



Queensland

Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019

Act No. 3 of 2019

An Act to amend the Ambulance Service Act 1991, the Health Practitioner Regulation National Law Act 2009 and the Hospital and Health Boards Act 2011 for particular purposes

[Assented to 7 March 2019]



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Contents

		Page
Part 1	Preliminary	
1	Short title	3
2	Commencement	3
Part 2	Amendment of Health Practitioner Regulation National Law Act 2009	
3	Act amended	3
4	Amendment of s 25 (Amendment of s 141 (Mandatory notifications by health practitioners))	3
5	Insertion of new ss 25A–25C	4
	25A Amendment of s 141A (Mandatory notifications by treating practitioners of sexual misconduct)	4
	25B Amendment of s 141B (Mandatory notifications by treating practitioners of substantial risk of harm to public)	4
	25C Amendment of s 141C (When practitioner does not form reasonable belief in course of providing health service)	4
6	Insertion of new s 56A	5
	56A Replacement of s 241A	5
	241A Proceedings for indictable offences	5
Part 3	Amendment of Health Practitioner Regulation National Law	
7	Law amended	7
8	Amendment of s 113 (Restriction on use of protected titles)	7
9	Amendment of s 115 (Restriction on use of specialist titles)	7
10	Amendment of s 116 (Claims by persons as to registration as health practitioner)	7
11	Amendment of s 117 (Claims by persons as to registration in particular profession or division)	8
12	Amendment of s 118 (Claims by persons as to specialist registration)	8

Contents

13	Amendment of s 119 (Claims about type of registration or registration in recognised specialty)	8
14	Amendment of s 121 (Restricted dental acts)	9
15	Amendment of s 122 (Restriction on prescription of optical appliances)	9
16	Amendment of s 123 (Restriction on spinal manipulation)	9
17	Amendment of s 140 (Definition of notifiable conduct)	9
18	Amendment of s 141 (Mandatory notifications by health practitioners)	10
19	Insertion of new ss 141A–141C	10
	141A Mandatory notifications by treating practitioners of sexual misconduct	11
	141B Mandatory notifications by treating practitioners of substantial risk of harm to public	11
	141C When practitioner does not form reasonable belief in course of providing health service	13
20	Amendment of s 196A (Offences relating to prohibition orders)	15
21	Insertion of new s 241A	15
	241A Proceedings for indictable offences	15
22	Amendment of s 242 (Proceedings for offences)	15
23	Amendment of sch 6, s 16 (Return of seized things)	16
24	Amendment of sch 6, s 17 (Access to seized things)	16
Part 4 Amendment of other legislation		
Division 1 Amendment of Ambulance Service Act 1991		
25	Act amended	17
26	Amendment of s 36A (Definitions for pt 4A)	17
27	Amendment of s 36L (Definitions for div 5)	17
28	Amendment of s 36NA (Information about excluded notifiable conduct)	18
Division 2 Amendment of Hospital and Health Boards Act 2011		
29	Act amended	18
30	Amendment of s 86 (Information about excluded notifiable conduct)	18
31	Amendment of s 107 (Information about excluded notifiable conduct)	18
32	Amendment of sch 2 (Dictionary)	19

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

Part 2 Amendment of Health Practitioner Regulation National Law Act 2009

3 Act amended

This part amends the *Health Practitioner Regulation National Law Act 2009*.

4 Amendment of s 25 (Amendment of s 141 (Mandatory notifications by health practitioners))

(1) Section 25, heading, after ‘practitioners’—
insert—

other than treating practitioners

(2) Section 25(3)—
omit.

[s 5]

5 Insertion of new ss 25A–25C

After section 25—

insert—

25A Amendment of s 141A (Mandatory notifications by treating practitioners of sexual misconduct)

(1) Section 141A(2), ‘National Agency’—

omit, insert—

health ombudsman

(2) Section 141A(3), after ‘this Part’—

insert—

or the *Health Ombudsman Act 2013*

25B Amendment of s 141B (Mandatory notifications by treating practitioners of substantial risk of harm to public)

(1) Section 141B(2) and (4), ‘National Agency’—

omit, insert—

health ombudsman

(2) Section 141B(6), after ‘this Part’—

insert—

or the *Health Ombudsman Act 2013*

25C Amendment of s 141C (When practitioner does not form reasonable belief in course of providing health service)

Section 141C(2)(e), ‘National Agency’—

omit, insert—

health ombudsman

6 Insertion of new s 56A

After section 56—

insert—

56A Replacement of s 241A

Section 241A—

omit, insert—

241A Proceedings for indictable offences

- (1) An offence against part 7, division 10 or section 196A(1) is an indictable offence that is a misdemeanour.
- (2) Subject to subsection (3), a proceeding for an indictable offence is to be heard and decided summarily.
- (3) A Magistrates Court must abstain from dealing summarily with a charge of an indictable offence—
 - (a) if satisfied, on an application made by the prosecution or the defence, that because of exceptional circumstances the charge should not be heard and decided summarily; or

Examples of exceptional circumstances—

- 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.
- 2 There is an important issue of law involved.
- 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.

[s 6]

- (b) if satisfied, at any stage and after hearing any submissions by the prosecution and defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.
- (4) If a Magistrates Court abstains from jurisdiction—
 - (a) the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily; and
 - (b) the proceeding for the charge must be conducted as a committal proceeding; and
 - (c) a plea of the defendant at the start of the hearing must be disregarded; and
 - (d) the evidence already heard by the court is taken to be evidence in the committal proceeding; and
 - (e) the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.
- (5) The maximum penalty that may be imposed on a summary conviction for an indictable offence is 165 penalty units.
- (6) A Magistrates Court that summarily deals with a charge of an indictable offence—
 - (a) must be constituted by a magistrate; and
 - (b) has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose.

Part 3 **Amendment of Health Practitioner Regulation National Law**

7 **Law amended**

This part amends the Health Practitioner Regulation National Law set out in the schedule to the *Health Practitioner Regulation National Law Act 2009*.

8 **Amendment of s 113 (Restriction on use of protected titles)**

Section 113(1) and (2), penalty—

omit, insert—

Maximum penalty—

- (a) in the case of an individual—\$60,000 or 3 years imprisonment or both; or
- (b) in the case of a body corporate—\$120,000.

9 **Amendment of s 115 (Restriction on use of specialist titles)**

Section 115(1) and (2), penalty—

omit, insert—

Maximum penalty—

- (a) in the case of an individual—\$60,000 or 3 years imprisonment or both; or
- (b) in the case of a body corporate—\$120,000.

10 **Amendment of s 116 (Claims by persons as to registration as health practitioner)**

Section 116(1) and (2), penalty—

[s 11]

omit, insert—

Maximum penalty—

- (a) in the case of an individual—\$60,000 or 3 years imprisonment or both; or
- (b) in the case of a body corporate—\$120,000.

11 Amendment of s 117 (Claims by persons as to registration in particular profession or division)

Section 117(3), penalty—

omit, insert—

Maximum penalty—

- (a) in the case of an individual—\$60,000 or 3 years imprisonment or both; or
- (b) in the case of a body corporate—\$120,000.

12 Amendment of s 118 (Claims by persons as to specialist registration)

Section 118(1) and (2), penalty—

omit, insert—

Maximum penalty—

- (a) in the case of an individual—\$60,000 or 3 years imprisonment or both; or
- (b) in the case of a body corporate—\$120,000.

13 Amendment of s 119 (Claims about type of registration or registration in recognised speciality)

Section 119(3), penalty—

omit, insert—

Maximum penalty—

- (a) in the case of an individual—\$60,000 or 3 years imprisonment or both; or
- (b) in the case of a body corporate—\$120,000.

14 Amendment of s 121 (Restricted dental acts)

Section 121(1), penalty—

omit, insert—

Maximum penalty—\$60,000 or 3 years imprisonment or both.

15 Amendment of s 122 (Restriction on prescription of optical appliances)

Section 122(1), penalty—

omit, insert—

Maximum penalty—\$60,000 or 3 years imprisonment or both.

16 Amendment of s 123 (Restriction on spinal manipulation)

Section 123(1), penalty—

omit, insert—

Maximum penalty—\$60,000 or 3 years imprisonment or both.

17 Amendment of s 140 (Definition of notifiable conduct)

- (1) Section 140, definition *notifiable conduct*, ‘the practitioner has’, first mention—

omit.

- (2) Section 140, definition *notifiable conduct*, paragraph (a), ‘practised’—

omit, insert—

[s 18]

practising

- (3) Section 140, definition *notifiable conduct*, paragraph (b), 'engaged'—

omit, insert—

engaging

- (4) Section 140, definition *notifiable conduct*, paragraph (c), 'placed'—

omit, insert—

placing

- (5) Section 140, definition *notifiable conduct*, paragraph (d), from 'placed' to 'practised'—

omit, insert—

placing the public at risk of harm by practising

18 Amendment of s 141 (Mandatory notifications by health practitioners)

- (1) Section 141, heading, after 'practitioners'—

insert—

other than treating practitioners

- (2) Section 141, after subsection (2)—

insert—

- (2A) However, subsection (2) does not apply if the first health practitioner forms the reasonable belief in the course of providing a health service to the second health practitioner or student.

19 Insertion of new ss 141A–141C

After section 141—

insert—

141A Mandatory notifications by treating practitioners of sexual misconduct

- (1) This section applies to a registered health practitioner (the *treating practitioner*) who, in the course of providing a health service to another registered health practitioner (the *second health practitioner*), forms a reasonable belief that the second health practitioner has engaged, is engaging, or is at risk of engaging, in sexual misconduct in connection with the practice of the practitioner's profession.
- (2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

Note—

See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.

- (3) A contravention of subsection (2) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (4) This section applies subject to section 141C.

141B Mandatory notifications by treating practitioners of substantial risk of harm to public

- (1) Subsection (2) applies to a registered health practitioner (the *treating practitioner*) who, in the course of providing a health service to another registered health practitioner (the *second health practitioner*), forms a reasonable belief that the second health practitioner is placing the public at substantial risk of harm by practising the profession—

[s 19]

- (a) while the practitioner has an impairment; or
 - (b) while intoxicated by alcohol or drugs; or
 - (c) in a way that constitutes a significant departure from accepted professional standards.
- (2) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the second health practitioner's conduct that forms the basis of the reasonable belief.

Note—

See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.

- (3) Subsection (4) applies to a registered health practitioner (also the *treating practitioner*) who, in the course of providing a health service to a student, forms a reasonable belief that the student has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm.
- (4) The treating practitioner must, as soon as practicable after forming the reasonable belief, notify the National Agency of the student's impairment.

Note—

See section 237 which provides protection from civil, criminal and administrative liability for persons who, in good faith, make a notification under this Law.

- (5) In considering whether the public is being, or may be, placed at substantial risk of harm, the treating practitioner may consider the following matters relating to an impairment of the second health practitioner or student—
- (a) the nature, extent and severity of the impairment;

-
- (b) the extent to which the second health practitioner or student is taking, or is willing to take, steps to manage the impairment;
 - (c) the extent to which the impairment can be managed with appropriate treatment;
 - (d) any other matter the treating practitioner considers is relevant to the risk of harm the impairment poses to the public.
- (6) A contravention of subsection (2) or (4) by the treating practitioner does not constitute an offence but may constitute behaviour for which action may be taken under this Part.
- (7) This section applies subject to section 141C.

141C When practitioner does not form reasonable belief in course of providing health service

- (1) This section applies if a registered health practitioner (the *first health practitioner*) forms a reasonable belief about—
- (a) a matter, relating to another registered health practitioner (the *second health practitioner*), mentioned in section 141A(1) or 141B(1); or
 - (b) a matter, relating to a student, mentioned in section 141B(3).
- (2) For this Division, the first health practitioner is taken not to form the reasonable belief in the course of providing a health service to the second health practitioner or student if—
- (a) the first health practitioner—
 - (i) is employed or otherwise engaged by an insurer that provides professional indemnity insurance that relates to the second health practitioner or student; and

[s 19]

- (ii) forms the reasonable belief about the matter as a result of a disclosure made by a person to the first health practitioner in the course of a legal proceeding or the provision of legal advice arising from the insurance policy; or
- (b) the first health practitioner forms the reasonable belief in the course of providing advice in relation to the matter for the purposes of a legal proceeding or the preparation of legal advice; or
- (c) the first health practitioner is a legal practitioner and forms the reasonable belief in the course of providing legal services to the second health practitioner or student in relation to a legal proceeding or the preparation of legal advice in which the matter is an issue; or
- (d) the first health practitioner—
 - (i) forms the reasonable belief in the course of exercising functions as a member of a quality assurance committee, council or other body approved or authorised under an Act of a participating jurisdiction; and
 - (ii) is unable to disclose the information that forms the basis of the reasonable belief because a provision of that Act prohibits the disclosure of the information; or
- (e) the first health practitioner knows, or reasonably believes, the National Agency has been notified of the matter that forms the basis of the reasonable belief.

20 Amendment of s 196A (Offences relating to prohibition orders)

Section 196A(1), penalty—

omit, insert—

Maximum penalty—\$60,000 or 3 years imprisonment or both.

21 Insertion of new s 241A

Before section 242—

insert—

241A Proceedings for indictable offences

- (1) An offence against part 7, division 10 or section 196A(1) is an indictable offence.
- (2) A proceeding for an indictable offence may be taken—
 - (a) by way of a summary proceeding before a court of summary jurisdiction; or
 - (b) on indictment.
- (3) Subsection (2) applies subject to another law of the participating jurisdiction in which the proceeding is started.

22 Amendment of s 242 (Proceedings for offences)

- (1) Section 242, heading, after ‘for’—

insert—

other

- (2) Section 242, after ‘this Law’—

insert—

, other than an offence mentioned in section 241A(1),

[s 23]

23 Amendment of sch 6, s 16 (Return of seized things)

(1) Schedule 6, section 16(1)—

omit, insert—

- (1) If a seized thing has not been forfeited, the inspector must return it to its owner—
 - (a) if proceedings involving the thing are started within 6 months after the thing is seized—at the end of the proceedings and any appeal from the proceedings; or
 - (b) otherwise—
 - (i) 6 months after the thing is seized; or
 - (ii) at the end of any longer time for which the thing may be kept under subclause (3).

(2) Schedule 6, section 16, after subsection (2)—

insert—

- (3) If the seized thing is a document, the inspector may keep it while the inspector is satisfied it is needed, or may be needed, for the purposes of—
 - (a) a proceeding for an offence against this Law that is likely to be started or that has been started but not completed; or
 - (b) an appeal from a decision in a proceeding for an offence against this Law.

24 Amendment of sch 6, s 17 (Access to seized things)

(1) Schedule 6, section 17(1), after ‘copy it’—

insert—

or take an extract from it

(2) Schedule 6, section 17(2), ‘or copying’—

omit, insert—

, copying or taking of an extract

Part 4 Amendment of other legislation

Division 1 Amendment of Ambulance Service Act 1991

25 Act amended

This division amends the *Ambulance Service Act 1991*.

26 Amendment of s 36A (Definitions for pt 4A)

Section 36A, definition *public risk notifiable conduct*—
omit, insert—

public risk notifiable conduct, for a registered health practitioner, means—

- (a) placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (b) placing the public at risk of substantial harm by practising the profession in a way that constitutes a significant departure from accepted professional standards.

27 Amendment of s 36L (Definitions for div 5)

Section 36L, definition *excluded notifiable conduct*—
omit, insert—

excluded notifiable conduct, for a registered health practitioner, means—

- (a) practising the practitioner's profession while intoxicated by alcohol or drugs; or

[s 28]

- (b) practising the practitioner's profession in a way that constitutes a significant departure from accepted professional standards but not in a way that places the public at risk of substantial harm; or
- (c) engaging in sexual misconduct in connection with the practice of the practitioner's profession.

28 Amendment of s 36NA (Information about excluded notifiable conduct)

Section 36NA(1), 'section 141(4)(d)'—

omit, insert—

sections 141(4)(d) and 141C(2)(d)

Division 2 Amendment of Hospital and Health Boards Act 2011

29 Act amended

This division amends the *Hospital and Health Boards Act 2011*.

30 Amendment of s 86 (Information about excluded notifiable conduct)

Section 86(1), 'section 141(4)(d)'—

omit, insert—

sections 141(4)(d) and 141C(2)(d)

31 Amendment of s 107 (Information about excluded notifiable conduct)

Section 107(1), 'section 141(4)(d)'—

omit, insert—

sections 141(4)(d) and 141C(2)(d)

32 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *excluded notifiable conduct* and *public risk notifiable conduct—*

omit.

- (2) Schedule 2—

insert—

excluded notifiable conduct, for a registered health practitioner, means—

- (a) practising the practitioner's profession while intoxicated by alcohol or drugs; or
- (b) practising the practitioner's profession in a way that constitutes a significant departure from accepted professional standards but not in a way that places the public at risk of substantial harm; or
- (c) engaging in sexual misconduct in connection with the practice of the practitioner's profession.

public risk notifiable conduct, for a registered health practitioner, means—

- (a) placing the public at risk of substantial harm in the practitioner's practice of the profession because the practitioner has an impairment; or
- (b) placing the public at risk of substantial harm by practising the profession in a way that constitutes a significant departure from accepted professional standards.