

Health (Drugs and Poisons) Amendment Regulation 2018

Explanatory notes for SL 2018 No. 156

made under the

Health Act 1937

General Outline

Short title

Health (Drugs and Poisons) Amendment Regulation 2018

Authorising law

Section 180 of the *Health Act 1937*.

Policy objectives and the reasons for them

The *Health (Drugs and Poisons) Amendment Regulation 2018* (the Amendment Regulation) amends the *Health (Drugs and Poisons) Regulation 1996*. The Health (Drugs and Poisons) Regulation provides authority for health practitioners in Queensland to use medicines and poisons.

The Amendment Regulation will fill a service delivery and workforce gap created in isolated practice areas of Queensland. This workforce gap is a result of the Indigenous health worker with isolated practice authorisation (IPA) role being replaced by the equally qualified and nationally recognised Aboriginal and Torres Strait Islander health practitioner role. The amendments will ensure that the delivery of effective and culturally appropriate healthcare to rural and remote communities across Queensland is maintained by transitioning the scheduled medicines authorities held by Indigenous health workers with IPA to Aboriginal and Torres Strait Islander health practitioners.

Indigenous health workers with IPA are Aboriginal and/or Torres Strait Islander persons who:

- hold a position within an organisation that is designated as an Aboriginal and/or Torres Strait Islander health worker, and
- have completed a minimum qualification of a *Diploma of Aboriginal and Torres Strait Islander Primary Health Care (Generalist)* and an isolated practice authorisation qualification delivered by Queensland Health.

Indigenous health workers with IPA hold scheduled medicines authorities under the Health (Drugs and Poisons) Regulation. The scheduled medicines authorities permit Indigenous health workers with IPA to obtain, possess, administer and supply specified schedule 2, 3, 4 or 8 substances. The authorities are limited to isolated practice areas within specified Hospital and Health Services including Cairns and Hinterland, North West, and Torres and Cape Hospital and Health Services. Indigenous health workers with IPA complete these functions under the *Drug Therapy Protocol – Indigenous Health Worker* published on the Queensland Health website and on the oral or written instruction of a doctor, nurse practitioner or physician's assistant.

The training and qualifications required to be an Indigenous health worker with IPA are no longer available in Queensland. This has resulted in a decreasing number of these health workers in the workforce. The role has subsequently been replaced by the role of Aboriginal and Torres Strait Islander health practitioner, which is a nationally registered profession under the Aboriginal and Torres Strait Islander Health Practice Board of Australia. They undertake equivalent clinical training to Indigenous Health Workers with IPA, graduating with a *Certificate IV Aboriginal and Torres Strait Islander Primary Care Practice*.

Stakeholders have identified service delivery gaps for rural and remote communities across Queensland that can be addressed by the Aboriginal and Torres Strait Islander health practitioner workforce. These service delivery gaps occur primarily where:

- culturally appropriate clinical services are sought by communities, but the isolated practice area in which they reside is not within a specified Hospital and Health Service
- the administration of a medicine needs to occur before oral or written instruction can be sought from an authorised person, for example, in the event of a box jellyfish sting
- oral health preventative intervention measures would be beneficial, but are not otherwise available.

Achievement of policy objectives

The amendments to the Health (Drugs and Poisons) Regulation will transition the scheduled medicines authorities held by Indigenous health workers with IPA to Aboriginal and Torres Strait Islander health practitioners to address the service delivery need of culturally appropriate healthcare to rural and remote communities. The amendments will commence on 1 November 2018.

Aboriginal and Torres Strait Islander health practitioner scheduled medicines authorities

Aboriginal and Torres Strait Islander health practitioners will be able to:

- obtain, possess, administer and supply specified schedule 2, 3, 4 or 8 substances in isolated practice areas in Hospital and Health Services and Aboriginal and Torres Strait Islander Community Controlled Health Services on the oral or written instruction of a dentist, doctor or nurse practitioner
- administer and supply schedule 4 box jellyfish antivenom, ipratropium and salbutamol without the oral or written instruction from a doctor or nurse practitioner
- administer schedule 4 fluoride varnish without oral or written instruction from a dentist.

The Amendment Regulation will require Aboriginal and Torres Strait Islander health practitioners to use scheduled medicines authorities in accordance with the *Drug Therapy Protocol – Aboriginal and Torres Strait Islander Health Practitioner – Isolated Practice Area* (Drug Therapy Protocol) and an individual practice plan. The Drug Therapy Protocol is a document certified by the chief executive of Queensland Health, stating the circumstances and conditions under which Aboriginal and Torres Strait Islander health practitioners may act and use a controlled or restricted substance or poison. The practice plan is an approved form, that when completed, will outline the scheduled medicines authorities that an individual health practitioner will use and ensure the authorities are consistent with their skill level.

Aboriginal and Torres Strait Islander health practitioners will be permitted in specified circumstances to administer specified schedule 4 emergency medicines before seeking oral or written instruction from a doctor or nurse practitioner. This exemption is to provide for situations where administration of an emergency medicine is required as soon as possible. For example, in the event of a box jellyfish sting, a practitioner will be able to administer an emergency dose of antivenom and then consult an authorised person.

Aboriginal and Torres Strait Islander health practitioners may undertake elective oral health training within their qualification studies. Aboriginal and Torres Strait Islander health practitioners who have undertaken appropriate qualifications will be able to administer schedule 4 fluoride varnish on an as needs basis without oral or written instruction from a dentist. On the oral or written instruction from a dentist, Aboriginal and Torres Strait Islander health practitioners will be able to administer or supply other schedule 4 oral health substances. Dentists have been included as an authorised person who can provide oral or written instruction to appropriately qualified Aboriginal and Torres Strait Islander health practitioners. These amendments will facilitate oral health prevention and early intervention practices in rural and remote communities.

Aboriginal and Torres Strait Islander health practitioner trainee scheduled medicines authorities

Aboriginal and Torres Strait Islander health practitioner trainees will be able to possess and administer specified schedule 2, 3, 4 and 8 substances in isolated practice areas in Hospital and Health Services and Aboriginal and Torres Strait Islander Community Controlled Health Services under the supervision of an authorised person to the extent necessary to undergo a course of training.

Amendments to existing Indigenous health worker with isolated practice authorisation scheduled medicines authorities

To provide for the remaining Indigenous health workers with IPA in the workforce, the amendments to the Health (Drugs and Poisons) Regulation will align the scheduled medicines authorities held by Indigenous health workers with IPA and Aboriginal and Torres Strait Islander health practitioners. Indigenous health workers with IPA will be able to administer and supply schedule 4 box jellyfish antivenom, ipratropium and salbutamol without the oral or written instruction from a doctor, nurse practitioner or physician's assistant.

Additional miscellaneous amendments have been made to Indigenous health worker with IPA provisions to correct technical errors. These changes do not result in a change of policy intent.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the *Health Act 1937*.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

As the authorities for health practitioners to use scheduled substances are set out in the Health (Drugs and Poisons) Regulation, an Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The amendments are not expected to impose additional costs or regulatory burden on Aboriginal and Torres Strait Islander health practitioners, Hospital and Health Services or Aboriginal and Torres Strait Islander Community Controlled Health Services. Health services and clinical and non-clinical staff within these services are equipped to accommodate the role and have been engaging with Queensland Health on required implementation measures.

Consistency with fundamental legislative principles

The Amendment Regulation is largely consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*. A potential breach of a fundamental legislative principle is addressed below.

Subdelegation of power

Clauses 5 (new section 59B), 11 (new section 164B) and 14 (new section 252C) of the Amendment Regulation require an Aboriginal and Torres Strait Islander health practitioner to administer and supply specified scheduled substances under the oral or written instruction of a dentist, doctor or nurse practitioner, the Drug Therapy Protocol and practice plan.

Prescribing requirements by reference to an external document may be seen to breach section 4(5)(e) of the Legislative Standards Act. A drug therapy protocol is a document certified by the chief executive of Queensland Health that sets out matters of technical detail for the administration, possession and supply of substances. For example, the Drug Therapy Protocol includes the route of administration, the specific dose, quantity, duration and restrictions placed on substances and the circumstances in which they may be administered. The Drug Therapy Protocol is monitored and updated when necessary, aligns with clinical best practice and is published on the Queensland Health website (www.health.qld.gov.au).

A practice plan is an approved form developed between an Aboriginal and Torres Strait Islander health practitioner and their clinical supervisor. The practice plan provides a framework for the individual practitioner's clinical practice and any supervision requirements. Together, the practitioner and their clinical supervisor develop the practice plan to individualise the scope of practice specific to the practitioner's employed position. The approved form for the practice plan is published on the Queensland Health website at www.health.qld.gov.au.

The Drug Therapy Protocol and practice plan are updated regularly, with consideration given to the healthcare needs of specific patient populations, how care can be provided in a timely and safe manner, and requirements for medical advice, referral or transfer to higher levels of care specific to the individual qualifications, skills and experience of the Aboriginal and Torres Strait Islander health practitioner. It is considered that the rigour surrounding the development of the Drug Therapy Protocol and practice plan, their use in ensuring Queenslanders receive healthcare based on best clinical practice and the detailed nature of the documents, justifies the need to sub-delegate by referring to external documents in the Health (Drugs and Poisons) Regulation.

Consultation

Key stakeholder bodies, including the Australian Health Practitioner Regulation Agency, Australian Medical Association Queensland, Aboriginal and Torres Strait Islander Health Practice Board of Australia, Australian Workers' Union, Greater Northern Area Regional Training Network, Aboriginal and Torres Strait Islander Community Controlled Health Organisations, Queensland Nurses and Midwives' Union and Hospital and Health Services have been consulted about the amendments relevant to those bodies. All stakeholders consulted support the amendments.

The Amendment Regulation was assessed by the Queensland Productivity Commission, in accordance with *The Queensland Government Guide to Better Regulation*. The Queensland Productivity Commission advised that further regulatory impact assessment was not required on the basis that the amendments do not have any significant impacts on the community and do not increase the regulatory burden.

Notes on provisions

1 Short title

Clause 1 provides the short title of the regulation.

2 Commencement

Clause 2 provides for the commencement of the regulation on 1 November 2018.

3 Regulation amended

Clause 3 provides that this regulation amends the *Health (Drugs and Poisons) Regulation 1996*.

4 Amendment of s 4 (Meaning of *manufacture*)

Clause 4 amends section 4(4) to include an Aboriginal and Torres Strait Islander health practitioner.

5 Insertion of new s 59B

Clause 5 inserts new section 59B to authorise Aboriginal and Torres Strait Islander health practitioners practising in an isolated practice area to obtain and possess a controlled drug, or to administer a controlled drug under the *Drug Therapy Protocol – Aboriginal and Torres Strait Islander health practitioner – Isolated Practice Area* and the practice plan for the practitioner, and on the oral or written instruction of a doctor or nurse practitioner.

The section also provides for a person undergoing a course of training to practise as an Aboriginal and Torres Strait Islander health practitioner, to possess a controlled drug under the direction of an authorised person or to administer a controlled drug under the personal supervision of an authorised person to the extent necessary to undergo the course of training.

6 Amendment of s 64AA (Physician's assistants)

Clause 6 omits the word 'developed' from section 64AA to reflect that the *practice plan* definition has been amended to incorporate Aboriginal and Torres Strait Islander health practitioners.

7 Amendment of s 67 (Registered nurses)

Clause 7 inserts section 67(4)(b)(iiia) to authorise registered nurses to give Aboriginal and Torres Strait Islander health practitioners an oral or written instruction to administer a controlled drug, and renumbers subsection (4)(b)(iiia) to (vii).

8 Amendment of s 97 (Oral instruction must be put in writing)

Clause 8 amends section 97(2) to require Aboriginal and Torres Strait Islander health practitioners to report an oral instruction that a dentist or nurse practitioner has given, which has not subsequently been put in writing after giving the instruction.

9 Amendment of s 112 (Records – ambulance officers, indigenous health workers, midwives and rural and isolated practice area endorsed nurses)

Clause 9 amends section 112 to require Aboriginal and Torres Strait Islander health practitioners to keep a record book, which must record full details of each transaction involving a controlled drug administered, obtained or used by the practitioner.

10 Amendment of s 164A (Indigenous health workers)

Clause 10 amends section 164A to allow an indigenous health worker to administer or supply S4 box jellyfish anti-venom, S4 ipratropium and S4 salbutamol without the oral or written instruction of a doctor, nurse practitioner or physician's assistant.

11 Insertion of new s 164B

Clause 11 inserts new section 164B to authorise Aboriginal and Torres Strait Islander health practitioners practising in an isolated practice area to obtain and possess a restricted drug, or to administer or supply a restricted drug under the *Drug Therapy Protocol – Aboriginal and Torres Strait Islander health practitioner – Isolated Practice Area* and the practice plan for the practitioner. An Aboriginal and Torres Strait Islander health practitioner must also administer or supply a restricted drug on the oral or written instruction of a dentist, doctor or nurse practitioner, or during a declared public health emergency relating to an infectious medical condition or while an influenza emergency declaration is in force.

The section provides for the Aboriginal and Torres Strait Islander health practitioner to administer S4 fluoride varnish, S4 box jellyfish anti-venom, S4 ipratropium and S4 salbutamol without an oral or written instruction from a dentist, doctor or nurse practitioner. Aboriginal and Torres Strait Islander health practitioners will still be required to act under the Drug Therapy Protocol, which provides that a practitioner can only administer or supply fluoride varnish if they have undertaken appropriate oral health qualifications.

The section also provides for a person undergoing a course of training to practise as an Aboriginal and Torres Strait Islander health practitioner to possess a restricted drug under the direction of an authorised person or to administer a restricted drug under the personal supervision of an authorised person to the extent necessary to undergo the course of training.

12 Amendment of s 171A (Physician's assistants)

Clause 12 omits the word 'developed' from section 171A to reflect that the *practice plan* definition has been amended to incorporate Aboriginal and Torres Strait Islander health practitioners.

13 Amendment of s 175 (Registered nurses)

Clause 13 inserts section 175(8)(b)(iiia) to authorise registered nurses to give Aboriginal and Torres Strait Islander health practitioners an oral or written instruction to administer or supply a restricted drug, and renumbers subsection (8)(b)(iiia) to (vii).

Section 175(8)(b)(iii) is also amended to authorise registered nurses to give Indigenous Health Workers an oral or written instruction to supply a registered drug.

14 Insertion of new s 252C

Clause 14 inserts new section 252C to authorise Aboriginal and Torres Strait Islander health practitioners practising in an isolated practice area to administer or supply an S2 or S3 poison under the *Drug Therapy Protocol – Aboriginal and Torres Strait Islander health practitioner – Isolated Practice Area* and the practice plan for the practitioner.

The section also provides for a person undergoing a course of training to practise as an Aboriginal and Torres Strait Islander health practitioner to administer an S2 or S3 poison under the personal supervision of an authorised person to the extent necessary to undergo the course of training.

15 Amendment of s 258A (Physician’s assistants)

Clause 15 omits the word ‘developed’ from section 258A to reflect that the *practice plan* definition has been amended to incorporate Aboriginal and Torres Strait Islander health practitioners.

16 Amendment of s 263 (Registered nurses)

Clause 16 amends section 263 to authorise registered nurses to give an Aboriginal and Torres Strait Islander health practitioner an oral or written instruction to administer or supply an S2 or S3 poison.

17 Amendment of appendix 9 (Dictionary)

Clause 17 inserts new defined terms and amends existing terms in appendix 9.

In particular:

- *Aboriginal and Torres Strait Islander community controlled health service* is defined as a service for maintaining, improving, restoring or managing the health of Aboriginal people or Torres Strait Islanders provided by an Aboriginal and Torres Strait Islander corporation or a registered entity under the *Australian Charities and Not-for-profits Commission Act 2012* (Cwlth).
- *Aboriginal and Torres Strait Islander health practitioner* is defined as a person registered under the Health Practitioner Regulation National Law to practise in the Aboriginal and Torres Strait Islander health practice profession, other than a student.
- The definition of *specified Hospital and Health Service* has been amended to reflect the amalgamation of the Cape York and Torres and Cape Hospital and Health Services.