

# Health and Other Legislation Amendment Regulation 2022

Explanatory notes for SL 2022 No. 170  
made under the

*Hospital and Health Boards Act 2011*  
*Public Health Act 2005*  
*State Penalties Enforcement Act 1999*

## General Outline

### Short title

*Health and Other Legislation Amendment Regulation 2022*

### Authorising law

Section 282 of the *Hospital and Health Boards Act 2011*

Section 461 of the *Public Health Act 2005*

Section 165 of the *State Penalties Enforcement Act 1999*

### Policy objectives and the reasons for them

The purpose of the Health and Other Legislation Amendment Regulation 2022 (Amendment Regulation) is to amend the:

- *Hospital and Health Boards Regulation 2012* to:
  - update the definition of *reportable events* to align with version two of the Sentinel Events List approved by Australian Health Ministers;
  - amend the definition of *major capital works* to exclude capital works that are comparatively minor;
  - include Douglas Shire Council, Mareeba Shire Council, Livingstone Shire Council and Noosa Shire Council in the list of local government areas covered by their respective Hospital and Health Service’s health service areas;
  - remove the requirement for the Minister for Health and Ambulance Services (Health Minister) to approve the taking of leases by Hospital and Health Services (HHSs) if the *Land Act 1994* applies;
  - update the positions prescribed as senior health service employees to include new classifications for rural generalist medical officers;
  - include the Surgical, Treatment and Rehabilitation Service (STARS) adult surgical ward as a ward subject to minimum nurse-to-patient ratios;
  - prescribe the updated Rheumatic Fever Strategy data sharing agreement as an agreement for which confidential information may be shared under the Hospital and Health Boards Act; and

- replace the position title of Chief Aboriginal and Torres Strait Islander Health Officer with Chief First Nations Health Officer to reflect a change in the position title in Queensland Health;
- *Public Health Regulation 2018* to update the school exclusion period for children with the contagious condition COVID-19 at a school, education and care service or Queensland Education and Care approved service; and
- *State Penalties Enforcement Regulation 2015* to prescribe certain offences from the *Radiation Safety Act 1999* as penalty infringement notice offences.

### ***Amendments to the Hospital and Health Boards Regulation 2012***

#### Definition of reportable events

The *Hospital and Health Boards Act 2011* provides for the option of conducting a *root cause analysis* as a quality improvement technique to investigate, assess and respond to a reportable event that occurs during the provision of health services. A root cause analysis is used to identify systemic factors that contributed to the happening of the event and any remedial measures that could be implemented to prevent a recurrence of a similar event.

A root cause analysis is not mandatory. The Hospital and Health Boards Act provides a legally privileged environment for this type of investigation, protecting any document or information gained during the root cause analysis from use in any legal proceeding. This provides for an open, transparent and thorough investigation without the fear of blame or reprisal.

Section 29 of the Hospital and Health Boards Regulation prescribes the *reportable events* for which a root cause analysis may be undertaken and for which the confidentiality protections in the Act apply. The prescribed list of reportable events currently includes events such as maternal death, the wrong procedure being performed on a person, the death of a person as a result of incorrect management of medication and suspected suicide of a person receiving inpatient health care.

The reportable events listed in section 29 of the Hospital and Health Boards Regulation aligns with the first Sentinel List developed by the Australian Council for Safety and Quality in Health Care (now the Australian Commission on Safety and Quality in Health Care (Commission)). In addition to the events in the first sentinel list, the prescribed events include still births and a ‘catch all’ event that covers any other death or permanent injury suffered by a person that was not a reasonably expected outcome of the health service provided to the person.

In 2017, the Commission revised the sentinel list. The Commission defines a sentinel event as “a particular type of serious incident that is wholly preventable and has caused serious harm to, or death of, a patient”. The Commission concluded that the following events are not wholly preventable and so were removed from the second edition list:

- maternal death or serious maternal morbidity associated with labour or delivery;
- the death of a person, or neurological damage suffered by a person, associated with an intravascular gas embolism;
- the suspected suicide of a person with a mental illness who is under the care of a provider of mental health services while residing in the community.

Version two of the sentinel list was approved by the Commonwealth, State and Territory Health Ministers in December 2018. Version two of the sentinel list is adopted or used by all other States and Territories in reporting.

The objective of the Amendment Regulation is to align the definition of reportable events in the Hospital and Health Boards Regulation to version two of the Sentinel List. This will contribute to streamline the understanding of staff and the public of serious events through aligned reporting. The additional events of stillbirth and the catch-all event of any other death or permanent harm suffered by a person that was not a reasonably expected outcome of the health service provided to the person will be retained. This will ensure that the events which are being removed from the definition may still be the subject of a root cause analysis and the protections this provides if a root cause analysis is considered appropriate.

#### Definition of *major capital works*

Section 8 of the Hospital and Health Boards Act provides that the public sector health system is comprised of HHSs and the department. The overall management of the public sector health system is the responsibility of the department. The chief executive (Director-General) of Queensland Health is the system manager. In performing this role, the Director-General is responsible for managing major capital works.

Under sections 45(c) and (d) of the Hospital and Health Boards Act, the Director-General has the function to develop statewide capital works plans and to manage major capital works for proposed public sector health service facilities. Under section 19(2)(g) of the Hospital and Health Boards Act, a HHS has the function to undertake minor capital works and major capital works approved by the Director-General, in its health service area.

Schedule 2 of the Hospital and Health Boards Act defines the term *major capital works* as capital works prescribed by regulation. Section 37 of the Hospital and Health Boards Regulation defines *major capital works* as works that:

- are structural works for the construction of a building; or
- involve alternations to the building envelope of an existing building; or
- require an assessment, certification or approval under an Act. For example, building work that requires assessment by a building certifier under the *Building Act 1975*.

Certification under the Building Act captures a very broad range of building works. Certification may be required on relatively minor building works or on some maintenance, repairs or routine testing activities. This results in the definition of major capital works in the Hospital and Health Boards Regulation applying to a broad range of works.

The definition of major capital works is contrary to the intent of the Hospital and Health Boards Act and Regulation by requiring the Director-General of Queensland Health's approval for capital works that may be of relatively low value and low risk or for routine maintenance, testing or repair tasks that are the responsibility of a HHS.

The objective of the amendment is to allow HHSs to undertake relatively minor works, maintenance tasks or repairs that require an assessment, certification or approval under an Act, without approval from the Director-General. This will create greater efficiency for both the Director-General of Queensland Health and HHSs.

List of local government areas covered by the respective HHS health service area

The public sector health system in Queensland is divided into the department as the system manager for the State-wide health service and sixteen HHSs. HHSs provide operational management for public sector health services. Fifteen of the HHSs provide health services to a discrete geographic area of the State. Children's Health Queensland HHS is a state-wide service providing health services to children. Each HHS, other than Children's Health Queensland HHS, has a health service area. Each health service area is defined by local government boundaries.

In 2013, Douglas Shire Council, Mareeba Shire Council, Livingstone Shire Council and Noosa Shire Council each de-amalgamated from the local government entity they were previously amalgamated into. The objective of the amendment is to include each of these councils into the list of local government areas that form the health service area for their respective HHS, as follows:

- Douglas Shire Council and Mareeba Shire Council are within the Cairns and Hinterland HHS health service area.
- Livingstone Shire Council is within the Central Queensland HHS health service area.
- Noosa Shire Council is within the Sunshine Coast HHS health service area.

Approval required for certain leases taken by HHSs

Section 20A of the Hospital and Health Boards Act places a limitation on a HHS's ability to take or grant a lease over land or buildings. A HHS must not take or grant a lease without the prior written approval of the Health Minister and the Treasurer, unless the lease is of a type prescribed by regulation. Section 3AB and schedule 1AB of the Hospital and Health Boards Regulation prescribes exceptions to the requirement for the approval of the Health Minister and Treasurer based on the purpose of a lease and annual rent thresholds. Schedule 1AB provides that a lease or sublease of land or a building (or part of a building) to which the Land Act applies (Land Act leases) may be taken without the Treasurer's approval. However, Land Act leases still require the approval of the Health Minister.

The Land Act generally applies to leases within Aboriginal and Torres Strait Islander communities. Under section 185 of the *Aboriginal Land Act 1991* and section 141 of the *Torres Strait Islander Land Act 1991*, a trustee (Aboriginal) lease and a trustee (Torres Strait Islander) lease granted under those Acts respectively is taken to be a trustee lease under the Land Act.

The requirement for Health Minister approval for Land Act leases results in time delays to lease dealings in Aboriginal and Torres Strait Islander communities compared to equivalently valued leases in the balance of communities in Queensland. The objective of the Amendment Regulation is to improve the negotiating process for taking leases in Aboriginal and Torres Strait Islander communities, reduce time delays and ensure projects to improve health services in these disadvantaged communities are able to be delivered more efficiently. It will also ensure leases in these communities are treated in the same way as equivalently valued leases in other parts of Queensland.

### Positions prescribed as senior health service employees

Rural and remote Queenslanders account for approximately 38 per cent of Queensland's total population and contribute significantly to Queensland's economic prosperity, diverse culture, and identity. Queensland is also home to Australia's second-largest First Nations population. Approximately 66 per cent of First Nations people live in non-metropolitan areas. Life expectancy is lower for rural and remote Queenslanders compared to those living in metropolitan areas and lower again among First Nations people, half of whom also report having one or more chronic conditions.

A long-term sustainable health services workforce in rural and remote Queensland contributes to improving the health outcomes for the population of these areas. Health Employment Directive No. 6/20 includes new classification levels for rural generalist medicine medical practitioners with private practice. These classifications provide opportunities for advancement for rural and remote medical practitioners.

The objective of this amendment is to provide certainty about the employment status of the medical practitioners in the new classifications by prescribing the new classifications of rural generalist medicine medical practitioners with private practice as senior health service employees.

### Wards subject to minimum nurse-to-patient ratios

Section 138B of the Hospital and Health Boards Act states a regulation may prescribe a requirement about the minimum number of nurses or midwives who must be engaged in delivering a health service according to the number of patients receiving the service. Section 30B of the Hospital and Health Boards Regulation states the section applies to an acute adult ward in a public sector health facility if the facility is listed in schedule 2A of the Hospital and Health Boards Regulation. If the section applies to a ward, then section 30B creates a minimum number of nurses who must be engaged in delivering health services to the patients in the ward. Different ratios apply for morning, afternoon and night shifts.

International research has shown that the ratio of the number of nurses or midwives to the number of patients, and the work environment, have a clear impact on patient outcomes. A higher percentage of nurses or midwives to patients can lower patient mortality. Through minimum ratios, persons receiving care and treatment will benefit from improved patient safety and quality of care. In turn, this provides greater patient satisfaction and improved patient outcomes, including reduced patient falls, reduced facility-related pressure injuries, reduced re-admission rates and reduced post-operative mortality rates. Minimum ratios also provide safer workloads for the front-line public sector nursing and midwifery workforce, to improve recruitment and retention, staff satisfaction, and greater workforce sustainability.

STARS is a 182-bed specialist public health facility within Metro North HHS. STARS received its first patients in November 2020 and was officially opened in 2021. STARS operates a 28-bed acute adult surgical ward. Although STARS currently complies with the minimum nurse-to-patient ratios as a matter of practice, it is not required to comply with the ratios as it is not yet prescribed in schedule 2A of the Hospital and Health Boards Regulation.

The objective of the amendment is to ensure the patients in STARS receive the benefits provided by minimum nurse-to-patient ratios by prescribing this requirement in the Hospital and Health Boards Regulation.

Prescribed agreements that allow confidential information to be disclosed to the Commonwealth, another State or Commonwealth or State entity

Sections 142 and 142A of the Hospital and Health Boards Act create a general prohibition on the sharing of confidential information by designated persons or prescribed health practitioners. Section 139A of the Hospital and Health Boards Act provides a list of people who are designated persons. This list includes a public service employee who is employed by Queensland Health.

Section 151(1) of the Hospital and Health Boards Act is an exception to the prohibition on the disclosure of confidential information by health services or public servants in Queensland Health. The exception allows for confidential information to be shared with the Commonwealth or another State, or an entity of the Commonwealth or another State if: the disclosure is required or allowed under an agreement; the agreement is prescribed under a regulation and the Director-General of Queensland Health states in writing the disclosure is in the public interest. Schedule 3, part 1 of the Hospital and Health Boards Regulation prescribes the agreements that are within the exception to the prohibition of confidential information for section 151(1)(a)(i)(B).

In Australia, Rheumatic Heart Disease (RHD) is almost exclusively found in Aboriginal and Torres Strait Islander communities. It is characterised by damage to the valves of the heart, caused by repeated episodes of acute rheumatic fever (ARF). ARF is caused by an auto-immune reaction to an infection with the bacterium group A streptococcus to the skin or throat. It is estimated that 60 per cent of people develop RHD after their first episode of ARF. Once a person has had an episode of ARF, they are more likely to have other episodes, and with each subsequent episode, there is the potential for a worsening of the damage to the heart valves.

The Rheumatic Fever Strategy National Partnership Agreement commenced in 2009, with the Northern Territory, Queensland and Western Australia participating. It was subsequently expanded to include South Australia. The strategy aims to promote improved detection, monitoring and management of ARF and the resultant RHD.

On 28 April 2022, the Health Minister signed the agreement called the *National Partnership Agreement on specified projects – Schedule E – Rheumatic Fever Strategy* between Queensland and the Commonwealth. This agreement provides for the collection and provision of data for national monitoring and reporting of ARF and RHD and measuring program effectiveness in the detection and management of ARF and RHD. Under this agreement, Queensland Health is required to provide all available and relevant ARF and RHD data as specified by the Commonwealth to the National Coordination Unit and/or directly to the Commonwealth (including the Australian Institute of Health and Welfare). The agreement is published by the Australian Government at: <https://federalfinancialrelations.gov.au/agreements>.

The objective of the Amendment Regulation is to update the information sharing agreement prescribed in the Hospital and Health Boards Regulation with the agreement signed by the Health Minister on 28 April 2022. This will ensure Queensland Health can continue to participate in the Rheumatic Fever Strategy to detect, monitor and manage ARF and the resultant RHD.

Replace the title of Chief Aboriginal and Torres Strait Islander Health Officer with Chief First Nations Health Officer.

Aboriginal peoples and Torres Strait Islander peoples are the First Nations peoples of Queensland. There are a wide range of nations, cultures, languages and practices across mainland Australia and throughout the Torres Strait.

In 2022, as part of a departmental restructure, the position title ‘Chief Aboriginal and Torres Strait Islander Health Officer’ was changed to ‘Chief First Nations Health Officer’. The new title better reflects and recognises both Aboriginal and Torres Strait Islander peoples as First Nations peoples and is an acknowledgment of the significant diversity within and across Aboriginal and Torres Strait Islander cultural groups.

The new title will be more consistent with other organisations, government agencies and First Nations leadership narrative across the country. It may also prevent people from shortening the description of ‘Aboriginal and Torres Strait Islander people’ to ‘ATSI people’ which is highly offensive to most Aboriginal and Torres Strait Islander peoples. The title change is part of a broader educational and awareness raising effort that supports national and state policy agendas around constitutional recognition, treaty and truth-telling.

***Amendments to the Public Health Regulation 2018***

School exclusion period for children with the contagious condition COVID-19

Schedule 4, part 2 of the Public Health Regulation sets out the prescribed school exclusion periods for various contagious conditions. This includes conditions such as human influenza with pandemic potential, hepatitis A, measles, meningococcal and gastroenteritis.

In March 2020, COVID-19 was added to the list of contagious conditions by the *Public Health (COVID-19) and Other Legislation Amendment Regulation 2020*. COVID-19 was prescribed as a contagious condition to provide an enforceable mechanism for children to be excluded from schools and other care environments on the grounds of suspected or actual COVID-19 infection, and to ensure their return happened only in line with expert guidance on infectious periods.

Since the Public Health Regulation was amended in March 2020, testing and isolation measures for COVID-19 have developed considerably, and confirmation by a clinician of a diagnosis or clearance of infection is no longer required to enter or leave isolation. The prescribed period for COVID-19 in the Public Health Regulation was based on the Communicable Diseases Network of Australia (CDNA) National Guidelines for Public Health Units Coronavirus Disease 2019 (known as the COVID-19 National Guidelines). The COVID-19 National Guidelines have been updated numerous times since March 2020, with the most recent update occurring on 14 October 2022.

The current advice in the COVID-19 National Guidelines provides that, although not mandatory, isolation for COVID-19 cases is recommended as an effective way to reduce the spread of infection. The guidelines also recommend additional precautions for positive COVID-19 cases for seven to ten days after the onset of symptoms, such as avoiding contact with people who are at higher risk of severe disease, including immunosuppressed people, or older people and people with a disability with multiple conditions. Mask wearing when in an indoor setting outside the home and working from home where practical are also recommended.

On 30 September 2022, National Cabinet agreed to end mandatory isolation requirements for COVID-19 effective 14 October 2022, with each jurisdiction implementing the change via relevant public health frameworks.

On 1 November 2022, a new COVID-19 management framework commenced in Queensland. The new framework manages COVID-19 by including the power for the Chief Health Officer to make public health directions for mandatory isolation for persons who test positive for COVID-19. This power will end on 31 October 2023, unless otherwise extended. The Amendment Regulation will link the powers under the Public Health Regulation for the contagious condition COVID-19 to the existence, if any, of a direction regarding mandatory isolation for those with COVID-19. The power in the Public Health Regulation contains a sunset clause to ensure it aligns with the COVID-19 management framework by also ending on 31 October 2023.

The objective of the amendment is to continue to ensure children can be excluded from schools and other care environments on the grounds of suspected or actual COVID-19 infection if the Chief Health Officer has made a public health direction for mandatory isolation for persons with COVID-19. The amendment will remove the scope for potentially conflicting requirements under the Public Health Regulation and relevant Public Health Directions regarding how long a child must remain excluded from school or care following a COVID-19 diagnosis or close contact notification.

### ***Amendments to the State Penalties Enforcement Regulation 2015***

#### Prescribing *Radiation Safety Act 1999* offences as infringement notice offences

The main objective of the Radiation Safety Act is to protect the public and the environment from the harmful effects of particular sources of ionising radiation and harmful non-ionising radiation. The Radiation Safety Act and Radiation Safety Regulation establish a licensing framework for regulating the possession, use and transport of radiation sources and radioactive substances.

Since the commencement of the Radiation Safety Act, Queensland Health has engaged in a number of awareness and education activities with licence holders and other stakeholders to help them understand and comply with their legislative obligations. Inspectors can issue improvement notices and prohibition notices requiring a person to remedy or cease a breach of the Radiation Safety Act. Failure to comply with these notices is an offence and carries penalties.

The *State Penalties Enforcement Act 1999* enables the issuing of infringement notices as an alternative method of prosecution for offences from court-based prosecutions. The recipient of an infringement notice can either pay the fine contained in the notice or, if they wish to contest the offence, elect to have the matter decided by a Magistrates Court. Infringement notices can be issued for an offence if the offence is prescribed in schedule 1 of the State Penalties Enforcement Regulation as an infringement notice offence. Offences are suitable for infringement notices if they do not contain subjective or discretionary elements.

No offences in the Radiation Safety Act are currently prescribed as infringement notice offences. If enforcement actions, such as issuing improvement notices and prohibition notices, fail to achieve compliance, the only remaining enforcement option available to Queensland Health is to prosecute the offence in the appropriate court.



The objective of the Amendment Regulation is to provide inspectors appointed under the Radiation Safety Act, with an alternative prosecution pathway for minor Radiation Safety Act offences. Serious breaches or offences can continue to be prosecuted through court proceedings.

## **Achievement of policy objectives**

### ***Amendments relating to the Hospital and Health Boards Regulation 2012***

#### Definition of *reportable events*

The Amendment Regulation amends the Hospital and Health Boards Regulation to prescribe an updated list of events for the definition of *reportable events* to align with version two of the Sentinel Events list. The updated list of prescribed events for the definition of reportable events continues to include stillbirths and other death or permanent harm suffered by a person that was not reasonably expected to be an outcome of the health service provided to the person. Updating the definition of reportable events will ensure the list of events that may prompt a root cause analysis review under the Hospital and Health Boards Regulation aligns with the Sentinel Events list.

#### Definition of *major capital works*

The Amendment Regulation amends paragraph (c) of the definition of *major capital works* in the Hospital and Health Boards Regulation. The changes to the definition will mean that capital works that require an assessment, certification or approval under an Act will only be considered major capital works if they involve capital expenditure of \$500,000 or more. The new definition also excludes capital works that involve routine maintenance or, or repairs to, an existing building or structure. These amendments will exclude capital works that are relatively minor from the definition while continuing the requirement for the Director-General of Queensland Health's approval for capital works that are:

- structural works for the construction of a building; or
- involve alternations to the building envelope of an existing building.

The amendments will give effect to the role of the Director-General of Queensland Health as the system manager managing major capital works and HHSs having responsibility for undertaking minor capital works.

#### List of local government areas covered by their respective HHSs health service area

The Amendment Regulation amends schedule 1 of the Hospital and Health Boards Regulation to prescribe:

- Douglas Shire Council and Mareeba Shire Council in the list of local government areas included in the health service area of Cairns and Hinterland HHS;
- Livingstone Shire Council in the list of local government areas in the health service area of Central Queensland HHS; and
- Noosa Shire Council in the list of local government areas in the health service area of Sunshine Coast HHS.

These amendments will ensure the Hospital and Health Boards Regulation accurately reflects the local government areas where each HHS provides health services.

#### Approval required for certain leases taken by HHSs

The Amendment Regulation amends section 3AB and schedule 1AB of the Hospital and Health Boards Regulation by removing the requirement for HHSs to seek the Health Minister's approval when taking leases where the Land Act applies. These leases exist in 29 of the 33 Aboriginal and Torres Strait Islander communities in the Torres and Cape HHS health service area and in a number of other HHSs throughout Queensland. HHSs will continue to need to seek the Health Minister's approval if the value of the lease is \$100,000 or more.

This amendment will improve the negotiating process for the taking of leases, reduce time delays and ensure projects to improve health services in disadvantaged communities are able to be delivered more efficiently. It will also ensure leases in these communities are treated in the same way as equivalently valued leases in other parts of Queensland.

#### Positions prescribed as senior health service employees

The Amendment Regulation amends schedule 1A of the Hospital and Health Boards Regulation to prescribe additional categories of health workers as senior health service employees. The amendment will prescribe the new classifications levels in Health Employment Directive No. 6/20. These classifications were created to provide Rural Generalist Medicine Medical Officers with Private Practice and Medical Superintendents with Private Practice with opportunities for advancement and to support rural and remote health. The inclusion of these classifications in the Hospital and Health Boards Regulation will provide certainty about the employment status of practitioners in the new classifications.

#### Wards subject to minimum nurse-to-patient or midwife-to-patient ratios

Schedule 2A of the Hospital and Health Boards Regulation prescribes the wards subject to the legislated nurse-to-patient and midwife-to-patient ratios. The Amendment Regulation amends schedule 2A of the Hospital and Health Boards Regulation to prescribe the acute adult surgical ward of STARS in Metro North HHS. The inclusion of STARS in schedule 2A will ensure legislated minimum nurse-to-patient ratio requirements are applied consistently across Metro North HHS public sector health service facilities and to support quality patient outcomes for patients in the STARS facility.

#### Prescribed agreements that allow confidential information to be disclosed to the Commonwealth, another State or Commonwealth or State entity

The Amendment Regulation amends schedule 3 by removing an agreement called, '*Acute Rheumatic Fever/Rheumatic Heart Disease Register Service Agreement*' between Queensland Health and the Menzies School of Health Research. The Amendment Regulation amends schedule 3 by prescribing the new ARF/RHD agreement called *National Partnership Agreement on specified projects – Schedule E – Rheumatic Fever Strategy*. Prescribing the new agreement will allow Queensland Health to continue to share confidential patient information under the Rheumatic Fever Strategy and improve the monitoring and management of ARF and RHD.

Replace the title of Chief Aboriginal and Torres Strait Islander Health Officer with Chief First Nations Health Officer

The Amendment Regulation amends section 11C by replacing the title of the Chief Aboriginal and Torres Strait Islander Health Officer with Chief First Nations health officer. This change recognises Aboriginal peoples and Torres Strait Islander peoples as First Nations peoples. It also reflects a change in the position title which occurred as part of a departmental restructure.

***Amendments to the Public Health Regulation 2018***

School exclusion period for children with the contagious condition COVID-19

Schedule 4 of the Public Health Regulation prescribes the period for contagious conditions for a child who has or is suspected of having a contagious condition. The Amendment Regulation amends the entry for coronavirus (COVID-19) to provide the exclusion period is that specified in a public health direction, if in force, relating to isolation periods for confirmed cases of COVID-19. These amendments will remove the scope for potentially conflicting requirements under the Public Health Regulation and public health directions. The amendments also provide that the provisions for school exclusion periods for children with COVID-19 will expire on the expiry of section 142A of the Public Health Act, which is currently due to expire on 31 October 2023.

***Amendments to the State Penalties Enforcement Regulation 2015***

Prescribing *Radiation Safety Act 1999* offences as infringement notice offences

To provide an additional enforcement mechanism for suitable offences in the Radiation Safety Act, the Amendment Regulation will amend the State Penalties Enforcement Regulation to prescribe 26 offences as infringement notice offences. The amendments will enable Queensland Health to issue fines for minor infringements of the Radiation Safety Act. The amendments will seek to deter noncompliance while still allowing more serious breaches to be prosecuted.

The offences where an infringement notice may now be issued relate to include failing to:

- make a notification, or give a copy of a report, to the chief executive as required under the Act;
- return a licence or other instrument to the chief executive in prescribed circumstances;
- notify of a change in circumstances;
- return an identity card; or
- cooperate with a direction of an inspector.

These offences are all minor and considered suitable to be dealt with by a fine. Imposing fines for non-compliance with these requirements in the Radiation Safety Act is an appropriate and proportionate response to the offending behaviour.

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

The Amendment Regulation is consistent with the policy objectives of the Hospital and Health Boards Act, Public Health Act and State Penalties Enforcement Act.

## **Inconsistency with policy objectives of other legislation**

No inconsistencies with the policy objectives of other legislation have been identified.

## **Alternative ways of achieving policy objectives**

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

## **Benefits and costs of implementation**

The Amendment Regulation does not impose significant costs on persons or organisations. The cost of implementing the amendments will be met within existing budget allocations.

The amendment to the Hospital and Health Boards Regulation to update the list of events prescribed for the definition of reportable events will provide greater focus for root cause analysis of events that are wholly preventable. Such events provide the best opportunity to identify and improve the policies, procedures or practices relating to the provision of the health service that contributed to the happening of the event. The amendments will also align with version two of the Sentinel Events List approved by Australian Health Ministers.

The amendment to the Hospital and Health Boards Regulation to amend the definition of *major capital works* will reduce the regulatory burden on HHSs when conducting routine maintenance activities and relatively low cost and low risk capital works.

The amendment to the Hospital and Health Boards Regulation to insert Douglas Shire Council, Mareeba Shire Council, Livingstone Shire Council and Noosa Shire Council into the health service areas of their respective HHSs will add clarity by accurately reflecting the local government area where each HHS provides health services.

The amendment to the Hospital and Health Boards Regulation to remove the requirement for the Health Minister to approve HHSs taking Land Act leases will improve the negotiating process for taking leases in Aboriginal and Torres Strait Islander communities, reduce time delays and ensure projects to improve health services in these disadvantaged communities are able to be delivered more efficiently. It will also ensure leases in these communities are treated in the same way as equivalently valued leases in other parts of Queensland.

The amendment to the Hospital and Health Boards Regulation to prescribe Medical Officers with Private Practice and Medical Superintendents with Private Practice as senior health service employees will provide certainty about the employment status of these practitioners. In doing so it will support the practice of rural generalist medicine in rural and remote Queensland.

The amendment to the Hospital and Health Boards Regulation to prescribe STARS acute adult surgical ward as a ward subject to minimum nurse-to-patient ratios will support quality patient outcomes for patients of the STARS facility.

The amendment to the Hospital and Health Boards Regulation to prescribe the new Rheumatic Fever Strategy will allow Queensland Health to continue to share confidential patient information with the Australian Institute of Health and Welfare and improve the monitoring and management of ARF and RHD.

The amendment to the Public Health Regulation to update the school exclusions period for children with the contagious condition COVID-19 will reduce confusion and remove the scope for potentially conflicting requirements under the Public Health Regulation and relevant public health directions regarding how long a child must remain excluded from school or care due to a likely or actual COVID-19 diagnosis. This will assist teachers, principals, students and carers to take appropriate action when a child has COVID-19.

The amendment to the State Penalties Enforcement Regulation to prescribe certain offences from the Radiation Safety Act as penalty infringement notice offences will enable Queensland Health to issue fines for minor breaches of the Radiation Safety Act. This will reduce the cost to the justice system for the prosecution for minor offences while retaining an individual's option to contest the infringement notice offence.

## **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*.

### ***Does the legislation allow the delegation of administrative power only in appropriate cases and to appropriate persons?***

Section 4(3)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation allows for the delegation of administrative power only in appropriate cases and to appropriate persons.

Clauses 4 and 10 amend section 3AB and schedule 1AB of the Hospital and Health Boards Regulation to prescribe the types of lease agreements that may be taken by a HHS without the prior written approval of the Health Minister or Treasurer. The amendment removes the requirement for the Health Minister's approval for leases where the Land Act applies. Delegation of this administrative power to the HHS is justified as the Health Minister's approval continues to be required depending on the purpose and annual rent payable for the lease or sublease. Also, decisions on the taking of a lease by a HHS are made by appropriately qualified persons employed by the HHS. HHSs continue to be accountable for their decisions to their Board and to Queensland Health by the Service Agreement that applies to the HHS. The combination of the continuing limitation on the delegation of this administrative power and accountability of the HHS justifies this delegation of administrative power.

Clause 8 amends the definition of *major capital works* in section 37(c) of the Hospital and Health Boards Regulation to exclude work that requires assessment, certification or approval under an Act for which the estimated capital cost is \$500,000 or less. The clause also amends the definition to exclude work that involves routine maintenance, or repairs, to an existing building or other structure. The amendment delegates further administrative power to a HHS to make decisions about capital works. This delegation of administrative power is justified as capital works that cost less than \$500,000 are low risk in comparison to many capital works projects for the Queensland public health system. HHSs employ appropriately qualified staff

to manage capital works projects that are subject to appropriate governance and accountability structures. For these reasons the delegation of these administrative powers is appropriate, and the powers are delegated to appropriate persons.

***Does the subordinate legislation allow for the subdelegation to appropriate persons or in appropriate cases***

Section 4(5)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the subdelegation of a power delegated by an Act, only in appropriate cases and to appropriate persons, and if authorised by an Act. Clause 17 of the Amendment Regulation amends schedule 4 of the Public Health Regulation by making reference to an external document. This external document is the public health direction relating to isolation periods for confirmed cases of COVID-19. This provision potentially impacts on the fundamental legislative principle that legislation must have sufficient regard to the institution of Parliament.

Reference to an external document is considered justified as public health directions must be tabled in Parliament within 21 days from when the direction is given. This requirement is created by section 142L(2) of the Public Health Act. Section 142L(2) also provides that if the direction is not tabled within this timeframe, it ceases to have effect. Once the direction is tabled, it will be referred to the relevant portfolio committee of Parliament, under section 93 of the *Parliament of Queensland Act 2001*, so the committee may examine the lawfulness of the direction, the policy to be given effect by the direction and whether the direction is compatible with human rights. The public health direction will be subject to disallowance in accordance with the procedures for disallowing subordinate legislation under section 50 of the *Statutory Instruments Act 1992*.

In addition to these tabling and disallowance provisions, within five days of giving a public health direction, the Chief Health Officer must publish a statement justifying the direction and the reasons for it. The justification statement must include a summary of the Chief Health Officer's rationale for giving the direction and assess whether the direction is compatible with human rights. The justification statement must also be tabled in Parliament within 21 days so that the portfolio committee may consider it when examining the direction.

***Fundamental legislative principles not contained in Legislative Standards Act***

***Right to privacy***

The right to privacy, the disclosure of private or confidential information, doctor-patient confidentiality, 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.

Clause 13 amends schedule 3 of the Hospital and Health Boards Regulation by removing the agreement called 'ARF/RHD Register Service Agreement' between Queensland and the Menzies School of Health Research' and inserting 'the agreement dated 28 April 2022 called 'National Partnership Agreement on specified projects - Schedule E - Rheumatic Fever Strategy' between Queensland and the Commonwealth of Australia.' This clause may be seen to infringe upon the privacy of individuals as the amendment prescribes an agreement under the exception to the prohibition on the disclosure of confidential information by health services or public servants in the Queensland Health. Section 151(1)(a)(i)(B) of the Hospital and Health

Boards Act allows for confidential information to be shared to the Commonwealth or another State, or an entity of the Commonwealth or another State if the disclosure is required or allowed under an agreement and the agreement is prescribed under a regulation.

Clause 13 authorises the disclosure of confidential information. The aim of sharing information for the Rheumatic Fever Strategy is to improve monitoring and management of ARF and RHD for persons who experience these conditions. A number of safeguards are in place to protect the information that is shared and to ensure that it is only used for the designated purpose. The safeguards include restricting user access to the Rheumatic Heart Disease Register by the use of security profiles ensuring only authorised users have access to the information for the purpose that is intended. The sharing of this confidential information is therefore considered justified due to the benefits provided by the sharing of the information and appropriate safeguards in place to protect the shared information.

### *Offences*

The penalty amounts contained in the Amendment Regulation are generally consistent with similar offences and penalty amounts contained in other health portfolio legislation. Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The introduction of infringement notices for comparatively minor offences in the Radiation Safety Act accords with this principle. When used appropriately and in conjunction with other enforcement mechanisms and compliance activities under the Radiation Safety Act, infringement notices are considered to be an effective enforcement response that is proportionate to the risk to public health and safety and to the environment arising as a result of offending behaviour. Issuing an infringement notice can help manage demand on Queensland courts while maintaining a person's right to access the judicial system if they wish to challenge the offence for which the infringement notice was issued.

There are also benefits to be derived from a more cost-effective method of enforcement and increased administrative efficiency. Further, prescribing infringement notice offences can advantage alleged offenders by giving them an alternative to court-based prosecution. The introduction of infringement notices for certain offences in the Radiation Safety Act takes sufficient regard to the fundamental legislative principles regarding individuals rights and liberties.

## **Consultation**

### Definition of reportable events

The Australian Medical Association Queensland, Queensland Nurses and Midwives' Union and Health Consumers Queensland were consulted on the amendment to the list of events prescribed for the definition of reportable events. The Australian Medical Association Queensland and Queensland Nurses and Midwives' Union supported the amendment. Health Consumers Queensland did not provide any feedback.

### Wards subject to minimum nurse-to-patient or midwife-to-patient ratios

The Queensland Nurses and Midwives' Union was consulted and supports the amendment to prescribe STARS acute adult surgical ward as subject to minimum nurse-to-patient ratios.

### School exclusion period for children with the contagious condition COVID-19

The Department of Education, Queensland Teachers' Union, Together Union and United Workers Union were consulted and are supportive of the amendment to the prescribed period for the contagious condition COVID-19.

### Offences for which an infringement notice may be issued to include certain offence from the Radiation Safety Act

In July and August 2022, approximately 20,000 radiation safety licence and other approval holders under the Radiation Safety Act were consulted about the introduction of infringement notices for certain offences in the Radiation Safety Act. Consultation closed on 14 August 2022, with 51 responses received. Seven responses supported the proposal, while 16 opposed the proposal on the basis that the issuing of penalty infringement notices was 'revenue raising' by government or the timeframes in which to fulfil obligations under the Act are unreasonable. Queensland Health will continue to work with stakeholders to assist them to understand their obligations under the Radiation Safety Act. Twenty-seven responses sought further clarification and six provided feedback that neither supported nor opposed the introduction of infringement notices for certain offences in the Radiation Safety Act.

The Australian Dental Association (Queensland Branch) proposed the development of more information resources to assist with radiation compliance. Queensland Health has updated web-based industry specific resources that provide step by step guidance on application processes. Queensland Health is also developing more online tools that will allow licensees to access and amend data held by the department. The Radiation Advisory Council supports the proposed infringement notice offences being prescribed.

### Assessment of proposals under *The Queensland Government Guide to Better Regulation*

The following amendments to the Hospital and Health Boards Regulation were assessed by Queensland Health, in accordance with *The Queensland Government Guide to Better Regulation*, as category (c) – regulatory proposals for the internal management of the public sector or statutory authority:

- updating the list of events prescribed for the definition of *reportable events*;
- updating the definition of *major capital works*;
- including Douglas Shire Council, Mareeba Shire Council, Livingstone Shire Council and Noosa Shire Council in the list of local government areas covered by their respective HHSs health service areas;
- removing the Land Act criteria for approvals for leases taken by HHSs;
- updating the positions prescribed as senior health service employees to include new classifications for rural generalist medical officers; and
- including STARS acute adult surgical ward as a ward subject to the minimum nurse-to-patient ratios.

The amendment to the Hospital and Health Boards Regulation to prescribe the updated Rheumatic Fever Strategy data sharing agreement was assessed by Queensland Health, in accordance with *The Queensland Government Guide to Better Regulation*, as meeting category (g) – regulatory proposals that are of a machinery nature, and therefore excluded from



regulatory impact assessment. This assessment was made as the amendment is to replace the expired data sharing agreement with the new version of the same agreement.

The Office of Best Practice Regulation, Queensland Treasury was consulted on the amendment to the Public Health Regulation to update the school exclusion period for children with the contagious condition COVID-19 and the amendment to the State Penalties Enforcement Regulation to prescribe certain offences in the Radiation Safety Act as infringement notice offences. The Office of Best Practice Regulation assessed these amendments as meeting category (k) exclusion from regulatory impact assessment on the basis that both were regulatory proposals designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts.

# Notes on provisions

## Part 1 Preliminary

### Short Title

*Clause 1* states the short title is the *Health and Other Legislation Amendment Regulation 2022*.

### Commencement

*Clause 2* states that sections 4, 7 and 10 commence on 1 January 2023.

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

### Regulation amended

*Clause 3* states that part 2 amends the *Hospital and Health Boards Regulation 2012*.

### **Amendment of s 3AB (Power to grant or take lease without Minister's or Treasurer's approval—Act, s 20A)**

*Clause 4* amends section 3AB by omitting subsections (2) and (3) and replacing them with new subsection (2). This amendment provides that leases of a type mentioned in schedule 1AB, part 2, column 1 may be taken by a Hospital and Health Service (HHS) without the prior written approval of the Health Minister or Treasurer.

### **Amendment of s11C (Definitions for part)**

*Clause 5* amends section 11C by replacing the definition of *chief Aboriginal and Torres Strait Islander health officer* with *chief First Nations health officer*. This amendment reflects a change of position title as part of a departmental restructure.

### **Amendment of ss 13A and 13B**

*Clause 6* amends sections 13A(a) and 13B(b) by replacing *chief Aboriginal and Torres Strait Islander health officer* with *chief First Nations health officer*.

### **Amendment of s 29 (Reportable event)**

*Clause 7* replaces the list of events prescribed for the definition of *reportable event*. This list of events incorporates the events contained in version two of the Sentinel Events list. Definitions of *ABO incompatibility*, *invasive procedure*, *mechanical restraint*, *serious harm* and *unauthorised person* are inserted to create additional clarity to the reportable events.

### **Amendment of s 37 (Major capital works)**

*Clause 8* amends the definition of *major capital works* in section 37(c) to exclude work that requires assessment, certification or approval under an Act for which the estimated capital

expenditure is less than \$500,000. The clause also amends the definition to exclude work that involves routine maintenance of, or repairs to, an existing building or other structure.

### **Amendment of sch 1 (Hospital and Health Services)**

*Clause 9* amends schedule 1 to insert additional local government areas to the health service areas to ensure the Hospital and Health Boards Regulation accurately reflects the local government areas where each HHS provides health services. These amendments include the addition of:

- Douglas Shire Council and Mareeba Shire Council in the list of local government areas included in the health service area of Cairns and Hinterland HHS;
- Livingstone Shire Council in the list of local government areas in the health service area of Central Queensland HHS; and
- Noosa Shire Council in the list of local government areas in the health service area of Sunshine Coast HHS.

### **Amendment of sch 1AB (Leases that may be granted or taken without Minister's or Treasurer's approval)**

*Clause 10* amends schedule 1AB by removing part 2 and removing the reference to the *Land Act 1994* in part 3. This amendment will ensure the administrative processes for the taking of leases in Aboriginal and Torres Strait Islander communities where the Land Act applies are treated in the same way as equivalently valued leases in other parts of Queensland. Removing the reference to the Land Act in schedule 1AB means the Health Minister's approval for a lease a HHS seeks to take will not be triggered by the Land Act applying to land or a building. This will improve the negotiating process for the taking of leases, reduce time delays and ensure projects to improve health services in disadvantaged communities are able to be delivered more efficiently.

### **Amendment of sch 1A (Senior health service employee positions—Act, s 74A)**

*Clause 11* amends schedule 1A by prescribing the following classification levels under the health employment directive called 'Health Employment Directive No. 6/20 (Medical Officers with Private Practice (MOPP) and Medical Superintendents with Private Practice (MSPP) classification levels)' as senior health service employee positions:

- rural generalist medical officer with private practice;
- senior rural generalist medical officer with private practice;
- rural generalist medical superintendent with private practice; and
- senior rural generalist medical superintendent with private practice.

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

*Clause 12* amends schedule 2A by prescribing the acute adult surgical ward of the Surgical, Treatment and Rehabilitation Service, Herston as subject to the minimum nurse-to-patient ratios.

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

*Clause 13* amends schedule 3 by removing the agreement called 'ARF/RHD Register Service Agreement' between Queensland and the Menzies School of Health Research and inserting the

agreement dated 28 April 2022 called ‘National Partnership Agreement on Specified Projects - Schedule E - Rheumatic Fever Strategy’ between Queensland and the Commonwealth of Australia.

### **Amendment of sch 6 (Dictionary)**

*Clause 14* amends schedule 6 by removing the reference to the definition for the title of *chief Aboriginal and Torres Strait Islander health officer* and inserts a cross-reference to the definition of *chief First Nations health officer*.

## **Part 3 Amendment of Public Health Regulation 2018**

### **Regulation amended**

*Clause 15* states that part 3 amends the *Public Health Regulation 2018*.

### **Insertion of new s 63A**

*Clause 16* inserts new section 63A. Section 63A provides an expiry date for provisions that prescribe COVID-19 as a contagious condition in schedule 4. This expiry date is linked to the expiry of provisions in the *Public Health Act 2005*. The purpose of this provision is to align the expiry date of prescribing COVID-19 as a contagious condition in the Public Health Regulation and the expiry of the power of the Chief Health Officer to make public health directions contained in section 142A of the Public Health Act.

### **Amendment of sch 4 (Contagious conditions)**

*Clause 17* inserts definitions for *isolation period*, *quarantine period* and *relevant public health direction*.

*Clause 17* inserts a new paragraph (b) into schedule 4, part 2, entry for coronavirus (COVID-19), column 2 prescribing the start of the COVID-19 contagious condition prescribed period can be the day the child takes a test for COVID-19 that returns a positive result.

*Clause 17* inserts new paragraphs (a) and (b) into schedule 4, part 2, entry for coronavirus (COVID-19), column 3. This provision aligns the exclusion period with the relevant public health direction relating to isolation periods or quarantine period for confirmed cases of COVID-19, if a direction is in place.

### **Amendment of sch 8 (Dictionary)**

*Clause 18* amends schedule 8 by inserting definitions for *isolation period*, *quarantine period* and *relevant public health direction*.

## **Part 4 Amendment of State Penalties Enforcement Regulation 2014**

### **Regulation amended**

*Clause 19* states that part 4 amends the *State Penalties Enforcement Regulation 2014*.

**Amendment of sch 1 (Infringement notice offences and fines for nominated laws)**

*Clause 20* amends schedule 1 by prescribing various offences under the *Radiation Safety Act 1999* as infringement notice offences with their associated infringement notice fines expressed in penalty units.

The clause also prescribes an inspector appointed under section 106 of the *Radiation Safety Act 1999*, as an authorised person for the service of infringement notices under the Radiation Safety Act.

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