

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

Report No. 24, 56th Parliament

Subordinate legislation tabled between 30 March 2019 and 29 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 between 30 March 2019 and 29 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*.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
35	Public Health and Other Legislation Amendment Regulation (No. 1) 2019	2 April 2019	21 August 2019
38	Hospital Foundations (Postponement) Regulation 2019	2 April 2019	21 August 2019

3 Public Health and Other Legislation Amendment Regulation (No. 1) 2019

The objectives are to:

- amend the Hospitals and Health Boards Regulation 2012 to prescribe an agreement to enable the sharing of confidential information between Queensland Health and the National Injury Insurance Agency Queensland (NIIAQ)
- amend the Public Health Regulation 2018, to prescribe as a public health risk, places that are at risk of having been contaminated because they may have been used to unlawfully produce a dangerous drug or to store chemicals or equipment that are associated with unlawful drug production.

3.1 Fundamental legislative principle issues

There are two broad aspects in which the regulation might breach the fundamental legislative principles. These are:

In regards to the Hospitals and Health Boards Regulation 2012:

- rights and liberties of individuals, regarding privacy of personal information

In regards to the Public Health Regulation 2018:

- rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review, regarding the prescribing a new public health risk.

These potential issues are discussed below.

Hospitals and Health Boards Regulation 2012 - Rights and liberties of individuals – privacy of information

The following aspect of the regulation raises issues of fundamental legislative principle relating to privacy of information:

- An agreement between Queensland Health and the National Injury Insurance Agency Queensland (NIIAQ) to enable the sharing of confidential information between Queensland Health and the NIIAQ.

Previous committees have shown concern regarding the disclosure of private or confidential information.¹

The explanatory notes provide the following justifications for this disclosure:

The National Injury Insurance Agency Queensland (NIIAQ) is a statutory body that provides funding for lifetime treatment, care and support to persons who sustain eligible serious personal injuries in a motor vehicle accident in Queensland. Section 57 of the National Injury Insurance Scheme (Queensland) Act 2016 provides that NIIAQ ‘represents the State’ and ‘has the privileges and immunities of the State’. As such, NIIAQ is an ‘entity of the State’ for purposes of section 151(1)(b) of the Hospital and Health Boards Act.

On 5 July 2018, the chief executive of Queensland Health signed an agreement with NIIAQ to allow for the exchange of confidential information to:

- facilitate funding by NIIAQ for patients covered by the National Injury Insurance Scheme (Queensland) Act 2016;
- enable patient information to be provided to NIIAQ to assist in the management of claims for seriously injured people; and
- assist Queensland Health in identifying and managing patients who have a National Injury Insurance Scheme Queensland claim.²

The committee’s request for advice from Queensland Health

To assist its consideration of the potential FLP issues, the committee sought the following advice from the department:

1. What training in regards to information privacy do the staff who handle the confidential information receive?
2. During the life of the agreement, have any breaches or possible breaches of confidentiality been reported?

¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 113.

² Explanatory notes, p 2.

Advice from Queensland Health

The department provided the following advice in response to the committee's questions:

1. All Department of Health employees, regardless of role or location, must complete a suite of required training, as mandated by: relevant Commonwealth and State legislation and administrative policies; codes of practice; directives; Queensland Health human resource policies; and service level agreements.

Within 14 days of commencement, these employees must complete the Public Health Agency Information Privacy Act training. This training explains Queensland's general privacy landscape, taking health agency employees through their privacy obligations contained in the *Information Privacy Act 2009*. It also explains how the National Privacy Principles operate, what steps to take to ensure compliance, and the consequences of non-compliance.

Separately, each Hospital and Health Service (HHS) has a contact point for enquiries about personal information, health records, privacy, and right-to-information (RTI) requests. The Privacy and Confidentiality Contact Officer (PCCO) for each HHS is responsible for the development and delivery of their own HHS-specific training in privacy and confidentiality.

The Privacy and Right to Information (PRTI) Unit of the Department of Health provides advice and guidance to PCCOs and to other departmental and HHS staff about privacy and confidentiality issues, including the administration of the *Information Privacy Act 2009* and part 7 of the *Hospital and Health Boards Act 2011*.

The PRTI Unit also offers additional training and resources to complement HHS's training programs, including:

- quarterly privacy lunchbox sessions;
- yearly RTI and Information Privacy training and workshops; and
- updated guidelines, information resources and online templates relevant to privacy and confidentiality.

2. The Department of Health is not aware of any breaches or potential breaches during the life of the agreement.

Committee comment

The committee is satisfied, given the reasoning provided and the accompanying safeguards, that the breach of a person's rights and liberties is sufficiently justified.

Public Health Regulation 2018 - Rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review, regarding the prescribing a new public health risk

Clandestine drug laboratories pose a significant risk to the health and safety of persons in the vicinity of these sites. There is firstly the danger associated with the combustible nature of the chemicals used in the manufacture of the drugs and secondly, there is the health risks of exposure to the residue of these chemicals that permeate the surfaces of the environment in which the drugs have been manufactured.

The number of clandestine drug labs found in Queensland and in Australia over the last ten years is shown in the table below.³

³ Australian Criminal Intelligence Commission 2019, 'Illicit Drug Data Report 2017-18', page 125 <https://www.acic.gov.au/sites/default/files/illicit_drug_data_report_2017-18.pdf Accessed 8.8.18>

Number of clandestine laboratory detections found in Queensland and the total in Australia from 2008–09 to 2017–18

Year	Qld	Australia	Qld as a % of Australia
2008–09	148	449	32.9
2009–10	297	694	42.8
2010–11	293	703	41.6
2011–12	379	809	46.8
2012–13	330	757	43.6
2013–14	340	744	45.7
2014–15	236	667	35.3
2015–16	234	575	40.7
2016–17	150	463	32.4
2017–18	141	432	32.6
Total over 10 years	2,548	6,293	40.5

The table above shows that 2,548 clandestine drug laboratories were found in Queensland over the last 10 years with this representing over 40% of the total number of clandestine labs found in Australia during that time.

As well as the risks to public health and safety posed by these sites, there are usually significant costs incurred in the clean-up of these sites.

The process of handling the site of a clandestine drug laboratory is at first the responsibility of the Queensland Police. Once the police have finalised their involvement with the site, they then hand over control to the Local Government Authority who are responsible for overseeing the clean-up of the site.

In relation to the location of clandestine drug laboratories, Queensland Health has stated that:

*Rental properties are the most common locations, although commercial, industrial properties, remote rural properties and hotel and motel accommodation are also used.*⁴

Other Australian research states, “Most clan labs are either in or adjacent to domestic dwellings (68.4%). Other sites include vehicles (9.9%), public places (6.8%), rural areas (6.0%), commercial/ industrial buildings (4.2%), and other (4.7%).”⁵

The costs associated with the clean-up of clandestine drug labs generally start at \$5,000. Queensland Health also recommends a \$1,300 swab test after cleaning to guarantee the site is safe.

Under the Public Health Regulation 2018, the costs and responsibilities associated with the clean-up of clandestine drug labs are borne by the property owner and enforced by the relevant Local Government Authority. Where a rental property has been used as a clandestine drug lab by tenants, the landlord will therefore be responsible for these costs.

The Explanatory Notes raise the issue of section 4(3)(a) of the *Legislative Standards Act 1992*, “Whether legislation has sufficient regard to rights and liberties of individuals depends on whether,

⁴ Queensland Health 2015, ‘Illicit drug laboratories’

<<https://www.health.qld.gov.au/public-health/industry-environment/environment-land-water/illicit-drug-lab>
Accessed 8.8.18>

⁵ Department of Health (Commonwealth) 2017, ‘enHealth Guidance on: Clandestine Drug Laboratories and Public Health Risks’

<[https://www1.health.gov.au/internet/main/publishing.nsf/Content/A12B57E41EC9F326CA257BF0001F9E7D/\\$File/Guidance-Clandestine-Drug-Laboratories-Public-Health.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/Content/A12B57E41EC9F326CA257BF0001F9E7D/$File/Guidance-Clandestine-Drug-Laboratories-Public-Health.pdf)
Accessed 8.8.18>

for example, the legislation -

(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review”

The Explanatory Notes then state that -

It is considered that the public health risk is defined with sufficient clarity and specificity to ensure that a public health officer’s discretion is appropriately constrained and that property owners have adequate notice of the circumstances in which they may be subject to a public health order.

Under clause 5, a place is prescribed only if it may have been used to unlawfully produce a dangerous drug or to store chemicals or equipment that are associated with unlawful drug production. This requirement limits the places being prescribed to those that are at significant risk of contamination arising from the improper storage, handling or use of chemicals or equipment that is likely to occur when dangerous drugs are unlawfully produced.

The newly prescribed public health risk is subject to the full range of substantive and procedural safeguards that apply to public health orders under the Public Health Act, including the requirement that a public health order must be reasonable, that appropriate notice must be given and that public health orders are subject to judicial review.

Also, under section 23 of the Public Health Act, an authorised person must form a reasonable belief that a public health risk exists at a place before issuing a public health order. The Commonwealth has published detailed national guidelines called Clandestine Drug Laboratories Remediation Guidelines (2011). The guidelines assist local governments to decide if a public health risk exists as a result of a clandestine drug laboratory. Additional guidelines are also being developed by Queensland Health and will be issued after the Amendment Regulation is made.

According to the explanatory notes, Queensland Health consulted a range of stakeholders in the development of the Amendment Regulation and these are listed on page 6 of the Explanatory Notes. Among these consultations, Queensland Health stated that, “The Queensland Productivity Commission was consulted on the amendments to the Public Health Regulation. The Commission advised that further regulatory impact analysis is not required because the amendments are unlikely to result in significant adverse impacts as they clarify current practice and are intended to eliminate any legal uncertainty for local government officers issuing public health orders to decontaminate inactive clandestine laboratories.”⁶

Other issues raised by the Explanatory Notes

In addition to its consideration of the potential FLP issues, the committee sought advice from the department in regard to other information contained in the Explanatory Notes. The amendment to the Public Health Regulation 2018 to prescribe as a public health risk places that are at risk of having been contaminated because they may have been used to unlawfully produce a dangerous drug or to store chemicals or equipment that are associated with unlawful drug production raises numerous non-FLP related issues that will likely impact on Queenslanders. The following sections discuss the committee’s requests for advice on these matters and the department’s responses.

Costs to landlords and insurance coverage

In relation to the amendment of the Public Health Regulation 2018, the Explanatory Notes mention that the amendments “may result in costs to property owners who are ordered to undertake assessment and remediation of contaminated premises.” It is also noted that many of the clandestine

⁶ Public Health and Other Legislation Amendment Regulation (No. 1) 2019, Explanatory notes for SL 2019 No. 35, page 6.

laboratories in question are found in rental properties. There is therefore the expectation that landlords who have no knowledge of, or responsibility for clandestine laboratories that were established in their rental properties having to incur the costs to decontaminate their property. The Explanatory Notes state that, "It is also anticipated that most of these costs will be covered by insurance and will therefore be minimal for individual property owners."

The committee asked Queensland health for advice on the following points:

3. What consultations have the department conducted with the Insurance Council of Australia or individual insurers in order to make this statement?

4. Has the department received advice on the clauses of standard landlords' insurance policies to determine that such policies would cover the costs of remediating rented premises that are contaminated as a result of the manufacture of illicit drugs on those premises?

Advice from Queensland Health

The department provided the following advice in response to the committee's questions:

Queensland Health consulted with the Insurance Council of Australia and the National Insurance Brokers Association. In addition, Queensland Health has consulted with or reviewed landlord insurance policies from the following insurance providers:

- Aon Insurance
- EBM RentCover: Landlord insurance specialists
- Terri Scheer: Landlord and Building Insurance for Australians
- Suncorp
- NRMA
- QBE Insurance Group

Through this consultation, Queensland Health identified several insurance products that cover costs of remediating premises that have been contaminated by illicit drug production. The availability and extent of coverage varies. Some insurance policies exclude losses from illegal activity, including loss or damage arising from or in connection with the supply of drugs or alcohol. However, one insurance policy offers specific coverage of up to \$20,000 for chemical contamination resulting from the manufacturing, storage or distribution of any controlled drug, including clean-up costs to remove or mitigate the contamination or pollution. Several other insurance policies cover clean-up and other remediation costs under standard provisions that apply to losses from 'malicious damage' or 'theft or vandalism'.

Costs to owners and residents of neighbouring properties

The Explanatory Notes also state, "There could also be inconvenience and potential costs to owners or residents of premises that are near a former clandestine laboratory site the subject of a public health order."

The committee asked Queensland health for advice on the following point:

5. What compensation is available for innocent victims as described by the statement above?

Advice from Queensland Health

The department provided the following advice in response to the committee's question:

As the explanatory notes suggest, the types of costs that might be incurred by owners or residents of premises near a former clandestine laboratory which is subject to a public health order will generally be due to temporary inconvenience and are unlikely to be significant. For example, it may be necessary to temporarily vacate the area immediately surrounding the contaminated premises while clean-up is performed. These costs are considered justified by the need to protect the public from significant public health risks and to prevent more substantial costs to nearby residents and property owners, including the risk that contamination will spread to neighbouring properties if the public health risk is not quickly and effectively addressed.

Recovering costs from third parties

In regards to recovering costs, the Explanatory Notes also state, "In addition, section 33 of the Public Health Act allows a person who has been issued a public health order to recover costs from third parties. This provides the possibility that costs may be recovered from parties who set up clandestine drug laboratories."

The committee asked Queensland health for advice on the following points:

6. Can the Department outline the legal process by which a person could recover costs from a party who has set up clandestine drug laboratory on their rental property or in a neighbouring property, if that person is in prison as a result of their actions, or if that person claims that they have no capacity to pay to undertake the required assessment and remediation of contaminated premises?

Advice from Queensland Health

The department provided the following advice in response to the committee's questions:

Sections 33 to 35 of the Public Health Act provide a process whereby a person who has complied with a public health order may recover costs from third parties who are wholly or partly responsible for the public health risk to which the order relates. Under this process, a property owner who is required to remediate a premises under a public health order can apply to a Magistrates Court for a cost recovery order against third parties who were involved in setting up or operating the drug laboratory or who were otherwise responsible for the contamination. The third party to whom the order relates must be given notice of the hearing to decide the application; if the person fails to attend, the application may be decided in the person's absence.

If a cost recovery order is issued, it may be enforced as a judgment made under the Magistrates Court's civil jurisdiction in accordance with the Uniform Civil Procedures Rules 1999. For example, an enforcement warrant may be issued authorising the seizure and sale of the person's property.

In addition to the cost-recovery process under the Public Health Act, property owners may also be able to recover costs from current or former tenants in accordance with the Residential Tenancies and Rooming Accommodation Act 2008. The landlord, if they terminate the tenancy, can apply to the Residential Tenancies Authority for the complete return of any bond to cover the costs of cleaning and remediation. This provides the landlord with access to funds.

Committee comment

The committee notes the serious public health risks associated with clandestine drug production which the provisions contained in the regulation are intended to help authorities address.

The committee is satisfied, given the supporting framework and the objective to manage the risks of contamination associated with clandestine laboratories, that the breach of fundamental legislative principle is sufficiently justified.

The committee is also satisfied that the power in regards to prescribing a new public health risk to address risks of contamination from clandestine drug laboratories is sufficiently defined and subject to appropriate review.

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

4 Hospital Foundations (Postponement) Regulation 2019

The objective is to extend the period of automatic commencement of the remaining uncommenced provisions of the *Hospital Foundations Act 2018* until 29 March 2020.

The effect of this is that the amendments to Part 5B of the *Drugs Misuse Act 1986* will automatically commence on the 30 March 2020, if they do not commence by proclamation at an earlier time. Part 5B relates to the legislative framework for the industrial cannabis industry. The postponement will allow for consultation with industry.⁷

Committee comment

No issues of fundamental legislative principle were identified.

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

5 Recommendation

The committee recommends that the House notes this report.



Aaron Harper MP

Chair

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

Chair	Mr Aaron Harper MP, Member for Thuringowa
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	Mr Marty Hunt MP, Member for Nicklin
	Mr Barry O'Rourke MP, Member for Rockhampton
	Ms Joan Pease MP, Member for Lytton

⁷ Explanatory notes p 2.