



Queensland

Health and Other Legislation Amendment Act 2023

Act No. 9 of 2023

An Act to amend the Hospital and Health Boards Act 2011, the Medicines and Poisons Act 2019, the Mental Health Act 2016, the Public Health Act 2005, the Radiation Safety Act 1999, the Recording of Evidence Act 1962, the Transplantation and Anatomy Act 1979 and the Water Fluoridation Act 2008 for particular purposes

[Assented to 2 May 2023]



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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 2023*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- (a) parts 2 and 4;
- (b) part 5, division 3;
- (c) parts 6 to 8.

Part 2 Amendment of Hospital and Health Boards Act 2011

3 Act amended

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

4 Amendment of s 7 (Role of Hospital and Health Services)

Section 7(5), from ‘the need’—

omit, insert—

particular matters in performing its functions.

[s 5]

5 Amendment of s 19 (Functions of Services)

Section 19(3)—

insert—

- (c) the need to promote a culture and implement measures to support the health, safety and wellbeing of staff of public sector health service facilities.

6 Amendment of s 22 (Role of exercising control over Service)

Section 22(2)—

insert—

- (c) the need to promote a culture and implement measures to support the health, safety and wellbeing of staff of public sector health service facilities.

7 Amendment of s 183 (Power to deal with persons causing a public nuisance)

(1) Section 183—

insert—

- (2A) However, the security officer must not give a direction under subsection (2) if the person requires emergency medical treatment that is immediately necessary to save the person's life or to prevent serious impairment to the person.

(2) Section 183(2A) and (3)—

renumber as section 183(3) and (4).

Part 3 **Amendment of Medicines and Poisons Act 2019**

8 Act amended

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

9 Amendment of s 14 (Meaning of *fumigant* and *pesticide*)

(1) Section 14(1), ‘section 19(2)(a), (b), (c) or (d)’—

omit, insert—

section 19(2)

(2) Section 14(2), ‘section 19(3)(a), (b) or (c)’—

omit, insert—

section 19(3)

10 Amendment of s 19 (Meaning of *pest management activity*, *fumigation activity* and *pest control activity*)

Section 19(2) and (3)—

omit, insert—

(2) A person carries out a *fumigation activity* if the person prepares or uses a substance to do any of the following activities when the substance becomes gaseous—

- (a) kill a pest;
- (b) sterilise grain or seed to prevent germination;
- (c) treat soil in which pests might be living;
- (d) another activity prescribed by regulation.

(3) A person carries out a *pest control activity* if the person prepares or uses a substance to do any of the following activities, other than a fumigation

[s 11]

activity—

- (a) kill, repel or stupefy a pest;
- (b) inhibit the feeding of a pest;
- (c) modify the physiology of a pest to alter its natural development or reproductive capacity.

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

Section 44(4), definition *primary producer*—

omit, insert—

primary producer, in relation to land, means a person using the land to commercially produce agricultural or horticultural products.

12 Amendment of s 221 (Disclosure of information to entities performing relevant functions)

(1) Section 221(1)(d)—

omit, insert—

- (d) to a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17; or
- (da) to the Veterinary Surgeons Board of Queensland established under the *Veterinary Surgeons Act 1936*, section 4; or
- (db) to an entity of the State or another jurisdiction responsible for law enforcement, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance; or

(2) Section 221(1)(da) to (j)—

renumber as section 221(1)(e) to (l).

(3) Section 221(3)—

omit, insert—

(3) This section does not limit, and is not limited by, section 231.

Note—

Section 231 allows the chief executive to give information to a person from the administrative action register and the substance authority register.

(3A) However, this section is subject to section 227 in relation to the disclosure of information in the monitored medicines database.

(4) Section 221(3A) and (4)—

renumber as section 221(4) and (5).

13 Replacement of s 231 (Publishing registers)

Section 231—

omit, insert—

231 Publishing, and giving information from, registers

(1) The chief executive may publish the substance authority register, or part of the register, on the department's website if the chief executive is satisfied it is in the public interest to do so.

(2) The chief executive may give information, including confidential information, from the administrative action register or the substance authority register to a person seeking the information if the chief executive is satisfied it is in the public interest to do so.

[s 14]

Part 4 **Amendment of Mental Health Act 2016**

14 **Act amended**

This part amends the *Mental Health Act 2016*.

15 **Amendment of s 740 (Appointment of representative)**

Section 740(4)—

omit, insert—

- (4) If the person is an adult with capacity, the person may waive the right to be represented by the appointed representative—
 - (a) in writing; or
 - (b) if the tribunal is satisfied it would not cause injustice to the person—in another way.

16 **Amendment of s 778 (Offence to use or disclose personal information)**

Section 778(3)(b), ‘part 3’—

omit, insert—

this Act

17 **Insertion of new ch 17, pt 5**

Chapter 17—

insert—

Part 5 **Availability of copies of tribunal records and transcripts**

793A Restrictions on availability of copies of records and transcriptions of proceedings

- (1) This section applies if—
 - (a) a record is made in relation to a proceeding in the tribunal under this Act; and
 - (b) the *Recording of Evidence Act 1962*, section 6 applies in relation to the record or a transcription of the record; and
 - (c) the president is the judicial person prescribed by regulation for the tribunal for that section; and
 - (d) a person requests a copy of the record or transcription under that section.
- (2) The president must not make available the copy of the record or transcription to the person unless the person is—
 - (a) a judicial person; or
 - (b) the registrar; or
 - (c) the chief psychiatrist performing a function or exercising a power under this Act; or
 - (d) an inspector mentioned in section 555(1) or (2) performing a function or exercising a power under this Act; or
 - (e) an entitled person, to the extent making the copy available would not contravene a confidentiality order or section 743.
- (3) Subsection (4) applies if—
 - (a) the person requesting the copy of the record or transcription is an entitled person who applied for an examination authority as a person mentioned in section 502(1)(c); and

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- (b) the copy relates to a decision in a proceeding in the tribunal about the examination authority.
- (4) The president must ensure that the copy of the record or transcription made available to the entitled person does not disclose the following information—
 - (a) contact details of the person the subject of the application for the examination authority;
 - (b) information about the health or health care of the person the subject of the application.
- (5) In this section—

entitled person, in relation to requesting a copy of a record or transcription, means a person entitled under this Act to be given written notice of a decision in a proceeding to which the copy relates.

judicial person see the *Recording of Evidence Act 1962*, section 4.

Part 5 **Amendment of Public Health Act 2005**

Division 1 **Preliminary**

18 **Act amended**

This part amends the *Public Health Act 2005*.

Division 2 Amendment commencing on assent

19 Amendment of s 213AA (Definitions for part)

Section 213AA, definition *school health program*—
omit, insert—

school health program, in relation to students of a school, means a program carried out to provide the students with any of the following types of health services—

- (a) a dental health service;
- (b) an immunisation health service;
- (c) a vision screening health service.

Division 3 Amendments commencing by proclamation

20 Amendment of s 229 (Definitions for pt 2)

(1) Section 229, definition *residential care facility*—
omit.

(2) Section 229—
insert—

director, of premises, means the person responsible for the day-to-day administration of the premises, whether or not the person has the title of director or has a financial interest in the premises.

(3) Section 229, definition *notification about cancer*, ‘section 234’—

omit, insert—

section 234, 234A, 234B, 234C, 234D

[s 21]

21 Replacement of s 234 (Notifications about cancer to be given to chief executive)

Section 234—

omit, insert—

234 Notification about pathological examination

- (1) This section applies to the director of a pathology laboratory if—
 - (a) a pathological examination of a specimen of human origin is carried out at the laboratory; and
 - (b) either—
 - (i) the examination indicates the person from whom the specimen was taken has, or has had, cancer; or
 - (ii) the director reasonably suspects the examination is a cancer-related follow-up examination.
- (2) The director must, within the period prescribed by regulation, give the chief executive a notification in the approved form about the pathological examination.

Maximum penalty—20 penalty units.

- (3) In this section—

cancer-related follow-up examination means a pathological examination of a specimen of human origin that is—

 - (a) carried out after the person from whom the specimen was taken has been diagnosed with cancer; and
 - (b) carried out—
 - (i) to determine the characteristics or status of the cancer; or

- (ii) to support or inform the treatment of the cancer.

234A Notification about diagnostic imaging procedure

- (1) This section applies to the director of a diagnostic imaging practice if—
 - (a) a diagnostic imaging procedure is carried out on a person at the practice; and
 - (b) either—
 - (i) the procedure indicates the person has, or has had, or may have, or may have had, cancer; or
 - (ii) the director reasonably suspects the procedure is a cancer-related follow-up procedure.
- (2) The director must, within the period prescribed by regulation, give the chief executive a notification in the approved form about the diagnostic imaging procedure.

Maximum penalty—20 penalty units.

- (3) In this section—

cancer-related follow-up procedure means a diagnostic imaging procedure that is—

 - (a) carried out on a person after the person has been diagnosed with cancer; and
 - (b) carried out—
 - (i) to identify the presence or absence of cancer; or
 - (ii) to support or inform the treatment of the cancer.

diagnostic imaging practice means a premises used for carrying out diagnostic imaging

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procedures.

diagnostic imaging procedure means a procedure for producing an image of an internal part of the human body for a diagnostic purpose.

Examples—

computerised tomography scan, magnetic resonance imaging scan, nuclear scan, positron emission tomography (PET), ultrasound scan, X-ray

234B Notification about cancer diagnosis at hospital

- (1) This section applies to the director of a hospital if—
 - (a) a person attends the hospital for treatment or care; and
 - (b) the person is diagnosed with cancer by a doctor at the hospital.
- (2) The director of the hospital must, within the period prescribed by regulation, give the chief executive a notification in the approved form about the diagnosis.

Maximum penalty—20 penalty units.

234C Notification about cancer-related treatment of hospital patient

- (1) This section applies to the director of a hospital if—
 - (a) a person attends the hospital for treatment or care; and
 - (b) the person is provided cancer-related treatment as a patient of the hospital, even if the treatment is not at the hospital.
- (2) The director of the hospital must, within the period prescribed by regulation, give the chief

executive a notification in the approved form about each cancer-related treatment provided to the person.

Maximum penalty—20 penalty units.

- (3) For this section, *cancer-related treatment*—
- (a) is an investigation, procedure or treatment that—
 - (i) is provided to a person who has, or has had, cancer; and
 - (ii) is related to treating the cancer; and
 - (b) includes an investigation, procedure or treatment related to previous treatment for cancer.

Example for paragraph (b)—

treatment of an adverse reaction to a medicine administered to treat cancer

- (4) However, *cancer-related treatment* does not include—
- (a) a pathological examination in relation to which section 234 applies; or
 - (b) a diagnostic imaging procedure in relation to which section 234A applies.

234D Notification about death at hospital

- (1) This section applies to the director of a hospital if—
 - (a) a person attends the hospital for treatment or care; and
 - (b) the director reasonably suspects the person has, or has had, cancer; and
 - (c) the person dies while at the hospital.
- (2) The director of the hospital must, within the

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period prescribed by regulation, give the chief executive a notification in the approved form about the death of the person.

Maximum penalty—20 penalty units.

22 Amendment of s 235 (Directions to give notifications about cancer to contractor)

(1) Section 235(1), ‘section 234(1), (3) or (5)’—

omit, insert—

a relevant provision

(2) Section 235(4), ‘section 234’—

omit, insert—

the relevant provision

(3) Section 235—

insert—

(6) In this section—

relevant provision means section 234(2), 234A(2), 234B(2), 234C(2) or 234D(2).

23 Amendment of s 236 (Further information may be required)

Section 236(2)(b)—

omit, insert—

(b) a doctor mentioned in the notification;

24 Insertion of new ch 12, pt 10

Chapter 12—

insert—

Part 10 Transitional provision for Health and Other Legislation Amendment Act 2023

518 Continued application of former s 234 for giving particular notifications

- (1) This section applies if—
 - (a) before the commencement, either of the following events happened—
 - (i) a pathological examination mentioned in former section 234(1) was undertaken;
 - (ii) a person mentioned in former section 234(3) separated from being a patient at a hospital; and
 - (b) immediately before the commencement, the time for giving a notification for the event under the former section had not ended; and
 - (c) immediately before the commencement, the notification had not been given to the chief executive.
- (2) The notification must be given as if former section 234 had not been repealed.
- (3) In this section—

former section 234 means section 234 as in force from time to time before the commencement.

25 Amendment of sch 2 (Dictionary)

Schedule 2, definition *residential care facility*—
omit.

29 Amendment of s 210 (Limited exemption for radiation source)

(1) Section 210, heading, ‘radiation source’—

omit, insert—

radioactive material and radiation apparatus

(2) Section 210(1), ‘a radiation source’—

omit, insert—

radioactive material or a radiation apparatus

Part 7 Amendment of Recording of Evidence Act 1962

30 Act amended

This part amends the *Recording of Evidence Act 1962*.

31 Amendment of s 4 (Definitions)

Section 4, definition *recording service*, paragraph (b), ‘section 5A or 5C’—

omit, insert—

section 5A, 5C or 6

32 Amendment of s 5 (Recording of relevant matter in legal proceedings)

Section 5(2)—

insert—

(d) for a legal proceeding before a tribunal prescribed under section 6(1)—under an arrangement under section 6(2).

[s 33]

33 Amendment of s 5B (Availability of copies of records and transcriptions)

(1) Section 5B—

insert—

(6A) This section does not apply in relation to a legal proceeding mentioned in section 5C or 6.

(2) Section 5B(6A) and (7)—

renumber as section 5B(7) and (8).

34 Amendment of s 5C (Inquiries and examinations)

Section 5C(4)—

omit.

35 Insertion of new s 6

After section 5C—

insert—

6 Legal proceedings before prescribed tribunals

- (1) This section applies in relation to a legal proceeding before a tribunal, other than QCAT, prescribed by regulation.
- (2) The judicial person prescribed by regulation for the tribunal may arrange for—
 - (a) the recording of relevant matter in the legal proceeding under section 5; or
 - (b) the transcription of a record under this Act of the legal proceeding.
- (3) For subsection (2), the recording or transcription may be carried out by a member or staff of the tribunal or by someone else, including, for example, a person who also provides services to the chief executive under an arrangement mentioned in section 5A(1).

-
- (4) Also, the judicial person prescribed by regulation for the tribunal must ensure appropriate arrangements are in place to ensure the availability to any person of—
- (a) copies of records under this Act; or
 - (b) copies of transcriptions of records under this Act.
- (5) For subsection (4), the copies of records or transcriptions must be available on request to—
- (a) a judicial person at no cost; and
 - (b) another person at the cost, if any, prescribed by regulation.
- (6) However, subsection (4) does not apply in relation to a copy of a record or transcription to the extent that, under this or another Act, or under an order of a court or judicial person, the copy of the record or transcription must not be made available to a person.

Part 8 **Amendment of Transplantation and Anatomy Act 1979**

36 Act amended

This part amends the *Transplantation and Anatomy Act 1979*.

37 Amendment of s 4 (Interpretation)

- (1) Section 4(1), definition *hospital*, paragraph (c)—
omit, insert—
- (b) a private hospital under the *Private Health Facilities Act 1999*; or
- (2) Section 4(1), definition *hospital*, paragraph (d)—

[s 38]

renumber as paragraph (c).

38 Omission of s 5 (Declaration of hospitals)

Section 5—

omit.

39 Amendment of s 42AA (Trading of tissue for particular purposes)

(1) Section 42AA(1)(c)—

insert—

(iv) obtained under the scheme known as the ‘Special Access Scheme’ administered by the Therapeutic Goods Administration; and

(2) Section 42AA(2)—

insert—

Therapeutic Goods Administration means the entity known as the ‘Therapeutic Goods Administration’ within the Commonwealth department responsible for administration of the *Therapeutic Goods Act 1989* (Cwlth).

Part 9 Amendment of Water Fluoridation Act 2008

40 Act amended

This part amends the *Water Fluoridation Act 2008*.

41 Amendment of s 13 (Notification of intention relating to fluoridation of public potable water supply)

(1) Section 13(2)(b)—

omit, insert—

- (b) publish the notice in a publicly accessible way.

Examples for paragraph (b)—

- publish the notice on the local government's website
- publish the notice in a newspaper circulating in the area of the State serviced by the public potable water supply

- (2) Section 13(3)(b)—

omit, insert—

- (b) publish the fluoridation notice in a publicly accessible way.

Examples for paragraph (b)—

- publish the fluoridation notice on the local government's website
- publish the fluoridation notice in a newspaper circulating in the area of the State serviced by the public potable water supply

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