

Health Legislation Amendment Regulation (No. 4) 2014

Explanatory notes for SL 2014 No. 260

made under the

Health Practitioners (Special Events Exemption) Act 1998

Hospital and Health Boards Act 2011

Public Health (Infection Control for Personal Appearance Services) Act 2003

General Outline

Short title

Health Legislation Amendment Regulation (No. 4) 2014.

Authorising law

Section 18 of the *Health Practitioners (Special Events Exemption) Act 1998*

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

Section 148 of the *Public Health (Infection Control for Personal Appearance Services) Act 2003*

Policy objectives and the reasons for them

The objectives of the regulation are to:

- enable overseas health practitioners who are accompanying sporting teams participating in the Asian Football Confederation (AFC) Asian Cup Australia 2015 (AFC Asian Cup 2015) and the International Cricket Council (ICC) Cricket World Cup 2015 (ICC Cricket World Cup 2015), to provide health services to those teams without needing to be registered under health practitioner registration laws;
- enable the disclosure of classified and forensic patient information for the purposes of identifying, engaging and supporting victims of crime where the alleged offender has been diverted to the forensic mental health system; and

- update the competency code for a mandatory infection control qualification for persons providing higher risk skin penetration services, such as beauty therapy, body piercing and tattooing, under the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Prescribing 'special events'

The *Health Practitioner Regulation National Law* requires health practitioners to be registered in order to provide health services in Queensland and throughout Australia. It is an offence under that law for a person to practise a regulated health profession without registration, or claim to be registered or qualified when they are not, and heavy penalties apply (currently \$30,000 for an individual).

It is often the case with large sporting, cultural or political events that delegations from other countries will be accompanied by a medical team comprising health practitioners such as doctors, nurses, physiotherapists and psychologists. The *Health Practitioners (Special Events Exemption) Act 1998* authorises visiting health professionals to provide health care services to visitors in Queensland, in connection with certain special events, without being registered under any Queensland law relating to the registration of health professionals. For this exemption to occur, the event must be prescribed in regulation.

The AFC Asian Cup 2015 – the sixteenth edition of the AFC Asian Cup – is taking place in Australia throughout January 2015. Sixteen nations, representing more than half of the world's population, will be participating. Matches are being held in Queensland from 9 January 2015 to 31 January 2015.

The ICC Cricket World Cup 2015 takes place in Australia and New Zealand in February and March 2015. The ICC Cricket World Cup is one of the world's largest international sports tournaments involving more than 400 accredited players and officials. Matches are being held in Brisbane from 21 February 2015 to 1 March 2015.

The Department of Health has ascertained that sporting teams participating in the AFC Asian Cup 2015 and the ICC Cricket World Cup 2015 will be bringing health practitioners with them from overseas. Consistent with the intent of the *Health Practitioners (Special Events Exemption) Act*, these visiting health practitioners will need to be exempted from Queensland's health practitioner registration laws and requirements to enable them to provide health care services to the sporting team they are accompanying to Queensland.

Memorandum of understanding

The *Mental Health Act 2000* provides a legislative framework to allow victims and approved persons to receive certain limited information about an alleged offender who is diverted to the forensic mental health system as a classified or forensic patient. To support this legislative framework, the Queensland Health Victim Support Service (QHVSS) was established to provide services to victims of crime, as well as their families. These services can include:

- information and support in understanding and navigating the forensic mental health system and criminal justice systems;
- counselling and information about victims' rights and entitlements;
- information about applications for information orders under the *Mental Health Act*;

- assisting in the preparation of statements to the Mental Health Court and submissions to the Mental Health Review Tribunal;
- support for victims at Mental Health Court hearings and understanding the role and outcomes of the Mental Health Review Tribunal; and
- coordination and liaison with related services on behalf of victims.

By administering the Mental Health Act, Queensland Health, through the Office of the Director of Mental Health (ODMH), collects information about classified and forensic patients. This information is considered 'confidential' under the *Hospital and Health Boards Act 2011*, which establishes a strict duty of confidentiality on designated persons, prohibiting them from disclosing confidential information about any person receiving public sector health services if the person receiving the services could be identified from the information. This duty of confidentiality applies to disclosures to third parties, as well as disclosures from one designated person to another designated person.

A range of scenarios have been identified where the disclosure of confidential information could be enabled between the ODMH, the QHVSS and the Queensland Police Service (QPS) to ensure effective service provision to victims of an offence, where the alleged offender has been diverted to the forensic mental health system ('the patient'). For example, it would be beneficial to enable:

- the ODMH to provide QHVSS with identifying information regarding a patient of an authorised mental health service who has been charged with an offence, or provide QHVSS with information regarding potential victims of offences committed by forensic mental health patients;
- the QHVSS to provide QPS with information regarding a person's mental condition relating to an offence or notification of their admission to an authorised mental health service for the purpose of assisting the QPS in identifying victims of an offence; and
- the QPS to contact a victim of an offence to seek their consent for their personal information to be provided to QHVSS to enable QHVSS to offer support services to the victim.

The disclosure of classified or forensic patient information between the ODMH, the QHVSS and the QPS would constitute a breach of the duty of confidentiality in the Hospital and Health Boards Act. However, there are a number of exceptions to the duty of confidentiality in the Hospital and Health Boards Act, including where a disclosure is made to an entity of the State under an agreement prescribed under a regulation, and the chief executive considers the disclosure to be in the public interest.

To facilitate the disclosure of patient-identifying information in the circumstances outlined above, a memorandum of understanding (MOU) has been signed between Queensland Health, Metro North Hospital and Health Service (as the entity which hosts the QHVSS) and the QPS. The MOU provides a lawful means for the ODMH and the QHVSS to exchange confidential patient information, but only in circumstances where the patient has committed an alleged criminal offence involving personal harm to a victim. The MOU also provides clear and consistent guidance to all parties to the MOU by outlining what information can be provided to each of the parties and under what circumstances. In order to give effect to the MOU and to meet the exception to the duty of confidentiality in the Hospital and Health Boards Act, the MOU must be prescribed in regulation..

Mandatory infection control qualification

The *Public Health (Infection Control for Personal Appearance Services) Act 2003* establishes a regulatory framework to protect the health and wellbeing of the community by minimising the risk of infection that may result from the provision of higher risk personal appearance services, which are skin penetration procedures in which the release of blood or other bodily fluid is an expected result (for example, body piercing, tattooing, scarring and implanting substances, such as hair or beads, into the skin).

A person who provides higher risk personal appearance services must hold an infection control qualification. A business proprietor is also obligated to ensure an operator employed or engaged by the proprietor holds an infection control qualification before providing higher risk personal appearance services. An infection control qualification is a certificate issued by a registered training organisation to an individual stating that the individual has achieved an infection control competency standard prescribed under a regulation.

The qualification currently prescribed in regulation contains a 'competency unit code' (HLTIN402B), and the name of the competency ('Maintain Infection Control Standards in Office Practice Settings'). The Ministerial Council for Vocational and Technical Education has recently approved a change in one unit of competency, resulting in the competency unit code being amended. The competency code therefore needs to be updated.

Achievement of policy objectives

Prescribing 'special events'

The regulation amends the *Health Practitioners (Special Events Exemption) Regulation 2009* to prescribe the AFC Asian Cup 2015 and the ICC Cricket World Cup 2015 as 'special events'. The prescribed exemption period for the AFC Asian Cup 2015 will be 9 December 2014 to 8 February 2015, allowing for health practitioners accompanying the football teams to practice in Queensland before the competition dates and for a period of time after the competition dates, in case of injury. Similarly, the exemption period for the ICC Cricket World Cup 2015 will be 14 January 2015 to 5 April 2015.

Memorandum of understanding

The regulation amends the *Hospital and Health Boards Regulation 2012* to prescribe an MOU between Queensland Health, the Metro North Hospital and Health Service and the Queensland Police Service.

Mandatory infection control qualification

The regulation amends the *Public Health (Infection Control for Personal Appearance Services) Regulation 2003* to prescribe a new infection control competency unit code. A further amendment ensures the current competency code continues to be recognised for the purposes of the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Consistency with policy objectives of authorising law

The regulation is consistent with the main objectives of the *Hospital and Health Boards Act 2011*, the *Public Health (Infection Control for Personal Appearance Services) Act 2003*, and the *Health Practitioners (Special Events Exemption) Act 1998*.

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

Benefits and costs of implementation

The regulation is not expected to impose significant financial or other costs.

Consistency with fundamental legislative principles

The amendments to disclose confidential patient-identifying information under an MOU potentially breaches 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 legislative framework for victims and approved persons to receive certain limited information about forensic mental health patients arose as a result of the 2006 review of the *Mental Health Act 2000* by His Honour Judge Brendan Butler AM SC. The recommendations in the final report arising from that review, *Promoting Balance in the Forensic Mental Health System*, primarily focused on the establishment of a victims support service as a conduit for information to victims. The amendments to the *Mental Health Act 2000* that followed, created a clearer focus on victims and included ability for victims and approved persons to receive certain limited information about forensic and classified patients.

The confidentiality provisions in the *Mental Health Act 2000* and the *Hospital and Health Boards Act 2011* have been identified as inhibiting the identification of victims that may wish to receive support from the QHVSS, and the level of support the QHVSS can provide. The prescribing of the MOU to enable disclosure of forensic mental health patient information between the ODMH, QHVSS and QPS, strikes an appropriate balance between the rights of the patient and the victim under the *Mental Health Act 2000*.

In recognition of the right to privacy, the MOU contains appropriate safeguards and establishes protocols for requesting and disclosing information under the MOU, including:

- All requests for information must be in writing and a record kept of what information was disclosed.
- Appropriate security measures are in place to protect confidential information from misuse, loss and unauthorised access, modification or disclosure, and all parties will respect any conditions or restrictions imposed by the other party in regards to handling or disclosure of information.
- Confidential information must not be disclosed by the QPS to a third party, unless authorised by the MOU or with the written approval of the Chief Executive (Queensland Health) and the QPS ensures the information is used only for the purpose for which it was given under the MOU. Likewise, information provided by the QPS to a Queensland Health employee must not be disclosed to a third party unless permission is first obtained from the Commissioner for Police or the Commissioner's delegate, or where required or permitted by law.
- The intent of the *Hospital and Health Boards Act 2011* must be upheld, and that all parties will interpret the privacy rights afforded to individuals broadly, and interpret the opportunities for information disclosure narrowly.
- All parties agree at all times to recognise and observe the confidentiality of information disclosed under the MOU, and that collection disclosure, use and store will comply with all applicable Queensland Government policy and legislative requirements, including, for example, the *Information Privacy Act 2009*.

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

Consultation

The Office of Best Practice Regulation was consulted on the regulation, in satisfaction of the requirements of the Regulatory Impact Statement (RIS) System.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation.

Commencement

Clause 2 provides for the commencement of the regulation.

Part 2 Amendment of Health Practitioners (Special Events Exemption) Regulation 2009

Regulation amended

Clause 2 specifies that this part amends the *Health Practitioners (Special Events Exemption) Regulation 2009*.

Insertion of new ss 3 and 4

Clause 3 inserts new sections 3 and 4.

Section 3 prescribes the AFC Asian Cup 2015 as a special event for the period 9 December 2014 to 8 February 2015.

Section 4 prescribes the ICC Cricket World Cup 2015 as a special event for the period 14 January 2015 to 5 April 2015.

Part 3 Amendment of Hospital and Health Boards Regulation 2012

Regulation amended

Clause 4 specifies that this part amends the *Hospital and Health Boards Regulation 2012*.

Amendment of sch 3 (Agreements)

Clause 5 amends schedule 3 to prescribe the agreement dated 16 June 2014 called 'Memorandum of Understanding between the Chief Executive Queensland Health and Metro North Hospital and Health Service and the Queensland Police Service, Confidential Information Exchange'.

The prescribing of the Memorandum of Understanding provides a means for the Office of the Director of Mental Health and Metro North Hospital and Health Service staff to exchange confidential mental health patient information. The exchange of information can only be made in circumstances where a mental health patient has committed an alleged criminal offence involving personal harm to a victim. The Memorandum of Understanding provides clear and consistent guidance to all parties to the agreement by outlining what information can be provided to each of the parties and under what circumstances.

Part 4 Amendment of Public Health (Infection Control for Personal Appearance Services) Regulation 2003

Regulation amended

Clause 6 specifies that this part amends the *Public Health (Infection Control for Personal Appearance Services) Regulation 2003*.

Amendment of s 4 (Infection control competency standard)

Clause 7 amends section 4 to prescribe the newly recognised infection control competency standard – HLTIN402C, while also retaining the former infection control competency standard (HLTIN402B – Maintain Infection Control Standards in Office Practice Settings) as a previous competency code. This ensures HLTIN402B continues to be recognised for the purposes of the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.