

# Hospital and Health Boards Amendment Regulation (No. 2) 2014

Explanatory notes for SL 2014 No. 99

made under the

*Hospital and Health Boards Act 2011*

## General Outline

### Short title

*Hospital and Health Boards Amendment Regulation (No. 2) 2014.*

### Authorising law

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

### Policy objectives and the reasons for them

The objectives of the regulation are to:

- transfer the employment function from the Department of Health to prescribed Services, to enable those Services to manage all existing staff, and any future staff, working in and for the Service;
- enable results of criminal history checks and other personal employee information to be transferred from the Department to a Service, and between Services in the future, when staff transfer or move between those entities;
- enable Services to take leases of land or buildings, to prescribed delegation limits, without the prior written approval of the Minister for Health and the Treasurer, which will streamline and fast track current approval processes; and
- enable disclosure, without breaching a statutory duty of confidentiality, of patient-identifying information to the Australian Orthopaedic Association and the Electronic Donor Record Agreement, in order to effect better outcomes and future resource planning for joint replacement services to the public and to improve organ and tissue donation processes.

The *Hospital and Health Boards Act 2011* (the Act) aims 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 Services, which are statutory bodies and the principal providers of public sector health services. The 17 Services and the health service area they are responsible for are prescribed in the *Hospital and Health Boards Regulation 2012* (the HHB Regulation). The Act took full effect from 1 July 2012.

### **Prescribed Employers**

Each Service is independently and locally controlled by a Hospital and Health Board, which appoints a Health Service Chief Executive (HSCE). The Service exercises significant responsibilities, including: financial management of the Service, management of the Service's land and buildings, and management of staff. Currently, Services have the power to employ only HSCEs and other health executives, but not other staff. The Director-General of Queensland Health is the employer of all other staff, called "health service employees" (e.g. administrative staff, nurses, allied health etc.).

Amendments to the Act in 2012, which were aimed at strengthening local healthcare delivery, removed the prohibition on Services employing staff, other than health executives, once the Service is prescribed in regulation. The Act enables a Service to appoint persons as health service employees only once the Service demonstrates appropriate capability and capacity to take on additional responsibilities to become the employer of staff working in and for the Service. Once capability and capacity is demonstrated, the Service is prescribed in the HHB Regulation and can employ health service employees under the Act. The approach of prescribing Services by regulation enabled consultation and implementation arrangements to be undertaken prior to a Service taking on the responsibility of employing staff.

In order to become an employer, Services are assessed against an evidence framework which provides assurance and mutual confidence of the Service's capacity and capability to effectively administer the employment related processes for employees. Eight of the 17 Services have been assessed as demonstrating appropriate capability and capacity to be prescribed in the HHB Regulation as a "prescribed Service", thus enabling these Services to employ health service employees. The remaining Services are working towards meeting the required capability and capacity to enable them to be prescribed in future.

### **Disclosure of employee information**

The Act and HHB Regulation enable health service employees to move across "health employers" (Services and the Department) without resignation or termination, to enable all leave entitlements to transfer. A *movement* occurs when an employee moves jobs from one health employer to another. A *transfer* occurs when an employee changes jobs but remains with the same employer.

To facilitate the movement and transfer of staff, the Act permits the disclosure of a person's personal information (such as pay records and outcomes of criminal history checks) to another health employer if the information is relevant to the person's suitability for employment or engagement, or continuing employment or engagement with the other health employer. Further consideration of this power raised doubt over the ability to transfer employee records after a person has been employed, appointed or otherwise engaged by another health employer, after the person's suitability for the position has already been assessed.

Under current practices, existing health service employees who are transferred between Services and/or the Department are not required to undertake a new criminal history check. This is primarily because they remain with the same employer (the Director-General of the Department). The Department currently holds the results of criminal history checks performed on existing and prospective employees. However, many of these employees will move to a Service on 1 July 2014. The regulation clarifies that all employee criminal history checks and personal information was easily accessible between the health employers.

Health service employees may also be required to carry out particular duties in their current or prospective employment. A chief executive of a department can decide that, because of the nature of the duties to be performed by an employee or prospective employee (such as working with children), the person should be asked to provide approval to obtain details of their criminal history. Queensland Health policy requires current or prospective employees to undergo criminal history checking before undertaking certain duties. An amendment to the Regulation allows criminal history information to be obtained at any point of employment and can be shared between health employers.

The Regulation clarifies that criminal history and other employee personal information may be transferred between the Department and Services as employees move or transfer between those entities.

### **Prescribed Leases**

The Act prohibits a Service from taking a lease of land or buildings without the prior written approval of the Minister for Health and the Treasurer, unless the lease is a type prescribed by regulation. The current process is for a Service to first brief the Minister for Health, and then the Treasurer, to obtain approval for low value, low risk transactions. This is considered time consuming and results in a high volume of briefing notes in the correspondence system.

The objective is to enable Services to approve leases for office and non-office accommodation and residential tenancy, to prescribed limits, without prior written consent of the Minister for Health and the Treasurer. The lease parameters are generally low value, which will provide for Services to efficiently transact lower scale leases, such as expenditure leases for office accommodation up to \$100,000 per annum. Metro North Service, Metro South Service, Gold Coast Service and Sunshine Coast Service have a higher threshold of \$250,000 for expenditure leases for office accommodation, which reflects the capacity for quick turnaround times in recognition of higher lease rental costs in South East Queensland.

### **Electronic Donor Record**

The Australian Organ and Tissue Authority (OTA), established under the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (Cwlth), is driving a reform program that includes a national operational system for use in real-time coordination of organ donation and transplant allocation, known as the Electronic Donor Record (EDR).

Queensland is a signatory to the *2014-2017 Agreement between The Health Authorities of the States and Territories of Australia and The Organ and Tissue Authority*, to enable participation in the EDR.

The EDR includes identified, sensitive and detailed information about the organ donor, including clinical information, demographics and social history, as well as donor family information. The EDR will also include identified, detailed information about Australians on transplant waiting lists, and will link potential and actual transplant recipients to the donor. Information from the EDR will be made available to transplant units and this may include units in New Zealand. Queensland data entered into the EDR will be visible to donation staff across the country. Furthermore, redacted information from the EDR will be provided to the Australian and New Zealand Organ Donation Registry (ANZOD).

As participation in the EDR requires the disclosure of patient-identifying information, it is necessary to provide for the disclosure of this information under an exception to the duty of confidentiality in the Act. This is achieved by prescribing the *2014-2017 Agreement between The Health Authorities of the States and Territories of Australia and The Organ and Tissue Authority*. The Agreement specifically outlines the requirements for maintaining patient confidentiality, that align with legislative frameworks, when dealing with data collection, communication, information management and release with third parties.

### **Australian Orthopaedic Association National Joint Replacement Registry (AOANJRR)**

The Australian Orthopaedic Association National Joint Replacement Registry (AOANJRR) is an initiative of the Australian Orthopaedic Association, and aims to improve and maintain the quality of care of individuals receiving joint replacement surgery.

Queensland Health has entered into an agreement with the Australian Orthopaedic Association to provide confidential patient information to the AOANJRR about patients undergoing joint replacement surgery in Queensland public hospitals. The data contains identifiable information on individuals, and consequently requires legal approval to avoid breaching the statutory duty of confidentiality in the Act. The compilation of the data collected through the registry is used for analysis purposes to create better outcomes and resource planning for the future. Data is collected on specific forms, which are completed in the hospital theatre at the time of surgery and submitted to the registry for analysis.

Queensland Health has signed a Data Disclosure Deed with the Australian Orthopaedic Association to provide a framework for ensuring confidentiality of information provided to the AOANJRR.

As participation in the AOANJRR requires the disclosure of patient-identifying information, it is necessary to provide for the disclosure of this information under an exception to the duty of confidentiality in the Act.

## **Achievement of policy objectives**

### **Prescribed Employers**

The regulation prescribes the following Services as employers of health service employees (“prescribed Services”) in the HHB Regulation:

- Children’s Health Queensland
- Gold Coast
- Metro North
- Metro South

- North West
- Sunshine Coast
- Townsville
- West Moreton

### **Information Sharing – Criminal history process**

The regulation enables the disclosure of criminal history information and other personal information for health service employees and departmental public service employees between prescribed Services and the Department.

The scenarios captured by the amendments are:

- The disclosure of criminal history information and other employee information (“personal information”) from the Department to a prescribed Service on 1 July 2014.
- The disclosure of personal information from one prescribed Service to another prescribed Service or the Department when an employee is transferred or moved.
- The disclosure of personal information from the Department to a prescribed Service when an employee is transferred or moved.

Personal information is defined by way of reference to section 12 of the *Information Privacy Act 2009*. It is intended that this term will capture all documentation relating to a person’s employment including, but not limited to, pre-employment screening (including criminal history information), personnel information, pay related information, training information, personal information and any employment or pre-employment related information.

### **Prescribed Leases**

The Regulation enables delegation of authority for the following:

- Lower value lease transactions of up to \$100,000 for the following Services:
  - Cairns and Hinterland
  - Central Queensland
  - Central West
  - Children’s Health Queensland
  - Darling Downs
  - Mackay
  - North West
  - South West
  - Torres and Cape
  - Townsville
  - West Moreton
  - Wide Bay
- Higher value lease transactions of up to \$250,000 for the following Services:
  - Metro North Service
  - Metro South Service
  - Gold Coast Service
  - Sunshine Coast Service

### **Electronic Donor Record**

The regulation prescribes the 2014-2017 *Agreement between The Health Authorities of the States and Territories of Australia and The Organ and Tissue Authority*, to enable Queensland Health staff to disclose donor information to the EDR, for the purpose of evaluating, managing, monitoring or planning health services relating to organ and tissue donation.

### **Australian Orthopaedic Association National Joint Replacement Registry (AOANJRR)**

The regulation prescribes the Australian Orthopaedic Association as an entity to whom confidential information may be disclosed about joint replacement surgery for use in the AOANJRR for the purpose of evaluating, managing, monitoring or planning health services relating to joint replacement.

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

The regulation is consistent with the main objective of the Act, which 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.

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

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

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

The regulation is the only way of achieving the policy objectives.

## **Benefits and costs of implementation**

The amendments to prescribe Services as employers and prescribe leases that may be taken by Services are consistent with the intent of the Act to strengthen local healthcare delivery by providing Services with greater autonomy. Any financial implications arising from the prescribing of Services as employers will be determined and managed within current project budgets. The prescribing of leases will reduce government red-tape and streamline processes, enabling Services to fast track approval processes for low value expenditure leases.

All departmental staff working for a Service at the time of the Service being prescribed as an employer, will become employees of the Service on the same employment terms and conditions.

Better facilitating the disclosure (or transfer) of employee information between the Department and Services will save those entities from undertaking further criminal history checks when an employee transfers or moves between entities. Further, it minimises disruption to matters impacting on employees, such as transfers of leave balances and payment of wages, when an employee transfers or moves.

The Commonwealth is responsible for funding the EDR, and has provided all jurisdictions with funding to cover the necessary information and communication technology costs.

Data collected through the AOANJRR is used for analysis purposes to then effect better outcomes and resource planning for the future. Data is collected on specific forms, which are completed in the hospital theatre at the time of surgery and submitted to the registry for analysis. The data is then used to improve and maintain the quality of care of individuals receiving joint replacement surgery.

Queensland Health currently provides confidential patient information to the AOANJRR about patients undergoing joint replacement surgery in Queensland public hospitals. Information was originally approved for release under the research provisions of the *Public Health Act 2005* in 2007, but the agreement expired on 30 November 2012. Subsequent approval to continue disclosing information was granted by the Director-General in January 2013 under section 160 of the Act (which enables disclosure if the Director-General believes, on reasonable grounds, that the disclosure is in the public interest). Therefore, there are no costs associated with the proposal to prescribe the Australian Orthopaedic Association in the HHB Regulation for duty of confidentiality purposes.

## **Consistency with fundamental legislative principles**

The amendments to disclose confidential employee and patient-identifying information potentially breach 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*. These types of breaches have been considered by the former Parliamentary Scrutiny of Legislation Committee, which has supported providing confidential patient information in instances where the protection and promotion of public health as a collective outweighs the rights and liberties of the individual.

The amendment to disclose personal employee information between entities may raise concerns about the privacy of, and access to, the employee's personal information. Access to electronic records is restricted, with users of relevant databases requiring approval and user identification and password to access information. The disclosures are necessary to ensure payroll and other employee records are made available to the new employer if the employee transfers or moves, and to avoid having to unnecessarily undertake another criminal history check when an employee moves or transfers between Services or the Department.

Disclosures to the EDR and the Australian Orthopaedic Association are underpinned by agreements between the Department and these entities. These agreements provide safeguards to ensure the information given to these entities is used only for the purposes for which it is provided. The agreements also include provisions about dealing with breaches of confidentiality and the action that the entity and Department must take.

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

## Consultation

The Department has been working closely with Services to assess capability and capacity to become prescribed employers. The Australian Taxation Office was also consulted in relation to operational impacts of prescribing Services as employers.

The Office of the Information Commissioner Queensland, the Australian Orthopaedic Association and the Organ and Tissue Authority were consulted in relation to the confidentiality amendments.

The Office of Best Practice Regulation (OBPR) was consulted in relation to the amending regulation meeting the requirements of the Regulatory Impact Statement (RIS) System.

## Notes on provisions

### Short Title

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

### Commencement

*Clause 2* provides for the commencement of the regulation on 1 July 2014.

### Regulation amended

*Clause 3* specifies that the regulation amends the *Hospital and Health Boards Regulation 2012*.

### Insertion of new pt 2, div 1A

*Clause 4* inserts new Division 1A, and new sections 3AA and 3AB.

Section 3AA prescribes Services listed in new schedule 1AA to employ other health service employees.

Section 3AB prescribes Services listed in new schedule 1AB that are able to take a lease or sublease of land or a building, used or intended for use as office and non-office accommodation, without Ministerial or Treasurer approval for the value of up to prescribed limits.

### Insertion of new s 11B

*Clause 5* inserts new section 11B, which enables the disclosure of criminal history information and other personal information relating to health service employees (working for a Service) and departmental public service employees (working for the Department), between Services and the Department. This disclosure will occur when an employee is being transferred or moved between, or is being considered for appointment with, those entities.

The effect of new section 11B is to ensure that employee records are transferred to the new health employer when the person is transferred or moved, or may be transferred when an employee is being considered for appointment to a position in a Service or the Department.

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

*Clause 6* amends section 35(1) to prescribe the Australian Orthopaedic Association as an entity to whom confidential information may be disclosed. The information to be disclosed is limited to joint replacement surgery for use in the National Joint Replacement Registry, for the purpose of evaluating, managing, monitoring or planning health services relating to joint replacement.

### **Insertion of new schedules 1AA and 1AB**

*Clause 7* inserts new Schedules 1AA and 1AB, which are referred to in clause 4.

New Schedule 1AA prescribes Services that may employ other health service employees under section 20(4) of the *Hospital and Health Boards Act 2011*.

New Schedule 1AB prescribes Services that are able to lease or sublease land or buildings for office and non-office accommodation, without Ministerial or Treasurer approval, under section 20A(2) of the *Hospital and Health Boards Act 2011*.

### **Amendment of sch 3 (Agreements)**

*Clause 8* amends Schedule 3, Part 1 to prescribe the *2014-2017 Agreement between The Health Authorities of the States and Territories of Australia and The Organ and Tissue Authority*, to enable disclosure of donor information to the Electronic Donor Record to improve organ and tissue donation processes.

### **Amendment of sch 6 (Dictionary)**

*Clause 9* amends Schedule 6 to insert a definition for *residential premises*, which is referred to in new Schedule 1B.

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#### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is Queensland Health.