

Health and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 92

made under the

Hospital and Health Boards Act 2011

Private Health Facilities Act 1999

Public Health Act 2005

Radiation Safety Act 1999

State Penalties Enforcement Act 1999

Voluntary Assisted Dying Act 2021

General Outline

Short title

Health and Other Legislation Amendment Regulation 2024

Authorising Law

Section 150(b) of the *Hospital and Health Boards Act 2011*

Section 147(4)(h)(ii) of the *Private Health Facilities Act 1999*

Section 225(b) of the *Public Health Act 2005*

Sections 41 and 103K of the *Radiation Safety Act 1999*

Section 165 of the *State Penalties Enforcement Act 1999*

Section 73 of the *Voluntary Assisted Dying Act 2021*

Policy objectives and the reasons for them

The purpose of the Health and Other Legislation Amendment Regulation 2024 (Amendment Regulation) is to amend:

- the *Hospital and Health Boards Regulation 2023*, to prescribe new confidential information-sharing agreements with the Commonwealth to facilitate Queensland recovering the cost of treating eligible veterans and visiting Norfolk Island residents in Queensland public hospitals;

- the Hospital and Health Boards Regulation, *Private Health Facilities Regulation 2016* and *Public Health Regulation 2018*, to authorise the provision of confidential information to Queensland Primary Health Networks (PHNs), the Queensland Aboriginal and Islander Health Council (QAIHC) and the Institute for Urban Indigenous Health Services (IUIH), to ensure PHNs, QAIHC and IUIH can effectively fulfill their functions of health service planning and evaluation;
- the *Radiation Safety Regulation 2021* to:
 - deem certain classes of student health practitioners to be licence holders for training purposes, removing the requirement for them to apply to Queensland Health for a licence and for Queensland Health to process the applications; and
 - enable specialist cardiologists who have completed specialised computed tomography (CT) coronary angiography training to request CT diagnostic imaging procedures, removing the need for them to refer the patient to another health practitioner to request the procedure;
- the *State Penalties Enforcement Regulation 2014* to prescribe two new offences in the *Tobacco and Other Smoking Products Act 1998* as infringement notice offences; and
- the *Voluntary Assisted Dying Regulation 2022*, to ensure that a voluntary assisted dying substance cannot be supplied to a person unless a previously supplied substance has been disposed of by or is in the possession of an authorised disposer or the administering practitioner for the person.

Hospital and Health Boards Regulation

Schedule 8, part 1 of the Hospital and Health Boards Regulation prescribes various agreements, between Queensland Health and the Commonwealth, States and Territories and other entities, to facilitate the sharing of confidential information.

Queensland public hospitals treat eligible veterans. Where these patients elect for the Commonwealth Department of Veterans' Affairs (DVA) to fund their treatment, DVA accepts financial responsibility for the cost of the treatment provided and Queensland makes a claim against DVA to recover the cost. In making such claims, Queensland must share confidential patient information with the Commonwealth, represented by DVA, and with the Repatriation Commission and the Military Rehabilitation and Compensation Commission. The previous agreement under which this confidential information is shared has now expired.

Queensland public hospitals also treat visiting residents from Norfolk Island. The Commonwealth of Australia accepts financial responsibility for the cost of the treatment provided and Queensland makes a claim against the Commonwealth to recover the cost. In making such claims, Queensland must share confidential patient information with the Commonwealth, represented by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts. The previous agreement under which this confidential information is shared has now expired.

On 8 April 2024, Queensland Health received the new signed agreement in relation to eligible veterans, called the 'Hospital services arrangement between the Commonwealth of Australia and the Repatriation Commission and the Military Rehabilitation and Compensation Commission and the State of Queensland'. This agreement will cover the period 1 July 2023

to 30 June 2025. The terms of the new agreement are materially the same as the expired agreement.

In November 2023, Queensland Health received the completed new agreement in relation to visiting residents from Norfolk Island, called the 'Cross-border agreement between the State of Queensland and the Commonwealth of Australia for the funding of patient services provided by Queensland Health to residents of Norfolk Island'. This agreement will cover the period from 1 July 2021 to 30 June 2025. The terms of the new agreement are materially the same as the expired agreement.

The objective of the Amendment Regulation is to ensure that Queensland Health can continue sharing confidential patient information with the Commonwealth, pursuant to the new agreement.

Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation amendments

Primary Health Networks (PHNs) are a national network of independent, not-for-profit, primary health care organisations funded by the Australian Government. Their key objective is to increase the efficiency and effectiveness of medical services for patients in their geographic region, particularly those at risk of poor health outcomes, and to improve the coordination of care.

The seven Queensland PHNs require regular, timely and ongoing access to a wide range of confidential patient level data from both within the department and across the 16 Hospital and Health Services (HHS). Access to this data is necessary to assist PHNs with achieving their core health services planning and evaluation functions.

The information provided can include, but is not limited to, public and private hospital admitted patient activity, non-admitted patient activity, emergency department presentations, perinatal data, maternity indicators and Health Contact Centre data.

This information contributes to the PHN's role in developing a joint regional needs assessment framework, under which the PHNs must work in partnership with their local HHS/s and other health partners, such as the local Aboriginal and Torres Strait Islander Community Controlled Health Organisations (ATSICCHOs). As this is considered a key health service planning function, timely access to confidential patient data is essential for the PHNs to achieve their functions.

The Queensland Aboriginal and Islander Health Council (QAIHC) is dedicated to empowering a sustainable ATSICCHO sector, underpinned by cultural safety, strong leadership, and governed by principles of self-determination. QAIHC's purpose is to advocate and lobby for accessible and equitable comprehensive primary healthcare to all First Nations people in Queensland and is responsible for supporting and delivering activities that develop the capability of ATSICCHOs. QAIHC works closely with members to identify needs and provide practical solutions. This is done through advice, support, cultural capability and education, workforce planning and development, continuous quality improvement and accreditation and chronic disease management. QAIHC's membership is open to all ATSICCHOs in Queensland.

The Institute for Urban Indigenous Health (IUIH) leads the planning, development and delivery of health and wellbeing services for Community Controlled Health Services of South-East Queensland.

Queensland Health data, when analysed together with other data drawn from QAIHC's and IUIH's member services, will enable QAIHC and IUIH to develop a more complete understanding of the health needs of Aboriginal and Torres Strait Islander communities, and better inform the opportunities for health services to be provided closer to the community in partnership with their member services. QAIHC and IUIH will also participate in the joint regional needs assessments, so having access to the same data will further advance their equal participation in this process.

Currently, this data is obtained from Queensland Health by seeking case-by-case approval from the chief executive. However, this is time and resource intensive.

Section 150(b) of the *Hospital and Health Boards Act 2011*, section 225(b) of the *Public Health Act 2005*, and section 147(4)(h)(ii) of the *Private Health Facilities Act 1999* allow for the disclosure of confidential information to an entity prescribed under a regulation for the purposes of evaluating, managing, monitoring or planning health services.

The objective of the Amendment Regulation is to ensure appropriate information sharing with PHNs, QAIHC and IUIH on an ongoing regular basis, to allow those entities to achieve their health service planning and evaluation functions and further the health of the community.

These amendments and subsequent data sharing with QAIHC and IUIH will also help to deliver Queensland Health's commitment to the National Agreement on the Closing the Gap across all four reform areas, but particularly focus area four: 'Shared access to data and information at a regional level'. These amendments are a positive step to advancing the health equity strategy and improving the delivery of health services to First Nations people across the state.

Radiation Safety Regulation amendments – prescribing classes of student health practitioners

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.

Section 13 of the Radiation Safety Act provides that a person using a radiation source is required to hold a use licence. Section 51 of the Radiation Safety Act provides that an application for a licence must be made in the approved form and accompanied by the prescribed fee. This requirement applies to all users of radiation sources, including registered health professionals and student health professionals.

Section 103K of the Radiation Safety Act provides that regulation may prescribe a person or class of persons who is taken to hold a use licence (prescribed licensee). This means the person (or class of persons) is not required to apply to the chief executive for and be granted a licence. However, they are still required to comply with all the other obligations of a use licensee under the Radiation Safety Act. Section 102 of the Radiation Safety Regulation provides that students

are exempt from paying application and licence fees. Currently, Queensland Health incurs costs processing and assessing student health practitioner licence applications.

Student health practitioners are under a formal guidance and mentorship program while undertaking the practical student placement component of their university training courses. It is considered that within this training environment, certain classes of student health practitioners have sufficient skills, training, competency, knowledge and experience in the use of the specified types of radiation sources to be able to safely and competently use a radiation source for the practice without endangering the health of other persons or adversely affecting the environment. The requirement to apply for, and be granted, a use licence issued by the department is therefore not necessary as other effective controls are in place within the education and clinical systems.

The objective of the Amendment Regulation is to reduce the financial and administration burden on Queensland Health, and the administrative burden on prescribed classes of student health practitioners.

Radiation Safety Regulation amendments – prescribing cardiologists as authorised persons

Schedule 6 of the Radiation Safety Regulation prescribes authorised persons for particular diagnostic procedures. Under this schedule, only diagnostic radiologists, radiation oncologists, and doctors in training for these specialties are authorised to request computed tomography (CT) procedures.

Where a cardiologist with CT coronary angiography training recommends a patient undergo a CT diagnostic imaging procedure, they must refer the patient to an authorised health professional who, in turn, will request the procedure for the patient. This is at the expense of the patient's convenience and, as CT coronary angiography trained cardiologists are best qualified to decide whether the patient should undergo the procedure, does not enhance patient care.

The objective of the Amendment Regulation is to increase efficiencies in healthcare delivery by removing the need for cardiologists who have completed specialist CT coronary angiography training to refer patients to other health professionals to request CT diagnostic imaging procedures.

State Penalties Enforcement Regulation amendments

The objectives of the State Penalties Enforcement Act include maintaining the integrity of fines as a viable sentencing or punitive option for offenders. One way this is achieved is through the use of infringement notices. When an authorised person has a reasonable belief that a person has committed an infringement notice offence, they may issue the person with an infringement notice. This notice allows the receiver to either pay the fine or elect to have the matter determined by a Magistrate.

In June 2023, significant amendments were made to the Tobacco and Other Smoking Products Act. This included establishing a licensing scheme for the wholesale and retail sale of smoking products. New section 65(1) makes unlicensed sale of smoking products an offence, with a maximum penalty of 1,000 penalty units. New section 78(2) makes it an offence to supply smoking products at a liquor licensed premises other than from a service area, with a maximum

penalty of 140 penalty units. To give businesses sufficient time to meet the new requirements, these offences do not commence until 1 September 2024.

The objective of the Amendment Regulation is to ensure the above new offences can be appropriately enforced, including through the issuing of penalty infringement notices.

Voluntary Assisted Dying Regulation amendments

The *Voluntary Assisted Dying Act 2021* establishes a legal framework for voluntary assisted dying in Queensland, allowing eligible people who are suffering and dying to choose the timing and circumstances of their death. Voluntary assisted dying refers to the administration of a voluntary assisted dying substance with the purpose of bringing about a person's death.

The voluntary assisted dying process encompasses three main phases, each requiring adherence to specific protocols and documentation. Individuals can halt or opt-out of the process at any stage.

The initial phase involves request and assessment. Individuals must fulfill eligibility criteria through three separate requests and be assessed by two authorised practitioners. Following approval, the second phase relates to the administration of the voluntary assisted dying substance. This decision by the individual, whether self-administration or practitioner administration, requires the appointment of a contact person.

The substance for a person who has decided upon self-administration is supplied to the person, their contact person, or their agent. The substance for a person who has decided upon practitioner administration is supplied to their administering practitioner.

In some circumstances, a person may choose to revoke an administration decision. Section 63 of the Voluntary Assisted Dying Act provides that if the person revokes a self-administration decision after they have been supplied a voluntary assisted dying substance, then the contact person must, within 14 days after the day the self-administration decision was revoked, give the substance to an authorised disposer for disposing. Section 77 of the Voluntary Assisted Dying Act provides that if a person revokes a practitioner administration decision after the administering practitioner has been supplied a voluntary assisted dying substance, the administering practitioner must dispose of the substance as soon as practicable after the administration decision is revoked.

Under section 51 of the Voluntary Assisted Dying Act, a person who has revoked a self-administration decision is not prevented from making another administration decision. Section 53 provides that if a practitioner administration decision is made then the authorised supplier is authorised to supply the substance for practitioner administration to the administering practitioner.

Similarly, where a person has made a practitioner administration decision and revokes this decision to make a new self-administration decision, the authorised supplier is authorised to supply the substance for self-administration to the person. For a practitioner administration decision, the substance remains in the control and possession of the administering practitioner.

However, there is currently no legislative requirement for a self-administration substance to be returned for disposal prior to supply of another voluntary assisted dying substance for practitioner administration occurring.

A review of the legislation has identified potential to improve the regulation of voluntary assisted dying substances to ensure safer management throughout the process.

The objective of the Amendment Regulation is to reduce the risk of any inappropriate use of a voluntary assisted dying substance which may arise from two voluntary assisted dying substances being supplied to a person at the same time, or from a self-administration substance remaining in the community when it is no longer needed.

Achievement of policy objectives

Hospital and Health Boards Regulation

The Amendment Regulation achieves the objective of ensuring that Queensland Health can continue sharing confidential patient information with the Commonwealth to facilitate Queensland recovering the cost of treating eligible veterans and visiting Norfolk Island residents in Queensland public hospitals. It does this by amending schedule 8, part 1 of the Hospital and Health Boards Regulation to prescribe the new agreements.

The terms of the agreements outline the data use and disclosure conditions. This ensures compliance with confidentiality obligations and clarifies permitted disclosures.

Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation amendments

The Amendment Regulation achieves the objective of ensuring appropriate information sharing with PHNs, QAIHC and IUIH, by amending the Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation to allow disclosure of confidential information to seven PHNs, QAIHC and IUIH by making them prescribed entities for evaluating, managing, monitoring or planning health services. This will allow ongoing disclosure without requiring individual approvals.

The PHNs, QAIHC and IUIH have entered into Deeds of Disclosure with Queensland Health, which outline the data use and disclosure conditions. This ensures compliance with confidentiality obligations and clarifies permitted disclosures.

Radiation Safety Regulation amendments – prescribing classes of student health practitioners

The Amendment Regulation achieves the objective of reducing the financial and administration burden on Queensland Health, and the administrative burden on prescribed classes of student

health practitioners, by amending part 11, division 2 to prescribe the following classes of student health practitioners as ‘use licensees’:

- dental students, oral health therapy students, dental hygiene students and dental therapy students;
- diagnostic radiography students;
- radiation therapy students; and
- nuclear medicine technology students.

For each class of student health practitioner, the following requirements are prescribed:

- the required qualification, professional registration or training;
- the radiation source allowed to be used;
- the radiation practice the use licensee is allowed to carry out using the source; and
- any condition placed on the use licence by the chief executive.

This means these student health practitioners will be taken to hold a use licence, without the requirement to apply, or for Queensland Health to process the licence application. As noted above, these student health practitioners are considered to have sufficient skills, training, competency, knowledge, experience and supervision in the use of the specified types of radiation sources to be able to safely and competently use a radiation source.

This amendment achieves a reduction in the regulatory and administrative burden for the relevant student health practitioners, and for Queensland Health, without diminishing the tightly regulated framework established by the Radiation Safety Act.

Radiation Safety Regulation amendments – prescribing cardiologists as authorised persons

The Amendment Regulation achieves the objective of increasing efficiencies in healthcare delivery by amending schedule 6 of the Radiation Safety Regulation to prescribe cardiologists who have completed specialist CT coronary angiography training as ‘authorised persons’.

This will remove the need for those cardiologists to refer a patient to another health professional to request a CT procedure. This will streamline delivery of care for cardiovascular conditions and create efficiencies for patients in accessing diagnostic services.

State Penalties Enforcement Regulation amendments

The Amendment Regulation achieves the objective of ensuring the new offences under section 65(1) (unlicensed sale of smoking products) and section 78(2) (supply of smoking products at a liquor licensed premises other than from a service area) of the Tobacco and Other Smoking Products Act can be appropriately enforced. It does this by amending the State Penalties Enforcement Regulation to prescribe those offences as infringement notice offences.

For the unlicensed retail or wholesale sale of smoking products, the amendments will allow the issuing of a penalty infringement notice with a penalty of 20 penalty units for an individual and 100 penalty units for a corporation. For the supply of smoking products by an employee at a liquor licensed premises other than from a point of sale, a penalty infringement notice with a penalty of 4 penalty units may be issued.

Penalty infringement notice (PIN) offences are an alternative to prosecution through the court system. A PIN invites an alleged offender to discharge their potential liability by the payment of a prescribed penalty, as opposed to having the matter dealt with by the court. If, however, the person wishes to contest the alleged offence or plead guilty and have a penalty imposed by a judicial officer, they can elect to have the matter dealt with in court.

PINs are an established method for the enforcement of comparatively minor offences.

This amendment will promote efficiencies, deter non-compliance and assist to achieve the overall public health objective of the Tobacco and Other Smoking Products Act.

Voluntary Assisted Dying Regulation amendments

The Amendment Regulation achieves the objective of reducing the risk of inappropriate use of a voluntary assisted dying substance by amending section 5 of the Voluntary Assisted Dying Regulation to provide that a voluntary assisted dying substance cannot be supplied to a person unless a previously supplied substance has been disposed of by, or is in the possession of, an authorised disposer or the administering practitioner for the person.

This ensures that two voluntary assisted dying self-administration substances cannot be supplied to a person at the same time, and that self-administration substances do not remain in the community when no longer needed. This gives legislative effect to current operational policy, ensuring that relevant safeguards are applied for the safety of individuals and the community.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the Hospital and Health Boards Act, Private Health Facilities Act, Public Health Act, Radiation Safety Act, State Penalties Enforcement Act and Voluntary Assisted Dying Act.

Inconsistency with policy objects of other legislation

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

Alternative ways of achieving policy objectives

Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation amendments

An alternative way of achieving the policy objective is for Queensland Health to grant case-by-case approval to disclose confidential patient information to the Commonwealth, PHNs, QAIHC and IUIH. This would be resource intensive and inefficient. Prescribing confidential information-sharing agreements will streamline the provision and exchange of this information.

Radiation Safety Regulation amendments – prescribing classes of student health practitioners

An alternative way of achieving the policy objective is for student health practitioners to continue to be required to apply for a use licence. Section 102 of the Radiation Safety Regulation provides that a person who is required to use a radiation source during the person's study or training at an educational institution is exempt from paying application and licence fees for the use licence.

Currently, Queensland Health incurs costs processing and assessing licence applications and cannot recoup these costs because students are exempt from paying associated licence and application fees. Student health practitioners also incur the administrative and time burden of applying for the use licence and being unable to continue with their studies until the application has been processed and issued.

Radiation Safety Regulation amendments – prescribing cardiologists as 'authorised persons'

No other alternative way of achieving the policy objective has been identified. The Amendment Regulation is the only effective way to achieve the policy objective.

State Penalties Enforcement Regulation amendments

An alternative way of achieving the policy objectives requires that breaches of the two new offences of the Tobacco and Other Smoking Products Act are addressed through prosecution only. The initiation of prosecution action incurs significant costs and resource allocation and is typically reserved for the most severe breaches.

Voluntary Assisted Dying Regulation amendments

Queensland Health, with the Queensland Voluntary Assisted Dying Support and Pharmacy Service, have already implemented strategies to require that where a person has revoked their self-administration decision, and then makes a practitioner administration decision, any already supplied self-administration substance must be returned before a practitioner administration substance can be supplied. However, the regulation does not currently prevent two voluntary assisted dying substances being supplied to the same person concurrently and the unused substance remaining in the community when it is no longer needed.

Benefits and costs of implementation

The cost of implementing the Amendment Regulation will be met within existing budget allocations. The amendments do not impose any new or increased fees.

Amendments to the Hospital and Health Boards Regulation will allow ongoing disclosure of confidential patient information to the Commonwealth. The amendments will facilitate

Queensland recovering the cost of treating eligible veterans and visiting Norfolk Island residents in Queensland public hospitals.

Amendments to the Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation will allow ongoing disclosure of confidential information to seven Queensland PHNs, QAIHC and IUIH for the purpose of evaluating, managing, monitoring or planning health services. This will provide a legal mechanism for Queensland Health to provide requested information without requiring individual written approvals from the chief executive officer, creating efficiencies and ensuring those organisations can fulfil their health service planning and evaluation functions, and in doing so will promote the health of the community.

The amendments to the Radiation Safety Regulation to prescribe classes of student health practitioners as use licensees will reduce the current regulatory and administrative burden on relevant student health practitioners and Queensland Health while ensuring the requirements of the Radiation Safety Act still apply.

The amendments to the Radiation Safety Regulation to prescribe cardiologists who have completed specialist CT coronary angiography training as authorised persons who may request CT procedures will streamline delivery of care for patients with heart disease and cardiac conditions, including by creating efficiencies in accessing relevant diagnostic services.

The amendment to the State Penalties Enforcement Regulation to prescribe two new offences in the Tobacco and Other Smoking Products Act as penalty infringement notice offences will enable authorised persons to issue fines for breaches dealing with the unlicensed supply of smoking products and supply of smoking products at liquor licensed premises other than at a point of sale. This will promote efficiencies, increase the deterrent effect of those offences, and support the public health objectives of the Tobacco and Other Smoking Products Act.

The amendment to the Voluntary Assisted Dying Regulation ensures that a voluntary assisted dying substance cannot be supplied to a person unless a previously supplied substance has been disposed of by, or is in the possession of, an authorised disposer or the administering practitioner for the person. This will ensure that two VAD substances are not supplied to the same person concurrently and protect the health and safety of individuals and the community.

Consistency with fundamental legislative principles

The Bill has been drafted with regard to the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*. However, as outlined below, the Amendment Regulation may 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). The list of examples in the Legislative Standards Act is not exhaustive of the issues relevant to deciding whether legislation has sufficient regard to the rights and liberties of individuals. Further considerations include whether the legislation infringes on the privacy of individuals and whether the penalties imposed by legislation are proportionate and relevant to the actions to which the penalties are applied.

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

The amendments discussed below potentially impact fundamental legislative principles. Queensland Health considers that the remaining amendments in the Amendment Regulation are consistent with fundamental legislative principles.

Disclosure of confidential information

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.

The Amendment Regulation amends the Hospital and Health Boards Regulation, Private Health Facilities Regulation and Public Health Regulation to allow the disclosure of confidential health data to PHNs, QAIHC and IUIH.

The amendments may be seen to infringe upon the privacy of persons whose medical information may be disclosed.

However, any departure from the fundamental legislative principle is mitigated by the appropriate safeguards in the Hospital and Health Boards Act, Public Health Act and Private Health Facilities Act, and within the relevant deeds of disclosure.

Under these Acts, the unlawful disclosure of confidential information is an offence. The Acts allow for the disclosure of confidential information to an entity prescribed under a regulation for the purposes of evaluating, managing or planning health services. Each prescribed entity must enter into a deed of disclosure with Queensland Health which outlines the data use and disclosure conditions and ensures compliance with confidential obligations and clarifies permitted disclosures. The Deed prohibits the recipient from using, copying, reproducing, communicating or disclosing the information to any unauthorised third party.

The disclosure of confidential data in this case serves a compelling public interest, by promoting public health.

In the context of PHNs, QAIHC and IUIH, sharing confidential data can facilitate timely and effective healthcare interventions, allowing for the identification of health trends, resource allocation, and targeted interventions to prevent the spread of diseases. This information exchange can lead to improved health outcomes for individuals and communities by enabling healthcare providers to deliver more personalised and responsive care.

Sharing confidential data with QAIHC and IUIH supports the Closing the Gap Agreement reform area of 'Shared access to data and information at a regional level'. Sharing data is the foundational step to supporting First Nations communities to achieve Data Sovereignty, including development of data that is strengths based and meaningful to First Nations peoples.

Given the above, any departure is limited by the safeguards discussed and justified because appropriate information sharing is necessary to ensure PHNs, QAIHC and IUIH can achieve their health service planning functions, to the benefit of the community.

Similarly, the Amendment Regulation amends the Hospital and Health Boards Regulation to prescribe new agreements to allow the disclosure of confidential patient information to the Commonwealth. This will facilitate Queensland recovering the cost of treating eligible veterans and visiting Norfolk Island residents in Queensland public hospitals. Again, any departure from the fundamental legislative principle is mitigated by the safeguards in the Hospital and Health Boards Act and the data use and disclosure conditions in the agreements.

Penalty infringement notices

The Amendment Regulation amends the State Penalties Enforcement Regulation. For legislation to have sufficient regard to the rights and liberties of individuals, new offences should be appropriate and reasonable, and the penalty should be proportionate to the wrong occasioned by the breach.

The *Tobacco and Other Smoking Products Amendment Act 2023* introduced a range of new offences. Most of these offences have already commenced. However, to give businesses sufficient time to become licensed, commencement of the new offence of unlicensed retail or wholesale sale of smoking products was delayed until 1 September 2024. Similarly, to give businesses sufficient time to relocate smoking product vending machines, the new offence of supplying smoking products at a liquor licensed premises other than from a point of sale was delayed until 1 September 2024. The Amendment Regulation amends the State Penalties Enforcement Regulation to prescribe these two new offences as infringement notice offences.

When used appropriately and in conjunction with other compliance mechanisms under the Act, infringement notices are considered to be a fair and effective enforcement response and provide a more immediate deterrent than commencing lengthy prosecution action. By providing an alternative to prosecution, infringement notices reduce demands on Queensland courts while still maintaining a person's right to access the judicial system if they wish to challenge the offence. The penalty units for the infringement notices prescribed in the regulation are consistent with those prescribed for similar offences in both the Tobacco and Other Smoking Products Act and other health portfolio legislation.

As such, the introduction of the new infringement notice offences is considered to have sufficient regard to the fundamental legislative principles regarding individual rights and liberties.

Consultation

In early-2023 consultation was undertaken with affected universities and professional bodies in relation to the amendments to the Radiation Safety Regulation to prescribe certain classes of student health practitioners as use licensees. Key stakeholders included the Australian Dental

Association Queensland, the Australian and New Zealand Society of Nuclear Medicine, the Australian Dental and Oral Health Therapists Association, and the Australian Diagnostic Imaging Association.

The Radiation Advisory Council has been consulted in relation to the proposal to prescribe cardiologists who have completed specialist CT coronary angiography training as ‘authorised persons’.

The Department of Justice and Attorney-General was consulted and approved the amendments to the State Penalties Enforcement Regulation.

In April 2024, a consultation paper¹ on the proposed amendments was published on the Queensland Health website and disseminated to key stakeholders across medical, dental, pharmacy and Aboriginal and Torres Strait Islander organisations.

The consultation paper did not include the amendments prescribing agreements for data sharing with the Commonwealth government. The agreement with the Commonwealth Department of Veteran Affairs is a long-standing agreement which provides for Queensland Health to recover the costs incurred for veteran’s healthcare in Queensland hospitals. The cross-border agreement with the Commonwealth Department of Infrastructure conforms with the process outlined in the National Health Reform Agreement to which the Commonwealth and Queensland governments are signatories. The agreement provides for Queensland Health to recover the costs incurred for Norfolk Island residents’ healthcare in Queensland hospitals.

In entering into the cross-border agreements, the Commonwealth, through its relevant agencies, represents the interests of eligible veterans and visiting Norfolk Island residents. Queensland Health did not undertake additional consultation with these stakeholders. Also, the agreements facilitate the recovery of public hospital treatment costs that have already been incurred and do not impact access to, or delivery of, such treatments to eligible veterans and visiting Norfolk Island residents.

There was general support for all proposed amendments with over 90 per cent of respondents supporting the amendments.

In relation to the sharing of confidential data with PHNs, QAIHC and IUIH, several stakeholders recommended more safeguards to ensure data security and control on forwarding of data or usage by the prescribed entities. These issues are addressed by the content of the Deeds of Disclosure which each entity has signed with Queensland Health. The deeds outline the data use and disclosure conditions and ensure compliance with confidentiality obligations. They also clarify permitted disclosures, including information management and security processes.

Some stakeholders raised concerns that the proposed amendment to the Radiation Safety Regulation to prescribe specialist cardiologists as ‘authorised persons’ would mean that a specialist cardiologist who also held a relevant use licence could both authorise and perform

¹ Available at <https://www.health.qld.gov.au/system-governance/legislation/stakeholder-consultation/past-consultation>.

CT diagnostic imaging procedures, which is contrary to ‘arm’s-length’ referral arrangements which aim to prevent individuals from being exposed to unnecessary radiation.

Queensland Health considers the risk of this occurring is very low. To date, no cardiologists have sought to obtain a use licence to perform CT diagnostic imaging procedures. Queensland Health considers it is very unlikely that a cardiologist (of whom there are a very small number in Queensland) would seek such a licence. CT diagnostic imaging procedures are usually performed by licensed diagnostic radiographers, not cardiologists.

To address any residual risk, it is intended that if an authorised cardiologist applies for a use licence, the use licence will only be granted subject to the condition that the cardiologist can only perform the CT diagnostic imaging procedure if it was requested by another authorised person. This would prevent the same cardiologist requesting and performing the procedure.

All the proposed amendments were assessed by Queensland Health in accordance with *The Queensland Government Guide to Better Regulation*. The majority of amendments were assessed as being exempt from further regulatory impact assessment on the basis they are minor and machinery in nature. The amendments to the Voluntary Assisted Dying Regulation were assessed as exempt from further regulatory impact assessment on the basis that an immediate response is required to prevent injury to persons.