

**Subordinate legislation tabled between
13 October 2015 and 16 February 2016**

Report No. 14, 55th Parliament
Health, Communities, Disability Services and
Domestic and Family Violence Prevention
Committee

March 2016

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

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1 Introduction

1.1 Role of the committee

The Health, Communities, Disability Services and Domestic and Family Violence Prevention 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;
- Communities, Women, Youth and Child Safety;
- Domestic and Family Violence Prevention; and
- Disability Services and Seniors.

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 15 September 2015 and 16 February 2016.

2 Subordinate legislation examined

The following table lists the subordinate legislation considered by the Committee and the deadline in each case for Members to give notice in the House of a disallowance motion in accordance with Standing Order 59¹.

SL No 2015	Name of subordinate legislation	Date tabled	Disallowance date ²
154	<i>Health Legislation Amendment Regulation (No.3) 2015</i>	10 November 2015	17 March 2016

¹ Section 50 of the *Statutory Instruments Act 1992* provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a Member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

² Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Issues for consideration

The Committee identified potential fundamental legislative principle (FLP) and/or other issues with the following subordinate legislation highlighted in the table:

- *Health Legislation Amendment Regulation (No.3) 2015*

3.1 Health Legislation Amendment Regulation (No. 3) 2015

The Regulation proposes to amend the following Regulations:

- *Health (Drugs and Poisons) Regulation 1996*
- *Health Regulation 1996*
- *Mental Health Regulation 2002*
- *Public Health (Infection Control for Personal Appearance Services) Regulation 2003*
- *Public Health Regulation 2005*
- *Tobacco and other Smoking Products Regulation 2010*

The policy objectives for the amendments for each Regulation are as follows:

Health (Drugs and Poisons) Regulation 1996

- provide greater treatment options through the use of nabiximols (Sativex™ – a patented cannabinoid oromucosal mouth spray) for Multiple Sclerosis patients throughout Queensland, to reduce the severity of their debilitating symptoms,
- improve management of regulated poisons by including an as-of-right authority for the transport and delivery of regulated poisons by authorised carriers,
- provide safe and effective disposal options of regulated poisons for authorised regulated poison holders, and
- protect public health and warrant more stringent access controls to ensure that para-amino propriophenone is only obtained and used by authorised persons for specific purposes;

Health Regulation 1996

- to enable the facilitation of new approaches to human immunodeficiency virus (HIV) testing by allowing access to ‘reagents’, an essential chemical used to detect antibodies when testing for HIV

Mental Health Regulation 2002

- ensure that the correct section of the *Mental Health Act 2000* is referenced in relation to a requirement for the administrator of an authorised mental health service to keep records about involuntary inpatients, and
- update the schedule of corresponding laws in the Mental Health Regulation which is outdated and incomplete due to legislative changes in other jurisdictions;

Public Health (Infection Control for Personal Appearance Services) Regulation 2003

- to minimise the risk of infection arising from personal appearance services, by prescribing tattoo removal as a higher risk personal appearance service under the *Public Health (Infection Control for Personal Appearance Services) Act 2003*;

Public Health Regulation 2005

- ensure that condition names and case definitions in schedules 1, 2 and 2A are consistent with contemporary terminology,
- allow greater identification, management, reduction and if possible, elimination of lead exposure sources, by identifying persons who have lead exposure with blood lead levels of 5 ug/dL or more, and
- enable greater public health action to limit the spread of measles by prescribing measles as a controlled notifiable condition; and

Tobacco and Other Smoking Products Regulation 2010

- to allow local councils in Townsville and Cairns to regulate smoking in their local area and enable them to enforce bans that prohibit smoking within four metres of an entrance to a public building.

3.1.1 Fundamental legislative principles issues

Rights and liberties – section 4(2)(a) – penalties

The Amendment Regulation provides that a person must not dispense, prescribe, sell or use nabiximols unless the person meets certain criteria set out in proposed sections 78A(a) and (b). The maximum penalty is 80 penalty units.

In *Alert Digest* No. 4 of 1996, the former Scrutiny of Legislation Committee (SLC) adopted a formal policy (Policy No. 2 of 1996) on the question of delegation of legislative power to create offences and prescribe penalties.³

The SLC accepted that legislative power to create offences and prescribe penalties could be delegated in limited circumstances provided a number of safeguards were followed. In particular the Committee recommended that maximum penalties in a Regulation be limited to 20 penalty units. Here, the maximum penalty unit amount of 80 clearly exceeds this recommendation. Whilst it appears from the regulation that the offence is potentially serious, there is no rationale provided in the Explanatory Notes for such a high penalty amount. Similarly, there is no justification given for why the penalty was not provided for in the Bill rather than the Amendment Regulation.

Legislation should not, without significant justification, unduly restrict ordinary business activities

Regulation of business, although prolific, is an intervention in a right to conduct business in the way in which the persons involved consider appropriate.⁴

Clauses 17, 19 and 20 of the Amendment Regulation provide for a number of amendments that potentially interfere with business activities. Prescribing tattoo removal as a high risk personal appearance service (clause 17), triggers a number of obligations for the business owner such as notifying agencies about certain conditions. However, it is arguable given the risk to public health and safety, that these interferences with business activities are warranted and proportionate in the circumstances.

The Explanatory Notes do not provide any explanation or justification in relation to this potential breach.

³ Office of Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 150.

⁴ Office of Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 118.

Explanatory Notes

The Explanatory Notes indicate that consultation was undertaken in relation to part 3 and part 5 of the subordinate legislation. There was no direct reference to any consultation with stakeholders in relation to parts 4, 6 and 7 of the subordinate legislation.

Section 24(4) of the *Legislative Standards Act 1992* states that a reason is to be provided for the non-inclusion of consultation and the results of consultation. Given that information regarding the consultation that was undertaken was included, arguably there has been no breach of the section 24(4) requirement.

The Explanatory Notes tabled with the amending Regulation otherwise comply with part 4 of the *Legislative Standards Act 1992*.

3.1.2 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 16 March 2015.

With regard to the reasons why the penalty is included in the regulation rather than the Act, the Minister advised:

The Health Act and associated framework regulating drugs and poisons pre-dates the Scrutiny of Legislation Committee's Policy No. 2 of 1996. As a consequence, much of the regulatory framework for drugs and poisons is contained in subordinate legislation, specifically the HDP Regulation. The HDP Regulation includes a range of penalties which significantly exceed 20 penalty units. To include the proposed new penalty in the Health Act, rather than the HDP regulation, would be inconsistent with the existing legislative framework.

I can assure the Committee that the proposed penalty of 80 penalty units is consistent with the penalties for comparable offences relating to other regulated controlled drugs, for example, dronabinol (synthetic tetrahydrocannabinol) and the amphetamine-type psychostimulants.

Given the seriousness of the offence and the impact of misuse, I consider that a penalty of 80 penalty units is justified.

With regard to the potential interference with business activities, the Minister advised:

The Amendment Regulation ensures that personal appearance service providers who undertake tattoo removal by processes involving skin penetration must undertake a qualification in infection control. An understanding of infection control greatly lessens the risk of a consumer becoming infected with a (notifiable) communicable disease. Consumers expect that basic health and safety standards are in place and enforced, which will prevent the transmission of diseases such as hepatitis C.

In this context, benefits of the proposed requirements which significantly lessen the health and safety risks associated with the provision of personal appearance services, outweigh any compliance costs to businesses. For this reason, any potential breach of fundamental legislative principles is considered to be justified.

With regard to the Explanatory Notes the Minister confirmed that Parts 4, 6 and 7 updated references, corrected drafting errors or removed redundant town planning listings and as they were administrative or machinery in nature these parts did not require consultation.

3.1.3 Committee comment

The Committee was satisfied with the Minister's response.

4 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