

Health Legislation Amendment Regulation (No. 3) 2019

Explanatory notes for SL 2019 No. 225

made under the

Hospital and Health Boards Act 2011
Transplantation and Anatomy Act 1979

General Outline

Short title

Health Legislation Amendment Regulation (No. 3) 2019

Authorising law

Sections 138B, 151 and 282 of the *Hospital and Health Boards Act 2011*.
Sections 42A and 52 of the *Transplantation and Anatomy Act 1979*.

Policy objectives and the reasons for them

The purpose of the Health Legislation Amendment Regulation (No. 3) 2019 (Amendment Regulation) is to:

- expand the current legislated minimum nurse-to-patient ratios to the acute adult mental health wards of a further 16 public hospitals;
- prescribe an agreement between the Commonwealth Department of Human Services (DHS) and Queensland Health, to enable sharing of patient identifying information for the BreastScreen Queensland program; and
- update the name of a prescribed tissue bank.

Hospital and Health Boards Regulation 2012

Prescribing minimum nurse-to-patient ratios in mental health wards

Research indicates that the number of nurses to the number of patients has clear benefits for patients, including lower patient mortality, improved patient safety and better quality of care. This leads to greater patient satisfaction and better outcomes for patients, such as reduced patient falls and reduced facility-related pressure injuries.

In 2016, the *Hospital and Health Boards Act 2011* was amended to provide a legislative framework for minimum nurse-to-patient ratios in public sector health service facilities. The *Hospital and Health Boards Regulation 2012* currently provides for a minimum nurse-to-patient ratio of:

- one nurse to four patients for the morning shift;
- one nurse to four patients for the afternoon shift; and
- one nurse to seven patients for the night shift.

The minimum nurse-to-patient ratios currently apply to the acute adult medical and surgical wards in prescribed public hospitals. The minimum ratios also apply to the acute adult mental health wards in the Princess Alexandra Hospital and the Royal Brisbane and Women's Hospital.

During the 2017 State Election, the Queensland Government committed to expand the minimum nurse-to-patient ratios to acute adult mental health wards in public hospitals. The minimum ratios will ensure minimum nursing staff numbers and improved patient outcomes for patients in those wards. The policy objective is to prescribe the 16 additional public hospitals with acute adult mental health wards that are required to meet the minimum nurse-to-patient ratios.

Prescribing an agreement between the Commonwealth Department of Human Services and Queensland Health

Management of patient records forms part of the delivery of public sector health services in Queensland and patient confidentiality is strictly regulated. The Hospital and Health Boards Act creates a duty of confidentiality, prohibiting 'designated persons' (Queensland Health staff, including contractors and volunteers) from disclosing confidential information about a person who is receiving, or who has received, a public sector health service if the person could be identified from the information. Confidential information includes any information collected by Queensland Health during the course of providing a health service to an individual and may include such things as: name, address, date of birth, admission and discharge dates, billing information, and Medicare number; health and medical information; and information generated by health professionals such as notes and opinions about an individual and their health.

The Hospital and Health Boards Act also prescribes a number of exceptions to the duty of confidentiality, outlining circumstances in which confidential information may be disclosed. These circumstances cover a range of necessary situations, for example if the patient consents to the disclosure or if a health practitioner needs to discuss aspects of the patient's health care with another health professional.

Section 151(1) of the Hospital and Health Boards Act provides that a designated person may 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;
- required or allowed under an agreement prescribed under a regulation; and
- stated in writing by the chief executive, or health service chief executive, to be in the public interest.

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

The BreastScreen Queensland program provides free breast cancer screening and assessment to eligible women. The policy objective is to ensure that Queensland Health can contact eligible women aged 50 to 74 to invite them to participate in the program. This requires the sharing of confidential information, as DHS holds Medicare data including names and dates of birth.

Queensland Health and DHS have signed an agreement to facilitate sharing of confidential information to support the operation of the BreastScreen Queensland program. The agreement provides a framework for Queensland Health to provide data to DHS relating to the women currently participating in the BreastScreen Queensland program. DHS will then identify eligible women in Queensland who are not participating in the program and share their details with Queensland Health. Prescribing the new agreement will allow Queensland Health access to vital Medicare data and to provide invitation letters to eligible Queensland women in order to increase participation in the BreastScreen program.

Transplantation and Anatomy Regulation 2017

Prescribing the new name of the Australian Red Cross' operating division

Section 42A of the *Transplantation and Anatomy Act 1979* provides that a person who owns a tissue bank may charge an amount to recover certain costs, such as those related to the storage or distribution of donated tissue. A tissue bank is defined in section 42A as a facility prescribed by regulation at which donated tissue is stored. Section 12(d) of the *Transplantation and Anatomy Regulation 2017* prescribes the Australian Red Cross Blood Service as a tissue bank.

The Australian Red Cross Blood Service is responsible for all blood collections, under a contract with the National Blood Authority (NBA). NBA is a statutory authority under the Australian Government's Health portfolio. The Australian Red Cross Blood Service is prescribed as a tissue bank in the *Transplantation and Anatomy Regulation* to enable it to lawfully recover costs associated with collecting or supplying blood and other blood products to the NBA.

The Australian Red Cross is changing the name of its operating division from 'Australian Red Cross Blood Service' to 'Australian Red Cross Lifeblood'. It is therefore necessary to update the name of the tissue bank in the *Transplantation and Anatomy Regulation*, to ensure it can continue to lawfully recover costs associated with collecting or supplying blood and other blood products to the NBA.

Achievement of policy objectives

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

- the Hospital and Health Boards Regulation to:
 - prescribe 16 public hospitals with acute adult mental health wards that are required to comply with the minimum nurse-to-patient ratios;
 - prescribe an agreement between DHS and Queensland Health; and
- the Transplantation and Anatomy Regulation to update the name of the Australian Red Cross Blood Service to Australian Red Cross Lifeblood.

Consistency with policy objectives of authorising law

The Amendment 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

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

Benefits and costs of implementation

Prescribing minimum nurse-to-patient ratios in acute adult mental health wards

The expansion of minimum nurse-to-patient ratios to a further 16 public acute adult mental health wards is expected to cost approximately \$2.7 million annually. These costs will be managed from within Queensland Health's existing resources. Patients will receive care from a minimum number of nursing staff which in turn will lead to improved patient outcomes such as lower patient mortality, improved patient safety and better quality of care.

Prescribing an agreement between the Commonwealth DHS and Queensland Health

Prescribing the agreement will allow Queensland Health to access vital Medicare data and to provide BreastScreen invitation letters to eligible Queensland women. This will increase participation in the BreastScreen program which will help in the early detection and treatment of breast cancer.

Prescribing the new name of the Australian Red Cross' operating division

Updating the name of the Australian Red Cross' operating division is necessary to allow ongoing operation after its name change. It will allow it to continue to recover costs involved in collecting or supplying blood and other blood products.

Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*, with the possible exception discussed below.

Prescribing the agreement between DHS and Queensland Health 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*.

The agreement between DHS and Queensland Health allows Queensland Health to share confidential information of women currently participating in the BreastScreen Queensland program. Sharing this information will allow DHS to provide Queensland Health with a list of eligible women that are not participating in the program. The agreement outlines the obligations on each party relating to the disclosure and use of confidential information.

Queensland Health and DHS 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 including the *Information Privacy Act 2009* and the *Privacy Act 1988* (Cwlth). The agreement requires that, following matching of BreastScreen Queensland data with Medicare data, DHS will destroy all BreastScreen Queensland data that was provided to DHS.

Given the importance of the BreastScreen program, early detection and treatment of breast cancer and the safeguards prescribed in the agreement, it is considered that any departure from fundamental legislative principles is justified.

Consultation

The Amendment Regulation was assessed by Queensland Health in accordance with *The Queensland Government Guide to Better Regulation* as being excluded from further regulatory impact assessment on the basis that prescribing an agreement and amending the name of a tissue bank are machinery in nature (exclusion category (g)). The nurse-to-patient ratios amendments relate to the internal management of public sector services (exclusion category (c)) and will ensure minimum nursing staff levels for patients in acute adult mental health wards in public hospitals. Therefore, consultation with the Queensland Productivity Commission was not required.

In August 2019, Hospital and Health Services and the Queensland Nurses and Midwives' Union (QNMU) were consulted on the amendments relating to the implementation of minimum nurse-to-patient ratios in acute adult mental health wards in prescribed public hospitals. QNMU was generally supportive of the amendments.

QNMU recommended that team leaders and nurse unit managers should be excluded from the ratio count for morning and afternoon shifts in acute adult mental health wards. QNMU also suggested the minimum nurse-to-patient ratios should not apply to high dependency beds in mental health wards due to the higher level of care required for these patients. Queensland Health will manage these matters through the *Nurse-to-Patient Ratio Compliance: Team Leader/Shift Coordinator Principles* document, Nursing and Midwifery Workload Management Standard and the industrially mandated Business Planning Framework which are publicly available on the Queensland Health website.

DHS was consulted during drafting of the information sharing agreement between Queensland Health and DHS. No consultation was required to prescribe the agreement in the Hospital and Health Boards Regulation, as this is a process required to meet the confidentiality provisions of the Hospital and Health Boards Act. DHS has been advised of this requirement and will be informed when the agreement has been prescribed and the sharing of information under the agreement can commence.

On 1 July 2019, the Australian Red Cross wrote to Queensland Health to advise of the change of name of its operating division. The Australian Red Cross supports the amendment to the Transplantation and Anatomy Regulation to ensure its operating division can continue to recover costs involved in collecting or supplying blood and other blood products.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation is the *Health Legislation Amendment Regulation (No.3) 2019*.

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*.

Replacement of sch 2A (Wards subject to minimum nurse-to-patient and midwife-to-patient ratios)

Clause 3 replaces schedule 2A of the Hospital and Health Boards Regulation to update the public sector health facility wards in which minimum nurse-to-patient ratios will apply. The dots in each acute adult ward column indicates if the minimum nurse-to-patient ratios requirement applies to the specific ward of a prescribed public hospital (see section 30B of the Hospital and Health Boards Regulation). For example, in the Hervey Bay Hospital the minimum nurse-to-patient ratios only apply to acute adult medical and surgical wards.

The prescribed hospitals with acute adult surgical and medical wards required to comply with the minimum nurse-to-patient ratios remain unchanged. Similarly, minimum nurse-to-patient ratios continue to be prescribed for acute adult mental health wards at the Princess Alexandra Hospital and Royal Brisbane and Women's Hospital. The changes to schedule 2A relate to prescribing an additional 16 public hospitals with acute adult mental health wards to which the legislated minimum nurse-to-patient ratios will apply:

- Bundaberg Hospital;
- Caboolture Hospital;
- Cairns Hospital;
- Gold Coast University Hospital;
- Ipswich Hospital;
- Logan Hospital;
- Mackay Hospital;
- Maryborough Hospital;
- Nambour Hospital;
- Prince Charles Hospital;
- Redland Hospital;

- Robina Hospital;
- Rockhampton Hospital;
- Sunshine Coast University Hospital;
- Toowoomba Hospital; and
- Townsville Hospital.

Amendment of sch 3 (Agreements)

Clause 4 inserts a new section 9C into part 1 of schedule 3 to prescribe a new agreement for the purpose of section 151(1) of the Hospital and Health Boards Act.

The agreement prescribed is ‘The agreement of 2019 called ‘Agreement pursuant to section 151(1)(a) of the *Hospital and Health Boards Act 2011* (Qld) between State of Queensland through the Chief Executive of Queensland Health and Commonwealth of Australia represented by the Department of Human Services for information exchange between Queensland Health and the Department of Human Services to identify women who are eligible to receive breast screening services in Queensland’.

Part 3 Amendment of Transplantation and Anatomy Regulation 2017

Regulation Amended

Clause 5 provides that part 3 amends the *Transplantation and Anatomy Regulation 2017*.

Amendment of s 12 (Tissue banks—Act, s42A)

Clause 6 amends section 12(d) to replace the words ‘Blood Service’ with ‘Lifeblood’, to reflect the Australian Red Cross Blood Service changing the name of its operating division to Australian Red Cross Lifeblood.