



Health Legislation Amendment Bill 2019



Queensland

Health Legislation Amendment Bill 2019

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2019

A Bill

for

An Act to amend the *Ambulance Service Act 1991*, the *Hospital and Health Boards Act 2011*, the *Private Health Facilities Act 1999*, the *Public Health Act 2005*, the *Queensland Mental Health Commission Act 2013* and the legislation mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Health Legislation Amendment Act 2019*. 4
5

Clause 2 Commencement 6

Sections 11(3) and (4), 12 to 14, 18 and 19 (to the extent it 7
inserts definition *health equity strategy*) commence on a day 8
to be fixed by proclamation. 9

Part 2 Amendment of Ambulance Service Act 1991 10
11

Clause 3 Act amended 12

This part amends the *Ambulance Service Act 1991*. 13

Clause 4 Amendment of s 3D (Service's functions) 14

(1) Section 3D— 15

insert— 16

(ja) to collaborate with Hospital and Health 17
Services to manage the interaction between 18
the services provided by the Queensland 19
Ambulance Service and health services 20
provided by Hospital and Health Services; 21
and 22

(2) Section 3D(ja) to (1)— 23

renumber as section 3D(k) to (m). 1

(3) Section 3D— 2

insert— 3

(2) In this section— 4

Hospital and Health Service see the *Hospital and* 5

Health Boards Act 2011. 6

Part 3 **Amendment of Hospital and** 7 **Health Boards Act 2011** 8

Clause 5 **Act amended** 9

This part amends the *Hospital and Health Boards Act 2011.* 10

Clause 6 **Amendment of s 4 (Principles and objectives of national** 11
health system) 12

(1) Section 4(c)(vi), ‘Indigenous health’— 13

omit, insert— 14

Aboriginal and Torres Strait Islander health 15

(2) Section 4(c)(vi), ‘Indigenous Australians’— 16

omit, insert— 17

Aboriginal people and Torres Strait Islander 18

people 19

Clause 7 **Amendment of s 7 (Establishment of Hospital and Health** 20
Services) 21

(1) Section 7, heading, ‘Establishment’— 22

omit, insert— 23

Role 24

(2) Section 7— 25

[s 8]

insert—

- (5) This Act requires each Hospital and Health Service to have regard to the need to ensure the effective and efficient use of public sector health system resources and the best interests of patients and other users of public sector health services throughout the State.

Clause 8 Amendment of s 13 (Guiding principles)

- (1) Section 13(1), ‘should be a commitment’—

omit, insert—

is a commitment

- (2) Section 13(1)—

insert—

(ba) there is a commitment to achieving health equity for Aboriginal people and Torres Strait Islander people;

(bb) there is a commitment to the delivery of responsive, capable and culturally competent health care to Aboriginal people and Torres Strait Islander people;

- (3) Section 13(1)(ba) to (j)—

renumber as section 13(1)(c) to (l).

Clause 9 Amendment of s 19 (Functions of Services)

- (1) Section 19(2)—

insert—

(hb) to collaborate with the Queensland Ambulance Service to manage the interaction between the services provided by the Queensland Ambulance Service and

	health services provided by the Hospital and Health Service;	1 2
(2)	Section 19(2)(ha) to (p)— <i>renumber</i> as section 19(2)(i) to (r).	3 4
(3)	Section 19— <i>insert</i> —	5 6
	(3) In performing its functions, a Service must have regard to—	7 8
	(a) the need to ensure resources of the public sector health system are used effectively and efficiently; and	9 10 11
	(b) the best interests of patients and other users of public sector health services throughout the State.	12 13 14
Clause 10	Amendment of s 22 (Role of exercising control over Service)	15 16
	Section 22— <i>insert</i> —	17 18
	(2) In controlling the Service for which it is established, a board must have regard to—	19 20
	(a) the need to ensure resources of the public sector health system are used effectively and efficiently; and	21 22 23
	(b) the best interests of patients and other users of public sector health services throughout the State.	24 25 26
Clause 11	Amendment of s 23 (Membership of boards)	27
(1)	Section 23(2)— <i>insert</i> —	28 29

[s 12]

	(ea) persons with skills, knowledge and experience in Aboriginal and Torres Strait Islander health and community issues relevant to the operation of the Service; and	1 2 3 4
(2)	Section 23(2)(ea) to (g)— <i>renumber</i> as section 23(2)(f) to (h).	5 6
(3)	Section 23— <i>insert</i> —	7 8
	(3A) One or more of the members of a board must be Aboriginal persons or Torres Strait Islander persons.	9 10 11
(4)	Section 23(3A) and (4)— <i>renumber</i> as section 23(4) and (5).	12 13
Clause 12	Amendment of s 24A (Temporary members of board)	14
(1)	Section 24A(1)— <i>insert</i> —	15 16
	(d) none of the members of the board are Aboriginal persons or Torres Strait Islander persons.	17 18 19
(2)	Section 24A(6), definition <i>clinician</i> , ‘section 23(4)’— <i>omit, insert</i> — section 23(5)	20 21 22
Clause 13	Amendment of s 40 (Engagement strategies)	23
(1)	Section 40(1)— <i>insert</i> —	24 25
	(c) a strategy (a <i>health equity strategy</i>) to achieve, and to specify the Service’s activities to achieve, health equity for Aboriginal people and Torres Strait Islander	26 27 28 29

	people in the provision of health services by the Service.	1 2
(2)	Section 40(2)— <i>insert—</i>	3 4
	(c) for the health equity strategy—the persons prescribed by regulation.	5 6
(3)	Section 40— <i>insert—</i>	7 8
	(5) In giving effect to the health equity strategy, the Service must consult with the persons prescribed, and in the way prescribed, by regulation.	9 10 11
Clause 14	Amendment of s 41 (Review of strategies)	12
	Section 41(2)— <i>insert—</i>	13 14
	(c) for the health equity strategy—the persons prescribed under section 40(2)(c).	15 16
Clause 15	Amendment of s 51AA (Consultation on health employment directives)	17 18
	Section 51AA(2), ‘health service directive’— <i>omit, insert—</i>	19 20
	health employment directive	21
Clause 16	Amendment of s 112 (Giving of copy of RCA report— patient safety entity)	22 23
(1)	Section 112— <i>insert—</i>	24 25
	(4A) However, if the entity is the administrative unit of the department responsible for coordinating improvements in the safety and quality of health	26 27 28

[s 17]

	services, a person who performs functions for the	1
	entity may give a copy of the report, or	2
	information contained in the copy of the report, to	3
	another prescribed patient safety entity that is a	4
	quality assurance committee for an authorised	5
	purpose of the other entity.	6
(2)	Section 112(4A) to (6)—	7
	<i>renumber</i> as section 112(5) to (7).	8
Clause 17	Amendment of s 139A (Meaning of <i>designated person</i>)	9
	Section 139A(1)(d)—	10
	<i>omit, insert</i> —	11
	(d) the chief psychiatrist; or	12
Clause 18	Insertion of new pt 13, div 7	13
	Part 13—	14
	<i>insert</i> —	15
	Division 7	Transitional provision for
		Health Legislation
		Amendment Act 2019
		18
	329 Aboriginal and Torres Strait Islander board	19
	membership	20
	Section 23(4) does not apply to the membership	21
	of a board until the first time after the	22
	commencement at which both—	23
	(a) a vacancy in the membership exists; and	24
	(b) 1 or more of the members of the board are	25
	clinicians within the meaning of section	26
	23(5).	27

Clause 19	Amendment of sch 2 (Dictionary)	1
	Schedule 2—	2
	<i>insert</i> —	3
	<i>health equity strategy</i> see section 40(1)(c).	4
	<i>Queensland Ambulance Service</i> means the	5
	Queensland Ambulance Service established	6
	under the <i>Ambulance Service Act 1991</i> .	7
Part 4	Amendment of Private Health	8
	Facilities Act 1999	9
Clause 20	Act amended	10
	This part amends the <i>Private Health Facilities Act 1999</i> .	11
Clause 21	Amendment of s 48 (Conditions of licence)	12
	(1) Section 48(1)(b) to (d)—	13
	<i>omit, insert</i> —	14
	(b) the licensee must comply with an	15
	accreditation scheme that relates to safety	16
	and quality matters and is prescribed by	17
	regulation;	18
	(2) Section 48(1)(e) to (h)—	19
	<i>renumber</i> as section 48(1)(c) to (f).	20
	(3) Section 48(2) and (3)—	21
	<i>omit</i> .	22
Clause 22	Amendment of s 50 (Term of licences)	23
	Section 50(2)(a), ‘a quality assurance system’—	24
	<i>omit, insert</i> —	25

[s 23]

	an accreditation scheme prescribed under section 48(1)(b)	1 2	
Clause 23	Amendment of pt 12 hdg (Saving and transitional provisions)	3 4	
	Part 12, heading, after ‘provisions’—	5	
	<i>insert—</i>	6	
	for Act No. 60 of 1999	7	
Clause 24	Insertion of new pt 15	8	
	After part 14—	9	
	<i>insert—</i>	10	
	Part 15	Transitional provision for Health Legislation Amendment Act 2019	11 12 13
	169 Conditions of existing licences	14	
	(1) A licence that was in force immediately before the commencement is taken, from the commencement, to be subject to the condition stated in new section 48(1)(b) and not to be subject to the conditions stated in previous section 48(1)(b) to (d).	15 16 17 18 19 20	
	(2) In this section—	21	
	<i>new</i> , in relation to a provision, means the provision as amended by the <i>Health Legislation Amendment Act 2019</i> .	22 23 24	
	<i>previous</i> , in relation to a provision, means the provision as in force immediately before the commencement.	25 26 27	

Clause 25	Amendment of sch 3 (Dictionary)	1
	Schedule 3, definitions <i>quality assurance entity</i> and <i>quality assurance program</i> —	2
	<i>omit.</i>	3
		4
	Part 5	
	Amendment of Public Health Act 2005	5
		6
Clause 26	Act amended	7
	This part amends the <i>Public Health Act 2005</i> .	8
Clause 27	Amendment of s 61D (Content of water risk management plans)	9
	Section 61D(e)(i), ‘or’—	10
	<i>omit, insert</i> —	11
	and	12
		13
Clause 28	Insertion of new ch 5B	14
	After chapter 5A—	15
	<i>insert</i> —	16
	Chapter 5B Conversion therapies	17
		18
	213E Definitions for chapter	19
	In this chapter—	20
	<i>conversion therapy</i> see section 213F.	21
	<i>gender identity</i> , of a person, see section 213G.	22
	<i>health service provider</i> see the <i>Health Ombudsman Act 2013</i> , section 8.	23
		24

[s 28]

sexual orientation, of a person, means the
person's capacity for emotional, affectional and
sexual attraction to, and intimate and sexual
relations with, persons of a different gender, the
same gender or more than 1 gender.

213F Meaning of *conversion therapy*

- (1) *Conversion therapy* is a treatment or other
practice that attempts to change or suppress a
person's sexual orientation or gender identity.
- Examples—*
- conditioning techniques such as aversion therapy,
psychoanalysis and hypnotherapy that aim to
change or suppress a person's sexual orientation or
gender identity
 - other clinical interventions, including counselling,
that encourage a person to change or suppress the
person's sexual orientation or gender identity
 - group activities that aim to change or suppress a
person's sexual orientation or gender identity
- (2) *Conversion therapy* does not include a practice
that—
- (a) assists a person who is undergoing a gender
transition; or
 - (b) assists a person who is considering
undergoing a gender transition; or
 - (c) assists a person to express their gender
identity; or
 - (d) provides acceptance, support and
understanding of a person; or
 - (e) facilitates a person's coping skills, social
support and identity exploration and
development.

Examples—

- | | |
|--|--------------------------|
| | 1 |
| • diagnosis and assessment of persons with gender dysphoria or gender non-conforming behaviour or identity | 2
3
4 |
| • support for persons with social adjustments related to gender dysphoria | 5
6 |
| • gender-affirming hormone treatment | 7 |
| • other gender transition services, such as speech pathology services for trans-gender and gender-diverse persons who wish to alter their voice and communication to better align with their gender identity | 8
9
10
11
12 |
| (3) Also, <i>conversion therapy</i> does not include a practice by a health service provider that, in the provider's reasonable professional judgment, is necessary to— | 13
14
15
16 |
| (a) provide a health service in a manner that is safe and appropriate; or | 17
18 |
| (b) comply with the provider's legal or professional obligations. | 19
20 |

213G Meaning of *gender identity*

- | | |
|---|----------------------|
| | 21 |
| (1) <i>Gender identity</i> , of a person, is the person's internal and individual experience of gender, whether or not it corresponds with the sex assigned to the person at birth. | 22
23
24
25 |
| (2) Without limiting subsection (1), the <i>gender identity</i> , of a person, includes— | 26
27 |
| (a) the person's personal sense of the body; and | 28 |
| (b) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and | 29
30
31 |
| (c) other expressions of the person's gender, including name, dress, speech and behaviour. | 32
33
34 |

[s 28]

213H Prohibition of conversion therapy	1
(1) A person who is a health service provider must not perform conversion therapy on another person.	2 3 4
Maximum penalty—	5
(a) if the other person is a vulnerable person— 150 penalty units or 18 months imprisonment; or	6 7 8
(b) otherwise—100 penalty units or 12 months imprisonment.	9 10
(2) An offence against subsection (1) is a misdemeanour.	11 12
(3) In this section—	13
<i>vulnerable person</i> means—	14
(a) a child; or	15
(b) a person who has impaired capacity within the meaning of the <i>Guardianship and Administration Act 2000</i> for making decisions about a particular treatment offered by a health service provider; or	16 17 18 19 20
(c) a person with an impairment that is likely to significantly limit the person's ability to understand a particular treatment offered by a health service provider.	21 22 23 24
213I Proceedings for indictable offence	25
(1) A proceeding for an offence against section 213H(1) may, at the prosecution's election, be taken summarily or on indictment.	26 27 28
(2) A magistrate must not hear a proceeding for an offence against section 213H(1) summarily if, at any stage of the hearing, the magistrate is satisfied on the application of the defendant, the offence should not be heard summarily because of	29 30 31 32 33

	exceptional circumstances.	1
	<i>Examples of exceptional circumstances—</i>	2
	1 There is sufficient connection between the offence the subject of the charge, and other offences allegedly committed by the defendant and to be tried on indictment, to allow all the offences to be tried together.	3 4 5 6 7
	2 There is an important issue of law involved.	8
	3 An issue of general community importance or public interest is involved, or the holding of a trial by jury is justified in order to establish contemporary community standards.	9 10 11 12
	(3) If subsection (2) applies—	13
	(a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and	14 15 16
	(b) a plea of the person charged at the start of the proceeding must be disregarded; and	17 18
	(c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and	19 20 21 22 23
	(d) before committing the person for trial or sentence, the magistrate must make a statement to the person under the <i>Justices Act 1886</i> , section 104(2)(b).	24 25 26 27
Clause 29	Omission of s 250 (Arrangements about transfer of information)	28 29
	Section 250—	30
	<i>omit.</i>	31
Clause 30	Omission of ch 6, pt 3 (Pap Smear Register)	32
	Chapter 6, part 3—	33

[s 31]

omit.

1

Clause 31 Amendment of s 441 (Summary offences)

2

Section 441(1), ‘A proceeding’—

3

omit, insert—

4

Subject to section 213I, a proceeding

5

Clause 32 Insertion of new ch 12, pt 5

6

Chapter 12—

7

insert—

8

Part 5

**Saving provision for
Health Legislation**

9

Amendment Act 2019

10

11

496 Proceeding for particular offence

12

(1) This section applies in relation to an offence
against former section 266 committed by a person
before the commencement.

13

14

15

(2) Without limiting the *Acts Interpretation Act 1954*,
section 20, a proceeding for the offence may be
continued or started, and the person may be
convicted of and punished for the offence, as if
the *Health Legislation Amendment Act 2019*,
section 30 had not commenced.

16

17

18

19

20

21

(3) Subsection (2) applies despite the Criminal Code,
section 11.

22

23

(4) In this section—

24

former section 266 means section 266 as in force
from time to time before the commencement.

25

26

Clause 33	Amendment of sch 2 (Dictionary)	1
(1)	Schedule 2, definitions <i>abnormal Pap smear, clinical information, clinical management, disclosure section, histological sample, histology test, HPV, HPV sample, HPV test, identifying information, nominated person, Pap smear, Pap Smear Register, Pap smear test, provider, registered screening history, woman</i> and <i>written or in writing</i> —	2 3 4 5 6 7
	<i>omit.</i>	8
(2)	Schedule 2—	9
	<i>insert</i> —	10
	<i>conversion therapy</i> , for chapter 5B, see section 213F.	11 12
	<i>gender identity</i> , of a person, for chapter 5B, see section 213G.	13 14
	<i>health service provider</i> , for chapter 5B, see section 213E.	15 16
	<i>sexual orientation</i> , of a person, for chapter 5B, see section 213E.	17 18
(3)	Schedule 2, definition <i>confidential information</i> , paragraphs (h) and (i)—	19 20
	<i>omit, insert</i> —	21
	(h) for chapter 6, part 3A, division 5, see section 279AK.	22 23
(4)	Schedule 2, definition <i>health practitioner</i> , paragraphs (b) and (c)—	24 25
	<i>omit, insert</i> —	26
	(b) for chapter 6, part 3A, see section 279AA.	27
(5)	Schedule 2, definition <i>information</i> , paragraphs (h) and (i)—	28
	<i>omit, insert</i> —	29
	(h) for chapter 6, part 3A, division 5, see section 279AK.	30 31
(6)	Schedule 2, definition <i>register</i> , paragraphs (c) to (e)—	32

[s 34]

<i>omit, insert—</i>	1
(c) for chapter 6, part 3A, see section 279AA; or	2 3
(d) for chapter 6, part 4, see section 280.	4
(7) Schedule 2, definition <i>relevant person</i> , paragraphs (h) and (i)—	5 6
<i>omit, insert—</i>	7
(h) for chapter 6, part 3A, division 5, see section 279AK.	8 9
(8) Schedule 2, definition <i>repealed provision</i> , paragraph (e)— <i>omit.</i>	10 11

Part 6	Amendment of Queensland Mental Health Commission Act 2013	12 13 14
---------------	--	----------------

Clause 34	Act amended	15
	This part amends the <i>Queensland Mental Health Commission Act 2013</i> .	16 17
Clause 35	Amendment of s 14 (Membership of commission)	18
(1)	Section 14(b), ‘other’— <i>omit.</i>	19 20
(2)	Section 14— <i>insert—</i>	21 22
	(2) The staff are employed under the <i>Public Service Act 2008</i> .	23 24
	<i>Note—</i>	25
	For the employment of the commissioner, see section 17.	26 27

Clause 36	Replacement of pt 2, div 4 hdg (Staff of the commission)	1
	Part 2, division 4, heading—	2
	<i>omit, insert—</i>	3
	Division 4 Commissioner	4
Clause 37	Omission of pt 2, div 4, sdiv 1 hdg (Commissioner)	5
	Part 2, division 4, subdivision 1, heading—	6
	<i>omit.</i>	7
Clause 38	Replacement of s 18 (Term of office)	8
	Section 18—	9
	<i>omit, insert—</i>	10
	18 Term of office	11
	Subject to this division, the commissioner holds	12
	office for a term of not more than 5 years decided	13
	by the Governor in Council.	14
Clause 39	Amendment of s 19 (Functions and powers of commissioner)	15
	Section 19(1)—	16
	<i>insert—</i>	17
	(c) to manage the staff of the commission in	19
	accordance with the requirements of this	20
	Act and the <i>Public Service Act 2008</i> .	21
Clause 40	Omission of pt 2, div 4, sdiv 2 (Staff)	22
	Part 2, division 4, subdivision 2—	23
	<i>omit.</i>	24

[s 41]

Part 7	Minor and consequential amendments	1 2
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Clause 41	Legislation amended	3
	Schedule 1 amends the regulations it mentions.	4

Schedule 1	Minor and consequential amendments of regulations	1 2
	section 41	3
	Private Health Facilities Regulation 2016	4
1	Sections 8 and 9—	5
	<i>omit, insert—</i>	6
	8 Safety and quality accreditation scheme—Act, s 48	7 8
	(1) For section 48(1)(b) of the Act, the AHSSQAS is prescribed.	9 10
	(2) In this section—	11
	<i>AHSSQAS</i> means the Australian Health Service Safety and Quality Accreditation Scheme formulated by the Commission under the <i>National Health Reform Act 2011</i> (Cwlth), section 9(1)(l) and incorporating the NSQHS Standards.	12 13 14 15 16 17
	<i>Commission</i> means the Australian Commission on Safety and Quality in Health Care established under the <i>National Health Reform Act 2011</i> (Cwlth), section 8.	18 19 20 21
	<i>NSQHS Standards</i> means the National Safety and Quality Health Service Standards, 2nd edition, formulated by the Commission under the <i>National Health Reform Act 2011</i> (Cwlth), section 9(1)(e).	22 23 24 25 26

Public Health Regulation 2018

1

1 Part 8, division 4—

2

omit.

3

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