

Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020

Explanatory notes for SL 2020 No. 190

made under the

Hospital and Health Boards Act 2011

General Outline

Short title

Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020

Authorising law

Sections 282 and 151 of the *Hospital and Health Boards Act 2011*

Policy objectives and the reasons for them

The objective of the *Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020* (the Amendment Regulation) is to enable a person's health information to be provided to the Parole Board Queensland (PBQ) to support well-informed decision making for that person.

Management of patient records forms part of the delivery of public sector health services in Queensland. However, access to patient records and disclosure of confidential information is strictly regulated to protect patients' privacy. The Hospital and Health Boards Act creates a duty of confidentiality, prohibiting 'designated persons' (Queensland Health staff, including contractors and volunteers) from disclosing confidential information about a person who is receiving, or who has received, a public sector health service if the person could be identified from the information.

Confidential information includes any information collected by Queensland Health during the course of providing a health service to an individual and may include name, address, date of birth, admission and discharge dates, health and medical information such as diagnosis and details of treatment, and information generated by health professionals such as notes and opinions about an individual and their health.

The Hospital and Health Boards Act also prescribes a number of exceptions to the duty of confidentiality, outlining circumstances in which confidential information may be disclosed, including with the patient's consent. These circumstances cover a range of necessary situations, for example, if a health practitioner needs to discuss aspects of the patient's health care with another health professional.

Section 151(1) of the *Hospital and Health Boards Act 2011* provides that a designated person may disclose confidential information if the disclosure is:

- to the Commonwealth or another State, or an entity of the Commonwealth or another State, or to an entity of the State of Queensland; and
- required or allowed under an agreement prescribed under a regulation; and
- stated in writing by the relevant chief executive to be in the public interest.

Agreements made under section 151(1) of the Hospital and Health Boards Act are prescribed in schedule 3, parts 1 and 2 of the *Hospital and Health Boards Regulation 2012*.

The Queensland Government committed to reform Queensland's parole system following the release of the *Queensland Parole System Review – Final Report November 2016*. This includes ensuring the provision of quality information to PBQ to support well-informed decision making.

A person's health treatment needs and health history may be highly relevant to PBQ considerations about the suitability of a person's release from custody, or the suitability of a person remaining in the community on parole. Currently, information is only able to be provided to PBQ with a person's consent. This can result in relevant health information not being available to PBQ where a person has not consented to disclosure, or where consent is not able to be sought for disclosure because the person is not a current patient of a health service.

For example, a person has missed a parole appointment because they are currently admitted for urgent medical treatment and they are not able to provide consent. It is in a patient's interest that this medical information is provided to PBQ in a timely manner so PBQ is aware that the person did not miss a parole appointment deliberately and does not cancel a parole order due to the missed appointment.

Achievement of policy objectives

To implement the reforms to the Queensland parole system, as recommended in recommendation 49, 50 and 57 of the *Queensland Parole System Review Final Report November 2016*, the Amendment Regulation prescribes an agreement between PBQ and Queensland Health, to enable disclosure of confidential information to PBQ.

On 19 May 2020, a confidential information disclosure agreement was signed between Queensland Health and PBQ. The Amendment Regulation will prescribe this agreement under section 151(1) of the Hospital and Health Boards Act to ensure Queensland Health can lawfully disclose confidential information about a person to PBQ. This information will assist PBQ when making parole decisions.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising 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 effective means of achieving the policy objectives.

Benefits and costs of implementation

Prescribing the agreement will allow Queensland Health to lawfully disclose confidential information with PBQ, to assist in PBQ's decisions about parole. The costs of implementing the agreement will be met within existing resources.

Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Prescribing the agreement between Queensland Health and PBQ raises 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*.

The agreement between Queensland Health and PBQ allows Queensland Health to disclose, when requested by PBQ, the confidential information of prisoners who are receiving, or have received, health care from Queensland Health.

Disclosure of this information allows PBQ access to health care information when it is relevant to PBQ's consideration of risks attached to a person residing, or continuing to reside, in the community under parole. The agreement outlines the obligations on each party relating to the disclosure and use of confidential information.

Queensland Health and PBQ are obliged to collect, store, use and disclose confidential information in accordance with relevant privacy principles and legislation including the *Information Privacy Act 2009* and *Hospital and Health Boards Act*. The agreement provides that confidential information must be used for the purpose of facilitating PBQ's statutory functions and prohibits the disclosure of confidential information by PBQ unless expressly allowed by the agreement, consented to by the relevant person, or authorised in writing by the relevant chief executive.

The agreement requires that the disclosure of confidential information under the agreement be subject to targeted audits conducted by Queensland Health at regularly defined intervals; the aim of which is to ensure that confidential information is only disclosed within the scope and terms of the agreement.

Given the important role PBQ plays in ensuring parole decisions are consistent with the safety of the community, and the safeguards prescribed in the agreement, it is considered that any departure from fundamental legislative principles is justified.

Consultation

PBQ was consulted during drafting of the information sharing agreement. No consultation was required to prescribe the agreement in the Hospital and Health Boards Regulation, as this is a process required to meet the confidentiality provisions of the Act.

The Amendment Regulation was assessed by the Office of Best Practice Regulation, in accordance with *The Queensland Government Guide to Better Regulation*, as being excluded from further regulatory impact assessment on the basis that prescribing the agreement does not add to the regulatory burden (exclusion category (k)).

Notes on provisions

Short Title

Clause 1 states the short title of the regulation is the *Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020*.

Regulation amended

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

Amendment of sch 3 (Agreements)

Clause 3 inserts new item 16 into schedule 3, part 2 to prescribe a new agreement for the purpose of section 151(1) of the *Hospital and Health Boards Act 2011*.

The agreement prescribed is the agreement of May 2020 called ‘Agreement pursuant to section 151(1)(b) of the *Hospital and Health Boards Act 2011* (Qld) between the State of Queensland through the Chief Executive of Queensland Health and the State of Queensland through the Parole Board Queensland, Confidential Information Disclosure’.