

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

Report No. 37, 56<sup>th</sup> Parliament

Subordinate legislation tabled between 21 February and 17 March 2020

**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 February and 17 March 2020. 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*.

The report identifies any issues identified by the committee in its consideration of the human rights certificate tabled with the subordinate legislation in accordance with the *Human Rights Act 2019*.

**2 Subordinate legislation examined**

No.	Subordinate legislation	Date tabled	Disallowance date*
16	Health Legislation Amendment Regulation 2020	17 March 2020	16 September 2020
17	Water Fluoridation Regulation 2020	17 March 2020	16 September 2020
21	Proclamation made under the <i>Health Transparency Act 2019</i>	17 March 2020	16 September 2020
22	Health Transparency Regulation 2020	17 March 2020	16 September 2020

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

**3 Committee consideration of the subordinate legislation**

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified in relation to the Water Fluoridation Regulation 2020, the Proclamation made under the *Health Transparency Act 2019*, or the Health Transparency Regulation 2020. The explanatory notes and human rights certificates accompanying these three pieces of subordinate legislation comply with the *Legislative Standards Act 1992*, and the *Human Rights Act 2019*, respectively.

Outlined below, the Health Legislation Amendment Regulation 2020 (the amendment regulation) raises issues relating to its consistency with fundamental legislative principles concerning the rights and liberties of individuals and respecting the institution of Parliament. The amendment regulation also raises issues regarding the human right to privacy and reputation. It is noted that the explanatory notes and human rights certificate accompanying the regulation comply with the relevant legislation.

## 4 Health Legislation Amendment Regulation 2020

The objectives of the Health Legislation Amendment Regulation 2020 (the amendment regulation) are to:

- *amend the Hospital and Health Boards Regulation 2012 (HHB Regulation) to implement the operational aspects of the aged care ratios for public residential aged care facilities by prescribing requirements for a minimum percentage of nurses and registered nurses, and minimum average daily resident care hours;*
- *amend the HHB Regulation to enable nurses, midwives and paramedics registered under the Health Practitioner Regulation National Law to access The Viewer;*
- *amend the Health (Drugs and Poisons) Regulation to enable pharmacists to administer vaccines and adrenaline to individuals aged 10 years or older; and*
- *amend the Health Ombudsman Regulation 2014 to make consequential amendments as a result of the Health Transparency Act 2019 and to recognise orders made under corresponding Victorian legislation.<sup>1</sup>*

### Aged care ratios

The *Health Transparency Act 2019* amended the *Hospital and Health Boards Act 2011* (HHB Act) to implement a legislative framework that introduces aged care ratios in public residential aged care facilities (RACFs). According to the explanatory notes, the aged care ratios will ensure residents receive a minimum level of care from an appropriately qualified mix of staff in public RACFs across Queensland.<sup>2</sup>

New sections of the HHB Act<sup>3</sup> enact this by providing a minimum percentage of nurses and registered nurses and minimum average daily resident care hours to be prescribed by regulation. The explanatory notes advise that prescribing these matters in regulation provides the legislative framework sufficient operational flexibility to make changes as needed to the ratios and care hours in the public aged care sector.<sup>4</sup>

The amendment regulation prescribes the following requirements for public RACFs:

- *a minimum nurse percentage, that is, registered nurses and enrolled nurses must comprise 50 per cent of the total care staff, with a minimum of 30 per cent required to be registered nurses, during each 24-hour period; and*
- *a minimum average daily resident care requirement of 3.65 hours.<sup>5</sup>*

### The Viewer

The Viewer is Queensland Health's web-based application that displays a consolidated view of patients' clinical and demographic information from a range 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.<sup>6</sup>

The explanatory notes advise that the amendment regulation enables nurses holding general or provisional registration, midwives holding general or provisional registration and paramedics holding

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<sup>1</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 1.

<sup>2</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 2.

<sup>3</sup> *Hospital and Health Boards Act 2011*, sections 138G to 138M.

<sup>4</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 2.

<sup>5</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 5.

<sup>6</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 2.

general registration access to The Viewer. According to the explanatory notes, providing these health professionals access to The Viewer will improve health information sharing for patients and residents transferring between hospitals and RACFs which will assist in ensuring appropriate follow up care, and prevent unnecessary hospital re-admissions.<sup>7</sup>

#### Pharmacists vaccinating persons under 10 years or older

In October 2018, the committee recommended that the Department of Health explore options for pharmacist-administered low risk vaccines as part of the *Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland*.<sup>8</sup>

The Queensland Chief Health Officer has endorsed pharmacists administering the influenza vaccine to persons aged 10 years and older and has recommended this approach be put in place for the 2020 influenza season.<sup>9</sup> The amendment regulation enables pharmacists to administer a vaccine or adrenaline to persons 10 years old or more.<sup>10</sup>

#### Health Ombudsman Regulation – recognising Victorian interim prohibition orders and prohibition orders

The *Victorian Health Complaints Act 2016* (Victorian Act) was made after the *Health Ombudsman Act 2013* and Health Ombudsman Regulation 2014 were in effect in Queensland. Provisions in the Victorian Act give the Victorian Health Complaints Commissioner the power to prohibit a general health service provider from practicing for an interim period of up to 12 weeks or to impose conditions on the provider; and under a prohibition order, either permanently or for a period specified in the order, prohibit a health practitioner from practicing.<sup>11</sup>

These orders substantially correspond to existing provisions for interim prohibition and prohibition orders under the Health Ombudsman Act.<sup>12</sup> The amendment regulation will insert references to the respective Victorian provisions to recognise corresponding interstate orders.<sup>13</sup>

### **4.1 Fundamental legislative principle issues**

#### **4.1.1 Privacy of information**

Legislation should have sufficient regard to the rights and liberties of individuals, including the right to privacy regarding personal information. With additional categories of health professionals having access to The Viewer, a person's individual information concerning their medical conditions can be accessed by a greater number of health professionals.

As mentioned above, The Viewer is Queensland Health's read-only web-based application that displays a patients' clinical and demographic information from a range of clinical and administrative systems.

The explanatory notes set out a number of safeguards:

- *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;*

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<sup>7</sup> Health Legislation Amendment Regulation 2020, explanatory notes, pp 3; 5.

<sup>8</sup> Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, *Report No. 12, 56<sup>th</sup> Parliament, Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland*.

<sup>9</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 4.

<sup>10</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 5.

<sup>11</sup> *Victorian Health Complaints Act 2016*, sections 90; 95.

<sup>12</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 4.

<sup>13</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 5.

- *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 whom 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.*<sup>14</sup>

Penalties of up to 600 penalty units apply for unauthorised disclosure of confidential information. Health practitioners can also be disciplined under the *Health Ombudsman Act 2013* and Health Practitioner Regulation National Law for unprofessional conduct.

The explanatory notes summarise the position this way:

*Given the benefits of sharing information with practitioners who work outside Queensland Health, it is considered that the privacy of individuals is sufficiently protected by the safeguards built into the arrangements for access to The Viewer.*<sup>15</sup>

#### Committee comment

The committee is satisfied that the potential breach of a person's privacy is justified, given the overall benefits of information sharing to assist patients, and noting the safeguards in place.

#### **4.1.2 Rights and liberties of an individual**

The recognition of interim prohibition orders and prohibition orders made in Victoria may affect an individual's rights and liberties by preventing a practitioner who is subject to such an order from practising in Queensland.

The explanatory notes set out this justification:

*... recognising interstate orders is an important mechanism for protecting the public. Ensuring that a health practitioner who has an order made against them in Victoria is subject to the same restrictions if they seek to practise in Queensland, without the need for a separate investigation or regulatory process to be undertaken, ensures that a practitioner cannot evade the consequences of having an order made against them by simply moving interstate and commencing to practise.*

...

*It is considered that any potential impacts on individual practitioners are justified, given the need to ensure that the public is protected..*<sup>16</sup>

#### Committee comment

Given the aim of the amendment regulation to protect the public from exposure to health practitioners deemed unable to practice indefinitely or for a period of time, the committee is satisfied that any breach of an individual's rights and liberties is justified.

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<sup>14</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 8.

<sup>15</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 9.

<sup>16</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 9.

### **4.1.3 Institution of Parliament**

Pharmacists may administer vaccines and adrenalin to persons aged 10 years or older under the Pharmacist Vaccination Program Drug Therapy Protocol (DTP). A DTP is a document, certified by the chief executive of Queensland Health, that sets out matters of technical detail for the administration, possession and supply of substances.

This involves a subdelegation of power, which could be seen as having insufficient regard to the institution of Parliament. The explanatory notes state:

*The vaccines to be approved for use by pharmacists through the DTP are health and medical decisions best undertaken by relevant medical and scientific experts. These decisions are made carefully and are informed by advice from AHPPC [Australian Health Protection Principal Committee]. The ability for pharmacists to administer vaccines is a rapidly evolving policy area and must respond quickly to changes in health conditions in the community. The amendments ensure that preventative health measures can be provided in a variety of ways that are convenient for consumers and families. It is considered that the rigour surrounding the development of the DTP, its use in ensuring Queenslanders received restricted drugs based on best practice and training, and the technical nature of the document, justifies the need for the subdelegation.<sup>17</sup>*

#### Committee comment

The committee is satisfied that the subdelegation of power, as outlined above, has been sufficiently justified.

### **4.2 Explanatory notes**

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

### **4.3 Consideration of human rights compatibility**

Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with Section 13 of that Act.

Section 13 of the *Human Rights Act 2019* provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

The committee considers that the subordinate legislation raises no significant human rights issues.

#### **4.3.1 Privacy and reputation – section 25 HRA**

Under section 25 of the Human Rights Act, a person has the right not to have their privacy arbitrarily interfered with.

The amendment regulation allows health practitioners to access The Viewer, which contains personal information of patients. This will have an impact on the privacy of patients.

In the human rights certificate accompanying the subordinate legislation, the minister, noting that the amendment regulation might appear to restrict the operation of the right to privacy and reputation, sets out a number of safeguards in place to protect confidential information, as noted above at section 4.1.1.

The minister also notes that it is an offence for a prescribed health practitioner to disclose confidential information unless authorised, with a maximum penalty of 600 penalty units. Further, patients can opt-out of external practitioners accessing The Viewer, so that their clinical and demographic

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<sup>17</sup> Health Legislation Amendment Regulation 2020, explanatory notes, p 8.

information is not shared. The minister expresses the conclusion that ‘there is therefore no limitation or breach of the right to privacy’.<sup>18</sup>

#### Committee comment

The committee is satisfied that the limitation of human rights imposed by the regulation in relation to privacy and reputation is reasonable and demonstrably justifiable.

#### **4.4 Human rights certificate**

Section 41 of the *Human Rights Act 2019* requires that the responsible minister for the subordinate legislation must prepare a human rights certificate for the legislation.

A human rights certificate was tabled with the subordinate legislation. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

## **5 Water Fluoridation Regulation 2020**

The *Water Fluoridation Act 2008* seeks to promote good oral health in Queensland through the safe fluoridation of public potable water supplies. The Water Fluoridation Regulation 2008, the existing regulation, prescribes a range of matters to support this objective, including:

- *the types of fluoride that may be used;*
- *the concentrations at which fluoride must be dosed;*
- *testing requirements;*
- *necessary safeguards for fluoride dosing equipment;*
- *record keeping and reporting requirements; and*
- *qualification requirements for persons that operate fluoridation equipment.*<sup>19</sup>

The Water Fluoride Regulation 2020 (the regulation) will replace the existing regulation which is set to expire on 31 August 2020. The regulation is largely consistent with the existing regulation, however some minor changes have been made to improve its operational effect; and, some minor amendments to reword and restructure some provisions to reflect contemporary drafting practices and improve clarity.<sup>20</sup>

#### Committee comment

The committee identified no issues regarding the subordinate legislation’s consistency with fundamental legislative principle or its lawfulness.

The committee considers that the subordinate legislation raises no human rights issues.

#### **5.1 Explanatory notes**

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

#### **5.2 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>18</sup> Health Legislation Amendment Regulation 2020, human rights certificate, p 2.

<sup>19</sup> Water Fluoride Regulation 2020, explanatory notes, p 1.

<sup>20</sup> Water Fluoride Regulation 2020, explanatory notes, p 2.

## 6 Proclamation made under the *Health Transparency Act 2019*

The *Health Transparency Act 2019* (the Act) was passed by the Legislative Assembly on 28 November 2019 and received Royal Assent on 5 December 2019.<sup>21</sup> Via a range of measures, the Act seeks to improve Queenslanders' access to comprehensive comparative outcomes information for public and private health facilities, including public and private RACFs. Public reporting of health information is intended to provide a 'meaningful picture for patients, support improvements for health care providers and drive better outcomes at a system level'.<sup>22</sup>

The objective of the proclamation is to commence the following provisions of the Act on 1 March 2020:

- *establish a legislative framework to collect and publish information about public and private hospitals and residential aged care facilities;*
- *amend the Health Ombudsman Act 2013 to implement recommendations of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's Inquiry into the performance of the Health Ombudsman's functions pursuant to section 179 of the Health Ombudsman Act 2013, except the amendments about joint consideration of matters between the Office of the Health Ombudsman and the Australian Health Practitioner Regulation Agency;*
- *make consequential amendments to the Health Practitioner Regulation National Law Act 2009, Hospital and Health Boards Act 2011, Private Health Facilities Act 1999 and Public Health Act 2005 to support the operation of the Act.*<sup>23</sup>

It should be noted, amendments regarding joint consideration of matters between the Office of the Health Ombudsman and the Australian Health Practitioner Regulation Agency will commence at a later time, to allow time for systems and processes to be developed by these agencies to manage the joint consideration process.<sup>24</sup>

### Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

The committee considers that the subordinate legislation raises no human rights issues.

### 6.1 Explanatory notes

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

### 6.2 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## 7 Health Transparency Regulation 2020

Noted above, the *Health Transparency Act 2019* (the Act) provides for the collection of information about public and private health facilities and public and private RACFs. The Act also allows for the publication of that information, making it available to the public. Transparent information about

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<sup>21</sup> Proclamation made under the *Health Transparency Act 2019*, explanatory notes, p 1.

<sup>22</sup> *Health Transparency Bill*, explanatory notes, p 1.

<sup>23</sup> Proclamation made under the *Health Transparency Act 2019*, explanatory notes, p 1.

<sup>24</sup> Proclamation made under the *Health Transparency Act 2019*, explanatory notes, p 1.

health and aged care services is intended to drive better performance, improve clinical outcomes and support Queenslanders to be better-informed about their care.<sup>25</sup>

The objective of the Health Transparency Regulation 2020 (the regulation) is to prescribe specific types of *quality and safety information* and *residential care information* that, under the Act, can be sought from public and private health facilities, and from public and private RACFs.

Under section 9 of the Act, quality and safety information includes information about a facility's accreditation and performance against the National Safety and Quality Health Service Standards, or any of the following information prescribed by regulation:

- *access to care information;*
- *activity information;*
- *patient outcome information;*
- *process of care information; and*
- *other information relating to the quality and safety of health services provided at the facility.*

Patient outcome information is defined in the Act as information about the impact of a health service on a patient and may include a change in the health of a person or group of people that may be attributed in whole or part to the health service. Residential care information is information prescribed by regulation about the personal care and nursing care provided to residents at the facility.

In particular, the regulation:

- requires private health facilities must report the number of cases of 'golden staph' at the private health facility in a particular period, an existing obligation for public health facilities, and
- prescribes the average daily resident care hours at each public and private RACF for a particular period as information that must be reported as residential care information.

As a significant amount of data and information is already held by Queensland Health and publishable under the Act, it is only intended to prescribe information by regulation that is not already held by Queensland Health through existing arrangements.<sup>26</sup>

#### Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

The committee considers that the subordinate legislation raises no human rights issues.

#### **7.1 Explanatory notes**

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

#### **7.2 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>25</sup> Health Transparency Regulation 2020, explanatory notes, p 1.

<sup>26</sup> Health Transparency Regulation 2020, explanatory notes, p 2.

## 8 Recommendation

The committee recommends that the House notes this report.



Aaron Harper MP

**Chair**

**May 2020**

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

<b>Chair</b>	Mr Aaron Harper MP, Member for Thuringowa, Chair
<b>Deputy Chair</b>	Mr Mark McArdle MP, Member for Caloundra, Deputy Chair
<b>Members</b>	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