



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

Subordinate legislation tabled between 14 June 2017 and 8 August 2017

Report No. 48

Aim of this report:

This report summarises the committee's examination of subordinate legislation tabled between 14 June 2017 and 8 August 2017. It reports on any fundamental legislative principle issues identified by the committee and the explanatory notes' compliance with the *Legislative Standards Act 1992*.

Subordinate legislation examined:

No.	Subordinate legislation	Date tabled	Disallowance date
098	Adoption (Fees) Amendment Regulation 2017	8 August 2017	26 October 2017
099	Disability Services Regulation 2017	8 August 2017	26 October 2017
107	Health Legislation Amendment Regulation (No. 1) 2017	8 August 2017	26 October 2017

Committee consideration of the subordinate legislation:

1. The committee has examined the policy to be given effect by the subordinate legislation and its lawfulness. No significant issues regarding consistency with fundamental legislative principles (FLPs) or the lawfulness of the subordinate legislation were identified.
2. The explanatory notes tabled with the regulations comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

Recommendation:

3. The committee recommends that the House notes this report.

Adoption (Fees) Amendment Regulation 2017

4. The Adoption (Fees) Amendment Regulation 2017 increases prescribed fees in the Adoption Regulation 2009 by the Government-endorsed indexation rate of 3.5 per cent.¹ The increased fees took effect on 1 July 2017.

Disability Services Regulation 2017

5. The Disability Services Regulation 2017:
 - increases prescribed fees for criminal history screening applications made under the *Disability Services Act 2006* by the Government-endorsed indexation rate of 3.5 per cent

¹ The fees relate to: a person applying to adopt a child; a person being assessed to adopt a child and for the chief executive of the Department of Communities, Child Safety and Disability Services to supervise the wellbeing and interests of a child.

- prescribes the information that a service provider must give to the chief executive in relation to approval of and the use of restrictive practices in relation to an adult with an intellectual or cognitive disability, and
- prescribes the types of records that must be made and kept by a funded non-government service provider.

Health Legislation Amendment Regulation (No. 1) 2017

6. The Health Legislation Amendment Regulation (No. 1) 2017 (Amendment Regulation) amends:
- the Ambulance Service Regulation 2015 to provide that accredited participants, officials and members of delegations for the 2018 Commonwealth Games are exempt from paying ambulance service fees before and during the Games (20 March 2018 to 18 April 2018)
 - the Hospital and Health Boards Regulation 2012 (HHB Regulation) to prescribe the Lady Cilento Children’s Hospital as a service area for the Children’s Health Hospital and Health Service
 - the HHB Regulation and the Public Health Regulation 2005 (PH Regulation) to enable the lawful disclosure of patient-identifying, confidential information to specified government and non-government entities, and
 - the PH Regulation to update the list of communicable diseases for which notification of clinical or pathological diagnosis must be made to Queensland Health to include the Zika virus.

Potential fundamental legislative principle issues

7. The committee identified a potential FLP issue with respect to whether the Amendment Regulation has sufficient regard to the rights and liberties of individuals in relation to their privacy. In particular, with respect to the disclosure of patients’ private or confidential information to government and non-government entities.
8. The *Hospital and Health Boards Act 2011* (HHB Act) establishes a duty of confidentiality for all Queensland Health employees, officers and agents (*designated persons*) which prohibits them from disclosing confidential information about any person who is receiving, or has received, public sector health services, if the person receiving the treatment could be identified from that information (*patient-identifying information*).
9. The HHB Act provides for exemptions to the duty of confidentiality, including the disclosure of patient-identifying information to government and non-government entities, if the disclosure is to:
- an entity prescribed by regulation for the purpose of evaluating, managing, monitoring or planning health services
 - a Commonwealth entity or the entity of another State, if the disclosure is allowed under an agreement prescribed under a regulation, and authorised in writing by the chief executive to be in the public interest, or
 - an entity of the State, if the disclosure is allowed under an agreement prescribed under a regulation, and authorised in writing by the chief executive to be in the public interest.
10. Similar to the HHB Act, the *Public Health Act 2005* (PH Act) establishes a duty of confidentiality on *relevant persons* (eg Director-General and Queensland Health staff) in relation to information obtained for the register of *notifiable conditions* (ie communicable diseases which must be notified to Queensland Health).

11. The PH Act provides for exemptions to the duty of confidentiality, if the disclosure is to:
- a Commonwealth entity or the entity of another State, if the disclosure is allowed under an agreement prescribed under a regulation, and is considered by the chief executive to be in the public interest, or
 - an entity of the State entity, if the disclosure is allowed under an agreement prescribed under a regulation, and is considered by the relevant chief executive to be in the public interest.

Disclosure for Spleen Australia Registry and Australian Stroke Clinical Registry

12. Section 8 of the Amendment Regulation amends the HHB Regulation to provide that patient-identifying information may be lawfully disclosed to the the following entities:
- Florey Institute of Neuroscience and Mental Health for the purpose of collecting data about eligible stroke and transient ischaemic attack patients for use in the Australian Stroke Clinical Registry (AuSCR) and for community based follow-up, and
 - Alfred Health for the purpose of collecting data about relevant asplenic² patients for use in the Spleen Australia Registry.

13. The explanatory notes state:

Disclosures of patient-identifying information to Alfred Health (for Spleen Australia) and the Florey Institute (for the AuSCR) (the entities) are underpinned by agreements with Queensland Health. The agreements, which take effect when the amendment regulation commences, operate alongside the Hospital and Health Boards Act 2011 (Qld) (HHB Act), the Information Privacy Act 2009 (Qld) (IP Act) and the National Privacy Principles to provide safeguards for the security and use of patient-identifying information.³

14. In addition, the explanatory notes state that the agreements with Queensland Health outline the obligations applying to each entity, and include provisions dealing with breaches of confidentiality.⁴

Disclosures for Rheumatic Heart Disease Australia

15. Sections 11 and 19 amend the HHB Regulation and PH Regulation to prescribe the agreement called 'ARF/RHD Register Service Agreement' (a service level agreement (SLA)) between the Menzies School of Health Research and Queensland Health.

16. The amendments enable Queensland Health to lawfully disclose patient-identifying information about acute rheumatic fever (ARF) and rheumatic heart disease (RHD) to Menzies School of Health Research for the purpose of Rheumatic Heart Disease Australia (RHDA).

17. The explanatory notes state:

ARF and RHD are significant public health concerns. Therefore, access to data for research purposes is considered to be in the overriding public interest. The disclosure of confidential information to the Menzies School of Health Research (for RHDA) is underpinned by a SLA between Queensland Health and the Menzies School of Health Research. The SLA enables the sharing of confidential data relating to ARF and RHD for the purpose of disease monitoring and surveillance and measuring program effectiveness.⁵

² A patient without a spleen or without a properly-functioning spleen.

³ Health Legislation Amendment Regulation (No. 1) 2017, explanatory notes, p 10.

⁴ Health Legislation Amendment Regulation (No. 1) 2017, explanatory notes, p 10.

⁵ Health Legislation Amendment Regulation (No. 1) 2017, explanatory notes, p 11.

18. The explanatory notes also state that the SLA contains provisions which outline the obligations on each party in relation to the disclosure and use of confidential information, and includes provisions about breaches of confidentiality.⁶

Disclosures to the State Government entities

19. Section 19 amends the PH Regulation to provide for the lawful disclosure of patient-identifying information from the notifiable conditions register under the:
- Memorandum of Understanding (MoU) between Queensland Health and the Department of Natural Resources and Mines regarding workplace lead exposures
 - MoU between Queensland Health and Queensland Treasury (Workplace Health and Safety Queensland) regarding workplace lead exposures, and
 - MoU between Queensland Health and the Queensland Family and Child Commission in relation to the death of children.
20. The explanatory notes state:

The MoUs, which take effect when the amendment regulation commences, act alongside the Right to Information Act 2009, the Information Privacy Act 2009 (Qld), PH Act and the HHB Act and contain protections and security measures for the confidentiality of the confidential information disclosed.⁷

Committee comment

21. The committee considers that, on balance, the Amendment Regulation has sufficient regard to the rights and liberties of individuals in relation to their privacy.
22. In reaching this view, the committee acknowledged the importance of sharing information and data to undertake research to improve public health. The committee also had regard to the justification provided for the disclosure of confidential, patient-identifying information in the explanatory notes.
23. The committee also noted the measures in place, including in the HHB Act, PH Act, *Information Privacy Act 2009* (Qld), the National Privacy Principles and the various MoUs and SLAs, to protect an individual's privacy and their confidential information.



Leanne Linard MP
Chair

⁶ Health Legislation Amendment Regulation (No. 1) 2017, explanatory notes, p 11.

⁷ Health Legislation Amendment Regulation (No. 1) 2017, explanatory notes, p 11.