registry

Postal address: The Registrar, SPER, GPO Box 1387, BRISBANE QLD 4001
Telephone: 1300 365 635
Fax: (07) 3035 3334
Website: www.sper.qld.gov.au

Suncoast Community Legal Service

Office address: 7 Ocean Street, MAROOCHYDORE QLD 4558
Postal address: PO Box 423, MAROOCHYDORE QLD 4558
Telephone: (07) 5443 7827
Fax: (07) 5451 1221
Email: admin@subcoastcommunitylegal.org
Website: www.suncoastcommunitylegal.org

The Advocacy and Support Centre

General

Telephone (toll free): 1300 008 272
Email: reception@tascinc.org.au
Website: www.tascinc.org.au

Toowoomba Office

Office address: 223 Hume Street, TOOWOOMBA QLD 4350
Postal address: PO Box 594, TOOWOOMBA QLD 4350
Telephone: (07) 4616 9700
Fax: (07) 4616 9777

Ipswich Office

Office address: 60 South Street, IPSWICH QLD 4305
Telephone: (07) 3812 7000
Fax: (07) 3812 7700

Warwick Office

Office address: 69 Guy Street, WARWICK QLD 4370
Telephone: (07) 4616 9700
Fax: (07) 4616 9777

Prisoners' services

ATSIWLAS

Office address: Unit 26 Milton Village, 43 Lang Parade, MILTON QLD 4064
Postal address: PO Box 5631, WEST END QLD 4101

Telephone (toll free): 1800 442 450

Telephone: (07) 3720 9089

Fax: (07) 3720 8892

Email: reception@atsiwl.com.au

Website: www.atsiwl.com.au

Catholic Prison Ministry

Office address: 20 Merivale Street, SOUTH BRISBANE QLD 4101

Postal address: PO Box 5251, WEST END QLD 4101

Telephone: (07) 3846 7577

Fax: (07) 3844 2703

Email: cpm@cpmqld.com

Website: www.catholicprisonministry.org.au

CentraCare

Office address: Cathedral House, Level 1, 229 Elizabeth Street, BRISBANE QLD 4000

Postal address: GPO Box 282, BRISBANE QLD 4001

Telephone: (07) 3324 3100

Fax: (07) 3324 3185

Email: centacare@bne.catholic.net.au

Legal Aid

Office address: 44 Herschel Street, BRISBANE QLD 4000

Postal address: GPO Box 2449, BRISBANE QLD 4001

Telephone (general): 1300 651 188

Telephone (mobile): (07) 3238 3444

Fax: (07) 3238 3014

Website: www.legalaid.qld.gov.au

Far north Queensland Families and Prison Support

Office address: 101 Martyn Street, CAIRNS QLD 4870

Telephone: (07) 4051 4485

Fax: (07) 4051 4485

North Queensland Prisoners Aid Society

Office address: 1 Charters Towers Road, HYDE PARK QLD 4810

Postal address: PO Box 596, HYDE PARK QLD 4812

Telephone: (07) 4772 3330

Prison Transport Group

Telephone: 1800 334 379

Prisoners' Legal Service

Postal address: PO Box 5162, WEST END QLD 4101
Telephone (legal advice): (07) 3846 3384
Telephone (administration): (07) 3846 5074
Fax: (07) 3844 2703
Email: pls@plsqld.com
Website: www.plsqld.com

Queensland Corrective Services

Head Office

Office address: State Law Building, 50 Ann St, BRISBANE QLD 4000
Postal address: GPO Box 1054, BRISBANE QLD 4001
Telephone: (07) 3227 7111
Website: www.correctiveservices.qld.gov.au

Queensland Parole Board

Queensland Parole Board and Southern Queensland Regional Parole Board

Postal address: GPO Box 1054, BRISBANE QLD 4001
Telephone: (07) 3406 2418
Website: www.correctiveservices.qld.gov.au

Central and Northern Queensland Regional Parole Board

Postal address: PO Box 5574, TOWNSVILLE QLD 4810

Sisters Inside

Office address: 326 Montague Road, WEST END QLD 4101
Postal address: PO Box 3407, SOUTH BRISBANE QLD 4101
Telephone: (07) 3844 5066
Fax: (07) 3844 2788
Email: admin@sistersinside.com.au

Women's Legal Service

Office address: 387 Ipswich Road, ANNERLEY QLD 4103
Postal address: PO Box 119, ANNERLEY QLD 4103
Telephone (legal advice): (07) 3392 0670
Telephone (outside Brisbane): 1800 677 278
Telephone (rural legal advice): 1800 457 117
Telephone (administration): (07) 3392 0644
Fax: (07) 3392 0658
Email: admin@wlsq.org.au
Website: www.wlsq.org.au

Complaints

Crime and Misconduct Commission

Office address: Level 2, North Tower Green Square, 515 St Pauls Terrace, FORTITUDE VALLEY QLD 4006
Postal address: GPO Box 3123, BRISBANE QLD 4001
Telephone: (07) 3360 6060
Telephone (outside Brisbane): 1800 061 611
Fax: (07) 3360 6333
Email: mailbox@cmc.qld.gov.au
Website: www.cmc.qld.gov.au

Health Quality Complaints Commission

Office address: Level 17, 53 Albert Street, BRISBANE QLD 4000
Postal address: GPO Box 3089, BRISBANE QLD 4001
Telephone: (07) 3120 5999
Telephone (outside Brisbane): 1800 077 308
Fax: (07) 3120 5998
Email: info@hqcc.qld.gov.au
Website: www.hqcc.qld.gov.au

Queensland Ombudsman

Office address: Level 17, 53 Albert Street, BRISBANE QLD 4000
Postal address: GPO Box 3314, BRISBANE QLD 4001
Telephone (toll free): 1800 068 908
Telephone: (07) 3005 7000
Fax: (07) 3005 7067
Email: ombudsman@ombudsman.qld.gov.au
Website: www.ombudsman.qld.gov.au

Decision-making

The freedom to make one's own decisions is a fundamental human right and essential to personal autonomy and citizenship. However, the law recognises that people may at times lack the capacity to make their own decisions, either temporarily or permanently. Where this is the case, the law allows substitute decision-makers to be appointed to make decisions on that person's behalf. For example, the *Mental Health Act 2000* (Qld) (**MHA**) allows the treating team to make treatment decisions for a person against their will and the *Guardianship and Administration Act 2000* (Qld) (**GAA**) and the *Powers of Attorney Act 1998* (Qld) (**POAA**) allows someone to be appointed to make other types of decisions for a person.

Queensland's legal framework tries to ensure that every person with impaired capacity is given the greatest possible freedom to make his or her own decisions.¹ The legal starting point for any decision is the 'presumption of capacity' and there are well established mechanisms for determining a person's capacity where it is in question, and to appoint a substitute decision maker. The appointment of a substitute decision-maker is a serious step as it effectively deprives a person of the legal right to make their own decisions and gives that right to someone else. There are many circumstances where this is necessary in the interests of the person. In such circumstances the law attempts to respect the person's autonomy while protecting them against harm. The GAA, in conjunction with the POAA and the *Public Trustee Act 1978* (Qld), also ensures that no person's freedom to make decisions for themselves is unnecessarily or unlawfully taken from them. This is consistent with the *Convention on the Rights of Persons with Disabilities* (2006).²

The practical difficulties in assessing legal capacity make it difficult to achieve the appropriate balance between autonomy and protection, particularly for a person who is not entirely incapacitated. For example, a person temporarily or permanently suffering from a serious mental illness may lack capacity to make treatment decisions because they lack insight into their illness, but may have capacity to make other decisions, for example about living arrangements or expenditure. As a result of these concerns, the trend in human rights protections is moving away from the appointment of substitute decision-makers towards supported decision-making alternatives.³ This would involve mechanisms that allow a person to make their own decisions with the assistance of a group of support people to help them to understand the nature and effect of their decisions, effectively protecting their autonomy, will and personal preferences. The United Nations has supported this change.⁴

For people living with a mental illness or substance misuse problem, this would be a significant change. Many people who live with a mental illness experience fluctuations in their mental capacity and may face difficulties with making their own decisions at some point in their lives. Under current law, people face the risk of having their decision-making capacity removed from them for a period of time.

¹ *Guardianship and Administration Act 2000* (Qld) s 6.

² Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 12.

³ See, eg, Office of the Public Advocate, *Supported decision-making: background and discussion paper* (November 2009).

⁴ United Nations Committee on the Rights of Persons with Disabilities, *Draft General Comment on Article 12 of the Convention – Equal Recognition before the Law*, 10th sess (13 September 2013) [21]-[23].

This section provides a broad overview of the legal framework in Queensland that allows the appointment of substitute decision-makers, the nature and extent of substitute decision-maker's powers and the impact these laws have on people living with a mental illness or substance misuse problem.

Relevant legislation

- *Guardianship and Administration Act 2000* (Qld)
- *Powers of Attorney Act 1998* (Qld)
- *Public Trustee Act 1978* (Qld)

Case Example:

An elderly man on an involuntary treatment order (**ITO**) sought legal assistance to revoke his enduring power of attorney (**EPOA**) which had been made in favour of his wife. The man was concerned that his wife was using the EPOA to take financial advantage of his situation. The ITO determined that the man lacked capacity to make treatment decisions but that this did not automatically negate his capacity to make other decisions. The question then arose of whether his concerns about his wife were symptoms of his mental illness (i.e. a product of delusion) and whether he had capacity to revoke the EPOA.

Guardianship and Administration Act 2000 (Qld)

What is the Act about?

Where a person lacks capacity to make decisions for themselves because of an impaired capacity, the *Guardianship and Administration Act 2000* (Qld) (**GAA**), in conjunction with the *Powers of Attorney Act 1998* (Qld) (**POAA**), allows another person to make certain decisions for them. The GAA also regulates the use of restrictive practices, such as seclusion and containment, by disability service providers.

Substituted Decision-Making

Under the GAA, a person will only lack capacity for a matter if they are incapable of:

- understanding the nature and effect of decisions about the matter;
- freely and voluntarily making decisions about the matter; and
- communicating the decision in some way.⁵

The GAA recognises that a person with impaired capacity should always be given the greatest degree of freedom to make his or her own decisions.⁶ Every person is presumed to have capacity under the GAA.⁷ Furthermore, capacity is decision-specific which means that a person may have capacity for one matter but not another. A person's capacity may also change over time. Therefore, a person will only be allowed to make decisions for someone else in very limited circumstances.

Where a person's capacity is impaired, a member of his or her existing support network (family, friend or other support person, such as a carer) may make decisions on their behalf on an informal basis.⁸ The person, while they have capacity, may also appoint an enduring Power of Attorney to make certain decisions on their behalf under the POAA. Where no such person is available and there is a risk that the person is likely to do something that may harm their health, welfare or property, the Queensland Civil and Administrative Tribunal (**QCAT**) may appoint a guardian, such as a family member, friend or carer, or otherwise the Adult Guardian, or an administrator, such as the Public Trustee, to make decisions about particular matters on their behalf.⁹ However, the GAA sets out various principles that limit the powers of a guardian or administrator to ensure the person's best interests are respected at all times.

A guardian may be appointed to make personal¹⁰ and lifestyle decisions for a person, including decisions about health care, where they live, whether they work and other day to day issues such as diet.¹¹ Generally, a guardian may not make decisions about special health matters, such as sterilisation,¹² and special personal matters, such as adoption of a child or the creation of a Will.¹³ In some circumstances however, QCAT may appoint someone with the power to consent

⁵ *Guardianship and Administration Act 2000* (Qld) s 7(a).

⁶ *Ibid* s 6.

⁷ *Ibid* s 5(d).

⁸ *Ibid* s 9(2)(a).

⁹ *Ibid* sch 4 (definition of 'capacity').

¹⁰ *Ibid* sch 2 (definition of 'personal matter').

¹¹ *Ibid* s 33(1).

¹² *Ibid* ch 5 div 2 pt 3.

¹³ *Ibid* s 14(3).

to special health care.¹⁴ A guardian will not be able to make decisions about the person's treatment if they are under an involuntary treatment order (ITO) under the *Mental Health Act 2000* (Qld) (MHA).¹⁵ Further, a guardian may not make decisions regarding the person's property or finances.¹⁶

An administrator may be appointed to make decisions relating to financial matters. Often this will be the Public Trustee, particularly if there is no family member able to take on the responsibility.¹⁷ The administrator will be required to create a financial management plan outlining how the person's finances are to be managed to ensure that the person's finances are properly managed.¹⁸

A guardian or administrator will be able to make decisions on the person's behalf until the date stated in QCAT's order. However, the person may try to have a guardian's or administrator's power removed by applying for a review of the order to QCAT. Otherwise, QCAT must review an order every five years.¹⁹ At a review, QCAT may decide to continue the appointment, stop the appointment, or appoint someone else as the person's guardian or administrator.²⁰

Restrictive Practices

The GAA allows QCAT to approve the use of restrictive practices by disability service providers under the *Disability Services Act 2006* (Qld) (DSA).²¹ This allows disability service providers to contain or seclude a person with a cognitive or intellectual impairment whose behaviour poses a threat to themselves or others.

QCAT may also appoint a guardian for restrictive practices under the GAA.²² When a person with a cognitive or intellectual impairment lacks the capacity to make personal decisions, another person may be appointed as their guardian to make those decisions for them. A person's guardian for restrictive practices, if they have one, must give consent before a disability service provider can use restrictive practices on that person.²³

The GAA does not affect the use of restraint or seclusion under the MHA. Under the MHA, a doctor or nurse may authorise the use of restraint or seclusion on a person while they are receiving treatment under an ITO without the person's, or any other person's, consent.²⁴

Are there particular concerns for people with a mental illness or substance misuse problem?

¹⁴ Ibid s 74.

¹⁵ Ibid s 14(2).

¹⁶ Ibid s 33.

¹⁷ Ibid s 33(2).

¹⁸ Ibid s 20.

¹⁹ Ibid s 28(1).

²⁰ Ibid s 31.

²¹ Ibid s 80V.

²² Ibid s 80ZD.

²³ *Disability Services Act 2006* (Qld) s 123D.

²⁴ *Mental Health Act 2000* (Qld) ss 162D, 162N.

A person will not automatically lack legal capacity just because they have a mental illness. The GAA establishes substitute decision-making mechanisms that are intended to limit the amount of interference with a person's autonomy and self-determination.

Key sections of the Act include:

- schedule 2 – types of matter – ‘financial matter’;
- schedule 2 – types of matter – ‘personal matter’; and
- schedule 4 – dictionary – definition of ‘capacity’.

Which agency is responsible for administration of the Act?

- The Adult Guardian
The Adult Guardian is an independent officer appointed to protect the rights and interests of adults with impaired capacity. The Adult Guardian has the power to investigate complaints and allegations about the actions of a guardian or an administrator²⁵ and may suspend the power of a guardian or an administrator found to have acted in an irresponsible manner.²⁶ The Adult Guardian may also be appointed by QCAT as a person's guardian if no other person, such as a family member, friend or carer, is available to be the person's guardian.
- The Public Advocate
The Public Advocate is tasked with promoting and protecting the rights of adults with impaired capacity and encouraging the development of and monitoring the delivery of services and facilities aimed at assisting adults to increase their autonomy.²⁷

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)

Relationship with other Queensland legislation

Child Protection Act 1999 (Qld) (CPA)

The GAA allows for decisions to be made on behalf of adults who lack capacity, not children. The CPA allows for decisions to be made on behalf of a child.

Disability Services Act 2006 (Qld) (DSA)

The DSA requires disability service providers to either get approval from QCAT or consent from a person's guardian before restrictive practices can be used.

Domestic and Family Violence Protection Act 2012 (Qld) (DFVPA)

The DFVPA allows a court to make a domestic violence order (DVO) to protect people from domestic violence. If the person is unable to apply for a DVO themselves, their guardian appointed under the GAA may apply for one on their behalf.

Mental Health Act 2000 (Qld) (MHA)

²⁵ *Guardianship and Administration Act 2000 (Qld)* s 174.

²⁶ *Ibid* s 195.

²⁷ *Ibid* s 209.

A guardian is not able to make decisions in relation to a person's treatment under an involuntary treatment order (ITO) made under the MHA. The MHA allows a doctor to make 'treatment decisions' for a patient against their will in certain circumstances. The MHA also allows a doctor or nurse to authorise the use of restraint or seclusion without the person's, or their guardian's, consent.

Power of Attorney Act 1998 (Qld) (POAA)

Both the GAA and the POAA allow decisions to be made on behalf of a person who lacks capacity to make their own decisions. It is possible for a guardian or an administrator to be appointed under the GAA to make decisions on behalf of a person even though an attorney has already been appointed (under the POAA) to make those decisions. Where this is the case, the guardian or administrator will hold the power to make decisions on behalf of the person. The person's attorney may only make decisions for them if he or she is authorised to do so by QCAT.²⁸ However the person's attorney will not have any power to make decisions in relation to the person's health as long as the guardian is appointed.²⁹ If the person has made an advance health directive under the POAA and has given express directions about their health in their advance health directive, this will overrule the power of the person's guardian or attorney.³⁰

Public Trustee Act 1978 (Qld) (PTA)

The Public Trustee established under the PTA may be appointed by QCAT as a person's administrator to manage the person's financial affairs while he or she lacks the capacity to do so.

Residential Tenancies and Rooming Accommodation Act 2008 (Qld) (RTRAA)

If a provider for rooming accommodation knows that a resident has an administrator appointed under the GAA or an attorney appointed under the POAA, the provider must give any written notice (for example, of a breach and what the resident must do to rectify the breach) to the person's administrator or attorney.

Victims of Crime Assistance Act 2009 (Qld) (VCAA)

The VCAA seeks to provide assistance to victims of acts of violence that result in death or injury. This includes financial assistance to aid the victim's recovery from the psychological and physical effects of the act of violence. Where a person is unable to apply for financial assistance themselves, the VCAA allows a person's guardian appointed under the GAA or attorney appointed under the POAA to apply for financial assistance on their behalf.³¹

Similar legislation in other jurisdictions

All other Australian jurisdictions have a similar system in place that allows decisions to be made on behalf of a person who is unable to make their own decisions.³² In each jurisdiction, the relevant court or tribunal may appoint a guardian to make decisions about personal and health

²⁸ Ibid s 22(2).

²⁹ Ibid s 66.

³⁰ Ibid.

³¹ *Victims of Crime Assistance Act 2009 (Qld) ss 51(4)(a),(c)*.

³² *Guardianship Act 1987 (NSW); Adult Guardianship Act (NT); Guardianship and Administration Act 1986 (Vic); Guardianship and Administration Act 1993 (SA); Guardianship and Management of Property Act 1991 (ACT); Guardianship and Administration Act 1990 (WA); Guardianship and Administration Act 1995 (Tas)*.

matters, but not special matters, or an administrator, or financial manager, to make decisions about financial matters. Like Queensland, most other states require that the person lack capacity before another person can be permitted to make decisions for them.³³ However, some jurisdictions allow a guardian or an administrator (or financial manager) to be appointed merely where the person is 'in need of oversight, care or control',³⁴ or if the person has an intellectual disability.³⁵

³³ *Guardianship Act 1987 (NSW)*; *Adult Guardianship Act (NT)*; *Guardianship and Administration Act 1986 (Vic)* s 61; *Guardianship and Administration Act 1993 (SA)* s 57; *Guardianship and Management of Property Act 1991 (ACT)*; *Guardianship and Administration Act 1990 (WA)* s 84; *Guardianship and Administration Act 1995 (Tas)*.

³⁴ *Guardianship and Administration Act 1990 (WA)* s 43(1)(b)(iii).

³⁵ *Adult Guardianship Act (NT)* s 15(1)(a).

Powers of Attorney Act 1998 (Qld)

What is the Act about?

The *Power of Attorney Act 1988* (Qld) (**POAA**) allows a person with capacity to appoint someone else to make decisions for them:

- while they still have capacity, known as a General Power of Attorney (**GPOA**); or
- when they lose capacity, known as an Enduring Power of Attorney (**EPOA**).

The POA intends to protect the rights and interests of people who are unable to make decisions for themselves by providing mechanisms that allow people to make arrangements for the management of their future personal, health care and financial matters.

General Power of Attorney

A person (**the principal**) may give other people the power to make financial decisions on their behalf for a set period of time, or during a particular event (for example, while they are overseas), by completing a GPOA. The attorney's power will only operate while the principal still has capacity. The attorney will not have any power to make decisions on behalf of the principal once the set period or event ends or if the principal loses capacity.³⁶

Enduring Power of Attorney

A person may complete an EPOA to allow other people to make decisions about their personal matters including health care, or their financial matters, on their behalf.³⁷ The power to make financial decisions will become active immediately regardless of the person's capacity, unless otherwise specified.³⁸ However, the attorney will only be able to make decisions about personal matters when the principal lacks the capacity to make their own decisions.³⁹ An attorney cannot be given the power to make decisions about special personal matters such as decisions about the person's will or special health matters such as sterilisation, termination of pregnancy or experimental health care.⁴⁰ An EPOA may only be revoked by the principal when they have capacity.⁴¹

Advance Health Directive

The POAA also allows a person, while they have capacity, to make an advance health directive. An advance health directive allows a person to give directions about health matters for their future health care. In some cases, an advance health directive can also give other people the power to act on the person's behalf more generally, for example, if the directions are unclear.⁴² If a person wants to give directions about whether treatment that keeps the person alive should be given or stopped, there are other more restrictive requirements that must be satisfied.⁴³ An advance health directive will only take effect while the person lacks capacity.⁴⁴

³⁶ *Power of Attorney Act 1998* (Qld) s 18.

³⁷ *Ibid* s 32.

³⁸ *Ibid* s 33(2).

³⁹ *Ibid* s 33(4).

⁴⁰ *Ibid* s 32(1)(a).

⁴¹ *Ibid* s 47.

⁴² *Ibid* s 35.

⁴³ *Ibid* s 36(2).

⁴⁴ *Ibid* s 36.

Statutory Health Attorney

If a person loses the capacity to make decisions about their health and no other person, such as an attorney or guardian, has been given the power to make decisions for them, another person may be appointed to make decisions for them.⁴⁵ This person is known as a statutory health attorney. This person will be the first of the person's spouse, an unpaid adult carer, an adult friend or relative, or, if none of these are available, the Adult Guardian.⁴⁶

Are there particular concerns for people with a mental illness or substance misuse problem?

People living with a mental illness or substance misuse problem need to make arrangements in advance for another person to make certain decisions including financial decisions should they lose capacity temporarily or permanently.

Key sections of the Act include:

- sch 2 – types of matters – ‘financial matter’;
- sch 2 – types of matters – ‘personal matter’; and
- sch 3 – dictionary – ‘capacity’ (this is the same definition as provided in the GAA).

Which agency is responsible for administration of the Act?

- Adult Guardian
 - The Adult Guardian is an independent officer appointed to protect the rights and interests of adults with impaired capacity. The Adult Guardian has the power to investigate complaints and allegations about the actions of a guardian or an administrator⁴⁷ and may suspend the power of a guardian or an administrator found to have acted in an irresponsible manner.⁴⁸

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court
- Queensland Civil and Administrative Tribunal (QCAT)

Relationship with other Queensland legislation*Guardianship and Administration Act 2000 (Qld) (GAA)*

The GAA outlines the circumstances of when a person will be considered to lack capacity on a particular matter. Like the POAA, the GAA also allows someone else (a guardian or administrator) to make decisions on behalf of a person with an impaired capacity.

The relationship between the POAA and the GAA is discussed in further detail above at page 87.

Public Trustee Act 1978 (Qld) (PTA)

⁴⁵ *Power of Attorney Act 1998 (Qld)* s 62.

⁴⁶ *Ibid* s 63.

⁴⁷ *Guardianship and Administration Act 2000 (Qld)* s 174.

⁴⁸ *Ibid* s 195.

The Public Trustee (established under the PTA) may be appointed by QCAT as a person's administrator to manage the person's financial affairs while he or she lacks the capacity to do so themselves.

Residential Tenancies and Rooming Accommodation Act 2008 (Qld)

If a provider for rooming accommodation knows that a resident has an administrator appointed under the GAA or an attorney appointed under the POAA, the provider must give any written notice (for example, of a breach and what the resident must do to rectify the breach) to the person's administrator or attorney.

Victims of Crime Assistance Act 2009 (Qld) (VCAA)

The VCAA allows a person's attorney (appointed under the GAA) to apply for victim assistance on behalf of the person if they lack the capacity to do so themselves.⁴⁹

Similar legislation in other jurisdictions

Other jurisdictions have put in place similar legislation that allows a person to nominate another person to make decisions for them while they still have capacity as well as when they lose the capacity to make certain decisions for themselves for reasons such as mental illness.⁵⁰

⁴⁹ *Victims of Crime Assistance Act 2009 (Qld) s 51(4)(c)*.

⁵⁰ *Powers of Attorney Act 2003 (NSW); Instruments Act 1958 (Vic); Powers of Attorney Act 2000 (Tas); Powers of Attorney and Agency Act 1984 (SA); Guardianship and Administration Act 1990 (WA); Powers of Attorney Act 2006 (ACT); Powers of Attorney Act (NT)*.

Public Trustee Act 1978 (Qld)

What is the Act about?

The *Public Trustee Act 1978* (Qld) (PTA) establishes the office of the Public Trustee. The Public Trustee may be appointed by the Queensland Civil and Administrative Tribunal (QCAT) as a person's administrator under the *Guardianship and Administrative Act 2000* (Qld) (GAA) to manage a person's financial affairs while they are unable to do so themselves.⁵¹ This may be the case where the person suffers from a mental illness, is under the influence of drugs, or where the person is unable to understand these matters because of their age. The Public Trustee may also be appointed where the person is at risk of being improperly influenced by someone else in the management of their financial affairs (for example, a child may influence their parent's decisions in a way that benefits them at the expense of the parent or siblings). The Public Trustee must only do things that are in the person's best interests while they are managing the person's financial affairs. The Public Trustee must always talk to all people that have an interest in the person's financial affairs and must consider the person's lifestyle, wealth, assets and other obligations when deciding how to act in the person's best interests.⁵²

The Public Trustee may also perform other functions, such as acting as a trustee under a trust.

Are there particular concerns for people with a mental illness or substance misuse problem?

People living with a mental illness or substance misuse problem may have an administrative order made allowing the Public Trustee to manage their financial affairs. The Public Trustee is the appropriate substitute decision-maker where a person does not have any family or friends who they can entrust with this responsibility.

Key sections of the Act include:

- s 80 – management by public trustee of property of incapacitated person.

Which agency is responsible for administration of the Act?

- The Public Trustee (Queensland)

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)

Relationship with other Queensland legislation

Guardianship and Administration Act 2000 (Qld) (GAA)

Where no other substitute decision-maker is available and there is a risk that the person is likely to do something that may harm their health, welfare or property, QCAT may appoint a guardian or an administrator such as the Public Trustee to make decisions about particular matters on their behalf.

Powers of Attorney Act 1998 (Qld) (POAA)

⁵¹ *Public Trustee Act 1978* (Qld) s 65.

⁵² *Guardianship and Administration Act 2000* (Qld) ch 4; *Trusts Act 1973* (Qld) pt 3.

Under the POAA, where a person's capacity is impaired, a member of his or her existing support network (family, friend or other support person, such as a carer) may make decisions on their behalf on an informal basis.⁵³ The person, while they have capacity, may also appoint a general or an enduring Power of Attorney, such as a family member, friend or carer, to make certain decisions on their behalf.

Similar legislation in other jurisdictions

All other Australian jurisdictions have put in place legislation that enables a public or state trustee to be appointed as a person's administrator when they are unable to make financial decisions for themselves.⁵⁴

⁵³ *Guardianship and Administration Act 2000* (Qld) s 9(2)(a).

⁵⁴ *Trustee and Guardian Act 2009* (NSW); *State Trustees (State Owned Company) Act 1994* (Vic); *Public Trustee Act 1941* (WA); *Public Trustee Act 1995* (SA); *Public Trustee Act 1930* (Tas); *Public Trustee Act 1985* (ACT); *Public Trustee Act* (NT).

Further information and advice

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Seniors Legal and Support Service (SLASS)

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Tel: (07) 3214 6333

Fax: (07) 3846 7483

Email: caxton@caxton.org.au

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Community Visitor Program

Office address: Level 3, Brisbane Magistrates Court, 363 George Street, BRISBANE QLD 4000

Postal address: GPO Box 149, BRISBANE QLD 4001

Telephone: (07) 3406 7711

Telephone (local call outside Brisbane): 1300 302 711

Fax: (07) 3109 9179

Email: community.visitorprogram@justice.qld.gov.au

Website: www.justice.qld.gov.au/justice-services/guardianship

Gold Coast Legal Service

Office address: 2/18 Bay Street, SOUTHPORT QLD 4215

Telephone: (07) 5532 9611

Fax: (07) 5532 9125

Email: citizens@advicebureau.org.au

Website: www.advicebureau.org.au

Guardianship Information Service

Telephone: 1300 447 624

Fax: (07) 3239 6367

Email: guardianshipinfo@justice.qld.gov.au

Moreton Bay Regional Community Legal Service Inc.

Postal address: PO Box 284, WOODY POINT QLD 4019

Telephone: (07) 3883 3834

Fax: (07) 3883 3834

Email: office@mbrcls.org.au

Website: www.mbrcls.org.au

Office of the Adult Guardian

General

Office address: Level 3, Brisbane Magistrates Court, 363 George Street, BRISBANE QLD 4000

Postal address: PO Box 13554, BRISBANE QLD 4003

Telephone: (07) 3234 0870

Telephone (outside Brisbane): 1300 653 187

Fax: (07) 3239 6367

Website: www.justice.qld.gov.au/justice-services/guardianship/adult-guardian

Townsville

Office address: 8 Black Hawk Boulevard, THURINGOWA CENTRAL QLD 4817

Postal address: PO Box 1283, THURINGOWA CENTRAL QLD 4817

Telephone: (07) 4760 9688

Fax: (07) 4760 9680

Email: AdultGuardian.Townsville@justice.qld.gov.au

Ipswich

Office address: Ipswich Tower Central, 114 Brisbane Street, IPSWICH QLD 4305

Postal address: PO Box 999, IPSWICH QLD 4305

Telephone: (07) 3884 6650

Fax: (07) 3884 6672

Email: AdultGuardian.Ipswich@justice.qld.gov.au

Office of the Public Advocate

Office address: Level 1, State Law Building, 50 Ann Street, BRISBANE QLD 4000

Postal address: GPO Box 149, BRISBANE QLD 4001

Telephone: (07) 3224 7424

Fax: (07) 3224 7364

Email: public.advocate@justice.qld.gov.au

Website: www.justice.qld.gov.au/justice-services/guardianship/public-advocate

Office of the Public Trustee

Telephone: 1300 360 044

Email (client enquiries): clientenq@pt.qld.gov.au

Email (complaints): complaints@pt.qld.gov.au

Website: www.pt.qld.gov.au

Queensland Advocacy Incorporated (QAI)

Office address: Level 2 South Central, 43 Peel Street, SOUTH BRISBANE QLD 4101

Postal address: PO Box 3302, SOUTH BRISBANE BC QLD 4101

Telephone: (07) 3844 4200

Fax: (07) 3844 4220

Email: qai@qai.org.au

Website: www.qai.org.au

Queensland Aged and Disability Advocacy

Telephone (toll free): 1800 818 338

Telephone: (07) 3637 6000

Email: info@qada.org.au

Website: www.qada.org.au

Queensland Civil and administrative tribunal

Office address: Level 9, BOQ Centre, 259 Queen Street, BRISBANE QLD 4000

Postal address: GPO Box 1639, BRISBANE QLD 4001

Telephone: 1300 753 228

Fax: (07) 3221 9156

Email: enquiries@qcat.qld.gov.au

Website: www.qcat.qld.gov.au

Queensland Public Interest Legal Clearing House

Postal address: PO Box 3631, SOUTH BRISBANE QLD 4101

Telephone: (07) 3846 6317

Fax: (07) 3846 6311

Email: admin@qpilch.org.au

Website: www.qpilch.org.au

Robina Community Legal Centre Inc.

Office address: Level 5, Southport Central One, 56 Scarborough Street, SOUTHPORT QLD 4215

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Email: commlegalgc@gmail.com

Website: www.rclc.net.au

South West Brisbane Community Legal Centre

Office address: 28 Wirraway Parade, INALA QLD 4077

Postal Address: PO Box 122, INALA QLD 4077

Telephone: (07) 3372 7677

Fax: (07) 3372 8925

Website: www.communitylegal.org.au

Synapse

Office address: Level 1, 262 Montague Road, WEST END QLD 4101

Postal address: PO Box 3356, SOUTH BRISBANE QLD 4101

Telephone: (07) 3137 7400

Telephone (outside Brisbane): 1800 673 074

Fax: (07) 3137 7452

Website: www.synapse.org.au

The Advocacy and Support Centre (TASC)

General

Telephone (toll free): 1300 008 272

Email: reception@tascinc.org.au

Toowoomba Office

Office address: 223 Hume Street, TOOWOOMBA QLD 4350

Postal address: PO Box 594, TOOWOOMBA QLD 4350

Telephone: (07) 4616 9700

Fax: (07) 4616 9777

Ipswich Office

Office address: 60 South Street, IPSWICH QLD 4305

Telephone: (07) 3812 7000

Fax: (07) 3812 7700

Warwick Office

Office address: 69 Guy Street, WARWICK QLD 4370

Telephone: (07) 4616 9700

Fax: (07) 4616 9777

Youth Advocacy Centre

Office address: 196 Newmarket Road, WILSTON QLD 4051

Telephone: (07) 3356 1002

Fax: (07) 3356 3002

Email: admin@yac.net.au

Website: www.yac.net.au

Employment

There are several key pieces of Queensland legislation which impact upon workers in Queensland, including workers with a mental illness. These include the *Industrial Relations Act 1999* (Qld), *Work Health and Safety Act 2011* (Qld) and the *Workers' Compensation and Rehabilitation Act 2003* (Qld). Australian workplaces are also governed by national legislation through the *Fair Work Act 2009* (Cth) and international frameworks are relevant to employment including the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993)¹ and the *International Covenant on Economic, Social and Cultural Rights* (1966).²

People with a mental illness are protected under existing state legislation with rights to leave entitlements and protection from unfair dismissal where a person requires time away from work as a result of their illness. Workplaces are required to protect people with a mental illness from further injury by implementing appropriate measures. Worker's compensation is also available for psychological or psychiatric claims, including where a pre-existing condition was aggravated, if their employment was a major significant contributing factor to their condition.

However, people with a mental illness may also be required to disclose pre-existing medical conditions, such as their mental illness. There may be implications for misleading or false disclosure, including ineligibility for Workers Compensation. An applicant is also required to disclose information regarding their mental illness if it is likely to affect their performance of the inherent requirements of the job.

This section aims to provide an overview of legislation with an indirect impact upon people with a mental illness, with key provisions having a disproportionate impact upon this group compared with the wider community.

Relevant legislation

- *Industrial Relations Act 1999* (Qld)
- *Work Health and Safety Act 2011* (Qld)
- *Workers' Compensation and Rehabilitation Act 2003* (Qld)

¹ GA Res 48/96, UN GAOR, 48th sess, 85th plen mtg, Agenda Item 109, UN Doc A/RES/48/96 (4 March 1994).

² Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

Case Example 1:

A client of QPILCH presented with a history of anxiety and depression and was facing difficulties at work. These challenges included having to undertake night shifts which were interfering with her parenting. The inflexibility of her workplace and uncaring nature of her superiors contributed to the distress the client was experiencing. As a result of ongoing harassment and bullying the client attempted suicide in the workplace. The client subsequently made a claim for Worker's Compensation.

Case Example 2:

A man had depression and anxiety and was working a stressful, unsupportive and bullying environment. The stress he experienced at his workplace exacerbated his mental illnesses and he was hospitalised on three occasions. He lost his job and subsequently made a claim to Work Cover for psychiatric injury. At times, he was unable to communicate with Work Cover due to his illnesses and his wife, who was caring for him, was unaware that she could obtain a Power of Attorney to assist when he did not have capacity. They unfortunately did not seek legal advice throughout the claim process. His claim was not approved as his employment was not considered to be the major contributing factor for his illness.

Industrial Relations Act 1999 (Qld)

What is the Act about?

The *Industrial Relations Act 1999* (Qld) (**IRA**) establishes the framework under which the Queensland employment system operates. The IRA applies to Queensland government and local government employees. However, it does not apply to private sector employees in Queensland. Private sector employees are covered by federal law under the *Fair Work Act 2009* (Cth).

In particular, the IRA establishes employees'³ and employers'⁴ rights and obligations regarding:

- rates of pay, including minimum wage entitlements;⁵
- leave entitlements, including sick leave;⁶
- termination and resignation from work;⁷ and
- minimum employment conditions.⁸

The IRA also establishes the Industrial Relations Court and the Industrial Relations Commission which deal with disputes arising under the IRA.⁹

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness may need to take time off work, due to their illness. The IRA provides employees with leave entitlements, such as sick leave, long service leave and carer's leave, as well as protection from unfair dismissal should they be unable to attend work due to illness.¹⁰

Key sections of the Act include:

- s10 – sick leave;
- ss 11-14; 71E-71EH – annual leave entitlements;
- ch 2 pt 3 divs 1-5 – long service leave;
- ch 2A pt 2 div 6 – long service leave;
- ch 2A pt 2 div 4 sub-div 1 – sick leave;
- ch 2 pt 2 div 3 – carer's leave;
- ch 2A pt 2 div 4 sub-div 2 – carer's leave; and
- ch 3 pt 2 – unfair dismissals.

Which agency is responsible for administration of the Act?

- Industrial Relations Commission

³ *Industrial Relations Act 1999* (Qld) s 5(1).

⁴ *Ibid* s 6(1).

⁵ *Ibid* ss 8A-8C, 71D.

⁶ *Ibid* ss 10, 71F-M.

⁷ *Ibid* ch 3.

⁸ *Ibid* chs 5A, 6, 6A.

⁹ *Ibid* ch 8.

¹⁰ *Ibid* s 73(2)(a).

Which judicial body is responsible for enforcement of the Act?

- Industrial Court
- Magistrates Court
- Court of Appeal

Status of the Act

On 17 October 2013, the Industrial Relations (Fair Work Act Harmonisation No 2) and Other Legislation Amendment Bill 2013 (Qld) was introduced into Parliament and passed with minor amendments. The *Industrial Relations (Fair Work Act Harmonisation No 2) and Other Legislation Amendment Act 2013* (Qld) makes changes including the:

- introduction of the Queensland Employment Standards (**QES**), which are similar to the Federal National Employment Standards (**NES**) and provide a set of minimum employment standards;
- introduction of measures to reduce protracted industrial action; and
- prohibition of union subscription fees being deducted from employee's wages.

Relationship with other Queensland legislation***Work Health and Safety Act 2011* (Qld) (**WHSA**)**

The WHSA ensures that businesses maintain reasonable and appropriate safety measures for their employees and that employees cannot be dismissed for raising concerns about their safety. The IRA also prevents State and local government employers from unfairly dismissing employees in Queensland. Employees who believe they have been unfairly dismissed may apply to the Queensland Industrial Relations Commission for reinstatement or compensation.

***Workers' Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**)**

The IRA provides employees with some protection for illness or injury that prevents them from working. However, the WCRA provides employees with more specific protection in relation to illness or injuries that have occurred at work.

Work Health and Safety Act 2011 (Qld)

What is the Act about?

The *Work Health and Safety Act 2011* (Qld) (**WHSA**) requires all people with a business to make sure that reasonable and appropriate safety measures are in place to protect the health and safety of all employees. This includes the employee's physical and psychological health, so employers should also make sure there is no bullying or harassment in the workplace. Factors that must be assessed in determining if safety measures should be introduced include:

- the possibility of the risk concerned occurring;
- the extent of harm that may result;
- what the person knows about the hazard of the risk and ways of minimising it;
- the availability of suitable ways to minimise the risk; and
- the cost of minimising the risk.¹¹

However, employees still need to be aware of their own health and safety obligations and must comply with safety directions given by employers. For example, this may include wearing protective equipment. Fines and penalties, including imprisonment, may be imposed on an employer if they fail to maintain the health and safety of their employees at work.

The WHSA also gives Workplace Health and Safety Queensland (**WHSQ**) inspectors the power to enter workplaces and make sure that the workplace is safe for all workers. Concerns about the health and safety of the workplace may be raised with various people including another employee, the person's employer, an inspector, or a health and safety representative. An employee cannot be dismissed from their employment for raising concerns about health and safety.¹²

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness may be vulnerable to workplace stress and as such it is important that appropriate measures are taken to ensure worker's mental health is protected. Business owners must also ensure that appropriate standards of safety and health are in place to protect all of their employees.

Key sections of the Act include:

- s 18 – what is 'reasonably practicable' in ensuring health and safety;
- s 19 – primary duty of care; and
- sch 5 – dictionary – definition of 'health' includes both physical and psychological health.

Which agency is responsible for administration of the Act?

- Workplace Health and Safety Queensland

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court

¹¹ *Work Health and Safety Act 2011* (Qld) s 18.

¹² *Ibid* ss 104-106.

Imposes penalties on people conducting a business for breaches of the WHSA and may also deal with cases where an employer has unfairly discriminated against a worker. For example, this may include disputes where an employer has dismissed an employee for raising a concern about unsafe working conditions.¹³

Relationship with other legislation

Anti-Discrimination Act 1991 (Qld) (ADA)

The ADA prevents unlawful discrimination at work. This includes discrimination during pre-work processes such as job applications, as well as discrimination during employment.

Fair Work Act 2009 (Cth) (FWA)

The FWA is a Commonwealth act which prevents employers from unfairly dismissing private sector employees. Employees who believe they have been unfairly dismissed, for example, unlawful discrimination on the basis of impairment, may apply to Fair Work Australia for reinstatement or compensation.

Industrial Relations Act 1999 (Qld) (IRA)

The IRA prevents State and local government employers from unfairly dismissing employees in Queensland. Employees who believe they have been unfairly dismissed may apply to the Queensland Industrial Relations Commission for reinstatement or compensation.

Workers' Compensation and Rehabilitation Act 2003 (Qld) (WCRA)

The WCRA provides employees with specific protections in relation to illness or injuries that have occurred at work.

¹³ Ibid s 112.

Workers' Compensation and Rehabilitation Act 2003 (Qld)

What is the Act about?

The *Workers' Compensation and Rehabilitation Act 2003* (Qld) (**WCRA**) provides employees with protection in relation to illness or injuries that have occurred at work. This includes physical injuries, diseases, psychiatric and psychological disorders and death.¹⁴ However, the circumstances in which psychiatric or psychological injuries are covered is restricted. For example, a claim cannot be made if the injury arose from 'reasonable management action taken in a reasonable way by the employer in connection with the worker's employment.' This may include where an employee is demoted or disciplined, or a decision is made not to provide a promotion.¹⁵

In 2013, the Queensland Parliament made amendments to the WCRA through the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (Qld). These changes will affect employees who are injured after 15 October 2013. Importantly, employees will only be eligible for compensation for psychological or psychiatric injuries if their employment was 'the *major* significant contributing factor' to their condition.¹⁶ Psychological and psychiatric injuries include the aggravation of pre-existing conditions.

Employers are now also able to request information about pre-existing injuries or medical conditions during the employment process. However, this request must include information about the work duties that will be required.¹⁷ Employees only need to disclose injuries or conditions they think may be aggravated by performing the duties of the job.¹⁸

An employee may not be eligible for compensation for aggravation of an injury or condition if they made a false disclosure about that existing condition to their employer.¹⁹

Are there particular concerns for people with a mental illness or substance misuse problem?

For any person to make a claim for psychological or psychiatric injury which arises from their work, their employment must be the *major* significant contributing factor to their injury.

People with a mental illness may also need to disclose their illness during the employment process if they think it will be aggravated by the performance of their work duties.

Key sections of the Act include:

- s 32 – meaning of injury;
- s 571B – obligation to disclose pre-existing injury or medical condition; and
- s 571C – false or misleading disclosure.

Which agency is responsible for administration of the Act?

- WorkCover Queensland

¹⁴ *Workers' Compensation and Rehabilitation Act 2003* (Qld) s 32.

¹⁵ *Ibid* s 32(5).

¹⁶ *Ibid* s 32(1).

¹⁷ *Ibid* s 571B.

¹⁸ *Ibid* ss 571A, 571B.

¹⁹ *Ibid* s 571C.

- Workers' Compensation Regulator
An employee can apply to the Workers' Compensation Regulator for a review of some decisions of insurers.

Which judicial body is responsible for enforcement of the Act?

- Queensland Industrial Relations Commission
An employee can appeal to the Queensland Industrial Relations Commission if they are not satisfied with a review conducted by the Workers' Compensation Regulator.
- Magistrates Court
- District Court
- Supreme Court

Relationship with other Queensland legislation

Industrial Relations Act 1999 (Qld) (IRA)

The IRA provides Queensland government and local government employees with some protection for illness or injury that prevents them from working.

Work Health and Safety Act 2011 (Qld) (WHS)

The WHSA ensures that businesses maintain reasonable and appropriate safety measures for their employees and that employees cannot be dismissed for raising concerns about their safety.

Similar legislation in other jurisdictions

There is similar legislation in other jurisdictions that allows employees to be protected in relation to illness or injuries that have occurred at work.²⁰

²⁰ *Workers Compensation Act 1951 (ACT); Workers Compensation Act 1987 (NSW); Workers Rehabilitation and Compensation Act (NT); Workers Rehabilitation and Compensation Act 1986 (SA); Workers Rehabilitation and Compensation Act 1988 (Tas); Workers Compensation and Injury Management Act 1981 (WA).*

Further information and advice

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Commonwealth Department of Employment

General

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Job Services Australia

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Disability Employment Service

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Fair Work Ombudsman

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Mackay Regional Community Legal Centre

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Queensland Council of Unions

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Roma Community Legal Service

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Stanthorpe Community Legal Service

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Website: www.granitenet.com.au/groups/community/cds/legal

Women's Legal Service

Office address: 387 Ipswich Road (Corner Ponsonby St), ANNERLEY QLD 4103

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Telephone (legal advice line): (07) 3392 0670

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Telephone (rural legal advice): 1800 457 117

Telephone (administration): (07) 3392 0644

Fax: (07) 3392 0658

Email: admin@wlsq.org.au

Website: www.wlsq.org.au

Health

This section deals with a diverse set of laws that relate to health service delivery. Queensland Health has responsibility for overall administration of health services and policy in Queensland. Accordingly, it administers a number of pieces of legislation that potentially impact on people with mental health issues or substance misuse issues, either directly or indirectly.

The delivery of public health services is governed by the *Hospital and Health Boards Act 2011* (Qld) and *Hospital and Health Boards Regulation 2012* (Qld) which establishes independent and locally controlled services overseen by an independent Health Board. The new legislative framework determines the practical management and operational structure of hospitals and community based health services. Although the administration of services may seem a remote concern to consumers, there can be practical implications that arise from the organisational arrangements. For example, the Chief Executive Officer of each region has a high level of autonomy, responsibility and accountability for the services delivered in that region. There may accordingly be significant differences between regions on what services are delivered and how they are delivered as well as how to navigate the system in a particular region.

Queensland Health also has responsibility for administering laws which provide for community safety through regulation of food and drugs, labelling laws and regulation of health practitioners.

The establishment of complaints mechanisms for consumers of health services is also regulated by health laws. This is particularly significant for repeat or long term clients of health services including those with mental health issues or drug misuse problems.

Queensland Health also administers the *Mental Health Act 2000* (Qld) which provides for the involuntary assessment, detention and treatment of people with mental illness in Queensland.

International instruments with which health related legislation are required to comply include the: *International Covenant on Economic, Social and Cultural Rights* (1966);¹ *Convention on the Rights of Persons with Disabilities* (2006);² *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991);³ *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991);⁴ and the *Declaration on the Guiding Principles of Drug Demand Reduction* (1998).⁵ For example, the *Health Ombudsman Act 2013* (Qld) (**HOA**) intends to promote the development of quality service delivery by health practitioners and health service providers throughout Queensland. It follows that all service providers should maintain a high standard of health service generally (consistent with the *International Covenant on Economic, Social and Cultural Rights* (1966)),⁶ and without discrimination on the basis of disability (consistent with the *Convention on the*

¹ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.

² Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 25.

³ GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/199 (17 December 1991).

⁴ GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/199 (17 December 1991).

⁵ GA A/S-20/4, UN GAOR, 1st mtg (8 June 1988).

⁶ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.

Rights of Persons with Disabilities (2006)⁷ and the *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991)).⁸

The *Queensland Mental Health Commission Act 2013* (Qld) (**QMHCA**) attempts to improve the health of all people living in Queensland, particularly in relation to mental health and substance misuse. In doing so, the QMHCA enforces standards required in various international instruments, including the *International Covenant on Economic, Social and Cultural Rights* (1966),⁹ the *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991),¹⁰ and the *Declaration on the Guiding Principles of Drug Demand Reduction* (1998).¹¹

Relevant legislation

Legislation with a direct impact

- *Health Ombudsman Act 2013* (Qld)
- *Health Quality and Complaints Commission Act 2006* (Qld)
- *Mental Health Act 2000* (Qld)
- *Mental Health Regulation 2002* (Qld)
- *Mental Health Review Tribunal Rule 2009* (Qld)
- *Queensland Mental Health Commission Act 2013* (Qld)

Legislation with a potential indirect impact

- *Health Act 1937* (Qld)
- *Transplantation and Anatomy Act 1979* (Qld)

Case Example:

A QPILCH client was on an Involuntary Treatment Order (**ITO**) and an in-patient, residing in hospital. Prior to hospitalization, the client was engaged in a business venture and building a website. He was also looking for work. To undertake both these activities, he required internet access. Once in hospital, he was unable to continue with his planned activities to further his personal goals. He attended a Mental Health Review Tribunal hearing and wanted to change his category to outpatient on an ITO, so as he could continue building his website and look for work, however this was refused.

⁷ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) art 25.

⁸ GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/199 (17 December 1991).

⁹ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.

¹⁰ GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/199 (17 December 1991).

¹¹ GA A/S-20/4, UN GAOR, 1st mtg (8 June 1988).

Health Ombudsman Act 2013 (Qld) (not yet commenced)

What is the Act about?

The *Health Ombudsman Act 2013* (Qld) (**HOA**) creates a system in Queensland that allows people to make complaints relating to the conduct and performance of health practitioners and organisations which provide health services, such as a hospital or medical practice. The HOA establishes the Health Ombudsman as the sole health complaints management system, replacing the Health Quality and Complaints Commission (**HQCC**).

Where a person is unhappy with the quality of service provided by a health practitioner or health service provider, they can make a complaint to the Health Ombudsman (Queensland). The Health Ombudsman will be required to take action in a timely manner¹² and may respond to the complaint by, for example:

- investigating the complaint;
- negotiating an agreement between the health practitioner and the person who made the complaint; or
- suspending or placing conditions upon the health practitioner's registration.¹³

The Health Ombudsman can also decide not to take action in response to a complaint if the complaint is lacking in substance, or if the reason for the complaint arose more than two years before the complaint was made.¹⁴

The implementation of this new system was proposed following a number of reports that identified major issues with the existing complaints management system, including significant delays in handling of complaints and a lack of consistency in decisions.¹⁵ Under the existing system, health practitioners and health service providers who potentially pose a risk to public health and safety have been allowed to continue to practice during significant delays in dealing with complaints, or without their competency being assessed at all.¹⁶ The HOA seeks to rectify these issues by ensuring health complaints are dealt with efficiently,¹⁷ allowing the Health Ombudsman to take immediate action where the public is at risk,¹⁸ requiring the Health Ombudsman to notify employers of serious matters concerning their employees¹⁹ and ensuring that complainants and health service providers are better informed about the handling of complaints and investigations.²⁰

Are there particular concerns for people with a mental illness or substance misuse problem?

¹² *Health Ombudsman Act 2013* (Qld) s 15.

¹³ *Ibid* s 14.

¹⁴ *Ibid* s 44.

¹⁵ Queensland, *Parliamentary Debates*, 16 April 2013, 921 (Lawrence Springborg).

¹⁶ *Ibid*.

¹⁷ *Health Ombudsman Act 2013* (Qld) s 15.

¹⁸ *Ibid* s 14.

¹⁹ *Ibid* s 279.

²⁰ *Ibid* s 52.

This system is a general health complaints system and not a specialist mental health complaints process. Nonetheless, the new system will provide a mechanism for people with a mental illness or substance misuse problem to make complaints about the quality of service they received from their health practitioners or other health service providers. The Health Ombudsman will have greater discretionary powers and reporting obligations than the HQCC. People will have two years in which to make a complaint.

Key sections of the Act include:

- s 13 – making health service complaints;
- s 14 – dealing with health service complaints and other matters;
- s 15 – timeliness; and
- s 33 – how to make a complaint.

Which agency is responsible for administration of the Act?

- The Queensland Health Ombudsman

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)

Serious health matters may be dealt with by QCAT, which may make various orders including suspending or cancelling a health practitioner’s registration.²¹ A registered health practitioner may also apply to QCAT for a review of the Health Ombudsman’s decision.²²

Status of the Act

While the HOA has been passed into law, it has not yet commenced. The operational commencement date has been set as 1 July 2014. The HOA (when it commences) will repeal and replace the HQCCA. Until this time, the Health Quality and Complaints Commission will continue to operate.

Relationship with other Queensland legislation

Health Practitioner Regulation National Law Act 2009 (Qld)

The relevant National Board of the Australian Health Practitioner Regulation Agency (AHPRA) must notify the Health Ombudsman (or other health complaints entity) about any complaint that could have been made to the Health Ombudsman.²³ Furthermore, the Health Ombudsman must notify the relevant National Board of AHPRA about any complaint made to the Health Ombudsman about a health practitioner.²⁴ AHPRA deals primarily with the qualification, skill and conduct of health practitioners, while the Health Ombudsman deals more generally with complaints about the quality of service of health practitioners and other health service providers.

Ombudsman Act 2001 (Qld) (OA)

²¹ Ibid s 16.

²² Ibid s 63.

²³ *Health Practitioner Regulation National Law Act 2009* (Qld) s 150 (1).

²⁴ Ibid s 150 (2).

If a person wishes to make a complaint about the quality of service received from state government agencies other than health service providers, they may do so under the OA to the Office of the Queensland Ombudsman.

Similar legislation in other jurisdictions

Every jurisdiction in Australia has a system that allows people to make complaints about the quality of service of health practitioners and health care service providers. For example, each jurisdiction has legislation which gives effect to the AHPRA, through which complaints can be made and investigations conducted with relation to health practitioners.²⁵ However the HOA gives greater powers to the Health Ombudsman than some other jurisdictions, including the power to suspend or place conditions on a health practitioner's registration, even in the absence of a complaint.

Victoria has established a specialist mental health complaints system. The Mental Health Complaints Commissioner (Vic) receives and deals with complaints about public mental health services in Victoria. This was established during a reform of the *Mental Health Act 1986* (Vic) following community calls for an independent, specialist mental health complaints body.

²⁵ *Health Practitioner Regulation National Law (NSW)* No 86a (NSW); *Health Practitioner Regulation National Law (Victoria) Act 2009* (Vic); *Health Practitioner Regulation National Law (ACT) Act 2010* (ACT); *Health Practitioner Regulation (National Uniform Legislation) Act 2010* (NT); *Health Practitioner Regulation National Law (Tasmania) Act 2010* (Tas); *Health Practitioner Regulation National Law (South Australia) Act 2010* (SA); *Health Practitioner Regulation National Law (WA) Act 2010* (WA).

Health Quality and Complaints Commission Act 2006 (Qld)

What is the Act about?

The *Health Quality and Complaints Commission Act 2006* (Qld) (**HQCCA**) creates a system that allows people to make complaints relating to the quality of health services in Queensland. A person, (or someone on their behalf), can make a complaint about a Queensland health service provider to the Health Quality and Complaints Commission (**HQCC**) if they are unhappy with the quality of service that was provided. The HQCC is an independent organisation that investigates complaints and helps both users and providers to resolve complaints.²⁶ However, the HQCC cannot assist with a complaint if it is made more than one year after the event that is being complained about.²⁷

The HQCC works with health service providers and consumers of these services to make sure Queensland health services maintain a high quality of service. The HQCC can also make recommendations on how the quality of health services may be improved.

Are there particular concerns for people with a mental illness or substance misuse problem?

Due to the interaction with health service providers, people with a mental illness or substance misuse problem may have cause to make a complaint against health providers. However, the HQCCA only allows people to make a complaint within one year of the event occurring.²⁸ This time limit is restrictive and people living with a mental illness or substance misuse problem may face difficulties in preparing a complaint within one year, especially if they are facing more immediate issues associated with their illness.

Key sections of the Act include:

- s 45 – how to make a health complaint;
- s 47 – complainant to reveal identity; and
- s 50 – how the Commission must deal with a health quality complaint.

Which agency is responsible for administration of the Act?

- Health Quality and Complaints Commission; and
- Health and Community Services Committee (**HCSC**)

The HCSC is responsible for monitoring and reviewing the performance of the HQCC.

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (**QCAT**)

Status of the Act

The HQCCA will be replaced by the *Health Ombudsman Act 2013* (Qld) (**HOA**) when it commences. The operational commencement date for the HOA has been set as 1 July 2014. The HQCCA will continue to operate normally until the HOA commences.

²⁶ *Health Quality and Complaints Commission Act 2006* (Qld) s 19(1).

²⁷ *Ibid* s 63(3).

²⁸ *Ibid* s 63(3).

Relationship with other Queensland legislation

Health Practitioner Regulation National Law Act 2009 (Qld)

The relevant National Board of the Australian Health Practitioner Regulation Agency (**AHPRA**) must notify the HQCC (or other health complaints entity) about any complaint that could have been made to the HQCC.²⁹ Furthermore, the HQCC must notify the relevant National Board of AHPRA about any complaint made to the HQCCA about a health practitioner.³⁰ AHPRA deals primarily with the qualification, skill and conduct of health practitioners, while the HQCC may deal with complaints about the quality of service of health practitioners and other health service providers.

Ombudsman Act 2001 (Qld) (**OA**)

If a person wishes to make a complaint about the quality of service received from government agencies (other than health service providers), they may do so under the OA to the Office of the Queensland Ombudsman.

Similar legislation in other jurisdictions

See comments relating to similar legislation in other jurisdictions in the *Health Ombudsman Act 2013* (Qld) section.

²⁹ *Health Practitioner Regulation National Law Act 2009* (Qld) s 150(1).

³⁰ *Ibid* s 150(2).

Mental Health Act 2000 (Qld) and Mental Health Regulation 2002 (Qld)

What is the Act about?

The *Mental Health Act 2000* (Qld) (**MHA**) allows a person with a mental illness, or someone who is believed to have a mental illness, to be detained, assessed and treated for their mental illness against their will. Involuntary treatment can occur under an involuntary treatment order (**ITO**) or a forensic order (**FO**). The MHA also established both the Mental Health Review Tribunal (**MHRT**) and the Mental Health Court (**MHC**).

Involuntary Assessment

A person who is believed to have a mental illness can be involuntarily detained and assessed under the MHA to determine whether they should be placed on an ITO. Generally the *request and recommendation* process is required before a person can be involuntarily assessed.

The request and recommendation process requires two documents (assessment documents) to be completed by two different people. A request for assessment can be made by any adult who has observed the person within the last three days if they believe the person has a mental illness that needs to be assessed by a doctor.³¹ A recommendation for assessment must be made by a medical practitioner who has examined the person in the last three days and who is satisfied that the 'assessment criteria' apply. The assessment criteria require that:

- the person has a mental illness;
- the person requires immediate assessment;
- the assessment can properly be made at an authorised mental health service;
- there is a risk that the person may cause harm to someone, or that the person may suffer serious mental or physical deterioration; and
- there is no less restrictive way of ensuring the person is assessed.³²

Alternatively, any person can apply to a magistrate or justice of the peace for a justices examination order (**JEO**). A JEO is used in non-urgent matters to require a person to be involuntarily examined when they have not seen a medical practitioner in the last three days. Upon examination, the doctor or authorised mental health practitioner will decide whether assessment documents should be made for the person. In urgent matters, a police officer, ambulance officer or psychiatrist may make an emergency examination order (**EEO**) which allows a person to be taken against their will to an authorised mental health service for examination.³³ After examination, the doctor or authorised mental health practitioner will decide whether assessment documents should be made for the person.

Once assessment documents are in place, the person can be involuntarily detained and treated for 24 hours for the purpose of assessment and determination about whether it is necessary to place the person on an ITO. However, this can be extended to 72 hours to allow proper

³¹ *Mental Health Act 2000* (Qld) s 17.

³² *Ibid* 13.

³³ *Ibid* ss 33-40.

assessment. If the assessment is not completed within this time, or it concludes that treatment is not necessary, the person must be released.

Involuntary Treatment Order (ITO)

If upon the involuntary assessment the medical practitioner believes that the treatment criteria under the MHA are satisfied, they may make an ITO³⁴ for the person. The treatment criteria require that:

- the person has a mental illness;
- the person's illness requires immediate treatment;
- the proposed treatment is available at an authorised mental health service;
- because of the person's illness there is an imminent risk that the person may cause harm to someone, or the person is likely to suffer serious mental or physical deterioration;
- there is no less restrictive way of ensuring the person receives appropriate treatment for the illness; and
- the person lacks the capacity to consent to be treated for the illness, or has unreasonably refused treatment for the illness.³⁵

An ITO allows a doctor to treat the person for mental illness without their consent. Depending on the person's needs, they may be detained in an authorised mental health service for treatment (in-patient ITO), or they may be required to receive treatment while living in the community (community ITO).³⁶ The doctor will also complete a treatment plan that outlines the treatment and care that will be given to the person.³⁷

An ITO remains in force until it is revoked by the authorised doctor, the MHRT or the Director of Mental Health. As soon as the doctor is satisfied that the treatment criteria no longer apply, the ITO must be revoked.³⁸ Every ITO must also be reviewed by the MHRT at least six weeks after it was made and then every six months unless it has been revoked within the initial six weeks.³⁹ A person on an ITO, or a person acting on their behalf, may apply for the ITO to be reviewed at any time.⁴⁰ The MHRT has the power to confirm or to terminate an ITO, or to change the category of an ITO.⁴¹ If the person is unhappy with the MHRT's decision, they may appeal to the Mental Health Court⁴² to have the decision reviewed.⁴³

Forensic Orders

The Mental Health Court may require a person to be detained for treatment where they have been charged with an offence and:

- were of unsound mind when they committed the offence; or
- are unfit for trial of the offence.

³⁴ Ibid s 108.

³⁵ Ibid s 14.

³⁶ Ibid s 109.

³⁷ Ibid s 110.

³⁸ Ibid s 121.

³⁹ Ibid s 187.

⁴⁰ Ibid s 188.

⁴¹ Ibid s 191.

⁴² Ibid s 320.

⁴³ Ibid s 325.

If the person requires involuntary treatment they may be detained in an authorised mental health service under a forensic order, or a Forensic Disability Service under a forensic disability order, if found to be of unsound mind or unfit for trial⁴⁴

The MHRT and MHC

The MHA establishes and sets out the procedures and powers of the MHRT and the MHC. The role of the MHRT is to ensure that involuntary processes under the MHA are appropriately applied.⁴⁵ For example, the MHRT hears reviews of ITOs and forensic orders, reviews fitness for trial of persons found unfit for trial by the MHC, and determines applications for particular involuntary patients to move out of Queensland.⁴⁶ The MHRT performs these roles in an informal, low-cost and timely manner.⁴⁷ It normally consists of three members, including a lawyer, a psychiatrist and a community member such as an experienced mental health worker.⁴⁸

Whenever a person's mental health is in doubt in a criminal trial, the matter may be referred to the MHC. The MHC will determine whether the person was of unsound mind at the time of the offence, or whether the person is unfit for trial.⁴⁹ If the person was of unsound mind or is unfit for trial, the trial process will be stopped and the MHC may make a forensic order requiring the person to be detained for involuntary treatment.⁵⁰ The MHC also hears appeals against decisions of the MHRT. For example, a person may appeal to the MHC against the MHRT's decision to confirm their ITO.⁵¹ The MHC, like the MHRT, may revoke or confirm an ITO or change the category of a person's ITO.⁵² The MHC considers matters in a more formal manner, and consists of a Supreme Court judge and two assisting psychiatrists.⁵³

Special Treatments

The MHA also regulates special types of treatment. Psychosurgery may only be performed on a person if they have given informed consent and the MHRT has approved the treatment.⁵⁴ Electroconvulsive therapy (**ECT**) may only be performed on a person if they have given informed consent, or the MHRT has approved the treatment.⁵⁵ Other treatments, such as deep sleep therapy and insulin induced coma therapy, are prohibited.⁵⁶

Restraint and Seclusion

The MHA also regulates the use of mechanical restraints such as belts, harnesses, manacles, straps and handcuffs and seclusion (confining the person alone in a room) on people being treated under an ITO. A doctor may only authorise the use of a mechanical restraint on a person if they are satisfied that it is the most appropriate way of preventing injury to the patient or

⁴⁴ Ibid s 288.

⁴⁵ Ibid s 437.

⁴⁶ Ibid.

⁴⁷ Ibid s 438.

⁴⁸ Ibid s 447.

⁴⁹ Ibid s 256.

⁵⁰ Ibid s 288.

⁵¹ Ibid s 319.

⁵² Ibid s 325.

⁵³ Ibid s 382.

⁵⁴ Ibid s 161.

⁵⁵ Ibid s 139.

⁵⁶ Ibid s 162.

someone else.⁵⁷ A doctor or senior registered nurse may only authorise the seclusion of a person if they are satisfied that it is necessary to protect the patient or other people from imminent physical harm and there is no less restrictive way of ensuring the safety of the person or others.⁵⁸ A doctor or nurse may also use reasonable force to apply a restraint,⁵⁹ or when placing a person in seclusion.⁶⁰

Are there particular concerns for people with a mental illness or substance misuse problem?

12, 541 ITOs were made authorising the involuntary treatment of people experiencing mental illness between July 2012 and June 2013. Of these, 7,266 were reviewed before the MHRT, and 315 were revoked by the MHRT.⁶¹

While substance misuse alone is not considered a mental illness under the MHA,⁶² it may contribute to the progression of the illness, or exacerbate the symptoms of the illness. Substance misuse may also hinder a person's recovery when an ITO has been removed, or contribute to a person relapsing and requiring further involuntary treatment.

Key sections of the Act include:

- s 12 – what is mental illness;
- s 13 – what are the assessment criteria; and
- s 14 – what are the treatment criteria.

Which agency is responsible for administration of the Act?

- Director of Mental Health

Which judicial body is responsible for enforcement of the Act?

- MHRT
- MHC

Status of the Act

The MHA is currently under review. The public was invited to make submissions on areas the MHA could be improved in August 2013. A Consultation Paper discussing potential amendments as a result of these submissions will be published in early 2014. Following this, the public will have another opportunity to make submissions, before new legislation is drafted.

Relationship with other Queensland legislation

Carers (Recognition) Act 2008 (Qld) (CRA)

The CRA requires all public authorities to take the views and needs of unpaid carers into consideration when providing services that affect unpaid carers and the people they care for.

⁵⁷ Ibid s 162D.

⁵⁸ Ibid s 162M.

⁵⁹ Ibid s 162F.

⁶⁰ Ibid s 162U.

⁶¹ Mental Health Review Tribunal, *Mental Health Review Tribunal 2012-13 Annual Report* (2013) 8.

⁶² Ibid s 12.

Therefore, the administration of the MHA and decisions made under it should be undertaken with consideration for the potential impact upon unpaid carers.⁶³

Corrective Services Act 2006 (Qld) (CRSA)

Any person convicted of a criminal offence, unless they have been determined unfit for trial or of unsound mind, may be detained in a corrective facility (rather than an authorised mental health service or the Forensic Disability Service) and dealt with in accordance with the CRSA.

Criminal Code Act 1899 (Qld) (the Criminal Code)

The Mental Health Court may consider matters where a person is alleged to have committed an offence under the Criminal Code and:

- is or was mentally ill at the time of the offence; or
- there is an issue of unsoundness of mind, diminished responsibility, or fitness for trial.⁶⁴

This may lead to the person being detained for treatment under a forensic order.

Disability Services Act 2006 (Qld) (DSA)

The DSA regulates how and when disability service providers (including those that deliver forensic disability services under the MHA) may use restrictive practices, such as restraint and seclusion, on people other than when they are receiving treatment under an ITO. Under the DSA, a disability service provider must obtain authorisation or consent to use restrictive practices on a person. Under the MHA, consent is not required.

Forensic Disability Act 2011 (Qld) (FDA)

The FDA gives the Mental Health Court the power to make a forensic disability order (FDO). A FDO requires a person to be detained at the Forensic Disability Service, whereas a general forensic order requires a person to be detained and treated at an authorised mental health service.

Guardian and Administration Act 2000 (Qld) (GAA)

A guardian appointed under the GAA is not able to make decisions in relation to a person's treatment under an ITO.

Penalties and Sentences Act 1992 (Qld) (PSA)

A sentencing court must be satisfied that an offender does not need to be referred to the Mental Health Court, to determine unsoundness of mind or diminished responsibility, before ordering an indefinite sentence for the offender.⁶⁵

Personal Injuries Proceedings Act 2002 (Qld) (PIPA)

Time limits on commencing legal actions for a personal injury will be paused while the person is an involuntary patient under the MHA.

Police Powers and Responsibilities Act 2000 (Qld) (PPRA)

⁶³ Ibid s 8(b).

⁶⁴ Ibid s 256.

⁶⁵ *Penalties and Sentences Act 1992 (Qld)* s 163.

The PPRA sets out the powers a police officer has while helping a doctor assess a person (under a JEO), or while helping to take a person to an authorised mental health service for involuntary assessment (under an EEO).⁶⁶

Youth Justice Act 1992 (Qld) (YJA)

The YJA enables a child charged with an offence to be subject to the MHA in the same way as adults. For example, if there is a question of whether the child is fit for trial, or was of unsound mind at the time of the offence, the MHA will apply. The child may also be brought before the Mental Health Court so that these issues can be determined.

Victims of Crime Assistance Act 2009 (Qld) (VCAA)

Whenever the Mental Health Court considers matters relating to the mental capacity of a person alleged to have committed a crime, the victim may submit a statement, similar to a victim impact statement, about their views of the person's behaviour, the risk that the person poses to them or other people and how the person's behaviour has impacted them.⁶⁷

Similar legislation in other jurisdictions

All Australian jurisdictions have enacted legislation for the care, treatment and protection of people with mental illness.⁶⁸ However, each jurisdiction has a different process to give effect to these purposes.

Some jurisdictions, such as Tasmania,⁶⁹ Western Australia,⁷⁰ Northern Territory⁷¹ and the Australian Capital Territory,⁷² impose similar requirements. In Victoria, similar criteria must be met before a person can be given involuntary treatment. However, a person does not need to have a mental illness, but rather only needs to 'appear' to be mentally ill.⁷³ South Australia also sets out similar criteria, although there is no requirement that the person lacks the capacity to consent to be treated for the illness, or that the person has unreasonably refused treatment for the illness.⁷⁴

In New South Wales, a person who is found to be a mentally ill person (a person with a mental illness that needs treatment for their own protection or the protection of others from serious harm),⁷⁵ may be detained and given treatment against their wishes until they are reviewed at a mental health inquiry.⁷⁶ If the person is found to be a mentally disordered person (that is, their

⁶⁶ *Mental Health Act 2000 (Qld) s 25; Police Powers and Responsibilities Act 2000 (Qld) s 16(3).*

⁶⁷ *Mental Health Act 2000 (Qld) s 284.*

⁶⁸ *Mental Health Act 1986 (Vic); Mental Health Act 2013 (Tas); Mental Health Act 1996 (WA); Mental Health Act 2007 (NSW); Mental Health Act 2009 (SA); Mental Health (Treatment and Care) Act 1994 (ACT); Mental Health and Related Services Act (NT).*

⁶⁹ *Mental Health Act 2013 (Tas) s 40.*

⁷⁰ *Mental Health Act 1996 (WA) s 26.*

⁷¹ *Mental Health and Related Services Act (NT) s 14.*

⁷² *Mental Health (Treatment and Care) Act 1994 (ACT) s 28.* Though unlike in Queensland, a psychiatric treatment order may only be made under the ACT legislation by the ACT Civil and Administrative Tribunal (ACAT).

⁷³ *Mental Health Act 1986 (Vic) s 8.*

⁷⁴ *Mental Health Act 2009 (SA) ss 10, 16, 21, 25.*

⁷⁵ *Mental Health Act 2007 (NSW) s 14.*

⁷⁶ *Ibid s 27.*

behaviour is so irrational for the time being that temporary care or treatment is necessary)⁷⁷ by two doctors, they may be detained and given treatment against their wishes for up to three days.⁷⁸ The New South Wales Act does not list a set of criteria that must be satisfied before a person can be treated involuntarily.

Each Act requires regular reviews of a patient's involuntary status and allows people to make an application for review of their involuntary status.

Each Act also places significant restrictions on the use of special treatment methods such as psychosurgery⁷⁹ and ECT.⁸⁰

As in Queensland, mental health legislation in New South Wales, Victoria, South Australia, Western Australia and the Australian Capital Territory have recently been reviewed or are currently under review.

⁷⁷ Ibid s 15.

⁷⁸ Ibid s 31.

⁷⁹ For example, the *Mental Health Act 2007* (NSW) prohibits psychosurgery (s 83), and the *Mental Health Act 1986* (Vic) allows psychosurgery only with informed consent from the patient and following an application to the Psychosurgery Review Board (s 57). The *Mental Health Act 1996* (WA) also requires approval from the Mental Health Review Board before psychosurgery can be performed (s 101).

⁸⁰ For example, the *Mental Health Act 2007* (NSW) permits ECT only following an ECT determination by the NSW Mental Health Review Tribunal. The South Australian and Victorian Mental Health Acts only permit ECT if the patient has given informed consent.

Mental Health Review Tribunal Rule 2009 (Qld)

What is the Rule about?

Where a person is under an involuntary treatment order (ITO) or forensic order (FO), this Rule requires the person's treating psychiatrist to write a clinical report and to make sure that the person has had an opportunity to read and understand the report at least seven days before a review hearing by the Mental Health Review Tribunal (MHRT).⁸¹ The clinical report must discuss matters such as the person's mental state and psychiatric history, their social circumstances and their response to treatment and willingness to continue treatment.

Are there particular concerns for people with a mental illness or substance misuse problem?

Requiring a person's treating psychiatrist to prepare a clinical report before a review hearing enables the person to know what is being said about them and why the doctor believes an ITO or FO should continue. It also gives the person an opportunity to write down their own views about their ITO or FO and about what is written in the clinical report and to properly prepare for their review hearing.

There are no penalties for non-compliance with the Rule. In 2012-2013, in 759 matters (or approximately seven per cent) there was no clinical report prior to the person's MHRT hearing.⁸²

Key sections of the Rule include:

- s 3 – report for each review.

Which agency is responsible for administration of the Rule?

- Director of Mental Health

Which judicial body is responsible for the enforcement of the Rule?

- MHRT

⁸¹ *Mental Health Review Tribunal Rule 2009 (Qld)* s 3.

⁸² Mental Health Review Tribunal, *2012-2013 Annual Report*, 13.

Queensland Mental Health Commission Act 2013 (Qld)

What is the Act about?

The *Queensland Mental Health Commission Act 2013* (Qld) (QMCA) establishes the Queensland Mental Health Commission (QMHC) and the Queensland Mental Health and Drug Advisory Council (QMHDAC). The purpose of the QMHC is to develop a plan that can be used by government and non-government agencies to address issues relating to mental health and the impact of substance misuse in Queensland. The QMHC will review systems that are currently in place to address these issues and will give advice on how they should be improved.⁸³ The QMHDAC will provide advice on mental health and substance misuse issues to the QMHC and make recommendations about the functions of the QMHC.⁸⁴

Are there particular concerns for people with a mental illness or substance misuse problem?

The QMCA aims to promote the best interests of:

- people who are vulnerable to developing mental health or substance misuse issues;
- people with mental health or substance misuse issues; and
- their families, carers and support persons.⁸⁵

The QMCA requires the QMHC to engage and consult with people with mental health or substance misuse issues and their families, carers and support persons, allowing this group of people to be involved in the improvement of systems currently in place throughout Queensland.⁸⁶

Key sections of the Act include:

- s 5 – guiding principles;
- s 11 – Commission’s functions; and
- s 38 – functions of council.

Which agency is responsible for administration of the Act?

- Queensland Mental Health Commission

Which judicial body is responsible for enforcement of the Act?

There is no judicial body responsible for enforcement of the Act.

Relationship with other Queensland legislation

Mental Health Act 2000 (Qld) (MHA)

The QMCA seeks to review, evaluate, advise and report on the mental health and substance misuse system.⁸⁷ The mental health system within Queensland is guided by the MHA.

Similar legislation in other jurisdictions

⁸³ *Queensland Mental Health Commission Act 2013* (Qld) s 11(1).

⁸⁴ *Ibid* s 38.

⁸⁵ *Ibid* s 4(2)(a)(ii).

⁸⁶ *Ibid* s 11(2)(d).

⁸⁷ *Ibid* s 11(d).

Few other Australian jurisdictions have implemented legislation that creates a dedicated body (such as a mental health commission) responsible for investigating and addressing issues relating to mental health. New South Wales has established a Mental Health Commission for this purpose;⁸⁸ however, it does not specifically address the impact of substance abuse. Western Australia has also established a similar Mental Health Commission. The National Mental Health Commission has also been established to address mental health issues on a national scale.⁸⁹

In each other jurisdiction, the relevant Minister for mental health or substance misuse or a chief psychiatrist under the State's respective mental health legislation is responsible for safeguarding the rights of people accessing mental health services within that jurisdiction.

⁸⁸ *Mental Health Commission Act 2012* (NSW).

⁸⁹ Established under the *Public Service Act 1999* (Cth).

Health Act 1937 (Qld)

What is the Act about?

The *Health Act 1937* (Qld) (HA) regulates the sale of drugs. 'Drugs' has a broad meaning and includes any type of medicine as well as narcotics, disinfectants, pesticides, deodorants, soaps and tobacco.⁹⁰ It is an offence under the HA to alter the composition of a drug⁹¹ or to incorrectly describe a drug on its packaging. Further, the chief executive has the power to prevent the advertisement or sale of any drug that is harmful to a person's health, or that is ineffective.⁹² Inspectors also have the power to monitor, investigate and enforce compliance with the HA.⁹³

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness or substance misuse problem may need medicines to treat their illness or addiction. Accordingly, it is important that medicines are properly regulated, unmodified and correctly labelled.

Key sections of the Act include:

- s 104 – adulterated drug not to be sold;
- s 110 – prohibition of sale of injurious articles etc.; and
- pt 4A – monitoring, investigation and enforcement.

Which agency is responsible for administration of the Act?

- Queensland Health

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court

Relationship with other Queensland legislation

Health (Drugs and Poisons) Regulation 1996 (Qld) (HDPR)

The HDPR provides further regulations and specifications in regards to the sale of medication.

⁹⁰ *Health Act 1937* (Qld) s 5.

⁹¹ *Ibid* ss 104-5.

⁹² *Ibid* s 110.

⁹³ *Ibid* pt 4A.

Hospital and Health Boards Act 2011 (Qld) and Hospital and Health Boards Regulation 2012 (Qld)

What is the Act about?

The *Hospital and Health Boards Act 2011* (Qld) (**HHBA**) and the *Hospital and Health Boards Regulation 2012* (Qld) (**HHBR**) governs the delivery of public health services and establishes independent and locally controlled services overseen by an independent Health Board. The HHBA also aims to create a public sector health system which delivers hospital and health services of a high quality to people in Queensland, with regard to objectives and principles of the national health system.⁹⁴ The HHMA gives effect to national health system objectives and principles including: Medicare principles; health system principles; and the Australian health care system's long term objectives.⁹⁵

Are there particular concerns for people with a mental illness or substance misuse problem?

As stated in the introduction to this chapter, the new legislative framework of the HHBA determines the practical management and operational structure of hospitals and community based health services. Although the administration of services may seem a remote concern to consumers, there can be practical implications that arise from the organisational arrangements. For example, the Chief Executive Officer of each region has a high level of autonomy, responsibility and accountability for the services delivered in that region. There may accordingly be differences between regions in what services are delivered and how they are delivered. This may impact upon people with a mental illness or substance misuse issue and their ability to navigate services in their region.

The HHBA also sets out standards which are relevant to all people, including those with a mental illness or substance misuse issue, including equitable access to health services and services built around the needs of the individual.⁹⁶ Also relevant to people with a mental illness under the HHBA, information may be provided to the director of mental health if a reportable event takes place in an authorised mental health service.⁹⁷ A reportable event includes a suspected suicide where the person is under care of mental health services.⁹⁸

Key sections of the Act include:

- s 4 – principles and objectives of national health system; and
- s 5 – object.

Which agency is responsible for administration of the Act?

- Hospital and Health Board
- Health Services Board

⁹⁴ *Hospital and Health Boards Act 2011* (Qld) s 5.

⁹⁵ *Ibid* s 4.

⁹⁶ *Ibid* s 4.

⁹⁷ *Ibid* s 111.

⁹⁸ *Hospital and Health Boards Regulation 2012* (Qld) s 29(h).

Which judicial body is responsible for enforcement of the Act?

- Supreme Court.

Transplantation and Anatomy Act 1979 (Qld)

What is the Act about?

The *Transplantation and Anatomy Act 1979 (Qld) (TAA)* allows human tissue to be legally removed for purposes including transplantation,⁹⁹ autopsies¹⁰⁰ and research.¹⁰¹ Donations can be made whilst the donor is still living, or after they have passed away. If the donor has passed away, their next of kin will be responsible for providing consent.¹⁰²

The TAA:

- facilitates transplantation procedures which provide relief for those suffering from certain medical conditions;
- facilitates the lawful use of organ and tissues for other therapeutic, medical and research purposes which benefit the public;
- safeguards a donor's rights in these processes by taking into consideration their wishes, or the wishes of their next of kin; and
- makes the unauthorised trading of human tissue an offence with a penalty of six months imprisonment.¹⁰³

Are there particular concerns for people with a mental illness or substance misuse problem?

A donor must be of 'sound mind' to provide consent for the removal of their tissue or blood.¹⁰⁴ The *Guardianship and Administration Act 2000 (Qld) (GAA)* provides for consent to be given by the Queensland Civil and Administration Tribunal (**QCAT**) where the person is unable to provide consent themselves (see below).

Key sections of the Act include:

- s 10 – consent by adult living donor to removal of regenerative tissue;
- s 11 – consent by adult living donor to removal of non-regenerative tissue for transplantation; and
- s 17 – consents by adults to removal of blood.

Which agency is responsible for administration of the Act?

- Organ and Tissue Authority
The Authority is an independent statutory authority within the Australian Government Health and Ageing portfolio. The Authority establishes a nationally coordinated approach to organ and tissue donation for transplantation.

Which judicial body is responsible for enforcement of the Act?

- Supreme Court

⁹⁹ *Transplantation and Anatomy Act 1979 (Qld)* ss 10-11.

¹⁰⁰ *Ibid* ss 26-27.

¹⁰¹ *Ibid* ss 21B, 31-33.

¹⁰² *Ibid* ss 21-23, 31-33.

¹⁰³ *Ibid* s 40.

¹⁰⁴ *Ibid* ss 10, 11, 17.

Relationship with other Queensland legislation*Guardianship and Administration Act 2000 (Qld) (GAA)*

The GAA allows QCAT to consent to the removal of tissue from a donor with impaired capacity.¹⁰⁵ However these circumstances are extremely limited. QCAT can only consent to such procedures where it is satisfied that:

- the risk to the adult is small;
- the risk of failure of the procedure is low;
- the life of the proposed recipient would be in danger without the donation;
- no other compatible donor is reasonably available; and
- there is, or has been, a close personal relationship between the adult and the proposed recipient.¹⁰⁶

¹⁰⁵ *Guardianship and Administration Act 2000 (Qld) s 69.*

¹⁰⁶ *Ibid s 69(1).*

Further information and advice

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 Postal address: Mental Health Association Australia, GPO Box 590, BRISBANE QLD 4001
 Telephone: 1300 729 686

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Email: info@mentalhealth.org.au
Website: www.mentalhealth.org.au

Queensland Advocacy Incorporated

Mental Health Legal Service

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Website: www.qai.org.au

Queensland Aged and Disability Advocacy

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Queensland Alliance for Mental Health

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Email: admin@qldalliance.org.au
Website: qldalliance.org.au

Queensland Health

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Telephone (all hours): **13 43 25 84**
Telephone (business hours): (07) 3234 0111
Website: www.health.qld.gov.au

Queensland Health Victim Support Service

General

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Email: Victim_Support@health.qld.gov.au
Website: www.health.qld.gov.au/qhvss

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Townsville

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Queensland Public Interest Law Clearing House Incorporated

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Email: admin@qpilch.org.au

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Footprints Legal Clinic

Telephone: (07) 3252 3488

Open Minds Legal Clinic

Telephone: (07) 3896 4222

Queensland Voice

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Housing

Secure and stable housing is fundamental to every person's wellbeing. Some people with a mental illness or substance misuse problem live in insecure housing in private rentals, hostels, or public or community housing. In Queensland, their rights and responsibilities, as well as the rights and responsibilities of landlords are governed by the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**RTRAA**). Also relevant to housing are international frameworks such as the *International Covenant on Economic, Social and Cultural Rights* (1966).¹ For example, at article 11.1 State parties recognise a right for everyone to have a standard of living which is adequate, including adequate housing. States must also take action to ensure this right is protected.

People living with a mental illness or substance misuse problem may face difficulties in finding and maintaining secure housing because of problems including being unable to fulfil the requirements of a tenancy agreement, being 'blacklisted' and being unable to find suitable accommodation. Insecure housing can add stress and may impact on all aspects of a person's life including relationships, finances and mental health.

This section aims to provide an overview of the RTRAA which impacts upon people with a mental illness or substance misuse problem disproportionately compared to the wider community.

Relevant legislation

- *Residential Tenancies and Rooming Accommodation Act 2008* (Qld)
- *Manufactured Homes (Residential Parks) Act 2003* (Qld)
- *Housing Act 2003* (Qld)

Case Example:

An elderly client of QPILCH was evicted from her rental apartment after she suffered from a mental health episode which led to her lending her life savings of \$20,000 to a 'friend' who absconded with her money. The client then fell behind in her rent and was admitted to hospital on an involuntary treatment order (**ITO**). The client's landlord evicted her from her apartment; placed all her possessions in storage and demanded outstanding rent and storage fees. QPILCH was able to negotiate with the landlord and separate the outstanding rent issues from the storage cost issues and arrange financial support from a community agency which enabled the client to retrieve her belongings. Her mental health has significantly improved since.

¹ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

Residential Tenancies and Rooming Accommodation Act 2008 (Qld)

What is the Act about?

The *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* (RTRAA) sets out the rights and responsibilities of tenants, lessors, residents and property managers in relation to rental properties. It applies to both residential tenancy agreements and rooming accommodation agreements.

Residential tenancy

The premises being rented under a residential tenancy agreement may include but are not limited to a house, flat, unit, caravan or moveable dwelling.² The RTRAA covers various types of tenancy agreements including those for:

- private residential tenants – the tenant rents the property from a lessor or real estate agent;
- public housing tenants – the tenant rents the property from the Department of Housing and Public Works (HPW); and
- community housing tenants – the tenant rents the property from a community housing provider, for example FSG Australia.³

Rooming accommodation

Rooming accommodation agreements generally apply to people who are renting a room in a house, but share facilities with other residents. Rooming accommodation agreements will not apply:

- to people who have the right to occupy the entire house;
- to people who are living in a self-contained unit – for example a studio apartment;
- to boarders or lodgers; or
- where the provider, the person who provides the room, lives on the premises and where the premises has fewer than four available rooms.⁴

Accommodation that is not covered by the RTRAA

Some types of accommodation that the RTRAA does not cover include:

- aged care accommodation – this is covered under the *Aged Care Act 1997 (Cth)*;⁵
- accommodation provided at an authorised mental health service under the *Mental Health Act 2000 (Qld)*;⁶
- accommodation provided at the Forensic Disability Service under the *Forensic Disability Act 2011 (Qld)*;⁷
- accommodation provided at hospitals;⁸

² *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* s 9.

³ *Ibid* s 12.

⁴ *Ibid* s 15.

⁵ *Ibid* s 44.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ *Ibid* ss 34, 44.

- accommodation for school students provided by a school or the Department of Education;⁹
- on-campus accommodation for university students provided by a university or non-profit organisation;¹⁰
- accommodation for travellers, for example backpackers' hostels;¹¹
- some accommodation provided under the Supported Accommodation Assistance Program;¹²
- accommodation for owner-occupiers of mobile homes - this is covered under the *Manufactured Homes (Residential Parks) Act 2003* (Qld); and
- temporary refuge accommodation where the accommodation is not 'approved supported accommodation (accommodation provided under the Crisis Accommodation Program or the Supported Accommodation Assistance Program).¹³

However, rental bonds paid under these types of arrangements will still be covered by the RTRAA.¹⁴

Acceptable behaviour agreements

Tenants of public or community housing may be required to make an 'acceptable behaviour agreement' with their lessor, HPW or their community housing provider, which states that they will not engage in certain anti-social behaviour at the property. This agreement also extends to any guests that the tenant has visiting. However, the lessor can only require this type of agreement to be completed if they are aware of the tenant's history and think that the tenant is likely to engage in anti-social behaviour.¹⁵ The lessor can apply to have the tenancy terminated if the tenant refuses to enter into the agreement, or if they repeatedly breach the agreement.¹⁶

Are there particular concerns for people with a mental illness or substance misuse problem?

A tenant may be notified of a breach of the tenancy agreement. Breaches may include failing to keep the property clean,¹⁷ or failing to pay the rent on time.¹⁸ The lessor may issue the tenant with a notice to leave the property¹⁹ and apply to the Queensland Civil and Administrative Tribunal (QCAT) to have the tenancy agreement terminated²⁰ if the tenant does not correct the breach by the due date. People with a mental illness or a substance misuse problem may be unable to rectify the breach within this timeframe if they are facing more immediate issues associated with their health. For example, a person detained in an authorised mental health facility for treatment under an in-patient ITO would have particular difficulties rectifying a breach within the seven day timeframe, or 24 hours for notice of entry and would often have

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid s 44.

¹³ Ibid s 36.

¹⁴ Ibid ss 32, 33, 44.

¹⁵ Ibid s 527D.

¹⁶ Ibid s 527E.

¹⁷ Ibid s 188.

¹⁸ Ibid s 280.

¹⁹ Ibid s 281.

²⁰ Ibid s 293.

difficulty accessing relevant assistance or legal support. In some circumstances, tenants may be 'blacklisted' on the TICA Default Tenant Database for breaches of their tenancy agreement.²¹ This may make it difficult for the person to get accommodation in the future.

People with a mental illness or substance misuse problem may live in public or community housing.²² This type of housing is provided to tenants through HPW or a community organisation and is offered to disadvantaged tenants at a reduced rent. People living in public housing are required to comply with HPW's anti-social behaviour management policy. Under this policy, if a public housing tenant receives three strikes within one year HPW will terminate their tenancy. However, if the behaviour is severe enough, HPW has power to terminate the tenancy immediately. Anti-social behaviour has been categorised into three types:

1. minor general or nuisance behaviours, for example loud noise from televisions, a loud party, or an untidy yard;
2. serious behaviours, for example harassing neighbours, using aggressive language or damaging property belonging to HPW; and
3. dangerous or severe behaviours, for example illegal activities including drug production or physical assaults against neighbours, other tenants, or HPW staff.²³

People living in community housing may also be subject to similar policies.²⁴

Key sections of the Act include:

- s 44 – rooming accommodation agreements to which Act does not apply;
- s 183 – quiet enjoyment;
- s 184 – tenant's use of premises;
- s 185 – lessors' obligations generally;
- s 188 – tenants obligations generally;
- s 527D – acceptable behaviour agreements for tenants; and
- s 527E – application for termination relating to acceptable behaviour agreement.

Which agency is responsible for administration of the Act?

- Residential Tenancies Authority (RTA)
The RTA provides services to meet the needs of tenants, residents, lessors and property managers. The RTA also assists with the resolution of disputes between these groups of people.

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)
QCAT hears disputes in relation to minor civil disputes such as residential tenancy matters.

Relationship with other Queensland legislation

²¹ Which are regulated by the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ch 9.

²² This is regulated by the *Housing Act 2003* (Qld).

²³ Government of Queensland, *Tenant Behaviour* (5 December 2013) Queensland Government <<http://www.qld.gov.au/housing/public-community-housing/tenant-behaviour/>>.

²⁴ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ss 527D-E.

Guardianship and Administration Act 2000 (Qld) (GAA)

If a provider for rooming accommodation knows that a resident has an administrator appointed under the GAA, the provider must give any written notice (for example, of a breach and what the resident must do to rectify the breach) to the person's administrator.

Powers of Attorney Act 1998 (Qld) (POAA)

If a provider for rooming accommodation knows that a resident has an attorney appointed under the POA the provider must give any written notice (for example, of a breach and what the resident must do to rectify the breach) to the person's attorney.

Housing Act 2003 (Qld) (HA)

The *Housing Act 2003 (Qld)* regulates housing-related activities carried on by the State and community based social housing services.²⁵ Among other things, the HA provides for the funding, registration and regulation of community organisations providing housing services.²⁶

²⁵ *Housing Act 2003 (Qld)* s 5.

²⁶ *Ibid.*

Further information and advice

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Department of Communities, Child Safety and Disability Services

Housing and Homelessness Service

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Department of Housing and Public Works

Housing Programs

Office address: Level 24, 41 George Street, BRISBANE QLD 4000

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Queensland Public Interest Legal Clearing House Incorporated

Self Representation Service (QCAT)

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Homeless Person Legal Clinic

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Residential Tenancy Authority:

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Postal address: GPO Box 390, BRISBANE QLD 4001
Telephone: 1300 366 311
Fax: (07) 3046 5266
Website: www.rta.qld.gov.au

Tenants Advice and Advocacy Service (TAAS)

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Telephone: (07) 5428 6011
Fax: (07) 5428 6022
Email: nntaas@tenancyadvice.org.au
Website: www.tenancyadvice.org.au

Tenants Union of Queensland (TUQ)

Statewide Office & Brisbane

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Telephone: (07) 3257 1411
Fax: (07) 3257 1135
Email: mail@tuq.org.au
Website: www.tuq.org.au

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Privacy and right to information

An enormous amount of information is collected by government. Information collected, used and held by government departments and agencies is a valuable and powerful resource and underpins all government decisions and activities. It is important then that citizens have access to information held by their government and be given the opportunity to correct wrong information in government records. This allows a greater degree of scrutiny and public participation which ensures that the government remains transparent and accountable to the public.

The importance of an effective right to information has a solid basis in international human rights law. The *International Covenant on Civil and Political Rights 2006* (1966) (ICCPR) recognises that everyone should have the right to seek and receive information.¹ Since the ICCPR has been ratified in Australia, Queensland (and all other Australian jurisdictions) has secured a right to information in a number of pieces of legislation.

While the public is entitled to access documents held by their government, much of the information held by government departments and agencies also contains peoples' personal information. It is therefore vital that interests of the right to information are balanced with interests of privacy. This is recognised in the ICCPR² and now also in Queensland legislation.

These laws, and how they impact on people living with a mental illness or substance misuse problem, are discussed in this section.

Relevant legislation

Legislation with a direct impact

- *Information Privacy Act 2009* (Qld)
- *Right to Information Act 2009* (Qld)
- *Right to Information Regulation 2009* (Qld)

Legislation with a potential indirect impact

- *Public Records Act 2002* (Qld)

Case Example 1:

A QPILCH client sought access to his medical records which had been collected over many years by various hospitals and mental health services. The client wanted this information to determine which medication he had been given and to assist him to put together a personal injuries claim for a car accident. In particular, he sought copies of his records to determine dates, treatment and the names of police officers who attended following the car accident.

¹ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 19.

² Ibid art 17.

Case Example 2:

A QPILCH client was the partner of a man with mental illness. The client called in relation to structures (including fences and sheds) that her partner had built on her property, which she owned. The structures did not have council approval and the council contacted her threatening legal action if she did not take them down. This was not possible as she feared the reaction her partner would have if the structures were disassembled. The client needed to get medical records belonging to her partner to prove to the council that he had a mental illness, and disassembling the structures would lead to an exacerbation of his illness. However she was unable to access the records due to privacy reasons.

Information Privacy Act 2009 (Qld)

What is the Act about?

The *Information Privacy Act 2009* (Qld) (**IPA**) enforces a number of Information Privacy Principles (**IPPs**) that restrict how and when Queensland Government departments can collect, store, use and give out people's personal information. This includes any information that identifies a person, including their name, contact details, age and gender. The IPA also enforces a number of National Privacy Principles (**NPPs**) that restrict how and when health agencies (including hospitals, health services and Queensland Health) can collect, store, use and give out personal information.³ For example, the NPPs limit how Queensland Health may deal with sensitive information such as information about a person's current health, medical history, disabilities, or criminal record. If these rules are not complied with, a person may make a formal complaint to the Office of the Information Commissioner Queensland.⁴

The IPA also allows people to make a request to access and view personal information held by a Queensland Government department or health agency.⁵ People can also request that changes be made to any document containing their personal information if that information is inaccurate, incomplete, out of date or misleading.⁶

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness or substance misuse problem often have contact with government health care providers for the management and treatment of their illness. Service providers record sensitive and private information about people who use their services, including the person's medical history. Treating teams may obtain information about a person's medical history from the person or from family members or others. The IPA requires service providers to maintain the confidentiality of private and sensitive information.

People living with a mental illness, particularly those on Involuntary Treatment Orders (**ITO**) or Forensic Orders (**FO**) may be concerned about the accuracy of information on their medical record and in the clinical report made for Mental Health Review Tribunal hearings. While people have the right to apply for an amendment of their records under the IPA, the burden of proof is on the person applying for the amendment to show that the record is inaccurate. Even if this can be established, amendment of records is 'discretionary' so an applicant may not be successful in having their records amended. However, where a person disagrees with the record, they are entitled to ask the service provider to include a notation on the record about the disputed record.⁷

Key sections of the Act include:

- sch 3 – Information Privacy Principles (which apply to agencies generally); and
- sch 4 – National Privacy Principles (which apply to health agencies).

³ *Information Privacy Act 2009* (Qld) s 31, sch 4.

⁴ *Ibid* ch 5.

⁵ *Ibid* s 40.

⁶ *Ibid* s 41.

⁷ *Ibid* s 74.

Which agency is responsible for administration of the Act?

- Office of the Information Commissioner Queensland

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)
Privacy complaints can be referred to QCAT where the Information Commissioner does not think the complaint can be resolved through mediation,⁸ or if mediation has been unsuccessful and the complainant requests it.⁹

Status of the Act

The IPA is currently under review. The consultation period for the draft discussion paper is now closed and responses are being considered.

Relationship with other legislation***Judicial Review Act 1991 (Qld) (JRA)***

Decisions made under the IPA may be the subject of a judicial review under the JRA.

Privacy Act 1988 (Cth) (PA)

While the IPA only protects people's personal information held by Queensland government departments (and not private businesses), the PA applies the same IPPs to Commonwealth government agencies¹⁰ and the same NPPs to most private businesses.¹¹ Therefore, information kept by private organisations, including medical practitioners and private health care providers, is governed by the PA and IPPs, not state privacy legislation. The PA also sets out a system that allows people to make a formal complaint if these principles are not complied with.¹²

Public Records Act 2002 (Qld) (PRA)

The PRA ensures that all public authorities in Queensland keep and maintain all public records prepared by the authority.

Right to Information Act 2009 (Qld) (RTIA)

The RTIA allows a person to apply for access to documents held by any agency or departments within Queensland that contain information about the person.

⁸ Ibid s 174.

⁹ Ibid s 176.

¹⁰ *Privacy Act 1988* (Cth) ss 6C, 16.

¹¹ Ibid ss 6C, 16A.

¹² Ibid s 36.

Right to Information Act 2009 (Qld) and Right to Information Regulation 2009 (Qld)

What is the Act about?

The *Right to Information Act 2009* (Qld) (**RTIA**) allows a person to apply to the relevant agency for access to documents, (which includes written documents, video recordings and photographs),¹³ held by any government agency or department within Queensland, such as the Queensland Police Service or Queensland Health, that contain information including but not limited to personal information.¹⁴ The relevant agency will consider applications and provide the applicant with notice of the decision and the reasons for it.¹⁵

Applicants are also required to pay a fee, currently \$41.90,¹⁶ to make an application.¹⁷ This fee cannot be waived. The applicant may also be required to pay a processing fee¹⁸ and a fee to access the document.¹⁹ The amount charged for processing will depend on how long it takes for the application to be processed.²⁰ The amount charged for access may depend on the type of document, its size and any costs of relocation, such as postage expenses.²¹ However, if the person applying for access to information is experiencing financial hardship, especially if they are a concession card holder, the processing or access fee may be waived.²²

A person may not be given access to information where it would be contrary to the public interest to allow access to it.²³ Further, if a person is provided access to a document, the relevant agency may delete information in the document that is irrelevant to the person,²⁴ or that is contrary to the public interest.²⁵ For example, the agency may delete (redact) information relating to the agency's internal affairs, or information that contains personal or private details of another person.

Are there particular concerns for people with a mental illness or substance misuse problem?

People living with a mental illness or substance misuse problem can access information, including information about their healthcare, held by a government agency such as Queensland Health. However, access to healthcare information about the applicant may be refused if revealing that information to the applicant might damage their health.²⁶ There are also other exemptions which may limit the documents to which a person can obtain access. For example, a person may not gain access to information provided to an agency on a confidential basis, such as

¹³ *Right to Information Act 2009* (Qld) sch 6.

¹⁴ *Ibid* s 24.

¹⁵ *Ibid* s 54.

¹⁶ *Right to Information Regulation 2009* (Qld) s 4.

¹⁷ *Right to Information Act 2009* (Qld) s 24(2)(a).

¹⁸ *Ibid* ss 56; 60.

¹⁹ *Ibid* ss 57; 60.

²⁰ *Right to Information Regulation 2009* (Qld) s 5.

²¹ *Ibid* s 6.

²² *Right to Information Act 2009* (Qld) s 66.

²³ *Ibid* ss 47(3)(b), 49.

²⁴ *Ibid* s 73.

²⁵ *Ibid* s 75.

²⁶ *Ibid* s 51(2).

information provided by a family member about a person's mental state. Information provided to a Justice of the Peace (**JP**) or Magistrate as the basis of a Justices Examination Order under the *Mental Health Act 2000* (Qld) (**MHA**) is also exempt from disclosure.

Applying for access to information can be difficult as an applicant must fill in the correct form, clearly identify the documents sought and provide certified copies of identification. Further, there can be delays in processing applications because of unclear requests, the difficulty in identifying or locating documents etc. It is common for documents to be provided to an applicant with some parts redacted (deleted, or blacked out) because it is exempt. Unfortunately, redacted documents may not provide all the information the person sought.

These issues are of particular concern to mental health patients seeking information before a review of their Involuntary Treatment Order (**ITO**) by the Mental Health Review Tribunal. The statutory timelines mean that it is rare for a person to succeed in obtaining their records prior to their first review hearing.

Key sections of the Act include:

- s 49 – contrary to public interest;
- s 51 – contrary to applicant's best interests – healthcare information; and
- sch 3 – exempt information.

Which agency is responsible for administration of the Act?

- The Office of the Information Commissioner Queensland (**OIC**)
The OIC is an independent statutory body established under the RTIA and the IPA to promote access to government-held information and to protect people's personal information held by the public sector. OIC provides information and assistance to support Queensland public sector agencies to comply with the law, reviews agency decisions regarding access and amendment applications, deals with privacy complaints and makes decisions on whether an agency's privacy obligations can be waived or modified in the public interest. If a person is not happy with an agency's decision (especially a decision that denies access to information), he or she may apply to the OIC for a review of that decision.²⁷

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (**QCAT**)
Any question of law that arises from a review by the Information Commissioner may be referred for determination by QCAT.²⁸ While this is being determined, the Information Commissioner cannot make a decision on the review application.²⁹

Status of the Act

The RTIA is currently under review. The consultation period for the *Right to Information Act 2009* discussion paper closed on 15 November 2013. Responses are now being considered, but have not yet been enacted into law.

²⁷ Ibid s 85.

²⁸ Ibid s 118.

²⁹ Ibid s 118(3).

Relationship with other Queensland legislation

Corrective Services Act 2006 (Qld) (**CRSA**)

People detained under the CRSA are entitled to apply for access to personal or prison documents held by corrective service providers.

Information and Privacy Act 2009 (Qld) (**IPA**)

The IPA gives applicants a right to request that records containing personal information be amended if they are inaccurate, incomplete or misleading.

Judicial Review Act 1991 (Qld) (**JRA**)

Certain decision made under the RTIA may be the subject of a judicial review under the JRA.

Public Records Act 2002 (Qld) (**PRA**)

The PRA ensures that all public authorities in Queensland keep and maintain all public records prepared by the authority.

Similar legislation in other jurisdictions

There is similar legislation in other jurisdictions that allow people to apply for access to documents held by government departments or agencies within their state or territory.³⁰

³⁰ *Right to Information Act 2009* (Tas); *Government Information (Public Access) Act 2009* (NSW); *Freedom of Information Act 1982* (Vic); *Freedom of Information Act 1991* (SA); *Freedom of Information Act 1991* (WA); *Information Act 2013* (NT); and *Freedom of Information Act 1989* (ACT).

Public Records Act 2002 (Qld)

What is the Act about?

The *Public Records Act 2002* (Qld) (**PRA**) requires that all Queensland public records are kept, managed and preserved in a useable form.³¹ The PRA allows people to gain access to all public records stored in the Queensland State Archives. This is intended to make public authorities accountable for their actions and decisions and to ensure that evidence of their actions is made available to the public.³²

Are there particular concerns for people with a mental illness or substance misuse problem?

The PRA requires all clinical records created by employees of Queensland Health to be kept and stored. This ensures that people living with a mental illness or substance misuse problem can gain access to past clinical records, through other legislation such as the *Right to Information Act 2009* (Qld) and the *Information Privacy Act 2009* (Qld), if they require such information.

Key sections of the Act include:

- s 6 – what is a public record.

Which agency is responsible for administration of the Act?

- Queensland State Archives (**QSA**)
The QSA keeps, maintains and provides public access to public records.³³
- Public Records Review Committee (**PRRC**)
The PRRC is responsible for advising the QSA about issues relating to the PRA.

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court

Relationship with other Queensland legislation

Information Privacy Act 2009 (Qld) (**IPA**)

The IPA regulates how Queensland Government departments collect, store, use and give out people's personal information. The IPA also allows people to apply for access to documents containing personal information.

Right to Information Act 2009 (Qld) (**RTIA**)

The RTIA allows a person to apply for access to documents held by agencies or departments within Queensland.

³¹ *Public Records Act 2002* (Qld) s 7.

³² *Ibid* ss 17, 18.

³³ *Ibid* ss 24, 25.

Further information and advice

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Rights

The legal recognition of equal rights for people with disabilities is a relatively recent development. Historically, people with disabilities, including mental disabilities, have been denied equal rights in education, employment, access to health services, access to accommodation and in various other social, cultural and political domains. The *Convention on the Rights of Persons with Disabilities* (2006)³⁴ (CRPD) now recognises these inequalities and seeks to encourage jurisdictions throughout the world to implement laws that respect the rights of people with disabilities. However, human rights protection for people with disabilities remains limited. Although Australia is a signatory to the CRPD, it has failed to incorporate many of the principles enshrined in the CRPD into domestic law. Currently, there is no comprehensive system of legal rights for people with disabilities in Australia.

In Queensland there are various pieces of legislation that promote the equal rights of people with disabilities. Anti-discrimination law provides protection to people living with a disability from unfair discrimination in certain circumstances. The *Disability Services Act 2006* (Qld) recognises that people with a disability have a right to respect, dignity and inclusion in the community that is equal with everyone else. It helps to ensure that everyone has access to the highest attainable standard of physical and mental health consistent with the *International Convention on Economic, Social and Cultural Rights* (1966)³⁵ and that people living with a disability have equal and adequate access to treatment and care for their disability (consistent with the CRPD³⁶ and the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993)).³⁷ It provides important safeguards for the rights of people with disabilities, and regulates the use of restrictive practices, such as seclusion and containment, on people with disabilities.

Other pieces of legislation also express standards that recognise the rights of people with a disability to respect, dignity and inclusion in the community. These are intended to guide the development of new and existing systems and services made available to people with disabilities. However, there is no comprehensive system of laws in Queensland that ensures all people with disabilities are treated equally with all others.

This section discusses the few pieces of legislation in Queensland that promote equal rights of people with a disability in Queensland. Importantly, this section does not provide a comprehensive guide to all protections available to people living with a disability. Commonwealth legislation, such as the *Disability Discrimination Act 1992* (Cth) and the *Social Security Act 1991* (Cth), also impact on the rights of people living with a disability. There is not scope within this section to discuss Commonwealth legislation, but relevant legislation is noted.

Relevant legislation

- *Anti-Discrimination Act 1991* (Qld)

³⁴ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

³⁵ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 12.

³⁶ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

³⁷ GA Res 48/96, UN GAOR, 48th sess, 85th plen mtg, Agenda Item 109, UN Doc A/RES/48/96 (4 March 1994).

- *Carers (Recognition) Act 2008* (Qld)
- *Disability Services Act 2006* (Qld)

Anti-Discrimination Act 1991 (Qld)

What is the Act about?

The *Anti-Discrimination Act 1991 (Qld)* (ADA) protects people from unfair discrimination in certain areas of activity, including work, education, services and accommodation. The purpose of this is to promote equality of opportunity for everyone. It prohibits discrimination on the basis of particular 'attributes' including:

- sex;
- age;
- gender;
- race;
- impairment (including mental impairment³⁸); and
- sexuality.³⁹

However, the ADA does not prevent all types of discrimination. Certain types of discrimination are allowed in specific circumstances. For example, discrimination may be allowed if it is necessary to protect the health and safety of other people at a place of work.⁴⁰ Arbitrary discrimination on the basis of other attributes (for example, brown hair) or in other contexts (for example, a social gathering) is not covered by the ADA and is therefore allowed.

A person can make a complaint to the Anti-Discrimination Commission Queensland (ADCQ) if they believe they have been discriminated against in an area covered by the ADA. The ADCQ can inquire into any complaint made and help negotiate a solution.⁴¹ If a person is not satisfied with the ADCQ's decision, they may apply to the Queensland Civil and Administrative Tribunal (QCAT) to have the decision reviewed. However, QCAT will usually only consider the complaint if it was made within one year of the alleged discrimination.⁴²

Are there particular concerns for people with a mental illness or substance misuse problem?

The ADA ensures people with a mental illness or substance misuse problem are protected from unfair discrimination. However, an unfavourable decision or action concerning a person with a mental illness or substance misuse problem is not necessarily discriminatory. The decision or action will not be considered discriminatory if it was not made because of the person's mental illness or substance misuse problem, or if there was a legal justification for it. Furthermore, It is up to the person who feels that they have been discriminated against to bring complaints to enforce a breach of the ADA. There may be significant financial expenses associated with legal advice or representation if this leads to legal proceedings.

Key sections of the Act include:

- s 7 – types of discrimination prohibited;

³⁸ *Anti-Discrimination Act 1991 (Qld)* sch 1.

³⁹ *Ibid* s 7.

⁴⁰ *Ibid* s 108.

⁴¹ *Ibid* s 235.

⁴² *Ibid* s 175.

- s 235 – complaint provision; and
- sch – definition of ‘impairment’.

Which agency is responsible for administration of the Act?

- Anti-Discrimination Commission Queensland (**ADCQ**)

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (**QCAT**)

Relationship with other legislation

The ADA intersects with several pieces of Queensland legislation. This includes, for example, employment and accommodation legislation. Relevant pieces of legislation are listed below; however this list is not exhaustive. Various pieces of Commonwealth legislation also enforce similar protections against discrimination at a federal level. While there is no scope to discuss these in any detail here, it is important to note their existence and relevance.

Corrective Services Act 2006 (Qld) (CRSA)

The CRSA places certain limitations on a prisoners’ right to make complaints under the ADA. For example, a complaint about discrimination must first be made to the chief executive (under the CRSA), not the Anti-Discrimination Commission Queensland.

Disability Services Act 2006 (Qld) (DSA)

Rights under the DSA, other than the right to make a complaint, may only be enforced under the ADA (or the *Disability Discrimination Act 1992 (Cth)*).

Fair Work Act 2009 (Cth) (FWA)

The FWA is a Commonwealth Act which prevents employers from unfairly dismissing private sector employees. Employees who believe they have been unfairly dismissed, for example, because of unlawful discrimination on the basis of impairment, may apply to the Fair Work Commission for reinstatement or compensation.

Industrial Relations Act 1999 (Qld) (IRA)

The IRA protects the rights of Queensland government and local government employees by providing minimum work entitlements as well as protection from unfair or unlawful dismissal.

Commonwealth Discrimination Legislation

Federal laws also provide similar protections against discrimination by Commonwealth departments and agencies. People are protected against unfair discrimination in certain areas of activity, including work, education, services and accommodation, on the basis of the following attributes:

- a person’s disability (under the *Disability Discrimination Act 1992 (Cth)*);
- a person’s age (under the *Age Discrimination Act 1992 (Cth)*);
- a person’s sex (under the *Sex Discrimination Act 1984 (Cth)*); and
- a person’s race (under the *Racial Discrimination Act 1975 (Cth)*).

Any person who feels they have been discriminated against on the basis of one or more of these attributes by a Commonwealth agency or authority may make a complaint to the Australian Human Rights Commission (**AHRC**) (established under the *Australian Human Rights Commission Act 1986* (Cth)).

Similar legislation in other jurisdictions

All other Australian jurisdictions have similar legislation that protects people against unfair discrimination.⁴³ Each protects people living with a mental illness from discrimination on the grounds of their mental impairment.⁴⁴

⁴³ *Anti-Discrimination Act 1977* (NSW); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 1984* (WA); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act* (NT). For Victoria and the ACT, see also the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2004* (ACT).

⁴⁴ *Anti-Discrimination Act 1977* (NSW) ss 4, 49B; *Equal Opportunity Act 1984* (SA) pt 5; *Anti-Discrimination Act 1998* (Tas) ss 14, 15, 16(k); *Equal Opportunity Act 2010* (Vic) s 6(e); *Equal Opportunity Act 1984* (WA) pt IVA; *Discrimination Act 1991* (ACT) s 7(j); *Anti-Discrimination Act* (NT) s 19(1)(j).

Carers (Recognition) Act 2008 (Qld)

What is the Act about?

The *Carers (Recognition) Act 2008 (Qld) (CRA)* formally recognises unpaid carers and the important contribution they make to the people they care for and to the community more generally. The CRA requires all public authorities to take the views and needs of unpaid carers into consideration when providing services that affect unpaid carers and the people they care for.

In addition to recognising the important contribution of unpaid carers, the CRA intends to ensure that the interests of carers are considered whenever decisions are made about the provision of services that impact on their role as unpaid carers.⁴⁵

Are there particular concerns for people with a mental illness or substance misuse problem?

Many people living with a mental illness or substance misuse problem rely on support provided by an unpaid carer, often a family member. The CRA seeks to improve the quality of assistance available to such people by recognising the views and needs of unpaid carers.

Key sections of the Act include:

- s 6 – meaning of carer;
- s 12 – functions of Carers Advisory Council; and
- sch – the Queensland carers charter.

Which agency is responsible for administration of the Act?

- The Carers Advisory Council (CAC)
The CAC is established by the CRA and has a duty to advance the interests of carers, promote compliance by public authorities with the carers charter, and to make recommendations to the relevant Minister on enhancing compliance.

Which judicial body is responsible for enforcement of the Act?

The CRA does not grant rights or impose legally enforceable obligations; rather it is intended to function as a guideline for public authorities.⁴⁶

Relationship with other Queensland legislation

Disability Services Act 2006 (Qld) (DSA)

The DSA seeks to ensure that disability services (such as those provided by paid carers) are safe and accountable. On the other hand, the CRA seeks to improve the quality of service offered by unpaid carers.

Mental Health Act 2000 (Qld) (MHA)

The administration of the MHA and decisions made under the MHA are to be undertaken with consideration for the potential impact on carers.⁴⁷

⁴⁵ *Carers (Recognition) Act 2008 (Qld) s 4.*

⁴⁶ *Ibid s 8.*

⁴⁷ *Mental Health Act 2000 (Qld) s 8(b).*

Similar legislation in other jurisdictions

Most other states also have similar legislation.⁴⁸ However, unlike the Queensland Act, each of these expressly recognises ‘mental illness’ as something which a person may require care and support for by a carer.⁴⁹ Neither Tasmania, nor the Australian Capital Territory has similar legislation, but both have put in place similar government policies intended to have the same effect.⁵⁰

The Carer Recognition Act 2010 (Cth)

This Act sets up a similar framework. However, unlike the Queensland Act, it expressly recognises ‘mental illness’ as something which a person may require care and support for by a carer.

⁴⁸ *Carers Recognition Act 2010* (Cth); *Carers Recognition Act 2012* (Vic); *Carers (Recognition) Act 2010* (NSW); *Carers Recognition Act 2005* (SA); *Carers Recognition Act 2004* (WA); *Carers Recognition Act* (NT)

⁴⁹ *Carers Recognition Act 2010* (Cth) s 5(1)(c); *Carers Recognition Act 2012* (Vic) s 4(1)(c); *Carers (Recognition) Act 2010* (NSW) s 5(1)(c); *Carers Recognition Act 2005* (SA) s 5(1)(b); *Carers Recognition Act 2004* (WA) s 5(1)(b); *Carers Recognition Act* (NT) s 5(1)(b);

⁵⁰ Department of Premier and Cabinet, Tasmania, *Tasmanian Carers Policy 2013* (2013); Department of Disability, Housing and Community Services, Australian Capital Territory, *ACT Carers Charter* (2011).

Disability Services Act 2006 (Qld)

What is the Act about?

The *Disability Services Act 2006* (Qld) (DSA) recognises that people with a disability have a right to respect, dignity and inclusion in the community that is equal with everyone else. The DSA also aims to ensure that disability services are safe and accountable. Under the DSA, disability service providers will not be given funding unless they can provide high quality services to people living with a disability.⁵¹ Also, all people volunteering or working for a disability service provider must have a criminal history screening check on a regular basis.⁵² If a person receiving disability services is not satisfied with the quality of their service, the person or their family member, carer or someone representing them, may make a complaint to Disability Services Queensland.⁵³

The DSA also regulates how and when disability service providers may use restrictive practices. Restrictive practices include, for example, containment, seclusion, physical restraint, or restricting access to a person or object. Restrictive practices may only be used:⁵⁴

- in response to behaviour that results in physical harm, or a serious risk of physical harm to the adult or someone else;
- if a positive behaviour support plan, which sets out a plan for the support to be given to the person to reduce the occurrence of behaviour that causes harm, has been prepared; and
- if the proposed restrictive practice includes some form of containment or seclusion, they are approved by the Queensland Civil and Administrative Tribunal (QCAT);⁵⁵ or
- if the proposed restrictive practice does not include some form of containment or seclusion, they are consented to by a guardian for a restrictive practice (appointed under the *Guardianship and Administration Act 2000* (Qld))⁵⁶ or, in some cases, the person's informal decision-maker.

The legislative intent of the DSA is to ensure people with a disability have access to disability services that are safe, accountable and that respond to the needs of people with disabilities. It is also intended to protect the rights of people with an intellectual or cognitive disability by regulating the use of restrictive practices and ensuring that they are only used where it is necessary to protect a person from harm and in a way that maximises the opportunity for positive outcomes, with the aim of reducing the need for the use of restrictive practices in the future.⁵⁷

Are there particular concerns for people with a mental illness or substance misuse problem?

⁵¹ *Disability Services Act 2006* (Qld) s 51.

⁵² *Ibid* pt 10.

⁵³ *Ibid* s 41.

⁵⁴ *Ibid* s 123D.

⁵⁵ *Guardianship and Administration Act 2000* (Qld) s 80V.

⁵⁶ *Ibid* s 80ZD.

⁵⁷ *Ibid* ss 6, 123A.

People living with a mental illness are classified as having a disability under the DSA.⁵⁸ People living with a substance misuse problem may also have a disability associated with their substance misuse. People with a disability are likely to come into contact with a variety of disability services to assist them in managing their disability. It is therefore vital that they receive the highest quality of service available. Recovery from a mental illness or substance misuse problem may be supported by the provision of appropriate services. As such, the DSA ensures that disability services available to people living with a disability are safe and accountable.

The DSA also regulates the use of restrictive practices by disability service providers on people living with a mental illness or substance misuse problem, except when the person is receiving treatment under an Involuntary Treatment Order (ITO). The *Mental Health Act 2000* (Qld) (MHA) regulates the use of seclusion or restraint on people while they are receiving treatment under an ITO.

Key sections of the Act include:

- s 11 – meaning of ‘disability’; and
- ss 18-19 – disability rights.

Which agency is responsible for administration of the Act?

- Disability Services Queensland

Which judicial body is responsible for enforcement of the Act?

- Anti-Discrimination Tribunal (for complaints of discrimination); and
- QCAT

Status of the Act

The Queensland Parliament is currently considering amendments to the parts of the DSA that apply to the use of restrictive practices.⁵⁹ Some of these changes, if adopted, will reduce administrative burdens on disability service providers seeking authority for the use of restrictive practices, especially in emergency situations. Other changes however are intended to enhance existing safeguards and support for people who have restrictive practices used on them. For example, the changes would require service providers to report their use of restrictive practices.⁶⁰ This is intended to make service providers more accountable for their use of restrictive practices. This is especially important given the potential risks associated with their use. The changes would also require service providers to provide a statement about the use of restrictive practices to the person’s family. This statement would have to include information about how they can be involved and express their views on the use of restrictive practices and also ways that they can make complaints about their use.⁶¹

Relationship with other Queensland legislation

⁵⁸ *Disability Services Act 2006* (Qld) s 11.

⁵⁹ *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013* (Qld).

⁶⁰ *Ibid* cl 36.

⁶¹ *Ibid* cl 31.

Anti-Discrimination Act 1991 (Qld) (ADA) and the *Disability Discrimination Act 1992 (Cth) (DDA)*

Rights under the DSA, other than the right to make a complaint, may only be enforced under the ADA or the DDA.

Carers (Recognition) Act 2008 (Qld) (CRA)

The DSA makes sure that disability services (such as paid carers) are safe and accountable. The CRA seeks to improve the quality of service received by unpaid carers by providing support to such carers.

Community Services Act 2007 (Qld) (CSA)

The CSA seeks to ensure that community service providers are high-quality, safe and accountable.

Forensic Disability Act 2011 (Qld) (FDA)

The FDA establishes the Forensic Disability Service (**FDS**). A person may be detained against their will in the FDS under a forensic disability order made under the MHA. The FDS is regulated by the DSA as it is a disability service.

Guardianship and Administration Act 2000 (Qld) (GAA)

A guardian who can make decisions relating to restrictive practices may be appointed by QCAT under the GAA.⁶² If a disability service provider seeks to use restrictive practices on a person other than seclusion or containment, they must first get consent from the person's guardian.⁶³ The GAA also sets out when QCAT may approve the use of restrictive practices that involve seclusion or containment.⁶⁴

Mental Health Act 2000 (Qld) (MHA)

While the DSA regulates the use of restrictive practices generally, the MHA specifically regulates the use of restrictive practices on people while receiving treatment under an ITO.

Similar legislation in other jurisdictions

Every other Australian jurisdiction has enacted legislation that promotes the development of high quality specialist disability services.⁶⁵ However, some (including Tasmania, New South Wales and the Australian Capital Territory) do not provide the same level of scrutiny (through a complaints system or regulation of employees and volunteers of such services) into the quality of service provided by specialist disability services.

⁶² *Guardianship and Administration Act 2000 (Qld) s 80ZD.*

⁶³ *Disability Services Act 2006 (Qld) s 123D.*

⁶⁴ *Guardianship and Administration Act 2000 (Qld) s 80V.*

⁶⁵ *Disability Services Act 1993 (NSW); Disability Services Act 2011 (Tas); Disability Act 2006 (Vic); Disability Services Act 1993 (SA); Disability Services Act 1993 (WA); Disability Services Act 1991 (ACT); Disability Services Act (NT).*

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Cairns Community Legal Centre – Disability Discrimination Legal Service

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Warwick

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Telephone: (07) 4616 9700

Fax: (07) 4616 9777

Email: reception@tascinc.org.au

Website: www.tascinc.org.au

The judicial system

Many people will come into contact with a court or tribunal during their life in some capacity. For example, they may be a party to a dispute, a witness to a crime, or a juror in a trial. The way the law affects them will depend on their role and the court or tribunal they are in. Laws in this area may protect a person's rights, for example as a witness, or determine the matters that can be heard at a court or tribunal and the measures throughout the hearing that must be followed to ensure procedural fairness.

In Queensland, there is a hierarchy of courts with the magistrates courts at the bottom rung of the hierarchy and the Supreme Court at the top rung. In some cases an appeal may also be available to the Court of Appeal and to the High Court of Australia. In addition there are specialist courts such as the Mental Health Court, the Land Court and the Children's Court.

There is also a federal system of courts. The types of matters which can be heard, the 'jurisdiction', and the procedure to be followed by each court are established by specific legislation for that court. For example, there is specific legislation for the Magistrates Court,¹ District Court² and Supreme Court.³ In addition to the courts, the Queensland Parliament has established tribunals to hear and determine certain legal issues in a less formal way. The Queensland Civil and Administrative Tribunal (**QCAT**) has jurisdiction to determine a broad range of matters from minor civil debt, building disputes, professional registration as well two areas of particular relevance to people with mental illness or a substance misuse problems: guardianship issues and discrimination issues.

For this reason, this section focuses specifically on QCAT and does not discuss the jurisdiction and procedural issues that apply in the Magistrates, District or Supreme Court. The Mental Health Tribunal and the Mental Health Court are discussed in the Health section at page 118.

The *Coroners Act 2003* (Qld) (**CA**) is also discussed in this section because the CA establishes the Office of State Coroner which is part of the court system. The State Coroner is a judicial officer who convenes court-like procedures to investigate suspicious deaths in which the public has an interest. This may particularly affect families of people with a mental illness, who die as a result of treatment or a lack of treatment while detained for treatment or while in custody.

The *Jury Act 1995* (Qld) and the *Judicial Review Act 1991* (Qld) are also briefly discussed.

Relevant legislation

- *Coroners Act 2003* (Qld)
- *Judicial Review Act 1991* (Qld)
- *Jury Act 1995* (Qld)

¹ *Magistrates Act 1991* (Qld); *Magistrates Regulation 2013* (Qld).

² *District Court of Queensland Act 1967* (Qld); *District Court Regulation 2005* (Qld).

³ *Supreme Court of Queensland Act 1991* (Qld); *Supreme Court of Queensland Regulation 2012* (Qld); *Uniform Civil Procedure Rules 1999* (Qld).

- *Queensland Civil and Administrative Tribunal Act 2009* (Qld)
- *Queensland Civil and Administrative Tribunal Regulation 2009* (Qld)
- *Queensland Civil and Administrative Tribunal Rules 2009* (Qld)

Coroners Act 2003 (Qld)

What is the Act about?

The *Coroners Act 2003* (Qld) (CA) sets out when and how deaths must be reported to and investigated by the State Coroner (**the Coroner**) in Queensland.

A death must be reported to the Coroner where:

- the identity of the person is unknown;
- the death was violent or unnatural (such as accidents, falls, suicides or drug overdoses);
- the death happened in suspicious circumstances;
- a 'cause of death' certificate has not been issued and is not likely to be issued;
- the death was a health care related death;
- the death occurred in care;
- the death occurred in custody; or
- the death occurred as a result of police operations.⁴

When a death is reported, the coroner must carry out an investigation and if possible, find out whether or not a death in fact happened, who the deceased person is and how, when and where the person died.⁵ This may require an autopsy to be conducted. Following these investigations, the coroner may decide to hold a further inquest into the death and make recommendations aimed at preventing similar deaths in the future.⁶ A person may also apply to the coroner to hold an inquest into the death.⁷

The Coroner is a judicial officer but has an atypical judicial role in that the primary function is investigative. The Coroner works closely with the Queensland Police Service and the Director of Public Prosecutions but has broad powers to facilitate investigation into a suspicious death including power to summons witnesses, issue subpoenas, and order arrests. The Coroner also has power to make recommendations to improve police and other government agency procedures and to refer a matter for prosecution to the Director of Public Prosecutions.

The CA is intended to ensure that suspicious deaths in Queensland are thoroughly investigated and to help prevent deaths from similar causes from happening in the future.⁸

Are there particular concerns for people with a mental illness or substance misuse problem?

Many people living with a mental illness or substance misuse problem encounter the need for care or medical treatment, or may be at risk of being detained for involuntary assessment or treatment under the *Mental Health Act 2000* (Qld) or the *Forensic Disability Act 2011* (Qld).

The CA requires any death that occurs after receiving health care and was caused or contributed to by health care, including the administration of drugs, to be reported to the coroner.⁹ Any death that occurs following the giving of some medication, for example antipsychotic

⁴ *Coroners Act 2003* (Qld) ss 7-8.

⁵ *Ibid* s 45.

⁶ *Ibid* s 3.

⁷ *Ibid* s 30.

⁸ *Ibid* s 3.

⁹ *Ibid* s 10AA.

medication, or following the failure to give some medication, should therefore be reported to the coroner. Any death that occurs while a person is being taken to or detained in an authorised mental health service or the forensic disability service must also be reported to and investigated by the coroner.¹⁰

The death of any person in custody must also be reported and investigated by the coroner,¹¹ as do violent or unnatural deaths, such as deaths occurring as a result of overdose, accident, fall or suicide.

If a death does occur in any of these circumstances and the circumstances of the death raise issues about the care provided to the person, or about the treatment of the person while in custody, the coroner may hold an inquest into the circumstances of the death.¹² If an inquest is conducted, the coroner must give a written copy of the findings to a member of the deceased person's family,¹³ and may also make recommendations to improve the quality of care provided in these circumstances to avoid similar cases in the future.¹⁴

However, these requirements also mean that the body of a person who has died in any of these circumstances may be handled, tested and examined by the coroner even if this is against their wishes or those of their family. When an internal examination of the deceased person's body is proposed, the coroner must first consider the distress it would cause to the deceased person's family.¹⁵ Any member of the person's family may also raise concerns with the coroner, which must be considered before an investigation is ordered.¹⁶ Despite this, the coroner may continue with an investigation regardless of the person's concerns; however they must provide a copy of the order for an internal examination to the person who raised the complaint.¹⁷

Key sections of the Act include:

- s 8 – reportable death defined;
- s 9 – death in care defined;
- s 10AA – health care related death defined; and
- s 27 – when an inquest must be held.

Which agency is responsible for administration of the Act?

- The State Coroner

Which judicial body is responsible for enforcement of the Act?

- Coroners Court
- District Court

¹⁰ Ibid s 9.

¹¹ Ibid ss 7-8, 10.

¹² Ibid s 27.

¹³ Ibid s 45(4).

¹⁴ Ibid s 46.

¹⁵ Ibid s 19.

¹⁶ Ibid s 19(4).

¹⁷ Ibid s20(6).

Relationship with other Queensland legislation

Corrective Services Act 2006 (Qld) (CRSA)

The CRSA regulates how people are treated while detained in corrective services in Queensland. Any death that occurs while a person is being detained must be reported to the coroner.

Director of Public Prosecutions Act 1984 (Qld) (DPPA)

The Director of Public Prosecutions will assist the coroner on behalf of the Crown, in an inquest which arises under the CA.

Forensic Disability Act 2011 (Qld) (FDA)

Any death that occurs while a person is detained in the forensic disability service (under the FDA) must be reported to the coroner.

Mental Health Act 2000 (Qld) (MHA)

Any death that occurs while a person is being taken to or detained at an authorised mental health service (under the MHA) must be reported to the coroner.

Police Powers and Responsibilities Act 2000 (Qld) (PPRA)

Any death that occurs while a person is in the custody of a police officer (under the PPRA) must be reported to the coroner.

Judicial Review Act 1991 (Qld)

What is the Act about?

The *Judicial Review Act 1991 (Qld)* (**JRA**) allows for the review of administrative decisions made under legislation by local councils, state government departments, such as Queensland Health, and statutory bodies in Queensland.

An administrative decision is a decision that is made by a government department, agency or statutory body that was provided for under Queensland law. This includes, for example, a decision made by the Queensland Parole Board under the *Corrective Services Act 2006 (Qld)*, such as the refusal of parole, a decision made by the Information Commissioner under the *Right to Information Act 2009 (Qld)*, such as to refuse access to certain information, or a decision made by the State Penalties Enforcement Registry under the *State Penalties Enforcement Act 1999 (Qld)*.

Under the JRA, any person who has been adversely affected by an administrative decision, or the failure to make a decision, may apply for a statement of reasons explaining the decision.¹⁸ An application for a statement of reasons must be made within 28 days of receiving written notice of the decision.¹⁹ If the applicant is not happy with the statement of reasons, they may be able to apply for a review of the decision in the Supreme Court of Queensland.²⁰ An application for judicial review must be made within 28 days of receiving written notice of the decision, or, if a statement of reasons has been requested, within 28 days of receiving the statement of reasons.²¹

There are only certain limited grounds on which a person may apply for judicial review. The mere fact that a decision was unfair will not be enough. The merits of a decision cannot be reviewed. The only aspect of a decision that can be reviewed is whether the decision was lawfully made. An application may be made, for example, if the decision involved an error of law, for example the decision maker did not comply with all requirements in a piece of legislation,²² the decision maker took irrelevant considerations into account, or the decision-maker failed to take relevant considerations into account.²³ If the Supreme Court finds that a decision has not been made properly, the court cannot itself rehear the matter and make a new decision in its place. Instead, the court can only set aside the original decision and refer the matter back to the original decision maker so that they can make the decision again.²⁴

By allowing people to apply for an external review of the lawfulness of decisions made by government departments, agencies and statutory bodies, the JRA intends to help to make such bodies more accountable for the decisions that they make and to ensure that decisions are made properly according to the law.

¹⁸ Judicial Review Act 1991 (Qld) s 32(1).

¹⁹ *Ibid* s 33.

²⁰ *Ibid* s 20.

²¹ *Ibid* s 26(2).

²² *Ibid* s 20(2).

²³ *Ibid* s 23.

²⁴ *Ibid* s 30.

Are there particular concerns for people with a mental illness or substance misuse problem?

The JRA only allows a person 28 days to make an application for a statement of reasons or for judicial review of an administrative decision. People living with a mental illness or substance misuse issue may face difficulties in preparing an application within 28 days, especially if they are facing more immediate issues associated with their health. Furthermore, many may not realise their rights to apply for review under the JRA, may not understand the complex nature of judicial review procedures, may face difficulties in finding suitable legal advice and representation and may not be able to afford the costs of a review.

Key sections of the Act include:

- s 4 – meaning of decision to which the JRA applies;
- s 20 – application for review of decision;
- s 23 – meaning of improper exercise of power; and
- s 32 – request for statement of reasons.

Which agency is responsible for administration of the Act?

- The Act can apply to any ‘statutory authority’ so is relevant to the administration of all government agencies or local government authorities.

Which judicial body is responsible for enforcement of the Act?

- Supreme Court

Relationship with other legislation

The JRA allows people to apply for a statement of reasons or for judicial review of administrative decisions made under ‘an enactment’ which includes all Queensland legislation unless specifically exempt from the application of the JRA. A judicial review application can be made in relation to a number of Acts discussed in this document including:

- *Corrective Services Act 2006* (Qld);
- *Right to Information Act 2009* (Qld);
- *Anti-Discrimination Act 1991* (Qld);
- *State Penalties Enforcement Act 1999* (Qld);
- *Information Privacy Act 2002* (Qld); and
- *Child Protection Act 1999* (Qld).

Many Queensland Acts also contain internal review systems. For example, an agency’s decision to refuse access to information under the *Right to Information Act 2009* (Qld) may be reviewed by the Office of the Information Commissioner. Each of these is discussed throughout this document in the relevant section. Alternatively, a complaint about the decision of a government department, agency or statutory body may also be made to the Queensland Ombudsman under the *Ombudsman Act 2001* (Qld). These options will typically provide quicker and cheaper results. Judicial review may often be sought as a last resort however time limitations prevent waiting for other options to be exhausted.

Administrative Decisions (Judicial Review) Act 1977 (Cth) (**ADJRA**)

The ADJRA allows people to apply for a review of administrative actions or decisions of Commonwealth government departments and statutory bodies.

Jury Act 1995 (Qld)

What is the Act about?

The *Jury Act 1995 (Qld)* (JA) sets out when a person may be asked to perform jury service. Qualified Australian citizens have an obligation to perform jury duty unless they have been excused by a judge or sheriff.²⁵ A person will generally be eligible to serve as a juror if they are 18 years of age and are enrolled to vote.²⁶ However, there are several categories of people who are ineligible for jury duty. This includes people:

- with a physical or mental disability that are not able to perform the functions of a juror;²⁷
- who have been convicted of an indictable offence;²⁸ or
- who have been sentenced to a term of imprisonment.²⁹

Judges³⁰ and sheriffs³¹ both have the power to excuse someone from jury duty, either for a particular jury service period, or permanently. Factors that must be considered when deciding if someone should be excused from jury duty include:

- the person's health;³²
- whether jury service would result in significant hardship because of the person's personal circumstances;³³ and
- whether other people are dependent on the person to provide care for them.³⁴

Are there particular concerns for people with a mental illness or substance misuse problem?

People with a mental illness may not be eligible for jury duty if their illness prevents them from being able to perform the functions of a juror. This group of people may also have difficulty in attending jury duty if they are receiving treatment for their illness.

The family of people with a mental illness or substance misuse problem may also have difficulties in completing jury service because of their carer role. This role may be considered a significant hardship that would allow the person to be excused from jury service if alternative care arrangements are not available.

Key sections of the Act include:

- s 4 – qualification to serve as a juror;
- s 5 – obligation to perform jury service; and
- s 21 – criteria to apply in excusing from jury service.

²⁵ *Jury Act 1995 (Qld)* s 5.

²⁶ *Ibid* s 4(1).

²⁷ *Ibid* s 4(3)(l).

²⁸ *Ibid* s 4(3)(m).

²⁹ *Ibid* s 4(3)(n).

³⁰ *Ibid* s 20.

³¹ *Ibid* s 19.

³² *Ibid* s 21(1)(e).

³³ *Ibid* s 21(1)(a).

³⁴ *Ibid* s 21(1)(d).

Which agency is responsible for administration of the Act?

- The Sheriff of Queensland
- Department of Justice and Attorney-General
- Queensland Courts

Which judicial body is responsible for enforcement of the Act?

- District Court
- Supreme Court

Queensland Civil and Administrative Tribunal Act 2009 (Qld), Queensland Civil and Administrative Tribunal Regulation 2009 (Qld) and Queensland Civil and Administrative Tribunal Rules 2009 (Qld)

What is the Act about?

The *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (**QCATA**) establishes the Queensland Civil and Administrative Tribunal (**QCAT**). QCAT has a wide jurisdiction to hear and determine matters including:

- anti-discrimination matters;
- adult guardianship matters;
- residential tenancy disputes;
- children and young people matters; and
- minor civil disputes.³⁵

QCAT may also review decisions made by other government or statutory agencies, such as decisions made in response to complaints³⁶ and may hear appeals of its own decisions.³⁷ The QCATA sets out the procedures QCAT must follow and the powers QCAT may exercise.

The *Queensland Civil and Administrative Tribunal Regulation 2009* (Qld) sets out various fees that must be paid to make an application for a hearing or an appeal at QCAT.

The *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) makes sure that matters before QCAT are dealt with in a manner that is fair, timely and cost-effective and that recognises and allows for the diverse needs of all people who use QCAT.³⁸ Further, proceedings at QCAT are very informal and usually do not allow legal representation which also assists in minimising costs for those involved in a dispute.³⁹

These Acts seek to provide people with a quick, low-cost and informal means of settling disputes.

Are there particular concerns for people with a mental illness or substance misuse problem?

Fees are imposed on anyone seeking a hearing or an appeal in QCAT, however, the fee may be waived if it would cause the person undue financial hardship.⁴⁰

People with a mental illness or substance misuse problem may face difficulties in understanding the procedures and rules of QCAT. There are various organisations and law firms that offer assistance on these matters on a pro bono basis, for example the Queensland Public Interest

³⁵ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ss 9-11.

³⁶ *Ibid* s 17.

³⁷ *Ibid* s 25.

³⁸ *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) s 3.

³⁹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 43.

⁴⁰ *Queensland Civil and Administrative Tribunal Regulation 2009* (Qld) s 10.

Law Clearing House's (**QPILCH**) Self Representation Service. Please see the section at the end of this chapter entitled 'Further Information and Advice' for contact details.

While generally people must represent themselves in QCAT, a person may be represented by someone else if they have impaired capacity.⁴¹ People with a mental illness, who experience impaired capacity because of their illness, may be entitled to have someone represent them in a QCAT proceeding.

The QCATA also sets out a number of arrangements that may be made to protect the mental health of any person who is a witness or a party to proceedings in QCAT.⁴²

Key sections of the Act include:

- s 28 – conducting proceedings generally;
- s 29 – ensuring proper understanding and regard;
- s 33 – making an application; and
- s 43 – representation.

Which agency is responsible for administration of the Act?

- QCAT

Which judicial body is responsible for enforcement of the Act?

- QCAT

Relationship with other Queensland legislation

Hearings or reviews may be conducted by QCAT under the following legislation:

- *Adoption Act 2009* (Qld);
- *Anti-Discrimination Act 1991* (Qld);
- *Commission for Children and Young People and Child Guardian Act 2000* (Qld);
- *Crime and Misconduct Act 2001* (Qld);
- *Drugs Misuse Act 1986* (Qld);
- *Education (General Provisions) Act 2006* (Qld);
- *Guardianship and Administration Act 2000* (Qld);
- *Health Quality and Complaints Commission Act 2006* (Qld);
- *Health Ombudsman Act 2013* (Qld);
- *Information Privacy Act 2009* (Qld);
- *Powers of Attorney Act 1998* (Qld);
- *Public Trustee Act 1978* (Qld);
- *Right to Information Act 2009* (Qld); and
- *Residential Tenancies and Rooming Accommodation Act 2008* (Qld).

⁴¹ *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) s 43.

⁴² *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ss 66, 90, 99.

Further information and advice

Association of Queensland Bailiffs

Office address: Bailiff 1st Floor, 12 Brisbane Street, MACKAY QLD 4740
Telephone: (07) 4957 8588 or (07) 4967 0671
Fax: (07) 4957 8441
Email: admin@mackaybailiff.com.au
Website: <http://www.bailiff.com.au/>

Brisbane District and Supreme Court

Office address: QEII Courts of Law Complex, 415 George Street, BRISBANE QLD 4000
Postal address: PO Box 15167, BRISBANE CITY EAST QLD 4002
Telephone (jury service enquiries): (07) 3247 4761
Telephone (jury recorded message): (07) 3030 0327
Website: www.courts.qld.gov.au/information-for-jurors

Coroners Court

General Enquiries

Postal address: GPO Box 1649, BRISBANE QLD 4001
Telephone: (07) 3239 6193
Fax: (07) 3239 0176
Email: state.coroner@justice.qld.gov.au

North Queensland

Office address: Level 1 Cairns Magistrates Court, 5D Sheridan Street, CAIRNS QLD 4870
Postal address: PO Box 1110, CAIRNS QLD 4870
Telephone: (07) 4057 3346
Fax: (07) 4057 3348
Email: northern.coroner@justice.qld.gov.au

Central Queensland

Office address: Mackay Magistrates Court, 12 Brisbane Street, MACKAY QLD 4740
Postal address: PO Box 104, MACKAY QLD 4740
Telephone: (07) 4967 0902
Fax: (07) 4967 0940
Email: [central.coroner@justice.qld.gov.au](mailto:center.coroner@justice.qld.gov.au)

Greater Brisbane, Sunshine Coast and South Queensland

Office address: Level 1 Brisbane Magistrates Court, 363 George Street, BRISBANE QLD 4000
Postal address: GPO Box 1649, BRISBANE QLD 4000
Telephone: (07) 3109 9076
Fax: (07) 3239 0176
Email: State.Coroner@justice.qld.gov.au

South-East Queensland

Office address: Level 3 Southport Magistrates Court, Hinze Street, SOUTHPORT QLD 4215

Postal address: PO Box 103, SOUTHPORT QLD 4215

Telephone: (07) 5583 5427

Fax: (07) 5583 5076

Email: southeastern.coroner@justice.qld.gov.au

Department of Justice and Attorney-General

Office address: State Law Building, 50 Ann Street, BRISBANE QLD 4000

Postal address: GPO Box 149, BRISBANE QLD 4001

Telephone: (07) 3239 3520

Fax: (07) 3211 4352

Email: mailbox@justice.qld.gov.au

Website: <http://www.justice.qld.gov.au/corporate>

Queensland Civil and Administrative Tribunal (QCAT)

Office address: Level 9, BOQ Centre, 259 Queen Street, BRISBANE QLD 4000

Postal address: GPO Box 1639, BRISBANE QLD 4001

Telephone: 1300 753 228

Fax: (07) 3221 9156

Email: enquiries@qcat.qld.gov.au

Website: www.courts.qld.gov.au/information-for-jurors

Queensland Public Interest Law Clearing House (QPILCH) Self Representation Service

Office address: Level 11, BOQ Building, 259 Queen Street, BRISBANE QLD 4000

Postal address: PO Box 3631, SOUTH BRISBANE BC QLD 4101

Telephone: (07) 3006 2324

Email: admin@qpilch.org.au

Website: www.qpilch.org.au

The State Coroner

Central Queensland

Office address: Mackay Magistrates Court, 12 Brisbane Street, MACKAY QLD 4740

Postal address: PO Box 104, MACKAY QLD 4740

Telephone: (07) 4967 0902

Fax: (07) 4967 0940

Email: central.coroner@justice.qld.gov.au

Greater Brisbane, Sunshine Coast and South Queensland

Office address: Level 1, Brisbane Magistrates Court, 363 George Street, BRISBANE QLD 4000

Postal address: PO Box 1649, BRISBANE QLD 4001

Telephone: (07) 3109 9076

Fax: (07) 3239 0176

Email: state.coroner@justice.qld.gov.au

North Queensland

Office address: Level 1, Cairns Magistrates Court, 50 Sheridan Street, CAIRNS QLD 4870

Postal address: PO Box 1110, CAIRNS QLD 4870

Telephone: (07) 4057 3348

Fax: (07) 4057 3346

Email: northern.coroner@justice.qld.gov.au

South-East Queensland

Office address: Level 3, Southport Magistrates Court, Hinze Street, SOUTHPORT QLD
4215

Postal address: PO Box 103, SOUTHPORT QLD 4215

Telephone: (07) 5583 5427

Fax: (07) 5583 5076

Email: southeastern.coroner@justice.qld.gov.au

Miscellaneous

The organisation of legislation is inevitably arbitrary to some extent. This section deals with a group of legislation that does not obviously fit into any other section but nonetheless has an impact on people with mental illness or substance misuse problems.

Relevant legislation

- *Community Services Act 2007* (Qld)
- *Legal Aid Act 1997* (Qld)
- *Legal Profession Act 2007* (Qld)
- *Ombudsman Act 2001* (Qld)
- *Personal Injuries Proceedings Act 2002* (Qld)
- *Tobacco and Other Smoking Products Act 1998* (Qld)
- *Transport Operations (Road Use Management) Act 1995* (Qld)
- *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld)

Case Example:

A QPILCH client was an elderly man on an age pension. He was on a Forensic Disability Order and was residing in a Queensland Health facility. While at the facility, he went outside for a cigarette and was fined \$220 for smoking in an area not designated for smoking. The client was not considered to have capacity and was under a guardian and administration order. QPILCH argued that the fine should be revoked as he did not have capacity, however it was decided that it was more cost effective to repay the fine, than to dispute it.

Community Services Act 2007 (Qld) and Community Services Regulation 2008 (Qld)

What is the Act about?

The *Community Services Act 2007* (Qld) (CSA) aims to assist Queenslanders accessing community services by:

- providing community service providers with assistance, including financial assistance; and
- regulating community service providers to ensure they are high-quality, safe and accountable.

Service providers must apply to become an 'approved service provider' to receive funding from the Department of Communities, Child Safety and Disability Services (CSS). When assessing the application, the chief executive of CSS must consider factors including the service provider's operational plan, record of financial management and whether the service provider receives assistance from another source.¹

Are there particular concerns for people with a mental illness or substance misuse problem?

Community service providers, including those with a focus on mental illness or substance misuse problems are able to access financial assistance if they become an approved service provider. This allows community service providers to provide much needed services to people with a mental illness or substance misuse problems.

Key sections of the Act include:

- s 16 – Decision on application; and
- s 24 – When assistance may be given.

Which agency is responsible for administration of the Act?

- Department of Communities, Child Safety and Disability Services (CSS)

Which judicial body is responsible for enforcement of the Act?

- Queensland Civil and Administrative Tribunal (QCAT)

Relationship with other Queensland legislation

Disability Services Act 2006 (Qld) (DSA)

The DSA seeks to ensure that disability services are safe and accountable. It regulates when disability service providers are given funding and when they can use restrictive practices (such as seclusion and containment) on disabled people.

¹ *Community Services Act 2007* (Qld) s 16.

Legal Aid Queensland Act 1997 (Qld)

What is the Act about?

The *Legal Aid Queensland Act 1997* (Qld) (**LAQA**) establishes Legal Aid Queensland (**LAQ**), an organisation which provides legal assistance to disadvantaged people in Queensland. It does so in a way that is as inexpensive and efficient as possible while still providing effective representation. LAQ is also involved in investigating and giving effect to new ways to provide legal assistance to disadvantaged people.²

LAQ specialises in criminal and family law, but does provide some assistance with civil law matters such as criminal injury compensation, consumer law disputes, and discrimination issues. However, LAQ cannot provide assistance to all disadvantaged people. A person must make an application to LAQ to receive representation. In deciding whether to represent a person, LAQ will consider a number of factors, including:³

- the person's assets and income;
- the person's debts and other financial obligations;
- the costs of obtaining legal services from a private lawyer;
- any benefit or detriment the person may suffer if legal assistance is granted or refused; and
- any other factors affecting the person's ability to meet the cost of obtaining legal services from a private lawyer.

Are there particular concerns for people with a mental illness or substance misuse problem?

Like any other person, people living with a mental illness or substance misuse problem may encounter a variety of legal issues throughout their lives. LAQ provides legal aid for criminal law, family law and some civil law matters subject to both a "means" and a "merits" test.

LAQ also has a specialised Mental Health Unit which provides legal advice and information directly relating to mental health matters. It can assist with advice regarding the rights of patients, complaints regarding medical treatment or care if related to the person's mental illness, and representation in the Mental Health Review Tribunal (**MHRT**) and Mental Health Court. However, it is not able to provide representation for people on involuntary treatment orders in the MHRT.

Key sections of the Act include:

- s 3 – LAQ main objects;
- s 12 – what is taken into account in deciding whether an applicant needs legal assistance; and
- s 43 – LAQ main functions.

Which agency is responsible for administration of the Act?

- Legal Aid Queensland (LAQ)

² *Legal Aid Queensland Act 1997* (Qld) s 43.

³ *Ibid* s 12.

Relationship with other Queensland legislation

LAQ has the expertise to provide legal advice in relation to many of the pieces of legislation considered in this paper.

Legal Profession Act 2007 (Qld)

What is the Act about?

The *Legal Profession Act 2007* (Qld) (**LPA**) regulates the admission of legal professionals and the work performed by them within Queensland.

The LPA seeks to ensure that legal professionals maintain a high level of integrity in the performance of their work.

Are there particular concerns for people with a mental illness or substance misuse problem?

Legal practitioners who have a mental illness will have their privacy protected whenever disciplinary action is taken against them under the LPA because of their mental illness. Any such disciplinary action will not be published or recorded in the discipline register.⁴ However, disciplinary action and other information relating to the person's illness may be recorded in the register or published if the person gives consent and the disciplinary action involves:

- the suspension or cancellation of a person's practising certificate;
- a refusal to grant or renew a practising certification; or
- a regulation of a person's right to engage in legal practice.⁵

Key sections of the Act include:

- s 476 – disciplinary action taken because of infirmity, injury or illness.

Which agency is responsible for administration of the Act?

- Queensland Law Society
- Bar Association of Queensland

Which judicial body is responsible for enforcement of the Act?

- Legal Services Commission

⁴ *Legal Profession Act 2007* (Qld) s 476(1).

⁵ *Ibid* s 476(2).

Ombudsman Act 2001 (Qld)

What is the Act about?

The *Ombudsman Act 2001* (Qld) (OA) establishes the Queensland Ombudsman (**the Ombudsman**). The Ombudsman independently reviews the actions of state government agencies and local governments. The Ombudsman also works with agencies to improve their administrative and decision-making practices.⁶

If a person has made a complaint to a government agency and is unhappy with the response, the OA also allows that person to apply for an internal review of the agency's decision by the Ombudsman.⁷

The Ombudsman, in exercising its investigative powers, helps people to voice their concerns and potentially overcome issues arising from their dealings with various government agencies. It also helps to improve the quality of services provided by government agencies and increase the satisfaction of those receiving these services.

Are there particular concerns for people with a mental illness or substance misuse problem?

The Office of the Ombudsman has the power to investigate a number of agencies that people living with a mental illness or substance misuse problem may deal with during their lifetime. These include the Mental Health Review Tribunal, the Anti-Discrimination Commission, the Residential Tenancies Authority and the Adult Guardian.

Key sections of the Act include:

- s 14 – what the Ombudsman may investigate;
- s 16 – what the Ombudsman may not investigate;
- s 20 – complaints; and
- s 25 – procedure.

Which agency is responsible for administration of the Act?

- Queensland Ombudsman

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- Supreme Court

Relationship with other Queensland legislation

Health Quality and Complaints Commission Act 2006 (Qld) (HQCCA) and the *Health Ombudsman Act 2013* (Qld) (HOA)

The HQCCA and the HOA, which will replace and repeal the HQCCA, allow people to make complaints about the quality of service received from health practitioners and health service providers in Queensland.

⁶ *Ombudsman Act 2001* (Qld) s 6.

⁷ *Ibid* s 20.

Personal Injuries Proceedings Act 2002 (Qld)

What is the Act about?

The *Personal Injuries Proceedings Act 2002* (Qld) (**PIPA**) sets out the procedures and time limits that must be followed when making a claim for damages for personal injury.⁸ A personal injury claim may be made by any person who has suffered an injury as a result of another person's negligence. However, the PIPA does not cover all work injuries, or injuries from car accidents or crimes.

Are there particular concerns for people with a mental illness or substance misuse problem?

The PIPA places restrictive time limitations on people who wish to make a claim for damages for personal injuries. For example, the person who has sustained an injury must prepare the first part of their notice of intention to make a claim within nine months after the injury occurred, or if legal representation has been obtained, within one month of having obtained that legal representation.⁹

These time limits will be paused while the person is under a legal disability.¹⁰ However a diagnosis of mental illness does not automatically mean that the person is under a legal disability. A person will be under a legal disability when he or she is of unsound mind,¹¹ which includes any person who is an involuntary patient under the *Mental Health Act 2000* (Qld) (**MHA**), a forensic disability client under the *Forensic Disability Act 2011* (Qld) or a person determined by a court to be of unsound mind.¹² However, the vast majority of people living with a mental illness do not receive treatment under the MHA and as such, will not be classified as having a legal disability.

Key sections of the Act include:

- s 9 – Initial time limitations for making a claim.

Which agency is responsible for administration of the Act?

- Department of Justice and Attorney-General

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court
- District Court
- Supreme Court

Relationship with other Queensland legislation

Civil Liability Act 2003 (Qld) (**CLA**)

The CLA sets out the elements that must be proved to establish a claim for damages for personal injury.

⁸ *Personal Injuries Proceedings Act 2002* (Qld) s 4.

⁹ *Ibid* s 9(3).

¹⁰ *Ibid* s 19.

¹¹ *Ibid* s 19(4); *Limitation of Actions Act 1974* (Qld) s 5(2).

¹² *Limitation of Actions Act 1974* (Qld) s 5(3).

Forensic Disability Act 2011 (Qld) (FDA)

Time limits imposed under the PIPA are paused while a person is a forensic disability patient under the FDA.

Limitation of Actions Act 1974 (Qld) (LAA)

The LAA sets out when a person shall be classified as having a legal disability for the purposes of the PIPA.

Mental Health Act 2000 (Qld) (MHA)

Time limits imposed under the PIPA are paused while a person is an involuntary patient under the MHA.

Motor Accident Insurance Act 1994 (Qld) (MAIA)

The MAIA sets out the steps that must be taken to make a claim for damages for injuries resulting from motor vehicle accidents.

Victims of Crime Assistance Act 2009 (Qld) (VCAA)

The VCAA allows people who have sustained injuries as the result of a crime to get assistance to help them recover from their injury.

Workers' Compensation and Rehabilitation Act 2003 (Qld) (WCRA)

The WCRA sets out the procedures for making a claim for damages for injuries resulting at work.

Tobacco and Other Smoking Products Act 1998 (Qld)

What is the Act about?

The *Tobacco and Other Smoking Products Act 1998* (Qld) (**TOSPA**) aims to restrict the supply of tobacco and other smoking products to children, to restrict advertising and promotion of tobacco and other smoking products, and to prohibit smoking in certain places.

Are there particular concerns for people with a mental illness or substance misuse problem?

Approximately 32 per cent of people with a mental illness are smokers. In comparison, 18 per cent of the general population are smokers.¹³ This legislation may have a significant impact as people with mental illness may be in-patients in hospital and unable to smoke.

Key sections of the Act include:

- s 26R – Person must not smoke in enclosed place;
- s 26ZJ – Person must not smoke near an entrance to an enclosed Place; and
- s 26ZL – Person smoking must stop when directed.

Which agency is responsible for administration of the Act?

- QLD Health

Which judicial body is responsible for enforcement of the Act?

- s 27 – An authorised person may enforce the powers under the TOSPA. The chief executive may appoint certain people under s 28 of the TOSPA. Such people may include:
 - a public service officer or employee;¹⁴
 - a health service employee;¹⁵
 - a local government employee;¹⁶ and
 - a person under contract with local government.¹⁷

Relationship with other Queensland legislation

N/A

¹³ Sane Australia, *Smoking and Mental Illness* (2012) Sane Australia
<http://www.sane.org/images/stories/information/factsheets/1206_info_fs16smoking.pdf>.

¹⁴ *Tobacco and Other Smoking Products Act 1998* (Qld) s28(1)(a).

¹⁵ *Tobacco and Other Smoking Products Act 1998* (Qld) s28(1)(b).

¹⁶ *Tobacco and Other Smoking Products Act 1998* (Qld) s28(2)(a).

¹⁷ *Tobacco and Other Smoking Products Act 1998* (Qld) s28(2)(c)

Transport Operations (Road Use Management) Act 1995 (Qld) and the Transport Operations (Road Use Management – Driver Licensing) Regulation 2010 (Qld)

What is the Act about?

The *Transport Operations (Road Use Management) Act 1995* (Qld) (**TORUM**) regulates road rules and driver licensing. The *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld) (the **TORUM Regulation**) sets out driving offences and further requirements for qualifying for a driver license or special licenses.

Are there particular concerns for people with a mental illness or substance misuse problem?

People living with a mental illness or substance misuse problem may be more likely to face issues in qualifying for a license. If a person's mental or physical disability is likely to adversely affect their ability to drive safely, they may not be permitted to get or renew a Queensland driver license.¹⁸ Whenever a person applies for a license or to renew an existing license, he or she must give notice of any mental or physical disability that is likely to adversely affect their ability to drive safely.¹⁹ A person must also inform the Queensland Department of Transport and Main Roads (**TMR**) of any permanent or long term mental or physical incapacity, or any worsening of symptoms of an existing mental or physical incapacity that develops while holding a driver license.²⁰ It is an offence not to disclose this information,²¹ or to give information that is false or misleading.²² A person's doctor or other health professional may also provide information to TMR relating to a person's medical fitness to hold a driver license.²³ This may result in the person's driver license being cancelled, or the person may be required to take a practical driving test to determine whether they are able to drive safely despite their incapacity.²⁴

People living with a substance misuse problem may also encounter licensing issues. It is an offence to drive while under the influence of alcohol or other drugs.²⁵ Any person who does so may have their license cancelled or suspended²⁶ and may also be given a fine or sentenced to a term of imprisonment.²⁷ Repeat offenders are more likely to be given more severe penalties.

If a person's driver license has been suspended or disqualified, they may be able to apply for a restricted or special needs driver license. A restricted license permits a person to drive, but only for the purposes and during the times ordered by the court.²⁸ In limited circumstances, for example if a person requires a license to get to and from work or to get medical treatment for

¹⁸ *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld) s 50.

¹⁹ *Ibid* s 51(1).

²⁰ *Ibid* s 51(2).

²¹ *Ibid* ss 51(1) and (2).

²² *Transport Operations (Road Use Management) Act 1995* (Qld) s 52.

²³ *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld) s 142.

²⁴ *Ibid* s 130.

²⁵ *Transport Operations (Road Use Management) Act 1995* (Qld) s 79(1).

²⁶ *Ibid* s 79B.

²⁷ *Ibid* s 79(1).

²⁸ *Ibid* s 87.

themselves or a family member, a person may also be able to get a special needs provisional license.²⁹ A special needs license will only be given to people who have no other available means of transport and who would suffer severe hardship if they were to be refused the license.³⁰ If granted, a special needs license may only be used for the purpose for which it was given, for example for getting to and from work. It is an offence to use a restricted license or special needs license for any purpose other than those for which it was granted.³¹ Doing so may result in the license being cancelled and future applications may be refused.

Key sections of the Act include:

- TORUM s 79 – vehicle offences involving liquor or other drugs;
- TORUM Regulation s 20 – special need – learner or provisional license; and
- TORUM Regulation s 50 – eligibility if mental or physical incapacity likely to adversely affect ability to drive safely.

Which agency is responsible for administration of the Act?

- Queensland Department of Transport and Main Roads (TMR)

Which judicial body is responsible for enforcement of the Act?

- Magistrates Court

Relationship with other Queensland legislation

Drugs Misuse Act 1986 (Qld) (DMA)

People who have been caught for driving while under the influence of alcohol or other drugs may also be liable to be prosecuted for offences under the DMA (such as for possessing illegal drugs).

²⁹ *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld) s 20(2)(a).

³⁰ *Ibid* s 20(2).

³¹ *Transport Operations (Road Use Management) Act 1995* (Qld) s 87.

Further information and advice

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Email: qldbar@qldbar.asn.au
Website: www.qldbar.asn.au

Department of Communities, Child Safety and Disability Services (CSS)

Community Services

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Telephone: 13 74 68
Fax: (07) 3405 6428
Email: enquiries@communities.qld.gov.au
Website: www.communities.qld.gov.au/communityservices

Department of Transport and Main Roads (TMR)

General Enquiries

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Legal Aid Queensland

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Legal Services Commission

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Email: lsc@lsc.qld.gov.au

Website: www.lsc.qld.gov.au

Queensland Civil and Administrative Tribunal

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Telephone: 1300 753 228

Fax: (07) 3221 9156

Email: enquiries@qcat.qld.gov.au

Website: www.courts.qld.gov.au/information-for-jurors

Queensland Law Society

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Fax: (07) 3842 5888

Email: info@qls.com.au

Website: www.qls.com.au

Queensland Ombudsman

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Postal address: PO Box 3314, BRISBANE QLD 4001

Telephone (toll free): 1800 068 908

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Website: www.ombudsman.qld.gov.au

International instruments

The United Nations (UN) is an international organisation that was created in 1945, during the aftermath of World War Two (WWII). It replaced the League of Nations and aspired to maintain international peace and security to ensure that the atrocities of WWII were never repeated. Since its formation, the UN has created numerous documents to protect and promote universal human rights to this end.

The *Universal Declaration of Human Rights*¹ was adopted by the UN General Assembly in 1948 and was followed by the *International Covenant on Civil and Political Rights* (1966)² and the *International Covenant on Economic, Social and Cultural Rights* (1966)³ which came into force in 1976. Together, these documents make the International Bill of Human Rights. The rights protected in these documents are universal human rights that apply to all people, in all places, regardless of distinctions such as race, gender, religion, or political opinion. As such, these rights have general application in a mental health and substance misuse contexts. However, more recently, the UN has drafted documents to protect the rights of particularly vulnerable groups of people, such as children and people with a mental illness or disability, through the *Convention on the Rights of the Child* (1989)⁴ and the *Convention on the Rights of Persons with Disabilities* (2006).⁵

Despite the aspirations of these documents and the large number of countries that have become signatories to them, there are significant problems with the implementation and enforcement of these rights at a national level. Many of the UN documents require signatories to submit reports on their compliance and as such, the UN has a monitoring role and will often make recommendations on how compliance can be improved. However, because the UN is an international organisation, there is no mechanism to enforce compliance by its member countries. Without an effective enforcement mechanism, many rights violations still occur and member countries sometimes introduce laws that are not consistent with the obligations they have made to the UN. In addition, countries such as Australia need to create both federal and state laws that comply with the relevant international instrument before it can be enforced as part of Australian law.

Difficulties in the implementation and enforcement of international documents remains an inherent problem, however this does not mean these documents have no value. Through its international documents, the UN has made a significant contribution to creating norms and influencing domestic laws and policy to better protect the rights of vulnerable groups. This section considers the international documents that may be relevant to people with a mental illness or substance misuse problem and provides some brief examples of where these documents are reflected in Australian law.

¹ GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

² Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

³ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

⁴ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

⁵ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

Relevant international instruments

- *Convention on the Rights of Persons with Disabilities* (2006)
- *Convention on the Rights of the Child* (1989)
- *Declaration on the Guiding Principles of Drug Demand Reduction* (1998)
- *International Covenant on Civil and Political Rights* (1966)
- *International Covenant on Economic, Social and Cultural Rights* (1966)
- *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991)
- *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993)

Convention on the Rights of Persons with Disabilities (2006)

What is the Convention about?

The *Convention on the Rights of Persons with Disabilities* (2006)⁶ (CRPD) aims to promote and protect the rights and dignity of people with disabilities. Australia has signed and ratified the CRPD.⁷

Are there particular concerns for people with a mental illness or substance misuse problem?

The CRPD applies to all people with a disability. Disability is recognised by the CRPD as an evolving concept that, *'results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.'*⁸

In particular, the CRPD aims to provide for:

- respect for inherent dignity, individual autonomy and independence of people;
- non-discrimination;
- full and effective participation and inclusion in society;
- respect for difference and acceptance of people with disabilities as part of human diversity and humanity;
- equality of opportunity;
- accessibility;
- equality between men and women; and
- respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.⁹

Key sections of the Convention include:

General obligations of signatories to the CRPD that are particularly relevant include ensuring that people with disabilities:

- are protected from discrimination of any kind on the basis of disability;¹⁰
- are equal under the law and are provided with legal capacity on an equal basis with others;¹¹
- including children, have the right to express their views freely on matters affecting them;¹²
- have equal rights to own property and control their financial affairs;¹³
- are not arbitrarily or unlawfully deprived of their liberty;¹⁴
- do not have experimental medical or scientific procedures performed on them without their free consent;¹⁵

⁶ Ibid.

⁷ Australia signed the CRPD on 30 March 2007 and ratified it on 17 July 2008.

⁸ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) preamble (e).

⁹ Ibid art 3.

¹⁰ Ibid art 5.

¹¹ Ibid art 12.

¹² Ibid arts 6, 21.

¹³ Ibid art 12.

¹⁴ Ibid art 14.

¹⁵ Ibid art 15.

- are entitled to respect for their physical and mental integrity on an equal basis with everyone else;¹⁶
- are provided with access to in-home, residential and other community support services, necessary to support living and inclusion in the community;¹⁷
- are provided with a right to education;¹⁸
- are provided with a right to work on an equal basis with others, where discrimination is prohibited on the basis of disability in relation to employment matters including recruitment, continuing employment, career advancement and safe and healthy working conditions;¹⁹ and
- can effectively participate in political and public life, including the right to vote and be elected.²⁰

Further, signatories must ensure:

- appropriate measures are taken so that people with a disability are able to exercise their legal capacity;²¹
- the best interests of the child are a primary consideration, where actions are made concerning children with disabilities;²²
- there is effective access to justice for people with disabilities and that appropriate training is provided to staff working in the administration of justice, particularly police and prison staff;²³
- appropriate measures are taken to promote the recovery, rehabilitation and social integration of people with disabilities who become victims of any form of abuse;²⁴ and
- effective measures are taken to eliminate discrimination against people with a disability in matters relating to marriage, family and relationships.²⁵

Which agency is responsible for administration of the Convention?

The UN Committee on the Rights of Persons with Disabilities (**ComRPD**) monitors each country's compliance with the CRPD. Signatories to the CRPD are required to submit reports to the ComRPD on their compliance with the CRPD every four years. Australia's most recent report was submitted on 3 December 2010.²⁶ This report was assessed by the ComRPD which made recommendations and addressed concerns in its Concluding Observations.²⁷

¹⁶ Ibid art 17.

¹⁷ Ibid art 19.

¹⁸ Ibid art 24.

¹⁹ Ibid art 27.

²⁰ Ibid art 29.

²¹ Ibid art 12.

²² Ibid art 7.

²³ Ibid art 13.

²⁴ Ibid art 16.

²⁵ Ibid art 23.

²⁶ *Implementation of the Convention on the Rights of Persons with Disabilities: Australia*, UN GAOR, UN Doc CRPD/C/AUS/1 (3 December 2010)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAU%2f1&Lang=en>.

²⁷ *Concluding Observations on the Initial Report of Australia*, UN GAOR, 118th mtg, 10th sess, UN Doc CRPD/C/AUS/CO/1 (12 September 2013)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fAU%2fCO%2f1&Lang=en>.

Is the Convention enforceable in Australia?

Australia has ratified the CRPD and has agreed to the Optional Protocol on the CRPD, which provides a mechanism for Australians to make complaints to the United Nations Disabilities Committee for breaches of the CRPD where domestic remedies have been exhausted. However, because the CRPD is an international instrument, it is not enforceable as a part of Australian law until it is enacted through equivalent domestic legislation. Legislation has been enacted at both the federal and state levels to protect the rights of persons with disabilities, which reflects many of the principles outlined in the CRPD. This includes the *Disability Discrimination Act 1992* (Cth) and the *Anti-Discrimination Act 1991* (Qld).

Convention on the Rights of the Child (1989)

What is the Convention about?

The *Convention on the Rights of the Child* (1989)²⁸ (CRC) aims to promote and protect the rights of children. It recognises that children lack the maturity of adults and therefore require additional protection of their rights. Australia signed and ratified the CRC in 1990.

Are there particular concerns for people with a mental illness or substance misuse problem?

Children with a mental illness are particularly vulnerable and limited in their ability to protect their interests, as are those children with parents who have a mental illness or substance misuse problem. This additional vulnerability means that the CRC is especially important to children living in these circumstances.

Key sections of the Convention include:

There are various standards that signatories to the CRC, including Australia, should apply in their own legal systems. These include:

- that any law that has an impact on children take into account the best interests of the child (as a primary consideration);²⁹
- that institutions and services responsible for the care or protection of children make sure that they protect the safety and health of children and have an adequate number of suitable staff available;³⁰
- that children are not separated from their parents against their will, except when this is in the best interests of the child according to the relevant court or tribunal;³¹
- that children have the right to have their say in any matter that concerns them;³²
- that children are protected from all forms of abuse including physical or mental violence;³³
- that children living with a disability have access to special care;³⁴
- that children have access to the best possible quality of health care;³⁵
- that children are protected from the use of drugs;³⁶ and
- that children can access appropriate legal assistance where their freedom is taken from them.³⁷

Which agency is responsible for administration of the Convention?

The UN Committee on the Rights of the Child (ComRC) monitors each country's compliance with the CRC. Every five years, signatories to the CRC, including Australia, must write a report to the ComRC that outlines how their laws apply the standards in the CRC. Australia's most

²⁸ Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

²⁹ Ibid art 3.

³⁰ Ibid art 3.

³¹ Ibid art 9.

³² Ibid art 12.

³³ Ibid art 19.

³⁴ Ibid art 23.

³⁵ Ibid art 24.

³⁶ Ibid art 33.

³⁷ Ibid art 37.

recent report was submitted on 25 June 2009.³⁸ The ComRC has considered this report and made recommendations about how Australia can better protect the rights of children.³⁹

Is the Convention enforceable in Australia?

Australia is a signatory to the CRC and should therefore apply its standards within Australia. However, because the CRC is an international instrument, it is not enforceable as a part of Australian law until it is made into law by the Australian Parliament. Currently, there is no law, either at a federal or state level, in Australia which reflects all of the principles outlined in the CRC.

Some aspects of the CRC are reflected in certain federal and state laws. For example, the *Family Law Act 1975* (Cth) reflects article 3 of the CRC and states that the child's best interests must be a primary consideration when making a parenting order.⁴⁰ The *Child Protection Act 1999* (Qld) also requires that the best interests of the child be taken into consideration when applying the Act.⁴¹ The *Adoption Act 2009* (Qld) also complies with some aspects of the CRC. For example it provides for the child's views to be expressed and considered during the adoption process, where this is appropriate, which reflects article 12 of the CRC.⁴² However, the *Mental Health Act 2000* (Qld) (**MHA**) does not comply with all aspects of the CRC. For example, the MHA does not require that the best interests of the child be taken into consideration when making decisions under the Act. Further, it does not ensure a child's right to freely express their views and have them taken into account where relevant. It should be noted however that the MHA is currently under review.

³⁸ *Consideration of Reports Submitted by States Parties: Australia*, UN GAOR, UN Doc CRC/C/AUS/4 (25 June 2009)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2f4&Lang=en>.

³⁹ *Concluding Observations on the Initial Report of Australia*, UN GAOR, 1725th mtg, 60th sess, UN Doc CRC/C/AUS/CO/4 (15 June 2012)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fAUS%2fCO%2f4&Lang=en>.

⁴⁰ *Family Law Act 1975* (Cth) s 60CA.

⁴¹ *Child Protection Act 1999* (Qld) s 5A.

⁴² *Adoption Act 2009* (Qld) s 6(e)(ii).

Declaration on the Guiding Principles of Drug Demand Reduction (1998)

What is the Declaration about?

The *Declaration on the Guiding Principles of Drug Demand Reduction* (1998)⁴³ (**DDR Guiding Principles**) aims to reduce the demand for drugs by sustaining a political, social, health and educational commitment to investing in demand reduction programmes. These programs should contribute to reducing public health problems, improving individual health and well-being, promoting social and economic integration, reinforcing family systems and making communities safer.

Are there particular concerns for people with a mental illness or substance misuse problem?

The DDR Guiding Principles specifically aim to address the consequences of drug abuse and drug trafficking.

Key sections of the Declaration include:

- demand reduction programmes should incorporate all areas of prevention, including discouraging the initial use of drugs and reducing negative health and social consequences of drug abuse;⁴⁴
- programmes should encourage information, education, public awareness, early intervention, counselling, treatment, rehabilitation, relapse prevention, aftercare and social integration;⁴⁵ and
- where appropriate, member countries should implement treatment, education, aftercare, rehabilitation and social reintegration as an alternative, or in addition to, conviction or punishment, for drug users within the criminal justice system.⁴⁶

⁴³ GA A/S-20/4, UN GAOR, 1st mtg (8 June 1988).

⁴⁴ Ibid art IV (B).

⁴⁵ Ibid art IV (A)-(B).

⁴⁶ Ibid art IV (D).

International Covenant on Civil and Political Rights (1966)

What is the Convention about?

The *International Covenant on Civil and Political Rights* (1966) (ICCPR)⁴⁷ aims to prevent freedom from fear and want by ensuring everyone can enjoy their civil and political rights. Australia has signed and ratified the ICCPR.⁴⁸

Are there particular concerns for people with a mental illness or substance misuse problem?

The ICCPR recognises the need to protect the rights of everyone, including the right to liberty and security of person, freedom of movement and equality before the law. The ICCPR also protects people from experimental medical and scientific procedures that are not freely consented to. These rights are particularly important to people with a mental illness or substance misuse problem as they may, for example, be subject to an involuntary treatment order (ITO) which severely restricts their freedom. Accordingly it is vital that restrictions of liberty in these circumstances occur in accordance with the law.

Key sections of the Convention include:

General obligations of countries that are signatories to the ICCPR, and that may be particularly relevant, include ensuring that:

- cruel, inhumane, or degrading treatment or punishment is not used on anyone;⁴⁹
- experimental medical or scientific procedures are not used without the free consent of the patient;⁵⁰
- no one is arrested or detained arbitrarily or without accordance to the law;⁵¹
- everyone has the right to freedom of movement, except in circumstances provided by law where it is necessary to protect national security, public health, public order, or the freedom of others;⁵² and
- everyone is equal before the law and is entitled to protection of the law without discrimination.⁵³

Which agency is responsible for administration of the Convention?

The UN Human Rights Committee (HRC) monitors each country's compliance with the ICCPR and the Australian Human Rights Commission (AHRC) is responsible for monitoring Australia's compliance. Signatories to the ICCPR are required to submit reports to the HRC on their compliance with the ICCPR. Australia's most recent report was submitted on 7 August 2007.⁵⁴

⁴⁷ Opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁴⁸ Australia signed the ICCPR on 18 December 1972 and ratified it on 13 August 1980.

⁴⁹ *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 7.

⁵⁰ *Ibid* art 7.

⁵¹ *Ibid* art 9.

⁵² *Ibid* art 12.

⁵³ *Ibid* art 26.

⁵⁴ *Consideration of Reports Submitted by States Parties: Australia*, UN GAOR, UN Doc CCPR/C/AUS/5 (7 August 2007)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fAU%2f5&Lang=en>.

This report was assessed by the HRC which made recommendations in its Concluding Observations.⁵⁵

Australia is also a signatory to the First Optional Protocol to the ICCPR, which means that the HRC can consider individual complaints regarding alleged violations of the ICCPR by Australia. The AHRC also has the power to monitor whether federal legislation complies with Australia's obligations under the ICCPR and to investigate any alleged violations of the ICCPR.

Is the Convention enforceable in Australia?

Australia is a signatory to the ICCPR and as such is responsible for complying with its principles. However, because the ICCPR is an international instrument, it is not enforceable as a part of Australian law until it is enacted through equivalent domestic legislation. This means that neither the HRC, nor the AHRC has power of enforcement. Currently, there is no single piece of legislation at a federal level that has been enacted in Australia which reflects the entirety of the principles outlined in the ICCPR. However, some states such as the Australian Capital Territory⁵⁶ and Victoria⁵⁷ have enacted legislation to protect human rights which reflects many of the civil and political rights protected in the ICCPR.

⁵⁵ *Concluding Observations on the Initial Report of Australia*, UN GAOR, 2624th mtg, 95th sess, UN Doc CCPR/C/AUS/CO/5 (2 April 2009)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fAUS%2fCO%2f5&Lang=en>.

⁵⁶ *Human Rights Act 2004* (ACT).

⁵⁷ *Charter of Human Rights and Responsibilities Act 2006* (Vic).

International Covenant on Economic, Social and Cultural Rights (1966)

What is the Convention about?

The *International Covenant on Economic, Social and Cultural Rights* (1966) (ICESCR)⁵⁸ aims to ensure that individuals can enjoy economic, social and cultural rights. Australia has signed and ratified the ICESCR.⁵⁹

Are there particular concerns for people with a mental illness or substance misuse problem?

The ICESCR recognises the need to protect the rights of individuals, including the right to self-determination, employment and high standards of physical and mental health.

Key sections of the Convention include:

General obligations of countries that are signatories to the ICESCR that are particularly relevant include ensuring that everyone has a right to:

- self-determination and is free to pursue their economic, social and cultural development;⁶⁰
- work in just and favourable conditions;⁶¹
- an adequate standard of living;⁶² and
- the highest attainable standard of physical and mental health.⁶³

Which agency is responsible for administration of the Convention?

The UN Committee on Economic, Social and Cultural Rights (CESCR) monitors each country's compliance with the ICESCR. Signatories to the ICESCR are required to submit reports to the CESCR every five years on their compliance with the ICESCR. Australia's most recent report was submitted on 7 August 2007.⁶⁴ This report was assessed by the CESCR which made recommendations in its Concluding Observations.⁶⁵

Is the Convention enforceable in Australia?

Australia is a signatory to the ICESCR and is therefore responsible for complying with its principles. However, because the ICESCR is an international instrument, it is not enforceable as a part of Australian law until it is enacted through equivalent domestic legislation. Like the *International Covenant on Civil and Political Rights* (ICCPR), currently, there is no single piece of legislation at a federal level that has been enacted in Australia which reflects the entirety of the

⁵⁸ Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

⁵⁹ Australia signed the ICESCR on 18 December 1972 and ratified it on 10 December 1975.

⁶⁰ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 1.

⁶¹ *Ibid* arts 6- 7.

⁶² *Ibid* art 11.

⁶³ *Ibid* art 12.

⁶⁴ *Implementation of the International Covenant on Economic, Social and Cultural Rights: Australia*, UN GAOR, UN Doc E/C.12/AUS/4 (7 January 2008)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fAUS%2f4&Lang=en>.

⁶⁵ *Concluding Observations on the Initial Report of Australia*, UN GAOR, 26th mtg, 42nd sess, UN Doc E/C.12/AUS/CO/4 (12 June 2009)

<http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fAUS%2fCO%2f4&Lang=en>.

principles outlined in the ICESCR. However, some states such as the Australian Capital Territory⁶⁶ and Victoria⁶⁷ have enacted legislation to protect human rights which reflects many of the rights protected in the ICESCR.

⁶⁶ *Human Rights Act 2004* (ACT).

⁶⁷ *Charter of Human Rights and Responsibilities Act 2006* (Vic).

The Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991)

What are the Principles about?

The *Principle for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991) (**MI Principles**)⁶⁸ aim to protect the rights and dignity of people with mental illness and were adopted by the UN General Assembly in 1991.

Are there particular concerns for people with a mental illness or substance misuse problem?

The MI Principles are directly relevant to all people with a mental illness.

Key sections of the Principles include:

- a right to the best available mental health care and to be treated with humanity and respect;⁶⁹
- a prohibition of discrimination on the basis of mental illness;⁷⁰
- a right to legal representation when deciding issues of legal capacity;⁷¹
- a right to live, work and be treated in the community, where possible;⁷²
- a right to the least intrusive treatment provided in the least restrictive environment that is appropriate to the person's health needs and the protection of others;⁷³
- a right to treatment which aims to protect and increase personal autonomy;⁷⁴
- a prohibition on involuntary admission to a mental health facility unless the person has been assessed as having a mental illness and there is a serious likelihood of immediate or imminent harm to that person or someone else; or failure to admit the person is likely to result in a serious deterioration of their condition;⁷⁵ and
- a right for involuntary patients to be periodically reviewed by an independent review body.⁷⁶

Are the Principles enforceable in Australia?

The MI Principles are not legally binding, but have influenced mental health laws in the Australian context. The Australian government previously pledged to ensure legislation in accordance with the MI Principles was developed.⁷⁷ Despite this, mental health legislation is an area of State jurisdiction and as such, there are wide differences in the legislation between

⁶⁸ GA Res 46/119, UN GAOR, 75th plen mtg, UN Doc A/RES/46/199 (17 December 1991).

⁶⁹ Ibid principle 1 (1)(2).

⁷⁰ Ibid principle 1(4).

⁷¹ Ibid principle 6.

⁷² Ibid principles 3, 7.

⁷³ Ibid principle 9(1).

⁷⁴ Ibid principle 9.

⁷⁵ Ibid principle 16.

⁷⁶ Ibid principle 17.

⁷⁷ MHCA (2005). *Not for Service – Experiences of Injustice and Despair in Mental Health Care in Australia*. Mental Health Council of Australia, Brain and Mind Research Institute and Human Rights and Equal Opportunity Commission.

States. Further, many States, including Queensland, are currently in the process of reviewing their mental health laws.

It should also be noted that the MI Principles are superseded by the *Convention on the Rights of Persons with Disabilities* (2006)⁷⁸, where there is any direct conflict.

⁷⁸ Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)

What are the Rules about?

The *Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1993)*⁷⁹ (EOPD Rules) aim to ensure that all people with disabilities, including those with a mental illness, are able to exercise the same rights and obligations as everyone else. Although the EOPD Rules are not compulsory, they aim to encourage a strong moral and political commitment on countries to adopt appropriate action to ensure the equalisation of opportunities for people with disabilities. The EOPD Rules are divided into four categories: preconditions for equal participation; target areas for equal participation; implementation measures and the monitoring mechanism.

Are there particular concerns for people with a mental illness or substance misuse problem?

The EOPD Rules are relevant to all people with a disability. Disability is recognised by the EOPD Rules as including physical, intellectual or sensory impairments, or medical conditions illnesses, regardless of whether such conditions are permanent or temporary in nature.⁸⁰

Key sections of the Rules include:

In particular, the EOPD Rules aim to ensure:

- appropriate medical care is provided for people with disabilities, including adequate training to medical staff;⁸¹
- necessary treatment and medicines used to preserve or improve the functioning of people with disabilities are provided;⁸²
- adequate rehabilitation services, based upon the principles of participation and equality, are provided that enable people with disabilities to maintain an optimum level of independence and functioning;⁸³
- support services are provided to assist people with disabilities to exercise their independence and rights;⁸⁴
- education with appropriate support services are provided to people with disabilities;⁸⁵
- employment laws do not discriminate against people with disabilities, or limit their employment;⁸⁶
- people with disabilities have the opportunity to become parents;⁸⁷
- a legal basis for measures to achieve the objectives of full participation and equality for people with disabilities is implemented;⁸⁸

⁷⁹ Res 48/96, UN GAOR, 48th sess, 85th plen mtg, Agenda Item 109, UN Doc A/RES/48/96 (4 March 1994).

⁸⁰ Ibid para 17.

⁸¹ Ibid rule 2

⁸² Ibid rule 2.

⁸³ Ibid rule 3.

⁸⁴ Ibid rule 4.

⁸⁵ Ibid rule 6.

⁸⁶ Ibid rule 7.

⁸⁷ Ibid rule 9.

⁸⁸ Ibid rule 15.

- legislation reflects the rights and obligations of people with disabilities, including the ability for people with disabilities to exercise their human, civil and political rights on an equal basis with other people;⁸⁹ and
- legislation provides for appropriate penalties where the principles of non-discrimination are violated.⁹⁰

Which agency is responsible for administration of the Rules?

Individual countries are responsible for monitoring and evaluating national programmes and services that comply with the EOPD Rules. The Monitoring Mechanism in the EOPD Rules also provided for monitoring through the Commission for Social Development.

Are the Rules enforceable in Australia?

The EOPD Rules are not legally binding, but are instead an instrument for policy-making that represents a moral and political commitment of Governments to take action on this issue.

⁸⁹ Ibid rule 15.

⁹⁰ Ibid rule 15.

Promotion of Laws

A number of agencies promote laws or provide information for people with mental illness or substance misuse issues. These include, but are not limited to:

- Legal Aid – <http://www.legalaid.qld.gov.au/publications/Pages/default.aspx>;
- Queensland Public Interest Law Clearing House (**QPILCH**) – www.qpilch.org.au;
- Queensland Advocacy Incorporated (**QAI**) - http://www.qai.org.au/index.php?option=com_content&view=article&id=13&Itemid=12;
- Adult Guardian - <http://www.justice.qld.gov.au/justice-services/guardianship/adult-guardian>;
- Public Trustee - <https://www.pt.qld.gov.au/publications/>;
- Queensland Civil and Administrative Tribunal (**QCAT**) - <http://www.qcat.qld.gov.au/about-qcat/publications>;
- TASC - <http://www.tascinc.org.au/resources/>;
- Queensland Health - <http://www.health.qld.gov.au/resources/default.asp>;
- Mental Health Review Tribunal - http://www.mhrt.qld.gov.au/?page_id=44; and
- A number of other community legal centres - http://www.qails.org.au/01_directory/search.asp?action=search.

Evidently there are a number of resources already available for people with mental illness or substance misuse issues and their carers. However it can still be a challenge for people with mental illness or substance misuse issues, and their families, to obtain legal information at the right point in time and in the right form. Navigating the legal system generally, and the mental health system in particular, presents serious challenges for people. Some ideas for the promotion of laws, including rights and responsibilities under the law, include:

- Provide a centralised location for legal information and referral information, which enables easier navigation through the legal system for consumers and carers. For example, this could be in the form of a website or telephone advice line;
- Communicate clear pathways and connect options between different areas of law and agencies;
- Create more avenues and enable more resources for individual and systems advocacy;
- Create options for mentoring or buddy systems, in which people navigating agencies and systems, can talk to others for support;
- Ensure relevant information is provided at key points, for example when a person comes into contact with doctors, police, courts, hospitals and legal services; and
- Ensure information is consistently communicated to consumers and carers, and information is accurate, for example ensuring hospital staff are well informed and consistent in their approach to communicating information.

Glossary

AA – *Adoption Act 2009* (Qld)

ADA – *Anti-Discrimination Act 1991* (Qld)

ADCQ – Anti-Discrimination Commission Queensland

ADJRA – *Administrative Decisions (Judicial Review) Act 1997* (Cth)

AHPRA – Australian Health Practitioner Regulation Agency

AHRC – Australian Human Rights Commission

BA – *Bail Act 1980* (Qld)

Blue card – Positive Notice Blue Card

CA – *Coroners Act 2003* (Qld)

CAC – Carers Advisory Council

CCYPCGA – *Commission for Children and Young People and Child Guardian Act 2000* (Qld)

CESCR – United Nations Committee on Economic, Social and Cultural Rights

CET – Community Engagement Team

CLA – *Civil Liability Act 2003* (Qld)

CLROA – *Criminal Law (Rehabilitation of Offenders) Act 1986* (Qld)

The Commission – Commission for Children and Young People and Child Guardian

ComRC – United Nations Committee on the Rights of the Child

ComRPD – United Nations Committee on the Rights of Persons with Disabilities

CPA – *Child Protection Act 1999* (Qld)

CRA – *Carers (Recognition) Act 2008* (Qld)

CRC – *Convention on the Rights of the Child* (1989)

The Criminal Code – *Criminal Code Act 1899* (Qld)

CRPD – *Convention on the Rights of Persons with Disabilities* (2006)

CRSA – *Corrective Services Act 2006* (Qld)

CSA – *Community Services Act 2007* (Qld)

CSS– Department of Communities, Child Safety and Disability Services (Child Safety Services)

DDA – *Disability Discrimination Act 1992* (Cth)

DDR Guiding Principles – *Declaration on the Guiding Principles of Drug Demand Reduction* (1998)

DFVPA – *Domestic and Family Violence Protection Act 2012* (Qld)

DMA – *Drugs Misuse Act 1986* (Qld)

DMR – *Drugs Misuse Regulation 2006* (Qld)

DPPA – *Director of Public Prosecutions Act 1984* (Qld)

DSA – *Disability Services Act 2006* (Qld)

DVO – domestic violence order

ECT – electroconvulsive therapy

EEO – emergency examination order

EGPA – *Education (General Provisions) Act 2006* (Qld)

EOPD Rules – *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (1993)

EPOA – Enduring Power of Attorney

FDA – *Forensic Disability Act 2011* (Qld)

FDO – forensic disability order

FDS – Forensic Disability Service

FO – forensic order

FOO – fine option order

FWA – *Fair Work Act 2009* (Cth)

GAA – *Guardianship and Administration Act 2000* (Qld)

GPOA – General Power of Attorney

HA – *Health Act 1937* (Qld)

HCSC – Health and Community Services Committee

HDPR – *Health (Drugs and Poisons) Regulation 1996* (Qld)

HHBA – *Hospital and Health Boards Act 2011* (Qld)

HHBR – *Hospital and Health Boards Regulation 2012* (Qld)

HOA – *Health Ombudsman Act 2013* (Qld)

HPW – Department of Housing and Public Works

HQCCA – *Health Quality and Complaints Commission Act 2006* (Qld)

HRC – United Nations Human Right Committee

ICCPR – *International Covenant on Civil and Political Rights* (1966)

ICESCR – *International Covenant on Economic, Social and Cultural Rights* (1966)

IPA – *Information Privacy Act 2009* (Qld)

IPPs – Information Privacy Principles

IRA – *Industrial Relations Act 1999* (Qld)

ITO – involuntary treatment order

JA – *Jury Act 1995* (Qld)

JAG – Department of Justice and the Attorney-General

JEO – justices examination order

JP – Justice of the Peace

JRA – *Judicial Review Act 1991* (Qld)

LAA – *Limitation of Actions Act 1974* (Qld)

LAQ – Legal Aid Queensland

LAQA – *Legal Aid Queensland Act 1997* (Qld)

LPA – *Legal Profession Act 2007* (Qld)

MAIA – *Motor Accident Insurance Act 1994* (Qld)

MHA – *Mental Health Act 2000* (Qld)

MHC – Mental Health Court

MHRT – Mental Health Review Tribunal

MI Principles – *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* (1991)

NES – National Employment Standards

NPPs – National Privacy Principles

OA – *Ombudsman Act 2001* (Qld)

ODPP – Office of the Director of Public Prosecutions

OIC – Office of the Information Commissioner

The Ombudsman – The Queensland Ombudsman

PA – *Privacy Act 1988* (Cth)

PGBA – *Peace and Good Behaviour Act 1992* (Qld)

PIPA – *Personal Injuries Proceedings Act 2002* (Qld)

POAA – *Powers of Attorney Act 1998* (Qld)

PPRA – *Police Powers and Responsibilities Act 2000* (Qld)

PRA – *Public Records Act 2002* (Qld)

PRRC – Public Records Review Committee

PSA – *Penalties and Sentences Act 1992* (Qld)

PTA – *Public Trustee Act 1978* (Qld)

QAI – Queensland Advocacy Incorporated

QCAT – Queensland Civil and Administrative Tribunal

QCATA – *Queensland Civil and Administrative Tribunal Act 2009* (Qld)

QCS – Queensland Corrective Services

QES – Queensland Employment Standards

QMHC – Queensland Mental Health Commission

QMHCA – *Queensland Mental Health Commission Act 2013* (Qld)

QMHDAC – Queensland Mental Health and Drug Advisory Council

QPILCH – Queensland Public Interest Law Clearing House Incorporated

QPS – Queensland Police Service

QSA – Queensland State Archives

The Regulation - *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld)

RTIA – *Right to Information Act 2009* (Qld)

RTRAA – *Residential Tenancies and Rooming Accommodation Act 2008* (Qld)

SOA – *Summary Offences Act 2005* (Qld)

SPEA – *State Penalties Enforcement Act 1999* (Qld)

SPER – State Penalties Enforcement Registry

Standard Guidelines – *Standard Guidelines for Corrections in Australia*

TAA – *Transplantation and Anatomy Act 1979* (Qld)

TASC – The Advocacy and Support Centre

TMR – Queensland Department of Transport and Main Roads

TORUM - *Transport Operations (Road Use Management) Act 1995* (Qld)

TORUM Regulation – *Transport Operations (Road Use Management – Driver Licensing) Regulation 2010* (Qld)

TOSPA - *Tobacco and Other Smoking Products Act 1998* (Qld)

UN – United Nations

VCAA – *Victims of Crime Assistance Act 2009* (Qld)

WCRA - *Workers' Compensation and Rehabilitation Act 2003* (Qld)

WHSA – *Work Health and Safety Act 2011* (Qld)

WHSQ – Workplace Health and Safety Queensland

YGA – *Youth Justice Act 1992* (Qld)