

Health Legislation Amendment Regulation (No. 1) 2014

Explanatory notes for SL 2014 No. 29

made under the

Hospital and Health Boards Act 2011
Private Health Facilities Act 1999

General Outline

Short title

Health Legislation Amendment Regulation (No. 1) 2014

Authorising law

Section 282 of the *Hospital and Health Boards Act 2012*
Section 151 of the *Private Health Facilities Act 1999*

Policy objectives and the reasons for them

The objectives of the Regulation are to:

- provide for the disclosure of confidential information to entities engaged by Queensland Health to undertake health service planning activities; and
- provide for the disclosure of confidential information, of persons with a disability, by prescribing relevant Queensland and Commonwealth entities involved in the Queensland implementation and ongoing management of the National Disability Insurance Scheme.

The *Hospital and Health Boards Act 2011* (the HHB Act) provides for the delivery of high quality public sector health services in Queensland. Similarly, the *Private Health Facilities Act 1999* (the PHF Act) provides a framework for protecting the health and wellbeing of patients receiving services at a private health facility.

Duty of Confidentiality

A person receiving care or treatment at a health facility expects that their identity and information about their health and treatment will be kept confidential. This also applies following a person's death.

The HHB Act recognises this need for confidentiality and imposes a very strict duty of confidentiality upon all Queensland Health employees, officers and agents (called ‘designated persons’ in the Act). This duty of confidentiality applies to persons receiving treatment or care at a public health facility or service. A maximum penalty of \$11,000 applies to a person who breaches the duty of confidentiality.

However, the HHB Act also recognises circumstances where it is necessary and unavoidable for a designated person to disclose information that will identify a patient. For this reason, a number of exceptions to the duty of confidentiality are prescribed in that Act. These exceptions are very detailed and explicit.

The PHF Act establishes a duty of confidentiality for persons receiving treatment or care at a private health facility. The PHF Act also contains some exceptions to the duty of confidentiality, although not to the extent of the HHB Act.

Section 150(b) of the HHB Act and section 147(4)(h)(ii) of the PHF Act provide for the disclosure of confidential information to an entity prescribed under a regulation for the purpose of evaluating, managing, monitoring or planning health services.

Health Service Planning

Since 2009, the procurement of health service planning services from prescribed entities has taken place via a three year standing offer arrangement (SOA) of pre-qualified health service planners. In 2012, a new Panel arrangement (the Prequalified Health Service Planning Panel) was established under SOA HSP2012. The new panel arrangement consists of eight entities that require access to confidential information.

The duty of confidentiality provisions under the HHB Act and the PHF Act explicitly prohibit the disclosure of confidential information. However, as outlined above, an exception to the duty of confidentiality enables the disclosure for the purposes of evaluating, managing, monitoring or planning health services. For this exception to be activated, the entity must be prescribed by regulation.

National Disability Insurance Scheme

The National Disability Insurance Scheme (NDIS) is a Commonwealth scheme established to provide a new way of community linking and individualised support for people with permanent and significant disability, their family and carers. The NDIS will be administered through the National Disability Insurance Agency (NDIA), an independent body established under the *National Disability Insurance Scheme Act 2013 (Cwth)*.

The NDIS is expected to provide significant benefits for Queenslanders with a disability, their families and carers, and the broader community. Change of this scale in Queensland, due to its diverse geographic challenges, requires careful preparation to maximise opportunities and mitigate potential risks.

People with a disability are often frequent users of the health system and, depending on the nature of the disability, may not be able to be discharged from a healthcare setting without appropriate disability support. Lengths of stay for these patients can range from a few months to well over 10 years.

In accordance with the terms of the Heads of Agreement between the Commonwealth and Queensland Governments on the NDIS (the Agreement), the implementation of the NDIS in Queensland requires a collaborated approach between Commonwealth and State entities comprising Queensland Health, Department of Communities, Child Safety and Disability Services, Queensland Treasury and Trade, the Department of Housing and Public Works and the NDIA.

The disclosure of confidential information to these entities is critical to assist with planning and facilitating the transition of, for example, long-stay patients with a disability, from a hospital care setting to a more appropriate community living arrangement that meets their specific needs. In the future, funding will be provided through the NDIS and managed by the NDIA.

Currently there is no mechanism for disclosing confidential information to entities other than by obtaining the consent of each individual. Without such a mechanism, the ability to manage the interface and transition between the health and disability sectors in a seamless and patient/client focused way is limited.

To enable the disclosure of confidential information to Commonwealth and State entities for the implementation and ongoing operation of the NDIS, an exception to the duty of confidentiality in the HHB Act must be activated.

Achievement of policy objectives

To achieve the policy objectives, the Regulation will:

- amend section 35(1)(b) of the HHB Regulation to prescribe new entities engaged under standing offer arrangement of pre-qualified Health Service Planners 2012 and to remove entities from the previous SOA that have not been re-engaged under the SOA HSP2012.
- amend section 35(1) of the HHB Regulation to prescribe Queensland and Commonwealth entities for which the disclosure of confidential information will be required for the implementation and ongoing management of the NDIS in Queensland.

In addition the Regulation will:

- amend section 8 of the PHF Regulation to prescribe Hades and Associates and entities engaged under SOA HSP2012 for reviewing patterns of health services delivery and projecting the future demand for, and supply of, health services.

Consistency with policy objectives of authorising

The regulation is consistent with the main objectives of the *Hospital and Health Boards Act 2011*, that is, to provide for the establishment of localised Hospital and Health Services as separate legal entities and for them to deliver high quality public sector health services in Queensland. The Regulation is also consistent with the main objectives of the *Private Health Facilities Act 1999*, that is, to provide for the regulation of private health facilities and other purposes.

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 is the only effective means to enable the disclosure of confidential information to entities engaged by Queensland Health to undertake health service planning activities and to State and Commonwealth agencies involved in the implementation and ongoing operation of the NDIS.

Benefits and costs of implementation

Prescribed health service planning panel entities have already been assessed as being capable to meet health service planning standards, capability requirements and business operating requirements. This is expected to facilitate positive work flow and processes and streamline the Queensland Health procurement process. There are no costs associated with the implementation.

The implementation of the *National Disability Insurance Scheme Act 2013* (Cwlth) in Queensland is expected to have a significant overall positive impact. The implementation of the NDIS will benefit about 97,000 Queenslanders with a significant or profound disability. The Queensland Government's commitment to introduce the scheme in Queensland is \$2.03 billion.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles, as set out in section 4 of the *Legislative Standards Act 1992*.

Consultation

Entities to be prescribed under the HHB Regulation and the PHF Regulation have been advised of the requirement to be prescribed by regulation and are supportive of the amendments.

The Office of Best Practice Regulation has been consulted regarding requirements of the Regulatory Impact Statement (RIS) System and advised that a RIS is not required for these amendments.