

# Health Transparency (Postponement) Regulation 2020

Explanatory notes for SL 2020 No. 199

made under the

*Health Transparency Act 2019*

## General Outline

### Short title

*Health Transparency (Postponement) Regulation 2020*

### Authorising law

Section 15DA of the *Acts Interpretation Act 1954*

Section 2 of the *Health Transparency Act 2019*

### Policy objectives and the reasons for them

The objective of the *Health Transparency (Postponement) Regulation 2020* (postponement regulation) is to postpone the automatic commencement of the uncommenced provisions of the *Health Transparency Act 2019* by one year.

Section 15DA(2) of the *Acts Interpretation Act 1954* provides that if a law has not commenced within one year of its Assent, it automatically commences on the next day. However, a regulation may extend the automatic commencement date for up to two years after the Assent date.

On 28 November 2019, the Health Transparency Act was passed by Parliament and received royal assent on 5 December 2019.

The purpose of the Health Transparency Act is to:

- establish a legislative framework for collecting and publishing information about public and private hospitals and residential aged cared facilities (RACFs);
- amend the *Hospital and Health Boards Act 2011* to introduce a minimum nurse and support worker skill mix ratio and minimum average daily resident care hours in public RACFs; and
- amend the *Health Ombudsman Act 2013* to implement recommendations of the Health, Communities, Disability Services and Domestic and Family Violence Committee's *Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013*.

Section 2 of the Health Transparency Act provides that certain provisions of the Act commence on a day to be fixed by proclamation. A proclamation was made on 1 March 2020 (SL 2020 No. 21) commencing certain provisions of the Health Transparency Act. The provisions which commenced:

- established a legislative framework to collect and publish information about public and private hospitals and residential aged care facilities;
- amended the *Health Ombudsman Act 2013* to implement recommendations of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's *Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013*; and
- made consequential amendments to the *Health Practitioner Regulation National Law Act 2009*, *Hospital and Health Boards Act 2011*, *Private Health Facilities Act 1999* and *Public Health Act 2005* to support the operation of the Act.

The remaining provisions of the Health Transparency Act amend the Health Ombudsman Act to introduce a joint consideration process between the Office of the Health Ombudsman (OHO) and the Australian Health Practitioner Regulation Agency ('Ahpra') for complaints about registered practitioners.

The Health Ombudsman will be required to notify Ahpra of a complaint about a registered practitioner, including full details to allow Ahpra to consider the complaint. Ahpra will have five business days to provide its initial view to the Health Ombudsman about how the complaint should be dealt with, such as whether it believes the matter should be referred to Ahpra or retained by the Health Ombudsman.

Prior to the emergence of COVID-19, the joint consideration provisions of the Health Transparency Act were anticipated to commence in 2020. However, work on finalising the joint consideration process was put on hold by Ahpra and OHO as COVID-19 significantly impacted on the availability of relevant staff from each agency to work on the project.

It is proposed to postpone commencement of the remaining provisions of the Health Transparency Act until the end of 5 December 2021 to give Ahpra and OHO time to finalise the substantial amount of work still required to develop and implement the technology required to automate data transfer between the two agencies.

## **Achievement of policy objectives**

The postponement regulation will extend the automatic commencement of the remaining provisions of the Health Transparency Act by one year, until 5 December 2021.

## **Consistency with policy objectives of authorising law**

The postponement regulation is consistent with the policy objectives of the 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**

There are no alternative ways of achieving the policy objectives.

## **Benefits and costs of implementation**

The postponement regulation will allow sufficient time for consultation to be undertaken on the supporting regulations. There are no additional costs involved.

## **Consistency with fundamental legislative principles**

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

## **Consultation**

No consultation was undertaken with stakeholders on the postponement regulation.

The postponement regulation was self-assessed by Queensland Health, in accordance with the *Queensland Government Guide to Better Regulation*, as being excluded from regulatory impact assessment under exclusion category (g) on the basis that the regulation is of a machinery nature. Consultation with the Queensland Productivity Commission is not required.

## Notes on provisions

### Short Title

*Clause 1* provides the short title of the regulation is the *Health Transparency (Postponement) Regulation 2020*.

### Postponed commencement of uncommenced provisions

*Clause 2* provides that under section 15DA(2) the *Acts Interpretation Act 1954*, the period before automatic commencement of the uncommenced provisions of the *Health Transparency Act 2020* is extended until the end of 5 December 2021. This has the effect that the Health Transparency Act will automatically commence on 6 December 2021, unless commenced earlier.

### Expiry

*Clause 3* provides that the regulation expires on 7 December 2021.