Parliamentary Committees

Health and Environment Committee

Report No. 34, 57th Parliament

Subordinate legislation tabled between 22 February 2023 and 14 March 2023

1 Aim of this report

This report summarises the findings of the Health and Environment Committee (committee) following its examination of subordinate legislation within its portfolio areas tabled between 22 February 2023 and 14 March 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs),[1] its compatibility with human rights,[2] and its lawfulness.[3] It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),[4] and the compliance of the human rights certificates with the *Human Rights Act 2019* (HRA).[5]

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
6 of 2023	Medicines and Poisons (Medicines) Amendment Regulation 2023	14 March 2023	25 May 2023

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Committee consideration of the subordinate legislation

The committee identified potential FLP and human rights issues in relation to the Medicines and Poisons (Medicines) Amendment Regulation 2023 (SL No. 6), which are discussed further below. However, the committee was ultimately satisfied that any breach of FLPs is justified and that the regulation is compatible with human rights.

The explanatory notes tabled with the subordinate legislation comply with the requirements of s 24 of the LSA.

Further, the accompanying human rights certificate provides a sufficient level of information to facilitate understanding of SL No. 6 in relation to its compatibility with human rights.

1 *Legislative Standards Act 1992* (LSA), s 4.

2 *Human Rights Act 2019* (HRA), s 8.

3 *Parliament of Queensland Act 2001*, s 93.

4 LSA, pt 4.

5 HRA, s 41.

4 SL No. 6 Medicines and Poisons (Medicines) Amendment Regulation 2023

4.1 Objectives

The objective of SL No. 6 is to amend the Medicines and Poisons (Medicines) Regulation 2021 (Medicines Regulation) to:

- update references to new versions of the extended practice authorities (EPAs) for the following health practitioners to enable them to administer the COVID-19 vaccine:
  - midwives
  - registered nurses
  - Aboriginal and Torres Strait Islander health practitioners, and
  - Indigenous health workers
- update a reference to a new version of the Pharmacists EPA to remove the age restriction for pharmacists administering the COVID-19 and influenza vaccines
- update references to new versions of the EPAs for the following health practitioners to align the authorised medicines listed in the EPA with the medicines contained in the 11th edition of the Primary Clinical Care Manual:
  - midwives
  - registered nurses
  - Aboriginal and Torres Strait Islander health practitioners
  - Indigenous health workers, and
  - Queensland Ambulance Service isolated practice area paramedics
- update references to the new versions of the registered nurses and midwives EPAs to enable registered nurses working under a sexual and reproductive health program and midwives to administer a long-acting reversible contraceptive
- update a reference to the new version of the registered nurses EPA to enable sexual and reproductive health nurses to administer vaccines for influenza and pneumococcal and medicines, such as adrenaline, lidocaine and hydrocortisone
- enable Aboriginal and Torres Strait Islander health practitioners to practise state-wide and to update a reference to the new version of their EPA
- include Aboriginal and Torres Strait Islander health workers as a new class of person authorised to deal with certain medicines.[6]

4.2 Consistency with fundamental legislative principles

4.2.1 Sufficient regard to the institution of Parliament – external documents

External documents, such as EPAs and guidelines, are not required to be tabled and are not subject to the disallowance provisions in the *Statutory Instruments Act 1992.* As a result, they could be considered to have insufficient regard to the institution of Parliament, and therefore be inconsistent with FLPs.

The explanatory notes advise that an EPA, which is made by the chief executive of Queensland Health,[7] 'sets out matters of technical detail for how an approved person can carry out a regulated activity with a regulated substance', including details such as 'the route of administration, the specific dose, quantity, duration and restrictions placed on substances and the circumstances in which they may be administered'.[8]

6 SL No. 6, explanatory notes, pp 1-2.

7 Under the *Medicines and Poisons Act 2019*, s 232.

8 SL No. 6, explanatory notes, p 9.

According to the explanatory notes, EPAs are monitored and updated regularly to align with clinical best practice, with each new version coming into effect when the Medicines Regulation is updated to reflect the name and version of the applicable EPA.[9]

In this instance, SL No. 6 updates the Medicines Regulation to commence the new versions of a range of EPAs, being for Aboriginal and Torres Strait Islander health practitioners and health workers, indigenous health workers, the Queensland Ambulance Service, midwives, registered nurses, pharmacists and physiotherapists.[10]

The explanatory notes provide the following justification for SL No. 6's provision for the commencement of the new or updated EPAs from 1 March 2023:[11]

> Including a list of extended practice authorities in the schedule of the Medicines Regulation creates certainty for the relevant professions and the public about the status of extended practice authorities published on the Queensland Health website and the date when these took effect.
>
> It is considered the rigour surrounding the development of extended practice authorities and the level of parliamentary oversight afforded by the requirement that an extended practice authority must be approved by regulation justifies the need to sub-delegate by referring to external documents in the Medicines Regulation. Queensland Health has made a commitment to table any extrinsic material referenced in legislation in the Legislative Assembly, so the updated extended practice authority will be tabled, providing the Legislative Assembly with an opportunity to consider the extended practice authority and any conditions imposed under it.[12]

As per the stated Queensland Health commitment, the EPAs approved in SL No. 6 were tabled as extrinsic material and are therefore readily available for scrutiny by the Queensland Parliament. In addition, the EPAs were published on the Queensland Health website,[13] consistent with requirements for online publication under the *Medicines and Poisons Act 2019*.[14]

Committee comment

The committee is satisfied that any breach of FLP arising from the approval of the EPAs via sub-delegation is justified, having regard to the detail in the documents, that a level of parliamentary oversight is provided via approval of an EPA being required by regulation, and that copies of the EPAs approved by SL No. 6 have been tabled and are available for review.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.4 Human rights considerations

4.4.1 Right to health services

Every person has the right to access health services without discrimination.[15] This involves 'a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health'.[16]

SL No. 6 regulates some medicines, meaning that certain medicines can only be prescribed and dispensed by, and to, specific people. While SL No. 6 expands the list of suitably qualified health

9 SL No. 6, explanatory notes, p 9.

10 SL No. 6, s 5 (amending the Medicines and Poisons (Medicines) Regulation 2021, sch 1).

11 SL No. 6, s 2 ('Commencement').

12 SL No. 6, explanatory notes, pp 9-10.

13 Queensland Health, *Legislation, standards and extended practice authorities,* webpage, updated 1 March 2023, https://www.health.qld.gov.au/system-governance/licences/medicines-poisons/medicines-poisons-act/legislation-standards.

14 *Medicines and Poisons Act 2019*, s 236 ('Availability of extended practice authorities and departmental standards').

15 HRA, s 37.

16 SL No. 6, human rights certificate, p 6.

practitioners and health workers authorised to administer COVID-19 and influenza vaccines, this work must still be done within the limits of the legislative framework.[17] In that regard, the restrictions, controls and conditions in the EPAs effectively limit access to medicines and, therefore, the right to access health services.[18]

According to the statement of compatibility, this limitation is required to mitigate the risks of substance abuse or misuse by vulnerable persons, and to ensure 'that those who possess the appropriate knowledge and training … have oversight and control over medicines'.[19]

The statement of compatibility asserts that SL No. 6 'balances the need to ensure medicines are not misused with the need to improve access to health services for the public', supporting the overall purpose of the Medicines Regulation in protecting human life.[20]

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights.[21]

4.5 Human rights certificate

The human rights certificate tabled with SL No. 6 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Recommendation

The committee recommends that the Legislative Assembly notes this report.

Aaron Harper MP
Chair

May 2023

Health and Environment Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Robert (Rob) Molhoek MP, Member for Southport
Members	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Mr Samuel (Sam) O'Connor MP, Member for Bonney
	Ms Joan Pease MP, Member for Lytton

17 SL No. 6, human rights certificate, p 3.

18 SL No. 6, human rights certificate, p 2.

19 SL No. 6, human rights certificate, p 6.

20 SL No. 6, human rights certificate, p 6.

21 Section 8 of HRA relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.