Parliamentary Committees

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

Report No. 25, 56th Parliament

Subordinate legislation tabled on 30 April 2019

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled on 30 April 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
40	**Health Legislation Amendment Regulation (No. 1) 2019**	30 April 2019	4 September 2019

3 Health Legislation Amendment Regulation (No. 1) 2019

The purpose of the Health Legislation Amendment Regulation (No. 1) 2019 (Amendment Regulation) is to:

- *allow pharmacists to administer vaccines and adrenalin to persons aged 16 years and older in accordance with the Drug Therapy Protocol – Pharmacist Vaccination Program*
- *update references to the National Safety and Quality Health Service (NSQHS) Standards to refer to the second edition*
- *require licensees of private health facilities to provide reports about reportable events within two working days of the event*
- *remove the duplication of requiring private health facilities to meet the NSQHS Standards and a separate quality assurance program. Instead, the second edition of the NSQHS Standards will be prescribed as the only quality assurance program that private health facilities must comply with to meet the requirements of the Private Health Facilities Act 1999*
- *move the certification requirements for proof of identity documents needed for a radiation source licence to the approved form for the application*
- *update the definition of transport code of practice to refer to the 2014 version of the Code for the Safe Transport of Radioactive Material published by the Australian Radiation Protection and Nuclear Safety Agency, and*
- *prescribe six smoke-free government precincts in Bundaberg, Cairns, Hervey Bay, Maroochydore, Rockhampton and Townsville.*[1]

[1] Explanatory notes, pp 1-2.

To achieve this, the Amendment Regulation amends the:

- Health (Drugs and Poisons) Regulation 1996
- Health Ombudsman Regulation 2014
- Hospital and Health Boards Regulation 2012
- Private Health Facilities Regulation 2016
- Radiation Safety Regulation 2010, and
- Tobacco and Other Smoking Products Regulation 2010.

Health (Drugs and Poisons) Regulation 1996

Currently, the Health (Drugs and Poisons) Regulation 1996 allows pharmacists to administer specified vaccines to an adult,[2] such as the influenza vaccine, and adrenalin of a strength of 0.1% or less to manage anaphylaxis, in accordance with the Drug Therapy Protocol – Pharmacist Vaccination Program (DTP-PVP). The DTP-PVP is subject to change as new or emerging vaccines are determined to be necessary. This determination is made by the chief executive of Queensland Health, or their delegate, as required.[3]

In October 2018, the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee (committee) recommended in its Inquiry into the establishment of a pharmacy council and transfer of pharmacy ownership in Queensland report (Report No. 12, 56th Parliament) that 'the Department of Health lower the minimum patient age requirement for pharmacist-administered vaccinations to 16 years of age'.[4]

The Amendment Regulation amends the Health (Drugs and Poisons) Regulation 1996 to enable pharmacists to administer vaccines and adrenalin to persons aged 16 years and over, implementing the committee's recommendation. The explanatory notes state that 'A person who is 16 years or older has sufficient capacity to give informed consent for their own medical treatment. Lowering the age limit will increase access to vaccinations for this age group.' [5] Other benefits ascribed by the explanatory notes are that the amendments will lower out-of-pocket expenses and result in better health outcomes for the public.[6]

Health Ombudsman Regulation 2014 and Hospital and Health Boards Regulation 2012

The Health Ombudsman Regulation 2014 and Hospital and Health Boards Regulation 2012 currently refer to the first edition of the National Safety and Quality Health Service (NSQHS) Standards. The NSQHS Standards aim to protect the public from harm and to improve the quality of health service provision. All hospitals and day procedure services must meet the NSQHS Standards for accreditation in accordance with the Australian Health Service Safety and Quality Accreditation (AHSSQA) Scheme administered by the Australian Commission on Safety and Quality in Health Care.[7]

The first edition of the NSQHS Standards was released in 2011 and became mandatory for all health facilities in January 2013. The second edition was released in November 2017 and assessment of health facilities against the second edition under the AHSSQA Scheme commenced on 1 January 2019.[8]

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2 Under Schedule 1 of the *Acts Interpretation Act 1954*, an adult is defined as an individual who is 18 years of age or older.

3 Explanatory notes, p 2.

4 Explanatory notes, p 2.

5 Explanatory notes, p 7.

6 Explanatory notes, p 7.

7 Explanatory notes, p 3.

8 Explanatory notes, p 3.

The Amendment Regulation updates references to the first edition of the NSQHS Standards in the Health Ombudsman Regulation 2014 and Hospital and Health Boards Regulation 2012, to refer to the second edition.[9]

Private Health Facilities Regulation 2016

Time for giving reports about reportable events

Under the *Private Health Facilities Act 1999* (Private Health Facilities Act), the Chief Health Officer can require a licensee to provide a report to monitor the quality of health services provided at a private health facility, which may include requiring a report about a reportable event.[10] The Private Health Facilities Regulation 2016 does not prescribe timeframes for providing reports about reportable events. However, the approved form made under the Private Health Facilities Act requires a licensee to give a report about a reportable event within two working days of becoming aware of it. Although this timeframe is generally complied with, prescribing the timeframe in the Private Health Facilities Regulation 2016 will provide a legislative basis to enforce compliance, if necessary.[11]

The amendment to the Private Health Facilities Regulation 2016 requires licensees to provide reports about reportable events within two working days of the event. A cross-reference to the definition of reportable event in the Hospital and Health Boards Act has been inserted.[12]

According to the explanatory notes, the 'requirement for reports to be made within two days will ensure early identification of any action Queensland Health may need to take to ensure private health facilities address any issues identified in the report'.[13]

Quality Assurance Standards

The Private Health Facilities Act establishes licensing conditions and reporting requirements for private health facilities, including that facilities must operate under a quality assurance program conducted by a prescribed quality assurance entity. The Private Health Facilities Regulation currently prescribes three quality assurance programs that may be used to meet this requirement, but the NSQHS Standards are not prescribed as a quality assurance program.[14]

As a result, private health facilities have to comply with both the NSQHS Standards and a quality assurance program prescribed in the Private Health Facilities Regulation 2016. This means that private health facilities must meet additional requirements for accreditation compared to public health facilities, resulting in additional expense and administrative burden for private health facilities. Furthermore, Queensland is the only state that requires private health facilities to be accredited against both a quality assurance program and the NSQHS Standards.[15]

The Amendment Regulation removes the duplication of requiring private health facilities to meet the second edition of the NSQHS Standards and a separate quality assurance program. Instead, the NSQHS Standards will be prescribed as the only quality assurance program that private health facilities must comply with to meet the requirements of a quality assurance system under the Private Health Facilities Act.[16] According to the explanatory notes, the amendment will provide parity with current private

9 Explanatory notes, p 3.

10 Section 29 of the Hospital and Health Boards Regulation 2012 lists events that are considered 'reportable events' and includes maternal death, death associated with incorrect management of medication, an incorrect procedure being performed and suspected suicide.

11 Explanatory notes, p 3.

12 Explanatory notes, p 4.

13 Explanatory notes, p 7.

14 Explanatory notes, p 4.

15 Explanatory notes, p 4.

16 Explanatory notes, p 4.

health facility licensing requirements in other Australian states and territories and the Queensland public health system quality assurance requirements.[17]

Radiation Safety Regulation 2010

Certification requirements for proof of identity documents for a radiation source licence

The *Radiation Safety Act 1999* prohibits a person from using a radiation source or transporting a radioactive substance unless they hold a licence. The *Radiation Safety Act 1999* requires applications for licences to be made in the approved form and to be accompanied by the proof of identity documents prescribed in the Radiation Safety Regulation 2010.[18]

The Radiation Safety Regulation requires the applicant for a radiation source licence to provide copies of proof of identity documents certified by a Justice of the Peace or Notary Public as part of the application process. The explanatory notes state that it can be difficult for applicants living in rural and remote areas of Queensland to access a Justice of the Peace or a Notary Public to have their proof of identity documents certified.[19]

The Amendment Regulation amends the Radiation Safety Regulation 2010 to require proof of identity documents to be provided in the way required or permitted in the approved form for the application, with the intention that the approved form will allow additional categories of persons to be able to certify proof of identity documents, such as a Commissioner for Declarations or a doctor. This change will facilitate a broadening of the persons who are authorised to certify proof of identity documents needed to apply for a radiation source licence, improving accessibility for people living in rural and remote areas. It is also intended to provide greater flexibility for additional categories to be added in future or for alternative identity certification processes, such as online verification, to be recognised.[20]

Updating the definition of transport code of practice

The Radiation Safety Regulation 2010 defines 'transport code of practice' by reference to the Code of Practice for the Safe Transport of Radioactive Material (2008), published by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA). ARPANSA published an updated version known as the Code for the Safe Transport of Radioactive Material (2014). The 2014 version made minor machinery and grammatical changes and included technical clarifications. According to the explanatory notes, the 2014 version does not impose new requirements on licensees and is already being widely used by industry.[21]

The Amendment Regulation updates the definition in schedule 9 of the Radiation Safety Regulation to refer to the 2014 version of the code.[22]

Tobacco and Other Smoking Products Regulation 2010

The *Tobacco and Other Smoking Products Act 1998* enables smoking to be prohibited at some types of facilities and outdoor places. Smoking can also be prohibited at prescribed government precincts, which includes land adjoining a building occupied by the State that is prescribed by regulation.[23]

A phased approach is being used to establish smoke-free government precincts across Queensland. The Tobacco and Other Smoking Products Regulation 2010 currently prohibits smoking at seven

17 Explanatory notes, p 7.

18 Explanatory notes, p 4.

19 Explanatory notes, p 5.

20 Explanatory notes, p 5, 7.

21 Explanatory notes, p 5.

22 Explanatory notes, p 5.

23 Explanatory notes, p 5.

government precinct sites adjoining government-occupied buildings in George, Mary and Charlotte Streets and 1 William Street in the Brisbane Central Business District.[24]

The amendments to the Tobacco and Other Smoking Products Regulation prescribe six smoke-free government precincts in Bundaberg, Cairns, Hervey Bay, Maroochydore, Rockhampton and Townville. According to the explanatory notes, the regional buildings proposed to become smoke-free were identified by Queensland Health through a selection process in conjunction with the Department of Housing and Public Works. The amendments align with the *Tobacco and Other Smoking Products Act 1998* which provides for other smoke-free places such as public swimming facilities, children's playgrounds and under 18 sporting events.[25]

3.1 Fundamental legislative principle issues

The amendments to the Health (Drugs and Poisons) Regulation allowing pharmacists to administer vaccines and adrenalin to persons aged 16 years or older provides for a sub-delegation of a power to an external document (the DTP-PVP). Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only if authorised by an Act, and in appropriate cases and to appropriate persons.[26]

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.[27] Where there is an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regards to the institution of Parliament.

Hence, the subdelegation to the DTP-PVP by the amendments to the Health (Drugs and Poisons) Regulation potentially breaches the fundamental legislative principle about ensuring subdelegation is appropriate. In this case, the DTP-PVP is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House. The DTP-PVP is an external document, available on the Queensland Health website. It is subject to change as new or emerging vaccines are determined to be necessary.[28]

According to the explanatory notes:

> *A drug therapy protocol is a document certified by the chief executive of Queensland Health, or their delegate, that sets out matters of technical detail for the administration, possession and supply of substances. The DTP – PVP is monitored and updated when necessary to reflect the latest advice, ensure it aligns with clinical best practice and is published on the Queensland Health website (www.health.qld.gov.au).*[29]

The committee sought further information on the practical or other considerations that prevent the department from including the DTD-PVP in subordinate legislation so as to ensure sufficient parliamentary scrutiny of regulations that refer to the protocol.

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24 Explanatory notes, p 5.

25 Explanatory notes, p 6.

26 Section 4(5)(e) of the *Legislative Standards Act 1992.*

27 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook,* p 170.

28 Explanatory notes, p 2.

29 Explanatory notes, p 8.

In response, Queensland Health stated:

> *…it is considered that the rigour surrounding the development of DTPs, their use in ensuring Queenslanders receive health care based on best clinical practice and the detailed nature of the documents, justifies the need to subdelegate by referring to external documents. It is common practice for technical and scientific information to be included in external documents, as it is not always possible to include this level of detail in the legislation itself.*
>
> *The inclusion of the detail set out in the DTP-PVP in subordinate legislation would prevent the DTP from being updated in a timely fashion to respond to changes in infection rates for vaccine preventable communicable diseases, such as an emergency influenza outbreak, by enabling increased and convenient access to vaccination.*[30]

Committee comment

The amendment to the Health (Drugs and Poisons) Regulation extends the reach of an existing ability of pharmacists to administer vaccines to those under 16 years of age. The existing requirement to do so in accordance with the DTP-PVP (and in turn, the already existing reference to an external document in the Health (Drugs and Poisons) Regulation 1996) are similarly extended.

The committee is satisfied the regulation has sufficient regard to the institution of Parliament and that it is appropriate for practical reasons for such matters to be set out in a document other than subordinate legislation.

For the remaining amendments provided in the Amendment Regulation, no significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified.

The explanatory notes tabled with the regulations comply with the requirements of section 24 of the LSA.

4 Recommendation

The committee recommends that the House notes this report.

Aaron Harper MP

Chair

August 2019

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

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	Ms Joan Pease MP, Member for Lytton

30 Queensland Health, correspondence dated 12 August 2019, attachment, p 1.