

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

### Report No. 16, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 22 August and 4 September 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 22 August and 4 September 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*.<sup>1</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
129	Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2018	4 September 2018	15 November 2018
133	Public Health (Medicinal Cannabis) and Other Legislation Amendment Regulation 2018	4 September 2018	15 November 2018

##### 2.1 Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2018

The objective of the Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2018 is to postpone by a year the automatic commencement of un-commenced provisions of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017* (‘the Amendment Act’).<sup>2</sup>

Section 15DA of the *Acts Interpretation Act 1954* provides that if a law has not commenced within one year of its assent, it automatically commences on the next day. As the Amendment Act received assent on 13 September 2017, the un-commenced provisions of the Amendment Act would have automatically commenced on 14 September 2018.<sup>3</sup>

The un-commenced provisions cannot commence until after the Council of Australian Government (COAG) Health Council has made the National Law Regulation 2018.

The regulation will expire on 15 September 2019.

##### Request for advice

In considering the policy implications of the regulation, the committee requested the Department of Health (the department) to advise:

<sup>1</sup> All Acts discussed in this report are Queensland Acts.

<sup>2</sup> Explanatory notes, p 1.

<sup>3</sup> Explanatory notes, p 1.

- which un-commenced provisions of the Amendment Act (the Health Practitioner Regulation National Law and Other Legislation Amendment Act 2017) had their commencement delayed by the regulation, and whether the delay in their commencement impact adversely on health outcomes
- how the regulation impacts on the commencement date for the registration of paramedics
- the reasons for the apparent delay in the making of the National Law Regulation 2018 by the COAG Health Council, and
- when the department expects the COAG Health Council to meet to make the National Law Regulation 2018.

### Departmental advice

The department advised that the National Law Regulation was made by the COAG Health Council on 12 October 2018 and takes effect on 1 December 2018. As a result the department is arranging commencement of the remaining provisions of the Amendment Act, and expects that a proclamation commencing these provisions on 1 December 2018 will be considered before the end of November 2018.<sup>4</sup>

In response to the points raised by the committee for advice, the department provided the following responses:

***Which uncommenced provisions of the Amendment Act had their commencement delayed by the regulation, and will the delay in their commencement impact adversely on health outcomes?***

*The Amendment Act is being implemented and commenced in stages. Some provisions of the Act commenced on assent and 28 days after assent. Two proclamations were also made commencing significant parts of the Act on 1 March 2018 and 1 August 2018.*

*The provisions of the Act affected by the Postponement Regulation are sections 4(2), 4(4), 4(6)—(7), 5-7, 13-15, 27, 30(2)—(3), 31, 40-42, 44-49, 51, 52 (to the extent it inserts sections 320 and 322-323), 53-54, 57(1)—(3), 78, pts 4-5 and schedule 1.*

*These provisions relate to:*

- *the registration of paramedics;*
- *specifying national boards in a regulation;*
- *amendments to recognise nursing and midwifery as separate health professions; and*
- *amendments about the application of the Australian Information Commissioner Act 2010 (Cwlth) to the Health Practitioner Regulation National Law.*

*All of these provisions are planned to commence on 1 December 2018 to coincide with related provisions in the National Law Regulation, which will also commence on 1 December 2018.*

*Sections 78(1) and (3) of the Amendment Act are planned to commence on 1 April 2019. Sections 78(1) and (3) are consequential amendments to the Health Ombudsman Act 2013 to provide for separate panels of assessors for the professions of 'nursing' and 'midwifery' to assist the Queensland Civil and Administrative Tribunal (QCAT) in disciplinary proceedings. These amendments are planned to commence on 1 April 2019 to allow sufficient time to appoint assessors to the newly established separate panels of assessors established by the Amendment Act. The Health Ombudsman Act sets out the process for appointing panels of assessors, including requirements for public advertising for nominations and for appointments to be approved through formal Cabinet and Governor in Council processes. In the interim, QCAT can*

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<sup>4</sup> Department of Health, Correspondence, 2 November 2018.

*continue to be assisted by assessors from the joint nursing and midwifery panel of assessors that is already in existence.*

*There are no impacts on health outcomes as a result of the Postponement Regulation. All of these provisions are administrative in nature, apart from the commencement of registration of paramedics, which is discussed in more detail below.*

***How will the regulation impact on the commencement date for the registration of paramedics?***

*The Postponement Regulation does not impact the commencement date for the registration of paramedics.*

*Section 41 of the National Law Regulation prescribes the 'participation day' for registration of paramedics as 1 December 2018. The commencement date was chosen to coincide with the annual registration period for other registered health professions and to provide paramedics with sufficient lead in time to lodge their applications for registration. The commencement date of 1 December 2018 was agreed by Health Ministers at COAG Health Council based on advice from the Paramedicine Board of Australia and the Australian Health Practitioner Regulation Agency.*

***What are the reasons for the apparent delay in the making of the National Law Regulation 2018 by the COAG Health Council?***

*The National Law Regulation was made on 12 October 2018, less than 13 months after assent of the Amendment Act. It was also made less than six months after assent of the Health Practitioner Regulation National Law (WA) Amendment Act 2018 of Western Australia, which was also necessary to provide the head of power for some provisions in the National Law Regulation. Given the complexities of the processes for making a regulation under national scheme legislation and implementation across jurisdictions, it is not unusual to require more than a year for commencement. The processes for making a regulation under national scheme legislation are significantly longer and more complex than the processes for making subordinate legislation in Queensland. The processes require additional time for inter-jurisdictional consultation and to obtain approvals from national decision-making bodies, including COAG Health Council and Australian Health Ministers' Advisory Council.*

***When does the department expect the COAG Health Council to meet to make the National Law Regulation 2018?***

*As stated above, COAG Health Council made the National Law Regulation on 12 October 2018. The provisions of the regulation commence on 1 December 2018.<sup>5</sup>*

**Committee comment**

The committee notes the Department of Health's advice that there are no adverse health outcomes as a result of the Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2018. The committee notes that the provisions are administrative in nature, and the COAG Health Council has now made the National Law Regulation. The delay in the making of the National Law Regulation led to the making of the regulation.

The committee further notes that the commencement date for the registration of paramedics with a 'participation day' of 1 December 2018 is not affected by the regulation.

**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*.

<sup>5</sup> Department of Health, Correspondence, 2 November 2018.

## **2.2 Public Health (Medicinal Cannabis) and Other Legislation Amendment Regulation 2018**

The objectives of the Public Health (Medicinal Cannabis) and Other Legislation Amendment Regulation 2018 are to:

- streamline the regulatory framework established by the *Public Health (Medicinal Cannabis) Act 2016* ('the Act')
- expand patient access to medicinal cannabis, including nabiximols<sup>6</sup>
- reduce regulatory reporting for pharmacists and medical practitioners, and
- remove unnecessary information requirements.

There are two pathways under the Act for a patient to receive treatment with medicinal cannabis:

- single-patient prescriber pathway – a medical practitioner who believes their patient may benefit from treatment with medicinal cannabis may apply to the chief executive of Queensland health for an approval to prescribe the product for the patient, and
- patient-class prescriber pathway – the Public Health (Medicinal Cannabis) Regulation 2017 (the Medicinal Cannabis Regulation) provides for a class of specialist doctors who have an as-of-right authority to prescribe specific medicinal cannabis products for patients with particular conditions, without the need for any additional chief executive approval.<sup>7</sup>

The Medicinal Cannabis Regulation provides that specialists in the fields of oncology, palliative medicine, neurology, paediatrics and haematology are specialist medical practitioners who may prescribe medicinal cannabis as a patient-class prescriber.

The approval processes under the Commonwealth Special Access Scheme and Queensland's single-patient prescriber pathway are duplicative. The regulation aims to extend the less onerous patient-class prescriber pathway to all specialist medical practitioners.

The regulation also extends the patient-class prescriber pathway to include persons suffering chronic non-cancer pain. Current classes of patients that may be prescribed medicinal cannabis in this pathway are those experiencing chemotherapy induced nausea, terminally ill persons undergoing palliative care, children with intractable epilepsy, and persons with multiple sclerosis experiencing muscle spasticity.

Further, the regulation aims to expand patient access to nabiximols, which is used in treating patients experiencing muscle spasticity from multiple sclerosis.

### **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*.

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<sup>6</sup> Nabiximols (Sativex®) is a pharmaceutical cannabis product approved by the Therapeutic Goods Administration for treating spasticity due to multiple sclerosis.

<sup>7</sup> Explanatory notes, p 2.

### 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 thanks the Department of Health for clarifying the circumstances and impacts associated with the Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2018.

The committee identified no inconsistencies with fundamental legislative principles (FLPs) in relation to the regulations examined.

The explanatory notes tabled with the regulations 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**

**November 2018**

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

Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Mark McArdle MP, Member for Caloundra
Members	Mr Michael Berkman MP, Member for Maiwar
	Mr Marty Hunt MP, Member for Nicklin
	Mr Barry O'Rourke MP, Member for Rockhampton
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