Parliamentary Committees

Health and Environment Committee

Report No. 1, 57th Parliament

Subordinate legislation tabled on 14 July 2020

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 14 July 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),[1] its compatibility with human rights,[2] and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),[3] and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).[4]

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
90	Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020	14 July 2020	3 December 2020
100	Ambulance Service (Fees) Amendment Regulation 2020	14 July 2020	3 December 2020
110	Environmental Legislation (Fees) Amendment Regulation 2020	14 July 2020	3 December 2020
111	Waste Reduction and Recycling (Waste Levy Rates for 2020–2021) Amendment Regulation 2020	14 July 2020	3 December 2020

1 Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

2 Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

3 LSA, part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

4 Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister's opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister's opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House (s 50 of the *Statutory Instrument Act 1992* specifies that the deadline for a notice of disallowance motion is 14 sitting days after the legislation is tabled in the Legislative Assembly).

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified. The committee considered fundamental legislative principles issues raised by SL No. 90 of 2020. The committee is satisfied that any breaches are reasonable and justified. The committee considers explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the *LSA.*

The committee considers that the subordinate legislation raises no human rights issues. The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.[5]

4 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020 (SL No. 90)

The objectives of the Health (Drugs and Poisons) Amendment Regulation (No. 2) (the amendment regulation) 2020 are to:

- enable a pharmacist to supply an oral hormonal contraceptive to women who are currently being treated, without a prescription, and
- include an authority for pharmacists to sell a restricted drug under a Drug Therapy Protocol.[6]

The amendment regulation also reduces the regulatory burden on medical practitioners, pharmacists and the community by:

- removing the requirement for non-specialist medical practitioners to obtain a state-based approval to prescribe controlled drug medicinal cannabis products
- enabling certain staff of Queensland pathology providers and the national blood product supplier, Australian Red Cross LifeBlood, as categories of persons exempted from requiring endorsements to carry out certain activities with restricted drugs that are immunoglobulin blood products listed on the National Product Price List for blood and blood products, and
- enabling the chief executive to exempt a package from the labelling requirements in part 2 of the Standard for the Uniform Scheduling of Medicines and Poisons.[7]

4.1 Fundamental legislative principle issues

4.1.1 Section 4(5)(e) LSA – sub-delegation of power

The amendment regulation references the Drug Therapy Protocol and the Poisons Standard.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends, for example, 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.[8]

5 *Human Rights Act 2019*, section 41.

6 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 1.

7 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 1.

8 Section 4(5)(e) *Legislative Standards Act 1992.*

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.[9] The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992.*

Where there is, incorporated into the legislative framework of the State, 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 regard to the institution of Parliament.

The Drug Therapy Protocol and the Poisons Standard are not contained in subordinate legislation in their entirety, and as such their content does not come to the attention of the House.

The explanatory notes, in relation to the Drug Therapy Protocol, state:

> *A Drug Therapy Protocol is a document certified by the chief executive of Queensland Health that sets out matters of technical detail for the possession, administration and supply of substances. The Pharmacist UTI Trial Drug Therapy Protocol incudes the conditions for treatment, process for drug selection, circumstances for referral to a medical practitioner, as well as the specific drugs and forms of drugs to be supplied. The Drug Therapy Protocol is monitored and updated when necessary, aligns with the trial and clinical best practice, is published on the Queensland health website (www.health.qld.gov.au) and a copy will be tabled as extrinsic material.*[10]

The Poisons Standard is made under section 52D of the *Therapeutic Goods Act 1989* (Cth). In relation to the Poisons Standard, the explanatory notes state:

> *Adopting the current version of the Poisons Standard will ensure key regulatory controls governing the availability and accessibility of drugs and poisons in Queensland will continue to be consistent with those in other States and Territories. Reference to the Poisons Standard provides national consistency. There are representative[s] from each State on the scheduling committee to ensure the Poisons Standard is applicable in all jurisdictions. Additionally, the committee meets three times per year to discuss updates to be made to the Poisons Standard.*[11]

And further:

> *… referencing the Poisons Standard … as opposed to stating the requirements directly in the Regulation, ensures the Regulation will always be consistent with the Poisons Standard and relevant to national requirements. Each labelling exemption must be published on the Queensland Health website (www.health.qld.gov.au) and specify the alternative way certified under section 11(3), the day the certification takes effect and the period for which the certification has effect.*[12]

Committee comment

The committee is satisfied that references made to the Drug Therapy Protocol and the Poisons Standard do not amount to an inappropriate sub-delegation of power and sufficient regard has been given to the institution of Parliament.

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9 Office of the Queensland Parliamentary Counsel (OQPC), Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

10 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 9.

11 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 9.

12 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 9.

4.1.2 Section 4(2)(a) LSA – rights and liberties of individuals – proportionality of penalties

The imposition of penalties could be seen to be having insufficient regard to the rights and liberties of an individual under section 4(2)(a) LSA. A penalty should be proportionate to the offence. The Office of the Queensland Parliamentary Council Notebook states:

> *Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*[13]

Former committees have previously stated that maximum penalties in regulations should be limited, generally, to 20 penalty units. This regulation is made under section 180 *Health Act 1937* which provides that a regulation under that Act may prescribe penalties of up to a maximum of 80 penalty units.

Clause 8(4) inserts new section 194(5) into the Health (Drugs and Poisons) Regulation 1996 and provides that it is an offence if a pharmacist fails to keep the record for at least two years after the date a restricted drug is sold by a pharmacist, with a maximum penalty of 20 penalty units.

Clause 9 inserts new section 194A, which relates to the sale of oral hormonal contraceptives by a pharmacist for immediate need. Subsection 194A(2) provides that is an offence for a pharmacist to sell the person more than a manufacturer's pack of the restricted drug; and subsection 194A(3) makes it an offence for a pharmacist to sell the restricted drug in a container that does not have a securely attached label with specific information on it. Further, subsection 194A(4) provides it is an offence for a pharmacist selling a restricted drug to fail to make a record of the sale. All these offences have a maximum penalty of 40 penalty units.

The explanatory notes state:

- in relation to the penalty in new section 194(5):

  The maximum penalty of 20 penalty units is equivalent to other offences under the HDPR [Health (Drugs and Poisons) Regulation 1996], including the recording of sales of S3 pseudoephedrine in section 258A. The penalty has been reviewed and is proportionate to the seriousness of the offence and is justified due to the need to ensure accurate records for the sale of restricted drugs are kept.[14]

- In relation to the maximum penalties of 40 penalty units in relation to offences in clause 9:

  The maximum penalty of 40 penalty units, is equivalent to other offences under the HDPR. These offences include sections 194, 198, 199 and 277. The above penalty has been reviewed and is proportionate to the seriousness of the offence and is justified due to the need to limit access to restricted drugs.[15]

Committee comment

The committee considers the penalties are proportionate and reasonable.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

4.3 Human rights considerations

The committee considers that the amendment regulation is compatible with human rights.

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13 OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

14 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 10.

15 Health (Drugs and Poisons) Amendment Regulation (No. 2) 2020, explanatory notes, p 10.

4.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the HRA). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Ambulance Service (Fees) Amendment Regulation 2020 (SL No. 100)

As set out in the explanatory notes, the *Ambulance Service Act 1991* provides for fees and charges to be prescribed by regulation. The Ambulance Service Regulation 2015 sets out fees and charges for ambulance services such as emergency and non-emergency transport, ambulance attendance and for the treatment of a person by an ambulance officer.[16]

The objective of the Ambulance Service (Fees) Amendment Regulation 2020 (the amendment regulation), is to increase the fees and charges in the Ambulance Service Regulation 2015, in line with the Government's indexation factor for 2020-21 of 1.8%. All the fee increases in the amendment regulation are within the 1.8% amount.[17]

5.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Human rights considerations

The committee considers that the regulation is compatible with human rights.

5.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the HRA). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 Environmental Legislation (Fees) Amendment Regulation 2020 (SL No. 110)

The regulation increases regulatory fees for the Department of Environment and Science, in accordance with the government Indexation rate of 1.8 per cent for 2020-21.

6.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified. All fee increases come within the 1.8 per cent range.

6.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

7 Waste Reduction and Recycling (Waste Levy Rates for 2020–2021) Amendment Regulation 2020 (SL No. 111)

The regulation defers the waste levy increase of $5 per tonne for six months, with the increase now to take effect from 1 January 2021. The deferral aims to provide relief from increased costs for businesses starting to re-open following the lifting of COVID-19 restrictions.

[16] Ambulance Service (Fees) Amendment Regulation 2020, explanatory notes, p 1.

[17] Ambulance Service (Fees) Amendment Regulation 2020, explanatory notes, p 1.

7.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

7.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

8 Recommendation

The committee recommends that the House notes this report.

Aaron Harper MP

Chair

November 2020

Health and Environment Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa, Chair
Deputy Chair	Mr Rob Molhoek MP, Member for Southport, Deputy Chair
Members	Mr Stephen Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
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