

Health Legislation Amendment Regulation (No. 1) 2018

Explanatory notes for SL 2018 No. 215

made under the

Ambulance Service Act 1991

Health Act 1937

Hospital and Health Boards Act 2011

General Outline

Short title

Health Legislation Amendment Regulation (No. 1) 2018

Authorising law

Sections 50L and 54 of the *Ambulance Service Act 1991*

Sections 132 and 180 of the *Health Act 1937*

Sections 20A and 151 and 282 of the *Hospital and Health Boards Act 2011*

Policy objectives and the reasons for them

The purpose of the *Health Legislation Amendment Regulation (No. 1) 2018* (Amendment Regulation) is to:

- update prescribed agreements between entities to reflect the current versions;
- update references to Australian Standards to reflect the current versions; and
- remove the need for Hospital and Health Services (HHSs) to seek approval from the Treasurer when granting and taking leases in certain circumstances.

Ambulance Service Regulation 2015

Updated agreements

Section 49 of the *Ambulance Service Act 1991* provides that a ‘designated officer’ must not disclose confidential information unless the disclosure is authorised under the Act. A ‘designated officer’ includes the chief executive, a service officer, an honorary ambulance officer, or an agent of the Queensland Ambulance Service (QAS).

‘Confidential information’ refers to information:

- a person has because they are a designated officer; and
- that identifies a person as someone who is receiving, or has received, an ambulance service.

Designated officers are authorised under section 50L of the Ambulance Service Act to disclose confidential information, if the disclosure is to the Commonwealth or State, or an entity of the Commonwealth or an entity of the State, and disclosure is allowed under an agreement prescribed under a regulation. The agreements for section 50L of the Ambulance Service Act are prescribed in schedule 2 of the *Ambulance Service Regulation 2015*.

Agreement between the Commonwealth of Australia and the State of Queensland

Schedule 2, part 1 of the Ambulance Service Regulation prescribes the 2008 agreement between the Commonwealth of Australia, as represented by the Department of Veterans’ Affairs (DVA), the Repatriation Commission and the Military Rehabilitation and Compensation Commission and the State of Queensland, as represented by QAS.

The agreement allows for the disclosure of confidential information to enable the Commonwealth to fund QAS to provide ambulance services and transport to veterans and former members of the Australian Defence Force eligible for health care benefits. The agreement was revised by the parties in 2017.

The policy objective is to prescribe the updated 2017 agreement in the Ambulance Service Regulation. This will allow the parties to continue to share confidential information for the provision of ambulance services to eligible veterans and former Australian Defence Force members.

Memorandum of Understanding between the Office of Industrial Relations, Department of Education and QAS

Schedule 2, part 2 of the Ambulance Service Regulation prescribes the 2015-2016 Memorandum of Understanding (MoU) between the Department of Justice and Attorney-General and QAS.

The MoU establishes the framework for the Office of Industrial Relations (OIR), which was then part of the Department of Justice and Attorney-General, to provide funding to QAS for the emergency treatment and transport of injured workers within the Queensland workers’ compensation scheme. The MoU is renewed on an annual basis.

The policy objective is to prescribe the MoU for 2018-2019. This will allow QAS and OIR, which now sits within the Department of Education, to continue to share confidential information about persons transported and treated by QAS to data match workers’ compensation claim details and to determine the extent of liability when paying for the provision of pre-hospital patient care and ambulance transport services.

Health Regulation 1996

Australian Standards

The *Health Regulation 1996* provides for the manufacturing of medicines and poisons; the advertising and labelling of substances and devices that are used or connected with a therapeutic purpose; and the preparation of medicines and poisons for dispensing at a pharmacy. The Health Regulation references various Australian Standards to establish the minimum standards and requirements for these matters.

The Australian Standards referenced in sections 22, 27, 29, 32 and 178 of the Health Regulation are out of date. The policy objective is to prescribe the updated Australian Standards in the Health Regulation to ensure that hospitals, pharmacies and manufacturers are complying with the correct standards.

Hospital and Health Boards Regulation 2012

Granting leases

The *Hospital and Health Boards Act 2011* prohibits a HHS from granting a lease or sublease without the prior written approval of the Health Minister and the Treasurer, unless the lease or sublease is a type prescribed by regulation. The *Hospital and Health Boards Regulation 2012* allows HHSs to take, but not grant, certain leases without the prior written approval of the Health Minister and the Treasurer.

HHSs routinely need to grant leases to tenants who provide services to patients, staff and visitors. Examples of services include retail coffee shops, florists or automatic teller machines. HHSs are currently required to obtain written approval from the Health Minister and then the Treasurer, before granting a lease or sublease to a prospective tenant. The approval process is time consuming and administratively burdensome.

The policy objective is to allow HHSs to grant leases and subleases, to prescribed parameters, without the prior written approval of the Treasurer. The Health Minister's prior written approval will be required for all leases and subleases granted by HHSs.

The prescribed parameters will ensure HHSs can only grant a lease or sublease without the Treasurer's prior written approval, if it is at least at market rent, and the term, including any option terms, is 10 years or less. A minimum five-year term is the accepted industry standard for retail leases in Australia. It provides a reasonable period for a tenant to obtain an appropriate return on their investment in the lease. It is also common for a tenant to be given an option to extend the lease for a further five years, where a tenant has invested heavily in fitting out the premises.

The prior written approval of both the Health Minister and the Treasurer will be required for any leases outside these parameters.

Taking leases

- *Land Act 1994 leases*

The Hospital and Health Boards Act prohibits a HHS from taking a lease or sublease without the prior written approval of the Health Minister and the Treasurer, unless the lease or sublease is a type prescribed by regulation.

The Hospital and Health Boards Regulation allows HHSs to take leases or subleases for office and non-office accommodation and residential tenancy, to prescribed thresholds, without the prior written approval of the Health Minister and the Treasurer.

The *Land Act 1994* requires the Minister administering the Land Act to approve the issue of leases, subleases or trustee leases to which the Land Act applies. The effect of the provisions in the Land Act and the Hospital and Health Boards Act and Regulation is that when taking leases or subleases to which the Land Act applies, such as unallocated state land or trust land, HHSs are required to obtain prior written approval from the Minister administering the Land Act, the Health Minister and the Treasurer. This requirement places an unnecessary burden on HHSs to seek multiple approvals for a single lease transaction.

The policy objective is to provide that HHSs will no longer require the prior written approval of the Treasurer when taking leases or subleases to which the Land Act applies. HHSs will only require the approval of the Minister administering the Land Act and the Health Minister when taking leases and subleases to which the Land Act applies.

This will reduce the time and administrative burden on the HHSs and the relevant departments by streamlining the approval process.

- *Other leases*

The thresholds at which HHSs can take leases and subleases for office and non-office accommodation to which the Land Act does not apply, and leases or subleases for residential premises remain unchanged. Metro North HHS, Metro South HHS, Gold Coast HHS and Sunshine Coast HHS have a higher threshold of \$250,000 for leases and subleases of office accommodation in recognition of the higher lease costs in South East Queensland. Other HHSs have a threshold of \$100,000.

Updated agreements

Section 142 of the Hospital and Health Boards Act provides that a ‘designated person’ must not disclose confidential information unless the disclosure is required or permitted under the Act. A ‘designated person’ includes Queensland Health employees, contractors, volunteers and inspectors working or carrying out duties at a public sector health service facility.

‘Confidential information’ includes information that is:

- acquired by a ‘designated person’; and
- identifies someone who is receiving, or has received, a public sector health service.

Designated persons are authorised under sections 151(1)(a) and (b) of the Hospital and Health Boards Act to disclose confidential information, if the disclosure is:

- to the Commonwealth or another State, an entity of the Commonwealth or another State, or an entity of the State of Queensland;
- allowed under an agreement prescribed under a regulation; and
- authorised in writing by the chief executive, or health service chief executive, to be in the public interest.

The agreements made under sections 151(1)(a) and (b) of the Hospital and Health Boards Act are prescribed in schedule 3, parts 1 and 2 of the Hospital and Health Boards Regulation.

Agreement between the Commonwealth of Australia and the State of Queensland

Schedule 3, part 1, item 1 of the Hospital and Health Boards Regulation prescribes the 2006 Hospital Services Arrangement between the Commonwealth of Australia, as represented by the DVA and the Repatriation Commission and the Military Rehabilitation and Compensation Commission, and the State of Queensland.

The agreement provides a framework for the provision of, and payment for, treatment of entitled veterans and their dependants in Queensland public hospitals. The agreement also allows confidential information to be shared between the parties to the arrangement. Disclosable confidential information includes a patient's personal details as well as clinical information such as care type, diagnoses, length of stay and DVA file numbers. This allows Queensland Health to make claims for treatment from the DVA. The agreement also allows Queensland Health to respond to requests for information by the DVA, if a veteran or dependant lodges a complaint regarding the treatment received at a Queensland Health facility. Veterans or their dependants are required to consent to the release of information through a patient election form. A new agreement was made on 1 December 2016 for the period 1 July 2014 to 3 June 2019.

The policy objective is to prescribe the updated 2016 agreement in the Hospital and Health Boards Regulation. This will allow the parties to continue to share confidential information for the provision of hospital services to eligible veterans and their dependants.

MoU between the chief executive of Queensland Health and Queensland Police Service

Schedule 3, part 2, item 13 of the Hospital and Health Boards Regulation prescribes a 2013 MoU between the chief executive of Queensland Health and the Queensland Police Service (QPS) for the confidential disclosure of information.

The MoU enables confidential, patient-identifying information to be disclosed to QPS in certain circumstances. Disclosure of confidential information can relate to suspected criminal conduct, a risk to the community and missing persons. The MoU also provides Queensland Health staff with authority to report criminal activity that has occurred on Queensland Health facilities or relating to the provision of Queensland Health services. The MoU details protocols on how QPS can make requests for confidential information and how Queensland Health is to disclose that information. An updated agreement was made on 2 November 2017.

The policy objective is to prescribe the updated 2017 MoU in the Hospital and Health Boards Regulation. This will allow Queensland Health and QPS to continue to share confidential information in the circumstances specified in the MoU.

Achievement of policy objectives

To achieve the policy objectives, the Amendment Regulation will amend:

- the Ambulance Service Regulation to:
 - prescribe the updated agreement between the Commonwealth of Australia and QAS for the provision and payment of ambulance services to entitled persons;
 - prescribe the updated MoU between the Department of Education and QAS for the provision of transport and pre-hospital patient care;
- the Health Regulation to update references to Australian Standards to reflect current versions; and
- the Hospital and Health Boards Regulation to:
 - enable HHSs to grant leases and subleases without the prior written approval of the Treasurer if the lease or sublease is at least market rent and the term of the lease, including any option terms, is 10 years or less;
 - prescribe that the prior written approval of the Treasurer will no longer be required for any leases and subleases to which the Land Act applies – HHSs will only be required to obtain the approval of the Minister administering the Land Act and the Health Minister when taking leases and subleases to which the Land Act applies;
 - prescribe the updated Hospital Services Arrangement between the Commonwealth of Australia and the State of Queensland for public hospital services provided to entitled persons; and
 - prescribe the updated MoU between Queensland Health and QPS for confidential information disclosure.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Ambulance Service Act, the *Health Act 1937* and the Hospital and Health Boards Act.

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

Benefits and costs of implementation

Removing the need for HHSs to seek the approval of the Treasurer when taking or granting certain leases does not impose additional costs or obligations, and reduces the administrative burden placed on HHSs.

The sharing of information under the prescribed MoUs and agreements is within the usual business of the departments, agencies and organisations involved. Any costs will be met from existing budget allocations.

There is a small cost involved to access the updated Australian Standards. However, updating the Standards will not impose any new obligations as hospitals and pharmacies should already be complying with the relevant standards according to best practice.

Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Rights and liberties of individuals

Prescribing the updated agreements and MoUs raises issues of privacy and confidentiality, which are relevant to whether legislation has sufficient regard to the fundamental legislative principle of the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

Agreement between the Commonwealth of Australia and the State of Queensland

Clause 3(1) of the Amendment Regulation prescribes an agreement between QAS and the DVA, the Repatriation Commission and the Military Rehabilitation and Compensation Commission to authorise QAS to disclose confidential information to DVA. Sharing confidential information will enable DVA to fund QAS to provide ambulance services and transport to veterans and former members of the Australian Defence Force eligible for health care benefits. Information to be shared by QAS through the agreement includes a patient's personal details, the date and time of the service provided and the type of treatment provided.

The agreement outlines the obligations on each party in relation to the disclosure and use of confidential information. The sharing of information is intended to inform DVA's acceptance and discharge of financial liability for the ambulance services provided by QAS to veterans. The agreement requires QAS to obtain the informed consent of an individual to the disclosure to, or access by, DVA of personal information. The agreement is also subject to the principles of the *Privacy Act 1988* (Cwlth).

MoU between OIR (Department of Education) and QAS

The updated MoU between OIR (Department of Education) and QAS authorises QAS to record and provide data on emergency ambulance transportations to OIR. The data to be provided by QAS includes an injured worker's personal and injury details, ambulance pick up location and the date and cost of the service.

OIR will use the information to data match workers' compensation claim details and determine the extent of liability to pay QAS for the provision of pre-hospital patient care and ambulance transport services. QAS and OIR are obliged to collect, use and disclose all data in accordance with relevant privacy principles and legislation related to the use of confidential personal information.

Agreement between the Commonwealth of Australia and the State of Queensland

Clause 13(1) prescribes the updated Hospital Services Arrangement agreement between the DVA and the Repatriation Commission and the Military Rehabilitation and Compensation Commission and the State of Queensland. The agreement authorises the disclosure of confidential information between the parties for the provision of, and payment for, the treatment of entitled veterans and their dependants in Queensland public hospitals. Confidential information that can be shared includes a patient's personal details and clinical information such as care type, diagnoses, length of stay and DVA file numbers.

The parties will only share confidential information to make and discharge claims for the treatment of veterans and their dependants or to resolve complaints by a veteran or dependant, regarding the treatment received at a Queensland Health facility. The agreement requires the parties to the agreement, and their officers, employees, agents and subcontractors, to comply with the Commonwealth Privacy Act and relevant state privacy legislation. Each party is obliged to report any breaches or possible breaches privacy legislation to the other party.

MoU between the chief executive of Queensland Health and QPS

Clause 13(2) prescribes an updated MoU between Queensland Health and QPS, authorising Queensland Health and its staff to disclose confidential, patient-identifying information to QPS in certain circumstances. Disclosure of confidential information can relate to suspected criminal conduct, a risk to the community and missing persons.

Under the MoU, in the first instance, it is preferable for confidential information to be shared by obtaining the consent of the individual concerned. In certain circumstances where it is not possible or reasonable to obtain consent, information can still be shared for the purposes of the MoU. Under the MoU, Queensland Health and QPS are required to ensure that appropriate security measures are in place to protect any confidential information disclosed from misuse, loss and unauthorised access, modification or disclosure. The MoU operates subject to all applicable Queensland government policy and legislation, including but not limited to the *Information Privacy Act 2009*, *Police Powers and Responsibilities Act 2000* and *Hospital and Health Boards Act*.

Subdelegation

References to Standards

Clauses 5, 6, 7 and 8 of the Amendment Regulation update the references to prescribed Australian Standards in the Health Regulation. Clauses 5, 6 and 7 refer to Australia/New Zealand ISO 14644, which provides for the control of contamination of air and, if appropriate, surfaces, to levels appropriate for accomplishing contamination-sensitive activities.

Clauses 5, 6 and 7 also refer to Australian Standard 2252.6, which provides design requirements and guidance for the construction of clean workstations, recommendations for the environment in which they are to be used, performance requirements and guidance on their installation and use.

Clause 8 references Australian Standard 2252.5, which specifies the basic requirements for the design, construction, installation, testing and use of cytotoxic drug safety cabinets.

Prescribing external Standards that are not subject to parliamentary scrutiny potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament under section 4(5) of the Legislative Standards Act. Australia/New Zealand ISO Standards are recognised and accepted industry standards, developed by technical experts with industry and government consultation. The Standards are accredited by Standards Australia, Standards New Zealand and the International Standards Organisation, which are the nationally and internationally recognised peak bodies for standards.

The Standards are detailed and technical in nature and apply to a specialist area, justifying the need to prescribe them. The proposed approach ensures HHSs and pharmacies continually keep up with industry expectations and standards, while removing the need to amend the Regulation each time the Standards change.

There are costs involved with accessing the Standards. However, the users of the Standards are HHSs and compounding pharmacies, who are expected to comply with the Standards to meet their obligations under professional regulations.

Sunscreen Standards

Clause 9 updates the relevant Standard for the evaluation and classification of sunscreen products. Prescribing an external Standard that is not subject to parliamentary scrutiny potentially breaches the principle that legislation should have sufficient regard to the institution of Parliament under section 4(5) of the Legislative Standards Act.

Australian Standards are recognised and accepted industry standards and developed by technical experts with industry and government consultation. The standards are accredited by Standards Australia, which is the nationally recognised peak body for standards. The Standard prescribed in clause 9 is technical and detailed in nature and generally used by sunscreen manufacturers and retailers. It is appropriate to delegate such detail to the Standard rather than set out the requirements for sunscreen products in the Regulation.

Consultation

HHSs were consulted in relation to the proposal to remove the need for HHSs to seek approval from the Treasurer when granting and taking certain leases. Of the HHSs that responded, North West HHS and Wide Bay HHS had no feedback while Central West HHS indicated its support for the amendments.

The Queensland Productivity Commission has advised that a regulatory impact statement is not required for the amendments to remove the need for HHSs to seek approval from the Health Minister and the Treasurer when granting and taking leases in certain circumstances. The Queensland Productivity Commission considered the proposal reduces the burden of regulation, with no apparent significant adverse impacts. The remaining amendments were self-assessed by Queensland Health, in accordance with *The Queensland Government Guide to Better Regulation*, as being machinery in nature under exclusion category (g). Therefore, consultation with the Queensland Productivity Commission was not required.

Notes on provisions

Part 1 Preliminary

Short title

Clause 1 provides that the short title of the regulation is the *Health Legislation Amendment Regulation (No.1) 2018*.

Part 2 Amendment of Ambulance Service Regulation 2015

Regulation amended

Clause 2 provides that part 2 amends the *Ambulance Service Regulation 2015*.

Amendment of sch 2 (Agreements)

Clause 3 amends schedule 2.

Clause 3(1) replaces schedule 2, part 1 to prescribe the latest agreement dated 11 October 2017 between the Commonwealth of Australia represented by the Department of Veterans' Affairs, the Repatriation Commission and the Military Rehabilitation and Compensation Commission, and the State of Queensland represented by the Department of Health, Queensland Ambulance Service.

Clause 3(2) replaces schedule 2, part 2, item 2 to prescribe the latest Memorandum of Understanding between the Department of Education and Queensland Ambulance Service for 2018-2019.

Part 3 Amendment of Health Regulation 1996

Regulation amended

Clause 4 provides that part 3 amends the *Health Regulation 1996*.

Amendment of s 22 (Definitions)

Clause 5 amends section 22 to omit the definitions for 'AS 1386' and 'AS 2639' and insert definitions for 'AS 2252.6' and 'AS/NZS ISO 14644'.

Amendment of s 27 (General requirements)

Clause 6 amends section 27(f) to omit the reference to 'parts 1 to 6 of AS 1386' and replace with references to 'AS 2252.6' and 'AS/NZS ISO 14644' for the use of a properly maintained laminar flow cabinet.

Amendment of s 29 (Maintenance)

Clause 7 amends section 29(2) to omit the reference to ‘AS 1386’ and replace with references to ‘AS 2252.6’ and ‘AS/NZS ISO 14644’. Occupiers of a dispensary should comply with the standards when maintaining and testing equipment and facilities mentioned in section 29.

Amendment of s 32 (Dispensing)

Clause 8 amends section 32(1)(a) and (b) to omit references to ‘AS 2639’ and replace with references to ‘AS 2252.5’. A definition for ‘AS 2252.5’ is also inserted as part of the amendment. Occupiers of a dispensary should comply with the standard when dispensing antineoplastic drugs.

Amendment of s 178 (Compliance of therapeutic goods or other drugs with certain description or standard)

Clause 9 amends section 178(2) to omit the reference to ‘the Australian Standard for Sunscreen Products—Evaluation and Classification (AS/NZS 2604–1998) as published by the Standards Association of Australia’ and replace with a reference to ‘AS/NZS 2604:2012 (Sunscreen products—Evaluation and Classification)’ as the standard suncreening preparations should comply with.

Part 4 Amendment of Hospital and Health Boards Regulation 2012**Regulation amended**

Clause 10 provides that part 4 amends the *Hospital and Health Boards Regulation 2012*.

Replacement of s 3AB (Power to take lease without Minister’s and Treasurer’s approval—Act, s 20A(2))

Clause 11 replaces section 3AB with new section 3AB.

New section 3AB(1) prescribes types of leases that Hospital and Health Services (HHSs) can grant without the prior written approval of the Treasurer, as specified in new schedule 1AB, part 1.

New section 3AB(2) prescribes types of leases that HHSs can take without the prior written approval of the Treasurer, as specified in new schedule 1AB, part 2.

New section 3AB(3) largely retains the wording of the previous section 3AB and prescribes the types of leases that HHSs can take without the prior written approval of both the Health Minister and Treasurer. The HHSs listed in schedule 1AB, part 3 are allowed to take a lease or sublease of land or a building, used or intended for use as office and non-office accommodation or residential premises, subject to financial limits. The only change is that the provision now refers to schedule 1AB, part 3 rather than schedule 1AB.

Replacement of sch 1AB (Leases that may be taken without Minister's and Treasurer's approval)

Clause 12 replaces schedule 1AB with a new schedule 1AB.

New schedule 1AB, part 1 provides that HHSs can grant a lease or sublease of land or a building, without the prior written approval of the Treasurer, if the lease or sublease is at least market rent and the term of the lease, including any option terms, is 10 years or less. The approval of the Health Minister will still be required for all leases granted by HHSs.

New schedule 1AB, part 2 provides that HHSs are no longer required to seek approval from the Treasurer when taking any leases or subleases to which the *Land Act 1994* applies. Only the prior written approval of the Minister administering the Land Act and the Health Minister will be required.

New schedule 1AB, part 3 provides that HHSs can take a lease or sublease of land or a building for office and non-office accommodation, to which the Land Act does not apply, without approval of the Health Minister and Treasurer, to prescribed financial limits. The prescribed financial limits remain unchanged from the previous schedule 1AB. It also provides that HHSs can take a lease or sublease of residential premises to a prescribed financial limit, whether or not the Land Act applies, without the approval of the Health Minister and Treasurer. HHSs are still required to seek the approval of the Health Minister and the Treasurer when taking leases to which the Land Act does not apply and where the lease is outside of the prescribed financial limits. Part 3 does not override part 2, which prescribes leases for which the Treasurer's approval is not required.

Amendment of sch 3 (Agreements)

Clause 13 amends schedule 3.

Clause 13(1) replaces item 1 to prescribe the latest Hospital Services Arrangement agreement dated 1 December 2016 between the Commonwealth of Australia as represented by the Repatriation Commission and the Military Rehabilitation and Compensation Commission, and the State of Queensland as represented by the Department of Health.

Clause 13(2) updates item 13 to prescribe the latest Memorandum of Understanding, dated 2 November 2017, between Queensland Health and the Queensland Police Service.