

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

### Report No. 15, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 13 June and 21 August 2018

#### 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 13 June and 21 August 2018. It reports on issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*. All Acts discussed in this report are Queensland Acts unless otherwise specified.

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
73	Hospitals Foundations (HIVFQ) Amendment Regulation 2018	21 August 2018	1 November 2018
74	Proclamation made under the <i>Hospital Foundations Act 2018</i>	21 August 2018	1 November 2018
75	Hospital Foundations Regulation 2018	21 August 2018	1 November 2018
87	Disability Services (Fees) Amendment Regulation 2018	21 August 2018	1 November 2018
88	Adoption (Fees) Amendment Regulation 2018	21 August 2018	1 November 2018
101	Proclamation made under the <i>Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017</i>	21 August 2018	1 November 2018
104	Proclamation made under the <i>Child Protection Reform Amendment Act 2017</i>	21 August 2018	1 November 2018
117	Public Health Regulation 2018	21 August 2018	1 November 2018

##### 2.1 Hospitals Foundations (HIVFQ) Amendment Regulation 2018

The objective of the Hospitals Foundations (HIVFQ) Amendment Regulation 2018 is to dissolve the HIV Foundations Queensland (HIVFQ) under section 59 of the *Hospital Foundations Act 1982* and to remove HIVFQ from the list of hospital foundations in schedule 1 of the Hospital Foundations Regulation 2015.

The HIVFQ was established on 1 December 2013 as a statutory agency under the *Hospitals Foundation Act 1982*. The Foundation was formed to replace the Ministerial Advisory Committee for HIV/AIDS and

provide leadership, coordination and support to Queensland's public health response to HIV (human immunodeficiency virus) and end new HIV transmissions.<sup>1</sup> Following the release of the Queensland Sexual Health Strategy 2016-2021 and the associated HIV Action Plan, on 21 December 2016, the former Minister announced that the service agreement between the Department of Health and the Foundation would not be renewed after its conclusion on 30 June 2017.<sup>2</sup>

The dissolution of the HIVFQ was requested by the HIVFQ and is administrative in nature.<sup>3</sup>

### **2.1.1 FLP issues**

No FLP issues were identified.

### **2.1.2 Explanatory notes**

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

## **2.2 Proclamation made under the Hospital Foundations Act 2018**

The objective of this proclamation is to fix a commencement date of 1 July 2018 for certain provisions of the *Hospital Foundations Act 2018*.

### **2.2.1 FLP issues**

No FLP issues were identified.

### **2.2.2 Explanatory notes**

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

## **2.3 Hospital Foundations Regulation 2018**

The objective of the Hospital Foundations Regulation 2018 is to replace the Hospital Foundations Regulation 2015. The regulation prescribes the hospital foundations established under the repealed *Hospital Foundations Act 1982* that will continue in existence after that Act is repealed by the *Hospital Foundations Act 2018*. These foundations are:<sup>4</sup>

- Bundaberg Health Services Foundation
- Children's Hospital Foundation Queensland
- Far North Queensland Hospital Foundation
- Gold Coast Hospital Foundation
- Ipswich Hospital Foundation
- Mackay Hospital Foundation
- PA Research Foundation
- Royal Brisbane and Women's Hospital Foundation
- Sunshine Coast Health Foundation
- The Prince Charles Hospital Foundation
- Toowoomba Hospital Foundation
- Townsville Hospital Foundation.

### **2.3.1 • FLP issues**

No FLP issues were identified.

### **2.3.2 Explanatory notes**

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

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<sup>1</sup> HIV Foundation Queensland 2017, [Annual Report 2016-2017](#), p 6, accessed 23 October 2018.

<sup>2</sup> HIV Foundation Queensland 2017, [Annual Report 2016-2017](#), p 7.

<sup>3</sup> Explanatory notes, p 2.

<sup>4</sup> Explanatory notes, p 3.

## **2.4 Disability Services (Fees) Amendment Regulation 2018**

The objective of the Disability Services (Fees) Amendment Regulation 2018 is to increase the fee for an application to obtain a positive notice Yellow Card. (A Yellow Card is required by individuals engaged by various entities providing a specialist disability support service.)

The fee increases are less than 3.5 per cent, in line with the *Queensland Government Principles for Fees and Charges*.

### **2.4.1 FLP issues**

No FLP issues were identified.

### **2.4.2 Explanatory notes**

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

## **2.5 Adoption (Fees) Amendment Regulation 2018**

The objective of the Adoption (Fees) Amendment Regulation 2018 is to increase the adoption fee in the Adoption Regulation 2009 by 3.5 per cent, consistent with the rate set out in the *Queensland Government Principles for Fees and Charges*.

Adoption is a legal process that establishes a permanent parent-child relationship between a child and his or her adoptive parent/s. The Department of Child Safety, Youth and Women solely administers the *Adoption Act 2009* to arrange for the adoption of children in Queensland, including the adoption of children from overseas by Queensland adults. The delivery of high-quality adoption services attracts significant costs.

Sections 71(3), 93(c), 112(1), 198(3) and 298(3) of the *Adoption Act 2009* provide for the payment of fees at various stages of the adoption process, including application, assessment and supervision. Adoption fees are prescribed in Schedule 2 of the Adoption Regulation 2009.<sup>5</sup>

### **2.5.1 FLP issues**

No FLP issues were identified.

### **2.5.2 Explanatory notes**

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

## **2.6 Proclamation made under the Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017**

The objective of this proclamation is to fix a commencement date of 1 August 2018 for certain provisions of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017*. Those provisions amend the:

- Health Practitioner Regulation National Law to facilitate National Boards providing additional information to notifiers who make complaints
- Health Practitioner Regulation National Law to require health practitioners to disclose all places at which they practice when requested to do so by a National Board and allow information about disciplinary or enforcement action to be shared with all places of practice, and
- *Health Ombudsman Act 2013* to allow information about disciplinary or enforcement action against a health practitioner to be shared with all places of practice.

### **2.6.1 FLP issues**

No FLP issues were identified.

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<sup>5</sup> Explanatory notes, p 1.

## **2.6.2 Explanatory notes**

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

## **2.7 Proclamation made under the Child Protection Reform Amendment Act 2017**

The objective of this proclamation is to fix a commencement date of 23 July 2018 for certain provisions of the *Child Protection Reform Amendment Act 2017*.

The Amendment Act implements priority legislative reforms in response to a comprehensive review of the *Child Protection Act 1999*, undertaken between 2015 and 2017, as recommended by the Queensland Child Protection Commission of Inquiry.<sup>6</sup> The provisions of the Amendment Act that will commence on 23 July 2018 relate to the following policy changes:

- clarification about the purpose and making of temporary custody orders (sections 15, 16 and 80 (to the extent that it inserts a transitional provision for applications for temporary custody orders))
- clarification regarding the operation of an intervention with parental agreement (sections 28, 29 and 31(2))
- vaccination of children in the chief executive's custody (section 47)
- access to information for prescribed research (section 73)
- extending the prohibition against publishing identifying information about a child witness in criminal proceedings (section 74), and
- clarification that a police officer is not prohibited from publishing identifying information about a child in the child protection system if the publication is necessary to perform his or her functions as a police officer, for example, publishing identifying information when issuing a child abduction alert in relation to a child missing from out-of-home care (section 75).<sup>7</sup>

### **2.7.1 FLP issues**

No FLP issues were identified.

### **2.7.2 Explanatory notes**

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

## **2.8 Public Health Regulation 2018**

The objective of the Public Health Regulation 2018 is to protect and promote the health of the Queensland public by:

- preventing, controlling and reducing risks to public health
- providing for the identification of, and response to, notifiable conditions
- imposing obligations on persons and particular health care facilities involved in the provision of declared health services to minimise infection risks
- providing for persons who have a major disturbance in mental capacity to be transported to a treatment or care place
- protecting children who have been harmed or are at risk of harm when the children present at health service facilities
- restricting the performance of cosmetic procedures on children

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<sup>6</sup> Explanatory notes, p 1.

<sup>7</sup> Explanatory notes, pp 1 - 2.

- collecting and managing particular health information, and establishing mechanisms for health information held by a health agency to be accessed for appropriate research
- inquiring into serious public health matters
- responding to public health emergencies, and
- providing for compliance with the *Public Health Act 2005* to be monitored and enforced.

The 2018 regulation remakes the 2005 regulation and prescribes a range of matters for the *Public Health Act 2005*, including:

- requirements in relation to particular public health risks, specifically asbestos, mosquitoes, rats and mice, and invasive procedures that might expose a person to an infectious condition
- medical conditions that are notifiable conditions, contagious conditions and vaccine preventable conditions
- health care facilities not required to hold an infection control management plan
- procedures that are not considered cosmetic procedures for the purposes of chapter 5A of the Act
- agreements between Queensland and the Commonwealth, another State or a Commonwealth or State entity relating to the disclosure of confidential information
- notification periods for perinatal and maternal death statistics
- non-notifiable types of cancer, the prescribed contractor for keeping the Queensland Cancer Register, and notification periods for section 234 of the Act
- information about a woman for the purposes of the definition of clinical information in section 251 of the Act relating to the pap smear register, and
- standards for the quality of drinking water and recycled water.

### 2.8.1 FLP issues

The regulation appears to raise FLP issues in relation to the reversal of the onus of proof and the subdelegations of power.

#### 2.8.1.1 Reversal of the onus of proof – paragraph 4(3)(d) Legislative Standards Act 1992

Legislation should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence, for example, by disproving a fact the prosecution would otherwise be obliged to prove, unless there is adequate justification.<sup>8</sup>

Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidentiary means and the defendant would be particularly well-positioned to disprove guilt.<sup>9</sup>

A number of clauses are relevant.

**Clause 17** requires a relevant person for a place to ensure water or another liquid that has accumulated at the place is not a breeding ground for mosquitoes. Subsection (3) provides for a defence and requires the defendant to prove they took all reasonable steps to comply with the requirement.

**Clause 19** makes it an offence to destroy, damage or remove a mosquito-proof screen or flap valve. The provision provides for a defence where a person removes the mosquito-proof screen or flap valve

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<sup>8</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

<sup>9</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

to carry out maintenance, and immediately replaces the screen or flap value after the maintenance is finished. The onus of proving the defence rests with the person seeking to rely on it.

**Clause 24** makes it an offence to destroy, damage or remove a screen or other object that has been fixed to a relevant structure to stop mice and rats from entering a structure. The provision includes a defence where a person removes the screen or other object to carry out maintenance, and immediately replaces the screen or object after the maintenance is finished. The onus of proving the defence rests with the person seeking to rely on it.

**Clause 25** provides that a relevant person for land around a dwelling must ensure rats or mice are not harboured on the land, and that the land is not a breeding ground for rats and mice. Subsection (2) provides for a defence and requires the defendant to prove that they took all reasonable steps to comply with the requirement.

The explanatory notes provide this justification:

*These offences have a defence of reasonable excuse, to ensure that strict liability for the offences does not arise. Placing the onus on the defendant is justified in circumstances where the matter that is the subject of proof is within the defendant's knowledge and would be difficult for the prosecution to prove.*<sup>10</sup>

Where a provision places the onus on the defendant to prove a defence, these types of provisions can be justified if the matter to be proved by the defendant is peculiarly within the defendant's knowledge.<sup>11</sup>

#### **Request for advice**

The committee sought assurance from the Department of Health that the reversal of the onus of proof is justified in each case (clauses 17, 19, 24, and 25), and that the relevant facts are inherently impractical to test by alternative evidentiary means, and the defendant would be particularly well-positioned to disprove guilt.

#### **Departmental advice**

The department advised the committee:

*Each of these offences provides a defence, which must be proved by the defendant. It is considered appropriate to require the defendant to prove these matters as they will be peculiarly within the defendant's personal knowledge. The defendant is best placed to state the relevant facts in the particular circumstance. It would be expensive and onerous for the prosecution to disprove each of these matters. In particular:*

- *For section 17, it would be impractical for the prosecution to prove that the relevant person did not take all reasonable steps as there are likely to be multiple options available for the relevant person to ensure that water accumulated at the place has not become a breeding ground for mosquitoes. The defendant will have personal knowledge of the steps that have been taken.*
- *For section 19, it would be impracticable for the prosecution to prove that a person had not removed the mosquito-proof screen or flap valve to carry out maintenance, and immediately replaced the screen or flap value after the maintenance is finished. It is appropriate to put the onus on the defendant to establish this, as the defendant will know the purpose for which the screen or flap valve was removed.*
- *For section 24, it would be impracticable for the prosecution to prove that a person had not removed the screen or other object to carry out maintenance, and immediately replaced the screen or object after the maintenance is finished. It is appropriate to put the onus on the*

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<sup>10</sup> Explanatory notes, p 7.

<sup>11</sup> Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs Reversal of onus of proof*, p 10.

*defendant to establish this, as the defendant will know the purpose for which the screen or other object was removed.*

- *For section 25, it would be impracticable to require the prosecution to prove that the defendant had not taken all reasonable steps to comply with the requirements in section 24, as there will be multiple ways options available to the person to ensure that rats or mice are not harboured on the land, and that the land is not a breeding ground for rats and mice. It is appropriate to put the onus on the defendant to establish that reasonable steps have been taken as the defendant will have personal knowledge of the steps that have been taken.<sup>12</sup>*

#### **Committee comment**

The committee notes the justifications provided in the Explanatory Notes and the Department of Health's further advice in response to the committee's questions. Given the matters needed to be proved and the nature of the required evidence, the committee is satisfied that the reversal of the onus of proof in sections 17, 19, 24 and 25 of the regulation is justified.

#### **2.8.1.2 Subdelegation – paragraph 4(5)(e) Legislative Standards Act 1992**

Paragraph 4(5)(e) of the *Legislative Standards Act 1992* provides that subordinate legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act. Parliamentary portfolio committees have considered that this principle is infringed by subordinate legislation that authorises another person to decide the content of the subordinate legislation.<sup>13</sup>

A number of clauses warrant consideration.

**Clause 8** enables the chief executive to establish or approve administrative arrangements and training competencies under which a person may obtain a certificate for the safe removal of bonded asbestos - containing material.

**Clause 11** provides that reasonable measures to minimise the release of asbestos fibres includes using vacuum cleaning equipment that complies with the relevant Australian/New Zealand Standard to collect the asbestos fibres.

**Clause 28** deals with water risk management plans. It requires a laboratory carrying out testing for Legionella to be accredited as complying with ISO/IEC 17025 to carry out the test. Accreditation must be provided by the National Association of Testing Authorities Australia or another entity the chief executive is satisfied is appropriately qualified to accredit a laboratory as complying with ISO/IEC 17025.

**Clause 34** deals with infection control for health care facilities. The clause prescribes the health care facilities that are exempt from requiring an infection control management plan ('ICMP'). This includes health care facilities accredited against the *Standards for general practices* (the standard) developed by the Royal Australian College of General Practitioners and by an entity approved by the Australian Commission on Safety and Quality in Health Care to accredit the health care facilities against the Standards.

**Clause 38** provides that the process for vaccinating a child for a vaccine - preventable condition is for the child to receive all vaccinations for the condition recommended by the National Immunisation Program Schedule Queensland.

**Part 9** contains water quality provisions which make multiple references to the Australian Drinking Water Guidelines (ADWG) as published by the National Health and Medical Research Council (NHMRC), and parameters under those guidelines.

<sup>12</sup> Department of Health, Correspondence, 25 October 2018.

<sup>13</sup> Office of the Queensland Parliamentary Counsel, Principles of good legislation Subordinate legislation, p 18.

**Clause 60** deals with the paint standard and provides that the prescribed part of the Poisons Standard dealing with paint is part 2.

**Clause 62** allows the chief health officer to prescribe training for section 45G of the Act, in relation to the exercise of powers by authorised officers for asbestos-related events.

**Clause 63** prescribes requirements for the definition of human research ethics committee in the Act by reference to the National Statement on Ethical Conduct in Human Research 2007 published by the NHMRC.

The explanatory notes provide the following justifications regarding these provisions:

#### Asbestos provisions

In relation to the chief executive establishing or approving administrative arrangements and training competencies, the explanatory notes state:

*Providing discretion to decide if a person has the necessary training to obtain a certificate and to prescribe necessary training ensures the integrity of the industry and provides confidence to the community that only appropriately qualified persons are dealing with asbestos. It is not possible to prescribe every eligible training program, provider or arrangement in legislation...*

*Providing the chief executive and the chief health officer with discretion provides greater operational flexibility to keep pace with changing training modules or requirements. The courses approved by the chief executive under which a home renovator or member of the public may obtain a certificate for the safe removal of bonded ACM are published on the Queensland Government website. The training prescribed by the chief health officer for the exercise of powers by authorised officers for asbestos-related events are published on a dedicated local government website that authorised officers can access.<sup>14</sup>*

In relation to clause 11, which refers to using vacuum cleaning equipment that complies with the relevant Australian/NZ standard, the explanatory notes provide:

*Australian Standards are recognised and accepted industry standards and developed by technical experts with industry and government consultation. The standards are accredited by Standards Australia, which is the nationally recognised peak body for standards. The prescribed standard in clause 11 deals with vacuum cleaning equipment. It is technical and detailed in nature. It is appropriate to delegate this detail to the standard rather than set out the requirements for vacuum cleaning equipment in the 2018 Regulation.<sup>15</sup>*

#### Water risk management plans

The explanatory notes, when referring to the prescription of an external standard, ISO/IEC 17025, state:

*The ISO/IEC 17025 standard is published jointly by the International Organization for Standardization and the International Electrotechnical Commission. These bodies are internationally recognised peak bodies that develop and publish International Standards. These International Standards are developed by technical experts with input from government and industry organisations. The subdelegation to the Standard is justified as it is detailed and technical in nature and applies to a specialist area. The proposed approach ensures laboratories continually keep up with industry expectations and standards, removing the need to amend the 2018 Regulation each time a competency standard changes.<sup>16</sup>*

In relation to accrediting laboratories, the explanatory notes state:

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<sup>14</sup> Explanatory notes, p 3.

<sup>15</sup> Explanatory notes, p 4.

<sup>16</sup> Explanatory notes, p 4.

*It is not practical to prescribe a list of entities that are appropriately qualified to accredit laboratories. This would diminish the ability of the 2018 Regulation to keep pace with changes to approved entities, such as name changes and new entities. Allowing the chief executive discretion to decide if an entity has the qualifications to accredit a laboratory provides operational flexibility and removes the need to amend the 2018 Regulation each time an entity changes. Furthermore, the chief executive must be satisfied that an entity is appropriately qualified before it can be permitted to accredit a laboratory.<sup>17</sup>*

#### Infection control for health care facilities

The explanatory notes provide relevant background, including that the Australian Commission on Safety and Quality in Health Care is a corporate Commonwealth entity established under the *National Health Reform Act 2011* (Cth). The Commission grants approval to accrediting agencies wishing to accredit health care facilities to the Standards. The list of approved accrediting agencies is available on the Commission's website ([www.safetyandquality.gov.au](http://www.safetyandquality.gov.au)) and is updated periodically. The notes conclude that:

*[P]rescribing specific accrediting entities in the 2018 Regulation will mean it is not able to keep pace with changes to approved entities, such as name changes and new entities being approved by the Commission. The proposed approach provides an easily accessible and up to date list of entities through the Commission's website. It removes the need to amend the 2018 Regulation each time the list changes, while ensuring that all prescribed entities meet the requirements set by the Commission.<sup>18</sup>*

#### Requirement for vaccination

The explanatory notes state:

*The National Immunisation Program Schedule Queensland is technical in nature and readily accessible to the public through the Queensland Health website ([www.health.qld.gov.au](http://www.health.qld.gov.au)). It is updated periodically as new information or best practice guidelines are developed and new vaccines are included/funded under the National Immunisation Program or state programs. Referring to the Schedule ensures the 2018 Regulation does not need to be updated each time the Schedule is modified.<sup>19</sup>*

#### Paint standard

According to the explanatory notes:

*The Poisons Standard is a legislative instrument for the purposes of the Legislative Instruments Act 2003 (Cth). Part 2 of the Poisons Standard sets out matters of technical detail for the control of medicines and poisons, such as requirements for labelling, storage and record keeping. As the Poisons Standard is updated regularly and contains matters of detail, it is appropriate to reference it in the 2018 Regulation rather than prescribing these matters.<sup>20</sup>*

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<sup>17</sup> Explanatory notes, p 4.

<sup>18</sup> Explanatory notes, p 5.

<sup>19</sup> Explanatory notes, p 5.

<sup>20</sup> Explanatory notes, p 6.

## Human research ethics committee

The explanatory notes record:

*The National Statement consists of series of guidelines made in accordance with the National Health and Medical Research Council Act 1992 (Cth) and is subject to 'rolling review'. It is therefore more appropriate to reference the National Statement in the 2018 Regulation rather than prescribing all its requirements in the regulation itself. The document is available on the NHMRC website, granting users easy access to the latest version at any time.*<sup>21</sup>

### **Request for advice**

The committee requested the Department of Health to explain:

- why it considers the subdelegations of power (clauses 8, 11, 28, 34, 38, 60, 62, and 63) to be appropriate and justified in the circumstances
- in relation to cl 8(2) whether it will make publicly available the details of the training arrangements approved by the chief executive
- whether copies of the Australian Standard AS/NZS 60335.2.69 referenced in cl 11 to specify the standard of vacuum cleaning equipment for asbestos removal readily and freely available to businesses, workers and consumers
- in regard to cl 28, whether it will publicise the entities the chief executive is satisfied are appropriately qualified to accredit a laboratory as complying with ISO/IEC 17025
- in regard to cl 62, whether it will make publicly available the details of the training approved by the chief executive, and
- given that the matters sub-delegated by the regulation are not subject to disallowance by the Legislative Assembly, how the regulation has sufficient regard to the Institution of Parliament.

### **Departmental advice**

In response to the committee's request for advice, the Department of Health advised:

*Sections 8, 11, 28, 34, 38, 60, 62 and 63 may be seen to breach the principle that subordinate legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act (section 4(5)(e) of the Legislative Standards Act 1992).*

*The Department considers the subdelegation is appropriate and justified in the circumstances for the reasons set out below. The Committee's specific questions about sections are also addressed below.*

#### Section 8

*Additional question: In relation to cl 8(2) will the department make publicly available the details of the training arrangements approved by the chief executive?*

*Section 8 of the 2018 Regulation enables the chief executive to establish or approve administrative arrangements and training competencies under which a person may obtain a certificate for the safe removal of bonded asbestos containing material in a non-work context. Section 8 of the 2018 Regulation replicates section 2E of the repealed Public Health Regulation 2005 (the 2005 Regulation).*

*Section 8 requires that a person in a non-work place area, for example, a home owner working on their own home, must hold the appropriate certificate to perform the removal of the bonded asbestos. The chief executive may establish a training course, or approve a training course*

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<sup>21</sup> Explanatory notes, p 6.

*conducted by an external provider. The homeowner must be able to produce a statement of attainment if requested by an authorised officer under the Act.*

*Along with comprehensive resources on asbestos, detail of the approved courses is published on the Queensland Government website:*

<http://www.deir.qld.gov.au/asbestos/removal/homeowners-certificate-to-remove-asbestos.htm>.

*A link to this website is also provided on the Queensland Health website:*

<https://www.health.qld.gov.au/public-health/industry-environment/environment-land-water/asbestos>.

*The names of training courses will change from time to time and new providers may be identified. It is therefore considered appropriate and justified to sub-delegate the power to determine appropriate training courses to the chief executive, as this ensures the list of approved courses can be kept current. Ensuring the list of approved training courses can be updated helps to provide the community with confidence that only appropriately qualified persons are dealing with asbestos.*

### Section 11

*Additional question: Are copies of the Australian Standard AS/NZS 60335.2.69 referenced in cl 11 to specify the standard of vacuum cleaning equipment for asbestos removal readily and freely available to businesses, workers and consumers?*

*Section 11 of the 2018 Regulation provides a number of ways that a person may minimise the release of asbestos fibres. Section 11 of the 2018 Regulation replicates section 2H of the 2005 Regulation.*

*One of the reasonable measures to remove asbestos fibres includes using vacuum cleaning equipment that complies with the relevant Australian/New Zealand Standard to collect the asbestos fibres. If a homeowner elects to utilise a vacuum cleaner, the vacuum cleaner must comply with the Australian/New Zealand Standard 60335.2.69.*

*The Australian/New Zealand Standard AS/NZS 60335.2.69 can be sourced and purchased online ([https://infostore.saiglobal.com/en-au/standards/as-nzs-60335-2-69-2017-99410\\_SAIG\\_AS\\_AS\\_209001/](https://infostore.saiglobal.com/en-au/standards/as-nzs-60335-2-69-2017-99410_SAIG_AS_AS_209001/)). However, a vacuum cleaner's compliance with the standard will also be labelled on the vacuum cleaner packaging. In addition, commercial suppliers can advise a homeowner who wishes to purchase or rent a vacuum cleaner whether the equipment complies with the standard. These vacuum cleaners may be used for other hazardous materials, for example lead contamination.*

*The prescribed standard in section 11 is technical and detailed in nature. It is appropriate to delegate this detail to the standard rather than set out the requirements for vacuum cleaning equipment in the 2018 Regulation. This also ensures the requirements for vacuum cleaning equipment remains current, without requiring amendments to the 2018 Regulation.*

*In addition, the 2018 Regulation provide a number of other options that homeowners may use, including spraying water, using PVA glue and wearing personal protective equipment.*

### Section 28

*Additional question: In regard to cl 28 will the department publicise the entities the chief executive is satisfied are appropriately qualified to accredit a laboratory as complying with ISO/IEC 17025?*

*Section 28 of the 2018 Regulation requires a laboratory carrying out testing for Legionella to be accredited as complying with ISO/IEC 17025 to carry out the test. Accreditation must be provided by the National Association of Testing Authorities Australia or another entity the chief executive is satisfied is appropriately qualified to accredit a laboratory as complying with ISO/IEC 17025. Section 28 of the 2018 Regulation replicates section 2Y of the 2005 Regulation.*

*The ISO/IEC 17025 standard is published jointly by the International Organization for Standardization and the International Electrotechnical Commission. These bodies are internationally recognised peak bodies that develop and publish International Standards. International Standards are developed by technical experts with input from government and industry organisations.*

*ISO/IEC 17025 contains the general requirements for the competence of testing and calibration laboratories. The subdelegation to the Standard is considered justified as the Standard is detailed and technical in nature and applies to a specialist area. The general requirements for the competence of testing and calibration laboratories change quite regularly. The subdelegation is therefore considered appropriate as it ensures laboratories continually keep up with industry expectations and standards, removing the need to amend the 2018 Regulation each time a competency standard changes.*

*It is also considered impractical to prescribe in the regulation the names of other entities that are appropriately qualified to accredit laboratories, as the detail of approved entities will change over time. Allowing the chief executive to decide if an entity has the qualifications to accredit a laboratory provides operational flexibility and removes the need to amend the 2018 Regulation each time an entity changes. The chief executive must be satisfied that an entity is appropriately qualified before it can be permitted to accredit a laboratory.*

*The chief executive has not currently approved any other entities as appropriately qualified to accredit a laboratory under section 28 of the 2018 Regulation. If the chief executive decides to approve other entities, the department will publish the details of the accrediting entity on the Queensland Health website along with the details of National Association of Testing Authorities.*

#### Section 34

*Section 34 of the 2018 Regulation prescribes the health care facilities that are exempt from requiring an Infection Control Management Plan. This includes health care facilities accredited against the Standards for general practices (the Standards) developed by the Royal Australian College of General Practitioners (RACGP) and by an entity approved by the Australian Commission on Safety and Quality in Health Care (the Commission) to accredit health care facilities against the Standards.*

*Accreditation entities were named in the 2005 Regulation. However, the provision was often out of date as the approved accreditation entities changed. The approach taken in the 2018 Regulation is considered justified as it ensures the list of accreditation entities remains current.*

*The Commission is a corporate Commonwealth entity established under the National Health Reform Act 2011 (Cwlth). The Commission grants approval to accrediting agencies wishing to accredit health care facilities to the Standards. The list of approved accrediting agencies is available on the Commission's website ([www.safetyandquality.gov.au](http://www.safetyandquality.gov.au)) and is updated periodically. This means the list of approved accrediting agencies is easily accessible to health care facilities and the public.*

*The Standards were developed over a three year period, in consultation with general practitioners, practice managers, nurses, consumers and other stakeholders, with the purpose of protecting patients from harm by improving the quality and safety of health services. The Standards support general practices in identifying and addressing any gaps in their systems and processes. The Standards are available online (<https://www.racgp.org.au/running-a-practice/practice-standards/standards-4th-edition>). Where health care facilities are accredited against the Standards, it is appropriate to provide an exemption from the requirement of an Infection Control Management Plan as these facilities will be required to provide a high level of safe care in order to maintain their accreditation.*

#### Section 38

*Section 38 of the 2018 Regulation provides that the way for vaccinating a child for a vaccine preventable condition is for the child to receive all vaccinations for the condition recommended*

*in the National Immunisation Program Schedule Queensland. Section 38 of the 2018 Regulation replicates section 12C of the 2005 Regulation.*

*The National Immunisation Program Schedule Queensland is technical in nature and easily accessible to the public through the Queensland Health website ([www.health.qld.gov.au](http://www.health.qld.gov.au)). It is updated periodically as new information or best practice guidelines are developed and new vaccines are included/funded under the National Immunisation Program or state programs. The National Immunisation Program Schedule is required to be a flexible document to account for emerging evidence, availability of vaccines and outbreaks of Vaccine Preventable Diseases. For example, there have been seven changes to the National Immunisation Program Schedule since February 2016. Referring to the Schedule ensures the 2018 Regulation does not need to be updated each time the Schedule is modified.*

#### Section 60

*Section 60 of the 2018 Regulation provides that part 2 of the Standard for the Uniform Scheduling of Medicines and Poisons (Poisons Standard) deals with paint. Section 60 of the 2018 regulation replicates section 18A of the 2005 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. As a legislative instrument, the Poisons Standard is published on the Federal Register of Legislation (<https://www.legislation.gov.au/>). Medicines and poisons are classified into Schedules according to the level of regulatory control over the availability of the medicine or poison required to protect public health and safety. The Poisons Standard is regularly reviewed, and updated approximately three times per year following extensive committee meetings and decision-making processes regarding classification.*

*Part 2 of the Poisons Standard sets out matters of technical detail for the control of medicines and poisons, such as requirements for labelling, storage and record keeping. As the Poisons Standard is updated regularly and contains matters of detail, it is appropriate to reference it in the 2018 Regulation rather than prescribing these matters.*

#### Section 62

*Additional question: In regard to cl 62, will the department make publicly available the details of the training approved by the chief executive?*

*Section 62 of the 2018 Regulation allows the chief health officer to prescribe training for section 454G of the Act, in relation to the exercise of powers by authorised officers for asbestos-related events. Section 62 of the 2018 Regulation replicates section 20A of the 2005 Regulation.*

*Local government officers engaged in the safe removal of asbestos to remove a public health risk are the only persons who need to undertake prescribed training for indemnity conditions. The training details are therefore not publicly available but detail of the prescribed training is accessible on local government intranet sites, hard copy and at the face to face training seminars attended by local government officers carrying out asbestos removal.*

*The Regulation provides criteria for the training that may be approved by the chief health officer, but enables the detail of the training to be determined by the chief health officer. AS noted for section 8, the detail of prescribed training will change from time to time and new providers may be identified. It is therefore considered appropriate and justified to sub-delegate the power to determine appropriate training courses to the chief health officer, as this ensures the list of prescribed training can be kept current.*

#### Section 63

*Section 63 of the 2018 Regulation prescribes requirements for the definition of 'human research ethics committee' in the Act by reference to the National Statement on Ethical Conduct in Human Research 2007 published by the National Health and Medical Research Council (National Statement). Section 63 of the 2018 Regulation replicates section 20 of the 2005 Regulation.*

*The National Statement consists of a series of guidelines made in accordance with the National Health and Medical Research Council Act 1992 (Cwlth) and is subject to 'rolling review'. It is therefore considered appropriate to reference the National Statement in the 2018 Regulation rather than prescribing all its requirements in the Regulation. The document is available on the National Health and Medical Research Council website, ensuring the public has access to the latest version at any time.<sup>22</sup>*

#### **Committee comment**

The committee notes the justifications provided in the Explanatory Notes and the Department of Health's further advice. The committee is satisfied that the various subdelegations of power are appropriate in the circumstances and that sufficient regard has been given to the Institution of Parliament.

#### **2.8.2 Explanatory notes**

The explanatory notes for the Public Health Regulation 2018 comply with part 4 of the *Legislative Standards Act 1992*.

### **3 Committee consideration of the subordinate legislation**

The committee has examined the policy to be given effect by the subordinate legislation and its lawfulness.

The committee identified inconsistencies with fundamental legislative principles (FLPs) in relation to the Public Health Regulation 2018. Specifically, these inconsistencies were with paragraphs 4(3)(d) (reversal of onus of proof) and 4(5)(e) (sub-delegation) of the *Legislative Standards Act 1992*. The committee considered the justification for the inconsistencies with FLPs provided in the explanatory notes and further advice provided by the Department of Health. The committee is satisfied that the reversal of onus of proof is justified, the sub-delegations of power are appropriate in the circumstances and that sufficient regard has been given to the Institution of Parliament.

The explanatory notes tabled with all of the regulations and proclamations examined comply with part 4 of the *Legislative Standards Act 1992*.

### **4 Recommendation**

The committee recommends that the House notes this report.



Aaron Harper MP

**Chair**

**October 2018**

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

Chair

Deputy Chair

Members

Mr Aaron Harper MP, Member for Thuringowa

Mr Mark McArdle MP, Member for Caloundra

Mr Michael Berkman MP, Member for Maiwar

Mr Marty Hunt MP, Member for Nicklin

Mr Barry O'Rourke MP, Member for Rockhampton

Ms Joan Pease MP, Member for Lytton

<sup>22</sup> Department of Health, Correspondence, 25 October 2018.