

Health Legislation (Information Sharing) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 31

made under the

Ambulance Service Act 1991

Hospital and Health Boards Act 2011

Private Health Facilities Act 1999

General Outline

Short title

Health Legislation (Information Sharing) Amendment Regulation 2018

Authorising law

Section 54 of the *Ambulance Service Act 1991*

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

Section 151 of the *Private Health Facilities Act 1999*

Policy objectives and the reasons for them

The purpose of the regulation is to enable the lawful disclosure of confidential information to particular Commonwealth and state government entities, and health, statistical and national authorities under the *Ambulance Service Act 1991*, the *Hospital and Health Boards Act 2011* (HHB Act) and the *Private Health Facilities Act 1999* (the PHF Act), by prescribing new and updated agreements.

Disclosure of confidential information

Ambulance Service Regulation 2015

Under section 49 of the *Ambulance Service Act 1991*, a ‘designated officer’ must not disclose confidential information unless the disclosure is authorised under the Act. ‘Confidential information’ is information that:

- a person has because they are a designated officer; and
- identifies a person as someone who is receiving, or has received, an ambulance service.

A ‘designated officer’ includes the chief executive, a service officer, an honorary ambulance officer, or an agent of the Queensland Ambulance Service (QAS).

Disclosure of confidential information by designated officers is authorised under section 50L(1)(b) of the *Ambulance Service Act 1991* if the disclosure is to an entity of the State and the disclosure is allowed under an agreement prescribed under a regulation. The agreements prescribed for this section are set out in schedule 2, part 2 of the *Ambulance Service Regulation 2015*.

Disclosure to Queensland Police Service, Queensland Fire and Emergency Services and Public Safety Business Agency

QAS plans to share information, including confidential information, with the Queensland Police Service (QPS), Queensland Fire and Emergency Services (QFES) and Public Safety Business Agency (PSBA) through an Inter-agency Computer Aided Dispatch Electronic Messaging System (ICEMS). The purpose of sharing information via ICEMS is to enhance interoperability among emergency services in Queensland and to support the safe and effective resolution of incidents dealt with by QAS, QPS, QFES and PSBA (the Agencies).

ICEMS is an electronic messaging protocol that, in near-real time, enables the sharing of information through an interface connecting Computer Aided Dispatch systems of each Agency. A Memorandum of Understanding (MoU) has been entered into between the Agencies to authorise information sharing through ICEMS, including confidential information. The MoU outlines how confidential information will be handled and the responsibilities and obligations of the Agencies for ICEMS.

The policy objective is to prescribe the MoU in the *Ambulance Service Regulation 2015*, under section 50L(1)(b) of the *Ambulance Service Act 1991*, to authorise QAS to disclose confidential information to the Agencies through the ICEMS.

Hospital and Health Boards Regulation 2012

Under section 142 of the HHB Act, a ‘designated person’ must not disclose confidential information unless the disclosure is required or permitted under the HHB Act. ‘Confidential information’ includes information acquired by a ‘designated person’ that identifies someone who is receiving, or has received, a public sector health service. A ‘designated person’ includes Queensland Health employees, contractors, volunteers and inspectors working or carrying out duties at a public sector health service facility.

Disclosure of confidential information by designated persons is authorised under various provisions of the HHB Act, including sections 151(1)(a) and 151(1)(b). These provisions permit disclosure of confidential information if the disclosure is:

- to the Commonwealth or another State, an entity of the Commonwealth or another State, or an entity of this State under an agreement with the recipient which is prescribed under a regulation, and
- authorised in writing by the chief executive, or health service chief executive, to be in the public interest.

The agreements prescribed for sections 151(1)(a) and 151(1)(b) of the HHB Act are set out in schedule 3, parts 1 and 2 of the *Hospital and Health Boards Regulation 2012* (HHB Regulation).

Prescribing updated agreements

- *Disclosure to the Queensland Police Service*

In 2011, Queensland Health and QPS entered into an MoU for Mental Health Collaboration, allowing the disclosure of confidential information between the two agencies in mental health crisis situations (now referred to as mental health incidents or situations involving vulnerable persons). An updated version of the MoU was made in 2016. The MoU supports the proactive and collaborative work undertaken by Queensland Health and QPS to reduce the likelihood of a mental health incident from occurring and to strengthen responses when an incident occurs.

The 2016 MoU is prescribed in schedule 3, part 2, item 10 of the HHB Regulation as an agreement under which confidential information may be disclosed for the purposes of section 151(1)(b) of the HHB Act. The MoU was revised again following the commencement of the *Mental Health Act 2016* on 5 March 2017, and an updated 2017 MoU was entered into.

The policy objective is to prescribe the updated 2017 MoU in the HHB Regulation, for section 151(1)(b) of the HHB Act, to allow Queensland Health and QPS to continue to share confidential information to ensure ongoing collaboration for the proactive development of mental health intervention strategies when responding to mental health incidents.

- *Disclosure to Queensland Corrective Services*

In 2011, Queensland Health and the Department of Justice and Attorney-General, represented by Queensland Corrective Services (QCS), entered into an MoU allowing the disclosure of confidential information about prisoners within the Queensland corrective services system if the information cannot otherwise be reasonably obtained, such as through consent from the prisoner or other legislative authority. An updated version of the MoU was made in 2016.

The 2016 MoU is prescribed in schedule 3, part 2, item 11 of the HHB Regulation as an agreement under which confidential information may be disclosed for the purposes of section 151(1)(b) of the HHB Act. The MoU was revised following the commencement of the *Mental Health Act 2016* on 5 March 2017, and an updated 2017 MoU was entered into.

The policy objective is to prescribe the updated 2017 MoU in the HHB Regulation, for section 151(1)(b) of the HHB Act, to allow Queensland Health and QCS to continue to share confidential information regarding prisoners, for the purposes of helping to facilitate the coordination of health services for prisoners.

Private Health Facilities Regulation 2016

Under section 147 of the PHF Act, a person who has obtained confidential information in the course of performing their functions under the PHF Act must not disclose confidential information if the disclosure is likely to damage the commercial activities of the person to whom the information relates, the information is personal health information, or the information is contained in a report about a person's criminal history obtained under section 16.

The PHF Act permits disclosure of confidential information in particular circumstances, including under section 147(4)(c). This section provides that disclosure of confidential information can be made if it is to the Commonwealth or another State, or an entity of the Commonwealth or another State, under an agreement with the recipient which is prescribed under a regulation, and the chief executive is satisfied giving the information is in the public interest.

The agreements prescribed for section 147(4)(c) of the PHF Act are set out in schedule 1 of the *Private Health Facilities Regulation 2016* (PHF Regulation).

Prescribing updated National Health Information Agreement

The National Health Information Agreement (NHIA) is an agreement between the Commonwealth, State and Territory governments, and health, statistical and national authorities to coordinate the development, collection and dissemination of health information in Australia, including the development, endorsement and maintenance of national data standards. The purpose of the NHIA is to ensure the availability of nationally consistent high quality health information, to support policy and program development and improve the quality, efficiency, appropriateness, effectiveness and accountability of health services provided to individuals and populations.

The 2011 version of the NHIA is prescribed in schedule 3, part 1, item 8 of the HHB Regulation as an agreement under which confidential information may be disclosed for the purposes of section 151(1)(a) of the HHB Act and schedule 1, item 2 of the PHF Regulation as an agreement under which confidential information may be disclosed for the purposes of section 147(4)(c) of the PHF Act. A revised version of the NHIA was entered into in 2013.

The policy objective is to prescribe the updated NHIA in the HHB Regulation for section 151(1)(a) of the HHB Act and in the PHF Regulation for section 147(4)(c) of the PHF Act to allow the continued disclosure of national minimum data sets and other agreed data sets under the NHIA, helping to ensure the availability of nationally consistent high quality health information.

Achievement of policy objectives

The only option for achieving the policy objectives is to amend the existing legislative schemes that deal with disclosure of confidential information. The regulation amends:

- the *Ambulance Service Regulation 2015* to prescribe the MoU for ICEMS dated 14 July 2017 between QAS, QPS, QFES and PSBA
- the HHB Regulation to:
 - prescribe the updated MoU for Mental Health Collaboration dated 15 June 2017 between Queensland Health and QPS
 - prescribe the updated MoU for Confidential Information Disclosure of 2017 between Queensland Health and QCS
 - update the reference to the NHIA to refer to the NHIA that commenced on 1 October 2013, and
- the PHF Regulation to update the reference to the NHIA to refer to the NHIA that commenced on 1 October 2013.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the policy objectives of the *Ambulance Service Act 1991*, the HHB Act and the PHF Act.

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 amendment regulation is the only means of achieving the policy objectives.

Benefits and costs of implementation

The sharing of information in accordance with the MoUs and agreements to be prescribed is part of the usual business of the departments, agencies and organisations involved. Any costs will be met from existing budget allocations.

Consistency with fundamental legislative principles

The amendments raise issues of privacy and confidentiality, which are relevant to whether legislation has sufficient regard to the fundamental legislative principle of the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*. The potential breaches of fundamental legislative principles are addressed and justified below.

MoU between QAS, QPS, QFES and PSBA

The amendment to the *Ambulance Service Regulation 2015* prescribes an MoU between QAS, QPS, QFES and PSBA to authorise QAS to disclose confidential information to the Agencies through ICEMS. Sharing information via ICEMS will enhance interoperability among emergency services in Queensland. Information to be shared by QAS through the MoU includes health observations, behavioural observations including descriptions of actions, mood and speech, and medical history including mental health.

The MoU outlines the obligations on each party in relation to the disclosure and use of confidential information, with the focus being to lessen or prevent serious threats to the life, health, safety or welfare of an individual, or to public health, safety or welfare. The sharing of information is also intended to support the safe and effective resolution of incidents attended by the Agencies. The MoU requires the Agencies not to disclose confidential information to third parties and to take steps to maintain the security of confidential information. The MoU operates subject to the *Information Privacy Act 2009*.

MoU for Mental Health Collaboration between Queensland Health and QPS

The MoU for Mental Health Collaboration between Queensland Health and QPS dated 15 June 2017 is prescribed in the HHB Regulation to replace the existing MoU from 2016. The MoU was updated following the commencement of the *Mental Health Act 2016* on 5 March 2017.

Sharing information between Queensland Health and QPS under the MoU is intended to assist with the safe resolution of mental health incidents involving people with mental health issues and other vulnerable people, including those unable to care for themselves. Sharing information between Queensland Health and QPS will provide for proactive collaboration in the development of mental health intervention strategies to reduce the likelihood of mental health incidents occurring and to respond to incidents when they occur. Sharing information is authorised, for example, where a mental health incident may involve a serious risk to the life, health or safety of the person concerned or another person. Information to be shared by Queensland Health includes, for example, medical history information, effects of medication and non-compliance with medication, warning signs that may indicate a deterioration in mental health, self-harm behaviours and de-escalation strategies.

The MoU states that, in the first instance, it is preferable for confidential information to be shared by obtaining the consent of the person concerned. However, if it is not possible or reasonable to obtain consent, information can be shared for the purposes of the MoU. All information disclosed under the MoU may only be used for the purpose for which it is given. The MoU requires the parties not to disclose confidential information to third parties and to take steps to maintain the security of confidential information. The MoU operates subject to the *Information Privacy Act 2009*.

MoU for Confidential Information Disclosure between Queensland Health and QCS

The MoU for Confidential Information Disclosure of 2017 between Queensland Health and QCS is prescribed in the HHB Regulation to replace the existing MoU from 2016. The MoU was updated following the commencement of the *Mental Health Act 2016* on 5 March 2017.

Sharing information between Queensland Health and QCS under the MoU is intended to enable the provision of a coordinated system of health care to prisoners and facilitate the appropriate management of prisoners. Health services include the Prison Mental Health Service, which provides mental health services to prisoners with a mental illness, and the Prison Health Service and Offender Health Service, which provide primary health care services such as medical, nursing, dental, optometry, radiology, pathology, dietary and sexual health care. Under the MoU, sharing information is authorised, for example, if a prisoner exhibits suicidal or self-harm behaviour, if they are a risk of harm to others or they have an illness, medical condition or take medication that may impact on their behaviour.

The MoU states that, in the first instance, it is preferable for confidential information to be shared by obtaining the written consent of the person concerned. However, if consent cannot be obtained, information can be shared for the purposes of the MoU. The MoU operates subject to the *Information Privacy Act 2009*.

National Health Information Agreement

An updated version of the NHIA is prescribed in the HHB Regulation and PHF Regulation to replace the existing agreement from 2011. The Commonwealth and all State and Territory governments are parties to the NHIA, along with health, statistical and national authorities. The aim of the NHIA is to improve the health of all Australians through the provision, use of and access to information to improve performance and reporting, support allocation of funding and support better planning and practice in health promotion, the prevention, detection and treatment of diseases and injury and health maintenance and rehabilitation.

Under the NHIA, information is collected, disseminated, secured, linked and must be used to comply with obligations from legislation, ethical guidelines and practices to protect the privacy and confidentiality of any individual and organisations.

Consultation

The amendments were assessed by the Department of Health, in accordance with *The Queensland Government Guide to Better Regulation*, as being machinery in nature and for the internal management of the public sector, and therefore are excluded from further regulatory impact assessment. Therefore, consultation with the Queensland Productivity Commission was not required.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the regulation is the *Health Legislation (Information Sharing) Amendment Regulation 2018*.

Part 2 Amendment of Ambulance Service Regulation 2015

Regulation amended

Clause 2 provides that part 2 amends the *Ambulance Service Regulation 2015*.

Amendment of sch 2 (Agreements)

Clause 3 amends schedule 2, part 2 to prescribe the Memorandum of Understanding (MoU) dated 14 July 2017 between Queensland Health represented by the Queensland Ambulance Service, and Queensland Police Service, Queensland Fire and Emergency Services and Public Safety Business Agency.

Part 3 Amendment of Hospital and Health Boards Regulation 2012

Regulation amended

Clause 4 provides that part 3 amends the *Hospital and Health Boards Regulation 2012*.

Amendment of sch 3 (Agreements)

Clause 5 amends schedule 3.

Clause 5(1) replaces the reference to the superseded National Health Information Agreement (NHIA) from 2011 in part 1, item 8 with a reference to the NHIA that commenced on 1 October 2013.

Clause 5(2) updates part 2, items 10 and 11 to replace references to superseded agreements with the following agreements:

- item 10 of part 2 prescribes the MoU dated 15 June 2017 between Queensland Health and Queensland Police Service, Mental Health Collaboration, and
- item 11 of part 2 prescribes the MoU of 2017 between Queensland Health and the Department of Justice and Attorney-General represented by Queensland Corrective Services, Confidential Information Disclosure.

**Part 4 Amendment of Private Health Facilities Regulation
2016**

Regulation amended

Clause 6 provides that part 4 amends the *Private Health Facilities Regulation 2016*.

Amendment of sch 1 (Agreements)

Clause 7 replaces the reference to the superseded NHIA from 2011 in schedule 1, item 2 with a reference to the NHIA that commenced on 1 October 2013.