

Health Legislation Amendment Regulation (No. 2) 2016

Explanatory notes for SL 2016 No. 237

made under the

Hospital and Health Boards Act 2011
Public Health Act 2005

General Outline

Short title

Health Legislation Amendment Regulation (No. 2) 2016

Authorising law

Section 282 of the *Hospital and Health Boards Act 2011*
Section 461 of the *Public Health Act 2005*

Policy objectives and the reasons for them

Consequential amendments to support the Health and Other Legislation Amendment Act 2016

The *Health and Other Legislation Amendment Act 2016* (the Amendment Act) commenced on Royal Assent on 23 September 2016.

The Amendment Act amended the *Hospital and Health Boards Act 2011* (the Hospital and Health Boards Act) to enable prescribed health practitioners to access a prescribed Queensland Health information system for the purpose of facilitating a patient's care or treatment. This amendment was intended to facilitate general practitioners (GPs) having access to the Queensland Health database, The Viewer.

The Amendment Act also amended the *Public Health Act 2005* (the Public Health Act) to enable schools to share student information with school immunisation and oral health service providers to improve the uptake of the school immunisation and school dental programs. The Amendment Act provides that the school health program provider may ask the school principal to provide information, including the name and date of birth of a student, the name, telephone number, email address and postal address of a parent or guardian of a student, and any other information prescribed by regulation about a student.

Amendments to support the administration of the Queensland Cancer Register

Section 230 of the Public Health Act provides that the chief executive must keep a register of cancer notifications, to be known as the Queensland Cancer Register. Section 232 provides that the chief executive may enter into a written agreement with a contractor prescribed under a regulation for the contractor to keep the register for the chief executive. Cancer Council Queensland (CCQ) currently has an agreement with Queensland Health to administer and maintain the Queensland Cancer Register. This agreement is provided for in transitional provisions of the Public Health Act.

Queensland Health intends to transfer responsibility for keeping the register from CCQ to Metro South Hospital and Health Service.

Achievement of policy objectives

Consequential amendments to support the Health and Other Legislation Amendment Act 2016

To support the Amendment Act, the amending regulation will amend:

- the *Hospital and Health Boards Regulation 2012* (the Hospital and Health Boards Regulation) to:
 - prescribe medical practitioners who hold a range of registration types under the Health Practitioner Regulation National Law (Queensland) (the National Law) as *prescribed health practitioners* for the purposes of part 7 of the Hospital and Health Boards Act to enable GPs to be granted access to prescribed information systems, and
 - prescribe The Viewer as a *prescribed information system* for the purposes of part 7 of the Hospital and Health Boards Act; and
- the *Public Health Regulation 2005* (the Public Health Regulation) to prescribe information about a student for the purposes of disclosure of student information under part 4 of the Public Health Act.

Amendments to support the administration of the Queensland Cancer Register

Amendments are also made to the Public Health Regulation to prescribe Metro South Hospital and Health Service as a contractor for the purposes of administering the Queensland Cancer Register, to facilitate the transfer of responsibility from CCQ.

The process of transferring responsibility for keeping the register from CCQ to Metro South Hospital and Health Service is underway and will be finalised after the Public Health Regulation has been amended.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the authorising Acts.

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

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

The amendments to the Public Health Regulation require schools to provide prescribed student information to school immunisation and oral health service providers to improve the uptake of the school immunisation and school dental programs.

Independent Schools Queensland (ISQ) and the Queensland Catholic Education Commission (QCEC) have provided feedback that this requirement will be a change in practice and may increase the administrative burden on schools. Implementation will be staggered to reduce the immediate administrative burden on schools. Disclosure of year 7 student information will be sought in the 2017 school year to support the School Immunisation Program, while disclosure for the School Dental Program will not be required until the 2018 school year. The Department of Health is working closely with the education sector to implement the amendments and has developed resource materials to support schools.

Metro South Hospital and Health Service currently hosts the Queensland Cancer Control Safety and Quality Partnership (a Quality Assurance Committee) and the Queensland Cancer Control Analysis Team. Transitioning responsibility for the Queensland Cancer Registry to Metro South Hospital and Health Service will increase the integrity and long term efficiencies of data collection management activities in the future. The Department of Health will work closely with Metro South Hospital and Health Service to finalise the associated costs.

There are no other costs associated with the amending regulation.

Consistency with fundamental legislative principles

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

Consultation

ISQ, the QCEC, and state school principal and school administrator associations were consulted on the student information amendments during preparation of the Amendment Act. ISQ and the QCEC support the intent of the amendments to improve the uptake of the school immunisation and school dental programs but noted disclosure of student information is a change in practice.

ISQ raised concerns regarding the disclosure of indigenous status, noting that it is considered 'sensitive information' under the *Privacy Act 1988* (Cwlth), is often provided for a specific purpose and that its disclosure is highly culturally sensitive. The QCEC noted that the disclosure of indigenous status was not considered critical to follow up with parents whose child has not returned a consent form.

Disclosure of information about a child's indigenous status will allow the Department of Health to make informed decisions about future strategies to improve consent form return rates. For example, school health program providers may need to adopt culturally appropriate

strategies in specific communities or at specific schools to improve consent form return rates, including the development of specific culturally appropriate resources. Where a school principal does not consider the disclosure of this information to be in the best interests of the student, the Public Health Act provides that they may refuse to disclose the information.

The Office of the Information Commissioner (OIC) and the Office of the Australian Information Commissioner (OAIC) were consulted in relation to privacy aspects of the Amendment Act. The OIC and the OAIC raised no significant privacy concerns in relation to the student information amendments. The OAIC confirmed that disclosure of indigenous status would be an authorised disclosure for the purposes of relevant privacy legislation.

The Legal Affairs and Community Safety Committee noted ISQ's concerns and the Department of Health's position on indigenous status in its report on the Amendment Act (Report No. 38, 55th Parliament), and supported the amendment. The Department of Health is developing resources to assist schools in complying with privacy requirements.

The OIC considered that the amendments to provide GPs with access to The Viewer would create a privacy vulnerability that did not exist previously, but was supportive of the safeguards proposed by the Department of Health to ensure patients' personal information is protected.

The Department of Health is working with CCQ and Metro South Hospital and Health Service to execute the transfer of responsibility for keeping the Queensland Cancer Register.

The amendments to the Hospital and Health Boards Regulation and Public Health Regulation have been self-assessed as being excluded from further regulatory impact analysis on the basis that they are consequential in nature or related to the internal management of the public sector.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the regulation will be the *Health Legislation Amendment Regulation (No. #) 2016*.

Part 2 Amendment of Hospital and Health Boards Regulation 2012

Regulation amended

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

Insertion of new ss 34A and 34B

Clause 3 inserts new section 34A to prescribe particular categories of medical practitioners registered under the National Law as *prescribed health practitioners* for the purposes of part 7 of the Hospital and Health Boards Act. This will enable GPs to have access to prescribed information systems.

Under the National Law, GPs may be registered under one of several categories. Accordingly, to ensure all medical practitioners providing clinical GP services can access The Viewer, it is necessary to prescribe medical practitioners who hold a range of registration types under the National Law – general, specialist, limited (area of need; postgraduate training or supervised practice), limited (public interest-occasional practice) and provisional. This will ensure, for example, that a medical practitioner who is registered as a specialist but practises as a GP is able to access prescribed information systems such as The Viewer. Some registration types, for example non-practising and limited (teaching or research; public interest) have not been prescribed, on the basis that these practitioners would not be engaged in clinical practice and would have no need for access to The Viewer, or the registration type is not used in Queensland.

The categories prescribed will have the effect of enabling other medical practitioners, such as medical specialists, to access prescribed information systems. However, access will be limited through technical specifications in The Viewer portal to medical practitioners providing GP services only. Consideration will be given to whether further categories of health practitioners should be granted access in future.

Clause 3 also inserts new section 34B to prescribe The Viewer as a *prescribed information system*, to enable prescribed health practitioners to access the database.

Part 3 Amendment of Public Health Regulation 2005

Regulation amended

Clause 4 provides that part 3 amends the *Public Health Regulation 2005*.

Amendment of s 2B (Definitions for div 1)

Clause 5 makes a minor amendment to an editor's note to ensure consistency with current drafting practice.

Insertion of new pt 2D

Clause 6 inserts new part 2D (School health programs) to prescribe information about a student for the purposes of section 213AD(1) of the *Public Health Act 2005*. The information to be prescribed is the sex of the student, their class or group, the language spoken at home and whether the student identifies as being an Aboriginal or Torres Strait Islander person.

Amendment of s 13A (Notifications about maternal death statistics—Act, s 228F)

Clause 7 omits a website reference to ensure consistency with current drafting practice.

Insertion of new s 15A

Clause 8 prescribes the Metro South Hospital and Health Service for section 232(1) of the *Public Health Act 2005*, which provides that the chief executive may enter into a written agreement with a contractor for the contractor to keep the Queensland Cancer Register for the chief executive.

This will enable Queensland Health to transfer responsibility for keeping the Queensland Cancer Register from CCQ to Metro South Hospital and Health Service.