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Dear Mr Harmer

Thank you for providing AMA Queensland with the opportunity to provide feedback on the *Health and Other Legislation Amendment Bill 2021* ("the Bill"). AMA Queensland is the state's peak medical advocacy group, representing over 9,600 doctors across Queensland and throughout all levels of the health system.

AMA Queensland notes that this Bill proposes changes to eight separate pieces of legislation, but will only provide comment on four (*Hospital and Health Boards Act 2011*, *Mental Health Act 2016*, *Termination of Pregnancy Act 2018* and *Criminal Code and Transplantation and Anatomy Act 1979*). Having consulted with relevant members about the proposed amendments, please find the recommended changes to the proposed amendments:

1. Proposed changes to the *Hospital and Health Boards Act 2011*

AMA Queensland agrees with these proposed amendments on the proviso that if the Bill is passed, the *Hospital and Health Boards Regulation 2012* will be amended to prescribe the qualifications for each type of allied health professional permitted to access the Viewer and the penalties for any unauthorised access by a health professional will be enforced.

2. Proposed changes to the *Mental Health Act 2016*

Criteria for approving the performance of ECT

This proposed amendment states, "The MHRT must be satisfied that:

- The person lacks capacity to consent to the therapy
- The therapy has clinical merit and that evidence supports the effectiveness of the therapy for the person's particular mental illness
- The procedure is appropriate for the person in the circumstances
- The views, wishes and preferences of the person has been considered."

This proposal gives the MHRT the task of being satisfied that the person lacks capacity to consent to the therapy. This implies that authorised psychiatrists/doctors cannot obtain informed consent even though they have the best interest of the patient and the background of the therapeutic engagement that has occurred previously.

Of concern, even if there are two first/second opinions by Authorised Psychiatrists, MHRT will have their say as third opinion for commenting on capacity assessment. We disagree with this proposal.

Mental Health Review Tribunal (MHRT) approval for the performance of ECT on persons subject to involuntary treatment orders

AMA Queensland does not support the proposed amendments because while the uptake of having ECT voluntarily may be uncommon, we do not agree with legislating all patients under the one legislative bracket. There are several reasons why we oppose the amendments:

Firstly, AMA Queensland understands the intent of these proposed changes is to protect the rights of patients; however, the intent of protecting their rights may actually harm and delay accessing the correct treatment, as the person is required to go through a series of assessments and cross assessments.

Under these proposed amendments, it appears that the therapeutic relationship with the treating team is not valued, as the independent statutory body will decide and cross-check the capacity.

Secondly, we need to enhance the ability to encourage patients under the *Mental Health Act 2016* (MHA) to make decisions regarding their own illness and treatment, which may include voluntarily seeking regulated treatment if it is in their best interest. These proposed amendments could unnecessarily delay the right treatment whilst capacity is being determined.

AMA Queensland is recommending Queensland Health establish a separate pathway which respects people having capacity in providing informed consent which can be established under Office of the Chief Psychiatrist (OCP) policies and procedures rather than in the legislation

Right to representation of the patient at the MHRT

AMA Queensland recommends that the person who is subject of a proceeding, may be represented by a nominated support person in addition to the MHRT representative.

3. Proposed changes to the *Termination of Pregnancy Act 2018 and Criminal Code*

The proposed amendment will provide approval for students registered in a health profession under the Health Practitioner Regulation National Law to assist in terminations.

AMA Queensland recommends that only medical and nursing students be provided with the authority to assist in the performance of a termination of pregnancy.

AMA Queensland supports the proposed changes to the *Termination of Pregnancy Act 2018 and Criminal Code* to allow students registered under the National Law to assist in the performance of a termination on the understanding that:

- i. the student retains their right to conscientiously object to participate
- ii. the involvement of the student to assist in the termination should not be required to fulfil the requirements of the student's clinical placement
- iii. the student clearly understands the clinical process and volunteers to assist in the termination without coercion, and

- iv. the woman who is undergoing the termination of pregnancy provides consent for the student to participate.

4. Proposed changes to the *Transplantation and Anatomy Act 1979*

AMA Queensland agrees with the proposed amendment, which excludes human milk from the definition of tissue under the *Transplantation and Anatomy Act 1979*.

Thank you again for providing AMA Queensland with the opportunity to provide feedback on the *Health and Other Legislation Amendment Bill 2021* ("the Bill").

Yours sincerely



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President
AMA Queensland



Dr Brett Dale
Chief Executive Officer
AMA Queensland