

## Health and Environment Committee

### Report No. 11, 57th Parliament

#### Subordinate legislation tabled between 21 April and 11 May 2021

#### 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 21 April and 11 May 2021. 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),<sup>1</sup> its compatibility with human rights,<sup>2</sup> and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),<sup>3</sup> and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).<sup>4</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
33	Proclamation made under the <i>Health Legislation Amendment Act 2020</i>	11 May 2021	15 September 2021
34	Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021	11 May 2021	15 September 2021
36	Nature Conservation and Other Legislation Amendment Regulation 2021	11 May 2021	15 September 2021

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

<sup>1</sup> Section 4 of the 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.

<sup>2</sup> Section 8 of the 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.

<sup>3</sup> 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).

<sup>4</sup> 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 (HRA, s 41(1)-(3)).

### **3 Proclamation made under the Health Legislation Amendment Act 2020**

The proclamation fixes 30 April 2021 as the commencement date for the remaining provisions of the *Health Legislation Amendment Act 2020*. Those provisions require Hospital and Health Services (HHSs) to develop and implement a health equity strategy for Aboriginal people and Torres Strait Islander people.

#### **3.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **3.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

#### **3.3 Human rights considerations**

The committee identified no human rights issues relating to the subordinate legislation.

#### **3.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation.<sup>5</sup> The certificate provides sufficient information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **4 Hospital and Health Boards (Health Equity Strategies) Amendment Regulation 2021**

The regulation amends the Hospitals and Health Boards Regulation 2012 to prescribe the requirements that a HHS must satisfy in the development and implementation of its health equity strategy. The stated aim is to ensure the strategy has a positive impact on health equity outcomes with Aboriginal peoples and Torres Strait Islander peoples.<sup>6</sup>

The requirements include specifying key performance measures relating to actively eliminating institutional racism, improving access to health services and ensuring that healthcare is provided in a manner that is sustainable, culturally safe and responsive to the needs of Aboriginal people and Torres Strait Islander people.<sup>7</sup>

#### **4.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **4.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

#### **4.3 Human rights considerations**

The committee identified no human rights issues relating to the subordinate legislation.<sup>8</sup>

#### **4.4 Human rights certificate**

As required by section 41 of the HRA, a human rights certificate was tabled with the subordinate legislation. The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>5</sup> This is despite s 41(4A) of the HRA, which states that where a proclamation fixes a date for commencement of all the provisions of an Act that are not in force, a human rights certificate is not required to be prepared.

<sup>6</sup> Explanatory notes, p 3.

<sup>7</sup> Explanatory notes, p 3.

<sup>8</sup> The human rights certificate refers briefly (at pp 3-5) to a number of human rights, and concludes the regulation does not contain any limits on those human rights; rather the provisions support those rights.

## 5 Nature Conservation and Other Legislation Amendment Regulation 2021

The stated objectives of the Regulation are to:

- ensure the conservation status and taxonomy of native fauna and flora species reflects the most up-to-date scientific knowledge (implementing the reclassification of 17 fauna species and 29 flora species)
- make consequential amendments (including prescribing a new version of the Queensland Environmental Offsets Policy) to reflect changes to conservation status and taxonomy, and
- resolve minor issues identified in subordinate legislation under the *Nature Conservation Act 1992* (NC Act) (including by correcting minor drafting errors and clarifying some provisions to achieve the original policy intent).<sup>9</sup>

The NC Act<sup>10</sup> provides for a regulation to prescribe wildlife to conservation classes. The reclassification of Queensland's native wildlife species is a routine process, ensuring that listings under the NC Act are kept up-to-date with current knowledge including population size and trends and risk of extinction. The conservation status of protected wildlife may be listed by regulation as 'extinct', 'extinct in the wild', 'critically endangered', 'endangered', 'vulnerable', 'near threatened' or 'least concern'.<sup>11</sup>

The Species Technical Committee (STC) is a panel of experts responsible for undertaking independent scientific assessments to determine the classification of protected wildlife under the NC Act and making recommendations to the responsible Minister. In 2020, the STC made recommendations to the former Minister for Environment and the Great Barrier Reef and Minister for Science and Minister for the Arts and the current Minister for the Environment and the Great Barrier Reef, Minister for Science and Youth Affairs. Following approval by the respective Ministers, Schedule 1 of the Nature Conservation (Animals) Regulation 2020 and Schedule 1 of the Nature Conservation (Plants) Regulation 2020 must be amended so the listings reflect the most recent approved advice of the STC.<sup>12</sup>

A consequential amendment to the Environmental Offsets Regulation 2014 prescribes a new version of the Queensland Environmental Offsets Policy. The new version reflects updates to classification and taxonomy of species prescribed in Schedule 1 of the Nature Conservation (Animals) Regulation 2020 and Schedule 1 of the Nature Conservation (Plants) Regulation 2020.<sup>13</sup>

Amendments are also required to the Nature Conservation (Animals) Regulation 2020, the Nature Conservation (Plants) Regulation 2020 and the Nature Conservation (Macropod) Conservation Plan 2017 to resolve a number of minor drafting errors, ranging from omissions and grammatical errors to provisions that require further clarification to achieve the original policy intent.<sup>14</sup>

### 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.

<sup>9</sup> Explanatory notes, pp 1 & 2.

<sup>10</sup> *Nature Conservation Act 1992*, ss 76-80.

<sup>11</sup> Explanatory notes, p 1.

<sup>12</sup> Explanatory notes, p 2.

<sup>13</sup> Explanatory notes, p 2.

<sup>14</sup> Explanatory notes, p 2.

### **5.3 Human rights considerations**

The committee identified no human rights issues relating to the subordinate legislation.

### **5.4 Human rights certificate**

As required by section 41 of the HRA, a human rights certificate was tabled with the subordinate legislation. The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **6 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

**Chair**

**September 2021**

### **Health and Environment Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Aaron Harper MP, Member for Thuringowa

Mr Robert (Rob) Molhoek MP, Member for Southport

Mr Stephen (Steve) Andrew MP, Member for Mirani

Ms Ali King MP, Member for Pumicestone

Ms Joan Pease MP, Member for Lytton

Dr Mark Robinson MP, Member for Oodgeroo