Our reference: BNE3416962

24 December 2019

Committee Secretary

Health, Communities, Disability Services

and Domestic and Family Violence Prevention Committee

Parliament House

BRISBANE QLD 4000

***By email:*** [health@parliament.qld.gov.au](mailto:health@parliament.qld.gov.au)

Dear Committee

**HEALTH LEGISLATION AMENDMENT BILL 2019**

Thank you for the opportunity to make a submission to the inquiry into the Health Legislation Amendment Bill 2019 (the Bill). This submission is confined to Part 3 of the Bill containing amendment of the *Hospital and Health Boards Act 2011*.

The explanatory notes for this portion of the Bill state the amendments implement policy initiatives and improves the effective operation of the *Hospital and Health Boards Act 2011* by:

* + strengthening the commitment to health equity for Aboriginal people and Torres Strait Islander people and strengthening the capability and effectiveness of Hospital and Health Boards by:
    - including as a guiding principle a commitment to achieving health equity and delivery of responsive, capable and culturally competent health care to Aboriginal people and Torres Strait Islander people;
    - requiring each Hospital and Health Service to have a strategy for achieving health equity for Aboriginal people and Torres Strait Islander people; and
    - requiring each Hospital and Health Board to have one or more Aboriginal persons and/or Torres Strait Islander persons as members.

The Queensland Human Rights Commission (the Commission) strongly supports the passage of Part 3 of the Bill.

**The role of the Queensland Human Rights Commission**

The Queensland Human Rights Commission has functions under the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019 (HRA)* to promote an understanding and discussion of human rights in Queensland, and to provide information and educative services about human rights.

Queensland’s Human Rights Act 2019 and Anti-Discrimination Act 1991 (ADA) contain specific protections for Aboriginal and Torres Strait Islander people, which we work to uphold.

Part 3 of the Bill aligns with the Commission’s vision of making human rights real for everyone in Queensland.

**Background to Proposed Amendment to the Hospital and Health Boards Act 2011**

In 2008, the Commonwealth and all Australian States and Territories committed to action to ‘Closing the Gap’ between Aboriginal people and Torres Strait Islander people and other Australians through the National Indigenous Reform Agreement. The Close the Gap Campaign brought public attention to the poorer health of Aboriginal and Torres Strait Islander people compared to the non-Indigenous population, and the National Aboriginal and Torres Strait Islander Health Plan 2013–2023 identified the need to address systemic racism within the health system to improve health outcomes.

Systemic racism is the observance and administration of policies, rules and procedures that purport to treat everybody equally, but are unfairly or inequitably administered or applied in dealings with people belonging to a particular racial, ethnic, religious or cultural group. In some instances this can be a form of indirect discrimination prohibited by the *Anti-Discrimination Act 1991.[[1]](#footnote-1)*

The explanatory notes to the Bill detail the genesis of these proposed amendments to the Hospital and Health Boards Act 2011 as follows:

In March 2017, Adrian Marrie provided 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) to the Anti-Discrimination Commission Queensland. The Health Equity Report identified institutional barriers to health equity for Aboriginal people and Torres Strait Islander people in Queensland’s public health system.

The Health Equity Report considered the *Hospital and Health Boards Act* renders Aboriginal people and Torres Strait Islander people ‘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 health care to Aboriginal and Torres Strait Islander people in Queensland as an object of the Act; and
  + 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 health care or health service delivery among the skills, knowledge and experience required for a Hospital and Health Service to perform its functions effectively and efficiently.

The Health Equity Report concluded that, ‘the *Hospital and Health Boards Act* fails to give the necessary legislative force to the COAG 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.

In early 2019, the Minister for Health and Minister for Ambulance Services convened an expert panel comprising Mr Jim McGowan AM, Professor Anne Tiernan and Dr Pradeep Philip (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. The Panel also recommended the mandating of Aboriginal and Torres Strait Islander representation on Hospital and Health Boards.

**Human Rights**

## The Bill is consistent with Queensland’s international obligations to uphold the human rights of everyone. The human rights of Aboriginal and Torres Strait Islander people have been affirmed and upheld though various international human rights instruments, including the *International Covenant on Civil and Political Rights* (the ICCPR), *International Convention on the Elimination of All Forms of Racial Discrimination*, and United Nations *Declaration on the Rights of Indigenous Peoples*.

The *Human Rights Act 2019* aims to consolidate and establish statutory protections for human rights recognised under human rights treaties. A key human right protected under the HRA is the right to recognition and equality before the law, based on articles 16 and 26 of the ICCPR.[[2]](#footnote-2) Other relevant human rights expressed in the HRA that may be afforded protection by Part 3 of the Bill include the right to receive health services without discrimination,[[3]](#footnote-3) and the cultural rights of Aboriginal and Torres Strait Islander peoples.[[4]](#footnote-4)

**Discrimination**

The *Anti-Discrimination Act 1991* provides protection from discrimination for people in Queensland on the basis of their race in the provision of services, including the provision of health services.[[5]](#footnote-5) The ADA also permits acts to promote equal opportunity for a group of people if the purpose of the act is not inconsistent with the ADA. This is only permitted until the purpose of equal opportunity has been achieved[[6]](#footnote-6).

The Bill is consistent with the purposes set out in the *Anti-Discrimination Act 1991* in promoting the equality of opportunity for everyone and ensuring that all Queenslanders live free from discrimination.

The Queensland Human Rights Commission strongly supports Part 3 of the Bill, and recommends the Committee supports its passage through the Parliament.

Yours sincerely

[signed]

**SCOTT MCDOUGALL**

**Queensland Human Rights Commissioner**

1. Section 11 *Anti-Discrimination Act 1991*. [↑](#footnote-ref-1)
2. Section 15 *Human Rights Act 2019* (Qld) [↑](#footnote-ref-2)
3. Section 37 *Human Rights Act 2019* (Qld) [↑](#footnote-ref-3)
4. Section 28 *Human Rights Act 2019* (Qld) [↑](#footnote-ref-4)
5. Sections 9 and 46 Anti-Discrimination Act 1991(Qld) [↑](#footnote-ref-5)
6. Section 105 Anti-Discrimination Act 1991(Qld) [↑](#footnote-ref-6)