



Queensland

Health Legislation Amendment Act 2020

Act No. 31 of 2020

An Act to amend the Ambulance Service Act 1991, the Hospital and Health Boards Act 2011, the Medicines and Poisons Act 2019, 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

[Assented to 20 August 2020]



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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 2020*.

2 Commencement

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

Part 2 Amendment of Ambulance Service Act 1991

3 Act amended

This part amends the *Ambulance Service Act 1991*.

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

(1) Section 3D—

insert—

(ja) to collaborate with Hospital and Health Services to manage the interaction between the services provided by the Queensland Ambulance Service and health services provided by Hospital and Health Services; and

(2) Section 3D(ja) to (1)—

[s 5]

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

(3) Section 3D—

insert—

(2) In this section—

Hospital and Health Service see the *Hospital and Health Boards Act 2011*.

Part 3 Amendment of Hospital and Health Boards Act 2011

5 Act amended

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

6 Amendment of s 4 (Principles and objectives of national health system)

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

omit, insert—

Aboriginal and Torres Strait Islander health

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

omit, insert—

Aboriginal people and Torres Strait Islander people

7 Amendment of s 7 (Establishment of Hospital and Health Services)

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

omit, insert—

Role

(2) Section 7—

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.

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).

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

[s 10]

health services provided by the Hospital and Health Service;

(2) Section 19(2)(ha) to (p)—

renumber as section 19(2)(i) to (r).

(3) Section 19—

insert—

(3) In performing its functions, a Service must have regard to—

- (a) the need to ensure resources of the public sector health system are used effectively and efficiently; and
- (b) the best interests of patients and other users of public sector health services throughout the State.

10 **Amendment of s 22 (Role of exercising control over Service)**

Section 22—

insert—

(2) In controlling the Service for which it is established, a board must have regard to—

- (a) the need to ensure resources of the public sector health system are used effectively and efficiently; and
- (b) the best interests of patients and other users of public sector health services throughout the State.

11 **Amendment of s 23 (Membership of boards)**

(1) Section 23(2)—

insert—

(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

(2) Section 23(2)(ea) to (g)—

renumber as section 23(2)(f) to (h).

(3) Section 23—

insert—

(3A) One or more of the members of a board must be Aboriginal persons or Torres Strait Islander persons.

(4) Section 23(3A) and (4)—

renumber as section 23(4) and (5).

12 Amendment of s 24A (Temporary members of board)

(1) Section 24A(1)—

insert—

(d) none of the members of the board are Aboriginal persons or Torres Strait Islander persons.

(2) Section 24A(6), definition *clinician*, ‘section 23(4)’—

omit, insert—

section 23(5)

13 Amendment of s 40 (Engagement strategies)

(1) Section 40(1)—

insert—

(c) a strategy (a *health equity strategy*) to achieve, and to specify the Service’s activities to achieve, health equity for Aboriginal people and Torres Strait Islander

[s 14]

people in the provision of health services by the Service.

(2) Section 40(2)—

insert—

(c) for the health equity strategy—the persons prescribed by regulation.

(3) Section 40—

insert—

(5) In giving effect to the health equity strategy, the Service must consult with the persons prescribed, and in the way prescribed, by regulation.

14 Amendment of s 41 (Review of strategies)

Section 41(2)—

insert—

(c) for the health equity strategy—the persons prescribed under section 40(2)(c).

15 Amendment of s 51AA (Consultation on health employment directives)

Section 51AA(2), ‘health service directive’—

omit, insert—

health employment directive

16 Amendment of s 112 (Giving of copy of RCA report—patient safety entity)

(1) Section 112—

insert—

(4A) However, if the entity is the administrative unit of the department responsible for coordinating improvements in the safety and quality of health

services, a person who performs functions for the entity may give a copy of the report, or information contained in the copy of the report, to another prescribed patient safety entity that is a quality assurance committee for an authorised purpose of the other entity.

- (2) Section 112(4A) to (6)—
renumber as section 112(5) to (7).

17 Amendment of s 139A (Meaning of *designated person*)

Section 139A(1)(d)—
omit, insert—

- (d) the chief psychiatrist; or

18 Insertion of new pt 13, div 7

Part 13—
insert—

**Division 7 Transitional provision for
Health Legislation
Amendment Act 2020**

**329 Aboriginal and Torres Strait Islander board
membership**

Section 23(4) does not apply to the membership of a board until the first time after the commencement at which both—

- (a) a vacancy in the membership exists; and
(b) 1 or more of the members of the board are clinicians within the meaning of section 23(5).

[s 19]

19 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

health equity strategy see section 40(1)(c).

Queensland Ambulance Service means the Queensland Ambulance Service established under the *Ambulance Service Act 1991*.

Part 3A Amendment of Medicines and Poisons Act 2019

19A Act amended

This part amends the *Medicines and Poisons Act 2019*.

19B Amendment of s 31 (Meaning of *authorised way*)

Section 31(c), note, ‘at the places’—

omit.

19C Amendment of s 44 (Offence to carry out pest management activities)

Section 44(2)(d)—

omit, insert—

- (d) a person who carries out a pest control activity using a household pesticide to control a pest, including a pest on an animal, if—
 - (i) the activity is carried out—
 - (A) at residential premises; or
 - (B) incidentally when performing other activities at another place,

using a minimal amount of the pesticide; and

- (ii) the activity is not carried out for a pest management business.

Examples for paragraph (d)—

- using a household pesticide to kill cockroaches at a house
- using a household pesticide to control fleas and ticks on a dog
- spraying a household pesticide on a water meter box in a nature strip before working on the box

19D Amendment of s 63 (What is a *manufacturing licence*)

Section 63(2)(b), ‘manufacture, and’—

omit, insert—

manufacture of, and

19E Amendment of s 92 (Definitions for part)

Section 92, definition *substance management plan*, ‘at the regulated place’—

omit, insert—

at, or in connection with, the regulated place

19F Amendment of s 93 (Requirements for substance management plan)

Section 93(2)(a)(iv), ‘at the place’—

omit.

19G Amendment of s 157 (Application of division)

Section 157(2), after ‘enters’—

[s 19H]

insert—

a place

19H Amendment of s 224 (Chief executive to keep database)

(1) Section 224(2)(b), from ‘the requirements’—

omit, insert—

any applicable requirements under the Health Practitioner Regulation National Law; and

(2) Section 224(2)(c)—

omit, insert—

(c) to facilitate—

- (i) the assessment or investigation of health service complaints under the *Health Ombudsman Act 2013*; and
- (ii) the investigation or monitoring of persons subject to actions or orders under that Act; and

19I Amendment of s 240 (Regulation-making power)

Section 240(2), before paragraph (a)—

insert—

(aa) dealing with S5 and S6 poisons and matters related to dealing with those poisons;

19J Amendment of s 242 (Definitions for part)

Section 242, definition *medicated animal feed*, ‘food-producing’—

omit, insert—

food producing

19K Amendment of s 271 (Requirements made by Health Act inspectors)

Section 271(1), '(each an *enforcement provision*)'—
omit.

19L Amendment of s 272 (Requirements made by Pest Management Act inspectors)

Section 272(1), '(each an *enforcement provision*)'—
omit.

19M Amendment of s 279 (State analysts)

Section 279(1), 'an'—
omit, insert—
a

19N Amendment of sch 1 (Dictionary)

Schedule 1, definition *standing order*, after 'place'—
insert—
or in stated circumstances

Part 4 Amendment of Private Health Facilities Act 1999

20 Act amended

This part amends the *Private Health Facilities Act 1999*.

21 Amendment of s 48 (Conditions of licence)

(1) Section 48(1)(b) to (d)—
omit, insert—

[s 22]

(b) the licensee must comply with an accreditation scheme that relates to safety and quality matters and is prescribed by regulation;

(2) Section 48(1)(e) to (h)—
renumber as section 48(1)(c) to (f).

(3) Section 48(2) and (3)—
omit.

22 Amendment of s 50 (Term of licences)

Section 50(2)(a), ‘a quality assurance system’—
omit, insert—

an accreditation scheme prescribed under section 48(1)(b)

23 Amendment of pt 12 hdg (Saving and transitional provisions)

Part 12, heading, after ‘provisions’—
insert—

for Act No. 60 of 1999

24 Insertion of new pt 15

After part 14—
insert—

Part 15

**Transitional provision
for Health Legislation
Amendment Act 2020**

169 Conditions of existing licences

(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).

(2) In this section—

new, in relation to a provision, means the provision as amended by the *Health Legislation Amendment Act 2020*.

previous, in relation to a provision, means the provision as in force immediately before the commencement.

25 Amendment of sch 3 (Dictionary)

Schedule 3, definitions *quality assurance entity* and *quality assurance program*—

omit.

Part 5 Amendment of Public Health Act 2005

26 Act amended

This part amends the *Public Health Act 2005*.

27 Amendment of s 61D (Content of water risk management plans)

Section 61D(e)(i), ‘or’—

omit, insert—

and

[s 28]

28 Insertion of new ch 5B

After chapter 5A—

insert—

Chapter 5B Conversion therapies

213E Definitions for chapter

In this chapter—

conversion therapy see section 213F.

gender identity, of a person, see section 213G.

health service provider see the *Health Ombudsman Act 2013*, section 8.

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 practice that attempts to change or suppress a person's sexual orientation or gender identity.

Examples—

a practice attempting to change or suppress a person's sexual orientation or gender identity by—

- inducing nausea, vomiting or paralysis while showing the person same-sex images
- using shame or coercion to give the person an aversion to same-sex attractions or to encourage gender-conforming behaviour
- using other techniques on the person encouraging the person to believe being lesbian, gay, bisexual, transgender or intersex is a defect or disorder

-
- (2) ***Conversion therapy*** does not include a practice by a health service provider that, in the provider's reasonable professional judgement—
- (a) is part of the clinically appropriate assessment, diagnosis or treatment of a person, or clinically appropriate support for a person; or
 - (b) enables or facilitates the provision of a health service for a person in a manner that is safe and appropriate; or
 - (c) is necessary to comply with the provider's legal or professional obligations.
- (3) Without limiting subsection (2), the following are examples of the types of practices to which that subsection may apply—
- (a) assisting a person who is undergoing a gender transition;
 - (b) assisting a person who is considering undergoing a gender transition;
 - (c) assisting a person to express the person's gender identity;
 - (d) providing acceptance, support or understanding of a person;
 - (e) facilitating a person's coping skills, development or identity exploration, or facilitating social support for the person.

Examples of the types of practices—

- exploring psychosocial factors with a person or probing a person's experience of sexual orientation or gender identity
- providing a speech pathology or gender transition service for a trans-gender or gender-diverse person wishing to alter the person's voice and communication to better align with the person's gender identity

[s 28]

- advising a person about the potential side effects of sex-hormonal drugs or the risks of having, or not having, surgical procedures

213G Meaning of *gender identity*

- (1) *Gender identity*, 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.
- (2) Without limiting subsection (1), the *gender identity*, of a person, includes—
 - (a) the person's personal sense of the body; and
 - (b) if freely chosen—modification of the person's bodily appearance or functions by medical, surgical or other means; and
 - (c) other expressions of the person's gender, including name, dress, speech and behaviour.

213H Prohibition of conversion therapy

- (1) A person who is a health service provider must not perform conversion therapy on another person.
Maximum penalty—
 - (a) if the other person is a vulnerable person—150 penalty units or 18 months imprisonment; or
 - (b) otherwise—100 penalty units or 12 months imprisonment.
- (2) An offence against subsection (1) is a misdemeanour.
- (3) In this section—
vulnerable person means—

- (a) a child; or
- (b) a person who has impaired capacity within the meaning of the *Guardianship and Administration Act 2000* for making decisions about a particular service offered by a health service provider; or
- (c) a person with an impairment that is likely to significantly limit the person's ability to understand a particular service offered by a health service provider.

213I Proceedings for indictable offence

- (1) A proceeding for an offence against section 213H(1) may, at the prosecution's election, be taken summarily or on indictment.
- (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 exceptional circumstances.

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.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

[s 29]

- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
- (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
- (d) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).

29 Omission of s 250 (Arrangements about transfer of information)

Section 250—

omit.

30 Omission of ch 6, pt 3 (Pap Smear Register)

Chapter 6, part 3—

omit.

31 Amendment of s 441 (Summary offences)

Section 441(1), ‘A proceeding’—

omit, insert—

Subject to section 213I, a proceeding

32 Insertion of new ch 12, pt 5

Chapter 12—

insert—

Part 5 Saving provision for Health Legislation Amendment Act 2020

496 Proceeding for particular offence

- (1) This section applies in relation to an offence against former section 266 committed by a person before the commencement.
- (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 2020*, section 30 had not commenced.
- (3) Subsection (2) applies despite the Criminal Code, section 11.
- (4) In this section—
former section 266 means section 266 as in force from time to time before the commencement.

33 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *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* and *written or in writing*—
omit.
- (2) Schedule 2—
insert—
conversion therapy, for chapter 5B, see section 213F.

[s 33]

gender identity, of a person, for chapter 5B, see section 213G.

health service provider, for chapter 5B, see section 213E.

sexual orientation, of a person, for chapter 5B, see section 213E.

- (3) Schedule 2, definition *confidential information*, paragraphs (h) and (i)—

omit, insert—

(h) for chapter 6, part 3A, division 5, see section 279AK.

- (4) Schedule 2, definition *health practitioner*, paragraphs (b) and (c)—

omit, insert—

(b) for chapter 6, part 3A, see section 279AA.

- (5) Schedule 2, definition *information*, paragraphs (h) and (i)—

omit, insert—

(h) for chapter 6, part 3A, division 5, see section 279AK.

- (6) Schedule 2, definition *register*, paragraphs (c) to (e)—

omit, insert—

(c) for chapter 6, part 3A, see section 279AA;
or

(d) for chapter 6, part 4, see section 280.

- (7) Schedule 2, definition *relevant person*, paragraphs (h) and (i)—

omit, insert—

(h) for chapter 6, part 3A, division 5, see section 279AK.

- (8) Schedule 2, definition *repealed provision*, paragraph (e)—

omit.

Part 6 **Amendment of Queensland Mental Health Commission Act 2013**

34 Act amended

This part amends the *Queensland Mental Health Commission Act 2013*.

35 Amendment of s 14 (Membership of commission)

(1) Section 14(b), ‘other’—

omit.

(2) Section 14—

insert—

(2) The staff are employed under the *Public Service Act 2008*.

Note—

For the employment of the commissioner, see section 17.

36 Replacement of pt 2, div 4 hdg (Staff of the commission)

Part 2, division 4, heading—

omit, insert—

Division 4 Commissioner

37 Omission of pt 2, div 4, sdiv 1 hdg (Commissioner)

Part 2, division 4, subdivision 1, heading—

omit.

[s 38]

38 Replacement of s 18 (Term of office)

Section 18—

omit, insert—

18 Term of office

Subject to this division, the commissioner holds office for a term of not more than 5 years decided by the Governor in Council.

39 Amendment of s 19 (Functions and powers of commissioner)

Section 19(1)—

insert—

(c) to manage the staff of the commission in accordance with the requirements of this Act and the *Public Service Act 2008*.

40 Omission of pt 2, div 4, sdiv 2 (Staff)

Part 2, division 4, subdivision 2—

omit.

Part 7 Minor and consequential amendments

41 Legislation amended

Schedule 1 amends the regulations it mentions.

Schedule 1 Minor and consequential amendments of regulations

section 41

Private Health Facilities Regulation 2016

1 Sections 8 and 9—

omit, insert—

8 Safety and quality accreditation scheme—Act, s 48

- (1) For section 48(1)(b) of the Act, the AHSSQAS is prescribed.
- (2) In this section—

AHSSQAS means the Australian Health Service Safety and Quality Accreditation Scheme formulated by the Commission under the *National Health Reform Act 2011* (Cwlth), section 9(1)(1) and incorporating the NSQHS Standards.

Commission means the Australian Commission on Safety and Quality in Health Care established under the *National Health Reform Act 2011* (Cwlth), section 8.

NSQHS Standards means the National Safety and Quality Health Service Standards, 2nd edition, formulated by the Commission under the *National Health Reform Act 2011* (Cwlth), section 9(1)(e).

Public Health Regulation 2018

1 Part 8, division 4—

omit.

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