

# Health Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 87

made under the

*Hospital and Health Boards Act 2011*

*Mental Health Act 2016*

*Public Health Act 2005*

*Radiation Safety Act 1999*

## General Outline

### Short title

*Health Legislation Amendment Regulation 2022*

### Authorising law

Section 139 of the *Hospital and Health Boards Act 2011*

Section 800 and schedule 3 of the *Mental Health Act 2016*

Sections 62, 63, 64, 279AO and 461 of the *Public Health Act 2005*

Section 51 of the *Radiation Safety Act 1999*

### Policy objectives and the reasons for them

The *Health Legislation Amendment Regulation 2022* (Amendment Regulation) amends the:

- *Mental Health Regulation 2017* to prescribe an additional cohort of medical practitioners as psychiatrists;
- *Public Health Regulation 2018* to:
  - prescribe monkeypox (MPX) as a notifiable condition; and
  - prescribe a disclosure agreement to facilitate information-sharing between Queensland Health and Resources Safety and Health Queensland; and
- *Hospital and Health Boards Regulation 2012*, *Mental Health Regulation* and *Radiation Safety Regulation 2021* to make amendments to support the *Health and Other Legislation Amendment Act 2022* (Amendment Act).

### Amendments to prescribe an additional cohort of medical practitioners as psychiatrists

The Amendment Regulation amends the *Mental Health Regulation* to allow medical practitioners with general registration from the Medical Board of Australia (Medical Board)

and overseas qualifications in psychiatry assessed as substantially comparable to Fellowship with the Royal Australian and New Zealand College of Psychiatrists (RANZCP) to exercise the functions of a psychiatrist under the Mental Health Act.

Under the Mental Health Act, an *authorised psychiatrist* may exercise functions such as confirmation or revocation of treatment authorities providing for involuntary treatment and the authoring of specialist reports about a person's unsoundness of mind and fitness for trial in relation to a criminal offence.

An *authorised psychiatrist* is a *psychiatrist* appointed under the Mental Health Act. The Mental Health Act defines a *psychiatrist* as a person registered under the Health Practitioner Regulation National Law (National Law) to practise in the medical profession as a specialist registrant in the speciality of psychiatry, or a person registered under the National Law to practise in the medical profession who is able to practise psychiatry as another type of registrant prescribed by regulation.

Section 4 of the Mental Health Regulation prescribes the following types of registrants:

- a registrant who holds limited registration to practise in an area of need in a specialist position in psychiatry;
- a registrant who holds limited registration to undertake post-graduate training or supervised practice in a specialist position of psychiatry; and
- a registrant who holds provisional registration to practise in a specialist position in psychiatry.

International medical graduates entering Australia are assessed by the Medical Board and granted registration under the National Law based on an assessment of their medical qualifications. Overseas-trained psychiatrists arriving from the United Kingdom, United States of America, Ireland, Canada and New Zealand are eligible for registration through the 'competent authority' pathway. This results in general registration as a medical practitioner, on the basis that the Medical Board has recognised the authorities of these nations as being competent in assessing the applied medical knowledge and clinical skills necessary for registration in Australia.

An international medical graduate's specialist psychiatric qualification is assessed by RANZCP, which is recognised by the Medical Board as the authority responsible for training, examining, and awarding psychiatric qualification within Australia. Fellowship with RANZCP is a pre-requisite for registration as a specialist registrant in the specialty of psychiatry.

While the specific cohort of international medical graduates from nations identified above may be granted a general registration by the Medical Board, their psychiatric qualifications are recognised and assessed as being *substantially comparable* to those of a RANZCP Fellow. This recognition reflects the highest comparability to Fellowship with the RANZCP. General registration allows these graduates to practise medicine in any role for which they have the appropriate qualifications, skills and experience. An assessment by RANZCP of *substantially comparable* demonstrates appropriate qualification and allows these medical practitioners to be employed by Hospital and Health Services to practise in staff specialist positions in the field of psychiatry while they undertake a 12-month pathway to fellowship with the RANZCP.

Despite a registration status which allows these general registrants to practise in the speciality of psychiatry, section 4 of the Mental Health Regulation does not include general registrants under National Law, who have had their specialist training in psychiatry assessed by RANZCP as being substantially comparable to a Fellow of the RANZCP as a *psychiatrist* for the purposes of the Mental Health Act.

This creates challenges for authorised mental health services that may struggle to ensure coverage of staff specialists in psychiatry whose specific type of registration allows them to deliver treatment and care restricted to psychiatrists for the purposes of the Mental Health Act. This creates a barrier to treatment and care for involuntary patients. It can also create a barrier to Hospital and Health Services recruiting these overseas-trained psychiatrists, despite them having the desired clinical skill and necessary qualifications to provide psychiatric care.

It is clinically appropriate for a medical practitioner suitably qualified to practise in a staff specialist position of psychiatry and on a pathway to RANZCP Fellowship to exercise the specific functions granted to an authorised psychiatrist under the Mental Health Act. A practitioner whose specialist psychiatric qualifications have been assessed as *substantially comparable* by RANZCP has skills and experience that are substantially comparable to an Australian-trained psychiatrist who has obtained fellowship with RANZCP.

The current drafting of the Mental Health Regulation prevents general registrants under the National Law, whose overseas specialist training in psychiatry have been assessed as substantially comparable by RANZCP, from being recognised as psychiatrists under the Mental Health Act, while registrants with limited or provisional registration are prescribed.

### **Amendments to prescribe monkeypox (MPX) as a notifiable condition**

Chapter 3 of the Public Health Act deals with notifiable conditions and establishes the notifiable conditions register. The notifiable conditions register is an important tool to manage and contain the spread of communicable diseases within Queensland. The Public Health Act requires doctors, persons in charge of hospitals and directors of pathology laboratories to notify the chief executive of Queensland Health when a person may have or has a notifiable condition. Queensland Health can also undertake contact tracing using the powers in part 3, chapter 3 of the Public Health Act in relation to persons who have or may have a notifiable condition.

Section 62 of the Act defines types of notifiable conditions.

- A *clinical diagnosis notifiable condition* is a condition where a diagnosis can be made on the basis of clinical evidence, including clinical history, signs and symptoms.
- A *pathological diagnosis notifiable condition* is where a diagnosis can be made on the basis of a pathological examination of a specimen of human origin.
- A *provisional diagnosis notifiable condition* is a condition where a provisional diagnosis can be made on the basis of clinical evidence, including clinical history, signs and symptoms.
- A *pathology request notifiable condition* is a condition listed in column 5 of schedule 1 of the Public Health Regulation. If a pathology laboratory receives a request to test for a condition in column 5, it must notify the chief executive.

Notifications must be made within 48 hours of the examination, pathological examination or receipt of the request for pathological examination, unless the condition is prescribed under schedule 2 as a notifiable condition requiring immediate notification.

Monkeypox (MPX) is a disease caused by the monkeypox virus. The virus can infect people of all ages and people diagnosed with MPX are infectious to others while they have symptoms. MPX is usually a mild, self-limiting illness and most people recover within a few weeks. However serious disease outcomes such as bronchopneumonia, encephalitis, secondary bacterial infection and blindness from corneal scarring can occur.

As of 26 May 2022, the World Health Organization (WHO) had reported that MPX has spread to 20 countries, with approximately 300 cases detected in countries where MPX does not normally circulate. A small number of cases have been detected in Australia. As of 3 June 2022, no cases of MPX have been detected in Queensland. Given that MPX has not previously circulated in Australia, it is considered a novel disease within Australia. As an affected country, Australia has an obligation to contribute to the WHO outbreak risk assessment through MPX surveillance and reporting which will inform understanding of who is most at risk.

The Australian population lacks natural immunity acquired from past infection to MPX and a large proportion of Australians do not possess cross-protection from smallpox vaccination, which was ceased in Australia in 1979 following the eradication of smallpox. Newborns, children and people with some underlying medical conditions or weakened immune systems may be at risk of more serious disease outcomes. In Africa, a case fatality rate of 3-6% has been reported in association with previous outbreaks, although given Australia's tertiary health care system it is anticipated that the case fatality rate would be much lower.

A timely public health response is dependent on rapid notification from the laboratories which will be required by including MPX as a notifiable condition under the Public Health Act. MPX needs to be notifiable under the Act to enable appointed contact tracing officers to undertake timely contact tracing. This includes source investigation and management of transmission risk. In non-endemic countries, prompt identification and isolation of human cases is paramount to preventing spread of the virus.

The Amendment Regulation prescribes MPX as a notifiable condition under schedule 1 of the Public Health Regulation on the basis that it is a significant risk to public health, for the reasons outlined above. MPX is prescribed as a pathological diagnosis notifiable condition and a pathology request notifiable condition. This means that notifications will be required to the chief executive when a laboratory makes a diagnosis of MPX based on a pathological examination of a patient's bodily specimen, or receives a request for a pathological examination of a specimen to test for MPX.

The Amendment Regulation also prescribes MPX under schedule 2 of the Public Health Regulation, as a notifiable condition that requires immediate notification upon diagnosis by pathological examination or receipt of a request for pathological examination, instead of within the usual period of 48 hours. This is to ensure that Queensland Health can respond rapidly to any cases or potential outbreaks of MPX and reduce the risk of spread, including by identifying contacts who may be at a higher risk of transmission.

### **Amendments to facilitate information-sharing between Queensland Health and Resources Safety and Health Queensland**

The Amendment Regulation amends the Public Health Regulation to prescribe a disclosure agreement between Queensland Health and Resources Safety and Health Queensland (RSHQ) to support RSHQ in performing its statutory functions and facilitate the purposes of the Notifiable Dust Lung Disease (NDLD Register).

In 2019, the Public Health Act was amended in response to the re-identification and emergence of occupational dust lung diseases, including coal workers' pneumoconiosis and silicosis, in Queensland. The amendments inserted a new chapter 6, part 3A into the Public Health Act to establish the NDLD Register and require prescribed medical practitioners to notify the chief executive of Queensland Health about cases of notifiable dust lung disease. A notifiable dust lung disease is a prescribed respiratory condition, such as mesothelioma or chronic obstructive pulmonary disease, when caused by occupational exposure to inorganic dust.

In Queensland, Resources Safety and Health Queensland (RSHQ) and the Office of Industrial Relations (OIR) in the Department of Education are responsible for the prevention, control and early detection of occupational dust lung diseases. Both agencies hold records of workers who have been diagnosed with a notifiable dust lung disease. RSHQ has health records of workers from coal mining industries who have undergone a health assessment and who have been diagnosed with a notifiable dust lung disease. OIR collects information on workers across all industries who have lodged a claim for workers' compensation for a work-related injury.

In addition to notifications from prescribed medical practitioners, the NDLD Register also collects information about notifiable dust lung disease given by RSHQ and OIR under section 279AH of the Public Health Act. By collecting information from all three sources, the NDLD Register has a complete record of the number and types of notifiable dust lung diseases in Queensland.

Strict confidentiality and disclosure obligations apply to the information stored on the NDLD Register. Section 279AL of the Public Health Act creates a duty of confidentiality, prohibiting 'relevant persons' from disclosing confidential information. A relevant person includes employees of Queensland Health, RSHQ, and OIR, as well as prescribed medical practitioners and other health practitioners required to give information about a notifiable dust lung disease and any person involved in the operation of the NDLD Register.

Confidential information means information, other than information that is publicly available, about a person's personal affairs or health, and may include name, address, date of birth, date of diagnosis, disease type, and occupational exposure history. The NDLD Register does not include detailed information such as clinical reports, X-rays and CT scans, or names of workplaces where exposure may have occurred.

The purposes of the NDLD Register are to monitor and analyse the incidence of notifiable dust lung disease and enable information about notifiable dust lung diseases to be exchanged with an entity of the State or corresponding entity. Consistent with these purposes, the Public Health Act also prescribes exceptions to the duty of confidentiality, outlining circumstances in which confidential information may be disclosed.

Section 279AO of the Public Health Act allows the chief executive to disclose confidential information to an entity of the State, if the disclosure is required or permitted under an agreement between the chief executive or the State, and the other entity. The agreement must be prescribed by regulation. Currently, there are no agreements prescribed under section 279AO.

In 2020, RSHQ was established by the *Resources Safety and Health Queensland Act 2020* as an independent statutory body responsible for regulating safety and health in the state's resources industries.

RSHQ's functions are to protect the safety and health of persons in the resources industry and to administer the Resource Safety Acts, which are the:

- *Coal Mining Safety and Health Act 1999*;
- *Explosives Act 1999*;
- *Mining and Quarrying Safety and Health Act 1999*; and
- *Petroleum and Gas (Production and Safety) Act 2004*.

On 11 February 2022, the agreement called 'Agreement pursuant to section 279AO of the *Public Health Act 2005* (Qld) between the State of Queensland acting through Queensland Health and Resources Safety and Health Queensland' (Agreement) was made.

The Agreement provides for Queensland Health to share confidential information from the NDLD Register with RSHQ for purposes directly relating to RSHQ and its personnel performing functions and exercising powers under the Resources Safety and Health Act and associated Resources Safety Acts.

Under the Agreement, Queensland Health may disclose notifications given to the NDLD Register where industry exposure or occupational role indicates that the individual is or may be an individual whose safety and health is protected, regulated or monitored under any of the Acts administered by RSHQ. Confidential information that may be disclosed under the Agreement includes a patient's personal details as well as clinical information such as diagnoses, disease type and occupational exposure history.

Information-sharing between Queensland Health and RSHQ enables the government to take a coordinated approach to managing occupational dust lung disease cases across the State and will assist RSHQ in responding to incidents of dust lung disease in the resources industry.

The objective of these amendments is to assist RSHQ in performing its statutory functions, and to facilitate the purposes of the NDLD Register, by prescribing the Agreement in the Public Health Regulation.

### **Amendments relating to the Health and Other Legislation Amendment Act 2022**

The Amendment Regulation also amends the Hospital and Health Boards Regulation, Mental Health Regulation and Radiation Safety Regulation, to support amendments to the Hospital and Health Boards Act, Mental Health Act and Radiation Safety Act made by the Amendment Act. These amendments improve the operation of health portfolio legislation and facilitate the provision of health services in Queensland.

#### Hospital and Health Boards Regulation

The Amendment Regulation amends the Hospital and Health Boards Regulation to support better public health outcomes by enabling additional categories of allied health professionals to access public healthcare information on The Viewer. The Viewer is a read-only web-based application that displays a consolidated view of patients' clinical and demographic information from a variety of Queensland Health clinical and administrative systems.

The Viewer is currently accessible to certain categories of health practitioners who are registered under the Health Practitioner Regulation National Law (National Law). The

Amendment Act amends the Hospital and Health Boards Act to enable categories of health professionals who are regulated in ways other than the National Law to access The Viewer. It also ensures they are subject to the confidentiality provisions within the Act. It does this by replacing references to *prescribed health practitioner* and *relevant health practitioner* with the term *prescribed health professional*.

Providing additional allied health professionals with access to The Viewer supports better health outcomes for patients, particularly those who are transferring from hospital settings to the community or residential facilities.

### Mental Health Regulation

The Mental Health Act facilitates the transfer of patients between facilities, including to and from facilities in other Australian jurisdictions. In its provisions relating to patient transfer, the Mental Health Act contains references to corresponding law of other jurisdictions.

The Amendment Act makes several amendments to the Mental Health Act, including to clarify and improve the requirements for the interstate transfer of patients who have been placed under a forensic or treatment support order, for authority to apprehend, detain and transport persons absent from interstate mental health services and for transport of patients under forensic or similar interstate orders. These amendments remove, and change the location of, some references to corresponding law. They also expand a reference to apprehension under a warrant issued under corresponding law to include apprehension under another document (however described) that authorises the apprehension.

The Amendment Regulation amends the Mental Health Regulation to give effect to these amendments.

### Radiation Safety Regulation

The Amendment Act amends the Radiation Safety Act to:

- remove the requirement to prescribe by regulation the identity verification documents that are required to be provided with all applications for instruments under the Act; and
- insert a requirement that the applications that are prescribed by regulation must be accompanied by proof of the applicant's identity to the satisfaction of the chief executive.

The purpose of this amendment is to enable Queensland Health to more efficiently set appropriate proof of identity requirements that meet contemporary practice.

The Amendment Regulation amends the Radiation Safety Regulation to give effect to these amendments.

## **Achievement of policy objectives**

### **Amendments to prescribe an additional cohort of medical practitioners as psychiatrists**

The Amendment Regulation amends the Mental Health Regulation to prescribe that a *psychiatrist* includes a medical practitioner with general registration from the Medical Board of Australia and who has overseas qualifications in psychiatry that have been assessed as substantially comparable to the qualification awarded by RANZCP called 'Fellowship of the

Royal Australian and New Zealand College of Psychiatrists’, which is required for specialist registration in the specialist field of psychiatry. These amendments will ensure that Hospital and Health Services are able to fully utilise the skills of suitably qualified overseas-trained psychiatrists to deliver involuntary psychiatric treatment and care under the Mental Health Act.

### **Amendments to prescribe monkeypox (MPX) as a notifiable condition**

The Amendment Regulation amends schedule 1 of the Public Health Regulation to prescribe MPX as a notifiable condition. MPX has been marked under columns 3 and 4 indicating that it is a pathological diagnosis notifiable condition and a pathology request notifiable condition. The Amendment Regulation also amends schedule 2 to prescribe MPX as a notifiable condition requiring immediate notification.

Prescribing MPX as a notifiable condition ensures that Queensland Health is advised of all suspected and confirms incidences of MPX in Queensland, and that contact tracing can be used to investigate sources and manage transmission risk.

### **Amendments to facilitate information-sharing between Queensland Health and Resources Safety and Health Queensland**

To achieve the policy objectives, the Amendment Regulation amends the Public Health Regulation to prescribe the Agreement between Queensland Health and RSHQ to enable lawful disclosure of confidential information to RSHQ. Access to complete and up-to-date information about the incidence of occupational dust lung disease in Queensland will support the performance of RSHQ’s statutory functions, including protecting the health and safety of resource industry workers.

### **Amendments relating to the Health and Other Legislation Amendment Act 2022**

#### Hospital and Health Boards Regulation

The Amendment Regulation prescribes audiologists, dieticians, exercise physiologists, orthoptists, orthotists/prosthetists, social workers and speech pathologists who meet specific accreditation or membership requirements as prescribed health professionals. This authorises these health professionals to access The Viewer, as section 161C of the Hospital and Health Boards Act in conjunction with section 34B of the Hospital and Health Boards Regulation allows access by prescribed health professionals. It also ensures that these professionals are covered by the confidentiality provisions of the Hospital and Health Boards Act, in which consequential amendments have been made to update references to health practitioners to the term *prescribed health professional*. The Amendment Regulation prescribes the existing categories of health workers with access to The Viewer as health professionals, so that they maintain authority to access The Viewer and continue to be subject to confidentiality obligations.

The Amendment Act inserts section 157B into the Hospital and Health Boards Act, which authorises designated persons and prescribed health professionals to disclose confidential information to a person performing functions under the Mental Health Act, other than for preparation of an annual report. Prescribing persons as *prescribed health professionals* in the Amendment Regulation will enable them to access information under this provision, authorising communications that support mental health care and treatment.



### Mental Health Regulation

The Amendment Regulation gives effect to the amendments in the Amendment Act by updating the list of corresponding laws in the Mental Health Regulation to ensure it incorporates relevant amendments to the Mental Health Act, and accurately refers to section numbers that use the term corresponding law. The Amendment Regulation also makes a minor amendment to a heading in the Mental Health Regulation, for clarity.

### Radiation Safety Regulation

The Amendment Regulation supports the amendments to the Radiation Safety Act made by the Amendment Act by removing the list of specific identification documents currently prescribed in the Radiation Safety Regulation. The Amendment Regulation also provides that proof of identity, to the chief executive's satisfaction, is required to accompany applications for the following Act instruments:

- licences;
- accreditation certificates; and
- radiation safety officer certificates.

It is intended that an applicant will only be required to provide proof of their identity where they have not already done so via a different application process under the Radiation Safety Act, and where records of identity may provide a benefit to regulatory and enforcement activities. The Amendment Regulation does not prescribe applications for approvals as requiring proof of identity. Applicants for approvals to acquire and relocate must already hold a possession licence, for which they would have already proven their identity. While an applicant for an approval to dispose may not necessarily hold a possession licence, identity verification can occur through the inspector powers in the Radiation Safety Act, if required.

The Queensland Health website provides guidance on identification to submit with licence applications. The documents currently listed are consistent with the *National Identity Proofing Guidelines* published by the Commonwealth Department of Home Affairs. The website will be updated to refer to all Act instruments that must be accompanied by proof of identity, and can also be updated should the chief executive consider additional forms of identification to be acceptable in the future.

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

The Amendment Regulation is consistent with the policy objectives of the Hospital and Health Boards Act, Mental Health Act, Public Health Act and Radiation Safety 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. Without the amendments in the Amendment Regulation, the amendments to the Amendment Act will not be able to operate.

The Explanatory Notes for the Amendment Act contemplated the amendments to subordinate legislation made by the Amendment Regulation.

## **Benefits and costs of implementation**

The amendments to the Mental Health Regulation to allow an additional cohort of appropriately qualified medical practitioners to exercise the functions of a psychiatrist under the Mental Health Act are expected to increase efficiency in the public health sector. This is because it will allow overseas-trained psychiatrists employed by Hospital and Health Services to work to their full scope of practice, including exercising functions under the Mental Health Act. This is expected to benefit both Hospital and Health Services and the community at large by removing barriers to important mental health treatment and improving the availability of involuntary public sector mental health services.

The amendment to the Public Health Regulation to prescribe MPX as a notifiable condition will be essential in understanding the epidemiology of the virus, the development of public health strategies and identifying and managing any cases or potential outbreaks within Queensland. It will improve health professionals' understanding of how MPX emerges, evolves and spreads. It will support the development of public health control strategies to respond to potential outbreaks and minimise transmission within the community. Established methods will be used to notify MPX to the chief executive of Queensland Health. As such, any costs incurred are expected to be minimal.

The amendment to the Public Health Regulation to prescribe the disclosure agreement with RSHQ will facilitate RSHQ's access to complete and up-to-date information about the incidence of occupational dust lung disease in Queensland. This supports the performance of RSHQ's statutory functions, including protecting the health and safety of resource industry workers. Any costs associated with the disclosure of information under the prescribed agreement will be met from Queensland Health's existing budget allocations.

The amendments to the Hospital and Health Boards Regulation to expand access to The Viewer to appropriately qualified audiologists, dietitians, exercise physiologists, orthoptists, orthotists/prosthetists, social workers and speech pathologists will improve the quality and continuity of patient care because these categories of allied health professionals routinely work with Queensland Health during the transfer of patient care from acute settings to community settings. They work in areas such as primary health services, domiciliary care, non-hospital rehabilitation, private practice and disability support. Access to The Viewer can enable them to efficiently consider accurate and recent records about patients' public healthcare interactions that will enable them to tailor their care and treatment in accordance with the needs of their patients. Costs of expanding access will be absorbed into existing budget allocations.

The amendments to the Mental Health Regulation, to ensure it incorporates relevant amendments to the Mental Health Act, will support the implementation of the policy objectives at no cost. The amendments improve the framework for the transfer of patients with mental illness by ensuring that necessary laws of other jurisdictions apply to relevant sections of the Mental Health Act.

The amendment to the Radiation Safety Regulation will reduce the administrative burden associated with licence applications and renewals because a person's identity will be able to be proved more flexibly and in line with contemporary methods. As well as reducing the regulatory

and financial burden on stakeholders, this amendment also reduces costs to Queensland Health associated with administrative work in processing licence applications and renewals.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with the fundamental legislative principles (FLPs) in section 4 of the *Legislative Standards Act 1992*, which requires legislation to have sufficient regard to the rights and liberties of individuals and to the institution of Parliament.

Section 4(2)(a) of the Legislative Standards Act requires that legislation have sufficient regard to the rights and liberties of individuals. This includes, for example, whether the legislation makes rights, liberties or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review (section 4(3)(a)); allows delegation of administrative power only in appropriate cases and to appropriate persons (section 4(3)(c)); and the legislation is consistent with the principles of natural justice (section 4(3)(b)).

Section 4(2)(b) of the Legislative Standards Act requires legislation to have sufficient regard to the institution of Parliament. According to section 4(4), this will depend on, for example, whether the regulation allows the delegation of legislative power only in appropriate cases and to appropriate persons (section 4(4)(a)) and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (section 4(4)(b)).

### **Amendments to prescribe an additional cohort of medical practitioners as psychiatrists**

Clause 3 of the Amendment Regulation provides that the definition of *psychiatrist* includes a person who holds general registration in the medical profession whose overseas qualifications in psychiatry have been assessed by the RANZCP as substantially comparable to the qualification of ‘Fellowship of the Royal Australian and New Zealand College of Psychiatrists’. Relying on the RANZCP’s assessment of qualifications to determine suitability to exercise the functions of a psychiatrist may potentially impact on the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament.

It is both appropriate and consistent with the existing approach taken in the Mental Health Regulation and the National Law for decisions about a medical practitioner’s expertise to practise in a specialist field in the medical profession to be made by a nominated national specialist medical college. Section 4 of the Mental Health Regulation currently prescribes classes of registrants by reference to certain types of registration to practise in a specialist position in psychiatry under the National Law. An individual cannot hold specialist registration in psychiatry under the National Law without first obtaining the relevant qualification through RANZCP.

The National Law establishes a delegated decision-making framework for registration of health practitioners. Each of the recognised health professions under the National Law is represented by a National Board. The responsibilities of the National Boards include registering practitioners and students for their professions.

To be eligible for registration in the medical profession, a person must meet certain minimum legislated requirements, including that they hold an approved qualification obtained by completing an approved program of study, meaning a program of study that has been accredited by an accrediting authority and approved by the Medical Board.

For the speciality of psychiatry, RANZCP is the recognised authority for training, examining, and awarding a psychiatry qualification following completion of the *Fellowship of the Royal Australian and New Zealand College of Psychiatrists* (FRANZCP) post-graduate program. Completion of this post-graduate program results in the approved qualification called ‘Fellowship of the Royal Australian and New Zealand College of Psychiatrists’.

RANZCP’s approved program of study includes special pathways for international medical graduates with overseas qualifications in psychiatry. To be eligible, an international medical graduate must meet specific criteria, including that they hold the highest psychiatry qualification obtainable as a specialist clinical psychiatrist in their country of origin, and had attained registration as a specialist psychiatrist in their country of origin, before applying to RANZCP for assessment of their qualification.

An international medical graduate whose qualification is assessed by RANZCP as ‘substantially comparable’ is considered to have specialist psychiatric qualifications substantially comparable to those of a RANZCP Fellow and demonstrates they have the qualifications, skills and experience to provide high-quality and appropriate psychiatric care in the Australian health care system. In recognition of this, these candidates are offered a streamlined substantial comparability pathway to an RANZCP Fellowship involving 12 months of workplace-based assessments. To be eligible for this pathway the international medical graduate must have secured a position specialising in psychiatry.

In order to remain on the substantial comparability pathway to Fellowship, the international medical practitioner is obliged to satisfy requirements such as undertaking workplace-based assessments. RANZCP accredited supervisors, themselves RANZCP Fellows, also have reporting obligations to RANZCP regarding the international medical graduate’s performance and completion of activities required by the pathway. This ensures that an international medical graduate is actively engaged in the program of study and working toward fellowship with RANZCP.

Given the RANZCP’s existing role in determining the suitability of a medical practitioner to practise in the field of psychiatry, which is recognised and incorporated through the accreditation framework in the National Law, it is considered appropriate to refer to RANZCP’s accredited program of study as a basis for determining who is suitable to exercise the statutory functions of a psychiatrist under the Mental Health Act.

The requirement that an international medical practitioner must be actively working toward fellowship with RANZCP provides an additional layer of protection by ensuring these practitioners can only be appointed as an *authorised psychiatrist* under the Mental Health Act if they are on a recognised path that will lead to Fellowship within a certain time.

The accreditation framework in the National Law also provides suitable mechanisms to ensure the ongoing quality and appropriateness of RANZCP’s program of study.

It is therefore considered justified for psychiatrists to be prescribed in the Mental Health Regulation in a way that relies on decisions by RANZCP about a medical practitioner’s expertise to practise in the specialist field of psychiatry.

### **Amendments to prescribe monkeypox (MPX) as a notifiable condition**

Section 4(2)(a) of the Legislative Standards Act provides that fundamental legislative principles include requiring that legislation has sufficient regard to rights and liberties of individuals.

Prescribing MPX as a notifiable condition may breach this principle, as it will require clinicians and pathologists to disclose confidential information, such as patient details, to the notifiable conditions register.

Section 77 of the Act provides a general duty of confidentiality for persons who are or were involved in the administration or enforcement of the notifiable conditions register. A maximum penalty of 50 penalty units applies for disclosing confidential information. Sections 78 to 88 of the Act allow for disclosure of confidential information in limited circumstances.

It is considered that any potential impact that the Amendment Regulation makes upon the rights and liberties of individuals in terms of access to confidential information is justified, given the existing protections in the Act and the important protections for public health that the Amendment Regulation will provide.

### **Amendments to facilitate information-sharing between Queensland Health and Resources Safety and Health Queensland**

Prescribing the agreement between Queensland Health and RSHQ 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 Queensland Health and RSHQ allows Queensland Health to disclose, at monthly intervals, notifications made to the NDLD Register, including the confidential information of individuals about whom the notification was made.

Disclosure of this information assists RSHQ in performing its statutory functions, including:

- administering the Resource Safety Acts and furthering their purposes;
- protecting the safety and health of persons in the resources industry;
- regulating safety and health in the resources industry; and
- monitoring compliance with, and the effectiveness of, the Resources Safety Acts.

Queensland Health and RSHQ are obliged to collect, store, use and disclose confidential information in accordance with relevant privacy principles and legislation including the *Information Privacy Act 2009*, Public Health Act and Resources Safety and Health Queensland Act.

The Agreement outlines the obligations on RSHQ relating to the disclosure and use of confidential information. It provides that confidential information must be used for the purpose of facilitating RSHQ's statutory functions and prohibits the disclosure of confidential information by RSHQ unless expressly allowed by the Agreement, authorised in writing by the chief executive of Queensland Health, or where required or permitted under an Act or other law.

The Agreement requires that the disclosure of confidential information under the agreement be subject to targeted audits conducted by RSHQ at regularly defined intervals; the aim of which is to ensure that confidential information is only disclosed within the scope and terms of the Agreement. If concerns are raised about RSHQ's compliance with the Agreement, Queensland Health or its nominated auditor may enter RSHQ's premises and inspect records kept by RSHQ to audit RSHQ's compliance with the Agreement.

Given the important role RSHQ plays in monitoring, regulating and protecting the health and safety of workers in the resources industry, and the safeguards prescribed in the agreement, it is considered that any departure from fundamental legislative principles is justified.

### **Amendments relating to the Health and Other Legislation Amendment Act 2022**

Clauses 4 and 5 of the Amendment Regulation amend the Hospital and Health Boards Regulation to define a *prescribed health professional* as a professional who provides a specific service and meets particular registration criteria or conditions listed for that service. These clauses provide audiologists, dietitians, exercise physiologists, orthoptists, orthotists/prosthetists, social workers and speech pathologists who have specific accreditation, certification or membership with a professional body with legislative authority to access The Viewer.

The right to privacy, the disclosure of private or confidential information, and privacy and confidentiality issues have generally been identified by the former Scrutiny of Legislation Committee as relevant to consideration of whether legislation has sufficient regard to individuals' rights and liberties. By expanding access to The Viewer to the above health professionals, the Amendment Regulation expands the potential for access to and disclosure of personal information, and requires assessment of the rights and liberties of individuals.

Expanding access to The Viewer to additional categories of health workers aims to improve the quality and continuity of healthcare in Queensland. Access to The Viewer supports better health outcomes for patients, particularly patients moving from hospital settings to the community or residential facilities, as health workers are able to efficiently obtain information about their patients' relevant public healthcare interactions.

There are legislative and operational safeguards in place that protect personal information from being inappropriately accessed. For example, each person is required to prove their identity to obtain system access to The Viewer and a person must provide their credentials on each log in to The Viewer. Every user's access to and activity on The Viewer is recorded in audit files, allowing for regular usage checks by Queensland Health. The Viewer can only be accessed through a read-only secure access portal known as the Health Provider Portal, after a stringent registration process is completed. This process will be maintained for the additional categories of health professionals that can gain access to The Viewer as a result of the Amendment Regulation. This will include confirmation of personal identity information, qualifications, and professional registrations. Patient searches can only be undertaken in The Viewer based on a set of unique patient identifiers, ensuring the patient is known to the health practitioner in a healthcare context, before their information can be accessed.

Under the Hospital and Health Boards Act, it is an offence for a health professional to inappropriately access information in The Viewer that is not directly related to the provision of care or treatment to the person. It is also an offence for a prescribed health professional to disclose confidential information unless the disclosure is required or permitted under the Act. The maximum penalty for breaching these requirements is 600 penalty units. Queensland

Health conducts audits to ensure patient information is being used appropriately and investigates and acts on any inappropriate use of information. Any privacy breaches are dealt with under the *Information Privacy Act 2009*, and patients who have concerns about a health service experience may also lodge a complaint with the Queensland Health Ombudsman.

Any breach of fundamental legislative principles regarding rights and liberties of individuals is considered justified as the expansion of access to The Viewer is for the purpose of providing appropriate treatment to an individual in a community care setting. This objective is balanced with the safeguards outlined above that prevent any instances of inappropriate access or inadvertent disclosure of confidential information.

As outlined above, the Amendment Regulation provides legislative authority for persons with specific accreditation, certification or membership with a professional body to gain access to The Viewer. For example, for a person providing a social work service to be a *prescribed health professional* (and be authorised to access The Viewer), they must be an ordinary member of the Australian Association of Social Workers, other than a retired ordinary member. A person providing dietetics services must be accredited by Dieticians Australia as a Provisional Accredited Practising Dietician, a Full Accredited Practising Dietician, an Advanced Accredited Practising Dietician or a Fellow of Dieticians Australia.

Inserting eligibility criteria for additional categories of health professionals into the Hospital and Health Boards Regulation is consistent with the existing approach to defining eligibility criteria in the Regulation. However, relying on professionals bodies' decisions on accreditation, certification or membership criteria may potentially impact on the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament.

While professional bodies make decisions about whether to grant accreditation, certification or membership, these decisions are made in accordance with their formal registration frameworks, which consider factors such as qualifications, experience, continuing professional development and fitness to practice. The bodies are recognised within each profession for their registration functions. It is considered appropriate to rely on their decisions about whether a person should be granted a particular category of recognition, rather than listing extensive technical criteria within the Hospital and Health Boards Regulation. In addition, if a person meets one of the conditions inserted by the Amendment Regulation because a professional body has granted them that type of recognition, they do not automatically have access to The Viewer. As outlined above, they must also complete a stringent registration process with Queensland Health.

It is therefore considered justified for health professionals who are not registered under the National Law to be prescribed in the Hospital and Health Boards Regulation with reference to particular forms of recognition with a professional body that the Regulation identifies for that profession.

## **Consultation**

RANZCP was consulted on the additional amendments to the Mental Health Regulation to prescribe an additional cohort of medical practitioners as psychiatrists and has endorsed the proposal.

Queensland Health has participated in national discussions about prescribing MPX as a notifiable condition through the Communicable Diseases Network Australia (CDNA) and the Public Health Laboratory Network, which are both sub-committees of the Australian Health

Protection Principal Committee. The Commonwealth Department of Health has determined that MPX should be made a nationally notifiable condition. States and territories need to prescribe nationally notifiable conditions as notifiable conditions under their own health legislation. On 20 May 2022, NSW amended the *Public Health Act 2010* (NSW) to prescribe MPX as a scheduled medical condition and a notifiable disease. It is expected that other jurisdictions will respond similarly.

Queensland Health consulted Public Health Units and senior representatives from the major private laboratories and the public laboratories. All feedback received was supportive of MPX being prescribed as a pathological diagnosis notifiable condition and a pathology request notifiable condition. Feedback was received on whether MPX should be made a notifiable condition requiring immediate notification. It was decided it is necessary for MPX to be a notifiable condition requiring immediate notification to ensure that notifications are received during weekends, as a 48-hour delay in receiving notifications was considered inappropriate to minimise risks to public health.

RSHQ was consulted during drafting of the disclosure agreement. No consultation was undertaken on the amendment to prescribe the agreement in the Public Health Regulation, as this is required to meet the confidentiality provisions of the Public Health Act.

The amendments to the Hospital and Health Boards Regulation and schedule of corresponding law in the Mental Health Regulation give effect to policies that were consulted on during development of the Bill for the Amendment Act. Consultation occurred with a wide range of stakeholders, who had expertise in privacy, human rights, health services (general health, allied health, mental health) and consumer experience.

The Radiation Advisory Council supports the amendments to the Radiation Safety Regulation.

The Office of Best Practice Regulation (OBPR) was consulted on the amendments to the Mental Health Regulation to prescribe an additional cohort of medical practitioners as psychiatrists, and the amendments to the Public Health Regulation to prescribe MPX as a notifiable condition and to enable information sharing between Queensland Health and RSHQ. OBPR advised that no further regulatory impact analysis under the Guide was required in relation to these proposals.

The amendments relating to the Amendment Act were assessed by Queensland Health in accordance with *The Queensland Government Guide to Better Regulation* as being excluded from regulatory impact assessment on the basis of the following categories: (a) (consequential amendments); (c) (internal management of the public sector or statutory authority); (f) (current Queensland drafting practice) and (g) (machinery in nature). Therefore, consultation with OBPR is not required for these amendments.



# Notes on provisions

## Part 1 Preliminary

### Short title

Clause 1 states the short title of the regulation is the *Health Legislation Amendment Regulation 2022*.

### Commencement

Clause 2 states that part 2, sections 8 to 10 and part 5 commence on 1 July 2022.

## Part 2 Amendment of Hospital and Health Boards Regulation 2012

### Regulation amended

Clause 3 states that this part amends the *Hospital and Health Boards Regulation 2012*.

### Replacement of s 34A (Prescribed health practitioner—Act, s 139)

Clause 4 replaces the definition of *prescribed health practitioner* with a definition of *prescribed health professional*.

The definition of *prescribed health professional* for health professionals registered under the Health Practitioner Regulation National Law refers to schedule 2C, part 1 of the Hospital and Health Boards Regulation. For other health professionals it refers to schedule 2C, part 2.

### Amendment of sch 2C (Prescribed health practitioners)

Clause 5 amends schedule 2C of the Hospital and Health Boards Regulation to define a *prescribed health professional* as a health professional who is registered under the Health Practitioner National Law in a particular profession or provides a particular health service, and meets particular conditions.

Clause 5(1) amends the heading of schedule 2C to replace the term *practitioners* with *professionals*.

Clause 5(2) inserts a subheading above the table titled *Part 1 – Health professional registered under the Health Practitioner Regulation National Law*.

Clause 5(3) inserts a second table under a subheading titled *Part 2 – Other health professionals*. This table lists health services that are not subject to regulation by the Health Practitioner Regulation National Law, and the conditions of health professionals offering those services.

This amendment provides authority for the professionals who meet the relevant conditions to access to The Viewer, as section 161C of the *Hospital and Health Boards Act 2011* allows a prescribed health professional to access a prescribed information system and section 34B of the Hospital and Health Boards Regulation prescribes The Viewer as an information system.

The amendment also ensures that the same professionals are covered by provisions of the Hospital and Health Boards Act that prohibit the disclosure of confidential information, except in limited defined circumstances, including to a person who requires the confidential information to perform a function under the *Mental Health Act 2016*, other than for the preparation of an annual report.

### **Part 3      Amendment of Mental Health Regulation 2017**

#### **Regulation amended**

*Clause 6* states that this part amends the *Mental Health Regulation 2017*.

#### **Amendment of s 4 (Prescribed registrant—Act, sch 3, definition psychiatrist, paragraph (b))**

*Clause 7* amends section 4 of the Mental Health Regulation to prescribe an additional class of registrant as psychiatrists under the *Mental Health Act 2016*.

Clause 7(1) inserts a new section 4(1)(aa) which provides that a *psychiatrist* means a registrant who holds general registration if:

- (i) the registrant is an overseas-trained health practitioner who holds a qualification in psychiatry; and
- (ii) the registrant's qualification has been assessed by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) as substantially comparable to the qualification called 'Fellowship of the Royal Australian and New Zealand College of Psychiatrists'.

Prescribing this class of registrants in section 4 means that an overseas-trained psychiatrist who has a comparability assessment of 'substantially comparable' from RANZCP is eligible to be appointed as an *authorised psychiatrist* under the Mental Health Act and may exercise the statutory functions of an authorised psychiatrist under that Act.

Clause 7(2) renumbers sections 4(1)(aa) to (c) of the Mental Health Regulation.

Clause 7(3) inserts a new definition for *general registration* in section 4(2) of the Mental Health Regulation. General registration means general registration in the medical profession under the Health Practitioner Regulation National Law.

#### **Amendment of sch 1, s 1 (Corresponding laws for provisions of Act relating to transfer of patients or transport of persons)**

*Clause 8* updates schedule 1, section 1 of the Mental Health Regulation to ensure it aligns with the *Mental Health Act 2016*, and to reflect current drafting practice.

Clause 8(1) inserts the word *particular* into the heading for schedule 1, section 1. This reflects that not all provisions of the Act that relate to transfer of patients or transfer of persons are listed in that section.

Clauses 8(2) and 8(3) omit sections 355(7), 520(2)(c) and 527(2)(c) of the Mental Health Act from the list of corresponding law and insert sections 355(8), 520(2)(b)(iii) and 527(2)(b)(iii). This is required due to changes in which provisions of the Mental Health Act refer to corresponding law.

**Amendment of sch 1, s 2 (Corresponding laws for Act, s 368(1)(b) and (2))**

*Clause 9* amends references in the heading and text of schedule 1, section 2 to ensure they align with the Mental Health Act.

Clause 9(1) omits section 368(2) and replaces it with a reference to subsection (5). This is required due to changes in which subsections of section 368 of the Mental Health Act refer to corresponding law.

Clause 9(2) adds to the text in section 2 which prescribes as corresponding law the general law of a State providing for a person's apprehension under a warrant, to prescribe as corresponding law the general law of a State providing for a person's apprehension under a warrant or another document (however described). This is necessary due to amendment of section 368 of the Mental Health Act to allow apprehension, detention and transport of persons absent from interstate mental services not only under a warrant issued under corresponding law but also under another document (however described), issued under corresponding law, that authorises the apprehension.

**Omission of sch 1, s 4 (Corresponding laws for Act, s 513 and 521, definition interstate transfer requirements)**

*Clause 10* omits schedule 1, section 4, which prescribes corresponding law for the purposes of section 513 and 521. This is required because the definition of *interstate transfer requirements* has been omitted from the Mental Health Act.

**Part 4 Amendment of Public Health Regulation 2018****Regulation amended**

*Clause 11* provides that Part 4 amends the *Public Health Regulation 2018*.

**Insertion of new s 49D**

*Clause 12* inserts a new provision specifying that the agreement in schedule 3, part 4 of the Public Health Regulation is prescribed under section 279AO(1)(b) of the Public Health Act as an agreement under which the chief executive may disclose confidential information.

**Amendment of sch 1 (Notifiable conditions)**

*Clause 13* amends schedule 1 of the Public Health Regulation to insert "monkeypox (MPX)". It inserts marks in columns 3 and 4 for the entry. This will mean that MPX will be a pathological diagnosis notifiable condition and a pathology request notifiable condition.

**Amendment of sch 2 (Immediate notifications)**

*Clause 14* amends schedule 2 of the Public Health Regulation to include "monkeypox (MPX)" in schedule 2. This will mean that any notification of MPX must be made immediately in accordance with section 32(3)(a) of the Public Health Regulation.

### **Amendment of sch 3 (Agreements)**

*Clause 15* amends schedule 3 to insert new section 49D as an authorising provision for prescribing agreements under section 270AO of the *Public Health Act 2005* in schedule 3, part 4 of the Public Health Regulation.

Clause 15 also inserts a new part 4 into schedule 3 for the prescribed agreement relating to notifiable dust lung diseases. Clause 7 inserts the heading ‘Confidentiality of information relating to notifiable dust lung diseases’ and prescribes an agreement for the purpose of section 279AO of the Public Health Act.

The agreement prescribed is the agreement of 11 February 2022 called ‘Agreement pursuant to section 279AO of the *Public Health Act 2005* (Qld) between the State of Queensland acting through Queensland Health and Resources Safety and Health Queensland’.

## **Part 5 Amendment of Radiation Safety Regulation 2021**

### **Regulation amended**

*Clause 16* states that this part amends the *Radiation Safety Regulation 2021*.

### **Replacement of s 68 (Documents relating to proof of identity—Act, s 51)**

*Clause 17* amends section 68 to omit the explanation of documents that are prescribed with a provision stating that licences, accreditation certificates and radiation safety officer certificates are prescribed for section 51(2) of the Radiation Safety Act.

This reflects amendment of the regulation-making head of power in the Radiation Safety Act, from a power to prescribe proof of identity documents, to a power to prescribe the types of applications under the Act for which proof of identity is required to the satisfaction of the chief executive.

### **Omission of sch 7 (Proof of identity documents)**

*Clause 18* omits schedule 7, which lists specific proof of identity documents. This is required because the head of power in the Radiation Safety Act no longer provides for identification documents to be prescribed by regulation.