

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

Report No. 28, 56<sup>th</sup> Parliament

Subordinate legislation tabled between 15 June and 20 August 2019

### 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 15 June and 20 August 2019. It reports on any 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* (LSA).

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
98	Health Legislation (Fees) Amendment Regulation 2019	20 August 2019	24 October 2019
99	Proclamation made under the <i>Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019</i> (commencing certain provisions)	20 August 2019	24 October 2019
109	Disability Services (Fees) Amendment Regulation 2019	20 August 2019	24 October 2019
116	Proclamation made under the <i>Health and Other Legislation Amendment Act 2019</i>	20 August 2019	24 October 2019
117	Health Legislation Amendment Regulation (No. 2) 2019	20 August 2019	24 October 2019
118	Proclamation made under the <i>Health and Wellbeing Queensland Act 2019</i>	20 August 2019	24 October 2019
125	Disability Services and Other Legislation (NDIS) Amendment Regulation 2019	20 August 2019	24 October 2019

### 3 Health Legislation (Fees) Amendment Regulation 2019

The objective of the Health Legislation (Fees) Amendment Regulation 2019 is to increase fees and charges in the following regulations by the Government-endorsed indexation factor of 2.25 per cent:

- Ambulance Service Regulation 2015
- Health (Drugs and Poisons) Regulation 1996
- Health Regulation 1996
- Pest Management Regulation 2003
- Private Health Facilities Regulation 2016; and
- Radiation Safety Regulation 2010.

#### **Committee comment**

The fee increases are generally within the indexation factor of 2.25 per cent. For some fee the increases that were slightly above 2.25 per cent due to the rounding of amounts to whole dollars.

The regulation raises no FLP issues. The explanatory notes comply with part 4 of the LSA

#### **4 Proclamation made under the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2019 (commencing certain provisions)***

The Proclamation fixed a commencement date of 1 July 2019 for certain provisions of the *Health Practitioner National Law and Other Legislation Amendment Act 2019*:

- improper use of protected titles (sections 113 and 115);
- making false or misleading claims about a person's registration (sections 116 to 119);
- contravening restrictions on the performance of restricted dental acts (section 121), the prescription of optical appliances (section 122) and the performance of spinal manipulation (section 123); and
- contravening a prohibition order (section 196A).

#### **Committee comment**

No issues of fundamental legislative principle were identified. The explanatory notes comply with part 4 of the LSA.

#### **5 Disability Services (Fees) Amendment Regulation 2019**

The objective of the Disability Services (Fees) Amendment Regulation 2019 is to maintain the value of the prescribed fees in the Disability Services Regulation 2017 through an increase to the 2019-20 fees by 2.25 per cent. The government indexation rate has been applied in compliance with the *Queensland Government Principles for Fees and Charges*.

#### **Committee comment**

The fee increases in this regulation are within the indexation factor of 2.25 per cent.

The regulation raises no FLP issues. The explanatory notes comply with part 4 of the LSA.

#### **6 Proclamation made under the *Health and Other Legislation Amendment Act 2019***

The Proclamation fixed a commencement date of 1 July 2019 for certain provisions of the *Health and Other Legislation Amendment Act 2019*. The provisions of the Amendment Act to be commenced by the proclamation deal with:

- repeal of the *Public Health (Medicinal Cannabis) Act 2016* and amendment of the *Health Act 1937* to significantly streamline the regulatory framework for prescribing medicinal cannabis in Queensland;
- amendment of the *Public Health Act 2005* to establish the Notifiable Dust Lung Disease register and require prescribed medical practitioners to notify the chief executive of Queensland Health about cases of notifiable dust lung disease;
- amendment of the *Public Health Act 2005* to enable the standard that a person must comply with when manufacturing, selling, supplying or using paint to be prescribed by regulation rather than in the Act; and
- amendment of the *Radiation Safety Act 1999* to provide that certain persons are deemed to have a use or transport licence.

### Committee comment

No issues of fundamental legislative principle were identified. The explanatory notes comply with part 4 of the LSA.

## 7 Health Legislation Amendment Regulation (No. 2) 2019

The regulation:

- prescribes requirements for the prescription, dispensing and storage of medicinal cannabis
- supports the establishment of a framework for notification of particular occupational dust lung diseases
- prescribes the standard for people manufacturing, selling, supplying or using paint; and
- prescribes new categories of licence holders, called prescribed licensees, who are deemed to have a licence under the *Radiation Safety Act 1999* and can use a specified radiation source or transport a radioactive substance in certain circumstances.

### Potential FLP issue

The regulation inserts the Poisons Standard into the Public Health Regulation 2018, and the Medicinal Cannabis Standard into the Health (Drugs and Poisons) Regulation 1996.

While the standards have been referenced in the regulation, they are not contained in their entirety. This means that their contents do not come to the direct attention of the House. Consequently, it may be argued that these documents have insufficient regard to the institution of Parliament.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.<sup>1</sup>

The sub-delegations are authorised as follows:

- Section 60 of the *Public Health Act 2005* requires a person, manufacturing, selling, supplying or using paint to comply with the provision of the standard prescribed by regulation, and
- Section 132 of the *Health Act 1937* allows for the prescription of standards about drugs, articles, substances, appliances etc in regulation.

The Poisons Standard is a Commonwealth legislative instrument that classifies medicines and poisons into Schedules for inclusion in the relevant legislation of the States and Territories. The Poisons Standard is regularly reviewed and updated approximately three times per year following extensive committee meetings and decision-making processes regarding classifications. Part 2 of the Poisons Standard sets out matters of technical detail.

The cannabis standard contains detailed requirements about the storage of medicinal cannabis, such as access controls, intruder resistance and detection and response. Both the Poisons Standards and Medicinal Cannabis Standard are readily accessible on the internet for no charge.<sup>2</sup>

---

<sup>1</sup> Section 4(5)(e) of the *Legislative Standards Act 1992*

<sup>2</sup> The Poisons Standard and the Medicinal Cannabis Standard are available from the Department of Health (Cwth) Therapeutic Goods Administration website at: <https://www.tga.gov.au/publication/poisons-standard-susmp> and <https://www.legislation.gov.au/Details/F2017L00286>.

### **Committee comment**

The committee notes that the sub-delegations to the Poisons Standard and the Medicinal Cannabis Standard provided for in the Health Legislation Amendment Regulation (No. 2) 2019 are duly authorised and appropriate for practical reasons. The explanatory notes comply with part 4 of the LSA.

## **8 Proclamation made under the *Health and Wellbeing Queensland Act 2019***

The Proclamation fixed a commencement date of 1 July 2019 for certain provisions of the *Health and Wellbeing Queensland Act 2019*. The commencement of these provisions in the Act will provide for:

- the establishment of Health and Wellbeing Queensland as a statutory health promotion agency to improve the health and wellbeing of the Queensland population;
- amendments to the *Hospital Foundations Act 2018* to enable a foundation to be established to support Health and Wellbeing Queensland; and
- amendments to the *Public Service Act 2008* to establish Health and Wellbeing Queensland as a public service office under that Act.

### **Committee comment**

No issues of fundamental legislative principle were identified. The explanatory notes comply with part 4 of the LSA.

## **9 Disability Services and Other Legislation (NDIS) Amendment Regulation 2019**

The objectives of the Disability Services and Other Legislation (NDIS) Amendment Regulation 2019 are to:

- amend the Disability Service Regulation 2017 and the Working with Children (Risk Management and Screening) Regulation 2011 to reflect requirements under the NDIS in relation to worker screening
- provide a four month transition period for new NDIS non-government service providers and persons engaged or employed by the providers to become compliant with the screening requirements of *Disability Services Act 2006* (DSA) and the *Working with Children (Risk Management and Screening) Act 2000*
- ensure where service providers are regulated under the *Aged Care Act 1997* (Cwlth) in relation to the provision of disability services to an adult with an intellectual or cognitive disability, they are not required to comply with Part 6 of the DSA
- ensure NDIS providers who use restrictive practices in the course of providing a class of supports under a NDIS participant's plan are only required to report about the use of restrictive practices to the NDIS Commission and not also report to the chief executive of the Department of Communities, Disability Services and Seniors; and
- update legislative references to ensure the Queensland Police Service can continue to exchange criminal history information with South Australia for child-related employment purposes.

### **Potential FLP issue**

Clauses 5, 6 and 15 of the regulation expand the scope of screening to be applied to meet that required of registered providers under the NDIS. These provisions may operate to exclude a currently employed person, because of a conviction for a past offence.



The explanatory notes provide the following justification:

*... the expanded scope of screening is considered justified to enable Queensland NDIS service providers to meet their obligations under the NDIS.<sup>3</sup>*

Information sought from the Department of Communities, Disability Services and Seniors

To assist its consideration of the potential FLP issue, the committee sought advice from the department regarding the extent of the changes the regulation will bring and its impacts as follows:

1. Can the department confirm that the categories of persons employed at service outlets who have not previously been screened but will now be screened are those listed under section 6 of the regulation (Insertion of new s 5A)?
2. Does the department have a view on the approximate number of people who will need to be screened for the first time during the transition period under the regulation?
3. Are there relatively minor offences such as traffic offences for which past convictions may not preclude employment at service outlets?

The department's advice received on 2 October 2019 is attached as an appendix to this report.

**Committee comment**

The committee is satisfied that the expanded screening requirements for workers provided for in the regulation are reasonable and that sufficient regard has been given to the rights and liberties of individuals.

As noted by the department in its written advice, it is likely only a very small proportion of the individuals who now require screening will be prevented from working with people with disability, and those who are excluded will be excluded on the grounds of a serious criminal history that indicates there is a risk of harm to people with disability.

The explanatory notes comply with part 4 of the LSA.

## 10 Recommendation

The committee recommends that the House notes this report.



Aaron Harper MP

**Chair**

**October 2019**

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

**Chair** Mr Aaron Harper MP, Member for Thuringowa, Chair

**Deputy Chair** Mr Mark McArdle MP, Member for Caloundra, Deputy Chair

**Members**

Mr Michael Berkman MP, Member for Maiwar

Mr Martin (Marty) Hunt MP, Member for Nicklin

Mr Barry O'Rourke MP, Member for Rockhampton

Ms Joan Pease MP, Member for Lytton

---

<sup>3</sup> Explanatory notes, p 5.



Your reference: A491967  
Our reference: COM 06605-2019

Office of the  
**Director-General**

Department of  
**Communities,  
Disability Services  
and Seniors**

Mr Aaron Harper MP  
Chair  
Health, Communities, Disability Services and  
Domestic and Family Violence Prevention Committee  
Parliament House  
health@parliament.qld.gov.au

Dear Mr Harper

Thank you for your letter seeking advice regarding Subordinate Legislation No. 125 of 2019, the Disability Services and Other Legislation (NDIS) Amendment Regulation 2019 (the Regulation).

As you may be aware, the Regulation forms part of the legislative amendments progressed to support Queensland's agreement to become a participating jurisdiction under the National Disability Insurance Scheme (NDIS) and as such, from 1 July 2019, the NDIS Rules and NDIS Commission commencing operation in Queensland. This includes the NDIS (Practice Standards – Worker Screening) Rules 2018 (WS Rules), which require a broader range of people working with people with disability to be screened.

The Commonwealth Government advised that as a condition of registration, registered NDIS providers in Queensland, along with other states and territories, must comply with all requirements under the WS Rules even if NDIS worker screening has not commenced in that jurisdiction. However, exemptions for health practitioners and blue card holders could be maintained during transition to the NDIS worker screening check in mid-2020.

The amendments to the scope of screening under the Regulation reflect the requirements imposed by the Commonwealth under the WS Rules, and support registered NDIS providers in Queensland to meet these requirements. This transitional approach ensures that the current, established worker screening process under the *Disability Services Act 2006* (DSA) can be utilised by providers to meet their registration requirements under the WS Rules. This ensures that an established, rigorous process applies to additional providers and workers during transition to full implementation of the NDIS worker screening check.

Without these amendments, registered NDIS providers and their workers would have been required to obtain their own separate police checks, in order to comply with the WS Rules. This approach would have resulted in a reduction in regulation and safeguards for people who require screening for the first time compared to those screened under the existing scope of screening in the DSA. It would have also required service providers to undertake their own criminal history assessments for their employees.

Following are the responses to your specific questions.

1. *Can the department confirm that the categories of persons employed at service outlets who have not previously been screened but will now be screened are those listed under section 6 of the regulation (Insertion of new s 5A)?*

The department can confirm that the categories of persons employed at service outlets, who were not previously screened but require screening, are captured under section 5A of the Regulation.

Prior to these amendments, only registered NDIS providers in 13 classes of support were in scope of screening under the Regulation.

Section 5A reflects the expanded scope under the WS Rules—that persons engaged in ‘risk assessed roles’ for a registered NDIS provider will require a yellow card, yellow card exemption, or blue card (in the case of people working exclusively with children with disability) during transition to NDIS worker screening. Following the amendments, all providers across all classes of support are in scope of screening and must identify risk assessed roles set out in section 5A. However, it should be noted that this captures some of the previous scope of yellow card screening under the DSA. This is outlined in the enclosed table.

2. *Does the department have a view on the approximate number of people who will need to be screened for the first time during the transition period under the regulation?*

Screening volumes are expected to increase as the Regulation expanded scope to classes of support not previously regulated under the DSA. This expansion was necessary to provide a mechanism for Queensland-based providers to comply with the Commonwealth’s screening requirements for registered providers under the WS Rules.

Data indicating the unique number of registered NDIS providers under the expanded scope of screening belongs to the Commonwealth as providers must register with the NDIS Commission. In the 2018–19 financial year, 5,964 registered NDIS providers were approved in Queensland.

It should be noted that some registered providers already had screening obligations under the provisions of the DSA. The number of additional employees that will need to be screened will depend on a number of factors, including the number of providers that seek registration with the NDIS Commission.

3. *Are there relatively minor offences such as traffic offences for which past convictions may not preclude employment at service outlets?*

Yes, there are offences that may not preclude someone from employment at service outlets.

Under the DSA, certain offences are classified as serious or disqualifying offences. A person who is convicted of a disqualifying offence must not apply for a yellow card, yellow card exemption or blue card (in the case of people working exclusively with children with disability). Disqualifying offences are the only offences for which a person is automatically excluded from working with people with disability (or children in the case of people working exclusively with children with disability). For example, this includes offences of a very serious nature such as murder, sexual assault of a child and child exploitation offences.



If a person is convicted of a serious offence, there is a presumption that the person will be issued a negative notice, unless the chief executive of the department is satisfied it is an exceptional case in which it would not harm the best interests of people with disability, or children, to issue a positive notice. This includes offences such as manslaughter, assault offences, burglary and drug-related offences.

All other offences are assessed on the basis that a yellow card, yellow card exemption or blue card (in the case of people working exclusively with children with disability) must be issued unless there is an exceptional case in which it would not be in the best interests of people with disability or children for a person to be issued a positive notice.

Traffic offences are not included in the list of serious and disqualifying offences and are not considered as part of screening unless it amounts to a criminal offence, such as dangerous operation of a vehicle.

In the 2018–19 financial year, the department received 32,658 applications for a yellow card or yellow card exemption. Of these, 0.02 per cent of applications resulted in a negative notice.

It is therefore reasonable to assume that only a very small proportion of the individuals who now required screening will be prevented from working with people with disability. However, if they are excluded it will be because of a serious criminal history that indicates there is a risk of harm to people with disability.

If you require any further information or assistance in relation to this matter, please contact Ms Elizabeth Bianchi, Executive Director, Strategic Policy and Legislation, Department of Communities, Disability Services and Seniors on [REDACTED]

I trust this information is of assistance.

Yours sincerely



Clare O'Connor  
**Director-General**

Enc.



## Queensland's previous prescribed services and expanded prescribed services for worker screening

	Classes of support that an NDIS provider can be registered for	A. Previous NDIS registered providers in scope	B. Expanded NDIS registered providers in scope – screening is required if the person is providing direct delivery of specified supports or specified services	C. Expanded NDIS registered providers in scope – screening is required if the person is in a key personnel role or the role includes more than incidental contact
1.	Assistance with daily life tasks in a group or shared living arrangement	✓	✓	✓
2.	Daily Personal Activities	✓	✓	✓
3.	Development of Daily Living and Life Skills	✓	✓	✓
4.	Therapeutic Supports	✓	✓	✓
5.	Early Intervention Supports for Early Childhood	✓	✓	✓
6.	Specialist Positive Behaviour Support	✓	✓	✓
7.	Assistance in coordinating or managing life stages, transition and supports	✓	✓	✓
8.	Management of Funding for Supports	✓	✓	✓
9.	Participation in community, social and civic activities	✓	✓	✓
10.	Interpreting and Translation	✓	✓	✓
11.	Personal Daily Personal Activities	✓	✓	✓
12.	Group and Centre Based Activities	✓	✓	✓
13.	Support Co-ordination	✓	✓	✓
14.	Assistance to Access and Maintain Employment or higher education		✓	✓
15.	Specialist Disability Accommodation			✓
16.	Specialised Supported Employment		✓	✓
17.	Accommodation/Tenancy Assistance			✓
18.	Assistance with Travel/Transport arrangements		✓	✓
19.	Household tasks			✓



	Classes of support that an NDIS provider can be registered for	A. Previous NDIS registered providers in scope	B. Expanded NDIS registered providers in scope – screening is required if the person is providing direct delivery of specified supports or specified services	C. Expanded NDIS registered providers in scope – screening is required if the person is in a key personnel role or the role includes more than incidental contact
20.	Assistance Animals			✓
21.	Specialised Driver Training		✓	✓
22.	Innovative Community Participation		✓	✓
23.	Community Nursing Care		✓	✓
24.	Custom Prostheses and Orthoses		✓	✓
25.	Exercise Physiology & Personal Well-being Activities		✓	✓
26.	Specialised Hearing Services		✓	✓
27.	Hearing Services		✓	✓
28.	Home Modification Design and Construction			✓
29.	Vehicle modifications			✓
30.	Assistive Equipment for Recreation			✓
31.	Assistive Products for Household Tasks			✓
32.	Assist Products for Personal Care and Safety			✓
33.	Communications & Information Equipment			✓
34.	Hearing Equipment			✓
35.	Personal Mobility Equipment			✓
36.	Vision Equipment			✓