

# Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, the Honourable Steven Miles MP, Deputy Premier and Minister for Health and Minister for Ambulance Services provide this human rights certificate with respect to the *Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020* made under the *Hospital and Health Boards Act 2011*.

In my opinion, the *Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The purpose of the *Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020* (Amendment Regulation) is to provide access to The Viewer by additional types of health practitioners registered under the Health Practitioner Regulation National Law (National Law).

Sections 142 and 142A of the *Hospital and Health Boards Act 2011* (HHB Act) provide a duty of confidentiality for designated persons and prescribed health practitioners respectively. Section 143(2)(e) permits disclosure of confidential information if that information is provided to a prescribed health practitioner by giving the prescribed health practitioner access to a prescribed information system.

Under section 34B of the *Hospital and Health Boards Regulation 2012* (HHB Regulation), The Viewer is a prescribed information system for the HHB Act. The Viewer is Queensland Health's read-only web-based application that displays a consolidated view of patients' clinical and demographic information from a variety of Queensland Health clinical and administrative systems. Prescribed health practitioners can access The Viewer via the Health Provider Portal, which provides read-only, secure access.

Section 34A and schedule 2C of the HHB Regulation prescribe who is a prescribed health practitioner for the purposes of section 139 of the HHB Act and is therefore able to access The Viewer.

On 21 February 2020, the *Health Legislation Amendment Regulation 2020* amended the HHB Regulation to enable access to The Viewer for midwives, nurses and paramedics to enhance collaboration and information exchange between health care practitioners involved in a patient's care. Currently, only medical practitioners, nurses, midwives and paramedics registered under the National Law can access The Viewer.

The Amendment Regulation will amend the HHB Regulation to prescribe additional types of registered health practitioners for the definition *prescribed health practitioner* for section 139 of the HHB Act. The new professions being prescribed are:

- Aboriginal and Torres Strait Islander Health Practice;
- Dental (including the professions of dentist, dental therapist, dental hygienist; dental prosthetist and oral health therapist);
- Medical radiation practice;
- Occupational therapy;
- Optometry;
- Pharmacy;
- Physiotherapy;
- Podiatry; and
- Psychology.

## Human Rights Issues

**Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

**Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)**

In my opinion, the right to privacy and reputation under section 25 of the *Human Rights Act 2019* is relevant to the subordinate legislation.

(a) the nature of the right

The right to privacy under section 25 of the Human Rights Act provides that a person has the right not to have the person's privacy, family, home, correspondence unlawfully or arbitrarily interfered with. An interference with a person's privacy will be arbitrary if it is capricious, unpredictable or unjust, or if the interference is not proportionate to a legitimate aim.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The Amendment Regulation provides access to The Viewer for additional types of registered health practitioners, which means these practitioners will be able to access private information about a person's health and services provided in public health settings. The purpose of providing this access is to improve healthcare, specifically where care is being transferred from public health care to other health care providers, including allied health practitioners, community services and aged care facilities. The improved access to health services is consistent with a free and democratic society and the right to access health services without discrimination is also protected by the Human Rights Act.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

There is a range of valuable information available in The Viewer that complements the information provided in a hospital discharge summary, such as radiology and pathology results, emergency department discharge summaries, medications, alerts, outpatient appointment details, and instructions for follow up treatment.

Extending access to The Viewer to allow additional types of registered health practitioners access regardless of the type of facility or organisation they work for will ensure these practitioners have timely availability of important clinical information that could impact advice and treatment of a patient's clinical condition and may reduce unnecessary duplication of tests and procedures. This is expected to improve a person's access to health services, particularly streamlining transfer of patients from acute hospital settings if follow up care is needed in the community.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The purpose of the Amendment Regulation cannot be achieved through any reasonably available and less restrictive means. Currently, registered health practitioners that are unable to access The Viewer must manually request this information from Queensland Health. This creates potential delays in providing relevant clinical information that would otherwise enable prompt clinical decision making and prevent the duplication of tests.

There are appropriate safeguards to protect a patient's confidential information, including:

- health practitioners must complete a stringent registration process to access The Viewer;
- automated checking of health practitioners' professional credentials is performed each time they log in;
- health practitioners must agree to terms and conditions that detail their legal and professional obligations when they apply to access The Viewer;
- health practitioners are not able to perform general searches for patients and can only access details of patients for which they have unique identifying information, such as a Medicare card number;
- all access and activity is recorded in audit files, and regular audits and usage reports are conducted; and
- The Viewer can be configured to display or withhold information as deemed appropriate for the practitioner's clinical role and work context. Different levels of access can be configured for different categories of health practitioners.

The HHB Act also makes it an offence for a prescribed health practitioner to disclose confidential information unless authorised and a maximum penalty of 600 penalty units applies.

Health practitioners can also be disciplined under the *Health Ombudsman Act 2013* and the National Law for unprofessional conduct.

Also, patients who do not want their information shared outside of Queensland Health also have the choice to opt-out of their information being made available through The Viewer to their registered allied health care providers.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The purpose of the Amendment Regulation is to ensure that the additional practitioners have timely access to important clinical information that could impact advice and ultimately treatment of a patient. The Amendment Regulation may potentially limit the right to privacy, as it expands the types of registered health practitioner that are able to be provided confidential information by being given access to The Viewer.

However, there are safeguards in place to protect confidential information, for example, health practitioners must complete a stringent registration process to access The Viewer and all access and activity is recorded in audit files, and regular audits and usage reports are undertaken. There are also appropriate penalties and enforcement mechanisms to deter potential misuse of confidential information.

Overall, the limitations on human rights are reasonable and demonstrably justifiable as the privacy of individuals is sufficiently protected by the safeguards built into the arrangements for access to The Viewer.

## Conclusion

I consider that the *Hospital and Health Boards (Prescribed Health Practitioners) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**STEPHEN MILES MP**  
DEPUTY PREMIER  
and MINISTER FOR HEALTH  
and MINISTER FOR AMBULANCE SERVICES