

**Subordinate legislation tabled between
7 May 2014 and 26 August 2014**

Report No. 57

Health and Community Services Committee

October 2014

Health and Community Services Committee

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| Deputy Chair | Mrs Jo-Ann Miller MP, Member for Bundamba |
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1 Introduction

1.1 Role of the committee

The Health and Community Services Committee is responsible for examining subordinate legislation within its portfolio areas and considering the policy effect, the application of fundamental legislative principles, and the lawfulness of the subordinate legislation (section 93(1) of the *Parliament of Queensland Act 2001*).

The committee's responsibilities include 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 it has considered.

1.2 Aim of this report

This report summarises the committee's examination of subordinate legislation tabled between 7 May 2014 and 26 August 2014. It reports on fundamental legislative principle issues identified by the committee.

2 Subordinate legislation examined

| SL No. | Name of subordinate legislation | Date for disallowance |
|--------|---|-----------------------|
| SL 81 | Health Legislation Amendment Regulation (No. 2) 2014 | 30 October 2014 |
| SL 83 | Commission for Children and Young People and Child Guardian Amendment Regulation (No. 1) 2014 | 30 October 2014 |
| SL 84 | Private Health Facilities (Standards) Amendment Notice (No. 1) 2014 | 30 October 2014 |
| SL 95 | Proclamation made under the <i>Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014</i> | 30 October 2014 |
| SL 96 | Proclamation made under the <i>Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014</i> | 30 October 2014 |
| SL 97 | Disability Services and Other Legislation Amendment Regulation (No. 1) 2014 | 30 October 2014 |
| SL 99 | Hospital and Health Boards Amendment Regulation (No. 2) 2014 | 30 October 2014 |
| SL 119 | National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No. 1) 2014 | 30 October 2014 |
| SL 124 | Health Ombudsman Regulation 2014 | 30 October 2014 |
| SL 139 | Forestry (State Forests) Amendment Regulation (No. 1) 2014 | 30 October 2014 |
| SL 152 | Major Sports Facilities Regulation 2014 | 30 October 2014 |
| SL 153 | Aboriginal Land Amendment Regulation (No.4) 2014 | 30 October 2014 |
| SL 157 | Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2014 | 30 October 2014 |
| SL 172 | Family Responsibilities Commission Amendment Regulation (No. 1) 2014 | 27 November 2014 |

3 Aboriginal and Torres Strait Islander and Multicultural Affairs

3.1 SL 153 – Aboriginal Land Amendment Regulation (No.4) 2014

The Aboriginal Land Amendment Regulation (No.4) 2014 amends the Aboriginal Land Regulation 2011 to declare the area of available State land at Lot 4579 on SP252529, County of Warner, parishes of Kalinga, Mulkay, Purre and Yacon (known as Mary Valley, approximately 390 km north-west from Cairns) as transferable land. The declaration of the land as transferable land allows for the grant of inalienable freehold title to the relevant Aboriginal people under the *Aboriginal Land Act 1991*.

The committee did not identify any fundamental legislative principles issues.

3.2 SL 172 – Family Responsibilities Commission Amendment Regulation (No. 1) 2014

The Family Responsibilities Commission Amendment Regulation (No. 1) 2014 amends the Family Responsibilities Commission Regulation 2008 to prescribe the local government area of the Doomadgee Aboriginal Shire Council as a welfare reform community area. The effect of the Amendment Regulation is to provide that Doomadgee falls within the remit of the Family Responsibilities Commission (the FRC).

The FRC is a statutory body established under the *Family Responsibilities Commission Act 2008* to:

- support the restoration of socially responsible standards of behaviour and local authority in *welfare reform community areas*, and
- help people in *welfare reform community areas* to resume primary responsibility for the wellbeing of their community and the individuals and families of the community.¹

The FRC's core objectives include safeguarding and restoring child safety, school attendance, lawful behaviour, and responsible tenancy.²

The committee considered whether the Amendment Regulation has sufficient regard to section 4(2)(a) of the *Legislative Standards Act 1992* (LSA) – rights and liberties of individuals and the requirement to observe Aboriginal tradition and Island custom at section 4(3)(j) of the LSA.

The committee considers that, on balance, the Amendment Regulation has sufficient regard to the fundamental legislative principles. In reaching this view, the committee had regard to the consultation undertaken with the community and stakeholders in Doomadgee prior to the making of the Amendment Regulation and the appointment of community members as local commissioners of the FRC.

4 Communities, Child Safety and Disability Services

4.1 SL 83 – Commission for Children and Young People and Child Guardian Amendment Regulation (No. 1) 2014

The Commission for Children and Young People and Child Guardian Amendment Regulation (No. 1) 2014 amends the Commission for Children and Young People and Child Guardian Regulation 2011 to increase prescribed application fees on 1 July 2014, in line with the Government endorsed indexation rate of 3.5 per cent.

The committee did not identify any fundamental legislative principles issues.

1 *Family Responsibilities Commission Act 2008*, s.4

2 Family Responsibilities Commission (FRC), *Family Responsibilities Commission*, <http://www.frcq.org.au>

4.2 SL 95 – Proclamation made under the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*

The Proclamation commenced, on 1 July 2014, all sections of the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*.

The *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014* amends the *Community Services Act 2007*, so that it may be used for a broader range of government funding; repeals parts of the *Disability Services Act 2006* that duplicate provisions of the *Community Services Act 2007*; and repeals the *Family Services Act 1987*.

The committee did not identify any fundamental legislative principles issues.

4.3 SL 96 – Proclamation made under the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014*

The Proclamation commenced, on 1 July 2014, the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014*.

The *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014* amends the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* in relation to the use of restrictive practices by service providers that receive Queensland Government funding.

The committee did not identify any fundamental legislative principles issues.

4.4 SL 97 – Disability Services and Other Legislation Amendment Regulation (No. 1) 2014

The Disability Services and Other Legislation Amendment Regulation (No. 1) 2014:

- amends various regulations as a consequence of the enactment of the *Communities Legislation (Funding Red Tape Reduction) Amendment Act 2014*, and
- indexes fees prescribed under the Disability Services Regulation 2006 and the Adoption Regulation 2009, in line with the Government endorsed indexation rate of 3.5 per cent.

The committee did not identify any fundamental legislative principles issues.

5 Health

5.1 SL 81 – Health Legislation Amendment Regulation (No. 2) 2014

The Health Legislation Amendment Regulation (No. 2) 2014:

- permits podiatrists to prescribe scheduled medicines under the Health (Drugs and Poisons) Regulation 1996, and to request plain film diagnostic images under the Radiation Safety Regulation 2010
- amends the Radiation Safety Regulation 2010 to authorise physiotherapists to request plain film diagnostic images, and
- makes other operational amendments to the Health (Drugs and Poisons) Regulation 1996.

The committee did not identify any significant fundamental legislative principles issues.

5.2 SL 84 – Private Health Facilities (Standards) Amendment Notice (No. 1) 2014

Section 12 of the *Private Health Facilities Act 1999* provides that the Chief Health Officer may make standards for the protection of health and wellbeing of patients receiving health services at private health facilities. A standard has no effect unless the Minister notifies the making of the standard.

The Private Health Facilities (Standards) Amendment Notice (No. 1) 2014 amends the Private Health Facilities (Standards) Notice 2000 to notify the making of the Physical Environment Standard (version 4) (the Standard), on 23 April 2014. The Standard applies to licensed private health facilities in Queensland.

The Standard implements a recommendation in the Chief Health Officer's report, *Review of the prevention and control of Legionella pneumophila infection in Queensland*, that public and private health facilities develop and implement a detailed water quality risk management plan.

The Standard requires all private health facilities to have a water quality risk management plan in place, to ensure microbial safety in the facility.

The committee did not identify any fundamental legislative principles issues.

5.3 SL 99 – Hospital and Health Boards Amendment Regulation (No. 2) 2014

The *Hospital and Health Boards Act 2011* provides for the establishment of Hospital and Health Services (HHSs), which are statutory bodies and the principal providers of public sector health services in Queensland. The 16 HHSs and the health service areas they are responsible for are prescribed under the Hospital and Health Boards Regulation 2012.

The Hospital and Health Boards Amendment Regulation (No. 2) 2014 amends the Hospital and Health Boards Regulation 2012 to:

- transfer the employment function from the Department of Health (the department) to prescribed HHSs, to enable those HHSs to manage all existing staff, and any future staff, working in or for the HHS
- enable results of criminal history checks and other personal employee information to be transferred from the department to an HHS and between HHSs when staff transfer or move between those entities
- enable HHSs to take leases of land or buildings, to prescribed delegation limits, without the prior written approval of the Minister for Health and the Treasurer, and
- enable disclosure, without breaching a statutory duty of confidentiality, of patient-identifying information to the Australian Orthopaedic Association (AOA) and the Electronic Donor Record (EDR) Agreement to achieve better outcomes and facilitate future resourcing planning for joint replacement services and tissue donation processes.

5.3.1 Rights and liberties of individuals – privacy issues

The committee considered whether the amendments providing for the disclosure of confidential information about employees to HHSs and patient-identifying information to the AOA and the EDR Agreement have sufficient regard to the rights and liberties of individuals (section 4(2)(a) of the *Legislative Standards Act 1992* (LSA)).

The committee wrote to the Hon. Lawrence Springborg MP, Minister for Health, to seek advice on how the Amendment Regulation had sufficient regard to section 4(2)(a) of the LSA. In particular, the committee sought advice about the protections that are in place in relation to the disclosure of confidential employee information and confidential patient-identifying information.

The Minister advised the committee of the protections in place to ensure that access to confidential information about employees is appropriately restricted. The Minister also provided information about the measures in place to safeguard confidential patient-identifying information that is disclosed to the AOA or EDR and the actions which may be taken in the event of a breach of confidentiality. A copy of the Minister's letter to the committee is at Appendix A.

5.3.2 Committee comment

The committee considered the information provided by the Minister and is of the view that the Amendment Regulation has sufficient regard to section 4(2)(a) of the LSA.

5.4 SL 124 – Health Ombudsman Regulation 2014

The Health Ombudsman Regulation 2014 makes provision to:

- recognise interim prohibition orders made under corresponding interstate legislation, to enable those orders to be recognised in Queensland
- prescribe nationally accepted conduct documents that the Health Ombudsman and the Queensland Civil and Administrative Tribunal (QCAT) may consider when managing a complaint about a health practitioner, and
- make consequential amendments to the Queensland Civil and Administrative Tribunal Regulation 2009 to enable QCAT to continue to charge fees to hear matters relating to complaints about health practitioners.

The committee did not identify any fundamental legislative principles issues.

6 National Parks, Recreation, Sport and Racing

6.1 SL 119 – National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No. 1) 2014

The National Parks, Recreation, Sport and Racing Legislation Amendment Regulation (No. 1) 2014 amends various regulations to index regulatory fees.

The fee increases are, in general, in accordance with the Government endorsed indexation rate of 3.5 per cent, except for the increase in apiary permit fees and stock grazing permits where Cabinet Budget Review Committee approval was obtained for other indexation factors to be applied.

The committee did not identify any fundamental legislative principles issues.

6.2 SL 139 – Forestry (State Forests) Amendment Regulation (No. 1) 2014

The Forestry (State Forests) Amendment Regulation (No. 1) 2014 amends the Forestry (State Forests) Regulation 1987 to revoke a part of the Herberton Range State Forest's (near Cairns) status as a State Forest.

The committee did not identify any fundamental legislative principles issues.

6.3 SL 152 – Major Sports Facilities Regulation 2014

The Major Sports Facilities Regulation 2014 remakes the Major Sports Facilities Regulation 2002, with minor amendments to the names of stadia, location of one noise monitoring location, and references to other legislation, to provide for the effective operation of the *Major Sports Facilities Act 2001*.

The committee did not identify any fundamental legislative principles issues.

6.4 SL 157 – Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2014

The Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2014 amends the Nature Conservation (Protected Areas Management) Regulation 2006 to permit the:

- operation, use and maintenance of existing communications infrastructure within D'Aguiar National Park, and
- operation, use and maintenance of existing water pipeline and electricity infrastructure within Magnetic Island National Park.

The committee did not identify any fundamental legislative principles issues.

7 Recommendation

The committee has examined the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles, and lawfulness of the subordinate legislation, and has not identified any significant issues.

Recommendation 1

That the Legislative Assembly note the content of this report and the committee's conclusion that the subordinate legislation does not raise any significant issues regarding the application of fundamental legislative principles, and is lawful and within power.



Trevor Ruthenberg MP

Chair

Appendix A – Letter from Minister for Health



Hon Lawrence Springborg MP
Minister for Health

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Mr Trevor Ruthenberg MP
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29 SEP 2014

Dear Mr Ruthenberg 

Thank you for your letter dated 22 September 2014, in relation to the Health and Community Services Committee's consideration of the Hospital and Health Boards Amendment Regulation (No.2) 2014.

As noted by the Committee, the Amendment Regulation provides for the disclosure of confidential information about employees to Hospital and Health Services (HHSs) and patient-identifying information to the Australian Orthopaedic Association (AOA) and the Electronic Donor Record (EDR). The Committee has sought advice on how these proposals have sufficient regard to the rights and liberties of individuals, as provided for under the *Legislative Standards Act 1992*.

Disclosure of employee information

The Committee has sought further information about what safeguards are in place to ensure that the use of personal information about employees, including criminal records, is restricted to the purpose for which it was collected, and which departmental and HHS employees will have access to employee's criminal records.

Queensland Health records relating to criminal history checks, Employees Requiring Placement and vacancy and appointment processes are stored using a web based application, VADER, created by the Department of Health. The employee information in VADER can only be accessed by those HHS employees responsible for the processing and decision-making directly related to the employee records, for example, recruitment officers, Human Resource (HR) managers. VADER cannot be accessed unless the user is already a user on the Queensland Health network, and they have been issued with a unique username and password. All requests to grant or remove user access must be received by the system administrator in writing from the respective HHS/Division HR Director or their delegate. Records relating to employment visas are primarily recorded in the HR Payroll system, SAP. However, references to visas will also be recorded in VADER as they relate to the employee's appointment process.

Disclosure of patient-identifying information

The Committee has also sought further information about the safeguards incorporated into agreements with the AOA and the EDR, to maintain patient confidentiality and ensure that patient-identifying information is used only for the purpose for which it was provided. Further, the Committee has sought advice in relation to the action that must be taken in the event of a breach of confidentiality.

I am advised that agreements and data disclosure deeds that provide for the disclosure of patient-identifying information are prepared by the Department, having regard to the need to maintain confidentiality and to ensure that privacy concerns are adequately addressed.

The protections contained within the EDR Agreement include ensuring that:

- users of the EDR understand and agree that the confidentiality of patient information in the EDR shall be safeguarded at all times and only accessed on the basis of clinical need
- users of the EDR, as a condition of access, agree not to copy, duplicate or disclose patient information in the EDR, or allow another person to do so, except in the normal course of their duties as they relate to organ and tissue donation
- staff and contractors undergo appropriate user training and privacy training prior to being allowed access to the EDR
- privacy breaches are investigated and appropriate sanctions imposed having regard to other legislative requirements, such as sanctions under the *Hospital and Health Boards Act 2011*, Code of Conduct, etc
- access to the EDR is monitored and anomalies are investigated, for example, the EDR includes functions that enable an audit log of all log-ins, edits to data, and pages transmitted out of the system
- at the time of obtaining consent to organ and tissue donation, staff will ensure the person providing the information is fully informed about the purpose for collecting information about the donor and to whom that information will be disclosed.

The Australian Organ and Tissue Authority (AOTA) is providing the EDR to facilitate organ and tissue donation for transplantation across Australia, consistent with the *Australian Organ and Tissue Donation and Transplantation Authority Act 2008* (Commonwealth). The AOTA is bound to protect personal and sensitive information in accordance with the *Privacy Act 1988* (Commonwealth).

Where a potential breach of the EDR Acceptable Use Policy and/or a breach of privacy in relation to the EDR is identified, either by the State or the AOTA, the AOTA and the State will fulfil their obligations in accordance with relevant legislation. In Queensland, this includes obligations under the *Hospital and Health Boards Act 2011*, *Information Privacy Act 2009* and *Public Health Act 2005*.

Breaches will be reported to the employing or contracting organisation of the responsible EDR user, that is, the relevant HHS or the Department of Health. Sanctions against the user may be imposed by that organisation with regard to any legislative requirements under the *Hospital and Health Boards Act 2011*, *Information Privacy Act 2009* and/or *Public Health Act 2005*. The breach may also be notified to the relevant privacy regulator – in this case, the Queensland Privacy Commissioner. Where a proven breach involves personnel in two or more jurisdictions, the employing or contracting organisations in both or all jurisdictions must investigate and impose sanctions as appropriate and in accordance with privacy laws in each jurisdiction.

The Data Disclosure Deed for the AOA National Joint Replacement Registry requires the recipient of the confidential information to:

- comply with parts 2 (National Privacy Principles) and 3 (transfer of personal information outside of Australia) of Chapter 2 of the *Information Privacy Act 2009* as if they were a government agency
- ensure the information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse
- not use the information other than for the purposes directly related to carrying out the relevant purpose specified in the Deed
- not disclose the information without the prior written consent of the Department
- not transfer the information outside of Australia without the prior written consent of the Department

- ensure that access to the information is restricted to those persons who require access for purposes directly related to carrying out the relevant purpose
- ensure that its officers, employees, agents, contractors and sub-contractors comply with the same obligations as those imposed on the recipient
- fully and promptly co-operate with the Department to enable the Department to respond to any applications or privacy complaints which require access to, or amendment of any document containing a person's personal information
- immediately notify the Department if the recipient becomes aware of any unlawful use or disclosure of the information in its possession or control
- comply with such other privacy and security measures required by the Department as advised in writing from time to time
- if requested by the Department, and upon the expiry or termination of the Deed, promptly return or destroy any record, document or file which contains personal information belonging to the Department in accordance with the Department's instructions.

The Data Disclosure Deed also requires recipients of the information to store and protect the information with appropriate security measures, having regard to the nature of the information, the medium in which it is found, and any instructions provided by the Department. Recipients must also undertake bi-annual data security audits to evaluate the security, completeness and accuracy of the data stored in the database, and provide a copy of any reports produced from the audit to the Department within 30 days of completion.

If the recipient becomes aware of any breach of the Data Disclosure Deed that involves an unauthorised use or disclosure of personal information under the *Information Privacy Act 2009*, the recipient must immediately notify the relevant HHS or the Department, whichever is applicable, as soon as it becomes aware of the breach, fully cooperate with the HHS or the Department to deal with the unauthorised use or disclosure of the personal information, and use its best efforts to immediately rectify the breach and prevent the reoccurrence of any such breaches.

Thank you again for bringing this to my attention. Should you require any further information in relation to this matter, I have arranged for Ms Loretta Carr, Acting Director, Regulatory Policy, Department of Health, on telephone [REDACTED] to be available to assist you.

Yours sincerely



LAWRENCE SPRINGBORG MP
Minister for Health