

**Subordinate legislation tabled between  
16 September 2015 and 13 October 2015**

**Report No. 12, 55<sup>th</sup> Parliament**

**Health and Ambulance Services Committee**

**February 2016**

## 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
131	Health Ombudsman and Other Legislation Amendment Regulation (No. 1) 2015	13 October 2015	18 February 2016

### 2.1 Health Ombudsman and Other Legislation Amendment Regulation (No. 1) 2015

The objective of the Amendment Regulation is to amend the *Health Ombudsman Regulation 2014* to declare the 'National Code of Conduct for health care workers (Queensland)' as a prescribed conduct document.

Prescribed conduct documents are those prescribed by a regulation that provide guidance to health service providers, persons receiving health services and entities performing functions under the *Health Ombudsman Act 2013* about the standard of services that should be provided by health service providers or a related matter. These documents include a code of conduct, charter, standard, a document prepared by the Minister or other documents.<sup>1</sup>

The National Code of Conduct sets minimum standards of conduct for healthcare workers and applies to health care workers delivering a health service in Queensland from 1 October 2015. It is published on the Queensland Health website.<sup>2</sup>

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<sup>1</sup> *Health Ombudsman Act 2013*, s288

<sup>2</sup> Queensland Health, The National Code of Conduct for Health Care Workers (Queensland), [www.health.qld.gov.au/system-governance/policies-standards/national-code-of-conduct/default.asp](http://www.health.qld.gov.au/system-governance/policies-standards/national-code-of-conduct/default.asp) <site accessed 16 December 2015>

The Regulation also makes amendments to non-Health portfolio Regulations:

- the *Cooperatives Regulation 1997* and *Guide, Hearing and Assistance Dogs Regulation 2009*, to remove references to repealed Health portfolio Acts and abolished health statutory bodies;
- the *Guide, Hearing and Assistance Dogs Regulation 2009*, to remove reference to a repealed Act and amend the meaning of ‘speech pathologist’; and
- the *State Penalties and Enforcement Regulation 2014*, to assign a Prescribed Infringement Notice (PIN) of up to 10 penalty units for unlicensed pest management activities.

#### *Fundamental Legislative Principle – Sufficient regard to the institution of Parliament*

The Committee considered whether the sub-delegation of power from subordinate legislation (the Amendment Regulation) to a statutory instrument (National Code of Conduct) has sufficient regard to the institution of Parliament. As the National Code of Conduct 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.<sup>3</sup>

#### Authorised by an Act

Section 288 of the *Health Ombudsman Act 2013* provides that a regulation may prescribe a code of conduct for certain matters. The *Statutory Instruments Act 1992* provides that if an Act authorises the making of a statutory instrument, the statutory instrument may make provision for a matter by applying, adopting or incorporating another document.

The Committee considers the sub-delegation of power from the Amendment Regulation to the Code of Conduct is authorised.

#### 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.<sup>4</sup>

The National Code of Conduct is a nationally consistent code of conduct to protect the public by setting minimum standards of conduct and practice for all health care workers. It may be that it is more appropriate for practical reasons for matters such as these to be set out in a document other than subordinate legislation. The Committee notes that justification or explanation on this point is offered in the Explanatory Notes.

#### Availability of documents 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.

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<sup>3</sup> *Legislative Standards Act 1992*, s4(5)(e)

<sup>4</sup> *Alert Digest 1999/04*, p10, paras 1.65-167

The Committee notes the National Code of Conduct is available on the Queensland Health website, however it does not appear it is intended for the Code of Conduct to be tabled in Parliament. The Minister also provided some background information about the National Code of Conduct (including the reasons for, and the nature of, the Code) in the Explanatory Notes to help inform the House about the document.

The National Code of Conduct is incorporated into the legislative framework of the State, without being reproduced in full in subordinate legislation, and changes to the document can be made without the content of those changes coming to the attention of the House.

#### *Minister/Departmental response*

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 9 February 2015 and advised:

*I understand that section 288(1) of the Health Ombudsman Act 2013 defines a prescribed conduct document as being a code of conduct, standard or other document. These documents give guidance to health service providers regarding standards of service and may be used by the Queensland Health Ombudsman and the Queensland Civil and Administrative Tribunal when taking action against a health practitioner or health care worker. It is noted that the Health Ombudsman Act 2013 does not include a specific requirement in relation to tabling such documents when they are prescribed in regulation.*

*On 17 April 2015, Ministers of the COAG Health Council endorsed the first National Code of Conduct for Health Care Workers. Queensland adopted the template Code provisions supplied by COAG and the Amendment Regulation was subsequently enacted to declare the Code as a prescribed conduct document. As noted by the Committee, the Code has been made publicly available by publishing it on the Queensland Health website at <https://www.health.qld.gov.au/system-governance/policies-standards/national-code-of-conduct/default.asp>. A copy of the webpage is enclosed for your information.*

*The Code provides a safeguard for all unregistered health care workers in Queensland and other States and Territories. The Code also gives effect to nationally-agreed principles, and therefore it is expected that any significant material changes to the Code would occur by prescribing an updated version of the Code in the Health Ombudsman Regulation 2014 via another amendment regulation.*

*While I am satisfied that the above processes minimise any potential fundamental legislative breach, I accept that having access to a prescribed conduct document at the time it is prescribed would enhance the visibility of these documents to members of the Legislative Assembly and allow members to fully consider the implications of any proposed changes.*

*For this reason, when tabling similar amendment regulations in future, I will be pleased to table the prescribed conduct document.*

#### **Committee comment**

The Committee was satisfied with the Minister's response and considered the Minister's commitment to table similar amendment regulations in the future sufficiently addresses this matter. These actions would ensure that sufficient regard was had to the institution of Parliament.

### 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