




Speech By
Hon. Cameron Dick

MEMBER FOR WOODRIDGE

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PUBLIC HEALTH (INFECTION CONTROL) AMENDMENT BILL

Second Reading

 **Hon. CR DICK** (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (3.54 pm): I move—

That the bill be now read a second time.

I table the government's response to the report of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee on the bill which was tabled on 15 May. I thank the committee for its careful consideration of the bill and the stakeholders who made submissions to the committee's inquiry.

Tabled paper: Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee: Report No. 37, 55th Parliament—Public Health (Infection Control) Amendment Bill 2017, government response [\[758\]](#).

The bill strengthens the infection control framework for healthcare facilities under the Public Health Act. The need to strengthen this framework was identified following recent incidents at dental clinics. The infection control framework applies to facilities performing invasive procedures or procedures which carry the risk of exposure to blood or other bodily fluids. Given that patients and staff at these facilities risk coming into contact with infectious bloodborne diseases, such as hepatitis and HIV, the act already requires people involved in performing declared health services to take reasonable precautions and care to minimise infection risks.

The act also requires the operators of healthcare facilities to develop detailed infection control management plans showing how infection risks at the facilities will be minimised and to implement and regularly review these plans. However, the act does not empower Queensland Health to properly investigate and take timely enforcement action where these obligations have been breached or to take appropriate action to require noncompliant practices to be rectified. Recent infection control incidents at dental clinics have shown that noncompliance with infection control requirements can place the health and wellbeing of staff and patients at risk. In these cases, the facility's staff and their patients were potentially exposed to diseases caused by the bloodborne viruses.

The bill responds to this highlighted need for better regulation by empowering Queensland Health to take a proportionate approach to monitoring risk and responding to noncompliance. This approach will be proactive in that it will involve Queensland Health continuing to audit healthcare facilities' compliance with their infection control obligations. Informed by a risk assessment, audits have so far been completed for all hospital and health services and for sample groups of dental clinics and non-hospital midwifery services. Planning is underway for the next round of audits focussing on other high-risk facilities. Participation in audits will become mandatory under the bill, which creates penalties for facilities which refuse to provide relevant information to Queensland Health on request.

Queensland Health will continue to respond appropriately to compliance issues identified through its audit program and through complaints received from the public and other regulatory bodies. Again, the bill creates a range of powers to ensure this follow-up is backed up by appropriate enforcement powers and penalties. Queensland Health's approach to infection control will involve targeted monitoring and direct intervention where necessary.

The bill supports a proportionate approach, strengthening the infection control framework and empowering Queensland Health to intervene appropriately in addressing deficient infection control practices. At the same time, it limits as much as reasonably possible the potential adverse impacts of this intervention on affected businesses.

The bill strengthens the infection control framework by facilitating more effective investigation and resolution of noncompliance. Inspectors are already empowered under the act to enter facilities with 24 hours notice to monitor compliance with the infection control framework. The act also allows inspectors to apply for a warrant to enter facilities to investigate, gather information and collect evidence of offences against the act. The bill enhances these powers by permitting inspectors to enter facilities without giving prior notice where a complaint or investigation reveals serious issues requiring urgent intervention.

The bill also empowers inspectors to require the operator of a healthcare facility to provide a copy of the infection control management plan for that facility in addition to any other information about the infection control procedures in place. Where infection control requirements are not met, the bill empowers inspectors to take a range of enforcement actions. The bill allows inspectors to issue improvement notices, requiring the operator of a healthcare facility to take remedial action to comply with the infection control framework.

The notice may also specify the remedial action needed to ensure compliance. For example, an improvement notice may require the operator to improve infection control practices or documentation or to properly train staff in the operation of equipment used at the facility. The bill also allows inspectors to require the operator of a healthcare facility to revise an infection control management plan if it is not up to standard.

In the most serious cases, the bill allows the director-general of Queensland Health to issue a directions notice to the operator of a facility. A directions notice prohibits the operator from providing a particular health service at that facility for up to 30 days while the necessary remedial action is undertaken. The notice may be extended for a further 30 days or an even longer period if approved by a magistrate.

Significant new penalties for breaches of key requirements of the framework are included in the bill. For example, owners of healthcare facilities may be penalised for not ensuring an infection control management plan for the facility is prepared, implemented and periodically reviewed. The bill also makes any person involved in providing declared health services at a facility, including operators, staff and contractors, liable to be prosecuted for failing to take reasonable precautions and care to minimise infection risks.

High penalties also apply where the operator of a healthcare facility disregards a lawful direction to amend an infection control management plan or fails to give effect to an improvement or directions notice. These include penalties of up of \$63,075 for failing to amend an infection control management plan as directed, \$126,150 for failing to comply with an improvement notice and \$378,750 for breaching a directions notice.

Finally, the bill expands the regulation-making head of power in the Public Health Act to allow a regulation to be made prescribing the standards of training and qualifications which must be met by the staff of healthcare facilities. To provide guidance to the operators and staff of healthcare facilities about how to minimise and prevent infection risks, standards will be prescribed under this head of power. Relevant peak industry bodies will be consulted before new standards are made to ensure that they are appropriate and reflect best practice.

Standards will cover a range of matters, including how equipment is to be cleaned, disinfected and sterilised. Other standards will prescribe staff competency and procedures for surface cleaning, waste disposal, and quality assurance monitoring and control. Every person involved in providing declared health services at a healthcare facility will be expected to meet prescribed standards in addition to complying with the infection control management plan for the facility. Doing so will be necessary for the person to discharge their obligation to take reasonable precautions and care to minimise and prevent infection risks. Operators and staff of healthcare facilities should already be meeting these standards. By expressly prescribing them, the amended regulation will assist people to understand and comply with their infection control obligations.

I now turn to the government's response to the parliamentary committee's report. The first recommendation of the committee in their report was that the bill be passed, and I appreciate the committee's support for the bill. The committee recommended that I clarify two matters in the second reading of the bill, which I am now pleased to do.

Recommendation 2 of the committee's report asked how Queensland Health will assure itself a healthcare facility has complied with an improvement or directions notice. The committee also asked how, once satisfied of compliance, Queensland Health will notify the facility of this in a timely manner. It is usual for healthcare 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. Queensland Health will make appropriate follow-up inquiries with the operator to ascertain compliance with a notice. This approach recognises that infection control requirements are widely understood and complied with across the healthcare 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 then need to assess whether there has been compliance with an improvement or directions 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.

In their third recommendation, the committee asked why the decision was made not to create a power to apply to the Queensland Civil and Administrative Tribunal to review a decision to issue an improvement or directions notice. I will speak on that issue to explain it, but I do know that the shadow minister, the member for Surfers Paradise, has circulated an amendment to the bill which creates a power for an operator or owner of a healthcare facility who is dissatisfied with an authorised person's decision to give the operator or owner an improvement notice or for an operator of a healthcare facility who is dissatisfied with the chief executive's decision to give the operator a directions notice to apply to QCAT for a review of the decision. I am happy to take advice on that. I am taking advice on that amendment at the moment.

We had some sanctimony in the previous debate about the government jumping the opposition on certain issues. We have had that today as well. Let us not be hypocritical about how the parliament works. This is completely in accordance with the standing orders and rules of the parliament. Let us not have the criticism from the opposition about attempts made by the government to address the very serious and significant flaws in their so-called no-body no-parole amendments in the last bill.

I will take advice on these amendments. We are doing that at the moment. I will take advice on that this afternoon. I can assure the parliament that I will not do anything to frustrate the intent of urgent intervention that is anticipated under this legislation. I will not do anything, including creating a statutory right of review to QCAT, that may intervene, as I have said, with the express intent of the legislation for urgent intervention.

These are serious matters. Bloodborne illnesses, once infection is transmitted, are difficult to deal with in many cases. These are some of the most serious bloodborne infections that we are attempting to protect Queensland against—HIV and hepatitis. Any attempts to frustrate that through a review mechanism will be opposed by the government. I am taking advice on what the impact of this proposed amendment might be and whether it will do that—whether there will be any impact on the clear intent of the government to ensure Queenslanders can remain protected. We will take advice on that.

I make it clear to the parliament that the provisions in the bill, as drafted, 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 Public Health Act to issue a water quality improvement notice

which is not reviewable. That matter came before the parliament through the parliamentary committee process as well. A decision to issue a public health order under the act is also not subject to QCAT jurisdiction. Why? Because they are urgent and important matters that require rectification. In order to be able to respond decisively to threats to public health, a right of review to QCAT is not included in the bill.

Very importantly, the bill does not exclude judicial review. Affected individuals have a right to have a decision reviewed judicially before a court in Queensland. An individual who feels aggrieved by the decision to impose an improvement notice or a directions notice has the capacity to seek that review. A directions notice will prohibit a particular health service from being provided but is likely to be issued only 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. As I have said, I will not see that purpose frustrated. I think that is very important. 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.

Of course we often hear that we are a government of reviews, but they are including a review now that could be expensive and time consuming for the party concerned, particularly when the improvement notice is all about improving standards that may not be at the appropriate level in an appropriate practice. Neither notice will be issued in a vacuum. Before issuing an improvement notice an inspector must reasonably believe the operator or owner of a healthcare 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. It is a very high standard. There must be a serious risk of harm before a directions notice is issued. In both cases a notice will only be issued following an investigation and where there is clear evidence of substandard practice.

There are also additional safeguards around the power to issue a directions notice. The chief executive must reasonably believe an operator is contravening the act and 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.

The committee report included a statement of reservations by opposition members. Non-government members asked if liability for failure to take reasonable precautions and care will be imposed on all persons involved in providing declared health services. Each person involved in providing a declared health service has a role to play in ensuring that service is provided safely. For this reason the Public Health Act already places the obligation on individuals to take reasonable precautions and care to minimise and prevent infection risks. This obligation is imposed on registered health practitioners providing professional services at healthcare facilities and the operators of facilities. It also captures technical and administrative staff employed in providing ancillary services such as the cleaning and sterilisation of instruments and equipment. The bill does not change this obligation but makes it more easily enforced by allowing for the imposition of penalties. Non-government members suggest this could lead to blame being shifted on to employees of healthcare facilities. This is not possible under the bill, which imposes a non-delegable obligation on owners of healthcare facilities to ensure all declared health services at a healthcare facility are performed in accordance with the infection control management plan for the facility.

It is also expected that prosecutions for failing to prevent or minimise an infection risk will only be taken where there is a serious breach, particularly involving negligent or reckless behaviour or the deliberate refusal to comply with an improvement or directions notice. These are serious matters: negligent behaviour, reckless behaviour or deliberate refusal to comply with an improvement or directions notice. Where an employee has acted in such a manner it may be appropriate to prosecute the employee rather than the operator. That would only be fair in the circumstances. If a medical professional or an employee was acting in a way that was reckless, negligent or deliberately refusing to comply with an improvement or directions notice, then prosecution would be an appropriate option to be considered.

Secondly, non-government members repeat the committee's concerns regarding the availability of review of QCAT decisions to issue an improvement or directions notice, and I have already responded to that issue. The statement of reservations suggests the bill may result in Queensland Health rewriting deficient infection control management plans for healthcare facilities. This is not the case. The bill provides for Queensland Health to identify the ways in which a plan is insufficient, but the obligation to rewrite a plan is clearly placed on the operator of the facility. Non-government members question whether the threshold created by the bill for entering a healthcare facility without notice, being an imminent infection risk, is too high. As noted by the committee in its report, entry without notice is an

exceptional power requiring substantial safeguards. The high threshold is an important safeguard. The act already includes powers to enter a healthcare facility in non-urgent situations including entry under warrant or with 24 hours notice.

Finally, the statement of reservations questions whether Queensland Health has the resources to enforce compliance with the strengthened infection control framework. Rather than requiring more investigations to be conducted, the bill makes the existing obligations to manage infection control risks more easily enforceable and facilitates proper investigation of compliance with those obligations. Most healthcare facilities comply with their obligations under the act. I want to make that point clear again, as I did when the bill was introduced and when I announced this legislative measure. Most healthcare facilities comply with their obligations under the act and comply to a very high standard. The Queensland community can have confidence in the standard of health care that is provided at prescribed healthcare facilities throughout Queensland. It is something that almost every health professional takes very seriously. If those health professionals are not taking infection control seriously in their facilities then one has to question why are they operating that practice and why would they be exposing individuals to risk? The government is seeking to ensure the community can be protected against that risk by having the best possible standards applicable as proposed under this legislation, this draft bill.

The bill ensures that where noncompliance is identified, Queensland Health is equipped to respond quickly and effectively. This response may involve inspectors from the existing public health units in hospital and health services in addition to further Queensland Health experts if required in a particular case. I note, however, that audit and inspection are not the only means by which the department identifies and responds to infection risks. Bloodborne viruses are required to be notified to the Department of Health under the Public Health Act. All newly notified HIV, hepatitis B and hepatitis C cases are actively followed up at notification. Queensland Health has an established process for identifying and gathering further information surrounding newly acquired cases. This surveillance activity provides an objective assurance that clusters of transmission associated with infection control breaches are identified and are investigated in real time. I can advise the House that this framework will not work in isolation. Our public health units will act on complaints and the findings of audits. However, public health compliance responses are also informed by intelligence and data. As with all similar regulatory frameworks, future resourcing decisions will be made in view of evolving demands on the framework.

This bill provides a proportionate, targeted and urgent response to an unacceptable risk of patients and staff of healthcare facilities being exposed to infectious bloodborne diseases. The bill enhances the powers of Queensland Health to investigate the infection control practices of healthcare facilities and to take appropriate enforcement action where noncompliant practices are identified. Importantly, the bill does not simply rely on penalties to enforce compliance. Where noncompliance is capable of being remedied, the new improvement and directions notices powers in the bill provide a means of supporting healthcare facilities to improve their infection control practices.

I again thank the committee for its detailed consideration of the bill and the stakeholders who provided submissions to the committee's inquiry. I commend the bill to the House.