

Public Health and Other Legislation Amendment Regulation (No. 1) 2019

Explanatory notes for SL 2019 No. 35

made under the

Hospital and Health Boards Act 2011

Public Health Act 2005

General Outline

Short title

Public Health and Other Legislation Amendment Regulation (No. 1) 2019

Authorising law

Sections 151(1)(b) and 282 of the *Hospital and Health Boards Act 2011*.
Sections 11(1)(b)(xi), 18 and 461 of the *Public Health Act 2005*.

Policy objectives and the reasons for them

The purpose of the *Public Health and Other Legislation Amendment Regulation (No. 1) 2019* (Amendment Regulation) is to:

- amend the *Hospital and Health Boards Regulation 2012* to prescribe an agreement to enable the sharing of confidential information between Queensland Health and the National Injury Insurance Agency Queensland; and
- amend the *Public Health Regulation 2018* to prescribe as a public health risk places that are at risk of having been contaminated because they may have been used to unlawfully produce a dangerous drug or to store chemicals or equipment that are associated with unlawful drug production.

Amendments to the Hospital and Health Boards Regulation 2012

Section 142 of the *Hospital and Health Boards Act 2011* provides that a *designated person* must not disclose confidential information unless the disclosure is required or permitted under the Act. A *designated person* includes public service and health service employees of Queensland Health, inspectors, health professionals engaged in delivering a public sector health service and volunteers carrying out certain duties at a public sector health service facility.

Section 151(1)(b) of the Hospital and Health Boards Act provides that a designated person may disclose confidential information to an ‘entity of the state’ if the disclosure is required or allowed under an agreement between the chief executive and the entity; the agreement is prescribed under a regulation for section 151(1)(b)(i); and the chief executive determines in writing that the disclosure is in the public interest. The agreements referred to in this section are prescribed in schedule 3, part 2 of the Hospital and Health Boards Regulation.

The National Injury Insurance Agency Queensland (NIIAQ) is a statutory body that provides funding for lifetime treatment, care and support to persons who sustain eligible serious personal injuries in a motor vehicle accident in Queensland. Section 57 of the *National Injury Insurance Scheme (Queensland) Act 2016* provides that NIIAQ ‘represents the State’ and ‘has the privileges and immunities of the State’. As such, NIIAQ is an ‘entity of the State’ for purposes of section 151(1)(b) of the Hospital and Health Boards Act.

On 5 July 2018, the chief executive of Queensland Health signed an agreement with NIIAQ to allow for the exchange of confidential information to:

- facilitate funding by NIIAQ for patients covered by the *National Injury Insurance Scheme (Queensland) Act 2016*;
- enable patient information to be provided to NIIAQ to assist in the management of claims for seriously injured people; and
- assist Queensland Health in identifying and managing patients who have a National Injury Insurance Scheme Queensland claim.

The policy objective of these amendments is to enable Queensland Health and NIIAQ to exchange confidential information for the purposes of the agreement.

Amendments to the Public Health Regulation 2018

The *Public Health Act 2005* protects and promotes the health of the Queensland public. One of the ways it achieves this is to define public health risks and authorise State and local governments to issue public health orders requiring persons to take reasonable actions to prevent, remove and reduce risks to the public in appropriate circumstances. Section 11(1) of the Act defines *public health risk*. Section 11(1)(b)(xi) of the Act provides that, in addition to the public health risks set out in the Act, additional public health risks may be prescribed by regulation. Public health risks prescribed for section 11(1)(b)(xi) are set out in the Public Health Regulation.

The policy objective is to enable local governments to effectively respond to the serious health risks associated with clandestine drug laboratories. Clandestine laboratories are improvised laboratory environments that are used to produce illicit drugs. The majority of these laboratories in Queensland are discovered on residential premises, particularly rental properties. Clandestine laboratories are most commonly used to produce methylamphetamine, which is a dangerous drug under the *Drugs Misuse Act 1986* and the subject of offences under that Act.

The Queensland Police Service notifies local governments when it discovers a clandestine laboratory. The Queensland Police Service also seizes chemicals and equipment from the premises that may pose imminent risks to human health. However, after these materials are removed, residual contaminants may remain. Chemicals used for illegal drug manufacturing

are often corrosive, explosive or toxic and may include heavy metals or carcinogens. These compounds can permeate walls, furniture, carpets, ducts, pipes and soil. This residual contamination presents serious risks to human health, particularly young children, including the potential for mental health problems, adverse skin conditions, respiratory problems and cardiovascular problems.

If a clandestine laboratory is discovered in an active or previously active state, that is, if there is evidence that active drug production has occurred, local governments may issue a public health order to remediate the site. An order may be made under section 11(1)(b)(vii) of the Public Health Act, which provides that the dispersal or release of a pesticide, herbicide, solvent or other chemical is a public health risk. However, clandestine laboratories may also be discovered in an inactive state, for example where chemicals or equipment are discovered in a 'boxed' or 'packaged' state from which it is unclear whether and to what extent they have been used. In these circumstances, there may still be a serious risk to human health because it is likely that the chemicals or equipment have been improperly stored or handled, leading to contamination. To determine the extent of the potential contamination, a local government may need to issue a public health order requiring the owner of the premises to conduct a risk assessment and, if necessary, take appropriate actions to decontaminate the premises. However, some local governments have expressed concern that section 11(1)(b)(vii) may not authorise them to issue a public health order in these circumstances.

To meet their responsibility to manage the risks of contamination associated with clandestine laboratories, local governments need clear authority to issue public health orders requiring property owners to conduct assessment and remediation of sites where clandestine laboratories have been detected, whether the laboratories are in an active or inactive state.

Achievement of policy objectives

To achieve the policy objectives, the Amendment Regulation amends the Hospital and Health Boards Regulation to prescribe the agreement between the State of Queensland and NIIAQ. This will allow Queensland Health to exchange confidential information with NIIAQ for the case-management and provision of services to persons with a serious personal injury caused through a motor vehicle accident, and for the management of claims under the National Injury Insurance Scheme Queensland.

The Amendment Regulation will also amend the Public Health Regulation to prescribe, as a public health risk, places that are at risk of having been contaminated because they may have been used to unlawfully produce a dangerous drug or to store chemicals or equipment that are associated with unlawful drug production. By expressly prescribing these places as a public health risk, the amendments will provide clarity to local government officials regarding the scope of their enforcement powers and responsibilities and ensure that they have appropriate powers to require the assessment and remediation of serious risks to the public associated with clandestine laboratories.

Consistency with policy objectives of authorising law

The amendments to the Hospital and Health Boards Regulation are consistent with the policy objectives of the Hospital and Health Boards Act, which provides a framework for authorising the disclosure of confidential information for important public health and administrative purposes.

The amendments to the Public Health Regulation are consistent with the object of the Public Health Act to protect and promote the health of the Queensland public. The unlawful production of dangerous drugs and the storage of chemicals or equipment associated with unlawful drug production is likely to lead to contamination that can cause serious harm to human health.

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 alternatives to amending the Hospital and Health Boards Regulation to prescribe the agreement between Queensland Health and NIIAQ. The Hospital and Health Boards Act requires that this agreement be prescribed before confidential information can be shared under the agreement.

There are no alternatives to amending the Public Health Regulation to achieve the policy objective of empowering local governments to order appropriate remediation of public health risks arising from the unlawful production of dangerous drugs and the storage of chemicals or equipment associated with these unlawful activities. Legal uncertainty over the scope of local government powers in this area is restricting the ability of local government officers to effectively manage health and environmental risks.

Benefits and costs of implementation

The amendments to the Hospital and Health Boards Regulation are not expected to result in additional costs because the purpose of these amendments is to enable information to be shared to improve overall administrative efficiency and effectiveness of service delivery for persons who are seriously injured in a motor vehicle accident.

The amendments to the Public Health Regulation may result in costs to property owners who are ordered to undertake assessment and remediation of contaminated premises. There could also be inconvenience and potential costs to owners or residents of premises that are near a former clandestine laboratory site the subject of a public health order.

It is considered these costs are justified by the significant benefits to public safety that result from strengthening the ability of regulators to order the assessment and remediation of sites that pose serious public and environmental health risks. It is also anticipated that most of these costs will be covered by insurance and will therefore be minimal for individual property owners. In addition, section 33 of the Public Health Act allows a person who has been issued a public health order to recover costs from third parties. This provides the possibility that costs may be recovered from parties who set up clandestine drug laboratories.

Consistency with fundamental legislative principles

Potential breaches of fundamental legislative principles are outlined below.

Amendments to the Hospital and Health Boards Regulation 2012

The amendments to enable disclosure of confidential patient-identifying information between Queensland Health and NIIAQ are potentially in breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992* in relation to privacy of individuals.

The proposed disclosure of confidential information is considered justified to enable the information to be used to improve case-management of persons with a serious personal injury and for the management and provision of funding to provide health services to injured persons. Disclosures of patient-identifying information between Queensland Health and NIIAQ, which are both State entities, are underpinned by a written agreement between the parties. The agreement will operate alongside the Hospital and Health Boards Act, *Information Privacy Act 2009* and National Privacy Principles to provide safeguards for the security and use of patient-identifying information. The agreement sets out the specific purposes for which confidential information may, and may not, be disclosed. The agreement also includes provisions about dealing with breaches of confidentiality and the action that Queensland Health and NIIAQ must take to address a breach.

Amendments to the Public Health Regulation 2018

The amendments that prescribe a new public health risk to address risks of contamination from clandestine laboratories (see clause 5, insertion of new section 27A) are relevant to the fundamental legislative principle that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (see *Legislative Standards Act 1992*, section 4(3)(a)).

It is considered that the public health risk is defined with sufficient clarity and specificity to ensure that a public health officer's discretion is appropriately constrained and that property owners have adequate notice of the circumstances in which they may be subject to a public health order.

Under clause 5, a place is prescribed only if it may have been used to unlawfully produce a dangerous drug or to store chemicals or equipment that are associated with unlawful drug production. This requirement limits the places being prescribed to those that are at significant risk of contamination arising from the improper storage, handling or use of chemicals or equipment that is likely to occur when dangerous drugs are unlawfully produced.

The newly prescribed public health risk is subject to the full range of substantive and procedural safeguards that apply to public health orders under the Public Health Act, including the requirement that a public health order must be reasonable, that appropriate notice must be given and that public health orders are subject to judicial review.

Also, under section 23 of the Public Health Act, an authorised person must form a reasonable belief that a public health risk exists at a place before issuing a public health order. The Commonwealth has published detailed national guidelines called *Clandestine Drug Laboratories Remediation Guidelines* (2011). The guidelines assist local governments to decide if a public health risk exists as a result of a clandestine drug laboratory. Additional guidelines are also being developed by Queensland Health and will be issued after the Amendment Regulation is made.

Consultation

A range of stakeholders were consulted in the development of the Amendment Regulation, including the Local Government Association of Queensland, local governments, Queensland Police Service, Department of Housing and Public Works, Hospital and Health Services and Residential Tenancies Authority. Overall, stakeholders support the amendments as they give greater clarity to local governments to act on public health risks associated with clandestine laboratories. Some stakeholders provided feedback on drafting matters, which was incorporated in the Amendment Regulation where appropriate.

The amendments to the Hospital and Health Boards Regulation 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 for these amendments.

The Queensland Productivity Commission was consulted on the amendments to the Public Health Regulation. The Commission advised that further regulatory impact analysis is not required because the amendments are unlikely to result in significant adverse impacts as they clarify current practice and are intended to eliminate any legal uncertainty for local government officers issuing public health orders to decontaminate inactive clandestine laboratories.

Notes on provisions

Part 1 Preliminary

1 Short title

Clause 1 provides the short title of the regulation is the *Public Health and Other Legislation Amendment Regulation (No. 1) 2019*.

Part 2 Amendment of Hospital and Health Boards Regulation 2012

2 Regulation amended

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

3 Amendment of sch 3 (Agreements)

Clause 3 amends part 2 of schedule 3 to prescribe the agreement dated 5 July 2018 called 'Agreement pursuant to section 151(1)(b) of the *Hospital and Health Boards Act 2011* (Qld) between The State of Queensland through the Chief Executive of Queensland Health and National Injury Insurance Agency Queensland'.

Part 3 Amendment of Public Health Regulation 2018

4 Regulation amended

Clause 4 states that part 3 amends the *Public Health Regulation 2018*.

5 Insertion of new s 27A

Clause 5 inserts a new section 27A that prescribes certain places as a public health risk for section 11(1)(b)(xi) of the *Public Health Act 2005*. The provision prescribes a place if:

- a dangerous drug has or may have been unlawfully produced at the place or a part of the place; or
- a police officer has seized, under the *Police Powers and Responsibilities Act 2000*, from the place, or a part of the place, a chemical or equipment that has or may have been used to unlawfully produce a dangerous drug.

This clause also provides that this public health risk is to be administered and enforced by local governments.

The terms *dangerous drug*, *produce* and *unlawfully* are also defined for the purposes of this clause.