

Health and Community Services Committee

Report on Subordinate Legislation tabled between 30 October and 30 November 2012

Report No. 16

The Health and Community Services Committee is responsible for examining subordinate legislation within its portfolio areas and considering the policy to be given effect, the application of fundamental legislative principles and the lawfulness of the subordinate legislation (s.93(1) *Parliament of Queensland Act 2001*). The committee's responsibility also includes monitoring the operation of the *Statutory Instruments Act 1992* as it relates to subordinate legislation. The committee reports to the Legislative Assembly on all subordinate legislation which it considers.

Recommendation

The committee recommends that the Legislative Assembly notes this report and the committee's conclusion that the subordinate legislation considered does not raise any significant issues regarding the application of fundamental legislative principles.

Subordinate legislation examined

The committee has considered the following subordinate legislation tabled in October and November 2012.

SL No.	Name of Subordinate Legislation	Date for disallowance
SL 189	Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2012	07/03/2013
SL 207	Health Legislation Amendment (Postponement) Regulation 2012	18/04/2013
SL 208	Health Legislation Amendment Regulation (No.2) 2012	18/04/2013

Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2012

The *Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2012* (the Regulation) amends the current regulation to allow communication and other uses to be permitted in identified national parks. The Regulation permits communications use in nine national parks, and electricity distribution in three of those nine parks. The national parks are Herberton Range National Park, Tamborine National Park, Conway National Park, Littabella National Park, Ngalba Bulal National Park, Girringun National Park, Bulburin National Park, Woowoonga National Park and Main Range National Park. The Regulation also permits the operation and maintenance of an airstrip, a sewage treatment plant and a tramway in Brampton Island National Park.

The committee did not identify any issues regarding consistency with fundamental legislative principles or the lawfulness of the Regulation.

Health Legislation Amendment (Postponement) Regulation 2012

The *Health Legislation Amendment (Postponement) Regulation 2012* (the Regulation) postpones the commencement of provisions of the *Health Legislation Amendment Act 2011*, which amend the *Food Act 2006* and the *Tobacco and Other Smoking Products Act 1998* until 25 November 2013. The commencement of the *Food Act 2006* amendments are postponed to ensure there is a consistent national framework for the local government food business rating scheme.

The amendments to the *Tobacco and Other Smoking Products Act 1998* are postponed to resolve issues regarding the scope of the ban on the sale of food or toys that resemble tobacco products.

The committee did not identify any issues regarding consistency with fundamental legislative principles or the lawfulness of the Regulation.

Health Legislation Amendment Regulation (No.2) 2012

The *Health Legislation Amendment Regulation (No.2) 2012* (the Regulation) makes consequential amendments to the *Food Regulation 2006*, *Health (Drugs and Poisons) Regulation 1996* and the *Public Health Regulation 2005*, in light of the *Health Legislation Amendment Act 2011*. The Regulation also corrects minor typographical, grammatical, punctuation and formatting errors in the above regulations.

The committee did not identify any fundamental legislative principles issues with the amendments to *Food Regulation 2006* and *Health (Drugs and Poisons) Regulation 1996*. The committee did, however, identify the following potential fundamental legislative principle issues with the amendments to the *Public Health Regulation 2005*.

The committee considered whether the use of the term “the National Immunisation Program Schedule published, from time to time, by the Department of Health and Ageing” has sufficient regard to the institution of Parliament by delegating law-making power to an ‘outside body’. The committee concluded that the delegation is acceptable in the circumstances, due to practical considerations, including the technical nature of the schedule, its public availability and the need for the schedule to be updated periodically to in light of best practice, new guidelines and new vaccinations.

The committee considered whether the drafting of section 24, which deals with the “prescribed period” (i.e. when children must not attend school, education or child care) for contagious conditions and vaccine preventable conditions, is unambiguous and is sufficiently clear. The committee concluded that the drafting may not be readily understood by readers, for instance, parents and teachers. Given the seriousness of this issue, the committee highlights the important role for Queensland Health to clearly communicate information about contagious and vaccine preventable conditions.

The committee also considered whether section 24 constitutes an appropriate delegation of power. Section 24 provides that the “prescribed period” for certain conditions, for example, Hepatitis A, typhoid and measles, is decided by the chief executive. This power is often delegated to the chief health officer, senior qualified staff in Queensland Health and Public Health Officers. The committee concluded that given the need for a quick response to contagious diseases and for local factors to be considered, there are practical arguments for the delegation of this power.

Statutory Instruments Regulation 2012

The committee also considered the *Statutory Instruments Regulation 2012* which extends the expiry date of a number of pieces of subordinate legislation to 31 August 2013. The committee did not identify any concerns with the extension of the expiry dates of the following pieces of subordinate legislation which fall within its portfolio:

Dental Technicians Registration Regulation 2002
Health (Drugs and Poisons) Regulation 1996
Health Regulation 1996
Major Sports Facilities Regulation 2002
Mental Health Regulation 2002
Mt Gravatt Showgrounds By-Law 2001
Private Health Facilities Regulation 2000
Private Health Facilities (Standards) Notice 2000
Speech Pathologists Registration Regulation 2001

Health and Community Services Committee

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