Waiver under section 157 of the *Information Privacy Act 2009* (Qld)

On 3 July 2025, the Sunshine Coast Hospital and Health Service (**Agency**) applied to the Information Commissioner (**Commissioner**) under section 157(1)(a) of the *Information Privacy Act 2009* (Qld) (**IP Act**) for approval to waive the Agency's obligation to comply with Queensland Privacy Principles (**QPP**) 3 and 6 in Schedule 3 of the IP Act (**Application**).

All references to legislation refer to the **IP Act**, unless otherwise stated.

Decision

In relation to the Agency's application for a waiver of QPP 3, I am **satisfied** the public interest in the Agency's compliance with QPP 3 sections 3.3 and 3.6 is outweighed by the public interest in waiving the Agency's compliance with this privacy principle to the extent stated below.

Accordingly, I approve a waiver of the Agency's obligations under QPP 3 sections 3.3 and 3.6, for a period of 12 months [from the date of the gazette notice, on the terms set out below.

In relation to the Agency's application for a waiver of QPP 6, I am **not satisfied** the circumstances in which the Agency intends the waiver apply require a waiver of its obligations under QPP 6. Accordingly, I do not approve the waiver of the Agency's obligations under QPP 6 under section 157(4).

I approve a waiver of the Agency's obligations under QPP 3 sections 3.3 and 3.6. The waiver applies for 12 months following the date the relevant gazette notice is published in accordance with section 157(2) and (3).

The reasons for my decision follow.

Reasons for decision

Background

In its Application, the Agency submits that it receives digital diagnostic imaging studies (such as CT, MRI and ultrasound), and associated reports (together **Patient Information**), from third party health services provider/s for the purpose of securely transferring this digital information to another third party health services provider, in circumstances where the Agency does not have involvement in the subject patient's treatment.

The reason the Agency plays this intermediary role in relation to the collection and transfer of Patient Information between third party health service providers is due to a lack of interoperable digital infrastructure between certain health service providers, in particular, private sector imaging providers and public health and hospital services (**HHS**).

The Agency expressed a concern that its intermediary role in this data handling practice is not compliant with the QPPs and seeks approval from the Commissioner for a waiver of its collection and disclosure obligations under QPP 3 and 6 for a period of 12 months.

If a waiver is approved, the Agency agrees during the waiver period to:

(a) obtain written consent from patients, where feasible, which will bring the Agency's data handling practices within their obligations under the QPPs
(b) continue to implement privacy and data minimisation safeguards
(c) maintain audit trails and a collection and disclosure register
(d) proactively progress digital infrastructure and interoperability; and
(e) cease its approved data handling practices at the expiry of the waiver, unless the Agency makes a further application for a waiver or the current approval is amended.

Relevant law

The primary object of the IP Act is to provide for the fair collection and handling of personal information in the public sector.[1]

Section 27 provides that an agency must comply with the QPPs and must not do an act or engage in a practice that contravenes or is otherwise inconsistent with a requirement in the QPPs. The QPPs came into effect on 1 July 2025.

Applying for a waiver or modification of QPP obligations

Section 157(1) provides that a 'relevant entity' may apply to the Commissioner for an approval that waives or modifies an obligation of the entity to comply with the QPPs or certain mandatory data breach scheme and related obligations.

When an approval is in force, an agency will not contravene the IP Act in relation to the obligation the subject of the approval if the agency acts in accordance with the approval.

[1] Section 3 of the IP Act.

Section 157(2) provides the Commissioner may by gazette notice give a temporary approval for a specified period or an approval that continues until it is revoked or amended.

The Commissioner must be satisfied under section 157(4) that the public interest in the relevant entity's compliance with the obligation is outweighed by the public interest in waiving or modifying the entity's compliance with the relevant QPP to the extent stated in the approval.
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If an approval is given, the Commissioner must publish a copy of the gazette notice on the OIC's website while the approval is in force, and the relevant agency must also publish a copy of the gazette notice on its website, if practicable.

In relation to the Application under consideration, the relevant QPPs are QPP 3 and 6. Relevant extracts from these QPPs are set out below.

QPP 3 – collection of personal information

3.1 An agency must not collect personal information, other than sensitive information, unless the information is reasonably necessary for, or directly related to, 1 or more of the agency's functions or activities.

…

3.3 An agency must not collect sensitive information about an individual unless—
- *(a) the individual consents to the collection of the information and the information is reasonably necessary for, or directly related to, 1 or more of the agency's functions or activities; or*
- *(b) QPP 3.4 applies in relation to the information.*

3.4 This QPP applies in relation to sensitive information about an individual if—
- *(a) the collection of the information is required or authorised under an Australian law or a court or tribunal order; or*
- *(b) a permitted general situation exists in relation to the collection of the information by the agency; or*
- *(c) the agency is a health agency and a permitted health situation exists in relation to the collection of the information by the agency; or*

…

3.5 An agency must collect personal information only by lawful and fair means.

3.6 An agency must collect personal information about an individual only from the individual unless—
- *(a) either—*
  - *(i) the individual consents to the collection of the information from someone other than the individual; or*
  - *(ii) the agency is required or authorised under an Australian law, or a court or tribunal order, to collect the information from someone other than the individual; or*
- *(b) it is unreasonable or impracticable to do so.*

QPP 6 – Use or disclosure of personal information

*6.1 If an agency holds personal information about an individual that was collected for a particular purpose (the **primary purpose**), the agency must not use or disclose the information for another purpose (the **secondary purpose**) unless—*

(a) the individual has consented to the use or disclosure of the information; or

(b) QPP 6.2 applies in relation to the use or disclosure of the information.

6.2 This QPP applies in relation to the use or disclosure of personal information about an individual if—

(a) the individual would reasonably expect the agency to use or disclose the information for the secondary purpose and the secondary purpose is—

(i) if the information is sensitive information—directly related to the primary purpose; or

(ii) if the information is not sensitive information—related to the primary purpose; or

(b) the use or disclosure of the information is required or authorised under an Australian law or a court or tribunal order; or

(c) a permitted general situation exists in relation to the use or disclosure of the information by the agency; or

(d) the agency is a health agency and a permitted health situation exists in relation to the use or disclosure of the information by the agency; or

…

'Personal information' is defined in section 12, and 'sensitive information' is defined in Schedule 5 and includes 'health information'.

Schedule 4, Part 2 sets out permitted health situations in relation to data handling practices involving health information as referred to in QPPs 3 and 6 above.

Schedule 4, Part 2 Collection - provision of a health service

(1) A permitted health situation exists in relation to the collection by a health agency of health information about an individual if—

(a) the information is necessary to provide a health service to the individual; and

(b) either—

(i) the collection is required or authorised under an Australian law; or

(ii) the individual would reasonably expect the health agency to collect the information for that purpose.

Balancing public interest considerations

For the Commissioner to approve a waiver of the QPPs, section 157(4) requires they must be '*satisfied that the public interest in the relevant entity's compliance with the obligation is outweighed by the public interest in waiving or modifying the entity's compliance with the obligation to the extent stated in the approval*'.

In support of its Application, the Agency drafted a letter and subsequently met with the Commissioner's staff. The Agency expressed background information and a set of 'Risk Mitigation Commitments' in relation to the public interest in favour of granting a waiver. These details include but are not limited to:

- Clinicians rely on complete and contemporaneous diagnostic information to make safe healthcare decisions at all stages of healthcare, from diagnosis and treatment, to discharge planning, outpatient follow-up, and shared care between facilities. However, technological barriers currently exist that prevent some third party health service providers from directly sharing or transferring Patient Information essential to these healthcare decisions. Delayed access to imaging may result in delayed diagnosis and treatment, or clinicians making judgements without the benefit of all relevant information.
- In situations where third party health service providers do not have interoperable information sharing platforms there are significant barriers to providing timely and secure access to Patient Information. In the absence of timely access to Patient Information, clinicians may refer patients for unnecessary re-imaging, exposing them to additional radiation exposure contrary to ALARA (As Low As Reasonably Achievable) safety principles and this also consumes finite public clinical resources and diagnostic capacity. Delays in undertaking this re-imaging may increase the risk of adverse patient outcomes.
- The Agency's involvement as an intermediary enables Patient Information to be transferred from third party health services provider/s for the purpose of securely transferring this digital information to another third party health services provider, in circumstances where the Agency does not have involvement in the subject patient's treatment.
- Transfers of Patient Information will only be made between third party health service providers using the Agency as an intermediary where both third party health service providers have a clinical relationship with the patient whose information is transferred, and only where it is clinically necessary for continuity of care.
- While the uptake of digital health infrastructure platforms (such as My Health Record, and enterprise imaging systems), which would allow for direct transfer of Patient Information, is progressing, full interoperability across all hospital and health services has not yet been realised. The Agency views the waiver as a transitional solution pending system-wide reform.
- The Agency's data handling practices, if approved under a waiver, will be limited to diagnostic imaging and associated reports. No broader patient health records will be included.

- The Agency will not retain or use Patient Information for any purpose other than the transfer.
- Access to information systems used for the data handling practices will be appropriately restricted and secure, complying with enterprise ICT and cybersecurity standards.
- Transfers of Patient Information will be undertaken by Agency staff trained in privacy, information security and data protection.
- Transfers of Patient Information will be logged in an internal disclosure register, including: patient identifier, sending and receiving health service provider, date and time of transfer, personnel involved, data type and purpose. The register will be subject to periodic internal audit with breach escalation procedures in place.
- The Patient Information will be destroyed after the transfer is complete.

QPP 3

In balancing the public interest considerations in relation to QPP 3, I have taken into account information provided by the Agency in its Application and at a meeting with the Agency held on 15 August 2025 as to the reasons why the Agency seeks a waiver of QPP 3. Namely, to allow the Agency to collect and receive Patient Information and associated reports from a third party health service provider and transfer it to another third party health service provider that requires access to the information in the absence of the health service providers each having access to an interoperable information sharing platform.

In these circumstances, I am satisfied the public interest in the Agency's compliance with QPP 3 sections 3.3 and 3.6 is outweighed by the public interest in waiving the Agency's compliance with those obligations. This decision is made on the grounds that it will permit patients to receive continuity in health services between the private and public sector where two third party health service providers do not share access to an interoperable information sharing platform, reduce the burden on health imaging services, reduce the financial cost on patients and ensure they are not required to undertake additional imaging and scans which may be contrary to their health and wellbeing. In reaching this decision, I weighed the Agency's Risk Mitigation Commitments and the protection for privacy that will be provided even with a waiver of QPP 3 sections 3.3 and 3.6.

Accordingly, I have determined to approve the Agency's application for a waiver of QPP 3 sections 3.3 and 3.6 as I am satisfied the public interest in the Agency's compliance with this obligation is outweighed by the public interest in waiving the Agency's compliance with QPP 3 sections 3.3 and 3.6 to the extent that such a waiver is necessary to achieve the purposes of this use of personal information. Accordingly, I approve the waiver of the Agency's obligation under QPP 3 sections 3.3 and 3.6 under section 157(4) on the conditions set out in this notice of decision.

The waiver is subject to the following conditions:

(a) The Agency's data handling practices in relation to the Patient Information are limited to diagnostic imaging and associated reports and no broader patient health records will be collected or transferred.
(b) The Agency will not retain or use the Patient Information for any purpose other than a transfer.
(c) Access to information systems used for the data handling practice will be appropriately restricted and secure and will comply with enterprise ICT and cybersecurity standards.
(d) A transfer will be undertaken by Agency staff trained in privacy, information security and data protection.
(e) The Patient Information will be destroyed within 5 business days after a transfer is complete.
(f) The Agency will keep an internal disclosure register in which it will record data including: patient identifier, sending and receiving health service provider, date and time of collection and transfer, personnel involved, data type, purpose, and date the Patient Information is deleted or destroyed by the Agency. The register will be subject to periodic internal audit by the Agency with breach escalation procedures in place.
(g) The Agency will publish a copy of the gazette notice approving the waiver on its website within 5 business days of it being published in the gazette.
(h) As far as reasonably practicable, and by the conclusion of the waiver period, the Agency will develop policies requiring that diagnostic imaging service providers, healthcare professionals, and other relevant parties using the approved data handling practice will inform patients of the Agency's collection and use of the information.[2]
(i) The Agency will add a short statement to its QPP Privacy Policy to specifically address this data handling practice and include a link to the published waiver.
(j) The Agency agrees to OIC conducting an audit to ensure the above conditions, and any other obligations under the IP Act relating to the Agency's data handling practices and Patient Information are met.

QPP 6

In relation to the Agency's application for a waiver of QPP6, I am not satisfied the circumstances in which the Agency intends the waiver to apply require a waiver of its obligations under QPP 6. Accordingly, I do not approve the waiver of the Agency's obligation under QPP 6 under section 157(4).

If the Agency collected the Patient Information from a third party health service provider for a particular purpose, namely the purpose of transferring that information to another

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[2] According to Schedule 4 Part 2, a permitted health situation exists if the information is necessary to provide a health service to the individual, and the individual would reasonably expect the health agency to collect the information for that purpose.

third party health service provider to provide care, and that was done fairly and lawfully in accordance with the IP Act and this grant of waiver, then there is not a secondary purpose that would breach QPP 6.

Accordingly, if the Agency complies with the waiver approved in relation to QPP 3 section 3.3 and 3.6, it will not be acting contrary to QPP 6 and no waiver is required.

Alexander White
Privacy Commissioner[3]

[3] As a delegate of the Information Commissioner, under section 139 of the IP Act. See *Information Privacy Act Delegation (No. 6) 2025*.