

Health and Environment Committee

Report No. 5, 57th Parliament

Subordinate legislation tabled between 15 July 2020 and 8 September 2020

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 15 July 2020 and 8 September 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),³ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁴

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
136	Nature Conservation (Animals) Regulation 2020	11 August 2020	24 February 2020
137	Nature Conservation (Plants) Regulation 2020	11 August 2020	24 February 2020
138	Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2020	11 August 2020	24 February 2020
150	Medicines and Poisons (Postponement) Regulation 2020	8 September 2020	10 March 2020
151	Therapeutic Goods (Postponement) Regulation 2020	8 September 2020	10 March 2020

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² 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.

³ LSA, part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁴ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (HRA, s 41(1)-(3)).

Subordinate legislation tabled between 15 July and 8 September 2020

No.	Subordinate legislation	Date tabled	Disallowance date*
154	Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020	8 September 2020	10 March 2020
161	Health (Drugs and Poisons) Amendment Regulation (No. 3) 2020	8 September 2020	10 March 2020
173	Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2020	8 September 2020	10 March 2020
174	Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2020	8 September 2020	10 March 2020
176	Wet Tropics (Review) Amendment Management Plan 2020	8 September 2020	10 March 2020

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House (s 50 of the *Statutory Instrument Act 1992* specifies that the deadline for a notice of disallowance motion is 14 sitting days after the legislation is tabled in the Legislative Assembly).

3 SL No. 136: Nature Conservation (Animals) Regulation 2020

The regulation follows a review of the regulatory framework, prompted by the impending expiry of the Nature Conservation (Wildlife Management) Regulation 2006 and the Nature Conservation (Wildlife) Regulation 2006.⁵ The regulation repeals the:

- Nature Conservation (Administration) Regulation 2017
- Nature Conservation (Wildlife Management) Regulation 2006
- Nature Conservation (Wildlife) Regulation 2006.⁶

The new framework created by the regulation removes the distinction between recreational and commercial animal keeping purposes. Rather than considering the purpose of an activity (such as personal employment or business), the new licence system is now based on the level of risk associated with keeping native animals. The licencing requirements will depend on the number and type of animals being kept, levels of breeding and trading undertaken, human health and safety risks and animal welfare matters.⁷

The explanatory notes state that the new framework reduces costs and regulatory burden for the majority of businesses and community members, while improving the administrative systems and delivering conservation outcomes for native animals in the wild.⁸

3.1 Fundamental legislative principle issues

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

3.1.1 Section 4(2)(a) *Legislative Standards Act 1992* – rights and liberties of individuals – proportionality of penalties

Penalties imposed should be reasonable and proportionate.

⁵ As to expiry, see section 54 of the *Statutory Instruments Act 1992*.

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 2.

⁸ Explanatory notes, p 2.

The regulation re-enacts offence provisions from the previous Nature Conservation (Wildlife Management) Regulation 2006 and Nature Conservation (Administration) Regulation 2017. According to the explanatory notes:

Although the Animals Regulation generally maintains status quo of offence provisions under the previous regulations, offences have been restructured to provide for a more consistent application of penalties.⁹

The explanatory notes state:

... these offences are only made where it is appropriate and is required to ensure the effective enforcement of requirements relating to the take, keep and use of protected animals. The offences are reasonable given the need to achieve the conservation objectives of the *Nature Conservation Act 1992* and consistent with the way existing offences are established for wildlife under the Act.¹⁰

The regulation imposes penalties for 'conditions of authority' offences under two types:

- record keeping and return of operation offences, with a maximum of 120 penalty units, and
- all other penalty offences, with a maximum of 80 penalty units.

(One penalty unit is \$133.45.)¹¹

The offence for feeding or disturbing dangerous animals incurs a maximum penalty of 40 penalty units, except for the feeding of dingoes on K'gari (Fraser Island), which attracts a maximum penalty of 80 penalty units.^{12,13}

Committee comment

Given that the regulation continues offences and penalties contained in the previous regulations, the committee considers that the offences and penalties are reasonable and proportionate.

3.1.2 Section 4(2)(a) *Legislative Standards Act 1992* – rights and liberties of individuals – ordinary activities should not be constrained

Legislation should not, without sufficient justification, unduly restrict ordinary activities.

The amendment, suspension or cancellation of animal authorities would impact on a person's ordinary activities. The explanatory notes state:

These provisions ... are considered to be proportionate with the need to conserve wildlife whilst also considering the rights and liberties of individuals who hold relevant authorities.¹⁴

Committee comment

Given the policy objective of these provisions, the committee believes that the restrictions on an individual's activities are sufficiently justified.

⁹ Explanatory notes, p 10.

¹⁰ Explanatory notes, pp 9-10.

¹¹ The Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2017 provides that the value of a penalty unit is \$133.45, <https://www.qld.gov.au/law/fines-and-penalties/types-of-fines/sentencing-fines-and-penalties-for-offences>.

¹² While the explanatory notes refer (at p 10) to an 'increase' in this penalty, the increase is not effected by the current regulation. Rather, it was effected by a 2019 amendment to the Nature Conservation (Wildlife Management) Regulation 2006.

¹³ Effected by s 6 of the Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2019 (subordinate legislation no. 108 of 2019).

¹⁴ Explanatory notes, p 10.

3.1.3 Section 4(3)(e) *Legislative Standards Act 1992* – rights and liberties of individuals – seizure of property

Section 4(3)(e) of the LSA provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether the legislation confers power to seize property, only with a warrant.

Under s 385 of the regulation, a conservation officer may seize an object without a warrant, if it is necessary for the protection of native wildlife.

The explanatory notes state this power is justified:

... in the interest of protecting native wildlife (e.g. seizing a trap being used for taking animals, or using illegal nets that have caught turtles). In these situations it is often necessary to seize the object immediately in order to protect wildlife. It would not be appropriate to delay seizure until a warrant is obtained as the delay would likely lead to the death of the animal. In addition, restrictions are placed on the chief executive when the owner or person in control of the object to be seized is or should reasonably be known.¹⁵

Committee comment

Given the explanation in relation to the need for urgency in the seizure of property, the committee is satisfied that the power is justified.

3.2 Explanatory notes

Under the heading ‘Consistency with fundamental legislative principles’, the explanatory notes state:

The Animals Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament, and complies with the fundamental legislative principles under the Legislative Standards Act 1992.¹⁶

The committee notes that this statement is incorrect, given the issues of fundamental legislative principle raised by the regulation, including issues identified and discussed in the explanatory notes immediately following the statement.

The explanatory notes otherwise comply with part 4 of the LSA.

3.3 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation. The committee’s consideration of these issues is set out below.

3.3.1 Section 19 Human Rights Act 2019 – freedom of movement

Under s 19 of the HRA, a person has right to move freely within Queensland and to enter and leave it.

The regulations prevent a boat or aircraft from being within a prescribed distance of a marine mammal and prescribe speed limits for boats in the vicinity of a marine mammal. Restrictions also apply in relation to a ‘no approach’ zone. These provisions restrict the ability of a person to move freely on a boat in such areas. The Minister provides the following justification:

The distances and zones are based on scientific evidence and national guidelines for the protection of marine mammals. For example, for whales the prescribed distance is generally 300m, while for dolphins it is generally 150m.¹⁷

Committee comment

Given the policy objectives of the legislation, the committee is satisfied any limit on human rights is reasonable and demonstrably justified.

¹⁵ Explanatory notes, p 11.

¹⁶ Explanatory notes, p 9.

¹⁷ Human rights certificate, p 4.

3.3.2 Section 24 Human Rights Act 2019 – property rights

Under s 24 of the HRA, a person has the right to not be arbitrarily deprived of their property.

Where a person holds an animal authority to take or keep a native animal, any animal covered by the authority is the property of the person. The regulation limits property rights by providing for the amending, suspending or cancelling of animal authorities. The regulation also contains provisions relating to dealing with excess animals.

Further, in certain circumstances conservation officers may seize property, such as animals, cages, enclosures, and traps, which would impact on a person's property rights.

The Minister states:

On balance, the ability to amend, suspend, or cancel an authority to ensure wildlife conservation, public and wildlife safety is a justifiable limitation on the property rights. The restrictions on property rights to manage the unauthorised breeding of animals and during compliance procedures are also justifiable to manage wildlife trade activities and achieve the conservation objectives of the [*Nature Conservation Act 1992*].¹⁸

Where a penalty infringement notice is issued, a failure to pay may result in enforcement action relating to an unpaid fine, including seizure of property or vehicle immobilisation. This might be seen as impacting a person's property rights.

On this aspect, the Minister states:

While there are material limitations on property rights through enforcement of the Animals Regulation via SPER, these limitations are not arbitrary and are not enforced without consideration of surrounding factual circumstances and not exercised without training and legislated authority. To that end, the benefit of the provisions in achieving the objectives [of] nature conservation, animal welfare and maintaining a strong licencing framework which regulate wildlife trade outweighs any limitation on the right to property.¹⁹

It is noted that s 24 proscribes an arbitrary deprivation of property.

Committee comment

Given the Minister's explanation, the committee is satisfied any limits on human rights in these respects is reasonable and demonstrably justified.

3.3.3 Section 25 Human Rights Act 2019 – privacy and reputation

Under s 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

The regulation provides for personal information to be collected in a number of circumstances, including where an animal authority is issued and that information is displayed in that authority.

The Minister provides the following justification:

The objective of collecting personal information is to ensure that conservation values are being upheld in dealings with protected animals, which reinforces a strong licencing framework and maintains public safety and animal welfare. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.²⁰

Committee comment

Given the Minister's statement the committee is satisfied any limit on human rights is reasonable and demonstrably justified.

¹⁸ Human rights certificate, p 8.

¹⁹ Human rights certificate, p 11.

²⁰ Human rights certificate, p 9.

3.3.4 Section 29 Human Rights Act 2019 – right to liberty and security of a person

Under s 29 of the HRA, a person has the right to liberty and security.

If a fine under a penalty infringement notice is not paid, enforcement action could follow, possibly including the issue of an arrest and imprisonment warrant, which could be seen as impacting on a person's right to liberty and security.

The Minister states:

Having regard to the nature and extent of the potential limitation on the right to liberty and security of person, the importance of implementing effective enforcement responses to offences that jeopardise the conservation objectives of the Animals Regulation are proportionate to the risk created by the offending behaviours.²¹

Committee comment

The committee is satisfied any limit on human rights is reasonable and demonstrably justified.

3.3.5 Section 31 Human Rights Act 2019 – fair hearing and section 32 Human Rights Act 2019 – rights in criminal proceedings

A person has the right to a fair and public hearing, under s 31 of the HRA and has the right to be presumed innocent until proved guilty, under s 32 of the HRA.

Where a penalty infringement notice is issued, a person may elect to have the offence determined in court, but is not required to do so. Some people may encounter barriers to the court process, including disability, language and financial standing. The court process may limit a person's rights to a fair hearing.

The Minister states:

The purpose of these amendments is to ensure the appropriate conservation and management of native animals, and that there is an effective system for issuing and enforcing fines to persons who commit PIN offences, which will encourage compliance with the law. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.²²

Committee comment

The committee is satisfied any limit on human rights is reasonable and demonstrably justified.

3.4 Human rights certificate

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

4 SL No. 137: Nature Conservation (Plants) Regulation 2020

The Nature Conservation (Plants) Regulation 2020 provides for the conservation and management of protected plants in Queensland. The regulation repeals three existing regulations and transfers the existing provision into one regulation. In doing this, the regulation:

- retains the existing policy intent of the protected plants framework
- improves its interpretation and administration by updating provisions to comply with contemporary parliamentary counsel drafting standards, and

²¹ Human rights certificate, p 13.

²² Human rights certificate, p 12.

- removes requirements or offences which are duplicated with *Nature Conservation Act 1992* offences.²³

4.1 Fundamental legislative principle issues

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

4.1.1 Section 4(2)(a) *Legislative Standards Act 1992* – rights and liberties of individuals – general rights and liberties

Legislation should not, without sufficient justification, unduly restrict ordinary activity.

Under the regulation, the chief executive may amend, suspend or cancel a plant authority. This would impact a person's ordinary activities in being able to deal with plants under a plant authority.

The explanatory notes provide the following justification:

These provisions in the Plants Regulation are considered to be proportionate with the need to conserve wildlife whilst also considering the rights and liberties of individuals who hold relevant authorities.²⁴

Committee comment

The committee is satisfied that the impact on a person's rights and liberties has been sufficiently justified.

4.1.2 Section 4(2)(a) *Legislative Standards Act 1992* – rights and liberties of individuals – penalties are reasonable and proportionate

Whether legislation has sufficient regard for an individual's rights and liberties includes whether offences and penalties are reasonable and proportionate. The regulation contains three types of penalties:

- minor administrative offences – maximum of 20 penalty units (\$2,669)
- offences that impact the conservation of plants – maximum 165 penalty units (\$22,019.25)
- other miscellaneous offences – maximum of 80 penalty units (\$10,676).²⁵

Section 175 of the *Nature Conservation Act 1999* provides that a regulation made under that Act may impose a fine of not more than 165 penalty units.

The explanatory notes state:

... these offences are only made where it is appropriate and is required to ensure the effective enforcement of requirements relating to the take, keep and use of protected plants. The offences are reasonable given the need to achieve the conservation objectives of the *Nature Conservation Act 1992* and consistent with the way existing offences are established for wildlife under the Act.²⁶

Committee comment

Given the justification provided in the explanatory notes, the committee considers that the imposition of penalties is reasonable and proportionate.

4.1.3 Section 4(3)(e) *Legislative Standards Act 1992* – seizing property

Under s 4(3)(e) of the LSA, legislation should confer power to seize property only with a warrant.

²³ Explanatory notes, p 2.

²⁴ Explanatory notes, p 9.

²⁵ Explanatory notes, p 9.

²⁶ Explanatory notes, p 8.

Under s 196 of the Plants Regulation, a conservation officer may seize an object (vehicle, boat, aircraft or appliance), without a warrant, if it is necessary for the protection of native wildlife and the object is on land without the landholder's consent or is abandoned.

The explanatory notes provide the following explanation:

... it is justified in the interest of protecting native plants (e.g. seizing harvesting equipment or chemicals used for the take of plants). In these situations it is often necessary to seize the object immediately in order to protect plants. It would not be appropriate to delay seizure until a warrant is obtained as the delay would likely lead to the death of the plant. In addition, restrictions are placed on the chief executive when the owner or person in control of the object to be seized is or should reasonably be known.²⁷

Committee comment

The committee notes the potential urgency in some situations to seize property without a warrant in order to protect plants and therefore considers that this power is sufficiently justified.

4.1.4 Section 4(5)(e) *Legislative Standards Act 1992* – institution of Parliament – sub-delegation of power

Under s 142, the Chief Executive may approve a flora survey guideline about the conduct of a flora survey. The Chief Executive must publish the flora survey guidelines on the department website. The flora survey guideline may contain requirements or provisions about the following:

- who may undertake a flora survey
- the extent of an area to be surveyed
- information to be included in a flora survey report, including, for example, a map or plan showing the clearing impact area

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.²⁸

Section 174B of the *Nature Conservation Act 1992* provides that the chief executive may, by gazette notice, approve or make guidelines about considering an application under the Act. The power to create the flora survey guidelines is authorised by the Act which gives this power to the chief executive.

The guideline is 12 pages long and contains detailed information. It might be accepted that it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation. Section 142(3) states that the chief executive must publish the flora survey guidelines on the department's website. The guideline is available on the Department of Environment and Science website.

Committee comment

Given that the guideline will be available on the Department of Environment and Science website, the committee is satisfied that the inclusion of the flora survey guideline in the regulation has sufficient regard to the institution of Parliament.

²⁷ Explanatory notes, p 9.

²⁸ Section 4(5)(e) of the *Legislative Standards Act 1992*.

4.2 Explanatory notes

The explanatory notes, under the heading 'Consistency with fundamental legislative principles', state:

The Plants Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament, and complies with the fundamental legislative principles under the *Legislative Standards Act 1992*.²⁹

The committee notes that this statement is incorrect, and that issues of fundamental legislative principle raised by the regulation, including issues identified and discussed in the explanatory notes immediately following the statement.

The explanatory notes otherwise comply with part 4 of the LSA.

4.3 Human rights considerations

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

4.3.1 Human rights issues in the amendment regulation

In the human rights certificate accompanying the amendment regulation, the Minister states her opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,³⁰ and
- with the HRA because while it does limit, restrict or interfere with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.³¹

The committee considered the following potential human rights issues.

4.3.2 Section 24 Human Rights Act 2019 – property rights

According to s 24 of the HRA, a person must not be arbitrarily deprived of their property.

The regulation provides conservation officers with the power to seize plants, vehicles, chemicals (and poisons) and harvesting equipment in particular circumstances.

The Minister provided the following justification:

On balance, seizure powers provide the ability for Conservation Officers to act within their statutory power to immediately respond to unlawful dealings with plants that impact conservation objective of the NC Act [Nature Conservation Act 1992], for example, if the unlawful dealing is in regards to a threatened plant, the dealing may impact the long term viability of the population in the wild. As seizure powers provide natural justice to ensure seized property is returned to owners, the limitation is reasonable considering the importance of native plant conservation to Queensland.³²

Committee comment

Given the Minister's statement, the committee is satisfied that the impact on a person's right to property is reasonable and justified.

4.3.3 Section 24 Human Right Act 2019 – property rights

Under s 24 of the HRA, a person must not be arbitrarily deprived of their property.

Where a penalty infringement notice (PIN) is issued under the regulation and there is a failure to pay the PIN, this may result in enforcement action. This can further lead to seizure of a person's property, which could be argued to affect a person's right to deal with and use their own property.

²⁹ Explanatory notes, p 8.

³⁰ Human rights certificate, p 1.

³¹ Human rights certificate, p 13.

³² Human rights certificate, p 4.

The Minister provided the following justification:

The purpose of these amendments is to ensure there is an effective system for issuing and enforcing fines for unlawful direct and indirect interactions or dealings with plants. This will ensure that there continues to be a proportionate and effective enforcement response to the variety of offences within the Plants Regulation and will encourage compliance with the law, minimising illegal wildlife trade risks.³³

Committee comment

The committee considers that the impact on a person's property rights is reasonable and justified.

4.3.4 Section 25 Human Rights Act 2019 – privacy and reputation

Under s 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Where a person takes a protected plant under a scientific purposes exemption, they are required to supply their name on a specimen label attached to the plant.

Sections 154 and 155 require personal information for the purchase, acceptance, sale or giving away of a restricted or prohibited plant.

An owner of a seized thing may be required to verify their right to the thing by statutory declaration, according to s 202.

These circumstances could be seen to be an impact on a person's right to privacy.

The Minister provides the following justification:

The limitation on privacy rights is balanced with the necessity for supporting the conservation objectives of the NC Act by managing plant diversity and populations and accurately recording interactions with plants.

Without the capacity to identify individuals interacting with plants and their locations there is increased risk of conservation objectives not being upheld.

Unauthorised and unmonitored dealings with protected plants may also cause biosecurity hazards, promote proliferation of pests or allow for ease of illegal trade.³⁴

Committee comment

The committee is satisfied that the impact on a person's right to privacy is reasonable and justified.

4.3.5 Section 29 Human Rights Act 2019 – right to liberty and security

Under s 29 of the HRA, every person has the right to liberty and security.

Under the regulation, infringement notice offences and failure to pay a penalty infringement fine may result in enforcement action under the *State Penalties Enforcement Act 1999*, which includes the issue of an arrest and imprisonment warrant. The Minister states:

Having regard to the nature and extent of the potential limitation on the right to liberty and security of person, the importance of implementing effective enforcement responses to offences that jeopardise the conservation objectives of the Plants Regulation are proportionate to the risk created by the offending behaviours.³⁵

Committee comment

The committee is satisfied that the impact on a person's right to liberty and security is reasonable and justified.

³³ Human rights certificate, p 7.

³⁴ Human rights certificate, p 6.

³⁵ Human rights certificate, p 10.

4.3.6 Section 31 *Human Rights Act 2019* – Fair hearing and Section 32 *Human Rights Act 2019* – rights in criminal proceedings

Under s 31 of the HRA, a person has the right to a fair and public hearing. Under s 32, a person has the right to be presumed innocent until proved guilty.

A person does not have to attend court in relation to a PIN, but may elect to do so if they believe the PIN has been improperly issued or they are unable to pay the PIN and wish to negotiate a lesser fine. Some individuals may encounter barriers to the court process, including disability, language and financial standing. There could be seen to be limitations on a person's human rights where the PIN is taken to court.

The Minister states:

Having regard to the nature and extent of the potential limitation on the right to a fair hearing and rights in criminal proceedings, the rights are protected by creating an infringeable offence with the option to challenge the matter in court. Any remaining potential limitation is reasonable considering the importance of implementing effective enforcement responses to offences that jeopardise the conservation objectives of the Plants Regulation.³⁶

Committee comment

The committee considers that the impact on a person's right to a fair hearing and in criminal proceedings is reasonable and justified.

4.4 Human rights certificate

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

5 SL No. 138: Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2020

Following a statutory review of the protected wildlife framework, a number of existing regulations will be repealed. The purpose of the Nature Conservation (Protected Areas Management (PAM)) and Other Legislation Amendment Regulation 2020 is to introduce consequential amendments associated with the repeal of existing regulations, including:

- incorporating administrative provisions relating to protected areas into the PAM Regulation
- amending the *State Penalties Enforcement Regulation 2014* to update the references to legislation for protected area penalty infringement notice offences
- changing a reference in the *Marine Parks Regulation 2017* from the Administration Regulation which will become redundant, to the PAM Regulation; and
- administrative amendments to the *Forestry Regulation 2015* and the *Recreation Areas Management Regulation 2017* to insert an informative note regarding COVID-19 fee waivers.³⁷

5.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified by the committee.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

³⁶ Human rights certificate, p 12.

³⁷ Explanatory notes, p 2.

5.3 Human rights considerations

5.3.1 Human rights issues in the amendment regulation

In the human rights certificate accompanying the amendment regulation, the Minister states that the amendment regulation is compatible:

- with the human rights protected by the HRA,³⁸ and
- with the HRA because while it does limit, restrict or interfere with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.³⁹

The committee considered the following potential human rights issues.

5.3.2 Section 24 Human Rights act 2019 – property rights

Under s 24 of the HRA, a person must not be arbitrarily deprived of their property.

The regulation provides for the amendment, suspension or cancellation of protected area authorities.

Further, a conservation officer may seize items where the officer believes that unlawful conduct or unlawful access is occurring or that the items are in the protected area for the purposes of unlawful taking, keeping, use or interference with natural or cultural resources. Cultural officers may also seize items reasonably believed to be abandoned within the protected area. These will impact a person's ability to use their property as they would in ordinary circumstances.

The Minister provides the following justification:

The circumstances of dealing with seized items authorised under this Amendment Regulation are not arbitrary and are only undertaken as a last resort where required for safety purposes and where the owner of seized items cannot be located.⁴⁰

Committee comment

Given the Minister's statement that the powers are not arbitrary and will only be undertaken as a last resort for safety purposes the committee considers these to be reasonable and justified.

5.3.3 Section 25 Human Rights Act 2019 – privacy and reputation

Under s 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Personal information of a person is collected as part of a protected area authority application and used by the chief executive prior to deciding on the application for a protected area authority. An authorised officer may require the granted authority or agreement to be made available for inspection when undertaking compliance activities on a protected area. This collection and use of a person's personal information will impact a person's right to privacy.

Regarding the collection of information for an application, the Minister states:

In these cases, a person is voluntarily seeking an agreement or authority and the collection of information is part of that voluntary action. An individual is not being forced to provide information as they are not being forced to apply for an authority.⁴¹

The committee considers that this argument is not entirely compelling, as an individual might require an authority for a range of purposes, which are reasonable to pursue. Applications might well be made

³⁸ Human rights certificate, p 1.

³⁹ Human rights certificate, p 5.

⁴⁰ Human rights certificate, p 3.

⁴¹ Human rights certificate, p 3.

voluntarily, but the issue remains whether the information sought and held is reasonable to require, and appropriately protected.

The Minister provides some assurance regarding the protection of personal information:

Private information collected, used and stored by the department is subject to strict control principles and practices, and complies with the Information Privacy Act 2009. The information is not made publically available. The collection of this information is not unlawful nor arbitrary and therefore there is not considered a limitation of privacy rights.⁴²

Committee comment

Given this assurance, the committee is satisfied the impact on a person's privacy is reasonable and demonstrably justified.

5.4 Human rights certificate

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

6 SL No. 150: Medicines and Poisons (Postponement) Regulation 2020

As set out in the explanatory notes, the purpose of the *Medicines and Poisons Act 2019*, which received assent on 26 September 2019, is to repeal and replace existing legislation with a new regulatory framework, which modernised and streamlined the regulation of medicines and poisons, making requirements for industry and the community easier to understand and apply in practice.⁴³

The Medicines and Poisons (Postponement) Regulation 2020 postpones the automatic commencement of the uncommenced provisions of the *Medicines and Poisons Act 2019* until 27 September 2021. The commencement is postponed to enable consultation with stakeholders to occur and regulations to be finalised so that the *Medicines and Poisons Act 2019* and the *Therapeutic Goods Act 2019* and supporting regulations may commence at the same time.⁴⁴

The explanatory notes state:

Prior to the emergence of COVID-19, the Medicines and Poisons Act and Therapeutic Goods Act 2019 and supporting regulations were proposed to commence on 1 July 2020. Consultation on the supporting regulations, which was scheduled to occur in the first quarter of 2020, was postponed due to COVID-19, as the stakeholders to be consulted were those most focused on the COVID-19 response (for example, doctors, nurses, pharmacists and their professional bodies). It is proposed to postpone commencement of the remaining provisions of the Medicines and Poisons Act to enable sufficient time to consult with stakeholders about the regulations. It is necessary for the regulations to be finalised so the scheme can commence in its entirety, with the Acts and supporting regulations commencing at the same time.⁴⁵

6.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

6.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.3 Human rights considerations

The committee considers that the postponement regulation is compatible with human rights.

⁴² Human rights certificate, p 3.

⁴³ Medicines and Poisons (Postponement) Regulation 2020, explanatory notes, p 1.

⁴⁴ Medicines and Poisons (Postponement) Regulation 2020, explanatory notes, p 2.

⁴⁵ Medicines and Poisons (Postponement) Regulation 2020, explanatory notes, p 2.

6.4 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.

7 SL No. 151: Therapeutic Goods (Postponement) Regulation 2020

According to the explanatory notes, the purpose of the *Therapeutic Goods Act 2019* (the Act) which received Assent on 26 September 2019, is to enhance national consistency in the regulation of medicines, poisons and therapeutic goods, reduce the current regulatory burden and ensure appropriate safeguards are implemented to protect the health and safety of the community. The Act aims to reduce regulatory duplication by removing the need for the separate manufacturing, advertising, labelling and packaging requirements in the Queensland regulatory framework for medicines and poisons.⁴⁶

The Therapeutic Goods (Postponement) Regulation 2020 postpones the automatic commencement of the *Therapeutic Goods Act 2019* until 27 September 2021. The postponement is to enable consultation on the regulations supporting the *Medicines and Poisons Act 2019* and the *Therapeutic Goods Act 2019*, which had been postponed due to the COVID-19 emergency, to occur.⁴⁷

The explanatory notes state:

Prior to the emergence of COVID-19, the Medicines and Poisons Act 2019 and Therapeutic Goods Act and supporting regulations were proposed to commence on 1 July 2020. Consultation on the supporting regulations, which was scheduled to occur in the first quarter of 2020, was postponed due to COVID-19, as the stakeholders to be consulted were those most focused on the COVID-19 response (for example, doctors, nurses, pharmacists and their professional bodies). It is proposed to postpone commencement of the Therapeutic Goods Act to enable sufficient time to consult with stakeholders about the regulations. It is necessary for the regulations to be finalised so the scheme can commence in its entirety, with the Acts and supporting regulations commencing at the same time.⁴⁸

7.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

7.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.3 Human rights considerations

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

7.4 Human rights certificate

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

⁴⁶ Therapeutic Goods (Postponement) Regulation 2020, explanatory notes, p 1.

⁴⁷ Therapeutic Goods (Postponement) Regulation 2020, explanatory notes, pp 1-2.

⁴⁸ Therapeutic Goods (Postponement) Regulation 2020, explanatory notes, p 1.

8 SL No. 154: Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020

The objective of the regulation is to extend the period of the 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 46 days (until the end of 2 October 2020).

The declaration of the public health emergency was made by the Minister on 29 January 2020, and notified in the gazette on 31 January 2020. It has previously been extended by SL 7, SL 8, SL 13 and SL 75 of 2020.

8.1 Fundamental legislative principle issues

The further extension regulation raises the same issues, regarding impacts on the rights and liberties of individuals, as the first extension regulation (SL 7).

8.1.1 Section 4(2)(a) *Legislative Standards Act 1992* – rights and liberties of individuals – general rights and liberties and Section 4(3)(f) *Legislative Standards Act 1992* - power to enter premises

The effect of declaring (and also of extending) a public health emergency is that a number of powers in the *Public Health Act 2005* (the 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.⁴⁹

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.⁵⁰

The emergency officer must make a reasonable attempt to seek consent, but need not do so if the officer believes on reasonable grounds that immediate entry is required.⁵¹

Legislation should not, without sufficient justification, unduly restrict ordinary activities. The right to personal liberty is the most elemental and important of all common law rights.⁵²

Entry without consent into any place where a person lives requires the highest justification.⁵³

An individual would normally expect to be able to enjoy freedom of movement and any removal of this right must be fully justified and should be only done with the authority of the court.⁵⁴

The explanatory notes detail the following protections limiting the exercise of the powers of emergency officers:

⁴⁹ *Public Health Act 2005*, s 345.

⁵⁰ *Public Health Act 2005*, s 343.

⁵¹ *Public Health Act 2005*, s 344.

⁵² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

⁵³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

⁵⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 99.

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)).⁵⁵

The explanatory notes offer the following justification:

The exercise of these emergency powers is likely to impact upon the rights and liberties of individuals. However, it is considered that any potential impact the Regulation has upon 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-19.⁵⁶

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 FLPs is sufficiently justified.

8.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.3 Human rights considerations

In the human rights certificate accompanying the regulation, the Minister states that the regulation is compatible:

- with the human rights protected by the HRA, and
- with the HRA because while it does limit, restrict or interfere with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.⁵⁷

The committee considers that the subordinate legislation raises a number of human rights issues.

8.3.1 Freedom of movement – section 19 HRA

Every person has the right to move freely within Queensland and to enter and leave it.

Under the regulation, emergency officers have the power to require a person:

- to not enter or not remain within a place

⁵⁵ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020, explanatory notes, p 4.

⁵⁶ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020, explanatory notes, p 4.

⁵⁷ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020, human rights certificate, p 11.

- to stay in a stated place, and
- to stop using a place for a stated purpose.

These requirements impact on a person's right to freedom of movement.

8.3.2 Freedom of thought, conscience, religion and belief right – section 20 HRA

Under section 20 of the HRA, every person has the right to freedom of thought, conscience, religion and belief.

The regulation provides emergency officers 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.

8.3.3 Freedom of expression – section 21 HRA

Under section 21 of the HRA, every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds.

A person's movements may be restricted under this regulation, which may limit the ways in which people can express their opinions and ideas.

8.3.4 Peaceful assembly and freedom of association – section 22 HRA

Under section 22 of the HRA, every person has the right to peaceful assembly.

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

8.3.5 Cultural rights – generally – section 27 HRA and Cultural rights – Aboriginal peoples and Torres Strait Islander peoples – section 28 HRA

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.

The HRA recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.

The restriction 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.

8.3.6 Taking part in public life – section 23 HRA

Under section 23 of the HRA, every person has the right to participate in the conduct of public affairs.

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.

8.3.7 Property rights – section 24 HRA

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

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; and
- take action in relation to property.

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

8.3.8 Privacy and reputation – section 25 HRA

A person has the right not to have their privacy unlawfully or arbitrarily interfered with, under section 25 of the HRA.

8.3.9 Liberty and security of person – section 29 HRA

A person must not be subject to arbitrary arrest or detention (section 29 of the HRA).

The regulation gives power 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.

8.3.10 Protection of families and children – section 26 HRA

Every child has the right to protection that is in their best interests as a child.

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

8.3.11 Humane treatment when deprived of liberty – section 30 HRA

Under section 30 of the HRA, a person deprived of their liberty must be treated with humanity and respect.

Emergency officers (medical) have the power to order detention of a person if that person has or may have a serious disease or illness.

8.3.12 Right to education – section 36 HRA

A child has the right to access primary and secondary education appropriate to their needs.

A child's educational activities may be limited due to the restriction of movement.

8.3.13 Justification for the limitations of human rights

The Minister provides the following justification in relation to all of the impacted 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.⁵⁸

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 a large number of rights, in many instances the limitations are minor in nature and the need to protect the right to life for all Queenslanders substantially outweighs any limitation on human rights.⁵⁹

The Minister also notes:

The Public Health Act states that the Regulation can only [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 continually assess the need for the declared public health emergency to continue based on the current threat of COVID-19 in Queensland.⁶⁰

⁵⁸ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020, human rights certificate, p 10.

⁵⁹ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020, human rights certificate, p 10.

⁶⁰ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2020, human rights certificate, p 11.

Committee comment

The committee is satisfied that limitations on human rights relating to emergency powers available under the Public Health Act to manage the spread of COVID-19, are reasonable and demonstrably justifiable in accordance with Section 13 of the HRA.

8.4 Human rights certificate

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

9 SL No. 161: Health (Drugs and Poisons) Amendment Regulation (No. 3) 2020

The regulation amends the Health (Drugs and Poisons) Regulation 1996 to authorise pharmacists to send their controlled drug data to Queensland Health via an automated online process. The amendment specifies the means by which electronic prescriptions may be sent to Queensland Health, ensuring the secure transmission of data and improved usability of prescription information.

The regulation does not expand the scope of, or the purposes for the use of, the data currently collected or expand the scope of persons to whom this data can be disclosed. The Amendment Regulation simply changes the mechanism by which data on prescribed and dispensed controlled drugs can be collected and the specific information and communication technology database in which the data is stored and accessed by departmental staff.⁶¹

9.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

9.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.3 Human rights considerations

The committee considers that the regulation is compatible with human rights.

9.4 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.

10 SL No. 173: Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2020

The stated objectives are to:

- increase the area of the protected area estate to allow for 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 custom⁶²
- redescribe Main Range National Park and Calliope Conservation Park, after the completion of up to date plans defining the boundaries of the parks,⁶³ and

⁶¹ Health (Drugs and Poisons) Amendment Regulation (No. 3) 2020, explanatory notes, p 4.

⁶² Explanatory notes, p 1.

⁶³ Explanatory notes pp 1-2.

- redescribe and alter the name of one nature refuge (from Old Hiddenvale Nature Refuge to Old Hidden Vale Nature Refuge), in light of a replacement conservation agreement and completion of a new plan defining the nature refuge.⁶⁴

10.1 Issues of fundamental legislative principle and comment

No issues of fundamental legislative principle were identified.

10.2 Explanatory notes comment

The explanatory notes comply with part 4 of the LSA.

10.3 Human rights considerations

10.3.1 Section 19 Human Rights Act 2019 – Freedom of movement

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

Access to areas in national parks or conservation parks may be restricted due to cultural or natural resources or values that are sensitive or require rehabilitation. Biosecurity threats or disaster management may also cause limitations on freedom of movement.

The Minister states:

... the freedom of movement limitations are proportionate with the benefits provided to the general public, in creating new publically accessible areas such as national parks. The limitations are also consistent with not imposing positive obligations on the State, whereby the State would not be required to provide absolute freedom of movement on protected area estate.⁶⁵

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

10.3.2 Section 28 Human Rights Act 2019 – Cultural rights – Aboriginal people and Torres Strait Islander peoples

Section 28 of the HRA recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

The dedication of new (or amendment of existing) national parks or conservation parks may have a potential indirect impact, or create limitations, on cultural rights in relation to the land.

The Minister states:

Any limitations or indirect impact on cultural rights of Aboriginal or Torres Strait Islander peoples are considered reasonable and proportionate as the interest of Aboriginal or Torres Strait Islander peoples are allowed for and encourage the maintenance of their relationship with the lands, seas and waterways.

During the nature refuge negotiation process that occurs prior to declaration, all persons with an interest in the proposed or existing nature refuge area, including native title holders and applicants, and parties to Indigenous Land Use Agreements, are provided with an opportunity to respond to the proposed declaration. Responses and consent are received from consulted parties, where required, before the subordinate legislation is made.⁶⁶

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

⁶⁴ Explanatory notes, pp 1, 3.

⁶⁵ Human rights certificate, p 2.

⁶⁶ Human rights certificate, p 3.

10.4 Human rights certificate

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

11 SL No. 174: Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2020

The regulation increases the area of Moreton Island National Park, by adding 42.04 hectares of unallocated State land.

The regulation also corrects an error in the Nature Conservation (Protected Areas) Regulation 1994, by reducing the total area for Moreton Island National Park by 1.367 hectares, to make the area described in the regulation accurately reflect the land area actually contained in the national park.⁶⁷

11.1 Issues of fundamental legislative principle and comment

No issues of fundamental legislative principle were identified.

11.2 Explanatory notes comment

The explanatory notes comply with part 4 of the LSA.

11.3 Human rights considerations

11.3.1 Section 19 Human Rights Act 2019 – Freedom of movement

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

The regulation limits the freedom of movement by restricting the use of vehicles and other modes of transport on the land being added to the national park. Again, access to areas may be restricted due to cultural or natural resources or values that are sensitive or require rehabilitation, or as a result of Biosecurity threats or disaster management.

The Minister states:

The limitation on the right to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by the relevant person complying with simple requirements, such as using an existing track, alternative path, or less damaging mode of movement (i.e. walking rather than driving) to traverse land and only on the land that is being added to the national park. As the limitation has a very limited scope, and persons subject to it have the ability to move freely throughout Queensland by complying with simple requirements, the limitation provides for an appropriate balance between the purpose of the limitation and the impact on an affected person is therefore justified.⁶⁸

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

11.3.2 Section 28 Human Rights Act 2019 – Cultural rights – Aboriginal people and Torres Strait Islander peoples

Section 28 of the HRA recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

The regulation adds land to the national park estate, which restricts the way the land is able to be used, including by Aboriginal and Torres Strait Islander peoples.

The Minister states:

⁶⁷ Explanatory notes, p 2.

⁶⁸ Human rights certificate, p 3.

While the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are limited by the operation of this section, Aboriginal peoples and Torres Strait Islander peoples with cultural connections to the lands will be able to continue and maintain their distinctive relationship with those lands under Aboriginal tradition or Island custom through Native Title rights and general public access to the land in a manner that is consistent with national park tenure.⁶⁹

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

11.4 Human rights certificate

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

12 SL No. 176: Wet Tropics (Review) Amendment Management Plan 2020

The stated objectives are to:

- improve the operation of the Wet Tropics Management Plan 1998 (Management Plan)
- improve and simplify the operation of the Management Plan zoning system
- better reflect Aboriginal tradition, by ensuring Aboriginal tradition and Rainforest Aboriginal Peoples' culture is better recognised in decision making and to increase their involvement in management of the Wet Tropics of Queensland World Heritage Area (the Area)
- enable the provision of appropriate visitor infrastructure within the Area into the future
- introduce uniformity of scrutiny in the assessment of applications for new community services infrastructure so all infrastructure is assessed consistently
- implement a simpler system for managing the operation of motor vehicles on roads in the Area
- update and refine regulations pertaining to domestic activities within the Area
- improve operational aspects of the Management Plan by updating schedules of listed undesirable plants and animals, introducing efficiency measures to keep lists up to date and regulating the translocation of fish and crustaceans into the Area's waterways.⁷⁰

12.1 Issues of fundamental legislative principle and comment

12.1.1 Section 4(2)(a) Legislative Standards Act 1992 – rights and liberties of individuals – new offences to be warranted, and penalties to be reasonable and proportionate

Section 35 adds a new offence provision to section 51 of the Management Plan. It is an offence for a permit holder to contravene a condition of a permit. The maximum penalty is 165 penalty units or approximately \$22,000.00 (1 penalty unit is currently \$133.45).

A penalty should be proportionate to the offence. The OQPC Notebook states:

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.⁷¹

The explanatory notes state:

⁶⁹ Human rights certificate, p 4.

⁷⁰ Explanatory notes, pp 1-2.

⁷¹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

The offence is consistent with the policy intent of the Management Plan and is similar to offences in broadly similar legislation. For example, the failure to comply with a stop work notice under the *Vegetation Management Act 1999* section 54A(5), which contains a maximum penalty of 1665 (sic) penalty units. Section 165 of the *Planning Act 2016* assigns a maximum penalty of 4,500 penalty units where a person contravenes a development approval.⁷²

It is noted that the penalty for a failure to comply with a stop work notice (under section 54A(5) of the *Vegetation Management Act 1999*) is 4500 penalty units, not 1665 units. Moreover, it is readily apparent that the penalties for the offences mentioned here are far in excess of the new penalty under consideration here, and so are not useful as examples of ‘similar’ penalties and offences to demonstrate comparability and proportionality.

The explanatory notes refer to some similar penalties elsewhere in the Management Plan:

By way of comparison, equal penalties exist for section 26 – Other prohibited activities, for offences about matters such as undesirable plants, mining, excavating or quarrying, interfering with a watercourse, building or maintaining a structure or a road, operating certain waste facilities.⁷³

Other prohibited activities in section 26 that attract a penalty of 165 penalty units include the unlawful translocation of a crustacean or fish.

Committee comment

Given penalties exist for similar prohibited activities the committee considers the 165 penalty units imposed is reasonable and proportionate.

12.1.2 Section 4(5)(e) Legislative Standards Act 1992 – Institution of Parliament – sub-delegation of power

The regulation replaces section 43 of the *Wet Tropics World Heritage Protection and Management Act 1993* – the ‘effect of cooperative management agreement on plan’. Section 43 applies if the Authority and a person enter into a cooperative management agreement under section 41 of the Act. The power under question is the power to vary the controls of the Management Plan, which under the Act is generally reserved by the Authority and Governor in Council and only upon recommendation by the Ministerial Council. Section 43 can sub-delegate plan-amendment authority to the parties of a cooperative management agreement.

It can be noted that this new provision replaces the current section 43, without substantial change. The explanatory notes state:

[The] continued operation of this sub-delegation is justified for the reason it was originally enacted and that cooperative management agreements are contemplated under the Act. Section 43, together with the associated provisions under Part 3 Division 5 provide the opportunity for entering into a mutually beneficial agreement that recognises the rights of persons who have interests concerning land in the Area; as well [as] being consistent with achieving the primary goal under Schedule 1 of the Act i.e.

*To provide for the implementation of Australia’s international duty for the protection, conservation, presentation, rehabilitation and transmission to future generations of the Wet Tropics of Queensland World Heritage Area within the meaning of the World Heritage Convention.*⁷⁴

Committee comment

The committee is satisfied that the sub-delegation of power is justified.

12.2 Explanatory notes comment

The explanatory notes comply with part 4 of the LSA.

⁷² Explanatory notes, p 8.

⁷³ Explanatory notes, pp 8-9.

⁷⁴ Explanatory notes, p 8.

12.3 Human rights considerations

12.3.1 Section 28 Human Rights Act 2019 – Cultural rights – Aboriginal people and Torres Strait Islander peoples

Section 28 of the HRA recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Sections of the Amendment Management Plan may limit the cultural rights of Aboriginal peoples because they regulate certain uses that potentially impact the world heritage values and integrity of the area.

The human rights certificate sets out examples, including:

- The plan allows the keeping of domestic animals but determines the way in which they are kept.
- The plan controls reconfiguring a lot which may result in changes to where clearing may occur or structures built, but only to an extent that the clearing or building was not already assessable under the existing Management Plan.⁷⁵

The Minister observes:

The Amendment Management Plan may affect the exercise of the cultural rights of Aboriginal Peoples but only to the extent that:

- a. The activity impacts on the world heritage values and integrity of the Area; and
- b. That the activity is not a native title right already protected under the Native Title Act (Cth) section 211.

After consideration of a) and b) above, the degree to which the right to Aboriginal cultural heritage is potentially affected is hard to determine because neither the exact cultural practices nor the considerations and processes that would be followed in practice are not completely known in advance.⁷⁶

The Minister advises that significant consultation was undertaken with the recognised Native Title Representative Body, the North Queensland Land Council (which also represented the Cape York Land Council in the consultation).⁷⁷ Further:

Furthermore, there are mechanisms under the Amendment Plan that help support and strengthen the consideration of Aboriginal traditions and cultural rights under section 28, including:

- a) Cooperative management agreements provide maximum flexibility for a negotiated outcome that finds a balance between the exercise of rights and interests of Aboriginal peoples to protect the unique and irreplaceable values of the world heritage area.
- b) New section 59 – Aboriginal tradition. This section was developed in response to consultation and applies to the consideration of all permits, rezoning and cooperative management agreement negotiations ...⁷⁸

Section 59 requires the authority, in considering any permit application, to have regard to the effects that a proposed decision might have on the Aboriginal tradition of Aboriginal people particularly concerned with land in the area.

Overall, the Minister concludes:

The benefits of protecting the values of the Area are considered to outweigh the limited extent to which Aboriginal cultural rights might be affected or limited by the Amendment Management Plan. Any limitation is expected to be minor and the outcome for the global community very significant, particularly

⁷⁵ Human rights certificate, p 3.

⁷⁶ Human rights certificate, p 2.

⁷⁷ Human rights certificate, p 4.

⁷⁸ Human rights certificate, pp 4-5.

the protection of the evolutionary history represented in the area. These values are irreplaceable and one of the best examples in the world.⁷⁹

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

12.4 Human rights certificate

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

13 Recommendation

The committee recommends that the House notes this report.



Aaron Harper MP

Chair

February 2021

Health and Environment Committee

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

⁷⁹ Human rights certificate, p 5.