

## Application of Better Regulation Principles

### *Health Administration Regulation 2020*

#### **Principle 1 - The need for government action should be established**

The *Health Administration Regulation 2015* (2015 Regulation) is due to be repealed on 1 September 2020, in accordance with the provisions of the *Subordinate Legislation Act 1989*. The *Health Administration Regulation 2020* (Amending Regulation) remakes the 2015 Regulation to support the operation of the *Health Administration Act 1982*. The Amending Regulation not only remakes the 2015 Regulation but also:

- updates the *prescribed establishments* referred to in Schedule 1, and
- refers to an updated Incident Management Policy, which was gazetted on 22 June 2020. The New Policy updates the definition of *reportable incident* for the purposes of the *Health Administration Act 1982*.

#### **Principle 2 - The objective of government action should be clear**

The Amending Regulation supports the operation of the Health Administration Act including by providing for quality assurance committees and root cause analysis (RCA) teams.

An RCA is an investigation and analysis procedure following the occurrence of a 'reportable incident' in a relevant health services organisation. The aim of an RCA is to identify the cause of the incident and any contributing factors, following which recommendations are made to reduce the likelihood of similar incidents occurring in the future. The 2015 Regulation refers to a *reportable incident* by reference to the 2014 Incident Management Policy. Reportable incidents in the 2014 Incident Management Policy are incidents that have serious clinical consequences or have had major clinical consequences where the probability of occurrence is frequent or likely. A subset of reportable incidents is a sentinel event. All states and territories follow the Australian Commission on Safety and Quality in Health Care definition of sentinel events.

In July 2019, the 2014 was updated and replaced with a new NSW Health Incident Management Policy. The updated policy lists two new sentinel events in Appendix D:

- Discharge or release of an infant or child to an unauthorised person, and
- Use of an incorrectly positioned oro-or naso-gastric tube resulting in serious harm or death.

These new sentinel events are in line with the Australian Commission on Safety and Quality in Health Care's updated definition of sentinel events. The policy also reflects the rollout of the ims+ incident management framework across NSW Health entities. That is, Health entities that now use ims+ are to consider Appendix E in determining the scope of the definition of a *reportable incident*.

*Prescribed establishments*, including those listed in Schedule 1 of the Amending Regulation, have reporting obligations under the regulation and are bodies authorised to establish *quality assurance committees*. *Quality assurance committees* that are approved by the Minister have statutory protections including:

- the confidentiality of documents and proceedings of the Committee
- the protection of those documents and proceedings from being used in legal actions; and
- the protection from liability and indemnity for present and former members of the Committee, who were acting in good faith in carrying out their responsibilities.

**Principle 3 - The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options**

There is no non-regulatory option to remake the regulation within the existing legislative framework.

**Principle 4 - Government action should be effective and proportional**

The Amending Regulation is considered to be effective and proportional, in particular by updating references to an outdated policy.

**Principle 5 - Consultation with businesses and the community should inform regulatory development**

The Ministry of Health has consulted publicly and with key stakeholder in relation to the proposed remake of the regulation.

**Principle 6 - The simplification, repeal, reform, consolidation of existing regulation should be considered**

The Amending Regulation remakes and replaces the existing 2015 Regulation. The Amending Regulation is substantially the same as the 2015 Regulation, with the key change being to update the names of the *prescribed establishments* listed in Schedule 1. Many of the *prescribed establishments* previously in Schedule 1 were originally listed in the Regulation two decades ago and some stakeholders were unaware that they were listed.

**Principle 7 - Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness**

The Amending Regulation will be subject to the standard five-yearly staged repeal under the *Subordinate Legislation Act 1989*.