

## Health and Environment Committee

### Report No. 15, 57th Parliament

#### Subordinate legislation tabled between 16 June 2021 and 31 August 2021

#### 1 Aim of this report

This report summarises the findings of the Health and Environment Committee (committee) following its examination of the subordinate legislation within its portfolio areas tabled between 16 June 2021 and 31 August 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, its compatibility with human rights<sup>1</sup> and its lawfulness.<sup>2</sup> 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 certificates with the Human Rights Act 2019 (HRA).<sup>4</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
65	Health Legislation (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
77	Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2021	31 August 2021	18 November 2021
82	Public Health Amendment Regulation (No. 2) 2021	31 August 2021	18 November 2021
90	Environmental Legislation (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
99	Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2021	31 August 2021	18 November 2021

<sup>1</sup> Section 8 of the Human Rights Act 2019 (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>2</sup> *Parliament of Queensland Act 2001*, s 93.

<sup>3</sup> *Legislative Standards Act 1992* (LSA), Part 4. Section 24 sets out the information that must be included in the explanatory notes for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

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

No.	Subordinate legislation	Date tabled	Disallowance date
104	Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021	31 August 2021	18 November 2021
111	Tobacco and Other Smoking Products Regulation 2021	31 August 2021	18 November 2021
125	Radiation Safety Regulation 2021	31 August 2021	18 November 2021
131	Biodiscovery Regulation 2021	31 August 2021	18 November 2021
132	Proclamation—Waste Reduction and Recycling (Plastic Items) Amendment Act 2021	31 August 2021	18 November 2021
133	Radiation Safety (Radiation Safety Standards) Notice 2021	31 August 2021	18 November 2021

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

### 3 Health Legislation (Fees) Amendment Regulation 2021

The Health Legislation (Fees) Amendment Regulation 2021 (SL No. 65) increases prescribed fees in the following regulations in line with the government indexation rate of 1.7%:

- Ambulance Service Regulation 2015
- Food Regulation 2016
- Private Health Facilities Regulation 2016.

All the fee increases in SL No. 65 come within the 1.7% indexation factor apart from a small number which are slightly higher due to rounding.

The increased fees and charges take effect from 1 July 2021 for the Ambulance Service Regulation 2015, and from 1 October 2021 for the Food Regulation 2016 and the Private Health Facilities Regulation 2016.<sup>5</sup>

#### 3.1 Fundamental legislative principle issues

No issue of fundamental legislative principle were identified.

#### 3.2 Explanatory notes

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

#### 3.3 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

#### 3.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

<sup>5</sup> SL No. 65, explanatory notes, p 2.

#### 4 Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2021

The Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2021 (SL No. 77) further extends the period of a declared public health emergency to allow for emergency powers to be used to reduce the risk of COVID-19 spreading. The regulation extends the declared public health emergency for a further period of 90 days (until the end of 27 September 2021).

The declaration of the public health emergency was made by the Minister for Health and Minister for Ambulance Services, Hon Steven Miles MP, on 29 January 2020, and notified in the gazette on 31 January 2020. It has previously been extended multiple times. (See SL Nos 7, 8, 13, 75, 154, 249 and 260 of 2020, and SL No. 26 of 2021)

According to the explanatory notes, extending the duration of the declared public health emergency until 27 September 2021 is considered essential to limiting, and responding to, the potential spread of COVID-19 in Queensland.<sup>6</sup>

Since the notification of this extension regulation, the Legislative Assembly passed the Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021<sup>7</sup> which extends the ability of regulations to extend periods of declared public health emergencies by up to 90 days until 30 April 2022.<sup>8</sup>

The explanatory notes advise that due to its urgent nature, external consultation on the regulation was not possible, however:

Queensland Health will continue to consult with businesses and industries and continue its public messaging about the emergency powers, social distancing requirements and the Queensland Government's response to ensure Queenslanders are informed about COVID-19, including any confirmed cases and actions that can be taken to reduce the risk of COVID-19 spreading.<sup>9</sup>

#### Committee comment

The committee appreciates the importance of the extension of this regulation in protecting the health of all Queenslanders by limiting, and responding to, the potential spread of COVID-19 in Queensland.

##### 4.1 Fundamental legislative principle issues

The committee identified potential fundamental legislative principle issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

#### ***Emergency powers – powers to require a person to leave or remain or not enter, and power of entry***

The effect of declaring (and also of extending) a public health emergency is that a number of powers in the *Public Health Act 2005* (Public Health Act) are vested in an 'emergency officer' who is responding to the declared public health emergency. These powers include the power to require a person to:

- not enter or not to remain within a place
- stop using a place for a stated purpose
- go to or stay in a stated place
- answer questions.<sup>10</sup>

<sup>6</sup> SL No. 77, explanatory notes, p 4.

<sup>7</sup> The Bill was passed on 2 September 2021.

<sup>8</sup> *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, ss 49 - 51.

<sup>9</sup> SL No. 77, explanatory notes, p 6.

<sup>10</sup> Public Health Act, s 345.

An emergency officer also has the power to enter a place to save a human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Reasonable force is permitted to be used to enter a place.<sup>11</sup>

The emergency officer must make a reasonable attempt to seek consent for entry, but need not do so if the officer believes on reasonable grounds that immediate entry is required.<sup>12</sup>

The right to personal liberty is the most elemental and important of all common law rights.<sup>13</sup> Entry without consent into any place where a person lives requires the highest justification.<sup>14</sup>

An individual would normally expect to be able to enjoy freedom of movement and any removal of this right must be fully justified.<sup>15</sup>

The explanatory notes provide the following advice regarding protections to limit the exercise of the powers of emergency officers:

The powers of emergency officers are discretionary and are only expected to be exercised if there are significant risks to public health. Additionally, the Public Health Act includes protections to limit the exercise of emergency officers' powers. For example:

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier's consent to the entry (section 344);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2));
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353); and
- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4)).<sup>16</sup>

The explanatory notes offer the following justification for the inconsistency with fundamental legislative principles:

... it is considered that any potential impact the Regulation has on the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the potential spread of COVID-19.<sup>17</sup>

It should be noted that the powers described above are already contained within the Public Health Act, and are triggered by the declaration (and any extension) of a public health emergency, in this case due to the outbreak of COVID-19.

#### Committee comment

Given the overall public health imperative to prevent the spread of COVID-19 in Queensland, the committee is satisfied that any potential breach of fundamental legislative principles is sufficiently justified.

---

<sup>11</sup> Public Health Act, s 343.

<sup>12</sup> Public Health Act, s 344.

<sup>13</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

<sup>14</sup> OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

<sup>15</sup> OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 99.

<sup>16</sup> SL No. 77, explanatory notes, p 4.

<sup>17</sup> SL No. 77, explanatory notes, p 5.

### ***Matters appropriate to subordinate legislation***

Subordinate legislation should contain only matters appropriate to that level of legislation. This issue is the corollary of the issue that a Bill should allow the delegation of legislative power in appropriate cases and to appropriate persons.<sup>18</sup>

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.<sup>19</sup>

The explanatory notes acknowledge that there is a potential breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament, given the extensive powers enlivened when a public health emergency is declared or extended.<sup>20</sup> It is regulations, not Acts of Parliament, which have generally been the mechanism by which the public health emergency has been extended.

The explanatory notes offer the following justification:

The potential breach is considered justified given the need to protect the health of the Queensland community by being able to respond swiftly to manage the ongoing evolving public health risk from COVID-19. The power to extend by regulation rather than an Act of Parliament allows the Government to discharge its key responsibility of protecting the health and safety of the public.<sup>21</sup>

...

A regulation extending the declared public health emergency may be made only if the Minister is satisfied it is necessary for a purpose of the Public Health Act. Having the ability to respond at short notice to an evolving epidemiological situation will continue to help ensure the public health objectives of the Public Health Act can be met.<sup>22</sup>

Although the explanatory notes state that as a result of amendments to the Public Health Act, the power to make a regulation to extend the public health emergency by up to 90 days will expire on 30 September 2021 (thereby providing a time limit for the ability to make 90 day extensions),<sup>23</sup> the passing of the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* enables regulations to extend periods of declared public health emergencies by up to 90 days until 30 April 2022.<sup>24</sup>

### **Committee comment**

Given the 30 April 2022 limitation on extending periods of declared public health emergencies by regulation for up to 90 days under the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, the committee is satisfied that in the circumstances, the subordinate legislation has sufficient regard for the institution of Parliament.

## **4.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

---

<sup>18</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 165.

<sup>19</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

<sup>20</sup> SL No. 77, explanatory notes, p 5.

<sup>21</sup> SL No. 77, explanatory notes, p 5.

<sup>22</sup> SL No. 77, explanatory notes, p 5.

<sup>23</sup> SL No. 77, explanatory notes, p 5. The amendments were made by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*.

<sup>24</sup> *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, ss 49 - 51.

### **4.3 Consideration of human rights compatibility**

The human rights issues raised by SL No. 77 are summarised below, followed by the collective response of the Minister for Health and Ambulance Services, Hon Yvette D'Ath MP, to all of those issues.

#### ***Freedom of movement***

Every person has the right to move freely within Queensland and to enter and leave it.<sup>25</sup>

Under the regulation, emergency officers have the power to do the following:

- require a person to not enter or not remain within a place
- stay in a stated place
- stop using a place for a stated purpose.<sup>26</sup>

This will impact on a person's right to freedom of movement.

#### ***Freedom of thought, conscience, religion and belief***

Every person has the right to freedom of thought, conscience, religion and belief.<sup>27</sup>

The regulation provides emergency officers with the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs.

#### ***Peaceful assembly and freedom of association***

Every person has the right to peaceful assembly.<sup>28</sup>

The restriction on a person's movements may limit their ability to assemble peacefully.

#### ***Cultural rights***

Persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture and to practise their religion.<sup>29</sup>

The HRA recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.<sup>30</sup>

As noted above, SL No. 77 provides emergency officers with the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs.

The restrictions on a person's movement could limit a person's cultural rights to engage with community and their traditionally owned or otherwise occupied lands and waters.

#### ***Taking part in public life***

Every person has the right to participate in the conduct of public affairs.<sup>31</sup>

The restrictions on a person's movement or ability to interact with other persons may impact on a person's right to take part in public life.

---

<sup>25</sup> HRA, s 19.

<sup>26</sup> SL No. 77, human rights certificate, pp 4-5.

<sup>27</sup> HRA, s 20.

<sup>28</sup> HRA, s 22.

<sup>29</sup> HRA, s 27.

<sup>30</sup> HRA, s 28.

<sup>31</sup> HRA, s 23.

### ***Property rights***

A person must not be arbitrarily deprived of their property.<sup>32</sup>

Emergency officers have the power to:

- demolish structures or other property
- remove an animal, substance or thing from a place
- dispose of an animal, substance or thing at a place
- destroy animals at a place or remove animals for destruction at another place
- take action in relation to property.<sup>33</sup>

All these actions will impact on a person's property rights and will deprive them of their property.

### ***Right to privacy***

A person has the right not to have their privacy unlawfully or arbitrarily interfered with.<sup>34</sup>

Being compelled to provide a name and address and to answer questions limits a person's human right to privacy.

### ***Right to liberty and security of person***

A person must not be subject to arbitrary arrest or detention.<sup>35</sup>

The regulation provides powers to emergency officers to restrict people's movements, including requiring a person to self-isolate at home or another premises. This may limit the right to liberty and security because preventing people from leaving their homes or other premises may constitute detention.

### ***Protection of families and children***

Every child has the right to protection that is in their best interests as a child.<sup>36</sup>

The power to restrict a person's movement may impact children through restriction of movement, contact with other people or restricting access to facilities, such as schools, and events.

### ***Humane treatment when deprived of liberty***

A person deprived of liberty must be treated with humanity and respect.<sup>37</sup>

Emergency officers (medical) have the power to order the detention of a person if that person has or may have a serious disease or illness. The use of force to enforce self-isolation or other directions could limit the right to humane treatment when deprived of liberty.<sup>38</sup>

### ***Right to education***

A child has the right to access primary and secondary education appropriate to their needs.<sup>39</sup>

A child's educational activities may be limited due to restrictions on movement.

---

<sup>32</sup> HRA, s 24.

<sup>33</sup> SL No. 77, human rights certificate, p 6.

<sup>34</sup> HRA, s 25.

<sup>35</sup> HRA, s 29.

<sup>36</sup> HRA, s 26.

<sup>37</sup> HRA, s 30.

<sup>38</sup> SL No. 77, human rights certificate, p 8.

<sup>39</sup> HRA, s 36.

### ***The Minister's justification for the limitations on human rights***

The Minister provides the following collective justification for all these limitations on human rights:

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.<sup>40</sup>

The Minister further states:

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Although the Regulation potentially limits many rights, these limitations are minor in nature and the need to protect the right to life for all Queenslanders substantially outweighs any limitation on human rights.<sup>41</sup>

The Minister also notes these safeguards:

The Public Health Act states that the Regulation can extend the declared public health emergency and related powers of emergency officers for a period of no more than 90 days. This requirement is an important safeguard as it places an obligation on the Queensland Government to repeatedly assess the need for the declared public health emergency to continue, based on the current threat of COVID-19 in Queensland.<sup>42</sup>

### ***Committee comment***

Given the imperative to protect the health of Queenslanders from the COVID-19 pandemic, the committee is satisfied that any limitation to human rights in the regulation is reasonable and justifiable. The committee notes that the extension regulation is limited by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*.<sup>43</sup>

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

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

## **5 Public Health Amendment Regulation (No. 2) 2021**

The Public Health Amendment Regulation (No. 2) 2021 (SL No. 82) amends the Public Health Regulation 2018 to increase the quarantine fees payable from 1 July 2021 for individuals who are required to undertake hotel quarantine.

The explanatory notes advise that section 362MC of the Public Health Act provides for a regulation making power, which permits a regulation to prescribe the fees payable for a person who is required to quarantine at a place other than the person's home. These fees include the types of costs associated with the person's quarantine, for example, the cost of accommodation or the cost of meals.<sup>44</sup>

SL No. 82 also prescribes respiratory syncytial virus (RSV) as a notifiable condition under schedule 1 of the Public Health Regulation 2018.

---

<sup>40</sup> SL No. 77, human rights certificate, p 9.

<sup>41</sup> SL No. 77, human rights certificate, p 10.

<sup>42</sup> SL No. 77, human rights certificate, p 11.

<sup>43</sup> *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*, ss 49-51.

<sup>44</sup> Explanatory notes, p 2.



### **Increased quarantine fees**

SL No. 82 increases the accommodation fee for each night of quarantine from \$135 to \$165.<sup>45</sup> This applies to adults and children (though if two or more persons are permitted to quarantine together then only one accommodation fee is payable per night).

The explanatory notes provide this justification for the fee increase:

The quarantine fee was ... negotiated in March 2020 following discussions with the then Queensland Department of Tourism, Innovation and Sport and hotel industry partners, as an acceptable rate in the initial stages of the Quarantine Hotel program. To support costs for hotel quarantine continuing to be sustainably managed, it is necessary to increase the daily accommodation room fee.<sup>46</sup>

The increase of \$30 per night of quarantine represents an increase of 18.2%. The explanatory notes offer a general justification based on cost recovery.

The regulation also increases meal fees for children aged 13 years or over from \$32.50 to \$65 per day.<sup>47</sup> The meal fees for children under 3 years are decreased from \$32.50 to \$0. Meal fees for children between 3 and 13 years old remain at \$32.50 per day.<sup>48</sup>

The explanatory notes state that the changes to meal fees for children is to align with the meal costs charged by hotels.<sup>49</sup>

More generally, the explanatory notes provide this justification for the increase in overall quarantine fees:

The intent of charging a fee is to offset the cost to government (similar to other fees and charges). The government is not seeking to recover the entire costs of quarantine, as the costs of security overlay for hotels, health support services, transport and logistics is not included in the calculation of the fee.<sup>50</sup>

Public consultation was not undertaken on the proposed amendments relating to the increase of quarantine fees.<sup>51</sup> The explanatory notes also advise that the increase to quarantine fees has been exempted by government from further analysis under *The Queensland Government Guide to Better Regulation*.<sup>52</sup>

### **Notifiable condition – Respiratory syncytial virus**

Chapter 3 of the Public Health Act establishes the notifiable conditions register. The Public Health Act requires doctors, persons in charge of hospitals and directors of pathology laboratories to notify the chief executive of Queensland Health when a person may have or has a notifiable condition. Section 64 of the Public Health Act requires the Minister to be satisfied the condition is a significant risk to public health before recommending to Governor in Council that a condition be prescribed as a notifiable condition.

The explanatory notes provide the following justification for including RSV on the register of notifiable conditions:

Respiratory syncytial virus (RSV) is one of the leading potentially preventable cause of mortality in children with acute lower respiratory tract infection during their initial five years of life. RSV is of

---

<sup>45</sup> SL No. 82, s 4.

<sup>46</sup> SL No. 82, explanatory notes, p 2.

<sup>47</sup> SL No. 82, s 4.

<sup>48</sup> Prior to this regulation, all children's meal fees were \$32.50 per day of quarantine. This regulation articulates different meal fees based on the age of the child. See *Community Services Industry (Portable Long Service Leave) Act 2020*, s 144.

<sup>49</sup> SL No. 82, explanatory notes, p 2.

<sup>50</sup> SL No. 82, explanatory notes, p 3.

<sup>51</sup> SL No. 82, explanatory notes, p 5.

<sup>52</sup> SL No. 82, explanatory notes, p 5.

significant public health concern, causing significant mortality and morbidity, particularly in young children, the elderly population, and those with pre-existing conditions. RSV remains one of a few major causes of childhood acute lower respiratory infections with no available vaccine. As a single RSV infection does not result in long-lasting protective immunity, symptomatic illness tends to occur repetitively in children.

Currently, there is not a comprehensive understanding of RSV's patterns of emergence, evolution and spread. Making RSV a notifiable condition will allow health professionals to develop a better understanding of the burden and epidemiology of this disease. This will subsequently provide data to assist in the development of public health control strategies.<sup>53</sup>

According to the explanatory notes, public consultation was not undertaken on the proposed amendments to include RSV as a notifiable condition.<sup>54</sup> However, Queensland Health maintains a communication network with clinicians including the medical practitioners and pathologists who will be affected by the amendment.<sup>55</sup> The explanatory notes advise that Queensland Health will ensure an appropriate communications strategy is adopted to inform relevant clinicians and pathologists of the requirements to notify RSV.<sup>56</sup>

## 5.1 Fundamental legislative principle issues

### *Retrospectivity*

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the rights and liberties, or impose obligations retrospectively.<sup>57</sup>

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.<sup>58</sup>

As acknowledged in the explanatory notes, the amendment to increase quarantine fees for accommodation and meals potentially breaches this fundamental legislative principle because it imposes the obligation to pay the higher set of quarantine fees from 1 July 2021.<sup>59</sup>

While the regulation was notified on 30 June 2021, and therefore was not retrospective in that sense, it is likely that individuals arriving from 1 July 2021 onwards would have made travel arrangements before 30 June 2021. These individuals will be liable to pay a higher amount for their quarantine than the amounts that applied at the time they made their travel arrangements.

#### *The explanatory notes state:*

The potential breach is justified as there is already a requirement to pay a fee for quarantine. The new fee reflects an increase from the fees which were initially set over a year ago and have since been re-negotiated with hotels providing quarantine.<sup>60</sup>

#### Further:

Queensland Health will continue to offer a fee waiver scheme that enables a full or partial waiver of the quarantine fee. There is also an option to pay in instalments by entering into a payment plan.<sup>61</sup>

---

<sup>53</sup> SL No. 82, explanatory notes, p 3.

<sup>54</sup> SL No. 82, explanatory notes, p 5.

<sup>55</sup> SL No. 82, explanatory notes, p 5.

<sup>56</sup> SL No. 82, explanatory notes, p 5.

<sup>57</sup> *Legislative Standards Act 1992*, s 4(3)(g).

<sup>58</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 55.

<sup>59</sup> SL No. 82, explanatory notes, p 4.

<sup>60</sup> SL No. 82, explanatory notes, p 4.

<sup>61</sup> SL No. 82, explanatory notes, p 4.

Committee comment

The committee is satisfied that any breach of fundamental legislative is justified in the circumstances, noting that any retrospective impact of the increased fees would apply to a small group of individuals and overall the fee increase is required to maintain the sustainability of the hotel quarantine program in Queensland.

**Privacy**

The amendment to include RSV as a notifiable condition raises the issue of fundamental legislative principle relating to the rights and liberties of individuals, as it will require clinicians and pathologists to disclose confidential information, such as patient details, to the notifiable conditions register. This will impact a person's right to privacy of their health information.

The explanatory notes acknowledge this amendment may potentially breach this fundamental legislative principle, but note there are safeguards within the Public Health Act to protect the way this confidential information is used and disclosed.<sup>62</sup> For example:

The confidentiality of data contained in the notifiable conditions register is protected by section 77 of the Public Health Act. Sections 78 to 85 of the Public Health Act provide specific conditions for the disclosure of confidential data. For example, for the purpose of contact tracing, because it is in the public interest or for public health monitoring. Only an appropriate delegate within Queensland Health can disclose confidential data. For example, the chief executive can disclose confidential health data in the public interest.<sup>63</sup>

Further, it is noted that a maximum penalty of 50 penalty units (\$6,892.50<sup>64</sup>) applies for disclosing confidential information other than in accordance with the Public Health Act.<sup>65</sup>

More broadly, the explanatory notes explain the benefits that prescribing RSV as a notifiable condition will have for the general community:

Prescribing RSV as a notifiable condition will be essential in understanding the epidemiology of the virus, the development of public health strategies and identifying and managing any outbreaks within Queensland. It will improve health professionals' understanding of the epidemiology and burden of disease by improving understanding of how the virus emerges, evolves and spreads. It will support the development of public health control strategies.<sup>66</sup>

Committee comment

The committee is satisfied that any breach of fundamental legislative is justified in the circumstances, having regard to the safeguards in place under the Public Health Act to protect confidential information and the overall objective of better understanding RSV and developing associated public health control strategies.

**5.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

**5.3 Consideration of human rights compatibility**

The committee considers that the subordinate legislation raises 2 human rights issues. Limitations on property rights and the right to privacy and reputation are discussed below.

---

<sup>62</sup> SL No. 82, explanatory notes, p 5.

<sup>63</sup> SL No. 82, explanatory notes, p 5.

<sup>64</sup> The value of a penalty unit is \$137.85: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

<sup>65</sup> SL No. 82, explanatory notes, p 5.

<sup>66</sup> SL No. 82, explanatory notes, p 4.

### **Property rights**

A person must not be arbitrarily deprived of their property.<sup>67</sup>

Property can include economic property (ie money). As acknowledged in the human rights certificate, the increase in fee for the costs of mandatory quarantine can potentially limit this human right.

However, the Minister states that any deprivation of property in these circumstances is not arbitrary as it is based on cost recovery:

In cases where government services are provided, it is standard practice for cost recovery to apply in appropriate cases. In this instance, it is considered the fee for quarantine should be increased to ensure that the costs of providing hotel quarantine incurred by the Queensland Government are borne primarily by those receiving the benefits of the services provided rather than by the community as a whole.

The fee is not being imposed arbitrarily ... The fee cannot be considered capricious, unpredictable or unreasonable, as it is directly related and proportionate to the legitimate aim of ensuring that the costs of mandatory quarantine are distributed fairly and are payable primarily by those who receive the benefits of the government services provided.<sup>68</sup>

If the amendments to increase fees were considered to be a limitation on the right to property, the Minister provides this justification:

A significant proportion of cases of COVID-19 in Australia originated from overseas. Given this, it is important that Australia continues its policy of requiring mandatory quarantine for overseas arrivals, as this has provided significant protection to the Australian community and helped to lower the rate of transmission compared to other countries. The requirement for those returning from overseas to pay an increased fee for quarantine reflects the fact that they are receiving the benefit of the services provided by the hotels in which they are quarantined, including food and linen services. The inclusion of a fee waiver scheme and payment plans is considered to ameliorate the potential impact on human rights.<sup>69</sup>

### **Right to privacy and reputation**

A person has the right not to have their privacy unlawfully or arbitrarily interfered with.<sup>70</sup>

SL No. 82 potentially limits this human right, as it will require clinicians and pathologists to disclose confidential information to the notifiable conditions register for patients with RSV. The approved form for notifying a notifiable condition includes details such as the patient's name, address, date of birth, and phone number. It also requires the patient's workplace, school, childcare or other institution to be provided, the country where the condition was acquired and the likely source of exposure.<sup>71</sup>

The Minister states that the purpose of the limitation is to protect the health of the public by managing any potential outbreak of RSV:

It is reasonable, necessary and proportionate to limit the privacy of a person who has or is suspected of having RSV in order to protect the health of the public. Limitations on the right to privacy exist for other health conditions prescribed as notifiable conditions. It is considered the notification of certain diseases acquired by individuals to public health authorities improves the overall management of public health, which is consistent with a free and democratic society based on human dignity, equality and freedom.<sup>72</sup>

The human rights certificate also highlights the provisions in the Public Health Act (set out above) that safeguard against unauthorised disclosure of confidential information.<sup>73</sup>

---

<sup>67</sup> HRA, s 24.

<sup>68</sup> SL No. 82, human rights certificate, pp 5-6.

<sup>69</sup> SL No. 82, human rights certificate, p 7.

<sup>70</sup> HRA, s 25.

<sup>71</sup> SL No. 82, human rights certificate, p 6.

<sup>72</sup> SL No. 82, human rights certificate, p 6.

<sup>73</sup> SL No. 82, human rights certificate, p 7.

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

**5.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

**6 Environmental Legislation (Fees) Amendment Regulation 2021**

The objective of the Environment Legislation (Fees) Amendment Regulation 2021 (SL No. 90) is to increase prescribed fees in the following regulations in line with the government indexation rate of 1.7%:

- Coastal Protection and Management Regulation 2017
- Environmental Protection Regulation 2019
- Forestry Regulation 2015
- Marine Parks Regulation 2017
- Nature Conservation (Animals) Regulation 2020
- Nature Conservation (Plants) Regulation 2020
- Nature Conservation (Protected Areas Management) Regulation 2017
- Queensland Heritage Regulation 2015
- Recreation Areas Management Regulation 2017
- Waste Reduction and Recycling Regulation 2011.

All the fee increases in SL No. 90 come within the 1.7% increase.

The explanatory notes state, that no external consultation was undertaken as the Amendment Regulation proposes annual increases in line with government endorsed indexation rate and policy.<sup>74</sup>

**6.1 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

**6.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

**6.3 Compatibility with human rights**

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

**6.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

---

<sup>74</sup> SL No. 90, explanatory notes, p 1.

## 7 Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2021

The object of the *Nature Conservation Act 1992* is the conservation of nature while allowing for the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.<sup>75</sup>

One of the ways in which the object is to be achieved is through the dedication and declaration of protected areas.<sup>76</sup>

A regulation may dedicate a specified area of state land as a national park (scientific), or a national park; or a conservation park; or a resources reserve.<sup>77</sup>

The Governor in Council may, by regulation, revoke the dedication of a protected area in whole or part. The regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days' notice has been given, passed a resolution requesting the Governor in Council to make the revocation.<sup>78</sup>

On 24 March 2021, the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs, Hon Meaghan Scanlon MP, tabled a proposal to revoke certain protected areas and gave notice of motion concerning the revocation.<sup>79</sup>

On 13 May 2021, the Minister moved that the House requests the Governor in Council to revoke by regulation under section 32 of the *Nature Conservation Act 1992* an area of 0.9376 hectares of the Warrina Conservation Park.<sup>80</sup>

The Minister advised that the proposal to revoke part of Warrina Conservation Park would 'allow for the area to be converted to road reserve to facilitate upgrades to the Warrina Innisfail residential aged care facility and rectify historical boundary alignment of the conservation park'.<sup>81</sup>

The Minister added:

... Warrina Innisfail is a community based organisation that provides accommodation, care and support for frail, aged and disabled people. The revocation would improve access for construction of a two-storey building and car park, which will enable the Warrina Innisfail facility to meet the growing demand for aged care in the local community.

The area proposed for revocation from the conservation park contains limited conservation values due to historical clearing predating dedication of the conservation park. The proposal will also consolidate the boundary of the conservation park, providing management benefits for the protected area. Warrina Innisfail has advised that it does not have the capacity to meet the department's compensation requirements for the proposed revocation. As parts of the revocation area are cleared and have historically been used for car parking by staff and visitors to the facility due to limited on-site capacity, the department supports that compensation for this proposal is waived.

This revocation is of vital importance to address access concerns for the expanded centre into the future. The expansion of the facility is a joint project with Cassowary Coast Regional Council and is of critical importance to accommodate aged-care needs in the region. I commend the motion to the House.<sup>82</sup>

The motion was agreed to.<sup>83</sup>

---

<sup>75</sup> *Nature Conservation Act 1992*, s 4.

<sup>76</sup> *Nature Conservation Act 1992*, s 5.

<sup>77</sup> *Nature Conservation Act 1992*, s 29.

<sup>78</sup> *Nature Conservation Act 1992*, s 32.

<sup>79</sup> Queensland Parliament, Record of Proceedings, 24 March 2021, p 704.

<sup>80</sup> Queensland Parliament, Record of Proceedings, 13 May 2021, pp 1,450-1,452.

<sup>81</sup> Queensland Parliament, Record of Proceedings, 13 May 2021, p 1,451.

<sup>82</sup> Queensland Parliament, Record of Proceedings, 13 May 2021, p 1,451.

<sup>83</sup> Queensland Parliament, Record of Proceedings, 13 May 2021, p 1,452.

A public notification about the proposed road reserve was placed in a newspaper circulated locally and another circulating statewide, but no objections were received.<sup>84</sup>

The explanatory notes advise that stakeholders that currently have, or are likely to have, an interest in the proposal areas such as Energy Queensland and Powerlink Queensland have been consulted and that feedback from stakeholders consulted about the Amendment Regulation was generally positive.<sup>85</sup>

SL No. 99 also changes the name of Gheebulum Coonungai (Moreton Island) National Park to Gheebulum Kunungai (Moreton Island) National Park.<sup>86</sup> Native title holders for Gheebulum Coonungai (Moreton Island) National Park requested the name change.<sup>87</sup>

#### **7.1 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

#### **7.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

#### **7.3 Compatibility with human rights**

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

#### **7.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **8 Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021**

The objective of the Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021 (SL No. 104) is to amend the Nature Conservation (Protected Areas) Regulation 1994 to redescribe the Heathlands Resources Reserve and remove the Jardine River Resources Reserve. This is because the necessary steps to return the land to Crown Land prior to the dedication of the resources reserve in 1994 were not completed.<sup>88</sup>

The human rights certificate explains:

The 1994 process whereby the Governor in Council approved the dedication of the land as resources reserves and included the land in the Regulation was an invalid action. For the action to be valid, the previous tenure of Departmental and Official Purpose (D&OP) Reserve under the former *Land Act 1962* must have been revoked or cancelled. There is no evidence that this action was undertaken, therefore dedication of the reserves under the NC Act [*Nature Conservation Act 1992*] in 1994 is invalid and beyond power. Implementing the Amendment Regulation will correct this register.

The *Statutory Instruments Act 1992* requires that the correct authorising law is applied when making a regulation. The NC Act was not the correct instrument to apply to administer the land in 1994. Section 24AA of the *Acts Interpretation Act 1954* provides the power to amend or repeal a decision or instrument. As the reserves remain governed by the current *Land Act 1994* (Land Act), the NC Act had no power in 1994 to support a decision for the land to be dedicated by regulation as a protected area.

Generally, the removal of NC Act lands from the protected area estate requires a decision by the Legislative Assembly. As the authorising law is invalid, and the Land Act applies, the *Acts Interpretation Act 1954* would not permit such a decision to be made.

---

<sup>84</sup> SL No. 99, human rights certificate, p 3.

<sup>85</sup> Explanatory notes, p 3.

<sup>86</sup> See *Nature Conservation Act 1992*, s 64.

<sup>87</sup> SL No. 99, explanatory notes, p 3.

<sup>88</sup> SL No. 104, explanatory notes, p 1.

To remove the land from the Regulation requires the decision of the Governor in Council. From an overarching perspective, though the NC Act is not the correct authorising law, a mechanism must be applied to remove the land from the Regulation which looks to the NC Act as its head of power. In this respect, the Amendment Regulation applies to:

- Section 33 of the NC Act which prescribes that the Governor in Council, by regulation, may change the class of a protected area by dedicating the area as another class of protected area, or, amalgamate protected areas of the same class, and assign a name to the amalgamated area; and
- Section 175 of the NC Act which prescribes that the Governor in Council may make regulations under this Act.<sup>89</sup>

According to the human rights certificate, SL No. 104 'is critical to enable the future correction of the Land Title Registry'.<sup>90</sup>

Trusteeship of the land returns solely to the Department of Environment and Science 'to streamline the future transfer of the land to First Nations peoples'.<sup>91</sup>

According to the explanatory notes, the Queensland Government has discussed the proposal with the First Nations peoples particularly concerned with this land. The Balkanu Cape York Development Corporation and the Cape York Land Council Aboriginal Corporation are supporting Traditional Owners who have an interest in this land and have been consulted.<sup>92</sup> Furthermore, all parties consulted support the proposed amendments.<sup>93</sup>

#### **8.1 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

#### **8.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

#### **8.3 Compatibility with human rights**

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

#### **8.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **9 Tobacco and Other Smoking Products Regulation 2021**

The Tobacco and Other Smoking Products Regulation 2021 (SL No. 111) remakes the Tobacco and Other Smoking Products Regulation 2010 which expired on 31 August 2021.<sup>94</sup>

SL No. 111 prescribes various matters to support the operation of the *Tobacco and Other Smoking Products Act 1998* including:

- the types of things that are *smoking related products*;
- the requirements for the form of price tickets and other indicators of price at points of sale or tobacco product vending machines;

---

<sup>89</sup> SL No. 104, human rights certificate, pp 1-2.

<sup>90</sup> SL No. 104, human rights certificate, p 3.

<sup>91</sup> SL No. 104, human rights certificate, p 3.

<sup>92</sup> SL No. 104, explanatory notes, p 3.

<sup>93</sup> SL No. 104, explanatory notes, p 3.

<sup>94</sup> See *Statutory Instruments Act 1992*, part 7; SL No. 111, explanatory notes, p 1.



- the requirements for the form of mandatory signs, permitted signs and no smoking signs;
- the requirements for the display of mandatory signs and no smoking signs;
- smoke-free outdoor places, such as outdoor swimming areas, government precincts and parts of national parks;
- the number of hookahs that can be displayed.<sup>95</sup>

The explanatory notes advise that SL No. 111 is ‘largely consistent with the existing Regulation, with minor changes to improve the operational effect of the Regulation, reflect contemporary drafting practices and improve clarity and readability’.<sup>96</sup>

## 9.1 Consistency with fundamental legislative principles

### *General rights and liberties*

Legislation should not, without sufficient justification, unduly restrict ordinary activities.<sup>97</sup>

#### Conducting a business

Regulation of business activities interferes with a person’s right to conduct the business in the manner they choose.<sup>98</sup>

Amongst other things, SL No. 111 restricts how business owners conduct their business by prescribing how price tickets for smoking products can be displayed, specifying the form of particular signs, and prescribing the number of hookahs that can be displayed.

While the explanatory notes do not directly address this issue, they do note that the objective of the *Tobacco and Other Smoking Products Act 1998* is ‘to improve the health of the public by reducing their exposure to tobacco and other smoking products’ and that SL 111 supports the operation of the Act’.<sup>99</sup> The human rights certificate advises that ‘[s]moking remains the leading preventable cause of death and disease despite a significant reduction in smoking rates over recent decades’.<sup>100</sup>

#### Smoking outdoors

The general concept of liberty requires that an activity should be lawful unless, for a sufficient reason, it is declared unlawful by an appropriate authority.<sup>101</sup>

SL No. 111 prescribes certain areas in which people must not smoke, including certain government precincts, outdoor swimming areas and national parks.

While the explanatory notes do not directly address this issue, they do note that the objective of the *Tobacco and Other Smoking Products Act 1998* is ‘to improve the health of the public by reducing their exposure to tobacco and other smoking products’ and that SL 111 supports the operation of the Act’.<sup>102</sup> The human rights certificate advises that ‘[s]moking remains the leading preventable cause of death and disease despite a significant reduction in smoking rates over recent decades’.<sup>103</sup>

As is outlined in the explanatory notes, Queensland Health consulted with key stakeholder bodies seeking feedback on the remake of the regulation including:

---

<sup>95</sup> SL No. 111, explanatory notes, pp 1-2.

<sup>96</sup> SL No. 111, explanatory notes, p 2. Details about differences between the 2 regulations is available on page 2 of the explanatory notes.

<sup>97</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 118.

<sup>98</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 118.

<sup>99</sup> SL No. 111, explanatory notes, p 1.

<sup>100</sup> SL No. 111, human rights certificate, p 3.

<sup>101</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 118.

<sup>102</sup> SL No. 111, explanatory notes, p 1.

<sup>103</sup> SL No. 111, human rights certificate, p 3.

- non-government public health organisations
- the Local Government Association of Queensland and local governments across Queensland;
- retailer associations
- licensed venue associations.<sup>104</sup>

It also stated:

All stakeholders who responded to consultation requests were generally supportive of the Regulation. Some stakeholders noted that community education and awareness will be important components for the successful implementation of the Regulation, for which Queensland Health is responsible.<sup>105</sup>

### *Committee comment*

Given that smoking remains the leading preventable cause of death and disease, the committee is satisfied that any inconsistency with fundamental legislative principles is justified in this instance.

## **9.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

## **9.3 Compatibility with human rights**

The committee considers that the subordinate legislation raises one human rights issue. The limitation on property rights is discussed below.

### ***Property rights***

The human rights certificate states that a person's right to property is limited by SL No. 111:

The Regulation prescribes various matters which limit the ability of a person to conduct various activities with smoking related products and hookahs. The Regulation sets requirements for the form of price tickets and other indicators of price and the form and display of certain signage. It also prescribes areas, such as outdoor swimming areas, government precincts and national parks, where people are not allowed to consume tobacco and other smoking products. This places limitations and restrictions on how a person may deal with their property.<sup>106</sup>

The human rights certificate advises that the limitations on the use of property are reasonable, and are intended to improve health and wellbeing.<sup>107</sup> It states:

Smoking remains the leading preventable cause of death and disease despite a significant reduction in smoking rates over recent decades. The health impacts of smoking include lung cancer and 18 other cancers and neoplasms, cardiovascular diseases such as coronary heart disease, type 2 diabetes, gastrointestinal disorders, hearing and vision disorders, infectious diseases, musculoskeletal conditions, neurological conditions, and respiratory diseases such as chronic obstructive pulmonary disease. Compared to adults who had never smoked, Australian current smokers die on average 10 years earlier and develop age-related diseases 10 years earlier.

Second-hand smoke is also a serious health threat. Second-hand smoke can cause or worsen a range of conditions and diseases, including cancer, heart attacks, heart disease, asthma, diabetes, respiratory conditions and infectious diseases. Infants and children are particularly susceptible to the health effects of second-hand smoke. Electronic cigarettes (e-cigarettes) also continue to pose risks to tobacco control and population health in terms of smoking initiation, cessation and youth uptake.

Given the significant health impacts as a result of smoking, it is considered necessary to regulate the use of smoking products in Queensland. While the Regulation controls how a person may use their property,

---

<sup>104</sup> SL No. 111, explanatory notes, p 3.

<sup>105</sup> SL No. 111, explanatory notes, p 3.

<sup>106</sup> SL No. 111, human rights certificate, p 2.

<sup>107</sup> SL No. 111, human rights certificate, p 2.

these restrictions are proportionate and appropriate to limit the risks to the public as a result of being exposed to tobacco or other smoking products.<sup>108</sup>

*Committee comment*

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

#### **9.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **10 Radiation Safety Regulation 2021**

The Radiation Safety Regulation (SL No. 125) remakes the Radiation Safety Regulation 2010 (the 2010 regulation) which expired on 31 August 2021.<sup>109</sup>

SL No. 125 continues the existing framework by prescribing various matters to support the operation of the *Radiation Safety Act 1999* including:

- labelling and classification requirements for lasers, including which lasers are considered radiation apparatus subject to the licensing requirements of the Act;
- standard conditions that apply to particular licences;
- requirements for the disposal of radioactive material;
- exemptions from the requirements to hold a use or possession licence for particular radiation sources; and
- persons authorised to request or prescribe diagnostic or therapeutic procedures.<sup>110</sup>

The explanatory notes advise that SL No. 125 is ‘generally consistent with the existing Regulation, with minor changes to improve its operation’ and that it has been re-structured and revised to reflect contemporary drafting practices and improve clarity and readability.<sup>111</sup>

The explanatory notes also state that the remake of this regulation went through a consultation process and that stakeholders were ‘generally supportive of the Regulation’.<sup>112</sup>

### **10.1 Consistency with fundamental legislative principles**

#### ***Proportionality and relevance of penalties***

Whether legislation has sufficient regard to rights and liberties of individuals<sup>113</sup> depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

---

<sup>108</sup> SL No. 111, human rights certificate, p 3.

<sup>109</sup> See Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2020; SL No. 125, explanatory notes, p 1.

<sup>110</sup> SL No. 125, explanatory notes, p 1.

<sup>111</sup> SL No. 125, explanatory notes, p 2. Key changes between SL No. 125 and the previous regulation are set out at page 2 of the explanatory notes.

<sup>112</sup> SL No. 125, explanatory notes, p 11.

<sup>113</sup> *Legislative Standards Act 1992*, s 4(2)(a).

... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.<sup>114</sup>

SL No. 125 includes the following two offence provisions (these were also included in the 2010 regulation):

- section 13 provides that a person disposing of a container that has been used for the transport or storage of radioactive material, an apparatus that contained a sealed radioactive substance, or radiation apparatus, must first remove all radiation warning signs, or otherwise make the warning signs illegible. This offence attracts a maximum penalty of 20 penalty units (\$2,757)<sup>115</sup>
- section 60 applies to a person who possesses a mineral substance that is radioactive but not a radioactive substance (that is, the mineral substance does not meet the prescribed thresholds for requiring a possession license but still emits radiation). The person must ensure that another person does not receive a total effective dose of ionising radiation above the prescribed threshold from the mineral substance, or they are liable for a maximum penalty of 20 penalty units (\$2,757).<sup>116</sup>

The explanatory notes provide detailed information regarding the basis for these offences and the corresponding maximum penalties. In regard to the section 13 offence, the explanatory notes state:

If the item were disposed with warning labels still legible despite not posing a radiation hazard, it would cause unnecessary alarm and may have resourcing implications during disposal if a person is led to believe the item needs special handling to minimise exposure to a non-existent hazard.

The maximum penalty for this offence is significantly lower than the maximum penalty for unlawfully disposing of a container in section 26 of the Act (2500 penalty units), which recognises that failing to remove warning labels does not pose the same risk as releasing hazardous materials into the environment. However, leaving warning signs on containers and apparatus undermines the process for ensuring all radiation hazards are appropriately labelled and managed to minimise impacts on health and safety and the environment.<sup>117</sup>

In regard to the section 60 offence, the explanatory notes state:

The requirement that the person in possession of the material 'ensure' another a person is not exposed to a certain level of radiation is appropriate, as this person is best placed to monitor radiation exposure and put safety measures in place to protect against unnecessary and harmful exposure to radiation. This is consistent with the obligations on possession licensees under the Act, who are required to ensure the health and safety of persons are not adversely affected by exposure to radiation while carrying out a radiation practice.

The maximum penalty for this offence is significantly lower than the maximum penalty for exposing a person to radiation from a radiation source in section 42 of the Act (500 penalty units). This is appropriate and consistent with the overall framework in the Act and Regulation, which regulates radiation sources more stringently than radioactive materials to ensure controls are proportionate to the risks associated with particular materials. However, radioactive materials still pose a risk to a person's health, particularly where there is prolonged exposure to the material or inadequate safety measures. The maximum penalty is appropriate given the potential health risks that can result from exposing a person to dangerous levels of ionising radiation.<sup>118</sup>

---

<sup>114</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>115</sup> The equivalent offence in the 2010 regulation can be found in section 18.

<sup>116</sup> The equivalent offence in the 2010 regulation can be found in section 58.

<sup>117</sup> SL No. 125, explanatory notes, pp 3-4.

<sup>118</sup> SL No. 125, explanatory notes, p 4.

Committee comment

The committee notes that the penalties contained in SL No. 125 remain unchanged from the penalties contained in the 2010 regulation and is satisfied that the penalties contained in SL No. 125 are proportionate and relevant to the actions to which they relate.

**Subdelegation of power**

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.<sup>119</sup>

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

Further, where there is, incorporated into the legislative framework of the State, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.<sup>120</sup>

External documents

SL No. 125 contains a number of provisions that incorporate external documents. The explanatory notes provide this overall justification for the incorporation of such documents:

Reference to external documents in the Regulation is considered justified noting the detailed, technical and scientific nature of the matters contained in the external documents, and the flexibility this provides the scheme to remain up to date with current practices and requirements. If the matters referred to in external documents were contained in the Act or the Regulation, they would regularly be out of date and not reflect changing standards, practices, substances and activities.<sup>121</sup>

Examples of provisions which refer to external documents, and the specific justifications provided in the explanatory notes, are set out below.

SL No. 125 refers to codes of practice published by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).<sup>122</sup> For example, sections 51 and 70, and schedule 9 refer to ARPANSA codes either through references to definitions contained in those codes or prescribing certain codes as a form of compliance.<sup>123</sup>

The explanatory notes provide this justification for the incorporation of ARPANSA codes:

These Codes of Practice are freely available and readily accessible on the ARPANSA website. Compliance with the requirements outlined in the codes of practice is a long-standing obligation and the remake of

---

<sup>119</sup> *Legislative Standards Act 1992*, s 4(5)(e).

<sup>120</sup> The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

<sup>121</sup> SL No. 125, explanatory notes, p 5.

<sup>122</sup> ARPANSA is a statutory agency established under the *Australian Radiation Protection and Nuclear Safety Act 1998* (Cth). Current versions of certain ARPANSA codes of practice were tabled by the Minister for Health and Ambulance Services, Hon Yvette D'Ath MP, on 30 August 2021, along with other relevant ARPANSA publications and Queensland Government radiation safety standards.

<sup>123</sup> For example, if someone possesses or uses an ionising radiation source for industrial gauging the prescribed code to comply with is the Code of Practice for Safe Use of Fixed Radiation Gauges (2007): SL No. 125, s 70 (item 6).

the Regulation does not introduce any additional or new obligations on licence holders or other persons or businesses. These Codes of Practice are detailed and technical in nature and apply to the specific field of radiation safety, justifying the need to prescribe the Codes of Practice rather than seeking to capture the detailed requirements in the Regulation.<sup>124</sup>

Various sections of SL No. 125 refer to Australian/New Zealand Standards when defining certain terms under the regulation.<sup>125</sup> The explanatory notes provide this justification for references to Australian/New Zealand Standards:

The Standards are detailed and technical and cover a range of matters relevant to ensuring radiation safety. To ensure the technical requirements in Standards keep pace with new technologies, they are regularly reviewed and updated by Standards Australia technical committees. This justifies the need to prescribe the Standards rather than seeking to capture the detail in the Regulation.

These Standards contain long-standing processes and requirements that have been incorporated in the Radiation Safety Regulation since 2000. Remaking the Regulation with reference to external Standards does not introduce any additional or new obligations on licence holders or other persons or businesses.<sup>126</sup>

Section 6 of SL No. 125 refers to a standard published by the International Organization for Standardization (ISO) and prepared by the International Commission on Illumination (CIE). The explanatory notes justify the reference to this standard as follows:

The ISO/CIE 17166:2019 provides a standardised methodology for determining whether or not an apparatus is a solarium based on its energy output to elicit erythema. This is a detailed and technical calculation specific to the scientific field of skin exposure to radiation, justifying the need to prescribe the Standard rather than seeking to capture the detail in the Regulation.<sup>127</sup>

Part 5 specifies that a security plan or transport security plan must specify certain measures for each 'threat level'. The meaning of threat level is the threat level published on the National Terrorism Threat Advisory System website (an Australian Government website).<sup>128</sup> The explanatory notes state 'it is considered appropriate to rely on the nationally determined threat level to establish the level of information and the measures required to be included in security plans and transport security plans instead of prescribing the threat level in the Regulation'.<sup>129</sup> The website is set out in section 28 and is accessible to the public.

Section 51 contains the definitions for 'internal effective dose' and 'relevant part', which refer to a document prepared by the International Commission on Radiological Protection (ICRP). To justify reference to this document, the explanatory notes provide:

Relying on the ICRP's publications to determine relevant dose limits is considered appropriate to ensure that technical matters, and any changes to the international standards and best practice principles relating to the calculation of radiation dose limits, are incorporated into the calculation of dose limits for the purpose of the Regulation. Given the complex and extensive level of guidance provided by the ICRP, it is not considered appropriate to capture detail in the Regulation.<sup>130</sup>

Finally, schedule 9 defines 'Australian Drinking Water Guidelines' as the document called 'Australian drinking water guidelines, paper 6, national water quality management strategy', dated 2011 and

---

<sup>124</sup> SL No. 125, explanatory notes, p 6.

<sup>125</sup> See pages 6 and 7 of the explanatory notes for a detailed description of each of the standards referred to. For example, 'laser standard' means 'AS/NZS IEC 60825.1-2014 (Safety of laser products, Part 1: Equipment classification and requirements), published jointly by Standards Australia and Standards New Zealand': SL No. 125, schedule 9.

<sup>126</sup> SL No. 125, explanatory notes, p 7.

<sup>127</sup> SL No. 125, explanatory notes, p 8.

<sup>128</sup> See SL No. 125, s 28.

<sup>129</sup> SL No. 125, explanatory notes, p 8.

<sup>130</sup> SL No. 125, explanatory notes, p 9.

published on the National Health and Medical Research Council's website. The explanatory notes provide the following reasoning for incorporating this external document:

The Guidelines specify an annual exposure dose from radioactivity in drinking water and provide a method to assess the radiological quality of water, relying on the 'dose per unit intake' methodology for each stated radionuclide.

The Guidelines are accepted nationally as the relevant standards for the treatment of drinking water across Australia. The technical and detailed nature of the document, as well as the fact that the parameters of acceptable impurities contained in the Guidelines are subject to change, makes it appropriate to refer to the Guidelines in the Regulation.<sup>131</sup>

#### Committee comment

The committee is satisfied that the incorporation of external documents into SL No. 125 is justified due to the technical and detailed nature of these documents, and the need for flexibility in the legislative framework.

#### Delegation to the chief executive

SL No. 125 allows the chief executive to:

- approve a quality assurance program if the chief executive is satisfied that the program implements one or more radiation safety standards made by the Minister under the Act<sup>132</sup>
- to approve training courses for which a person can use a radiation source without a 'use licence'.<sup>133</sup>

While the ability of the chief executive to approve such programs or courses represents a subdelegation of power, the explanatory notes provide the below justification for why this is considered appropriate in the circumstances.

In regard to the approval of quality assurance programs:

The intention is to allow the chief executive to determine whether a quality assurance program, such as a national quality assurance program for a particular type of radiation source, requires a possession licensee to comply with a set of requirements that meet or exceed Queensland's radiation safety standards, and that would result in a duplication of the obligations imposed on possession licensees. If the chief executive is satisfied such duplication of requirements exists, the chief executive may approve the quality assurance program to allow possession licensees complying with the approved program to obtain another certificate of compliance on a less frequent basis, as these compliance checks will be completed under the approved quality assurance program.

...

Given the technical nature of the assessment to determine the suitability of the quality assurance program, it is considered appropriate the power to approve the relevant quality assurance programs be delegated to the chief executive. The delegation does not provide powers to an external agency and the requirements will remain within the control of Queensland Health. The public will be informed of the approved quality assurance programs through the list of approved programs published on Queensland Health's website.<sup>134</sup>

In regard to the approval of training courses:

The provision is intended to allow the chief executive to approve training courses which require students to undertake practical and theoretical training involving the use of ionising or non-ionising radiation in a range of settings, and which assess the theoretical training and competency of students on completion of the training.

---

<sup>131</sup> SL No. 125, explanatory notes, p 9.

<sup>132</sup> SL No. 125, s 8.

<sup>133</sup> See section 13(2)(b)(ii) of the *Radiation Safety Act 1999* and SL No. 125, s 83.

<sup>134</sup> SL No. 125, explanatory notes, p 10.

...

The delegation of power to the chief executive to approve training courses is considered appropriate to ensure that training approved for the purposes of exempting someone from a use licence remains current.

...

The power granted to the chief executive will mean that the power to make decisions will not be delegated outside of Queensland Health. In addition, the powers of the chief executive are constrained to ensure that only a training program that satisfies the criteria set out in ... section 83 of the Regulation is approved. These criteria require that the training covers both practical and theoretical training and that this training is to an acceptable standard.

The chief executive will publish a list of approved training on the Queensland Health website so that the public is aware of the approved training courses and can make an informed decision about what training they may wish to undertake to meet their personal circumstances.<sup>135</sup>

In both circumstances, the chief executive may only approve programs or training courses according to criteria set out in SL No. 125 and the decisions of the chief executive are required to be published on the department's website. Further, these decisions appear to be of an administrative character and necessary to carry out the requirements of SL No. 125 and the principal Act (*Radiation Safety Act 1999*).

#### Committee comment

The committee is satisfied that the delegation of power to the chief executive in these circumstances is appropriate, such that SL No. 125 has sufficient regard to the institution of Parliament.

### **10.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA. The explanatory notes are clear and provide detailed analysis in regard to the subordinate legislation's consistency with fundamental legislative principles.

### **10.3 Compatibility with human rights**

The committee considers that the subordinate legislation raises 2 human rights issues. The limitations on property rights and the right to privacy and reputation are discussed below.

#### ***Property rights***

The human rights certificate considers that SL No. 125 could limit property rights<sup>136</sup> because it may prevent a person from owning radioactive materials other than in compliance with the regulatory framework (being SL No. 125 and the *Radiation Safety Act 1999*).

However, the human rights certificate justifies any limitation on the basis that SL No. 126 provides for the protection of public health and safety 'by imposing restrictions on the possession, use, and transport and disposal of radiation sources that have the potential to pose significant risks if used incorrectly or for improper purposes.'<sup>137</sup>

#### ***Privacy and reputation***

##### Disclosure of protected information

The human rights certificate considers that SL No. 125 may impact on an individual's right to privacy. In particular, part 13 of the regulation prescribes a list of purposes for which protected information

---

<sup>135</sup> SL No. 125, explanatory notes, pp 10-11.

<sup>136</sup> See HRA, s 24.

<sup>137</sup> SL No. 125, human rights certificate, p 2.



(which could include personal details as well as information about radiation doses a person has received) may be disclosed.<sup>138</sup> These purposes include:

- developing a plan to avoid or limit the impact of an emergency situation on persons, property or the environment
- enabling a person dealing with an emergency situation to know the hazards, or possible hazards, the person may face in dealing with the emergency situation
- protecting national security.<sup>139</sup>

According to the human rights certificate, the justification for this limitation on the right to privacy is to ensure that swift and appropriate action can be taken to respond to a significant risk to the health and safety of the public.<sup>140</sup> Further, that:

Given the potentially significant risk to the community and the environment from radiation hazards, particularly in the circumstances of an emergency situation or activity involving politically motivated violence, it is essential that the State can access and disclose any information that can assist in preventing or mitigating the potential for this outcome, or in responding to an emergency situation that has arisen. As the State has a positive duty to protect human life, it is considered necessary to authorise the disclosure of protected information to protect human life.<sup>141</sup>

There are safeguards to protect the information, to the extent that the *Radiation Safety Act 1999* provides that the Commonwealth, State or other entity that receives protected information under part 13 must not give it to anyone else; and must ensure the information is used only for the purpose for which it was given.<sup>142</sup>

#### Personal monitoring records and public registers

Part 7 of SL No. 125 prescribes personal information that must be included in a personal monitoring record, including personal details and details about the radiation doses the person has received. While this may impact a person's right to privacy, the human rights certificate states that the purpose is:

... to ensure the person is not exposed to levels of radiation that puts their health and safety at risk. The prescribed information includes identifying details to allow a monitored person to be identified and contacted if there is a risk that they have been exposed dangerous levels of radiation.<sup>143</sup>

Ultimately, the human rights certificate concludes that the interference 'is proportionate to the legitimate aim sought of protecting the health and safety of persons who may be exposed to harmful radiation.'<sup>144</sup>

Part 12 of SL No. 125 prescribes information that must be included in public registers of holders of Act instruments under the *Radiation Safety Act 1999* (for example, licensees, accredited persons and inspectors). While this may impact on those individuals' right to privacy, the human rights certificate states that the purpose of the registers are to 'allow a person to verify that another person is authorised to engage in the radiation practice or other activity that the person represents themselves as authorised to undertake.'<sup>145</sup> Further:

Given the significant risks potentially posed by carrying out a radiation practice, it is essential that the person has the relevant skills and knowledge to carry out the activity safely and that this can be verified.

---

<sup>138</sup> SL No. 125, s 81 and *Radiation Safety Act 1999*, s 209.

<sup>139</sup> SL No. 125, s 81.

<sup>140</sup> SL No. 125, human rights certificate, p 7.

<sup>141</sup> SL No. 125, human rights certificate, p 8.

<sup>142</sup> *Radiation Safety Act 1999*, s 209(6).

<sup>143</sup> SL No. 125, human rights certificate, p 5.

<sup>144</sup> SL No. 125, human rights certificate, p 5.

<sup>145</sup> SL No. 125, human rights certificate, p 6.

...

Applicants for any of the instruments under the Act, such as a licence, are informed at the time of their application that, if the application is granted, their details will be added to the public register. Queensland Health collects and maintains the information in the register in accordance with the requirements under the *Information Privacy Act 2009*.<sup>146</sup>

#### Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

#### **10.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **11 Biodiscovery Regulation 2021**

Biodiscovery includes the collection and use of native biological material (e.g. plants, animals and other organisms) for commercial applications (e.g. pharmaceuticals and insecticides).<sup>147</sup>

The objective of the Biodiscovery Regulation 2021 (SL No. 131) is to approve the *Traditional Knowledge Code of Practice* (the Code of Practice) in accordance with amendments made to the *Biodiscovery Act 2004* (Biodiscovery Act) by the *Biodiscovery and Other Legislation Amendment Act 2020* (BOLA Act).<sup>148</sup>

The BOLA Act introduced protections into the Biodiscovery Act for the use of traditional knowledge in biodiscovery. Essentially, to meet their obligations under the Biodiscovery Act, a person must take all reasonable and practical measures to ensure the person does not use the traditional knowledge for biodiscovery other than under an agreement with the custodians of the knowledge. This is a penalty provision that carries a maximum penalty of 5,000 penalty units (\$689,250).<sup>149</sup> This protection applies to the use of traditional knowledge about native biological material collected from anywhere in Queensland (including all State, private, freehold, and leasehold land, and all Queensland waters).<sup>150</sup>

The Code of Practice outlines the minimum requirements for how to comply with the traditional knowledge obligation under the Biodiscovery Act, but also permits an entity to find the most cost-effective way to comply with the obligation (ie they may comply in a way other than following the Code of Practice provided they are able to demonstrate they have satisfied the traditional knowledge obligation).<sup>151</sup> Specifically, the Code of Practice:

- describes the circumstances under which the traditional knowledge obligation applies, and what is meant by using traditional knowledge; and
- outlines the principles, performance outcomes and minimum requirements for the use of traditional knowledge. This includes practical steps for identifying the custodians of the traditional knowledge; obtaining free, prior and informed consent from custodians to use this knowledge; and establishing benefit-sharing agreements with custodians on mutually agreed

---

<sup>146</sup> SL No. 125, human rights certificate, p 6.

<sup>147</sup> Queensland Government, *Biodiscovery in Queensland*, 2021, <https://www.business.qld.gov.au/industries/science-it-creative/science/biodiscovery/qld>. Also defined in the *Biodiscovery Act 2004* schedule.

<sup>148</sup> SL No. 131, explanatory notes, p 1; SL No. 131, s 2.

<sup>149</sup> Biodiscovery Act, s 9B.

<sup>150</sup> SL No. 131, explanatory notes, p 1.

<sup>151</sup> SL No. 131, explanatory notes, p 3. See also 'Traditional Knowledge Code of Practice', p 5 (available: <https://environment.des.qld.gov.au/licences-permits/plants-animals/biodiscovery/traditional-knowledge>)

terms. It also outlines specific requirements for use of publicly accessible traditional knowledge.<sup>152</sup>

The Code of Practice is available on the Department of Environment and Science's website, together with the Traditional Knowledge Guidelines and a Capacity Strengthening Toolkit.<sup>153</sup>

The explanatory notes provide detail of the extensive consultation undertaken on the development of the Code of Practice (and supporting guidelines). Key biodiscovery entities and other experts in the field of biodiscovery were consulted including:

- Traditional Knowledge Roundtable
- Myuma Group
- Dugalunji Aboriginal Corporation
- Chuulangun Aboriginal Corporation
- BioCultural Consulting
- Griffith University (including Griffith Enterprise)
- University of Queensland (including Queensland Alliance for Agriculture and Food Innovation and UniQuest)
- Queensland University of Technology
- University of the Sunshine Coast
- James Cook University
- University of New South Wales
- QIMR Berghoffer
- CSIRO
- Thomson Geer Lawyers
- Queensland Herbarium
- Queensland Museum.<sup>154</sup>

The explanatory notes also state:

Stakeholder submissions made through workshops and public consultation support the objectives of the Traditional Knowledge Code of Practice, so that adequate protections for the use of traditional knowledge in biodiscovery are applied and minimum requirements are outlined for how to comply with the traditional knowledge obligation.<sup>155</sup>

## 11.1 Consistency with fundamental legislative principles

### ***Subdelegation of power***

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of power in appropriate cases and to appropriate persons.<sup>156</sup>

For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.<sup>157</sup>

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

---

<sup>152</sup> SL No. 131, explanatory notes, p 2.

<sup>153</sup> See <https://environment.des.qld.gov.au/licences-permits/plants-animals/biodiscovery/traditional-knowledge>.

<sup>154</sup> SL No. 131, explanatory notes, p 4.

<sup>155</sup> SL No. 131, explanatory notes, p 4.

<sup>156</sup> *Legislative Standards Act 1992*, s 4(5)(e).

<sup>157</sup> OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 154.

Further, where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the Code of Practice) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

The explanatory notes do not address this issue in the discussion of fundamental legislative principle. However, they do provide some general background as to how the Code of Practice operates in the context of the traditional knowledge obligation:

The Code of Practice does not limit how a biodiversity entity can meet the obligation. The principles and performance outcomes in the Code of Practice provide guidance for an alternative course of action to meet the obligation.<sup>158</sup>

In this sense, while compliance with the Code of Practice will mean that an entity is taken to have complied with the traditional knowledge obligation, it does not prevent the entity from complying with the obligation in an alternative way.

Further, though the Code of Practice is not subordinate legislation (and therefore is not subject to the usual tabling and disallowance provisions), it does not take effect until it is approved by regulation.<sup>159</sup> This provides some level of parliamentary oversight.

In its report on the *Biodiscovery and Other Legislation Amendment Bill 2019* (which became the BOLA Act and introduced the provisions surrounding the traditional knowledge obligation and the use of a code of practice), the Innovation, Tourism Development and Environment Committee considered this issue and concluded:

The committee is satisfied that the breach of fundamental legislative principle is sufficiently justified, having regard to the following factors:

- the likely content of the Code
- the Code takes effect when it is approved by regulation
- such regulation would be subject to the tabling and disallowance provisions of Part 6 of the *Statutory Instruments Act 1992*.<sup>160</sup>

#### Committee comment

The committee is satisfied that the breach of fundamental legislative principle is justified in the circumstances, having regard to the content of the Code of Practice and that it only takes effect once approved by regulation, providing a level of parliamentary oversight.

### **11.2 Explanatory notes**

Although the explanatory notes did not address the issue of fundamental legislative principle relating to the institution of Parliament, the explanatory notes otherwise complied with part 4 of the LSA.

### **11.3 Compatibility with human rights**

The subordinate legislation is compatible with human rights.

---

<sup>158</sup> SL No. 131, explanatory notes, p 3.

<sup>159</sup> Biodiscovery Act, s 9C(3).

<sup>160</sup> Innovation, Tourism Development and Environment Committee, Report No. 25, 56<sup>th</sup> Parliament, Biodiscovery and Other Legislation Amendment Bill 2019, p 23, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2020/5620T321.pdf>.

#### 11.4 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### 12 Proclamation—Waste Reduction and Recycling (Plastic Items) Amendment Act 2021

The Proclamation—Waste Reduction and Recycling (Plastic Items) Amendment Act 2021 (SL No. 132) fixes 1 September 2021 as the commencement date for the remaining provisions of the *Waste Reduction and Recycling (Plastic Items) Amendment Act 2021* (Amendment Act).

The Amendment Act makes amendments to the *Waste Reduction and Recycling Act 2011* to ban the supply of single-use plastic straws, stirrers, plates, bowls and cutlery, and expanded polystyrene takeaway food containers and cups.<sup>161</sup>

#### 12.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

#### 12.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

#### 12.3 Human rights certificate

A human rights certificate was not required to be tabled with SL No. 132.<sup>162</sup>

### 13 Radiation Safety (Radiation Safety Standards) Notice 2021

The objective of the Radiation Safety (Radiation Safety Standards) Notice 2021 (SL No. 133) is to notify the making of the following radiation safety standards:

- Standard for ionising radiation apparatus—medical imaging (2021)
- Standard for non-ionising radiation apparatus—medical or cosmetic procedures, or related practices (2021)
- Standard for premises—ionising radiation sources (2021)
- Standard for premises—non-ionising radiation apparatus (2021)
- Standard for radiation sources—industrial, mining, manufacturing, and other practices (2021).<sup>163</sup>

The *Radiation Safety Act 1999* enables the Minister to make radiation safety standards about certain matters relating to radiation sources and premises where radiation sources are used and where radioactive substances are stored. Radiation safety standards set the minimum acceptable standards for equipment and premises used by businesses, industry and individuals.<sup>164</sup>

The Minister must notify the making of these standards and the notice is subordinate legislation.<sup>165</sup>

According to the explanatory notes, Queensland Health conducted a review of the standards and has consolidated the 21 previous standards into 5 new standards to be made under SL No. 133.<sup>166</sup> As part

---

<sup>161</sup> SL No. 132, explanatory notes, p 1.

<sup>162</sup> See section 4A of the HRA. A human rights certificate is not required to be tabled with a proclamation that fixes a single day for the commencement of all of the provisions of an Act that are not in force.

<sup>163</sup> SL No. 133, schedule 1.

<sup>164</sup> *Radiation Safety Act 1999*, s 16; SL No. 133, explanatory notes, p 1.

<sup>165</sup> *Radiation Safety Act 1999*, s 16(4) and (6).

<sup>166</sup> SL No. 133, explanatory notes, p 1.

of the review, the department consulted with stakeholders and feedback was incorporated into the standards:

Stakeholders were largely supportive of the making of the radiation safety standards, and provided a number of detailed and technical comments on the specific tests in the standards. The test criteria in the standards were amended to incorporate stakeholder feedback where appropriate.<sup>167</sup>

The notice authorising the previous standards expired on 1 September 2021, and so this notice is required to authorise the 5 consolidated standards.<sup>168</sup>

Copies of the standards were tabled on 30 August 2021 and are available on Queensland Health's website.<sup>169</sup> Further, as per the requirement in section 16(5) of the *Radiation Safety Act 1999*, copies of the standards are available for inspection without charge at the department's office dealing with radiation health and safety.<sup>170</sup>

The explanatory notes provide detail of the consultation undertaken by Queensland Health including the publication of the proposed new radiation safety standards and the associated comparison documents between the current standards and proposed new standards on the Queensland Government's Get Involved website. It also contacted approximately 20,000 individuals and businesses who hold licences and other authorities under the Radiation Safety Act and the Radiation Advisory Council.<sup>171</sup>

### 13.1 Consistency with fundamental legislative principles

#### *Subdelegation of power*

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of power in appropriate cases and to appropriate persons.<sup>172</sup>

For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.<sup>173</sup>

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Further, where there is, incorporated into the legislative framework of the state, extrinsic documents (such as these standards) that are not reproduced in full in subordinate legislation, and where changes to such documents can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the documents (and the process by which they are incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

The explanatory notes do not address this issue in the discussion of fundamental legislative principle. However, the issue was addressed in the explanatory notes to the Radiation Safety Bill 1999 which created the legislative framework providing for the making of radiation safety standards by the Minister in this way:

Radiation safety standards will be technical in nature and ... will draw upon recognised standards, specifications or protocols published by peak bodies such as the Standards Association of Australia, the

---

<sup>167</sup> SL No. 133, explanatory notes, p 2.

<sup>168</sup> SL No. 133, explanatory notes, p 1.

<sup>169</sup> See: <https://www.health.qld.gov.au/system-governance/licences/radiation-licensing>

<sup>170</sup> SL No. 133, s 4.

<sup>171</sup> SL No. 133, explanatory notes, p 2.

<sup>172</sup> *Legislative Standards Act 1992*, s 4(5)(e).

<sup>173</sup> OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 154.

National Health and Medical Research Council, the National Occupational Health and Safety Commission, and the International Atomic Energy Agency.<sup>174</sup>

The explanatory notes to SL No. 133 also comment generally on the content of the standards, noting they 'were developed in consultation with experts and clarify test requirements, cater for more flexible technology, and update tests to be more consistent with relevant national or international standards'.<sup>175</sup> The content of the standards appears to be technical in nature, containing information such as minimum test requirements, compliance tests and criteria for passing tests.

Further, though the standards are not subordinate legislation (and therefore not subject to the usual tabling and disallowance provisions), the notice itself is subordinate legislation and is therefore subject to those provisions in Part 6 of the *Statutory Instruments Act 1992*. This provides some level of parliamentary oversight.

Copies of the standards were also tabled in Parliament, providing another avenue for parliamentary oversight.

#### Committee comment

The committee is satisfied that the breach of fundamental legislative principle is justified in the circumstances, having regard to the technical nature of the standards and that level of parliamentary oversight provided through the making of the notice and tabling of the standards.

#### **13.2 Explanatory notes**

While the explanatory notes did not address the issue of fundamental legislative principle relating to the institution of Parliament, the explanatory notes otherwise complied with part 4 of the LSA.

#### **13.3 Compatibility with human rights**

The subordinate legislation is compatible with human rights.

#### **13.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **14 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

**Chair**

**October 2021**

#### **Health and Environment Committee**

<b>Chair</b>	Mr Aaron Harper MP, Member for Thuringowa
<b>Deputy Chair</b>	Mr Robert (Rob) Molhoek MP, Member for Southport
<b>Members</b>	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

<sup>174</sup> Radiation Safety Bill 1999, explanatory notes, p 19.

<sup>175</sup> SL No. 133, explanatory notes, p 2.

**15 Statement of Reservation**



Statement of Reservation

Health and Environment Committee

Report No. 15, 57th Parliament

Subordinate Legislation tabled between 16 June 2021 and 31 August 2021.

A broad range of subordinate legislation was examined by the committee and while most of it appears to be in order, I believe it would be remiss to not discuss my concerns with two particular items as they directly relate to the extension of special Covid-19 powers contained in the *Public Health and Other Legislation Amendment Bill 2021*.

The subordinate legislation relates to special powers granted to government via the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Bill 2021* (the Bill), which passed the House on 2 September 2021. This legislation extends existing special Covid-19 powers until April 2022.

While I have no direct concern about *Regulation (No. 2) 2021, SL No. 77*, I believe that the Opposition's concerns with the Bill more broadly should be recanvassed for the public record.

For the record the Leader of the Opposition and Member for Broadwater stated during the debate:

*The opposition will be supporting this bill. Before I talk about the amendments moved by the Shadow Health Minister I say that we must give this serious consideration and we must give the community the confidence they need. This is a bill that will impact every family and every small and family business, and ensuring that these powers are in place is something that the community needs to see. Things have changed immensely since this bill was first debated. As such, we owe it to our communities to show that we are going to adapt to that change.*

*The amendments that the shadow health minister is proposing are sensible because they allow for that adaptation. No-one is suggesting for one moment that we are not living in uncertain times. No-one is suggesting for one moment that things will not continue to evolve, but the pandemic politics and the scaremongering and the fear have to stop. What this bill does and what the proposed amendments do is chart a course out of that—hope over fear; confidence over chaos; a pathway out of the pandemic. That is what our communities want.*

*We see the childish behaviour today and hear comments made about people wanting to see the virus enter Queensland. There is not one Queenslander who wants to see that. Queenslanders want hope. They want to know that at the end of their sacrifice lies opportunities for them and for their family. The undermining this week has done nothing to give them that hope. The Premier standing up yesterday and making up her own health advice on the run and then doubling down today and running a scare campaign does not give hope. Having a policy position that prioritises sporting families over Queensland families coming home does not give hope. The pathway out is through confidence in the vaccines. That is what we have consistently said from day one. All of the undermining and all of the mixed messaging does nothing to give that confidence.*

*There are three reasons the amendments proposed by the shadow health minister make sense. In the uncertain times we are experiencing it is appropriate that we extend the health powers. It is vital that health advice be made available to the public to assist with clarity of the message. As parliamentarians it is our obligation to continually review laws that have such an impact on the lives of Queenslanders. That is simply what is proposed.*

*The opposition agrees with the need to extend the powers of the Chief Health Officer. With the government falling behind the other states on vaccination rates, we believe that it is appropriate for these powers to remain. In extending these powers, the government will have time to address some of the vaccination hesitancy caused by their mixed messaging and the Premier's derogatory comments about the AstraZeneca vaccine. The opposition believes that, despite the government's confusing language around vaccines, December should be enough time for the vaccination rate to reach the levels we need it to.*

*Let me make it clear on the second point that we are advocating for amendments that make expert health advice the central theme of this legislation. In fact, our amendments seek to elevate the*

*importance of expert health advice by mandating its publication. We see this amendment as crucial to breaking through the political spin and confusion by having a single point of truth. By mandating the release of the health advice, we will not see the shambolic performances that we have witnessed and the sudden, drastic changes to policy.*

*Finally, on the third point, these powers are extraordinary powers enacted to deal with an extraordinary situation. As parliamentarians we have a responsibility to constantly review these powers, and that is all we are asking. While we must ensure the safety of Queenslanders, we must also ensure that we do not hold on to them any longer than we need to. These amendments are a measured response from the opposition that respects and promotes the health advice, respects the rights of Queenslanders and, most importantly, keeps Queenslanders safe.*

I agree wholeheartedly with the comments made by the Leader of the Opposition during the course of the debate. Neither myself, nor any Member of the Opposition wants to see Covid-19 spread in Queensland. The Government's suggestion that this is the case is not only preposterous but also fearmongering. Instead, the Opposition wants to chart a course out of the pandemic; to give hope to everyday Queenslanders who are facing the consequences of the restrictions imposed by the Bill and the relevant subordinate legislation.

In addition, the mandatory publication of the health advice, which was a proposed change to the Bill included in the Shadow Minister for Health and Ambulance Services' amendments would have imposed a level of transparency and accountability to the health advice when it comes to the imposition of restrictions on Queenslanders across the state. If the health advice was published, Queenslanders would be able to trust that restrictions imposed by the Government aligned with the health advice, to ensure that there was only as much hardship being endured as is necessary against the health risks.

In supporting the extension of this Regulation, which seeks to further support the health of all Queenslanders by limiting, and responding to, the potential spread of Covid-19 in Queensland, it's important that the Government continues to respond cautiously; and that the Government's use of these powers is measured and reasonable. These powers should not be continued indefinitely without public scrutiny and government responses must be mindful of the various challenges faced by families as a result of border closures, local government area-wide lockdowns, and other ongoing restrictions to peoples' movements and activities. The ongoing hardships endured by many as a result of restrictions contained in the legislation should be considered.

It would also be remiss of me not to mention the broader implications to the mental health and well-being of individuals and families the ongoing restrictions has to those in our communities. I am sure I am not the only Member to speak to constituents and their families who are in a state of distress over various levels of the restrictions, whether they be impacts to a family business as a result of lockdowns or restrictions, loved ones not being able to travel to, or return to, Queensland after tragic events such as the death of a loved one, or other such situations that the restrictions have causally impacted. While the Government must look out for the best interests of all Queenslanders the Government must also ensure that the systems in place for processing and consideration of exemptions must be fair and reasonable. The Government must ensure it communicates its decisions and updates with applicants in a timely manner. Furthermore, proposed trials of home quarantine and other measures must be progressed so that families may be reunited as a priority.

These concerns were all raised during the course of the debate in the House and have been canvassed across public media as well. While the Opposition agrees with the extension provisions of the Bill, we also believe the Government should continue to monitor the situation, and make policy

adjustments as necessary, it should also give thought to the concerns of the Opposition about improvements in their response framework.

A handwritten signature in black ink, appearing to read 'Rob', written over a horizontal line.

Rob Molhoek MP  
Deputy Chair  
State Member for Southport