

Health Legislation Amendment Regulation (No. 2) 2023

Explanatory notes for SL 2023 No. 146
made under the

Health Ombudsman Act 2013
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 (No. 2) 2023

Authorising law

Section 292 of the *Health Ombudsman Act 2013*
Sections 151 and 282 of the *Hospital and Health Boards Act 2011*
Section 800 of the *Mental Health Act 2016*
Sections 64 and 461 of the *Public Health Act 2005*
Section 215 of the *Radiation Safety Act 1999*

Policy objectives and the reasons for them

The purpose of the Health Legislation Amendment Regulation (No. 2) 2023 (Amendment Regulation) is to amend miscellaneous Queensland Health subordinate legislation to implement contemporary public health advice and clinical practice in relation to notifiable conditions, clarify the application of a fee exemption and update references to agreements, published documents and interstate legislation.

The Amendment Regulation will amend:

- the *Public Health Regulation 2018* to:
 - make Acute Post Streptococcal Glomerulonephritis (APSGN) a clinical diagnosis condition;
 - remove haemolytic uraemic syndrome (HUS) as a pathological diagnosis notifiable condition;
 - remove COVID-19 as a provisional diagnosis notifiable condition or a pathology request notifiable condition; and
 - remove flavivirus infections and COVID-19 as conditions which are notified immediately.

- the *Radiation Safety Regulation 2021* to:
 - clarify that the fee exemption for applying for an additional use licence does not apply to a prescribed licensee whose only other use licence is a deemed licence; and
 - remove reference to a superseded International Commission on Radiological Protection (ICRP) document and insert a reference to the replacement ICRP document.
- the *Mental Health Regulation 2017* to update the prescribed corresponding law of another jurisdiction, by replacing the reference to the *Mental Health Act 2014* (Vic) with a reference to the *Mental Health and Wellbeing Act 2022* (Vic);
- the *Hospital and Health Boards Regulation 2023* to facilitate the continued disclosure of confidential information between Queensland Health and Queensland Corrective Services, by replacing the reference to an existing prescribed memorandum of understanding with a reference to the more recently executed information sharing agreement; and
- the *Health Ombudsman Regulation 2014* to prescribe interim prohibition orders and prohibition orders made pursuant to the *Health and Disability Services (Complaints) Act 1995* (WA) as corresponding interstate interim orders and corresponding interstate orders, respectively.

Public Health Regulation - updated notifiable conditions

The Public Health Regulation prescribes notifiable conditions, which are medical conditions which must be reported to the Notifiable Conditions Register because they pose a significant risk to public health.

Schedule 1 of the Public Health Regulation designates notifiable conditions into one or more of the following types, depending on who notifies and when the notification must occur:

- clinical diagnosis notifiable condition – requires notification when diagnosed upon clinical history and symptoms following an examination of a person by a doctor;
- pathological diagnosis notifiable condition – requires notification upon pathological diagnosis;
- pathology request notifiable condition – requires notification when the request for diagnosis is received;
- provisional diagnosis notifiable condition – requires notification when provisionally diagnosed based on clinical evidence; and
- controlled notifiable condition – additional control measures may be imposed due to the much higher public health risk posed by the medical condition.

Also, schedule 2 of the Public Health Regulation prescribes those notifiable conditions which require immediate notification upon diagnosis.

Under section 64(2) of the *Public Health Act 2005*, the Minister must only recommend prescribing a condition as a notifiable condition if satisfied the condition is a significant risk to public health.

APSGN is an injury to the kidneys caused by the body's immune response to an infection from a bacterium called Group A Streptococcus. This infection, and the chronic diseases arising from the immune response to the infection, disproportionately affect Aboriginal and Torres Strait Islander communities, particularly children.

An expert panel of North Queensland Public Health Medical Officers, using the Communicable Diseases Network Australia criteria, assessed APSGN as posing a significant public health risk. In making this assessment, they noted:

- there is a risk of kidney damage arising from the disease;
- APSGN cases are a high risk of requiring hospitalisation;
- there are significantly higher APSGN rates among Aboriginal and Torres Strait Islander communities; and
- the transmissibility of the bacteria which causes APSGN disease, particularly in vulnerable communities.

It is proposed to amend the Public Health Regulation to make APSGN a clinical diagnosis notifiable condition. This will ensure surveillance data may be utilised to inform appropriate public health action, to prevent spread and secondary cases of APSGN. The data may also be used to create a detailed baseline epidemiology of this condition.

Also, due to changes in the risks presented by several existing notifiable conditions and the public health practice protocols for managing the risks, it is proposed to amend the Public Health Regulation to re-designate the notifications for those conditions, as follows:

- keep haemolytic uraemic syndrome (HUS) a clinical diagnosis notifiable condition, but make it no longer a pathological diagnosis notifiable condition;
- keep COVID-19 a pathological diagnosis notifiable condition and a controlled notifiable condition, but make it no longer a provisional diagnosis notifiable condition or a pathology request notifiable condition; and
- make flavivirus infections and COVID-19 no longer immediately notifiable.

These changes will align the notification framework with contemporary public health practices, to ensure that only information required to manage public health is collected.

Radiation Safety Regulation – removal of fee exemption

Radiation safety is regulated under the framework established in the *Radiation Safety Act 1999*. The framework is intended to protect people and the environment from the health risks associated with the inappropriate uses of radiation, while also recognising its beneficial uses.

Under the Radiation Safety Regulation, a person who is already the holder of a use licence (to use a radiation source for diagnostic or therapeutic purposes) may apply for a subsequent use licence without having to pay an application fee. The fee exemption recognises that as the department can rely on its previous consideration of the applicant's suitability, it does not incur the full cost of processing a new application.

An unintended consequence of the fee exemption is that it applies to prescribed licensees. A prescribed licensee is a person who, under section 103K of the Radiation Safety Act, is deemed to hold a use licence without having to apply, be assessed or pay the associated fee.

It was not the policy intent that prescribed licensees could rely on their deemed licence to obtain multiple additional use licenses without needing to apply for the licence, pay the application fee or undergo the vetting process. In practice, most prescribed licensees who obtain additional use licenses do apply and pay the associated fee. However, to close this loophole, it is proposed to amend the Radiation Safety Regulation to clarify that the fee exemption does not apply to prescribed licensees.

It is also proposed to amend the Radiation Safety Regulation to remove reference to a superseded ICRP document and insert a reference to the replacement ICRP document.

Hospital and Health Boards Regulation – allowing disclosure to Queensland Corrective Services

Under section 151(1)(b) of the *Hospital and Health Boards Act 2011*, confidential information may be disclosed to an entity of the State. This may occur where the disclosure is required or allowed under an agreement prescribed in regulation. Pursuant to this section, an information-sharing memorandum of understanding has been in place between Queensland Health and Queensland Corrective Services. The ability to share confidential health information within a custodial environment is essential to ensure Queensland Health can effectively deliver health services and Queensland Corrective Services can safely manage persons in custody.

Coronial findings about a death in custody recommended consideration be given to including more contextual information in the memorandum of understanding. This would better support effective sharing of relevant information between the agencies.

As a result, Queensland Health and Queensland Corrective Services executed a new information-sharing agreement to replace the memorandum of understanding. The agreement, which is in similar terms to the memorandum of understanding, allows the sharing of confidential information between the agencies about persons in custody in correctional facilities. The agreement will be supported by operating guidelines which provide practical guidance about how to apply the new agreement, including scenario-based examples to assist officers to share relevant information. This will facilitate the sharing of information which is reasonably required to support the delivery of client-focused health services by Queensland Health and the safe, secure and effective supervision and management of persons in custody by Queensland Corrective Services.

It is proposed to amend the Hospital and Health Boards Regulation to prescribe the new agreement in place of the previous memorandum of understanding.

Mental Health Regulation – recognising the Mental Health and Wellbeing Act 2022 (Vic)

States and Territories each have their own mental health legislation. Under the Queensland *Mental Health Act 2016*, transfers of interstate patients must have regard to corresponding laws of the jurisdiction into which, or from where, a patient is being transported. These corresponding laws are prescribed in the Mental Health Regulation.

The Mental Health Regulation prescribes the *Mental Health Act 2014 (Vic)*, thereby allowing the recognition of persons subject to an involuntary order under that Act. This facilitates the person's transfer to Queensland or apprehension and transport to Victoria when they are absent without approval within Queensland.

On 1 September 2023, the *Mental Health and Wellbeing Act 2022 (Vic)* commenced. This new Act, which replaced the *Mental Health Act 2014 (Vic)*, arose out of a key recommendation of the Royal Commission into the Victorian mental health system.

It is proposed to amend the Mental Health Regulation to update the prescribed corresponding laws, by replacing the reference to the *Mental Health Act 2014 (Vic)* with a reference to the *Mental Health and Wellbeing Act 2022 (Vic)*.

Health Ombudsman Regulation – recognising interim prohibition orders and prohibition orders made in Western Australia

Under the Health Ombudsman Act, the Health Ombudsman may issue a health practitioner with an interim prohibition order. This order either prohibits or imposes restrictions on the health practitioner's ability to provide any health service or a stated health service.

Also under the Health Ombudsman Act, the Health Ombudsman may issue a health practitioner with a prohibition order. The order may prohibit the practitioner from providing any health service or a stated health service, either permanently or for a stated period. Alternatively, the order may impose restrictions on the health practitioner's ability to provide health services.

States have each enacted their own health legislation to protect the public when accessing health services. Where a health practitioner works across various jurisdictions, they may be subject to different laws depending on the State in which they are providing health services. This means that where a health practitioner's ability to provide health services is prohibited or restricted in one State, those prohibitions or restrictions will not automatically apply to their ability to provide health services in another State.

To address this, the Health Ombudsman Act allows for the recognition in Queensland of orders issued in another State. Section 77 of the Act provides that a regulation may prescribe an order to be a corresponding interstate interim order if the order is issued under a law of another State and corresponds, or substantially corresponds, to an interim prohibition order under the Act. Section 900 of the Act is similar for prescribing an order to be a corresponding interstate order in relation to a prohibition order under the Act.

On 27 July 2023, amendments to the *Health and Disability Services (Complaints) Act 1995* (WA) commenced, empowering the Western Australian Director of Health and Disability Services to issue an interim prohibition order or a prohibition order. The Director may issue one of these orders if they suspect a health practitioner has contravened a relevant code of conduct or has been convicted of certain offences. The Director must also be satisfied it is necessary to issue the order to avoid a serious risk to the life, health, safety or welfare of a person or the health, safety or welfare of the public.

The Western Australian interim prohibition order and prohibition order are very similar to an interim prohibition order and a prohibition order, respectively, made under the Health Ombudsman Act. Where a health practitioner working in Queensland is subject to an interstate order which prohibits or restricts their ability to provide health services, it is important for the Health Ombudsman to be able to enforce that order in Queensland.

It is proposed to amend the Health Ombudsman Regulation to prescribe an interim prohibition order made under the *Health and Disability Services (Complaints) Act 1995* (WA) as a corresponding interstate interim order. It is also proposed to amend the Regulation to prescribe a prohibition order made under the *Health and Disability Services (Complaints) Act 1995* (WA) as a corresponding interstate order.

Achievement of policy objectives

To achieve the policy objectives, the Amendment Regulation amends:

- schedule 1 of the Public Health Regulation, to include APSGN as a clinical diagnosis condition (column 2);
- schedule 1 of the Public Health Regulation, to remove HUS as a pathological diagnosis notifiable condition (column 3), while still remaining a clinical diagnosis notifiable condition (column 2);
- schedule 1 of the Public Health Regulation, to remove COVID-19 (within coronaviruses) as a provisional diagnosis notifiable condition (column 5) and a pathology request notifiable condition (column 4), while still remaining a pathological diagnosis notifiable condition (column 3) and controlled notifiable condition (column 6);
- schedule 2 of the Public Health Regulation, to remove flavivirus infections, including alfuy, Edge Hill, kokobera, Stratford, West Nile/kunjn and other unspecified flaviviruses (excluding dengue and yellow fever);
- schedule 2 of the of the Public Health Regulation, to remove coronavirus (COVID-19);
- section 102 of the Radiation Safety Regulation, to provide that the fee exemption in section 102(4) does not apply to a prescribed licensee whose only other relevant use licence is a deemed licence pursuant to section 103K of the Radiation Safety Act;
- section 51 of the Radiation Safety Regulation, to update references to include the ICRP document called Occupational Intakes of Radionuclides: Part 5 (known as ICRP Publication 151), and make minor technical changes arising from this update;
- schedule 8, part 2, item 12 of the Hospital and Health Boards Regulation, to replace the existing prescribed agreement with: ‘Information Sharing Agreement: Confidential information sharing under the *Hospital and Health Boards Act 2011* (Qld) and *Corrective Services Act 2006* (Qld) between the state of Queensland acting through Queensland Health and the state of Queensland acting through Queensland Corrective Services’;
- schedule 1, section 1 of the Mental Health Regulation, to replace the reference to the *Mental Health Act 2014* (Vic) with a reference to the *Mental Health and Wellbeing Act 2022* (Vic);
- section 3 of the Health Ombudsman Regulation, to prescribe an interim prohibition order made under the *Health and Disability Services (Complaints) Act 1995* (WA) as a corresponding interstate interim order; and
- section 4 of the Health Ombudsman Regulation, to prescribe a prohibition order made under the *Health and Disability Services (Complaints) Act 1995* (WA) as a corresponding interstate order.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising Acts.

Inconsistency with policy objectives of other legislation

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

Alternative ways of achieving policy objectives

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

Benefits and costs of implementation

The amendment to the Public Health Regulation to include APSGN as a notifiable condition will impose an administrative burden on entities which are required to notify conditions. However, as these entities are already required to notify other conditions, no additional notification infrastructure will be needed.

The cost to the government in implementing the amendments will be met within existing budget allocations. This may include necessary flow-on costs for public health units investigating notified cases, laboratories performing testing and primary care providers managing contacts.

The other Public Health Regulation amendments to update the designations for several existing notifiable conditions will align the notification framework with contemporary health practices. This will ensure that only information required to manage public health is collected.

The amendment to the Radiation Safety Regulation will remove a fee exemption that was never intended to apply to a prescribed licensee. Although this means a prescribed licensee will pay a fee to use an additional type of radiation source, this is reasonable given they never paid a fee for their original use licence.

The amendment to the Hospital and Health Boards Regulation to prescribe a new information-sharing agreement will support the delivery of client-focused health services by Queensland Health for persons in custody. It will assist with the safe, secure and effective supervision and management of these persons by Queensland Corrective Services.

The remaining amendments, to the Radiation Safety Regulation, Mental Health Regulation and the Health Ombudsman Regulation, will ensure that references to external documents or interstate legislation is up to date.

Consistency with fundamental legislative principles

The regulation has been drafted with regard to, and is generally consistent with, the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*. However, the Amendment Regulation may potentially infringe upon the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act*). This may include the right to privacy and the right to conduct business without interference.

Legislation should have sufficient regard to the rights and liberties of individuals – Legislative Standards Act, section 4(2)(a)

Right to privacy

The right to privacy, including the disclosure of private or confidential information, doctor-patient confidentiality and other privacy and confidentiality issues, is relevant to whether legislation has sufficient regard to a person's rights and liberties.

Clause 10 amends schedule 1 of the Public Health Regulation to make APSGN a clinical diagnosis notifiable condition.

This amendment will result in additional confidential patient information being collected within the Notifiable Conditions System and may result in a public health response. As such, the amendment may be seen to infringe upon a person's privacy. However, any infringement is considered justified by the importance of being able to initiate a public health response which reduces the potential community transmission of the condition. Only information required to manage public health is collected. The information is also protected by the confidentiality provisions in the Public Health Act, which only allow for the disclosure of confidential information in clearly identified circumstances.

Clause 6 amends schedule 8, part 2 of the Hospital and Health Boards Regulation to make the new information-sharing agreement between Queensland Health and Queensland Corrective Services a prescribed agreement under which confidential information may be disclosed to Queensland Corrective Services.

The amendment may be seen to infringe upon the privacy of persons in custody whose confidential medical information may be disclosed under the agreement. However, any infringement on a person's privacy is considered justified. This is because disclosure would only be for the purpose of ensuring the delivery of client-focused health services by Queensland Health and to facilitate the safe, secure and effective supervision and management of the persons in custody by Queensland Corrective Services.

Reasonable and fair treatment – imposition of liability

Provisions imposing liability should be fair and reasonable, both in relation to the circumstances in which the liability is imposed and any exemptions and defences. The reasonable and fair treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

Clause 14 amends section 102 of the Radiation Safety Regulation to provide that a fee exemption for existing holders of a use licence does not apply to a prescribed licensee whose only other relevant use licence is a deemed licence. As this will require a prescribed licensee to pay a fee in circumstances where they were previously exempt, the amendment may be seen to infringe upon a person's right to reasonable and fair treatment. However, any infringement is considered justified as prescribed licensees were never intended to receive the fee exemption and this amendment merely puts them in the same position as all other licensees.

Consultation

In relation to making APSGN a notifiable condition under the Public Health Regulation, the Queensland Clinical Senate, Queensland Infection Clinical Network, Aboriginal and Torres Strait Islander Clinical Network, Office of First Nations and the Queensland Aboriginal and Islander Health Council were consulted. These agencies supported the amendment.

In relation to re-designating several existing notifiable conditions under the Public Health Regulation, the Office of the Chief Health Officer, the Laboratory Reference Group (which includes representatives from both private and public pathology laboratories) and public health

physicians from Public Health Units within Hospital and Health Services were consulted. These stakeholders supported the amendments.

In relation to updating the reference to the prescribed agreement under the Hospital and Health Boards Regulation, Hospital and Health Service chief executives were consulted in developing the new information sharing agreement. The amendment gives effect to this new agreement.

Following an audit, removal of the fee exemption for prescribed licensees under the Radiation Safety Regulation was deemed not to have a significant impact, as in practice most prescribed licensees who obtain additional use licenses do not avail themselves of the exemption. Also, updating references to documents in the Radiation Safety Regulation and references to Victorian mental health legislation in the Mental Health Regulation will ensure these Regulations remain contemporary.

In relation to prescribing orders made in Western Australia as a corresponding interstate interim order and a corresponding interstate order under the Health Ombudsman Regulation, the Office of the Health Ombudsman has been consulted and supports the amendments.

All the proposed amendments were also assessed by Queensland Health in accordance with *The Queensland Government Guide to Better Regulation*. The amendments were assessed as meeting a category of exclusion from regulatory impact assessment on the basis they are regulatory proposals which are minor and machinery in nature. This includes the changes to update references to documents in the Radiation Safety Regulation, references to Victorian mental health legislation in the Mental Health Regulation and references to Western Australian interstate orders in the Health Ombudsman Regulation.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation as the *Health Legislation Amendment Regulation (No. 2) 2023*.

Part 2 Amendment of Health Ombudsman Regulation 2014

Regulation amended

Clause 2 provides that this part amends the *Health Ombudsman Regulation 2014*.

Amendment of s 3 (Corresponding interstate interim orders—Act, s 77)

Clause 3 amends section 3 to prescribe an interim prohibition order under the *Health and Disability Services (Complaints) Act 1995* (WA) as a corresponding interstate interim order.

Amendment of s 4 (Corresponding interstate orders—Act, s 90O)

Clause 4 amends section 4 to prescribe a prohibition order under the *Health and Disability Services (Complaints) Act 1995* (WA) as a corresponding interstate order.

Part 3 Amendment of *Hospital and Health Boards Regulation 2023*

Regulation amended

Clause 5 provides that this part amends the *Hospital and Health Boards Regulation 2023*.

Amendment of sch 8 (Agreements)

Clause 6 amends schedule 8, part 2, item 12 to replace the previous prescribed agreement with the agreement dated 14 July 2023 called ‘Information sharing agreement – Confidential information sharing under the *Hospital and Health Boards Act 2011* (Qld) and *Corrective Services Act 2006* (Qld) between the State of Queensland acting through Queensland Health and The State of Queensland acting through Queensland Corrective Services’.

Part 4 Amendment of *Mental Health Regulation 2017*

Regulation amended

Clause 7 provides that this part amends the *Mental Health Regulation 2017*.

Amendment of schedule 1, section 1

Clause 8 amends schedule 1, section 1 to omit the reference to the *Mental Health Act 2014* (Vic) and replace it with the *Mental Health and Wellbeing Act 2022* (Vic).

Part 5 Amendment of *Public Health Regulation 2018*

Regulation amended

Clause 9 provides that this part amends the *Public Health Regulation 2018*.

Amendment of schedule 1 (Notifiable conditions)

Clause 10 amends schedule 1 to include acute post-streptococcal glomerulonephritis (APSGN) as a clinical diagnosis notifiable condition (column 2).

The clause amends schedule 1 to remove COVID-19 as a pathology request notifiable condition (column 4) and as a provisional diagnosis notifiable condition (column 5).

The clause amends schedule 1 to remove haemolytic uraemic syndrome (HUS) as a pathological diagnosis notifiable condition (column 3).

Amendment of schedule 2 (Immediate notifications)

Clause 11 amends schedule 2 to remove ‘coronavirus (COVID-19)’ and ‘flavivirus infections, including alfu, Edge Hill, kokobera, Stratford, West Nile/kunjin and other unspecified flaviviruses (excluding dengue and yellow fever)’ as immediately notifiable conditions.

Part 6 Amendment of *Radiation Safety Regulation 2021*

Regulation amended

Clause 12 amends the *Radiation Safety Regulation 2021*.

Amendment of s 51 (Definitions for division)

Clause 13 amends the section 51 definition of ‘internal effective dose’. It also amends the section 51 definition of a ‘relevant part’ of the ‘Occupational Intakes of Radionuclides’ series of documents prepared by the International Commission on Radiological Protection (ICRP).

The definition of ‘internal effective dose’ covers both a radionuclide mentioned in a relevant part of the ‘Occupational Intakes of Radionuclides’ series and a radionuclide which is not mentioned in that series. However, following the recent publication of a new document in the series, called ‘Occupational Intakes of Radionuclides: Part 5’, known as ‘ICRP Publication 151’, all radionuclides are now mentioned in that series.

As such, clause 13 amends the definition of ‘internal effective dose’ to remove the reference to a radionuclide not mentioned in a relevant part of the ‘Occupational Intakes of Radionuclides’ series. Clause 13 also makes a consequential amendment to include ‘ICRP Publication 151’ in the definition of a ‘relevant part’ of the series.

Amendment of s 102 (Exemption from payment of fees)

Clause 14 amends section 102 to provide that the fee exemption in that section does not apply to a person who is a prescribed licensee if the only use licence held by the person is the use licence they are taken to hold pursuant to section 103K of the Radiation Safety Act.

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