

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Report No. 10, 56th Parliament

Subordinate legislation tabled between 20 March 2018 and 1 May 2018

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 21 March and 11 May 2018. It reports on issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
31	Health Legislation (Information Sharing) Amendment Regulation 2018	1 May 2018	5 September 2018

2.1 Health Legislation (Information Sharing) Amendment Regulation 2018

The objective of the Health Legislation (Information Sharing) Amendment Regulation 2018 is to enable the lawful disclosure of confidential information to particular Commonwealth and State government entities, and to health, statistical and national authorities under the *Ambulance Service Act 1991*, the *Hospital and Health Boards Act 2011*, and the *Private Health Facilities Act 1999* by prescribing new and updated agreements.¹

Ambulance Service Regulation 2015

The policy objective is to prescribe the Memorandum of Understanding (MoU) in the Ambulance Service Regulation 2015 under section 50L(1)(b) of the *Ambulance Service Act 1991*, to authorise Queensland Ambulance Service to disclose confidential information to certain agencies (the Queensland Police Service, Queensland Fire and Emergency Services, and the Public Safety Business Agency) through an inter-agency computer aided dispatch electronic messaging system (ICEMS).

¹ Explanatory notes, p 1.

Hospital and Health Boards Regulation 2012

The policy objective is to prescribe:

- the updated 2017 MoU between Queensland Health and the QPS in the Hospital and Health Boards Regulation 2011, for section 151(1)(b) of the *Hospital and Health Boards Act 2011*, to allow Queensland Health and the QPS to continue to share confidential information to ensure ongoing collaboration for the proactive development of mental health intervention strategies when responding to mental health incidents
- the updated 2017 MoU between Queensland Health and the QCS in the Hospital and Health Boards Regulation 2011, for section 151(1)(b) of the *Hospital and Health Boards Act 2011*, to allow Queensland Health and Queensland Corrective Services to continue to share confidential information regarding prisoners, to help facilitate the coordination of health services for prisoners.

Private Health Facilities Regulation 2016

The policy objective is to prescribe the updated National Health Information Agreement (NHIA) in the Hospitals and Health Board Regulation 2012 for section 151(1)(a) of the *Hospitals and Health Board Act 2011* and in the Private Health Facilities Regulation 2016 for section 147(4)(c) of the *Private Health Facilities Act 1999* to allow the continued disclosure of national minimum data sets and other agreed data sets under the NHIA, helping to ensure the availability of nationally consistent high quality health information.

2.1.1 Potential FLP issues and comment

Rights and liberties - privacy, section 4(2)(a) Legislative Standards Act 1992

The amendments raise issues of privacy and confidentiality of personal information, and so raise the issue of whether the regulation has sufficient regard to the fundamental legislative principle of the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

The explanatory notes acknowledge the potential breaches of fundamental legislative principles and provide the following justifications for the various categories of disclosure of information:

Disclosures under the Ambulance Service Regulation 2015

Sharing information via ICEMS will enhance interoperability among emergency services in Queensland. Information to be shared by QAS through the MoU includes health observations, behavioural observations including descriptions of actions, mood and speech and medical history including mental health.

The MoU outlines the obligations on each party in relation to the disclosure and use of confidential information, with the focus being to lessen or prevent serious threats to the life, health, safety or welfare of an individual, or to public health, safety or welfare. The sharing of information is also intended to support the safe and effective resolution of incidents attended by the Agencies. The MoU requires the Agencies not to disclose confidential information to third parties and to take steps to maintain the security of confidential information. The MoU operates subject to the Information Privacy Act 2009.²

Disclosures under the Hospital and Health Boards Regulation 2012 - Queensland Health and QPS

Sharing information between Queensland Health and QPS under the MoU is intended to assist with the safe resolution of mental health incidents involving people with mental health issues and other vulnerable people, including those unable to care for themselves. Sharing information between Queensland Health and QPS will provide for proactive collaboration in the development of mental health intervention strategies to reduce the likelihood of mental health incidents

² Explanatory notes, p 5.

occurring and to respond to incidents when they occur. Sharing information is authorised, for example, where a mental health incident may involve a serious risk to the life, health or safety of the person concerned or another person. Information to be shared by Queensland Health includes, for example, medical history information, effects of medication and non-compliance with medication, warning signs that may indicate a deterioration in mental health, self-harm behaviours and de-escalation strategies.

The MoU states that, in the first instance, it is preferable for confidential information to be shared by obtaining the consent of the person concerned. However, if it is not possible or reasonable to obtain consent, information can be shared for the purposes of the MoU. All information disclosed under the MoU may only be used for the purpose for which it is given. The MoU requires the parties not to disclose confidential information to third parties and to take steps to maintain the security of confidential information. The MoU operates subject to the Information Privacy Act 2009.³

Disclosures under the Hospital and Health Boards Regulation 2012 - Queensland Health and QPS

Sharing information between Queensland Health and QCS under the MoU is intended to enable the provision of a coordinated system of health care to prisoners and facilitate the appropriate management of prisoners... Under the MoU, sharing information is authorised, for example, if a prisoner exhibits suicidal or self-harm behaviour, if they are a risk of harm to others or they have an illness, medical condition or take medication that may impact on their behaviour.

The MoU states that, in the first instance, it is preferable for confidential information to be shared by obtaining the written consent of the person concerned. However, if consent cannot be obtained, information can be shared for the purposes of the MoU. The MoU operates subject to the Information Privacy Act 2009.⁴

Disclosures under the Private Health Facilities Regulation 2016

The Commonwealth and all State and Territory governments are parties to the NHIA, along with health, statistical and national authorities. The aim of the NHIA is to improve the health of all Australians through the provision, use of and access to information to improve performance and reporting, support allocation of funding and support better planning and practice in health promotion, the prevention, detection and treatment of diseases and injury and health maintenance and rehabilitation.

Under the NHIA, information is collected, disseminated, secured, linked and must be used to comply with obligations from legislation, ethical guidelines and practices to protect the privacy and confidentiality of any individual and organisations.⁵

2.1.2 Explanatory notes

The amendments concern dealings with private individual information. The explanatory notes record that:

The amendments were assessed by the Department of Health, in accordance with The Queensland Government Guide to Better Regulation, as being machinery in nature and for the internal management of the public sector, and therefore are excluded from further regulatory impact assessment. Therefore, consultation with the Queensland Productivity Commission was not required.

This statement deals with the question of consultation with the Queensland Productivity Commission and the need for any regulatory assessment.

³ Explanatory notes, p 6.

⁴ Explanatory notes, p 6.

⁵ Explanatory notes, p 6.

It arguably does not address the question of any wider consultation – as contemplated by the requirement in section 24(2) of the *Legislative Standards Act 1992* for an explanatory note to contain information about whether or not consultation took place and:

- (a) *if consultation took place about the subordinate legislation -*
 - (i) *a brief statement of the way the consultation was carried out; and*
 - (ii) *an outline of the results of the consultation; and*
 - (iii) *a brief explanation of any changes made to the legislation because of the consultation; or*
- (b) *if consultation did not take place - a statement of the reason for no consultation.*

The explanatory notes otherwise comply with part 4 of the *Legislative Standards Act 1992*.

2.1.3 Committee comment

The committee note the advice contained in the explanatory notes regarding the information to be exchanged between the various agencies and between Queensland Health and other entities by way of MoU and agreement, including the obligations the parties must adhere to in relation to the disclosure of confidential information. The agreements also address breaches of confidentiality.

Given that the material being exchanged is, variously, in the public interest, the patient's interest or in the interest of the safety of individuals, and noting the justifications provided, the committee considers that the regulation has sufficient regard to the rights and liberties of the individual.

3 Committee consideration of the subordinate legislation

The committee has examined the policy to be given effect by the subordinate legislation and its lawfulness. The committee identified issues regarding consistency with fundamental legislative principles (FLPs) in relation to the Health Legislation (Information Sharing) Amendment Regulation 2018, but is satisfied the regulation has sufficient regard to the rights and liberties of individuals.

The explanatory notes tabled with the regulation generally comply with the requirements of section 24 of the *Legislative Standards Act 1992*. The committee has notes deficiencies in the notes which do not outline the department's wider consultation as required by section 24(2) of the *Legislative Standards Act 1992*.

4 Recommendation



house notes this report.

September 2018

Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Mark McArdle MP, Member for Caloundra
Members	Mr Michael Berkman MP, Member for Maiwar
	Mr Marty Hunt MP, Member for Nicklin
	Mr Barry O'Rourke MP, Member for Rockhampton
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