

CLAUSE NOTES

Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Bill 2018

Clause 1	<p>Short Title</p> <p>Provides for the Act to be cited as the <i>Community, Health, Human Services and Related Legislation (Miscellaneous Amendments) Act 2018</i>.</p>
Clause 2	<p>Commencement</p> <p>Provides for the Act to commence on Royal Assent.</p>
Clause 3	<p>Consequential Amendments</p> <p>Provides for miscellaneous amendments to legislation as specified in Schedule 1.</p>
Clause 4	<p>Repeal of Act</p> <p>Provides for automatic repeal of the Amendment Act one year after commencement, as the amendments are incorporated into the relevant amended legislation.</p>
Schedule 1	<p>Consequential amendments</p> <p><i>Ambulance Service Act 1982</i></p> <ol style="list-style-type: none">1. Substitutes “Commissioner for Ambulance Services” for “Director of Ambulance Services in the Long Title of the Act. This corrects terminology that should have been updated when the Ambulance Service Act was previously amended to change the title from Director to Commissioner.2. Amends section 19 to permit the Secretary as well as the Commissioner to authorise officers. This is so the Secretary can appoint authorised officers in relation to non-emergency patient transport service provisions in the Act, as these services are licensed by the Secretary rather than the Commissioner.3. Consistent with the second amendment, makes a change to section 41B(1) to remove the requirement that authorised officers are officers of the Ambulance Service. This is so that officers, such as Departmental officers, authorised by the Secretary may issue infringements when enforcing the non-emergency patient transport provisions.

Disability Services Act 2011

1. Amends definitions in the Disability Services Act. The current definition of 'funded provider' is effectively limited to providers receiving funding under the Tasmanian Act. This means that the powers in the Act (such as inspection of premises for quality reasons) do not currently apply to providers not in receipt of state funding, such as National Disability Insurance Scheme funded services. The amendment gives capacity for the Secretary to determine such services are also 'funded providers.'

The amendment also inserts a definition of 'therapeutic services' to clarify the scope of that term. This term is currently undefined in the Act, and used in respect of restrictive interventions approved under the Act by the Guardianship and Administration Board or Secretary. A restrictive intervention is any action that restricts the rights or freedom of movement of a person with disability for the primary purpose of behaviour control of the person. It does not include certain actions, including those taken for therapeutic purposes.

'Therapeutic purposes' are intended to relate to the treatment of health conditions. For example, a person with disability with a broken leg may have a leg cast fitted which restricts their movement, which would not require an approval as it serves a treatment purpose.

The operation of these provisions has identified that the definition of 'therapeutic purposes' could be interpreted as having a broader scope than intended. For example, it could in fact be taken to include things done for preventing an injury to the disability client in the future. That is a necessary restriction in some cases, but it is also the kind of restriction that is intended to be approved by the Secretary or Board.

The new definition therefore clarifies the intended scope, based on national best practice, of when an action can be considered taken for therapeutic purposes.

2. Amends the provision for the period for which a restrictive intervention may be approved by the Guardianship and Administration Board after a hearing. Currently, the period is for 6 months or a shorter period. The amendment retains the default period as 6 months, but allows for a shorter or longer period (up to 2 years), where agreed to by the Senior Practitioner. The Senior Practitioner is a statutory officer with specific statutory functions relating to best

practice in restrictive interventions. Some disability clients will require restrictive interventions for significant periods of time. The amendment allows for shorter period of approval to continue to be granted, as well as longer periods to reduce the frequency of review where appropriate to do so.

Health Act 1997

1. Amends definitions in the Health Act to remove outdated references to the Commonwealth Act and to remove references to the Hospitals and Ambulance Service Advisory Board which has not operated since 2002. Currently, the *Tasmanian Health Service Act 2018* now provides for advisory functions to the Secretary, and the *Ambulance Services Act 1982* provides for the Tasmanian Ambulance Clinical Council.
2. Section 5 is amended to update a reference to the 'Commonwealth Act'. The Tasmanian Act refers to this Act in several places, and defines it in section 3 as the *Health Insurance Act 1973* of the Commonwealth. While that Act remains relevant in other provisions of the Tasmanian Act, the requirements on States in relation to the Medicare Principles and Commitments are now given effect under the *Federal Financial Relations Act 2009* of the Commonwealth.
3. As noted above, the Hospitals and Ambulance Service Advisory Board no longer exists operationally, so the section relating to its establishment is repealed.
4. As noted above, the Hospitals and Ambulance Service Advisory Board no longer exists operationally, so the Schedule relating to its functions is repealed.

Mental Health Act 2013

1. Amends terminology in section 200 to use the correct titles of orders under the Act. These changes replace the incorrect term of "continuing care order" with the correct term of "treatment order".
2. Amends terminology in section 204 to use the correct titles of orders under the Act. This replaces the incorrect term of "continuing care order" with the correct term of "treatment order".

Pharmacy Control Act 2001

1. Amends section 61C(1) to ensure that both the legal interest and the beneficial interest in each share in an applicant company is held by a pharmacist or a close

relative of a pharmacist. Recent changes to the Act did not address the situation where a (pharmacist) shareholder of a company is holding those shares as a trustee of a family trust, unit trust or other body corporate. Such a person is then exempt from needing to hold an 'eligibility certificate', as the certificate is held by the body corporate and the requirement for a trust to comply with the limitations relating to beneficiaries does not apply. The amendment addresses this situation so that in all cases both the legal interest and the beneficial interest in each share in an applicant company is held by a pharmacist or a close relative of a pharmacist.

2. Inserts a new power to make regulations in relation to Pharmacy Depots. Pharmacy depots are places, such as a general retail shop in geographic areas without a pharmacy, where prescriptions (other than for narcotic substances) can be deposited and sent to a pharmacist who dispenses and return the medications to be collected. Pharmacy depots were previously regulated in Tasmania's legislation through the Pharmacy Code made under the Act. Amendments were made to the *Pharmacy Control Act 2001* in 2010 in the context of national pharmacist registration at a time when the requirement for a Pharmacy Code was considered unnecessary and the provision was repealed. The Tasmanian Pharmacy Authority recommended that the power to regulate pharmacy depots be reintroduced, so that any growth in pharmacy depots can be regulated in future if necessary. Any regulations made under this power will be subject to the usual regulatory impact assessment process. This would be to ensure that any future growth in pharmacy depot arrangements is done in an appropriately safe manner for consumers. For example, there may be powers prescribed to inspect depots to ensure the storage and supply of dispensed medicines is done properly, securely and safely.

Poisons Act 1971

1. Amends section 47(10)(a) of the Act to include references to new provisions 25C, 25D, and 25E. This cross-referencing was unintentionally not included when these subsections were introduced into the Act in previous amendments. This means it will be lawful for a person to possess a raw narcotic, narcotic substance, prohibited plant or prohibited substance where the person is authorised under sections 25A, 25B, 25C, 25D or 25E of the Act.

2. Amends section 54E to require a poppy grower to have a notice from the Board specifying the location and area that can be planted for the relevant growing period so that adequate annual compliance activity can be undertaken under new 5-year licensing regime. This reflects and reinforces the current administrative requirements on poppy growers.

Right to Information Act 2009

1. Amends section 6(1) of the Act to include the Commissioner for Children and Young People in the list of persons or bodies excluded from the *Right to Information Act 2009*. This amendment was requested by the Commissioner for Children and Young People. The amendment brings the Commissioner for Children and Young People in line with other offices in the same section, including the Anti-Discrimination Commissioner, Custodial Inspector and the Health Complaints Commissioner. These offices all hold confidential and sensitive information, much of which is sourced from other public authorities which are subject to right to information. It is appropriate that the source public authority respond to any right to information request given their operational responsibility for it. Like all such offices, this amendment does not prevent a person seek information relating to the administration of the office under right to information.

Youth Justice Act 1997

1. Amends the definition of detention centre manager to refer to the new provision 124A. The Youth Justice Act defines “detention centre manager” to mean the person in charge of a detention centre. It does not however contain any specific appointment provisions. The person in practice is a senior State Service officer. The detention centre manager’s powers and functions are significant. The inclusion of standalone appointment provisions for the State Service officer to be formally appointed under the Act as detention centre manager reinforces the statutory powers and responsibilities of the role.
2. For the reasons noted above, inserts a new section 124A to provide for the appointment of a detention centre manager. No additional remuneration for the manager arises from this change.
3. Amends section 146B to remove unnecessary

administrative restrictions on who the detention centre manager may delegate powers and functions to. These restrictions originally envisaged powers would only be delegated to officers in the adult prison. However, it is equally necessary to delegate appropriate powers to youth justice officers, such as when the manager is unavailable to exercise them.