

# Hospital and Health Boards Amendment Regulation (No. 1) 2016

Explanatory notes for SL 2016 No. 20

made under the

*Hospital and Health Boards Act 2011*

## General Outline

### Short title

*Hospital and Health Boards Amendment Regulation (No. 1) 2016*

### Authorising law

Section 282 of the *Hospital and Health Boards Act 2011*.

### Policy objectives and the reasons for them

The object of the *Hospital and Health Boards Act 2011* (the Act) is to establish a public sector health system that delivers high quality hospital and other services to Queenslanders, having regard to the principles and objectives of the national health system. To achieve this object, the Act provides for the establishment of Hospital and Health Services, which are statutory bodies and the principal providers of public sector health services. Hospital and Health Services and the area they service are prescribed in the *Hospital and Health Boards Regulation 2012*.

Section 142 of the Act establishes a duty of confidentiality for ‘designated persons’, preventing those persons from disclosing confidential information about any person receiving public sector health services, if the person receiving the treatment could be identified from confidential information. The Act prescribes a number of exceptions to the duty of confidentiality (sections 143 to 161B). Specifically, under section 150(b), information may be disclosed if the disclosure is to an entity prescribed under a regulation for the purposes of evaluating, managing, monitoring or planning health services.

Queensland Health has agreed to participate in the Australian and New Zealand Society of Cardiac and Thoracic Surgeons (ANZSCTS) Cardiac Surgery Database, which is a population-based, identified, cardiac surgery intervention clinical quality register. The Australasian Cardiac Surgery Research Institution operates and maintains the ANZSCTS Cardiac Surgery Database in collaboration with Monash University as the data custodian.

Participation in the ANZSCTS Cardiac Surgery Database will require Queensland Health to provide patient-identifying information to the Australasian Cardiac Surgery Research Institution and Monash University about adult patients undergoing:

- cardiac surgery;
- other thoracic surgery using cardiopulmonary bypass; or
- pericardiectomy for constructive pericarditis where performed on or off cardiopulmonary bypass in public hospitals.

The patient information provided by Queensland Health will be used to:

- compile, maintain and update the ANZSCTS Cardiac Surgery Database;
- produce national reports to indicate how Queensland compares to available national data and outcomes;
- conduct research projects (using only aggregated, de-identified data); and
- conduct data linkages to obtain additional, validating or long-term data.

The data collected through the ANZSCTS Cardiac Surgery Database will enable the Australasian Cardiac Surgery Research Institution and Monash University to monitor, analyse and assist in the improvement of the safety and quality of cardiac surgery in Australia.

Queensland Health has signed a Data Disclosure Deed with the Australasian Cardiac Surgery Research Institution and Monash University to provide a framework for ensuring confidentiality of information provided for the ANZSCTS Cardiac Surgery Database. However, as participation in the ANZSCTS Cardiac Surgery Database requires the disclosure of patient-identifying information, this disclosure must be enabled under an exception to the duty of confidentiality in the Act.

## **Achievement of policy objectives**

Section 150(b) of the Act enables patient information to be disclosed if the disclosure is to an entity prescribed under a regulation for the purposes of evaluating, managing, monitoring or planning health services. Entities are currently prescribed under section 35 of the *Hospital and Health Boards Regulation 2012*.

In accordance with section 150(b) of the Act, the regulation prescribes the Australasian Cardiac Surgery Research Institution and Monash University as entities to whom confidential information may be disclosed for the purpose of evaluating, managing, monitoring or planning health services relating to cardiac surgery health services.

## **Consistency with policy objectives of authorising law**

The regulation is consistent with the policy objectives of the *Hospital and Health Boards Act 2011*, by ensuring and improving the delivery of cardiac surgery and other health services in the public sector health system.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

The regulation is the only effective means of achieving the policy objectives.

## **Benefits and costs of implementation**

The regulation does not impose significant costs on the persons or organisations to which they apply.

## **Consistency with fundamental legislative principles**

The amendment to enable disclosure of confidential patient-identifying information potentially breaches fundamental legislative principles in regards to interfering with the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

Disclosures to the Australasian Cardiac Surgery Research Institution and Monash University are underpinned by an agreement (the Data Disclosure Deed) between Queensland Health and these entities. The Data Disclosure Deed, which takes effect when the regulation commences, operates alongside the Act, the *Information Privacy Act 2009* and the National Privacy Principles to provide safeguards for the security and use of patient-identifying information provided for the ANZSCTS Cardiac Surgery Database.

In particular, the Data Disclosure Deed requires the Australasian Cardiac Surgery Research Institution and Monash University, as recipients of the patient information, to:

- ensure security of the information to prevent loss and unauthorised access, use, modification, disclosure or other misuse;
- not use the information other than for the purposes for which it was provided;
- not disclose the information or transfer the information outside of Australia without the prior written consent of Queensland Health; and
- immediately notify Queensland Health of any unlawful use or disclosure of the information in their possession or control.

## **Consultation**

The Australasian Cardiac Surgery Research Institution and Monash University were consulted, as signatories to the Data Disclosure Deed. The Office of the Information Privacy Commissioner Queensland was also consulted during development of the Data Disclosure Deed and feedback was incorporated into that document.

The Office of Best Practice Regulation, Queensland Productivity Commission, was consulted about the regulatory proposal, in satisfaction of the requirements of the Regulatory Impact Statement System. The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required for the regulatory proposal.

## Notes on provisions

### Short Title

*Clause 1* provides the short title of the regulation.

### Regulation amended

*Clause 2* provides that the regulation amends the *Hospital and Health Boards Regulation 2012*.

### **Amendment of s 35 (Disclosure of confidential information for purposes relating to health services)**

*Clause 3* amends section 35(1) to prescribe the Australasian Cardiac Surgery Research Institution (ABN 44 099 817 106) and Monash University (ABN 12 377 614 012) as entities to whom confidential patient information about cardiac surgery may be disclosed under section 150(b) of the Act, for use in the ANZSCTS Cardiac Surgery Database.