



Queensland

Health and Other Legislation Amendment Bill (No. 2) 2023



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2023

A Bill

for

An Act to amend the Criminal Code, the *Hospital and Health Boards Act 2011*, the *Mental Health Act 2016*, the *Public Health Act 2005*, the *Termination of Pregnancy Act 2018* and the legislation mentioned in schedule 1 for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Health and Other Legislation
Amendment Act (No. 2) 2023*. 4
5

Clause 2 Commencement 6

The following provisions commence on a day to be fixed by
proclamation— 7
8

(a) part 2; 9

(b) part 3, division 3; 10

(c) parts 4, 6 and 7; 11

(d) schedule 1. 12

Part 2 Amendment of Criminal Code 13

Clause 3 Code amended 14

This part amends the Criminal Code. 15

Note— 16

See also the amendments in schedule 1. 17

**Clause 4 Amendment of s 319A (Termination of pregnancy
performed by unqualified person)** 18
19

(1) Section 319A(1) and (2), ‘on a woman’— 20

omit, insert— 21

on another person 22

-
- (2) Section 319A(2), note, from ‘woman’ to ‘herself’— 1
omit, insert— 2
 person who consents to, assists in, or performs a 3
 termination on themselves 4
- (3) Section 319A(3), definition *assisting*, ‘woman’— 5
omit, insert— 6
 person 7
- (4) Section 319A(3)— 8
insert— 9
 medical termination means a termination caused 10
 by use of a termination drug. 11
- (5) Section 319A(3), definition *prescribed student*, paragraph 12
(b)— 13
omit, insert— 14
- (b) who assists in the performance of a 15
 termination on a person only— 16
- (i) under the supervision of— 17
- (A) a medical practitioner performing 18
 the termination; or 19
- (B) for a medical termination—a 20
 registered health practitioner, to 21
 whom the *Termination of* 22
 Pregnancy Act 2018, section 6A 23
 applies, performing the 24
 termination; or 25
- (C) a prescribed practitioner lawfully 26
 assisting in the performance of the 27
 termination; or 28
- (D) the student’s primary clinical 29
 supervisor; and 30
- (ii) to the extent necessary to complete the 31
 student’s program of study for, or 32

[s 4]

| | | |
|------|---|----------------------|
| | clinical training in, the student’s health profession. | 1 2 |
| (6) | Section 319A(3), definition <i>unqualified person</i> , paragraph (a)— | 3 4 |
| | <i>omit, insert—</i> | 5 |
| | (a) in relation to the performance of a termination—a person who is not— | 6 7 |
| | (i) a medical practitioner; or | 8 |
| | (ii) for a medical termination—a registered health practitioner to whom the <i>Termination of Pregnancy Act 2018</i> , section 6A applies; or | 9 10 11 12 |
| (7) | Section 319A(3), definition <i>unqualified person</i> , paragraph (b), ‘a woman’— | 13 14 |
| | <i>omit, insert—</i> | 15 |
| | another person | 16 |
| (8) | Section 319A(3), definition <i>unqualified person</i> , paragraph (b), after subparagraph (i)— | 17 18 |
| | <i>insert—</i> | 19 |
| | (ia) for a medical termination—a registered health practitioner to whom the <i>Termination of Pregnancy Act 2018</i> , section 6A applies; or | 20 21 22 23 |
| (9) | Section 319A(3), definition <i>unqualified person</i> , paragraph (b)(ia) to (iii)— | 24 25 |
| | <i>renumber</i> as subparagraphs (ii) to (iv). | 26 |
| (10) | Section 319A(3), definition <i>woman</i> — | 27 |
| | <i>omit.</i> | 28 |

| | | |
|-------------------|---|----------------|
| Part 3 | Amendment of Hospital and Health Boards Act 2011 | 1 2 |
| Division 1 | Preliminary | 3 |
| Clause 5 | Act amended | 4 |
| | This part amends the <i>Hospital and Health Boards Act 2011</i> . | 5 |
| Division 2 | Amendments commencing on assent | 6 7 |
| Clause 6 | Amendment of s 135 (Reports by clinical reviewers other than to provide advice to investigator) | 8 9 |
| | Section 135(7)— | 10 |
| | <i>omit, insert—</i> | 11 |
| | (7) Subsection (8) applies if— | 12 |
| | (a) a report is provided to the chief executive after a clinical review in the department or a Service; or | 13 14 15 |
| | (b) a copy of a report is given to the chief executive under section 137 after a clinical review in a Service; or | 16 17 18 |
| | (c) a report is provided to a health service chief executive after a clinical review in the Service. | 19 20 21 |
| Clause 7 | Amendment of s 199 (Reports by health service investigators) | 22 23 |
| | Section 199(7)— | 24 |
| | <i>omit, insert—</i> | 25 |

[s 8]

| | | |
|-----------------|--|------------------------------------|
| | (7) Subsection (8) applies if— | 1 |
| | (a) a report is provided to the chief executive after an investigation in the department or a Service; or | 2 3 4 |
| | (b) a copy of a report is given to the chief executive under section 200 after an investigation in a Service; or | 5 6 7 |
| | (c) a report is provided to a health service chief executive after an investigation in the Service. | 8 9 10 |
| Clause 8 | Insertion of new pt 13, div 8 | 11 |
| | Part 13— | 12 |
| | <i>insert—</i> | 13 |
| | Division 8 | Transitional provisions for |
| | | Health and Other |
| | | Legislation Amendment |
| | | Act (No. 2) 2023 |
| | | 14 15 16 17 |
| | 330 Clinical reviews started before commencement | 18 19 |
| | Section 135, as in force on the commencement, applies in relation to a clinical review for which a report is provided after the commencement, whether the review started before or after the commencement. | 20 21 22 23 24 |
| | 331 Health service investigations started before commencement | 25 26 |
| | Section 199, as in force on the commencement, applies in relation to an investigation for which a report is provided after the commencement, whether the investigation started before or after | 27 28 29 30 |

| | | |
|-------------------|--|----------------------------------|
| | the commencement. | 1 |
| Division 3 | Amendments commencing by proclamation | 2 3 |
| Clause 9 | Amendment of s 84 (Disclosure of information) | 4 |
| | Section 84(1)— | 5 |
| | <i>insert</i> — | 6 |
| | (ca) to the chief executive under section 85A; or | 7 |
| Clause 10 | Insertion of new s 85A | 8 |
| | After section 85— | 9 |
| | <i>insert</i> — | 10 |
| | 85A Disclosure to prevent serious risk of harm | 11 |
| | (1) This section applies if a committee forms a reasonable belief that a health professional, in the practice of the health professional’s profession, poses a serious risk of harm to a person because of the health professional’s health, conduct or performance. | 12 13 14 15 16 17 |
| | (2) The committee must disclose to the health professional’s chief executive— | 18 19 |
| | (a) the information that forms the basis of the reasonable belief; and | 20 21 |
| | (b) the identity of the health professional. | 22 |
| | (3) Subsection (2)(b) applies despite section 83(2). | 23 |
| | (4) The chief executive must not disclose to another person information obtained under subsection (2), other than— | 24 25 26 |
| | (a) if the chief executive is the chief executive of the department or a prescribed Service— | 27 28 |

[s 10]

- (i) to the extent necessary to allow the chief executive to perform the chief executive's functions under this Act or the *Public Sector Act 2022*; or
 - (ii) for the purposes of making a notification about the health professional under the Health Practitioner Regulation National Law (Queensland), part 8, division 2; or
- (b) if the chief executive is the chief executive of a private health facility—
 - (i) to the extent necessary to allow the chief executive to perform the chief executive's functions relating to the management of the facility; or
 - (ii) for the purposes of making a notification about the health professional under the Health Practitioner Regulation National Law (Queensland), part 8, division 2.
- (5) In this section—
chief executive, of a health professional, means—
 - (a) if the health professional is appointed as a health service employee or public service officer in the department—the chief executive of the department; or
 - (b) if the health professional is appointed as a health service employee in a prescribed Service—the health service chief executive of the prescribed Service; or
 - (c) if the health professional is employed in a private health facility—the licensee of the facility.

| | | |
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| Clause 11 | Amendment of s 112 (Giving of copy of RCA report—patient safety entity) | 1 2 |
| (1) | Section 112(4)(b), from ‘other than’ to ‘was given’— <i>omit.</i> | 3 4 |
| (2) | Section 112— <i>insert—</i> | 5 6 |
| | (4A) However, a person who performs functions for the entity may disclose the following information to another person for the authorised purpose for which the copy of the report was given— | 7 8 9 10 |
| | (a) information contained in the copy of the report, including, for example, recommendations mentioned in section 100(1)(c); | 11 12 13 14 |
| | (b) information mentioned in subsection (3)(a) and (b). | 15 16 |
| | <i>Example of disclosing information mentioned in subsection (4A)—</i> | 17 18 |
| | giving another person access, for the authorised purpose, to information mentioned in the subsection by including the information in an information system | 19 20 21 |
| (3) | Section 112(5), ‘However,’— <i>omit, insert—</i> | 22 23 |
| | Also, | 24 |
| (4) | Section 112(6), ‘(4)(b) or (c)’— <i>omit, insert—</i> | 25 26 |
| | (4)(c) or (4A) | 27 |
| Clause 12 | Amendment of s 138B (Prescription of minimum nurse-to-patient and midwife-to-patient ratios) | 28 29 |
| | Section 138B(3)— <i>omit, insert—</i> | 30 31 |

[s 13]

- (3) For this section— 1
- (a) a nurse or midwife is taken to be engaged in 2
delivering a health service only if directly 3
involved in providing care to 1 or more of 4
the patients receiving the service; and 5
- (b) to remove any doubt, it is declared that if a 6
person receiving care in a maternity ward 7
gives birth, the person’s newborn baby is 8
also counted as a patient receiving the 9
service. 10
- (4) In this section— 11
- newborn baby* includes a baby— 12
- (a) who has shown no sign of respiration or 13
heartbeat, or other sign of life, on being 14
born; and 15
- (b) who— 16
- (i) has been gestated for 20 weeks or 17
more; or 18
- (ii) weighs 400 grams or more. 19

Part 4 **Amendment of Mental Health Act 2016** 20
21

Clause 13 **Act amended** 22
This part amends the *Mental Health Act 2016*. 23

Clause 14 **Amendment of ch 5, pt 5, div 2, hdg (Admissibility and 24
use of evidence)** 25
Chapter 5, part 5, division 2, heading, after ‘evidence’— 26
insert— 27
and transcript 28

| | | |
|------------------|--|----------------------|
| Clause 15 | Amendment of s 157 (Admissibility of expert’s report at trial) | 1 2 |
| | (1) Section 157, heading, after ‘expert’s report’— | 3 |
| | <i>insert—</i> | 4 |
| | and transcript | 5 |
| | (2) Section 157, before unnumbered subsection— | 6 |
| | <i>insert—</i> | 7 |
| | (1) This section applies to— | 8 |
| | (a) an expert’s report received in evidence by the Mental Health Court on a reference; and | 9 10 |
| | (b) a transcript of the proceeding of the Mental Health Court on the reference. | 11 12 |
| | (3) Section 157, unnumbered subsection— | 13 |
| | <i>number</i> as section 157(2). | 14 |
| | (4) Section 157(2), as numbered, from ‘An’ to ‘in relation to the reference’— | 15 16 |
| | <i>omit, insert—</i> | 17 |
| | The report and transcript are admissible at the trial of the person for the offence in relation to the reference, or any other offence alleged to have been committed by the person, | 18 19 20 21 |
| Clause 16 | Amendment of s 157A (Admissibility of expert’s report in proceeding before Magistrates Court) | 22 23 |
| | (1) Section 157A, heading, after ‘expert’s report’— | 24 |
| | <i>insert—</i> | 25 |
| | and transcript | 26 |
| | (2) Section 157A(1)— | 27 |
| | <i>omit, insert—</i> | 28 |
| | (1) This section applies to— | 29 |

[s 17]

- (a) an expert's report received in evidence by the Mental Health Court on a reference; and
 - (b) a transcript of the proceeding of the Mental Health Court on the reference.
- (3) Section 157A(2), from 'The report' to 'Magistrates Court'—
omit, insert—
- The report and transcript are admissible in a proceeding before a Magistrates Court for the offence in relation to the reference, or any other offence alleged to have been committed by the person,

Clause 17 Replacement of s 160 (Other use of expert's report)

Section 160—
insert—

160 Other use of expert's report

- (1) This section applies to an expert's report filed in the Mental Health Court Registry for a proceeding on a reference.
- (2) The report may be given to, and used by, a person only with the leave of the court.
- (3) The court may grant the leave subject to the conditions it considers appropriate.
- (4) Despite subsection (2), if the report has been received in evidence by the court on the reference, the report may be given to—
 - (a) if an authorised mental health service is responsible for the person the subject of the reference—the administrator of the service; or
 - (b) if the forensic disability service is responsible for the person the subject of the

| | | | |
|------------------|---|-----------------------------------|----|
| | reference—the administrator of the service; | 1 | |
| | or | 2 | |
| | (c) the tribunal for conducting a review. | 3 | |
| Clause 18 | Insertion of new ch 21, pt 4 | 4 | |
| | Chapter 21— | 5 | |
| | <i>insert—</i> | 6 | |
| | Part 4 | Transitional provision | 7 |
| | | for Health and Other | 8 |
| | | Legislation | 9 |
| | | Amendment Act (No. 2) | 10 |
| | | 2023 | 11 |
| | 874 Application of amendments about | 12 | |
| | admissibility relating to references | 13 | |
| | (1) Chapter 5, part 5, division 2, as in force on the | 14 | |
| | commencement, applies in relation to an expert’s | 15 | |
| | report, or a transcript, for a proceeding for a | 16 | |
| | reference if the reference is made after the | 17 | |
| | commencement. | 18 | |
| | (2) For subsection (1), it is irrelevant whether the | 19 | |
| | offence in relation to the reference, or any other | 20 | |
| | offence alleged to have been committed by the | 21 | |
| | person, is alleged to have been committed before | 22 | |
| | or after the commencement. | 23 | |
| | Part 5 | Amendment of Public Health | 24 |
| | | Act 2005 | 25 |
| Clause 19 | Act amended | 26 | |
| | This part amends the <i>Public Health Act 2005</i> . | 27 | |

[s 20]

| | | |
|------------------|--|------------------|
| Clause 20 | Amendment of s 279AF (Obligation to notify chief executive) | 1 2 |
| | Section 279AF(4)— | 3 |
| | <i>insert—</i> | 4 |
| | (d) the chief medical officer for the Commonwealth Department of Health and Aged Care for the purpose of recording the information in a national register. | 5 6 7 8 |
| Part 6 | Amendment of Termination of Pregnancy Act 2018 | 9 10 |
| Clause 21 | Act amended | 11 |
| | This part amends the <i>Termination of Pregnancy Act 2018</i> . | 12 |
| | <i>Note—</i> | 13 |
| | See also the amendments in schedule 1. | 14 |
| Clause 22 | Insertion of new s 6A | 15 |
| | After section 6— | 16 |
| | <i>insert—</i> | 17 |
| | 6A Medical termination by particular registered health practitioners | 18 19 |
| | (1) This section applies to each of the following registered health practitioners— | 20 21 |
| | (a) a practitioner whose health profession is midwifery; | 22 23 |
| | (b) a practitioner whose health profession is nursing; | 24 25 |
| | (c) another practitioner prescribed by regulation. | 26 27 |
| | (2) The registered health practitioner may, in the | 28 |

| | | |
|------------------|--|----|
| | practice of the practitioner’s health profession, | 1 |
| | perform a termination on a person if— | 2 |
| | (a) the termination is a medical termination; | 3 |
| | and | 4 |
| | (b) the practitioner is authorised under the | 5 |
| | <i>Medicines and Poisons Act 2019</i> , section 54 | 6 |
| | to carry out the activity that constitutes the | 7 |
| | performance of the termination. | 8 |
| | (3) For subsection (2), a registered health practitioner | 9 |
| | performs a medical termination on a person if the | 10 |
| | practitioner prescribes, or gives a treatment dose | 11 |
| | of, a termination drug for use in the termination. | 12 |
| | (4) In this section— | 13 |
| | give a treatment dose , of a termination drug, has | 14 |
| | the meaning given under the <i>Medicines and</i> | 15 |
| | <i>Poisons Act 2019</i> , section 25(3). | 16 |
| Clause 23 | Amendment of s 7 (Registered health practitioners and | 17 |
| | students who may assist) | 18 |
| | (1) Section 7, before subsection (1)— | 19 |
| | <i>insert—</i> | 20 |
| | (1AA) This section applies in relation to— | 21 |
| | (a) the performance of a termination on a | 22 |
| | person by a medical practitioner; or | 23 |
| | (b) the performance of a medical termination on | 24 |
| | a person by a registered health practitioner | 25 |
| | to whom section 6A applies. | 26 |
| | (2) Section 7(1) and (2), from ‘a termination’ to ‘a medical | 27 |
| | practitioner’— | 28 |
| | <i>omit, insert—</i> | 29 |
| | the termination | 30 |
| | (3) Section 7(2)(a)(i), after ‘practitioner’— | 31 |

[s 24]

- insert*— 1
or registered health practitioner 2
- (4) Section 7(3), ‘subsections (1) and (2)’— 3
omit, insert— 4
subsections (2) and (3) 5
- (5) Section 7(3), from ‘performed by’— 6
omit, insert— 7
performed by— 8
(a) the medical practitioner other than under 9
section 5 or 6; or 10
(b) the registered health practitioner other than 11
under section 6A. 12
- (6) Section 7(1AA) to (3)— 13
renumber as section 7(1) to (4). 14

- Clause 24 Amendment of s 8A (Prescribed student with conscientious objection)** 15
16
- (1) Section 8A(1)(a), ‘a woman’— 17
omit, insert— 18
another person 19
- (2) Section 8A(3), definition *relevant person*, after paragraph 20
(a)— 21
insert— 22
(aa) for a medical termination—a registered 23
health practitioner, to whom section 6A 24
applies, performing the termination; or 25
- (3) Section 8A(3), definition *relevant person*, paragraphs (aa) to 26
(c)— 27
renumber as paragraphs (b) to (d). 28

| | | |
|------------------|---|---|
| Clause 25 | Amendment of sch 1 (Dictionary) | 1 |
| | Schedule 1— | 2 |
| | <i>insert—</i> | 3 |
| | <i>medical termination</i> means a termination caused | 4 |
| | by use of a termination drug. | 5 |
| | Part 7 | |
| | Amendment of legislation | 6 |
| Clause 26 | Legislation amended | 7 |
| | Schedule 1 amends the legislation it mentions. | 8 |

| | | |
|------------------------------------|--|----|
| Schedule 1 | Other amendments | 1 |
| | section 26 | 2 |
| Criminal Code | | 3 |
| 1 | Section 313(1), ‘a female’— | 4 |
| | <i>omit, insert—</i> | 5 |
| | another person | 6 |
| 2 | Section 313(1A), note, ‘woman’s’— | 7 |
| | <i>omit, insert—</i> | 8 |
| | person’s | 9 |
| 3 | Section 313(1A), note, ‘herself’— | 10 |
| | <i>omit, insert—</i> | 11 |
| | themselves | 12 |
| 4 | Section 313(2), ‘a female pregnant’— | 13 |
| | <i>omit, insert—</i> | 14 |
| | another person who is pregnant | 15 |
| Powers of Attorney Act 1998 | | 16 |
| 1 | Schedule 2, section 11, example 2, ‘woman’— | 17 |
| | <i>omit, insert—</i> | 18 |

| | | |
|----------|--|----|
| | person | 1 |
| | Termination of Pregnancy Act 2018 | 2 |
| 1 | References to women— | 3 |
| | Each of the following provisions is amended by omitting ‘women’ and inserting ‘persons’— | 4 |
| | • section 3(a) | 5 |
| | • section 13, definition <i>termination services premises</i> , paragraph (a). | 6 |
| | | 7 |
| | | 8 |
| 2 | References to woman— | 9 |
| | Each of the following provisions is amended by omitting ‘woman’ and inserting ‘person’— | 10 |
| | • section 5 | 11 |
| | • section 6 | 12 |
| | • section 8 | 13 |
| | • section 9 | 14 |
| | • section 10 | 15 |
| | • schedule 1, definition <i>assisting</i> . | 16 |
| | | 17 |
| 3 | Section 6, ‘woman’s’— | 18 |
| | Section 6, ‘woman’s’— | 19 |
| | <i>omit, insert—</i> | 20 |
| | person’s | 21 |
| 4 | Section 8(3), ‘her’— | 22 |
| | <i>omit, insert—</i> | 23 |

Schedule 1

| | | |
|----------|---|----|
| | the person's | 1 |
| 5 | Section 9(1)(a), 'or 6'— | 2 |
| | <i>omit, insert—</i> | 3 |
| | , 6 or 6A | 4 |
| 6 | Section 10, heading, 'Woman'— | 5 |
| | <i>omit, insert—</i> | 6 |
| | Person | 7 |
| 7 | Section 10, 'herself'— | 8 |
| | <i>omit, insert—</i> | 9 |
| | themselves | 10 |
| 8 | Schedule 1, definition <i>woman</i>— | 11 |
| | <i>omit.</i> | 12 |

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