



Queensland

Health and Other Legislation Amendment Act 2016

Act No. 50 of 2016

An Act to amend the Criminal Code, the Hospital and Health Boards Act 2011, the Public Health Act 2005 and the Queensland Institute of Medical Research Act 1945 and the legislation mentioned in schedule 1 for particular purposes

[Assented to 23 September 2016]



Queensland

Health and Other Legislation Amendment Act 2016

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The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health and Other Legislation Amendment Act 2016*.

Part 2 Amendment of Criminal Code

2 Code amended

This part amends the Criminal Code.

3 Amendment of s 6 (Carnal knowledge)

Section 6(2), ‘sodomy’—

omit, insert—

anal intercourse

4 Omission of s 208 (Unlawful sodomy)

Section 208—

omit.

5 Amendment of s 213 (Owner etc. permitting abuse of children on premises)

(1) Section 213(1), from ‘prescribed age’ to ‘208,’—

omit, insert—

age of 16 years to be in or upon the premises for

[s 6]

the purpose of any person, whether a particular person or not, doing an act in relation to the child (a ***proscribed act***) defined to constitute an offence in section

(2) Section 213(3)(a), ‘208 or’—

omit.

(3) Section 213(4) and (6)—

omit.

(4) Section 213(5)—

renumber as section 213(4).

6 Amendment of s 215 (Carnal knowledge with or of children under 16)

Section 215(6)—

omit.

7 Amendment of s 216 (Abuse of persons with an impairment of the mind)

(1) Section 216(1), after ‘knowledge’—

insert—

with or

(2) Section 216(5), definition *carnal knowledge*—

omit.

8 Amendment of s 219 (Taking child for immoral purposes)

(1) Section 219(1), from ‘prescribed age’ to ‘208,’—

omit, insert—

age of 16 years and is not the husband or wife of that person for the purpose of any person, whether a particular person or not, doing an act in relation

to the child (a *proscribed act*) defined to constitute an offence in section

- (2) Section 219(3)(a), ‘208 or’—

omit.

- (3) Section 219(4) and (6)—

omit.

- (4) Section 219(5)—

renumber as section 219(4).

9 Amendment of s 229B (Maintaining a sexual relationship with a child)

- (1) Section 229B(1) and (5), ‘prescribed age’—

omit, insert—

age of 16 years

- (2) Section 229B(10), definition *offence of a sexual nature*, ‘208,’—

omit.

- (3) Section 229B(10), definition *prescribed age*—

omit.

10 Amendment of s 578 (Charge of offence of a sexual nature)

- (1) Section 578(1), ‘208,’—

omit.

- (2) Section 578(1A)—

omit.

- (3) Section 578(4), ‘208,’—

omit.

[s 11]

11 Amendment of s 636 (Evidence of blood relationship)

Section 636(1), definition *prescribed offence*, paragraph (b),
'208,'—

omit.

12 Insertion of new pt 9, ch 95

Part 9—

insert—

**Chapter 95 Transitional provision
for Health and Other
Legislation
Amendment Act 2016**

735 References to particular offences

- (1) An amended provision applies as if a reference to section 215 in the amended provision included a reference to—
 - (a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and
 - (b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.
- (2) The definition *prescribed offence* in section 636(1) applies as if it included a reference to an offence defined in a provision mentioned in subsection (1)(a) or (b).
- (3) In this section—

amended provision means any of the following provisions as in force on or after the commencement—

[s 15]

prescribed information system means an information system prescribed by regulation.

relevant health practitioner means an individual who is registered under the Health Practitioner Regulation National Law to practise a health profession, other than as a student.

15 Insertion of new s 139A

After section 139—

insert—

139A Meaning of *designated person*

- (1) *Designated person* means a person who is—
- (a) a public service employee employed in the department; or
 - (b) a health service employee; or
 - (c) the chief health officer; or
 - (d) the director of mental health; or
 - (e) a health professional (other than a person mentioned in paragraphs (a) to (d)) engaged in delivering a public sector health service, whether at a public sector health service facility or another place; or
 - (f) a member of a board of a Service; or
 - (g) a person (other than a person mentioned in paragraph (a) or (b)) engaged temporarily to provide administrative support services for a Service or the department; or
 - (h) a person being educated or trained at a public sector health service facility as part of the requirements for—
 - (i) registration, enrolment or other authorisation (however described) to practise as a health professional; or

-
- (ii) completion of a course of study qualifying a person for registration, enrolment or authorisation mentioned in subparagraph (i); or
 - (i) a person providing education or training at a public sector health service facility to a person mentioned in paragraph (h); or
 - (j) a contractor who accesses confidential information under a contract to provide information and communication technology or information management services to a Service or the department; or
 - (k) a volunteer carrying out duties at a public sector health service facility on behalf of a Service or the department; or
 - (l) an inspector; or
 - (m) another person prescribed under a regulation for this paragraph to be a designated person.
- (2) Any person who was a person mentioned in subsection (1) is also a *designated person*.

16 Insertion of new pt 7, div 2, sdiv 1, hdg

Part 7, division 2, before section 142—

insert—

Subdivision 1 Prohibited disclosure of confidential information

17 Amendment of s 142 (Confidential information must not be disclosed)

(1) Section 142, heading, after ‘disclosed’—

insert—

by designated persons

[s 18]

(2) Section 142(2), after ‘designated person’—

insert—

or a prescribed health practitioner

18 Insertion of new s 142A and pt 7, div 2, sdiv 2, hdg

After section 142—

insert—

142A Confidential information must not be disclosed by prescribed health practitioners

(1) A prescribed health practitioner must not disclose, directly or indirectly, confidential information to another person unless the disclosure is required or permitted under this Act.

Maximum penalty—600 penalty units.

(2) For subsection (1), another person includes another prescribed health practitioner or a designated person.

(3) Subsection (1) applies even if the person who could be identified from the disclosure of confidential information is deceased.

Subdivision 2 Permitted disclosure of confidential information

19 Amendment of s 143 (Disclosure required or permitted by law)

(1) Section 143(2)—

insert—

(e) information provided to a prescribed health practitioner by a designated person by giving the prescribed health practitioner

access to a prescribed information system
for the purposes of section 161C.

(2) Section 143—

insert—

(3) A prescribed health practitioner may disclose confidential information if the disclosure is required or permitted by an Act or law.

20 Amendment s 144 (Disclosure with consent)

Section 144, after ‘designated person’—

insert—

or prescribed health practitioner

21 Amendment of s 145 (Disclosure of confidential information for care or treatment of person)

Section 145, after ‘designated person’—

insert—

or prescribed health practitioner

22 Amendment of s 146 (Disclosure to person who has sufficient interest in health and welfare of person)

Section 146(1), after ‘designated person’—

insert—

or prescribed health practitioner

23 Amendment of s 147 (Disclosure to lessen or prevent serious risk to life, health or safety)

Section 147, after ‘designated person’—

insert—

or prescribed health practitioner

[s 24]

24 Amendment of s 148 (Disclosure for the protection, safety or wellbeing of a child)

Section 148—

insert—

- (2) A prescribed health practitioner may disclose confidential information if—
 - (a) the relevant chief executive believes, on reasonable grounds, the disclosure is necessary for the protection, safety or wellbeing of a child; and
 - (b) the confidential information relates to someone other than the child mentioned in paragraph (a); and
 - (c) the relevant chief executive has, in writing, authorised the disclosure.

25 Insertion of new s 150A

After section 150—

insert—

150A Disclosure for purposes related to approved research

- (1) This section applies if the relevant chief executive gives a person (a *researcher*) written approval to carry out research.
- (2) A designated person may disclose confidential information about a person (a *participant*) for the purpose of conducting the research if—
 - (a) the disclosure is to the researcher; and
 - (b) the participant is an adult who has impaired capacity for consenting to participation in the research; and
 - (c) the tribunal under the *Guardianship and Administration Act 2000* or another person

authorised under a law to make decisions for the participant consents to the participant's participation in the research.

Example of a person authorised under a law—

A statutory health attorney for an adult's health matter under the *Powers of Attorney Act 1998*.

(3) In this section—

impaired capacity has the same meaning as impaired capacity under the *Guardianship and Administration Act 2000*.

research see the *Public Health Act 2005*, section 280, definition *research*.

26 Amendment of s 154 (Disclosure to or by relevant chief executive)

Section 154, after 'designated person'—

insert—

or prescribed health practitioner

27 Amendment of s 155 (Disclosure to health practitioner registration board)

Section 155, after 'designated person'—

insert—

or prescribed health practitioner

28 Amendment of s 156 (Disclosure to health ombudsman)

Section 156, after 'designated person'—

insert—

or prescribed health practitioner

[s 29]

29 Amendment of s 157 (Disclosure to person performing functions under Coroners Act 2003)

Section 157, after ‘designated person’—

insert—

or prescribed health practitioner

30 Amendment of s 159 (Disclosure to Australian Red Cross Society)

Section 159, after ‘designated person’—

insert—

or prescribed health practitioner

31 Insertion of new pt 7, div 4

Part 7—

insert—

Division 4 Access by prescribed health practitioner to prescribed information system

161C Prescribed health practitioner may access prescribed information system and particular information

- (1) A prescribed health practitioner may access a prescribed information system.
- (2) A prescribed health practitioner must not access information contained in a prescribed information system unless—
 - (a) the information is necessary for the prescribed health practitioner to facilitate the care or treatment of an individual; or

- (b) the prescribed health practitioner accesses the information incidentally while accessing information mentioned in paragraph (a).

Maximum penalty—600 penalty units.

- (3) A prescribed health practitioner must comply with all conditions prescribed by regulation in relation to accessing a prescribed information system and any information contained in the system.

Maximum penalty—600 penalty units.

32 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

prescribed health practitioner, for part 7, see section 139.

prescribed information system, for part 7, see section 139.

relevant health practitioner, for part 7, see section 139.

Part 4 Amendment of Public Health Act 2005

33 Act amended

This part amends the *Public Health Act 2005*.

34 Amendment of s 158 (Definitions for ch 5)

- (1) Section 158, definition *recognised immunisation provider*—
omit.

[s 35]

- (2) Section 158—

insert—

recognised vaccination provider, for part 2,
division 1AA, see section 160A.

35 Amendment of s 160A (Definitions for div 1AA)

- (1) Section 160A, definition *recognised immunisation provider*—

omit.

- (2) Section 160A—

insert—

recognised vaccination provider, see the
Australian Immunisation Register Act 2015
(Cwlth), section 4.

- (3) Section 160A, definition *immunisation history statement*,
paragraph (a)—

omit, insert—

(a) an immunisation history statement as
recorded on the ACI register as defined
under the *Australian Immunisation Register*
Act 2015 (Cwlth), section 4; or

- (4) Section 160A, definition *immunisation history statement*,
paragraph (b), ‘recognised immunisation’—

omit, insert—

recognised vaccination

- (5) Section 160A, definition *immunisation status “up to date”*,
paragraphs (b) and (c), ‘recognised immunisation’—

omit, insert—

recognised vaccination

36 Insertion of new ch 5, pt 4

Chapter 5—

insert—

**Part 4 Disclosure of
information for school
health programs**

213AA Definitions for part

In this part—

health service see the *Hospital and Health Boards Act 2011*, section 15.

health service chief executive see the *Hospital and Health Boards Act 2011*, section 33.

school health program, in relation to students of a school, means a program carried out for the purpose of providing a dental health service or an immunisation health service for the students.

school health program provider, in relation to a school health program, means a Service, or an entity engaged by a Service, that carries out the school health program.

school principal includes a delegate of the principal.

Service means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

student, of a school, means a child who is enrolled in the school.

213AB Application of part

This part applies in relation to a school health program provider carrying out, or preparing to

carry out, a school health program for students.

213AC Identifying school health program providers

- (1) If the school health program provider is a Service, the health service chief executive of the Service must give the school principal notice stating that the Service is the school health program provider.
- (2) If the school health program provider is an entity engaged by a Service, the health service chief executive of the Service must give the school principal notice stating that the entity is the school health program provider.

213AD Disclosure of information about students

- (1) For carrying out a function under the school health program, the school health program provider may ask the school principal to provide the following information—
 - (a) the name and date of birth of a student;
 - (b) the name, telephone number, email address and postal address of a parent or guardian of a student;
 - (c) any other information prescribed by regulation about a student.
- (2) The school principal must, within a reasonable period, disclose the information requested if the school principal receives, or has received, a notice under section 213AC stating that the Service or entity that requested the information is the school health program provider.
- (3) However, the school principal may refuse to disclose any information about the student if the school principal considers the disclosure is not in the best interests of the student.

- (4) If, under subsection (3), the school principal refuses to disclose information about 1 or more students, the school principal must give the school health program provider notice stating how many students have had information withheld for the school health program.

213AE Application of Information Privacy Act 2009 to contracted service providers

- (1) This section applies to a school health program provider that is not—
- (a) an agency under the *Information Privacy Act 2009*, section 18; or
 - (b) a health agency under the *Information Privacy Act 2009*, schedule 5.
- (2) For the purposes of the *Information Privacy Act 2009*, chapter 2, part 4—
- (a) the school health program provider is taken to be a bound contracted service provider; and
 - (b) the agreement to provide a school health program between the Service and the school health program provider is taken to be a service arrangement; and
 - (c) the Service is the contracting agency.

213AF Delegation by health service chief executive for this part

A health service chief executive may delegate the health service chief executive's functions under this part to an appropriately qualified—

- (a) employee of the Service; or
- (b) health service employee employed in the department and working for the Service.

[s 37]

37 Amendment of sch 2 (Dictionary)

- (1) Schedule 2, definitions *health service*, *health information held by a health agency* and *recognised immunisation provider*—
omit.
- (2) Schedule 2—
insert—

health information held by a health agency—

- (a) means—
- (i) information held by the agency about a person's health or the provision of a health service to a person; or
 - (ii) information about a person's health or the provision of a health service to the person obtained by the agency under this Act or another Act; or
 - (iii) for chapter 6, part 4, information about a person's health or the provision of a health service to a person held or obtained by a contractor for the contractor to keep the Queensland Cancer Register; and
- (b) includes information about a person who is deceased.

health service—

- (a) for chapter 5, part 4, see section 213AA; or
- (b) for chapter 6, part 1A, see section 228C.

health service chief executive, for chapter 5, part 4, see section 213AA.

recognised vaccination provider, for chapter 5, part 2, division 1AA, see section 160A.

school health program, for chapter 5, part 4, see section 213AA.

school health program provider, for chapter 5, part 4, see section 213AA.

school principal, for chapter 5, part 4, see section 213AA.

Service, for chapter 5, part 4, see section 213AA.

student, for chapter 5, part 4, see section 213AA.

Part 5 **Amendment of Queensland Institute of Medical Research Act 1945**

38 Act amended

This part amends the *Queensland Institute of Medical Research Act 1945*.

39 Replacement of s 19 (Bonuses to discoverers)

Section 19—

omit, insert—

19 Bonuses to discoverers and inventors

- (1) The Council may pay an amount (a *bonus*) to a successful discoverer or inventor working, or who has worked, as an officer and employee or under the auspices of the Council.
- (2) Without limiting subsection (1), a bonus is an amount paid in addition to the discoverer's or inventor's salary and allowances (if any).
- (3) However, subsection (4) applies if the Council intends to pay a bonus to a discoverer or inventor in a financial year and the total amount of bonuses paid to all discoverers and inventors in the financial year—

[s 40]

- (a) is more than \$10m before the payment is made; or
 - (b) will be more than \$10m because of the payment.
- (4) Before the Council pays the bonus, the Council must obtain the approval of the Governor in Council.

Part 6 Minor and consequential amendments

40 Legislation amended

Schedule 1 amends the legislation it mentions.

Schedule 1 Legislation amended

section 40

Child Protection (Offender Reporting) Act 2004

1 Part 7—

insert—

**Division 4 Transitional provision for
Health and Other
Legislation Amendment
Act 2016**

88 Sch 1 references to the Criminal Code, s 215

Schedule 1 applies as if the reference to the Criminal Code, section 215 included a reference to—

- (a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and
- (b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

2 Schedule 1, item 9(a), entry for section 208—

omit.

Corrective Services Act 2006

1 Schedule 1, entry for the Criminal Code, section 208—
omit.

2 Schedule 1—
insert—

**Criminal Code provision repealed by Health
and Other Legislation Amendment Act 2016**
section 208 (Unlawful sodomy)

Criminal Organisation Act 2009

1 Section 7(2), from ‘would be’—
omit, insert—

would have been an offence against section 208 as
in force immediately before its repeal by the
*Health and Other Legislation Amendment Act
2016.*

Criminal Practice Rules 1999

1 Schedule 3, form 113—
omit.

Disability Services Act 2006

1 Schedule 2, item 4, entry for the Criminal Code, section 208—

omit.

2 Schedule 3, item 1, entry for the Criminal Code—

insert—

208	Unlawful sodomy	as the provision was in force from time to time before its repeal by the <i>Health and Other Legislation Amendment Act 2016</i>
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3 Schedule 4, item 4, entry for the Criminal Code, section 208—

omit.

4 Schedule 5, item 1, entry for the Criminal Code—

insert—

208	Unlawful sodomy	as the provision was in force from time to time before its repeal by the <i>Health and Other Legislation Amendment Act 2016</i> for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind
-----	-----------------	---

5 Schedule 6, item 4, entry for the Criminal Code, section 208—

omit.

6 Schedule 7—

insert—

Criminal Code

Provision of Code	Relevant heading	Qualification relating to the provision of the Act
208	Unlawful sodomy	as the provision was in force from time to time before its repeal by the <i>Health and Other Legislation Amendment Act 2016</i> for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind

District Court of Queensland Act 1967

1 Section 61(2)(b), ‘208,’—

omit.

2 Insertion of new s 151

After section 150—

insert—

151 Transitional provision for Health and Other Legislation Amendment Act 2016

Section 61 applies as if the reference in section 61(2)(b) to the Criminal Code, section 215 included a reference to the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act*

2016.

Evidence Act 1977

1 Section 21M(3), definition *prescribed special offence*,
'208,'—
omit.

2 Part 9—
insert—

**Division 6 Health and Other
Legislation Amendment
Act 2016**

**147 *Prescribed special offence* taken to include
references to Criminal Code, ss 208 and 209**

The definition *prescribed special offence* in section 21M(3) applies as if it included a reference to—

- (a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and
- (b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

Penalties and Sentences Act 1992

- 1 **Section 15E(4), definition *offence of a sexual nature*, '208,'—**

omit.

- 2 **Part 14—**

insert—

**Division 13 Transitional provision for
Health and Other
Legislation Amendment
Act 2016**

**240 *Offence of a sexual nature* taken to include
references to Criminal Code, ss 208 and 209**

The definition *offence of a sexual nature* in section 15E(4) applies as if the reference to the Criminal Code, section 215 included a reference to—

- (a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and
- (b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

- 3 **Schedule 1, entry for the Criminal Code, item 5—**

omit.

- 4 **Schedule 1—**

insert—

**Criminal Code (Provision repealed by
Health and Other Legislation
Amendment Act 2016)**

1 section 208 (Unlawful sodomy)

5 **Schedule 1A, entry for the Criminal Code, section 208—**
omit.

6 **Schedule 1A—**
insert—

**Criminal Code (Provision repealed by
Health and Other Legislation
Amendment Act 2016)**

Section	Section heading
208	Unlawful sodomy

7 **Schedule 2, entry for the Criminal Code, section 208—**
omit.

8 **Schedule 2—**
insert—

Criminal Code (Provision repealed by Health and Other Legislation Amendment Act 2016)

Section	Section heading
208	Unlawful sodomy

Police Powers and Responsibilities Act 2000

- 1 Section 538(1)(d)—**
omit.
- 2 Section 538(1)(e), ‘girl’—**
omit, insert—
child
- 3 Section 538(1), note, ‘208 (Unlawful sodomy),’—**
omit.

Private Employment Agents Act 2005

- 1 Section 39(3), definition *offence of a sexual nature*, ‘208,’—**
omit.

2 Part 8—*insert—***53 Transitional provision for *Health and Other Legislation Amendment Act 2016***

The definition *offence of a sexual nature* in section 39(3) applies as if it included a reference to—

- (a) the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*; and
- (b) the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

Transport Operations (Passenger Transport) Act 1994**1 Schedule 1A, part 1, division 1, item 1—***omit.***2 Schedule 1A, part 1—***insert—*

Division 3A Provision of the Criminal Code repealed by the Health and Other Legislation Amendment Act 2016

- 1 section 208 (Unlawful sodomy) unless, when the offence was committed, the offender was aged between 17 and 20 (both inclusive) and the person

in relation to whom the offence was committed was not a person with an impairment of the mind and was aged between 14 and 17 (both inclusive)

Vicious Lawless Association Disestablishment Act 2013

1 After section 11—

insert—

12 Transitional provision for Health and Other Legislation Amendment Act 2016

The definition *declared offence* in section 3 applies as if it included a reference to the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*.

2 Schedule 1, entry for the Criminal Code, section 208—

omit.

Working with Children (Risk Management and Screening) Act 2000

1 Schedule 2, item 4, entry for the Criminal Code, section 208—

omit.

2 Schedule 3, item 1, entry for the Criminal Code—

insert—

208 Unlawful sodomy as the provision was in force from time to time before its repeal by the *Health and Other Legislation Amendment Act 2016*

3 Schedule 4, item 4, entry for the Criminal Code, section 208—

omit.

4 Schedule 5, item 1, entry for the Criminal Code—

insert—

208 Unlawful sodomy as the provision was in force from time to time before its repeal by the *Health and Other Legislation Amendment Act 2016* for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind

5 Schedule 6, item 4, entry for the Criminal Code, section 208—

omit.

6 Schedule 6A—

insert—

Criminal Code

Provision of Code	Relevant heading	Qualification relating to the provision of the Act
208	Unlawful sodomy	as the provision was in force from time to time before its repeal by the <i>Health and Other Legislation Amendment Act 2016</i> for an offence committed before 1 July 1997, only if committed against a child or a person with an impairment of the mind

Youth Justice Act 1992

1 Section 170(4), definition *offence of a sexual nature*, '208,'—
omit.

2 Part 11—
insert—

Division 13 **Transitional provision for Health and Other Legislation Amendment Act 2016**

369 Particular definitions are taken to include reference to Criminal Code, s 208

The following apply as if each provision included a reference to the Criminal Code, section 208 as in force at any time before its repeal by the *Health and Other Legislation Amendment Act 2016*—

- (a) definition *offence of a sexual nature* in section 170(4);
- (b) definition *disqualifying offence* in section 226C(4).

3 **Schedule 5, entry for the Criminal Code, section 208(2)—**
omit.

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