

Health and Environment Committee

Report No. 28, 57th Parliament

Subordinate legislation tabled between 17 August 2022 and 12 October 2022

1 Aim of this report

This report summarises the Health and Environment Committee’s findings following its examination of subordinate legislation within its portfolio areas tabled between 17 August 2022 and 12 October 2022. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),⁴ and the compliance of the human rights certificates with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
118	Voluntary Assisted Dying Regulation 2022	12 October 2022	First sitting day 2023
125	Environmental Protection (Water and Wetland Biodiversity) Amendment Policy 2022	12 October 2022	First sitting day 2023
126	Nature Conservation (Protected Areas) Amendment Regulation 2022	12 October 2022	First sitting day 2023
127	Public Health (Further Extension of Declared Public Health Emergency-COVID-19) Regulation (No. 3) 2022	12 October 2022	First sitting day 2023
129	Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2022	12 October 2022	First sitting day 2023

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change. At the time of adoption of this report, proposed sitting dates for 2023 had not been advised.

¹ Section 4 of the *Legislative Standards Act 1992* 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 *Parliament of Queensland Act 2001*, s 93.

⁴ *Legislative Standards Act 1992*, Part 4.

⁵ 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 (see HRA, s 41(1) - (3)).

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified in the subordinate legislation. FLP issues considered by the committee in relation to SL No. 127 and SL No. 129 are detailed in this report. The explanatory notes tabled with the subordinate legislation comply with the requirements of s 24 of the LSA.

Potential human rights issues were identified in relation to SL No. 127 as outlined in this report. The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with human rights.

4 SL No. 118 Voluntary Assisted Dying Regulation 2022

4.1 Objectives

The objectives of the Voluntary Assisted Dying Regulation 2022 (SL No. 118) are to prescribe:

- the technical requirements for the management of a voluntary assisted dying substance (substance) including how to prescribe, label, supply, store, and dispose of the substance
- information that the Review Board is to record and keep about requests for, and provision of, voluntary assisted dying.⁶

4.1.1 Technical requirements

A coordinating practitioner must state (on the prescription for the substance) their name, place of usual practice, phone number, the date the prescription is issued, and the address of the person who is accessing voluntary assisted dying.⁷

An authorised supplier must attach a label to the outside of the container or package of the substance stating certain information, such as the name, address and telephone number of the place where the authorised supplier supplied the substance, the form and strength of the substance, and the date of supply.⁸ Another label must also be attached to the outside of the container or package stating, among other things, that the purpose of the dose of the substance is to cause death.⁹

An authorised supplier must not supply the substance if the prescription for the substance was issued more than 6 months before the day the substance is to be supplied.¹⁰

The substance must be stored in a box that is not easily penetrable and that is lockable with a lock of sturdy construction.¹¹ The box must be immediately locked and kept locked unless the substance is being prepared, administered or disposed of.¹²

An authorised disposer or administering practitioner must personally destroy the substance.¹³

4.1.2 Review Board's records

The information to be recorded and kept includes, for example:

⁶ SL No. 118, explanatory notes, p 5.

⁷ SL No. 118, s 3.

⁸ SL No. 118, s 4(2).

⁹ SL No. 118, s 4(3)

¹⁰ SL No. 118, s 5(2).

¹¹ SL No. 118, s 6(2).

¹² SL No. 118, s 6(3)

¹³ SL No. 118, s 7(1). Destroy means to render the substance unusable and unidentifiable by any person, s 7(2).

- the number of people assessed as eligible or ineligible for access to voluntary assisted dying in a first assessment or a consulting assessment
- the number of completed requests for voluntary assisted dying
- for each person who made a final request, the time between the first and final request.¹⁴

4.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.4 Human rights considerations

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

4.5 Human rights certificate

The human rights certificate tabled with SL No. 118 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 SL No. 125 Environmental Protection (Water and Wetland Biodiversity) Amendment Policy 2022

5.1 Objective

The objective of the Environmental Protection (Water and Wetland Biodiversity) Amendment Policy 2022 (SL No. 125) is to amend the Environmental Protection (Water and Wetland Biodiversity) Policy 2019 (Policy) to establish new and updated environmental values and water quality objectives for Queensland waters in:

- the South East Queensland region (updates) and adjacent coastal waters
- the Burdekin, Don and Haughton region (new) and adjacent coastal waters (new)
- the Mackay and Whitsunday region (updates) and adjacent coastal waters.¹⁵

The proposed amendment also addresses errata and other minor amendments, including:

- correcting an error in sections 11(2)(a) and (b) of the Policy that has been the subject of legal advice that it precludes the achievement of the policy intent of the section
- prioritising and expanding the documents stated in section 8(3)(a) of the Policy that are used to decide the indicators and water quality guidelines for an environmental value
- amending the definition of the environmental value for waters from which aquatic foods intended for human consumption are taken, in section (6)(2)(e) of the Policy, to avoid possible misinterpretation.¹⁶

Environmental values and water quality objectives apply to receiving waters¹⁷ and are relevant for statutory and non-statutory planning and decision-making, including report card reporting.¹⁸

5.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

¹⁴ SL No. 118, s 8.

¹⁵ SL No. 125, explanatory notes, p 1.

¹⁶ SL No. 125, explanatory notes, p 1.

¹⁷ 'Receiving water source' means a lake, or watercourse, into which recycled water is supplied under an approved recycled water management plan to augment a supply of drinking water, *Water Act 2000*, s 108.

¹⁸ SL No. 125, explanatory notes, p 1.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Human rights considerations

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

5.5 Human rights certificate

The human rights certificate tabled with SL No. 125 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 SL No. 126 Nature Conservation (Protected Areas) Amendment Regulation 2022

6.1 Objectives

The objectives of the Nature Conservation (Protected Areas) Amendment Regulation 2022 (SL No. 126) are to:

- redescribe the Jardine River National Park
- dedicate the majority of Jardine River National Park as Apudthama National Park (Cape York Peninsula Aboriginal Land)
- dedicate 9 parcels of unallocated state land as Apudthama National Park (Cape York Peninsula Aboriginal Land)
- dedicate the entirety of the existing Denham Group National Park as Yamarrinh Wachangan Islands (Denham Group) National Park (Cape York Peninsula Aboriginal Land)
- dedicate 2 unallocated state land islands as Yamarrinh Wachangan Islands (Denham Group) National Park (Cape York Peninsula Aboriginal Land).¹⁹

Dedicating these areas will enable joint management of the national parks between the Aboriginal Traditional Owners and Aboriginal people particularly concerned with the land and the Queensland Government. The action facilitates an opportunity for Traditional Owners to explore economic sustainability through expansion of local commercial recreation and ecotourism ventures.²⁰

The proposal to dedicate and redescribe protected areas will be enshrined in an Indigenous Land Use Agreement (ILUA) to be authorised by the Native Title Parties and the State.²¹

6.2 Consistency with fundamental legislative principles

The committee notes that the explanatory notes do not raise the FLP that legislation should have sufficient regard to Aboriginal tradition and Island custom,²² however the issue is addressed from a human rights perspective in the human rights certificate.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.4 Human rights considerations

The committee considered the following human rights issue in relation to SL No. 126.

¹⁹ SL No. 126, explanatory notes, p 1.

²⁰ SL No. 126, explanatory notes, p 3.

²¹ SL No. 126, human rights certificate, p 1.

²² *Legislative Standards Act 1992*, s 4(3)(j)

6.4.1 Human Rights Act 2019, section 28 – Cultural rights—Aboriginal people and Torres Strait Islander people

Aboriginal people and Torres Strait Islander people hold distinct cultural rights.²³

The human rights certificate notes that dedicating new protected areas or amending existing national parks engages cultural rights of Aboriginal people and Torres Strait Islander people, but it does not limit the right.

According to the human rights certificate:

Dedicating the new protected areas which will be jointly managed, enables a broader range of cultural practices to be undertaken on the land. Implementing [SL No. 126] goes hand in hand with agreeing an Indigenous Management Agreement and ILUA between the parties. Native title rights and interests for this proposal have been negotiated with the Atambaya, Angkamuthi (Seven Rivers) and Gudang/Yadhaykenu People and the outcome is agreed in an ILUA.

...[SL No. 126] promotes cultural rights by delivering the aspiration of First Nations peoples to have traditional names.

Committee comment

Although legislation amending existing protected areas can have a potential indirect impact or create limitations on cultural rights in relation to the land, the committee is satisfied that, while engaged, cultural rights are not limited by SL No. 126. The committee is satisfied that the subordinate legislation is compatible with human rights.

6.5 Human rights certificate

The human rights certificate tabled with SL No. 126 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 SL No. 127 Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2022

7.1 Objective

The objective of the Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 3) 2022 (SL No. 127) is to extend from 22 September 2022 to 30 October 2022 the declared public health emergency to respond to COVID-19.²⁴ The declaration has been extended several times.²⁵

A declared public health emergency activates a range of powers and functions under chapter 8 of the *Public Health Act 2005* (Public Health Act). For example, emergency officers have wide ranging powers under chapter 8 to assist in responding to a public health emergency, including powers of entry and a range of powers to compel persons to do or refrain from certain activities. Emergency officers (medical) have additional powers relating to the detention of persons.

Up to 31 October 2022, under chapter 8 of the Public Health Act, the Chief Health Officer had the power to make public health directions to assist in containing, or responding to, the spread of COVID-19 within the community.²⁶ The Chief Health Officer was able to give any direction considered necessary to protect public health, including directions to restrict the movement of persons, require

²³ HRA, s 28.

²⁴ SL No. 127, s 2; explanatory notes, p 2.

²⁵ SL No. 127, schedule 1.

²⁶ SL No. 127, explanatory notes, p 1.

persons to stay at or in a stated place, or to not enter or stay in a stated place, or restrict contact between persons.²⁷

7.2 Consistency with fundamental legislative principles

The committee identified potential FLP issues in relation to SL No. 127. The committee's consideration of these issues is set out in sections 7.2.1 and 7.2.2 below.

7.2.1 Rights and liberties of individuals

The effect of declaring (and also of extending) a public health emergency is that a number of powers in 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 remain within a place
- stop using a place for a stated purpose
- go to or stay in a stated place
- answer questions.²⁸

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.²⁹ 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.³⁰

The right to personal liberty is the most elemental and important of all common law rights.³¹

Entry without consent into any place where a person lives requires the highest justification.³²

Any removal of an individual's right to freedom of movement must be fully justified.³³

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

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

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier's consent to the entry (section 344);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2));
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353); and
- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4)).³⁴

The explanatory notes offer this justification for impacts on the rights and liberties of individuals:

²⁷ SL No. 127, explanatory notes, p 2.

²⁸ *Public Health Act 2005* (Public Health Act), s 345.

²⁹ Public Health Act, s 343.

³⁰ Public Health Act, s 344.

³¹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 96.

³² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 45.

³³ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 99.

³⁴ SL No. 127, explanatory notes, p 6.

... it is considered that any potential impact [SL No. 127] 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 impact of COVID-19.³⁵

Committee comment

The committee notes that the provisions relating to the Chief Health Officer's powers in chapter 8 of the Public Health Act, which expired on the COVID-19 public health legislation expiry day (31 October 2022), were applicable for the duration of the declaration in SL No. 127.

The committee considers the FLP breaches in SL No. 127 arising from the restrictions on a person's rights and liberties are justified in the circumstances, given the need to respond to the spread of COVID-19 within the community.

7.2.2 Institution of parliament – 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.³⁶

Generally, the greater the level of potential 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.³⁷

The explanatory notes acknowledge that there is a potential breach of the FLP that legislation has sufficient regard to the institution of parliament, 'given the extensive powers enlivened when a public health emergency is declared or extended'.³⁸

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.

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.

In addition, if the Minister becomes satisfied it is no longer necessary to exercise powers to respond to COVID-19 to prevent or minimise serious adverse effects on human health, the Minister must end the declared public health emergency in accordance with section 324 of the Public Health Act.³⁹

The explanatory notes also highlight that the amendments made to the Public Health Act by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* and the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022* are also time limited. Further, that the power to make a regulation to extend the public health emergency by up to 90 days has an expiry date of 31 October 2022, or an earlier day if the Minister ends the declared public health emergency under s 324 of the Public Health Act.⁴⁰

³⁵ SL No. 127, Explanatory notes, p 6.

³⁶ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 165.

³⁷ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 145.

³⁸ SL No. 127, explanatory notes, p 7.

³⁹ SL No. 127, explanatory notes, p 6.

⁴⁰ SL No. 127, explanatory notes, p 7. See also *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022*, ss 30–32.

Committee comment

The committee considers the FLP breaches relating to the institution of parliament are justified, given the need to respond expeditiously to the spread of COVID-19 within the community.

7.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.4 Human rights considerations

The committee considered potential human rights issues and the justification for any limitations on human rights provided in the human rights certificate that was tabled with SL No. 127, as outlined in sections 7.4.1 – 7.4.12 below.

7.4.1 Freedom of movement

Every person has the right to move freely within Queensland and to enter and leave it.⁴¹

Under chapter 8 of the Public Health Act, emergency officers have the power to restrict the movement of persons including:

- requiring a person to not enter or not remain within a place
- requiring a person to stay in a stated place
- requiring a person to stop using a place for a stated purpose.⁴²

Use of this power affects a person's right to freedom of movement.

7.4.2 Freedom of thought, conscience, religion and belief

Every person has the right to freedom of thought, conscience, religion and belief.⁴³

Under chapter 8 of the Public Health Act, emergency officers have the power to order a person to 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.⁴⁴

7.4.3 Peaceful assembly and freedom of association

Every person has the right to peaceful assembly.⁴⁵

The restriction on a person's movements may limit their ability to assemble peacefully.⁴⁶

7.4.4 Cultural rights

Persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture and to practise their religion.⁴⁷

The HRA recognises Aboriginal people and Torres Strait Islander people hold distinct cultural rights.⁴⁸

As noted above, chapter 8 of the Public Health Act provides emergency officers with the power to order a person to isolate or to otherwise restrict a person's or group's movements, which may limit the ability of people to publicly demonstrate and practise their religion or beliefs.⁴⁹

⁴¹ HRA, s 19.

⁴² SL No. 127, human rights certificate, pp 5–6.

⁴³ HRA, s 20.

⁴⁴ SL No. 127, human rights certificate, p 6.

⁴⁵ HRA, s 22.

⁴⁶ SL No. 127, human rights certificate, p 6.

⁴⁷ HRA, s 27.

⁴⁸ HRA, s 28.

⁴⁹ SL No. 127, human rights certificate, p 6.

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.⁵⁰

7.4.5 Taking part in public life

Every person has the right to participate in the conduct of public affairs.⁵¹

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.

7.4.6 Property rights

A person must not be arbitrarily deprived of their property.⁵²

Under chapter 8 of the Public Health Act, emergency officers have the power to: demolish stated 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, including, for example, to allow the officer to take control of a building for the purposes of the emergency.⁵³

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

7.4.7 Right to privacy

A person has the right not to have their privacy unlawfully or arbitrarily interfered with.⁵⁴ Being compelled to provide a name and address and to answer questions limits a person's human right to privacy.

7.4.8 Right to liberty and security of person

A person must not be subject to arbitrary arrest or detention.⁵⁵

SL No. 127 provides powers to emergency officers to restrict people's movements, including requiring a person to 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.⁵⁶

7.4.9 Protection of families and children

Every child has the right to protection that is in their best interests as a child.⁵⁷

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

7.4.10 Humane treatment when deprived of liberty

A person deprived of liberty must be treated with humanity and respect.⁵⁸

Emergency officers (medical) have the power to order the detention of a person if that person has or may have a serious disease or illness. The use of force to enforce self-isolation or other directions could limit the right to humane treatment when deprived of liberty.⁵⁹

⁵⁰ SL No. 127, human rights certificate, p 7.

⁵¹ HRA, s 23.

⁵² HRA, s 24.

⁵³ SL No. 127, human rights certificate, p 7.

⁵⁴ HRA, s 25.

⁵⁵ HRA, s 29.

⁵⁶ SL No. 127, human rights certificate, p 8.

⁵⁷ HRA, s 26.

⁵⁸ HRA, s 30.

⁵⁹ SL No. 127, human rights certificate, p 9.

7.4.11 Right to education

A child has the right to access primary and secondary education appropriate to their needs.⁶⁰

A child's educational activities may be limited due to restrictions on movement.⁶¹

7.4.12 Justification for the limitations on human rights

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

The purpose of the limitations on human rights to be imposed by [SL No. 127], if enacted, is to protect the Queensland public from serious risks to health and safety, including the potential for loss of life that could occur without an effective public health response to the COVID-19 pandemic.

... despite reaching high levels of vaccination in the community, flexibility to deliver ongoing public health responses is an important safeguard to ensure the pandemic can continue to be managed safely and effectively.

A number of uncertainties around the development of the pandemic remain. This includes the potential emergence of new highly transmissible and virulent variants, the effects of waning vaccine and infection-derived immunity over time, and what impacts new variants may have on reinfection. It is likely there will be ongoing waves of COVID-19 in Australia as the virus continues to mutate at a rapid rate.

A further extension of the declared public health emergency enables operation of key public health powers under the Public Health Act to continue to provide the flexibility to respond to ongoing community transmission and the potential emergence of more transmissible and immune-evading subvariants of Omicron or other COVID-19 variants.⁶²

The human rights certificate further states:

The limitation of human rights is necessary to ensure that public health officials can implement effective ongoing measures to respond to the COVID-19 pandemic. These measures allow Queensland Health to administer a rapid and flexible public health response now and in the immediate future to protect the health, safety and welfare of Queenslanders and mitigate the spread of COVID-19 in the community.

...

Although [SL No. 127] potentially limits many rights, the need to protect the right to life for all Queenslanders substantially outweighs the limitations on human rights.⁶³

The human rights certificate also notes a safeguard:

If it is no longer considered necessary to exercise the emergency powers in the Public Health Act, the Act provides for the Minister for Health to declare that the public health emergency has ended, which immediately extinguishes the emergency powers given to the Chief Health Officer and emergency officers under the Public Health Act. This safeguard requires the Queensland Government to assess the need for the public health emergency, not just prior to the expiry of the declaration period, but on a continual basis.⁶⁴

Committee comment

The committee considers the human rights limitations identified are reasonable and justified in the circumstances having regard to s 13 of the HRA. The committee is satisfied that SL No. 127 is compatible with the HRA.

⁶⁰ HRA, s 36.

⁶¹ SL No. 127, human rights certificate, p 10.

⁶² SL No. 127, human rights certificate, p 10.

⁶³ SL No. 127, human rights certificate, p 11.

⁶⁴ SL No. 127, human rights certificate, p 12.

7.5 Human rights certificate

The human rights certificate tabled with SL No. 127 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 SL No. 129 Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2022

8.1 Objectives

The objective of the Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2022 (SL No. 129) is to update a reference to a new version of the extended practice authority for pharmacists, to transition the model of care for the treatment of uncomplicated urinary tract infections (UTIs) by community pharmacists to usual practice.⁶⁵

The extended practice authority allows any community pharmacist who has completed the required training, to supply specified medicines without a prescription for the treatment of women aged between 18 and 65 years.⁶⁶

Section 232 of the *Medicines and Poisons Act 2019* enables the chief executive or their delegate to make an extended practice authority and states the extended practice authority must be approved by regulation (s 232(4)). Schedule 1, part 1 of the Medicines and Poisons (Medicines) Regulation 2021 (Medicines Regulation) lists the approved extended practice authorities. When the chief executive or a delegate make new versions of an extended practice authority, the Medicines Regulation is amended for the new version to take effect.⁶⁷

8.2 Consistency with fundamental legislative principles

The committee identified the following potential FLP issue in relation to SL No. 129.

8.2.1 Sufficient regard to the institution of parliament

Subordinate legislation should allow for the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by the Act itself.⁶⁸ The significance of this requirement is that an external document, such as an extended practice authority, is not subject to parliamentary scrutiny via the tabling and disallowance provisions for subordinate legislation.⁶⁹

As noted above, s 232 of the *Medicines and Poisons Act 2019*, allows the chief executive or delegate to make an extended practice authority, authorising an approved person to deal with a regulated substance. The extended practice authority may state the places or circumstances in which the approved person may deal with the regulated substance, impose conditions on dealing with the regulated substance or require the approved person to hold particular qualifications or training to deal with the registered substances.⁷⁰

The explanatory notes clarify that:

Extended practice authorities are updated regularly, with consideration given to the healthcare needs of specific patient populations, how care can be provided in a timely and safe manner and requirements for medical advice, referral or transfer to other individuals qualified to provide higher levels of care, and the individual qualifications, skills and experience of the class of health practitioners who will act under the particular authority.

⁶⁵ SL No. 129, s 4; explanatory notes, p 1.

⁶⁶ SL No. 129, explanatory notes, p 1.

⁶⁷ SL No. 129, explanatory notes, pp 1–2. See *Medicines and Poisons Act 2019 Extended Practice Authority 'Pharmacists'*, tabled on 26 September 2022, <https://documents.parliament.qld.gov.au/tp/2022/5722T1345-36EC.pdf>.

⁶⁸ *Legislative Standards Act 1992*, s 4(5)(e).

⁶⁹ Scrutiny of Legislation Committee, Alert Digest 1999/04, p 10, para 1.66.

⁷⁰ SL No. 129, explanatory notes, p 4.

...

A copy of the updated extended practice authority is tabled as extrinsic material each time the regulation is amended, to reflect the updated document. The Act provides that an extended practice authority has effect in relation to an approved person only if a provision of a regulation states it applies to the particular class of persons, as approved persons.⁷¹

The explanatory notes provide the following justification for the potential breach of s 4(5)(e) of the LSA:

It is considered the rigour surrounding the development of extended practice authorities, their use in ensuring Queenslanders receive health care based on best clinical practice and the detailed nature of the documents, justifies the need to sub-delegate by referring to external documents in the Medicines Regulation.⁷²

Committee comment

The committee is satisfied that the potential FLP breach arising from the use of extended practice authorities is justified, having regard to the following:

- the detail in the documents
- a level of parliamentary oversight will be provided because an extended practice authority must be approved by regulation, and
- a copy of the updated extended practice authority was tabled in the Legislative Assembly.

8.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.4 Human rights considerations

The human rights certificate accompanying SL No. 129 identified the following human rights as being limited in a way that is reasonable and demonstrably justified.

8.4.1 *Human Rights Act 2019*, section 35 – Right to health service

Every person has the right to access health services without discrimination.⁷³ This includes access to medication.⁷⁴

The human rights certificate asserts that:

The amendment to the Medicines Regulation to update a reference to a new version of the extended practice authority for Pharmacists to transition the model of care for the treatment of uncomplicated UTIs by community pharmacists to usual practice will provide improved access to health services, by facilitating treatment of UTIs in community pharmacy settings. This is particularly important in rural and remote areas where access to primary health care services can be reduced.

...The new version of the extended practice authority for Pharmacists balances the need to ensure medicines are not misused with the need to improve access to health services for uncomplicated UTIs. Pharmacies are already subject to stringent requirements for storage and handling of medicines. Enabling pharmacists to provide medicines for the treatment of uncomplicated UTIs is unlikely to lead to any increased misuse of the medicines in the community, and pharmacists are required to follow relevant professional practice standards. The improved services available for patients through community pharmacies, particularly in rural and remote communities, outweighs any potential increased risk of misuse.⁷⁵

⁷¹ SL No. 129, explanatory notes, pp 4–5.

⁷² SL No. 129, explanatory notes, p 5.

⁷³ HRA, s 37.

⁷⁴ SL No. 129, human rights certificate, p 1.

⁷⁵ SL No. 129, human rights certificate, pp 3, 4.

8.4.2 Human Rights Act 2019, section 15 – Recognition and equality before the law

Every person is equal before the law and is entitled to the equal protection of the law without discrimination.⁷⁶

The human rights certificate notes that:

The regulation of medicines is achieved in part by regulating certain activities by reference to certain classes of persons, for example by reference to classes of approved persons (schedules 3 to 15) for various occupations and professions. This means that the Medicines Regulation applies to people differently depending on their occupation.

This engages, but does not limit, the human right in section 15(3) of the [*Human Rights Act 2019*]. Under section 15(3), every person has a right to equal protection of the law without discrimination. Discrimination is defined to include direct and indirect discrimination on the basis of the attributes protected in section 7 of the *Anti-Discrimination Act 1991*. Employment status or occupation is not one of those attributes.⁷⁷

8.4.3 Human Rights Act 2019, section 24 – Right to property

A person must not be arbitrarily deprived of their property.⁷⁸ Property can include income from work.⁷⁹

The human rights certificate provides that:

The right to property in section 24 of the [*Human Rights Act 2019*] may be engaged by impacts on a person's employment. However, the Medicines Regulation does not prevent a person from practising their profession, nor from seeking any particular kind of employment. It does impose requirements on carrying out certain professions or engaging in employment, for example, by requiring a substance authority for certain dealings in medicines.

The right not to be deprived of property in section 24(2) is a right not to be 'arbitrarily' deprived of property. Because the human rights meaning of arbitrary is, among other things, disproportionate, it is convenient to address whether the deprivation is arbitrary when considering whether it is proportionate under section 13 of the [*Human Rights Act 2019*].

...While a person's work and occupation can be critical to their sense of self and their ability to live a dignified life, the restrictions imposed by [SL No. 129] regulate rather than prevent a person from those benefits.⁸⁰

Committee comment

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

8.5 Human rights certificate

The human rights certificate tabled with SL No. 129 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁷⁶ HRA, s 15(3).

⁷⁷ SL No. 129, human rights certificate, p 2.

⁷⁸ HRA, s 24(2).

⁷⁹ SL No. 77, human rights certificate, p 5.

⁸⁰ SL No. 129, human rights certificate, pp 2, 5.

9 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

Chair

November 2022

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 Mr Samuel (Sam) O'Connor MP, Member for Bonney Ms Joan Pease MP, Member for Lytton