

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

## Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Steven Miles MP, Deputy Premier and Minister for Health and Minister for Ambulance Services provide this human rights certificate with respect to the *Hospital and Health Boards (Information Sharing–Parole Board Queensland) Amendment Regulation 2020* made under the *Hospital and Health Boards Act 2011*.

In my opinion, the *Hospital and Health Boards (Information Sharing–Parole Board Queensland) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The purpose of the *Hospital and Health Boards (Information Sharing–Parole Board Queensland) Amendment Regulation 2020* (Amendment Regulation) is to amend the *Hospital and Health Boards Regulation 2012* to prescribe an agreement between the Parole Board Queensland (PBQ) and Queensland Health to enable sharing of confidential information.

## Human Rights Issues

**Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

### Privacy and Reputation

Section 25 of the Human Rights Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Clause 3 of the Amendment Regulation prescribes the Confidential Information Disclosure Agreement between Queensland Health and PBQ in Schedule 3 of the Hospital and Health Boards Regulation. It raises issues of privacy as the agreement between Queensland Health and PBQ allows Queensland Health to disclose, when requested by PBQ, the confidential health information of prisoners who are receiving, or have received, health care from Queensland Health services.

Disclosure of this information allows PBQ access to health care information relevant to PBQ's consideration of risks attached to a person residing, or continuing to reside, in the community under parole.

## **Consideration of reasonable limitations on human rights (section 13 of the *Human Rights Act 2019*)**

(a) the nature of the right

The nature of the right to privacy and reputation (section 25 of the Human Rights Act) protects the individual from all interferences and attacks upon their privacy, family, home, correspondence and reputation. It protects privacy in the sense of personal information, data collection and correspondence, and extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation. 'Arbitrary' in the human rights context refers to conduct that is capricious, unpredictable or unjust and refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to allow PBQ access to healthcare information when it is relevant to its consideration of risks attached to a person residing, or continuing to reside, in the community under parole.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation of privacy rights may help protect the right to liberty and security of a person, as the information may be used to release the person on parole.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no other less restrictive way to achieve the purpose.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

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 2011*. 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, provided with consent of the relevant person, or authorised in writing by the relevant chief executive.

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

The Hospital and Health Boards Act also provides that it is an offence for a prescribed health practitioner to disclose confidential information unless authorised. A maximum penalty of 600 penalty units applies.

Given the important role PBQ plays in ensuring that parole decisions are consistent with the safety of the community, and the safeguards prescribed in the agreement, it is considered that the benefits gained by prescribing the agreement outweigh any adverse impacts on the right to privacy and reputation.

(f) any other relevant factors

Nil.

## Conclusion

I consider that the *Hospital and Health Boards (Information Sharing–Parole Board Queensland) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**STEVEN MILES**  
DEPUTY PREMIER  
and MINISTER FOR HEALTH  
and MINISTER FOR AMBULANCE SERVICES

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