

Health and Environment Committee

Report No. 8, 57th Parliament

Subordinate legislation tabled between 24 February 2021 and 20 April 2021

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 24 February 2021 and 20 April 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),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*
17	Public Health Amendment Regulation 2021	23 March 2021	17 June 2021
21	Nature Conservation (Protected Areas Management) (Communications Facility) Amendment Regulation 2021	23 March 2021	17 June 2021
26	Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021	20 April 2021	1 September 2021
27	Hospital and Health Boards Amendment Regulation 2021	20 April 2021	1 September 2021

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

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(2)).

3 Codes examined

The committee also considered ten codes of practice made in accordance with the *Nature Conservation Act 1992* and one compliance code made under the *Biodiscovery Act 2004*, all of which were tabled by the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs.

Although these codes are not subordinate legislation, sections 49, 50 and 51 of the *Statutory Instruments Act 1992* apply to these codes of practice and the compliance code as if they were subordinate legislation.⁵ This means that the tabling and disallowance regime for subordinate legislation applies. However, as the codes are not subordinate legislation they are not part of the usual numbered subordinate legislation series.

Code of Practice – <i>Nature Conservation Act 1992</i>	Date tabled	Disallowance date*
Aviculture	9 March 2021	27 May 2021
Captive Reptile and Amphibian Husbandry	9 March 2021	27 May 2021
Care of Sick, Injured or Orphaned Protected Animals in Queensland	9 March 2021	27 May 2021
Commercial crocodile viewing	9 March 2021	27 May 2021
Ecologically sustainable lethal take of flying-foxes for crop protection	9 March 2021	27 May 2021
Ecologically sustainable management of flying-fox roosts	9 March 2021	27 May 2021
Emu farming	9 March 2021	27 May 2021
Low impact activities affecting flying-fox roosts	9 March 2021	27 May 2021
For the harvest and use of protected plants under an authority	9 March 2021	27 May 2021
For the take and use of protected plants under an exemption	9 March 2021	27 May 2021

Compliance Code – <i>Biodiscovery Act 2004</i>	Date tabled	Disallowance date*
Compliance Code - Taking native biological material under a collection authority	23 March 2021	17 June 2021

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

Committee consideration of the codes is discussed in sections 8 and 9 of this report.

4 SL No. 17: Public Health Amendment Regulation 2021

The regulation amends section 61A of the Public Health Regulation 2018 to ensure fees for hotel quarantine continue to be payable while quarantine is required during the continuing COVID-19 emergency.

⁵ *Nature Conservation Act 1992*, s 174A(2), *Biodiscovery Act 2004*, s 44(4).

Section 61A of the Public Health Regulation 2018 sets out the fees payable for quarantine. The current fees are \$135 for each night of accommodation, including cleaning. A daily meals fee is also payable at \$65 per day for adults and \$32.50 per day for children.⁶

The provision was due to expire on 18 March 2021. The regulation was notified on 15 March 2021 and subsequently tabled on 23 March 2021.⁷

The regulation removes the expiry date from section 61A, with the outcome that the ability to charge hotel quarantine fees will continue until the expiry date for the relevant provisions of the *Public Health Act 2005* (currently 30 September 2021).⁸

4.1 Fundamental legislative principle issues

The committee identified no FLP issues relating to the subordinate legislation.

4.2 Explanatory notes

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

4.3 Human rights considerations

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

4.3.1 Human Rights Act 2019, section 24 – property rights

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

The requirement to quarantine may potentially limit the human right to property to the extent that a person required to quarantine must pay fees for accommodation, cleaning and meals associated with their quarantine. The regulation allows for a fee to continue to be charged for the costs of mandatory quarantine until Chapter 8, Part 7AA of the Public Health Act expires (currently due to expire on 30 September 2021).

As the Minister notes, the assessment of compatibility with human rights relating to the power to charge hotel quarantine fees has been considered in statements of compatibility for:

- the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020, and
- the amendments in consideration in detail for the Community Services Industry (Portable Long Service Leave) Bill Act 2020.⁹

In the committee's report on the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020, it noted concerns of submitters regarding quarantine fees, but stated it was 'satisfied that the hardship scheme mitigates any potential financial disadvantage'.¹⁰ In considering the fees requirement from a human rights perspective, the committee also stated in its report:

This provision engages but does not limit section 24(2) of the HRA. There is no limitation because the right in section 24(2) protects against an 'arbitrary' deprivation of property. Not all interferences with property will be arbitrary. There is no definition of 'arbitrary' in the HRA. Applying a human rights meaning to the term means that it will be construed to mean an unreasonable, unjust or disproportionate interference.

⁶ Public Health Regulation 2018, s 61A.

⁷ Section 32 (1)(a) of the *Statutory Instruments Act 1992* provides '...a statutory instrument commences if it is required to be notified under section 47 or published in the gazette—on the day on which it is notified or published'. The regulation was notified on 15 March 2021 and therefore commenced on that day which was before the section 61A(5) of the regulation expiry date of 18 March 2021.

⁸ See ss 362MC and 362MG of the *Public Health Act 2005*.

⁹ Public Health Amendment Regulation 2021, human rights certificate, p 2.

¹⁰ Health and Environment Committee, Report No. 4, 57th Parliament – Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020, February 2021, p 30.

The provisions ... do not impose an unreasonable, unjust or disproportionate interference for the following reasons:

- the fees payable are prescribed by regulations and may be set by reference to the costs associated with the quarantine and whether shared accommodation is available; and
- Part 7AA contains a waiver provision on the basis of vulnerability and financial hardship.¹¹

In addition, the Minister provides the following justification for any limitation on this human right:

Any limit on human rights arising from imposing a fee for mandatory quarantine is considered necessary to have a clear and equitable mechanism in place to sustainably manage the costs associated with international arrivals returning to Australia. Given the continued growth of COVID-19 cases globally and advice that international border restrictions are likely to be one of the last restrictions to be lifted, it is considered necessary to require payment of a fee for mandatory quarantine.¹²

Further, in balancing the limitation and the human right to property, the Minister states:

The requirement for those returning from overseas to pay a 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 cleaning services being provided. The inclusion of a hardship scheme and payment plans is considered to ameliorate the potential impact on human rights for vulnerable people and those facing financial hardship.¹³

Committee comment

The committee appreciates that the COVID-19 public health emergency necessitates the continued operation of hotel quarantine for returned travellers and the management of its associated costs. Given the hardship waiver provisions, the committee is satisfied that there is no unreasonable or unjust limit on the right to property and any limitation of human rights is reasonable and demonstrably justified.

4.4 Human rights certificate

As required by section 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 legislation in relation to its compatibility with human rights.

5 SL No. 21: Nature Conservation (Protected Areas Management) (Communications Facility) Amendment Regulation 2021

The regulation permits the installation, operation and maintenance of a service facility (for a communications use) in Carnarvon National Park, by Optus Mobile Pty Ltd, by prescribing this as a permitted use in the national park.¹⁴

The *Nature Conservation Act 1992* specifies how development applications to install, maintain or use infrastructure in national parks are to be dealt with. Under section 35(1)(b) of that Act, the Chief Executive may issue a permit or other authority over, or in relation to, land in a national park for a service facility if the Chief Executive is satisfied:

- the cardinal principle for the management of national parks will be observed to the greatest possible extent
- the use will be in the public interest
- the use is ecologically sustainable, and

¹¹ Health and Environment Committee, Report No. 4, 57th Parliament – Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Bill 2020, February 2021, p 48.

¹² Public Health Amendment Regulation 2021, human rights certificate, p 5.

¹³ Public Health Amendment Regulation 2021, human rights certificate, p 5.

¹⁴ Nature Conservation (Protected Areas Management) (Communications Facility) Amendment Regulation 2021, explanatory notes, p 2.

- there is no reasonably practicable alternative to the use.

The explanatory notes state the proposed use has been assessed as meeting these requirements.¹⁵

Before the Chief Executive can grant the authority, the proposed use must be prescribed by regulation.¹⁶ This regulation amends Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017 to prescribe the proposed communications service facility as a permitted use in the national park.

5.1 Fundamental legislative principle issues

The committee identified no potential FLP issues relating to the subordinate legislation.

5.2 Explanatory notes

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

5.3 Human rights considerations

The committee identified no potential human rights issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

5.4 Human rights certificate

As required by section 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 legislation in relation to its compatibility with human rights.

6 SL No. 26: Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021

The Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021 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 29 June 2021).¹⁷

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 multiple times. (See SL 7, SL 8, SL 13, SL 75, SL 154, SL 249 and SL 260 of 2020.)¹⁸

According to the explanatory notes, extending the duration of the declared public health emergency until 29 June 2021 is considered essential to limiting, and responding to, the potential spread of COVID-19 in Queensland.¹⁹

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.

6.1 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.

¹⁵ Nature Conservation (Protected Areas Management) (Communications Facility) Amendment Regulation 2021, explanatory notes, p 2.

¹⁶ *Nature Conservation Act 1992*, s 35(1)(d).

¹⁷ Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation 2021, s 2(2).

¹⁸ Section 323(3)(a) of the Public Health Act provides that a regulation extending or further extending the period of a declared public health emergency must state the period of extension of not more than 90 days.

¹⁹ Explanatory notes, p 4.

6.2 Legislative Standards Act 1992, section 4(2)(a) – rights and liberties of individuals and section 4(3)(e) – 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* (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.²⁰

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.²¹

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.²²

Legislation should not, without sufficient justification, unduly restrict ordinary activities.²³ The right to personal liberty is the most elemental and important of all common law rights.²⁴

Entry without consent into any place where a person lives requires the highest justification.²⁵

An individual would normally expect to be able to enjoy freedom of movement. The former Scrutiny of Legislation Committee considered the ultimate question was whether an acceptable balance was struck between the obvious need to adequately protect and promote the health of the public on the one hand and the rights and liberties of the individual on the other.²⁶

The explanatory notes provide this 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

²⁰ Public Health Act, s 345.

²¹ Public Health Act, s 343.

²² Public Health Act, s 344.

²³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

²⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

²⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

²⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 101.

- 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)).²⁷

The explanatory notes offer the following justification:

... 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-19.²⁸

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.

6.3 Legislative Standards Act 1992, section 4(5)(c) – 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.²⁹

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.³⁰

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.³¹ 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.

...

It is clear 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.³²

²⁷ Explanatory notes, p 4.

²⁸ Explanatory notes, p 5.

²⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 165.

³⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

³¹ Explanatory notes, p 5.

³² Explanatory notes, p 5.

The explanatory notes also state that as a result of recent 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).³³

Committee comment

The committee is satisfied that in the circumstances, the subordinate legislation has sufficient regard for the institution of Parliament.

6.4 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.5 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.

6.5.1 Human rights issues in the regulation

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

- with the human rights protected by the HRA³⁴
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.³⁵

6.5.2 Human Rights Act 2019, section 19 – freedom of movement

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

The Regulation provides for the continuation of powers given to emergency officers under the Public Health Act 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.³⁶

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

6.5.3 Human Rights Act 2019, section 20 – freedom of thought, conscience, religion and belief

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.

6.5.4 Human Rights Act 2019, section 21 – freedom of expression

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.

³³ Explanatory notes, p 5. The amendments were made by the Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021.

³⁴ Human rights certificate, p 1.

³⁵ Human rights certificate, p 11.

³⁶ Human rights certificate, pp 4-5.

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

6.5.5 Human Rights Act 2019, section 22 – peaceful assembly and freedom of association

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

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

6.5.6 Human Rights Act 2019, section 27 – cultural rights – generally and Human Rights Act 2019, section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples

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 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.

6.5.7 Human Rights Act 2019, section 23 – taking part in public life

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.

6.5.8 Human Rights Act 2019, section 24 – property rights

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
- take action in relation to property.³⁷

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

6.5.9 Human Rights Act 2019, section 25 – right to privacy and reputation

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

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

6.5.10 Human Rights Act 2019, section 29 – right to liberty and security of person

Under section 29 of the HRA, a person must not be subject to arbitrary arrest or detention.

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.

6.5.11 Human Rights Act 2019, section 26 – protection of families and children

Under section 26 of the HRA, every child has the right to protection that is in their best interests as a child.

³⁷ Human rights certificate, p 6.

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.

6.5.12 Human Rights Act 2019, section 30 – humane treatment when deprived of liberty

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

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.

6.5.13 Human Rights Act 2019, section 36 – right to education

Under section 36 of the 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 restrictions on movement.

Consideration of limitations to human rights

The Minister provides the following collective justification for 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.³⁸

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.³⁹

The Minister also notes these safeguards:

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 repeatedly assess the need for the declared public health emergency to continue based on the current threat of COVID-19 in Queensland.⁴⁰

Committee comment

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*.

6.6 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.

7 SL No. 27 Hospital and Health Boards Amendment Regulation 2021

The objective of the Hospital and Health Boards Amendment Regulation 2021 is to amend the Hospital and Health Boards Regulation 2012 to prescribe an agreement between the Commonwealth of Australia (represented by the Department of Veterans' Affairs (DVA)), the Repatriation Commission,

³⁸ Human rights certificate, p 9.

³⁹ Human rights certificate, p 10.

⁴⁰ Human rights certificate, p 11.

the Military Rehabilitation and Compensation Commission and the State of Queensland to enable the sharing of confidential information of veterans and their dependents.⁴¹

The *Hospital and Health Boards Act 2011* (the Act) creates a duty of confidentiality, prohibiting 'designated persons' (Queensland Health staff, including contractors and volunteers) from disclosing confidential information about a person who is receiving, or who has received, a public sector health service if the person could be identified from the information.⁴² The Act and the Hospital and Health Boards Regulation 2012 include a framework for sharing confidential health information.

The Act provides that an individual's confidential health information may be disclosed to the Commonwealth or an entity of the Commonwealth under an agreement prescribed by regulation.⁴³ Existing prescribed agreements include those between Queensland and the Commonwealth of Australia represented by the Department of Human Services.⁴⁴

The agreement provides a framework for the provision of, and payment for, treatment of entitled veterans and their dependants in Queensland public hospitals. As part of this framework, the agreement allows confidential information to be shared between the parties in order to give effect to the funding arrangements.⁴⁵

The agreement was made on 12 June 2020 and in effect provides for a continuation of information sharing arrangements under a similar previous agreement made on 1 December 2016.⁴⁶

7.1 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.

7.1.1 *Legislative Standards Act 1992*, section 4(2)(a) – privacy and confidentiality

The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.⁴⁷

The duty of confidentiality by health professionals towards their patients has long been recognised at common law.⁴⁸

The agreement allows the parties to share confidential information about veterans and their dependents, such as a patient's personal details and clinical information such as care type, diagnoses, length of stay and DVA file numbers.⁴⁹ The agreement also allows Queensland Health to respond to requests for information by the DVA if a veteran or dependant lodges a complaint regarding the treatment received at a Queensland Health facility.⁵⁰

⁴¹ Hospital and Health Boards Amendment Regulation 2021, s 3. The agreement will be prescribed in schedule 3 of the Hospital and Health Boards Regulation 2012.

⁴² Explanatory notes, p 1.

⁴³ *Hospital and Health Boards Act 2011*, s 151(1)(a)(i)(B).

⁴⁴ Hospital and Health Boards Regulation 2012, sch 3.

⁴⁵ Explanatory notes, p 2.

⁴⁶ The agreement made on 1 December 2016 was added to the Hospital and Health Boards Regulation 2012 by the Health Legislation Amendment Regulation (No. 1) 2018.

⁴⁷ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 113.

⁴⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 114.

⁴⁹ Explanatory notes, p 3.

⁵⁰ Explanatory notes, p 2.

Although stating that the regulation is consistent with fundamental legislative principles, the explanatory notes acknowledge that prescribing the agreement raises issues of privacy and confidentiality which are relevant to a consideration of section 4(2)(a) of the LSA.⁵¹

The explanatory notes then go on to highlight the following safeguards:

The parties will only share confidential information to make and discharge claims for the treatment of veterans and their dependants or to resolve complaints by a veteran or dependant regarding the treatment received at a Queensland Health facility. The agreement requires the parties to the agreement, and their officers, employees, agents and subcontractors, to comply with the Commonwealth Privacy Act and relevant state privacy legislation. Each party is obliged to report any breaches or possible breaches of privacy legislation to the other party. In addition, confidential information used to resolve complaints can only be disclosed with patient consent.⁵²

Committee comment

Noting the safeguards in place and the overall purpose of the agreement to allow for treatment of entitled veterans and their dependants in Queensland public hospitals, the committee is satisfied that sufficient regard has been given to the rights and liberties of individuals, such that the breach of fundamental legislative principle is justified.

7.2 Explanatory notes

The explanatory notes state that the regulation is consistent with the fundamental legislative principles in section 4 of the LSA.⁵³

As noted above, the explanatory notes subsequently state:

Prescribing the agreement raises issues of privacy and confidentiality, which are relevant to whether legislation has sufficient regard to the fundamental legislative principle of the rights and liberties of individuals under section 4(2)(a) of the Legislative Standards Act.⁵⁴

The explanatory notes then detail the safeguards referred to above.

Rather than initially stating that the regulation was consistent with fundamental legislative principles, a better approach would have been to note there was an inconsistency with fundamental legislative principles and then provide the reasons for the inconsistency (as required under section 24(1)(i), LSA). This has been the approach taken in explanatory notes for similar regulations prescribing other agreements under the Hospital and Health Boards Regulation 2012 (and raising the same issue of fundamental legislative principle regarding confidentiality of personal information).⁵⁵

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

7.3 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.

7.3.1 Human rights issues in the amendment regulation

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

⁵¹ Explanatory notes, p 3.

⁵² Explanatory notes, p 3.

⁵³ Explanatory notes, p 3.

⁵⁴ Explanatory notes, p 3.

⁵⁵ See, for example, the explanatory notes for the following regulations: Hospital and Health Boards Amendment Regulation (No. 3) 2016 (at pp 6-7), Health Legislation (Amendment Regulation) (No. 1) 2018 (at pp 7-8), Health Legislation (Information Sharing) Amendment Regulation 2018 (at pp 5-7), Public Health and Other Legislation Amendment Regulation (No. 1) 2019 (at p 5), Health Legislation Amendment Regulation (No. 3) 2019 (at pp 4-5), Hospital and Health Boards (Information Sharing—Parole Board Queensland) Amendment Regulation 2020 (at pp 3-4).

- with the human rights protected by the HRA,⁵⁶
- with the HRA because it raises human rights issues but does not limit human rights.⁵⁷

The committee considered the following potential human rights issues.

7.3.2 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, every person in Queensland has the right not to have their privacy unlawfully or arbitrarily interfered with.

This regulation limits the right to privacy by allowing the parties to the agreement (Department of Veterans' Affairs (DVA), the Repatriation Commission, the Military Rehabilitation and Compensation Commission and the Queensland Health) to share confidential health information of entitled veterans and their dependents to allow for their treatment at Queensland public hospitals.

The Minister states that any limitation on the right to privacy is 'demonstrably justified by the legitimate need to provide treatment to veterans and their beneficiaries' and that confidential information will be disclosed by Queensland Health 'only to the extent necessary to make claims for treatment from the DVA in accordance with the agreed funding arrangements with the Commonwealth'.⁵⁸

The Minister also notes that parties will be required to comply with Commonwealth and state privacy legislation and that confidential information used to resolve complaints can only be disclosed with patient consent.⁵⁹

Committee comment

Noting the safeguards in place and the overall purpose of the agreement to allow for treatment of entitled veterans and their dependants in Queensland public hospitals, the committee is satisfied that any limitations on the right to privacy are reasonable and demonstrably justified.

7.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA.

While the certificate generally provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights, it contains some inconsistency. The Minister states:

The disclosure of confidential information about an individual may limit the right to privacy and reputation. However, any limitation of the right to privacy and reputation is demonstrably justified by the legitimate need to provide treatment to veterans and their beneficiaries.⁶⁰

However, the Minister later concludes:

I consider that the Hospital and Health Boards Amendment Regulation 2021 is compatible with the Human Rights Act 2019 because it raises human rights issues but does not limit human rights.⁶¹

The human rights certificate lacks clarity about whether the regulation:

- limits human rights but the limitation is reasonable and demonstrably justified, or
- does not limit human rights.⁶²

⁵⁶ Human rights certificate, p 1.

⁵⁷ Human rights certificate, p 2.

⁵⁸ Human rights certificate, p 2.

⁵⁹ Human rights certificate, p 2.

⁶⁰ Human rights certificate, p 2.

⁶¹ Human rights certificate, p 2.

⁶² Human rights certificate, p 2.

To reach a conclusion that a limitation on a human right is reasonable and demonstrably justified, best practice is for human rights certificates to include reference to the factors listed in section 13(2) of the HRA. This was the approach taken in the human rights certificate for a recent regulation prescribing a similar agreement under the Hospital and Health Boards Regulation 2012.⁶³

8 Codes of Practice made under the *Nature Conservation Act 1992*

Ten codes of practice were tabled on 9 March 2021 under section 174A of the *Nature Conservation Act 1992* (the Act). The Act empowers the chief executive to approve or make codes, by gazette notice, for:

- protected areas or protected wildlife, or
- forest reserves under part 4A of the Act.⁶⁴

As the codes are not subordinate legislation, statutory provisions governing subordinate legislation do not apply. Firstly, the provisions in the *Legislative Standards Act 1992* (LSA) regarding consistency with the fundamental legislative principles and requiring the provision of an explanatory note do not apply. Secondly, the requirement to provide a human rights certificate does not apply.⁶⁵ The committee therefore, considered the codes of practice in relation to the policy to be given effect by those codes to assist in forming a view on any disallowance.⁶⁶ The committee notes that the Minister provided both a set of explanatory notes and a human rights certificate for each code of practice.

With respect of each of the codes of practice made under the Act:

- no issues of fundamental legislative principle were identified
- the explanatory notes are consistent with the requirements in part 4 of the LSA
- no human rights issues were identified
- the human rights certificate accompanying the code provides a sufficient level of information to facilitate understanding of the code in relation to its compatibility with human rights.

Generally, the explanatory notes described the codes as either:

- retaining the standards in, or not imposing any new or modified standards from, the previous version, or
- containing updates of a structural nature only, with the content and intent, or scope, or safety and welfare considerations of the previous version retained.

A number of updates to the codes reflect changes to the structure of subordinate legislation under the Act and include rewording to aid clarity.

The committee wrote to the Department of Environment and Science seeking further information regarding the wildlife management codes of practice. It sought information specifically about any external consultation with stakeholders and whether the department or stakeholders had identified any unintended consequences as a result of these revisions. The department's response was comprehensive and assisted the committee greatly. The department's response is attached at Appendix A.

A brief description of the objectives of each code of practice is outlined in the following sections.

⁶³ See the Hospital and Health Boards (Information Sharing – Parole Board Queensland) Amendment Regulation 2020, human rights certificate, pp 2-3.

⁶⁴ *Nature Conservation Act 1992*, s 174A(1).

⁶⁵ Required by the *Human Rights Act 2019*, s 41.

⁶⁶ Under its jurisdiction to consider legislation under section 92 of the *Parliament of Queensland Act 2001*, a general or policy consideration is still available under the self-referral power in section 92.

8.1 Code of Practice – Aviculture

The objective of the Code of Practice – Aviculture is to provide an effective framework of protection for native birds kept in captivity that considers their needs and welfare. The code of practice identifies the minimum standards required for keeping different types of native birds and addresses enclosure size, food requirements, hygiene and health, and other factors relevant to practising aviculture.⁶⁷

8.2 Code of Practice – Captive Reptile and Amphibian Husbandry

The objective of the Code of Practice – Captive Reptile and Amphibian Husbandry is to provide an effective framework of protection for native reptiles and amphibians kept in captivity. The code provides minimum standards for the welfare and breeding of native reptiles and amphibians and refers to relevant factors such as enclosure size, access to warmth, food and water, hygiene and disease treatment and safety and security requirements.⁶⁸

8.3 Code of Practice – Care of Sick, Injured or Orphaned Protected Animals in Queensland

The objective of the Code of Practice – Care of Sick, Injured or Orphaned Protected Animals in Queensland is to provide an effective framework for the care and rehabilitation of protected animals to ensure that the activities of all parties involved in the care and rehabilitation of native animals result in the best possible conservation and animal welfare outcomes for rehabilitated animals and the wild populations they are returned to.⁶⁹ The code provides for minimum standards for relevant factors such as handling and transport of animals being rescued, housing, dietary and food and water requirements, euthanasia and release procedures.⁷⁰

8.4 Code of Practice – Commercial crocodile viewing

The objective of the Code of Practice – Commercial crocodile viewing is to provide a framework for commercial crocodile viewing to ensure that commercial crocodile tours can operate safely and that the viewing is conducted in a way that maintains the natural behaviour and welfare of crocodiles.⁷¹ The code provides for minimum standards for viewing crocodiles covering such topics as approach distances, attracting, touching and restricting the movement of crocodiles.⁷² The code of practice also provides information about crocodile behaviour in response to being disturbed by boat proximity, noise and speed to ensure the experience of seeing a crocodile is made safe and without impact on the crocodiles involved and their welfare.⁷³

8.5 Code of Practice – Ecologically sustainable lethal take of flying-foxes for crop protection

The objective of the Code of Practice – Ecologically sustainable lethal take of flying-foxes for crop protection is to provide a lethal management option to control flying-foxes⁷⁴ in an ecologically sustainable manner.⁷⁵ The explanatory notes advise, that the code provides a lethal management option to control flying-foxes in circumstances where non-lethal measures have failed and fruit growers are still suffering crop losses.⁷⁶ The code provides for the method for taking and dealing with

⁶⁷ Code of Practice – Aviculture, explanatory notes, p 1.

⁶⁸ Code of Practice – Captive Reptile and Amphibian Husbandry, explanatory notes, p 1.

⁶⁹ Code of Practice – Care of Sick, Injured or Orphaned Protected Animals in Queensland, p 4.

⁷⁰ Code of Practice – Care of Sick, Injured or Orphaned Protected Animals in Queensland, explanatory notes, p 1, and Code of Practice – Care of Sick, Injured or Orphaned Protected Animals in Queensland, pp 11-21.

⁷¹ Code of Practice – Commercial crocodile viewing, explanatory notes, p 1.

⁷² Code of Practice – Commercial crocodile viewing, pp 5-7.

⁷³ Code of Practice – Commercial crocodile viewing, explanatory notes, p 1.

⁷⁴ Code of Practice – Ecologically sustainable lethal take of flying-foxes for crop protection, explanatory notes, p 1.

⁷⁵ Code of Practice – Ecologically sustainable lethal take of flying-foxes for crop protection, p 4.

⁷⁶ Code of Practice – Ecologically sustainable lethal take of flying-foxes for crop protection, explanatory notes, p 1.

a taken flying-fox, which includes details such as the method (shooting), the ammunition to be used, distances between the shooter and flying-fox and dealing with a taken flying-fox.⁷⁷

8.6 Code of Practice – Ecologically sustainable management of flying-fox roosts

The objective of the Code of Practice – Ecologically sustainable management of flying-fox roosts is to provide an effective management framework that allows local governments and authorised individuals to disturb and disperse flying-fox roosts that are impacting on local communities, while ensuring the action considers the welfare of the individual animals and viability of the species involved.⁷⁸ The code sets out how local governments may undertake management actions, which may:

- destroy a flying-fox roost
- drive away, or attempt to drive away, a flying-fox from a flying-fox roost
- disturb a flying-fox in a flying-fox roost.⁷⁹

8.7 Code of Practice – Emu farming

The objective of the Code of Practice – Emu farming is to ensure that emu farming is carried out in a way that is sustainable by not impacting on the conservation of emus in the wild, while meeting the welfare needs of those animals in farms.⁸⁰ The code provides minimum standards and conditions for the conduct of persons involved in the farming of emus in Queensland and for use by persons responsible for emus that are maintained in captivity for the purposes of closed-cycle captive breeding and the production of products such as meat, leather and oil.⁸¹ The minimum standards address: basic welfare requirements, perimeter fencing, housing, equipment design and maintenance, protection from hazards, handling and yard facilities, health, transportation and product tagging requirements.⁸²

8.8 Code of Practice – Low impact activities affecting flying-fox roosts

The objective of the Code of Practice – Low impact activities affecting flying-fox roosts is to ensure that there is an effective framework of protection for flying-foxes whilst allowing for certain routine low-impact activities to occur near roosts.⁸³ The code sets out how a person may undertake low impact activities at, or near, a flying-fox roost anywhere in Queensland (for example, how roost trees are to be trimmed and how maintenance and removal of infrastructure in close proximity to roost trees is to occur).⁸⁴

8.9 Code of Practice – For the harvest and use of protected plants under an authority

The Code of Practice – For the harvest and use of protected plants under an authority applies to harvesting, growing and trade activities authorised under a licence under the Nature Conservation (Plants) Regulation 2020.⁸⁵ The code sets out requirements for the take and use of protected plants (for example, how a plant is to be removed and tools to be used) and requirements for labels and record-keeping (for example, which names are to be recorded and details of the licence under which the plant was taken).⁸⁶

⁷⁷ Code of Practice – Ecologically sustainable lethal take of flying-foxes for crop protection, pp 7-8.

⁷⁸ Code of Practice – Ecologically sustainable management of flying-fox roosts, explanatory notes, p 1.

⁷⁹ Code of Practice – Ecologically sustainable management of flying-fox roosts, pp 12.

⁸⁰ Code of Practice – Emu farming, explanatory notes, p 1.

⁸¹ Code of Practice – Emu farming, p 3.

⁸² Code of Practice – Emu farming, pp 4-10.

⁸³ Code of Practice – Low impact activities affecting flying-fox roosts, explanatory notes, p 1.

⁸⁴ Code of Practice – Low impact activities affecting flying-fox roosts, pp 3-4.

⁸⁵ Code of Practice – For the harvest and use of protected plants under an authority, p 4.

⁸⁶ Code of Practice – For the harvest and use of protected plants under an authority, pp 4-7.

8.10 Code of Practice – For the take and use of protected plants under an exemption

The objective of the Code of Practice – For the take and use of protected plants under an exemption is to address the quantities of take and use that can occur under the relevant exemptions provided in the Nature Conservation (Plants) Regulation 2020 and to detail specific administrative requirements associated with the take and use of protected plants.⁸⁷ This complements the code of practice for the harvest and use of protected plants under an authority (addressed above), with both codes including identical administrative and record keeping requirements.⁸⁸

Committee comment

The committee identified no issues in the policies given effect by the codes of practice made under the *Nature Conservation Act 1992*.

9 Compliance Code - Taking native biological material under a collection authority - made under the *Biodiscovery Act 2004*

The Compliance Code - Taking native biological material under a collection authority (the compliance code) was made under section 44 of the *Biodiscovery Act 2004* (the Act), which empowers the chief executive to establish a written code for that purpose. The compliance code was gazetted on 25 September 2020 and tabled on 23 March 2021.

The reasoning for the compliance code status as a statutory instrument rather than subordinate legislation was provided in the explanatory notes accompanying the Biodiscovery Bill 2004 (which became the Act):

Making [the Compliance Code] a statutory instrument rather than sub-ordinate [sic] legislation should not demonstrate insufficient regard to the institution of Parliament. The Compliance Code will be technical and procedural in nature, and elevating such to subordinate legislation status may not add to the rigor of the proposed regulatory regime.⁸⁹

Given that the compliance code is not subordinate legislation, other statutory provisions governing subordinate legislation do not apply. Firstly, the provisions in the *Legislative Standards Act 1992* (LSA) regarding consistency with the fundamental legislative principles and requiring the provision of an explanatory note do not apply. Secondly, the requirement to provide a human rights certificate does not apply.⁹⁰ The committee therefore considered the compliance code in relation to the policy to be given effect by the compliance code to assist in forming a view on any disallowance.⁹¹ The committee notes that the Minister provided both a set of explanatory notes and a human rights certificate for the code.

With respect to the compliance:

- no issues of fundamental legislative principle were identified
- the explanatory notes are consistent with the requirements in part 4 of the LSA
- no human rights issues were identified
- the human rights certificate accompanying the code provides a sufficient level of information to facilitate understanding of the code in relation to its compatibility with human rights.

⁸⁷ Code of Practice – For the take and use of protected plants under an exemption, explanatory notes, p 1.

⁸⁸ Code of Practice – For the take and use of protected plants under an exemption, explanatory notes, p 1.

⁸⁹ Explanatory notes for the Biodiscovery Bill 2004, pp 24-25.

⁹⁰ Required by the *Human Rights Act 2019*, s 41.

⁹¹ Under its jurisdiction to consider legislation under section 92 of the *Parliament of Queensland Act 2001*, a general or policy consideration is still available under the self-referral power in section 92.

9.1 Policy consideration of the Compliance Code - For taking native biological material under a collection authority

The stated purpose of the compliance code is to ensure that all native biological resources collected for biodiscovery are obtained in an ecologically sustainable way, with minimal environmental and social impacts on state lands and Queensland waters.⁹²

Native biological resources include plants, seaweeds, animals, insects, marine animals and micro-organisms (including fungi, bacteria, archaea and viruses) that are native to Australia. Biological resources might also include soil or water from which compounds or microorganisms with biological activity could be extracted.⁹³

The compliance code sets out the minimum standards that must be complied with during any collection of native biological resources carried out under a collection authority.⁹⁴ For example, it sets out maximum sample sizes and sampling intensities that can be taken for different groups of native biological material.

On 30 September 2020, amendments to the Act came into force. As a result, the following changes have been made to the compliance code:

- removal of references to biodiscovery plans
- updated department names and contact details to reflect the current administrative arrangements for the *Biodiversity Act 2004*
- clarification that the compliance code applies to collection activities on all state land and Queensland waters, including protected areas
- updated references to the *Nature Conservation Act 1992*.⁹⁵

Committee comment

The committee identified no issues in the policy given effect by Compliance Code - For taking native biological material under a collection authority.

10 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

Chair

May 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

⁹² Compliance Code – For taking native biological material under a collection authority, p 3.

⁹³ Compliance Code – For taking native biological material under a collection authority, p 3.

⁹⁴ Compliance Code – For taking native biological material under a collection authority, p 3.

⁹⁵ Compliance Code – For taking native biological material under a collection authority, explanatory notes, p 2.

Appendix A

Our Ref: CTS 09678/21
Your Ref: A684014



Department of
Environment and Science

Mr Aaron Harper MP
Chair
Health and Environment Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Harper

Thank you for your letter of 10 May 2021 seeking information regarding the wildlife management codes of practice tabled in Parliament on 9 March 2021.

The codes of practice referred to in your letter were updated during 2020 to reflect the structure of the incoming Nature Conservation (Animals) Regulation 2020 and the Nature Conservation (Plants) Regulation 2020. These new regulations replaced three previous regulations which applied to both animals and plants, and were due to expire on 1 September 2020.

The development and introduction of the new regulations underwent extensive consultation by way of a Consultation Regulatory Impact Statement, and a Decision Regulatory Impact Statement and consultation with stakeholders was appropriately documented in the process of making the new regulations. I can advise that most requirements from the previous regulations affecting the people of Queensland remain materially unchanged. However, the re-structuring of the regulations into separate plant and animal regulations did result in new regulation names and new section numbering, as well as some new regulatory drafting structures proposed by the Office of the Queensland Parliamentary Counsel.

The previous regulations for native animals and plants made reference to statutory codes of practice which included technical standards and administrative requirements relating to activities authorised under those regulations. For example, the previous regulations allowed for the issuing of 'damage mitigation permits' for the lethal control of flying-foxes for crop protection and included provisions that required the permit holder to comply with the "*Code of Practice-Ecologically sustainable lethal take of flying-foxes for crop protection*". The new Nature Conservation (Animals) Regulation 2020 provides for the same damage mitigation permits to be issued for the lethal control of flying-foxes – under the same criteria and with the same requirements to comply with the relevant code of practice – however, the relevant provisions within the new code of practice have been re-numbered with the relevant chapter, division and section numbers contained in the new regulation.

Other than those changes, the policy principles and requirements in both the regulation and the code of practice effecting this activity remain largely unchanged. Many licence holders would be unaware of the relevant legislative and code of practice amendments because the actual rules and standards effecting their activities are identical and their operations have not changed. This approach of updating references to new regulations and section numbers was repeated across each code of practice mentioned in your letter.

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During the revision of the regulations and codes of practice, the Department of Environment and Science (the department) also corrected a small number of spelling and grammatical errors and updated scientific names to reflect current nomenclature. These changes had no material impact on the intent of the regulatory provisions and codes of practice and how they affect the public.

In summary, the updates made to the codes of practice mentioned in your letter were entirely administrative and consequential in nature and did not expand the scope of regulation or amend any rule, standard, or requirement that would affect those people conducting wildlife management activities under them. The department did not believe formal consultation on the proposed changes to the codes of practice was necessary based on consideration of the standards established by “The Queensland Government Guide to Better Regulation (May 2019)”, which guides agencies in developing and consulting on changes to regulations and statutory rules.

It should be noted the department is regularly engaged with stakeholders in relation to the operation and continuous improvement of wildlife management codes of practice. For example, the “*Code of Practice for Ecologically sustainable management of flying-fox roosts*” and “*Code of Practice for Low impact activities affecting flying-fox roosts*” were reviewed and updated following extensive stakeholder consultation, over a 12-month period in 2019 and 2020, with revised codes released in early 2020.

Should you require any further information, you may contact Mr Andrew Mullens, Manager, Operational Policy and Governance, Queensland Parks and Wildlife Service and Partnerships of the department on telephone [REDACTED] or by email at [REDACTED]

Yours sincerely



Jamie Merrick
Director-General

13 / 05 / 21