

**Subordinate legislation tabled between
26 March 2015 and 15 September 2015**

Report No. 8, 55th Parliament

Health and Ambulance Services Committee

October 2015

Health and Ambulance Services Committee

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1 Introduction

1.1 Role of the committee

The Health and Ambulance Services Committee (Committee) is a portfolio committee of the Legislative Assembly which was established on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Order of the Legislative Assembly (Standing Orders).

The Committee's primary area of responsibility under Schedule 6 of the Standing Orders is health and ambulance services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles to the legislation; and
- for subordinate legislation – its lawfulness.

1.2 Aim of this report

This report summarises the Committee's examination of subordinate legislation tabled in the Legislative Assembly between 26 March 2015 and 15 September 2015.

2 Subordinate legislation examined

No.	Name of subordinate legislation	Date tabled	Disallowance date
38	Private Health Facilities (Standard) Amendment Notice (No. 1) 2015	14 July 2015	11 November 2015
49	Health Legislation (Fees) Amendment Regulation (No. 1)	14 July 2015	11 November 2015
94	Proclamation made under the <i>Health and Other Legislation Amendment Act 2014</i>	15 September 2015	3 December 2015
95	Research involving Human Embryos and Prohibition of Human Cloning for Reproduction Regulation 2015	15 September 2015	3 December 2015
96	Health Legislation Amendment Regulation (No. 2) 2015	15 September 2015	3 December 2015
97	Ambulance Service Regulation 2015	15 September 2015	3 December 2015
103	Hospitals Foundation Regulation 2015	15 September 2015	3 December 2015

2.1 SL 38 - Private Health Facilities (Standard) Amendment Notice (No. 1) 2015

A new version of the Management and Staffing Standards (MMS) has been made. MMS are made under the *Private Health Facilities Act 1999*, which provides that the Chief Health Officer may make standards for the health and wellbeing of patients receiving health services at private health facilities.¹ The MMS will apply to licensed private health facilities in Queensland.

As a standard has no effect unless the Minister notifies the making of the standard,² the Private Health Facilities (Standard) Amendment Notice (No. 1) 2015 notifies that a new MMS has been made.

The amendments intend to provide greater clarity and ease of interpretation of the standards.³ Version 5 of the MMS's will:

- be consistent with the current version of the Clinical Services Capability Framework (CSCF),
- include updated references to legislation, and
- reflect the current CSCF title.

Fundamental Legislative Principle – Sufficient regard to the institution of Parliament

The Committee considered whether the Act authorises the delegation of power from subordinate legislation (the Amendment Notice) to a statutory instrument (MMS). As the MMS is not 'subordinate legislation' it is not subject to parliamentary scrutiny, including the tabling and disallowance provisions in the *Statutory Instruments Act 1992*.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether it sub-delegates a power delegated by an Act. This is permissible if authorised by an Act and in appropriate cases, to appropriate persons.⁴

Authorised by an Act

The Act provides that the Chief Health Officer may make standards for the protection of the health and wellbeing of patients receiving health services at private health facilities. However, the standards have no effect unless the Minister notifies the making of the standard.⁵ The notice must state the places where copies of the standard and the provisions of any document applied, adopted or incorporated by the standard are available for inspection, without charge, during normal business hours.

Appropriate cases and to appropriate persons

The former Scrutiny of Legislation Committee (SLC) considered whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny. It considered the importance of the subject dealt with, and matters such as the practicality of including those matters entirely in subordinate legislation.⁶

Availability of document and parliamentary scrutiny

The former SLC's concerns about sub-delegation were reduced where the document in question could only be incorporated under (disallowable) subordinate legislation and was attached to the subordinate legislation, or where the document was required to be tabled with the subordinate legislation and made available for inspection.

¹ *Private Health Facilities Act 1999*, s12(1)

² *Private Health Facilities Act 1999*, s12(3)

³ Private Health Facilities (Standard) Amendment Notice (No. 1) 2015, Explanatory Notes, p2

⁴ *Legislative Standards Act 1992*, s4(5)(e)

⁵ *Private Health Facilities Act 1999*, s12

⁶ *Alert Digest 1999/04*, p10, paras 1.65-167

The Committee noted the MSS will be available at the office of the Chief Health Officer, free of charge, during normal business hours, however it did not appear it was intended for the MSS to be tabled in Parliament.

Action taken

The Committee wrote to the Minister for Health and Minister for Ambulance Services and sought a response from the Minister to the matters raised above.

The Minister replied by letter dated 26 October 2015 and advised the explanatory notes to the Private Health Facilities Bill 1999 (the Bill), considered this issue at the time the Bill was introduced. The Minister was satisfied that any potential breach was considered by the Parliament at the time the primary law was being considered (second reading debate of the Bill), however accepted that having access to the content of the standards would enhance the visibility of the MMS to members of the Legislative Assembly, and allow members to consider the implications of any proposed changes.

The Minister considered that when tabling similar notices in future, he would table the standards made by the Chief Health Officer under the *Private Health Facilities Act 1999*, as well as standards and guidelines made under comparable provisions in other Acts administered by the Minister.

Committee comment

The Committee was satisfied with the Minister's response and considered the proposal by the Minister to table future standards with notices as they are made, sufficiently addresses this matter, and will enable all Members of the Legislative Assembly to view the relevant documents during the disallowance period.

These actions would ensure that sufficient regard was had to the institution of Parliament.

2.2 SL 49 - Health Legislation (Fees) Amendment Regulation (No. 1)

The objective of the Health Legislation (Fees) Amendment Regulation (No. 1) is to increase fees and charges in several regulations by 3.5% in accordance with the Queensland Government's policy on fees and charges.

The Committee did not identify any fundamental legislative principles issues.

2.3 SL 94 - Proclamation made under the *Health and Other Legislation Amendment Act 2014*

The objective of the Proclamation made under the *Health and Other Legislation Amendment Act 2014* is to fix a commencement date of 1 September 2015 for certain provisions of the *Health and Other Legislation Amendment Act 2014*.

The Committee did not identify any fundamental legislative principles issues.

2.4 SL 95 - Research involving Human Embryos and Prohibition of Human Cloning for Reproduction Regulation 2015

The Research Involving Human Embryos and Prohibition of Human Cloning Regulation 2003 expired on 31 August 2015. The Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Regulation 2015 replaces the 2003 Regulation, prescribing certain matters to support the *Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Act 2003* (Queensland Act).

The explanatory note states the 2015 Regulation is consistent with the 2003 Regulation,⁷ and in particular:

- prescribes the Reproductive Technology Accreditation Committee of the Fertility Society of Australia as an authorised entity to accredit a person or body to carry out assisted reproductive technology
- prescribes guidelines issued by the National Health and Medical Research Council (NHMRC) for the purposes of the definitions of *proper consent* and *unsuitable for implantation* and for the NHMRC Licensing Committee to consider when issuing licences for research involving excess assisted reproductive technology embryos
- ensures the short title of the Regulation is consistent with the short title of the Queensland Act.⁸

The Committee did not identify any fundamental legislative principles issues.

2.5 SL 96 - Health Legislation Amendment Regulation (No. 2) 2015

The Health Legislation Amendment Regulation (No. 2) 2015 aims to ensure that:

- Local governments meet the training obligations under the asbestos liability conditions in the *Public Health Act 2005*, and
- The Australian Bone Marrow Donor Registry (ABMDR) can lawfully trade in bone marrow under the *Transplantation and Anatomy Act 1979*, without requiring a Ministerial permit.

The Committee did not identify any fundamental legislative principles issues.

2.6 SL 97 - Ambulance Service Regulation 2015

The Ambulance Service Regulation 2015 replaces the Ambulance Service Regulation 2003 to support the *Ambulance Service Act 1991* and to reflect contemporary drafting practices.

The Committee did not identify any fundamental legislative principles issues.

2.7 SL 103 - Hospitals Foundation Regulation 2015

The Hospitals Foundation Regulation 2015 (the Regulation) replaces the Hospital Foundations Regulation 2005 (2005 Regulation), prescribing matters necessary to support the *Hospital Foundations Act 1982* (the Act). In particular, the Regulation:

- prescribes in Schedule 1 the bodies corporate that are hospital foundations for the purpose of the Act;
- provides that the hospital foundation previously known as the Children's Health Foundation Queensland is now the Children's Hospital Foundation Queensland;
- provides that section 4 of the 2005 Regulation, which provided for the amalgamation of two hospital foundations, continues to have effect.

⁷ Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Regulation 2015, Explanatory Notes, page 3

⁸ Research Involving Human Embryos and Prohibition of Human Cloning for Reproduction Regulation 2015, Explanatory Notes, page 2

The Regulation will ensure the hospital foundations established under section 7 of the Act will continue after the 2005 Regulation expires.

The Committee did not identify any fundamental legislative principles issues.

3 Recommendation

The Committee has examined the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles and lawfulness and has not identified any significant issues.

Recommendation 1

The Committee recommends the Legislative Assembly notes the contents of this report.



Leanne Linard MP

Chair