

# Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Minister for Health and Ambulance Services provide this human rights certificate with respect to the *Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021* made under the *Hospital and Health Boards Act 2011*.

In my opinion, the *Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021* (Regulation), as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

In March 2017, the then Anti-Discrimination Commission Queensland (now the Queensland Human Rights Commission) and the Queensland Aboriginal and Islander Health Council (QAIHC) provided Queensland Health with the *Addressing Institutional Barriers to Health Equity for Aboriginal and Torres Strait Islander People in Queensland's Public Hospital and Health Services Report* (the Health Equity Report). The Health Equity Report identified institutional barriers to health equity for Aboriginal peoples and Torres Strait Islander peoples in Queensland's public health system. The Health Equity Report considered the Hospital and Health Boards Act rendered Aboriginal peoples and Torres Strait Islander peoples 'legally invisible' by not including, for example:

- a statement of commitment to Closing the Gap in Aboriginal and Torres Strait Islander health in a preamble to the Act, reflecting that "Aboriginal and Torres Strait Islander health is 'everyone's business'";
- a provision for the delivery of responsive, capable and culturally competent healthcare to Aboriginal and Torres Strait Islander peoples in Queensland as an object of the Act;
- a requirement that Hospital and Health Boards have among their members a person, or persons, with expertise and experience in Aboriginal and Torres Strait Islander healthcare or health service delivery among the skills, knowledge and experience required for a Hospital and Health Service to perform its functions effectively and efficiently; and
- a provision that requires the Hospital and Health Services to establish Aboriginal and Torres Strait Islander health plans.

The Health Equity Report concluded that, "the Hospital and Health Boards Act fails to give the necessary legislative force to the [Council of Australian Government's] National Partnership Agreements and federal and Queensland policy imperatives to close the Aboriginal and Torres Strait Islander health gap, thus indicating to the Aboriginal and Torres Strait Islander communities that the State is not taking its responsibilities to close the Indigenous Health Gap seriously".

Following the release of the Health Equity Report, Queensland Health issued the *Statement of Action towards Closing the Gap in health outcomes* (Statement of Action), which committed all areas of Queensland Health to undertake organisational, system-level changes to build sustainable cultural capability across the organisation. The Statement of Action committed all areas of Queensland Health to three key actions:

- Promoting opportunities to embed Aboriginal and Torres Strait Islander representation in Queensland Health leadership, governance and workforce.
- Improving local engagement and partnerships between Queensland Health and Aboriginal and Torres Strait Islander peoples, communities and organisations.
- Improving transparency, reporting and accountability in Closing the Gap progress.

On 26 November 2018, Queensland Health released a further advice about the Statement of Action, which outlined that each Hospital and Health Service was required to develop a *Closing the Gap Health Plan* to demonstrate activities across the three key areas in the Statement of Action. In recognition of the importance of addressing institutional racism across the health system, the responsibility for implementing and monitoring the Plans sits with the Hospital and Health Boards, Health Service Chief Executives and other executives within Queensland Health.

In early 2019, the then Minister for Health and Minister for Ambulance Services convened an expert panel comprising of Mr Jim McGowan AM, Professor Anne Tiernan and Dr Pradeep Phillip (the panel) to provide advice on Queensland Health's governance framework as established by the Hospital and Health Boards Act. The panel considered the findings of the Health Equity Report and recommended the Hospital and Health Boards Act be amended to embed the Queensland Government's commitment to closing the gap in Aboriginal and Torres Strait Islander health.

In October 2019, Ms Haylene Grogan was appointed as Queensland's first Chief Aboriginal and Torres Strait Islander Health Officer and Deputy Director-General. The key leadership role was a significant milestone for Queensland Health and led to the establishment of a dedicated Aboriginal and Torres Strait Islander Health Division within Queensland Health.

In November 2019, the Health Legislation Amendment Bill 2019 was introduced to the Legislative Assembly. To implement the panel's recommendations, the Bill included amendments to the Hospital and Health Boards Act to include a requirement that each Hospital and Health Board have at least one member who is an Aboriginal person or Torres Strait Islander person and to require each Hospital and Health Service to develop and implement an Aboriginal and Torres Strait Islander Health Equity Strategy (Health Equity Strategy). The Health Legislation Amendment Bill 2019 was passed by the Legislative Assembly on 13 August 2020 and received Royal Assent on 20 August 2020, becoming the *Health Legislation Amendment Act 2020*.

The amendments to the Hospital and Health Boards Act to require each Hospital and Health Service to have one member who is an Aboriginal person or Torres Strait Islander person commenced by proclamation on 25 September 2020. As of March 2021, 14 of the 16 Hospital and Health Boards have at least one member who is an Aboriginal person or Torres Strait Islander person. It is anticipated that the remaining two Hospital and Health Boards will achieve this requirement as part of the next round of appointments to the Hospital and Health Boards in mid-2021.

The provisions of the Health Legislation Amendment Act that amended the Hospital and Health Boards Act to require each Hospital and Health Service to have a Health Equity Strategy, and require the engagement and review requirements for developing a Health Equity Strategy to be prescribed in regulation, are proposed to commence on 30 April 2021. These provisions supersede the existing requirement for a Closing the Gap Health Plan. Through a Health Equity Strategy, each Hospital and Health Service will outline the key performance measures and actions it will achieve to improve the health and wellbeing outcomes for Aboriginal peoples and Torres Strait Islander peoples.

The Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021 (the Regulation) amends the *Hospital and Health Boards Regulation 2012* to prescribe the requirements that Hospital and Health Services must comply with in the development and implementation of their Health Equity Strategy to ensure the strategy has a positive impact on health equity outcomes with Aboriginal peoples and Torres Strait Islander peoples. These requirements include specifying key performance measures relating to actively eliminating institutional racism, improving access to health services and ensuring that healthcare is provided in a manner that is sustainable, culturally safe and responsive to the needs of Aboriginal people and Torres Strait Islander people.

## Human Rights Issues

### **Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

The Regulation outlines the requirements each Hospital and Health Service must follow in the development and implementation of a Health Equity Strategy under section 40 of the Hospital and Health Boards Act. These requirements include the Health Equity Strategy outlining how the Hospital and Health Service will seek to improve health outcomes with Aboriginal peoples and Torres Strait Islander peoples, actively eliminate racial discrimination and institutional racism and provide for sustainable, culturally safe and responsive health services.

In my opinion, the human rights that are relevant to the subordinate legislation are:

- Recognition and equality before the law (section 15).
- Cultural rights – Aboriginal and Torres Strait Islander peoples (section 28).
- Right to health services (section 37).

#### *Recognition and equality before the law (section 15 of the Human Rights Act)*

Section 15 of the Human Rights Act provides that every person has the right to recognition as a person before the law and the right to enjoy human rights without discrimination. This is a stand-alone right that permeates all human rights. Section 15(3) provides that every person is entitled to the equal protection of the law without discrimination. Section 15(4) provides a right to equal and effective protection against discrimination. These sections require positive action by Queensland to remove discrimination. Section 15(5) provides that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination. This makes clear that the State's positive duty to remove discrimination may be discharged by affirmative action.

The Regulation seeks to improve health equity outcomes through seeking to actively eliminate racial discrimination and institutional racism in the provision of health services and support greater engagement with Aboriginal peoples and Torres Strait Islander peoples in the design, delivery, monitoring and review of health services. As such, I am satisfied that the Regulation supports the right of recognition and equality before the law.

*Cultural rights – generally and Cultural rights – Aboriginal peoples and Torres Strait Islander peoples*

Cultural rights protect the rights of all people with particular cultural, religious, racial and linguistic backgrounds to enjoy their culture, declare and practice their religion, and use their language in the community. It promotes the right to practise and maintain shared traditions and activities, and recognises that enjoying one's culture is intertwined with the capacity to do so in connection with others from the same cultural background. In addition to the general cultural rights, the Human Rights Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. They have the right to enjoy, maintain, control, protect and develop their culture, language and kinship ties with other members of their community. The right also protects Aboriginal peoples and Torres Strait Islander peoples' right to maintain and strengthen their distinct spiritual relationship with the land, territories, waters, coastal seas and other resources, and to conserve and protect the environment.

The Regulation requires each Health Equity Strategy to state key performance measures relating to improve health and wellbeing outcomes for Aboriginal peoples and Torres Strait Islander peoples, including measures relating to:

- working with Aboriginal people and Torres Strait Islander people, Aboriginal and Torres Strait Islander communities and other organisations to design, deliver, monitor and review health services;
- influencing the cultural determinants of health; and
- ensure the delivery of sustainable, culturally safe and responsive health services.

Improving these health and wellbeing outcomes, and doing so in a manner of genuine co-design, co-ownership and co-implementation, is a critical component of the new *National Agreement on Closing the Gap 2020*, which recognises that when Aboriginal peoples and Torres Strait Islander peoples have a genuine say in the design and delivery of policies, programs and services that affect them, better life outcomes are achieved. The greater involvement in the design, development and implementation processes will provide for greater recognition of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples as they relate to health services.

Hospital and Health Services are also required to state the actions they will take to improve the representation of Aboriginal peoples and Torres Strait Islander peoples within the health workforce and the actions that the Hospital and Health Service will take to ensure a greater level of integration with other parts of the health sector to support the provision of tailored and co-designed health services for Aboriginal peoples and Torres Strait Islander peoples.

In my opinion, the Regulation supports the cultural rights of Aboriginal peoples and Torres Strait Islander peoples protected by the *Human Rights Act 2019*.

### *Right to health services*

The right to health services under section 37 of the *Human Rights Act 2019* provides that every person has the right to access health services without discrimination. The Regulation requires Hospital and Health Services to state various key performance measures and other actions to:

- actively eliminate racial discrimination and institutional racism in the provision of health services; and
- improve access to health services for Aboriginal people and Torres Strait Islander people.

In my opinion, these measures prescribed in the Regulation will support the human right to health services without discrimination.

### **Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

As the Regulation does not limit human rights, it is not considered necessary to further assess the Regulation under section 13 of the *Human Rights Act 2019*.

## **Conclusion**

I consider that the *Health and Hospital Boards (Health Equity Strategies) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does not limit, restrict or interfere with human rights and promotes human dignity, equality and freedom.

**YVETTE D'ATH MP**  
MINISTER FOR HEALTH and AMBULANCE SERVICES  
and LEADER OF THE HOUSE

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