

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

**Public Health (Infection Control) Amendment Bill 2017
Report No. 37, 55th Parliament**

Government Response

Recommendations

Recommendation 2

The committee recommends the Minister for Health and Minister for Ambulance Services clarify during the second reading debate how the Department of Health will:

- assure itself that a health care facility has complied with an improvement or directions notice and is, therefore, able to provide health services to patients in a safe manner, and
- notify a health care facility, in a timely manner, that the department is satisfied that the facility has complied with the notice.

Government response: Supported

The Government supports the Committee recommendation that the issues raised be clarified by the Minister for Health and Minister for Ambulance Services during the second reading debate.

The Minister will clarify that it is usual for health care facilities to provide a range of health services. When an improvement notice is issued, the facility may continue to provide those health services, but must take remedial action to address the infection control deficiency detailed on the notice. For a directions notice, the facility is prohibited from providing the health service to which the notice relates until remedial action is taken to address the infection control deficiency detailed on the notice.

For both improvement and directions notices, the onus rests on the operator of the facility to comply with the notice by taking the remedial action it requires. Queensland Health will, however, undertake appropriate monitoring to ensure the operator is taking appropriate remedial action.

This approach recognises that infection control requirements are widely understood and complied with across the health care industry. Guidance about how to manage infection risks is clearly detailed in Australian Standards and in guidelines and other material published by Queensland Health. The Bill expands on this knowledge base, by allowing relevant training and qualification standards to be prescribed in the regulation.

In addition, an improvement or directions notice must describe the problem to be addressed. As a consequence, operators will be in no doubt as to what they need to do to fix the problem. The Bill also allows this remedial action to be detailed on the actual notice. In the case of a directions notice, or an improvement notice requiring significant improvements,

Queensland Health will use this power to clearly spell out the steps which an owner or operator must take.

Queensland Health will only need to consider whether there has been compliance with an improvement or directions notice if an operator advises they have complied. In that case, the inspector, for an improvement notice, or the chief executive, for a directions notice, must satisfy themselves of the operator's compliance and record this on the notice.

In making this assessment, the inspector or chief executive will have regard to the advice of the operator. In more serious cases, particularly where a directions notice has been issued, Queensland Health will inspect the facility to ensure compliance.

If satisfied as to the operator's compliance, the Bill requires Queensland Health to provide formal advice to this effect to the operator. Queensland Health will provide this advice as soon as possible.

Recommendation 3

The committee recommends the Minister for Health and Minister for Ambulance Services informs the House, during the second reading debate, why a decision was taken not to enable operators to apply to the Queensland Civil and Administrative Tribunal to review decisions to issue notices.

Government response: Supported

The Government supports the Committee recommendation that the issue raised be clarified by the Minister for Health and Minister for Ambulance Services during the second reading debate.

The Minister will clarify that provisions in the Bill are consistent with other non-reviewable public health powers. Specifically, the power to issue an improvement notice is modelled on the existing power, under the Act, to issue a water quality improvement notice which is not reviewable. A decision to issue a public health order under the *Public Health Act 2005* is also not subject to QCAT jurisdiction.

In order to be able to respond decisively to threats to public health, a right of review to QCAT is not included.

The Bill does not exclude judicial review.

A directions notice will prohibit a particular health service from being provided, but is likely to only be issued in an emergency situation requiring immediate intervention to prevent serious harm from occurring. Providing for merits review of the decision to exercise this emergency power could frustrate this purpose.

Improvement notices would be issued in less-serious situations. As these notices do not prevent an operator continuing to provide health services, a right of review is not considered necessary.

Neither notice will be issued in a vacuum. Before issuing an improvement notice, an inspector must reasonably believe the operator or owner of the health care facility is

breaching the Act. Similarly, the chief executive must reasonably believe the operator is breaching the Act, and that that breach is causing a serious risk of harm, before issuing a directions notice. In both cases, a notice will only be issued following an investigation and where there is clear evidence of substandard practice.

There are also significant additional safeguards around the power to issue a directions notice. The chief executive must reasonably believe an operator is contravening the Act and that this creates a serious risk of harm. There are strict limitations on who may exercise the power to issue a directions notice, and on the length of time a notice may continue in effect before the matter to which it relates must be brought before a court.