

## Health and Environment Committee

### Report No. 19, 57th Parliament

#### Subordinate legislation tabled between 17 November 2021 and 15 March 2022

#### 1 Aim of this report

This report summarises the Health and Environment Committee’s (committee) findings following its examination of the subordinate legislation within its portfolio areas tabled between 17 November 2021 and 15 March 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) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).<sup>1</sup>

In addition, the report outlines the committee’s consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
169	Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021	22 February 2022	26 May 2022
188	Forestry and Other Legislation Amendment Regulation (No. 3) 2021	22 February 2022	26 May 2022
189	Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021	22 February 2022	26 May 2022
17	Environmental Legislation (Fee Unit Conversion) Amendment Regulation 2022	15 March 2022	23 June 2022

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

<sup>1</sup> *Legislative Standards Act 1992* (LSA), Part 4.

<sup>2</sup> *Human Rights Act 2019* (HRA), s 41(1) to (3).

### 3 Committee consideration of the subordinate legislation

The committee identified no significant issues regarding the policy, consistency with FLPs, lawfulness or human rights implications of the subordinate legislation.

However, the committee considered potential FLP and human rights implications in relation to the Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021 and human rights implications in relation to the Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021.

The committee considered that the explanatory notes tabled with the subordinate legislation comply with section 24 of the LSA. 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 its compatibility with human rights.<sup>3</sup>

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

On 29 January 2020, a public health emergency was declared, under section 319 of the *Public Health Act 2005* (Public Health Act), in response to the COVID-19 outbreak. A declared public health emergency activates a range of powers and functions under the Public Health Act, including granting *emergency officers* with the power to:

- enter premises, and
- compel persons to do, or refrain from, certain activities.

Prior to 7 February 2020, the Public Health Act provided that a declared public health emergency expired seven days after the day it was declared, unless extended by regulation.<sup>4</sup>

On 7 February 2020, the *Public Health (Declared Public Health Emergencies) Amendment Act 2020* amended the Public Health Act to provide that a declared public health emergency may be extended, by regulation, for periods of up to 90 days. The amendment was time-limited and expired on 7 February 2021.

On 8 March 2021, the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* reinstated the amendments to provide that a declared public health emergency may be extended for up to 90 days by regulation. On 9 September 2021, the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* extended the effect of this provision until 30 April 2022.<sup>5</sup>

The committee notes that the declared public health emergency has been extended by regulation multiple times.<sup>6</sup>

The Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021 (the Regulation) further extends the declared public health emergency for a period of 90 days (until the end of 26 March 2022).<sup>7</sup>

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<sup>3</sup> HRA, s 41.

<sup>4</sup> *Public Health Act 2005*, ss 322 and 323.

<sup>5</sup> *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, ss 49 – 51.

<sup>6</sup> See SL Nos 7, 8, 13, 75, 154, 249 and 260 of 2020, and SL Nos 26, 77, 148 of 2021.

<sup>7</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, s 2.

The explanatory notes advised that the declared public health emergency was due to expire on 26 December 2021, and stated:

If the declared public health emergency is not extended, the emergency powers will cease to have effect, including the powers provided to the Chief Health Officer to make public health directions and the powers of emergency officers to issue quarantine notices for people who have or are suspected of having COVID-19. While cases of COVID-19 are likely to be manageable once the target of 80 per cent of fully vaccinated Queenslanders is reached, the nature of the virus and the potential for new variants are such that targeted responses to particular outbreaks may still be required. The powers may also be required to impose targeted lockdowns for areas with lower vaccination rates or ongoing restrictions such as capacity and density limits for venues and events that allow unvaccinated people to enter. It is therefore considered necessary to extend the declared public health emergency.<sup>8</sup>

The committee notes that the Regulation was in force from 3 December 2021 to 26 March 2022, expiring prior to the disallowance date of 26 May 2022.

The committee considers that the Regulation raises the same FLP and human rights issues as previous extension regulations. The committee's assessment of these issues is outlined below.

#### **4.1 Consistency with fundamental legislative principles**

##### **4.1.1 Rights and liberties of individuals - emergency powers**

The LSA provides that legislation must have sufficient regard to the rights and liberties of individuals.<sup>9</sup>

The committee considers that the right to personal liberty is the most elemental and important of all common law rights<sup>10</sup> and entry without consent into any place where a person lives requires the highest justification.<sup>11</sup> An individual would normally expect to be able to enjoy freedom of movement and any removal of this right must be fully justified.<sup>12</sup>

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*. These powers include the power to require a person to:

- not enter, or not to remain within, a place
- stop using a place for a stated purpose
- go to, or stay in, a stated place
- answer questions.<sup>13</sup>

An *emergency officer* also has the power to enter a place to save a human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Reasonable force is permitted to be used to enter a place.<sup>14</sup>

The *emergency officer* must make a reasonable attempt to seek consent for entry, but need not do so if the officer believes on reasonable grounds that immediate entry is required.<sup>15</sup>

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<sup>8</sup> Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2021, explanatory notes, p 4.

<sup>9</sup> LSA, s 4(2)(a).

<sup>10</sup> Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

<sup>11</sup> OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

<sup>12</sup> OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 99.

<sup>13</sup> Public Health Act, s 345.

<sup>14</sup> Public Health Act, s 343.

<sup>15</sup> Public Health Act, s 344.

The explanatory notes state that the powers of *emergency officers* are discretionary and the Public Health Act includes protections to limit the exercise of the powers of emergency officers, including:

- 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)
- a person who is detained must be given the opportunity of receiving medical treatment, including by a doctor chosen by the person (section 354(4)).<sup>16</sup>

The explanatory notes state that:

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

The committee notes that the powers described above are already contained within the Public Health Act, and are triggered by the declaration (and any extension) of a public health emergency, in this case due to the COVID-19 pandemic.

#### Committee comment

Given the ongoing nature of the COVID-19 pandemic, the committee considers the breaches of FLPs which arise from the restrictions on a person's rights and liberties are justified in the circumstances.

#### **4.1.2 Institution of Parliament - matters appropriate to subordinate legislation**

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

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

The explanatory notes acknowledge that there is a potential breach of the section 4(4)(a) of the LSA, which provides that legislation should have sufficient regard to the institution of Parliament, given the extensive powers enlivened when a public health emergency is declared or extended.<sup>19</sup> The committee notes that 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

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<sup>16</sup> Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2021, explanatory notes, p 5.

<sup>17</sup> Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2021, explanatory notes, p 6.

<sup>18</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 165; LSA, s 4(4)(a).

<sup>19</sup> Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 4) 2021, explanatory notes, p 6.

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.<sup>20</sup>

The explanatory notes also highlight that on 2 September 2021 the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* was passed by the Legislative Assembly. This Act further extended the ability of regulations to extend periods of declared public health emergencies for up to 90 days, until 30 April 2022.<sup>21</sup>

The committee notes the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022*, which was passed by the Legislative Assembly on the on 31 March 2022, extended the expiry of this power to 31 October 2022, or an earlier day if the Minister ends the declared public health emergency under section 324 of the Public Health Act.<sup>22</sup>

#### Committee comment

Given the ongoing nature of the COVID-19 public health emergency, the committee considers the breaches of FLPs relating to the institution of Parliament are justified in the circumstances.

#### **4.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

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

The committee has identified the following human rights issues in relation to the Regulation:

- freedom of movement (section 19 of the HRA) - the Regulation provides that emergency officers have the power to: require a person to not enter or not remain within a place; stay in a stated place and stop using a place for a stated purpose
- freedom of thought, conscience, religion and belief (section 20 of the HRA) - the Regulation provides emergency officers with the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs
- right to peaceful assembly and freedom of association (section 22 of the HRA) - the restriction on a person's movements contained in the Regulation may limit their ability to assemble peacefully
- right to enjoy culture and practise religion and hold distinct cultural rights (sections 27 and 28 of the HRA) - the HRA also recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.<sup>23</sup> The Regulation provides emergency officers with the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs. The restrictions on a person's movement could also limit a person's cultural rights to engage with community and their traditionally owned or otherwise occupied lands and waters

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<sup>20</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, explanatory notes, p 6.

<sup>21</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, explanatory notes, p 6. See also *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021*, ss 49 - 51.

<sup>22</sup> Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2022, s 25.

<sup>23</sup> HRA, s 28.

- right to take part in public life (section 23 of the HRA) - the restrictions on a person's movement or ability to interact with other persons contained in the Regulation may impact on a person's right to take part in public life
- property rights (section 24 of the HRA) – the Regulation provides emergency officers with 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 or take action in relation to property. All these actions will impact on a person's property rights and will deprive them of their property.
- right to privacy (section 25 of the HRA) – the power under the Regulation to compel a person to provide their name and address and to answer questions limits their right to privacy
- right to liberty and security of person (section 29 of the HRA) - the Regulation provides powers to emergency officers to restrict a person's movements, including requiring a person to self-isolate at home or another premises. This may limit the right to liberty and security because preventing people from leaving their homes or other premises may constitute detention
- protection of families and children (section 26 of the HRA) - the power contained in the Regulation to restrict a person's movement may impact children through restriction of movement, contact with other people or restricting access to facilities, such as schools, and events
- humane treatment when deprived of liberty (section 30 of the HRA) – under the Regulation, 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 human treatment when deprived of liberty
- right to education (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.<sup>24</sup>

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

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.<sup>25</sup>

The Minister further stated:

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

Although the Regulation potentially limits many rights, these limitations are minor in nature and the need to protect the right to life for all Queenslanders substantially outweighs any limitation on human rights.<sup>26</sup>

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<sup>24</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, human rights certificate, p 9.

<sup>25</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, human rights certificate, p 10.

<sup>26</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, human rights certificate, p 11.

The Minister also noted these safeguards:

The Public Health Act states that the Regulation can extend the declared public health emergency and related powers of emergency officers for a period of no more than 90 days. This requirement is an important safeguard as it places an obligation on the Queensland Government to repeatedly assess the need for the declared public health emergency to continue, based on the current threat of COVID-19 in Queensland.<sup>27</sup>

#### Committee comment

Given the imperative to protect the health of Queenslanders from the COVID-19 pandemic, the committee is satisfied that any limitation to human rights in the Regulation is reasonable and justifiable in the circumstances.

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

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

### **5 Forestry and Other Legislation Amendment Regulation (No. 3) 2021**

The Forestry and Other Legislation Amendment Regulation (No. 3) 2021:

- revokes part of one State forest – Glen Rock State Forest (approximately 42 km north-east of Warwick)
- redescibes 3 national parks – Byfield National Park (approximately 55 km north of Rockhampton), Paluma Range National Park (approximately 40 km west of Townsville) and Wiliyan-ngurru National Park (approximately 159 km north-west of Mt Isa)
- increases the area of one national park – Main Range National Park (approximately 42 km north-east of Warwick)
- redescibes one conservation park – Byfield Conservation Park (approximately 55 km north of Rockhampton)
- dedicates one new conservation park – Main Range Conservation Park (approximately 42 km north-east of Warwick)
- declares 8 new nature refuges – Basilisk Nature Refuge (approximately 100 km south of Cairns), Bloodwood Nature Refuge (approximately 56 km north-west of Warwick), Dungi Yandi Nature Refuge (approximately 10 km south-west of Maleny), Gurrbum Nature Refuge (approximately 10 km north-east of Tully), Moonoomoo Nature Refuge (approximately 179 km south of Charters Towers), Rainy Mountain Nature Refuge (approximately 7 km north-west of Kuranda), The Dods Place Nature Refuge (approximately 1 km west of Kuranda) and Undullah Nature Refuge (approximately 20 km south-east of Ipswich)
- redescibes 2 nature refuges – Gumnut Park Nature Refuge (located approximately 5 km south of Kenilworth) and Rutland Plains Nature Refuge (approximately 10 km south of Kowanyama).

The explanatory notes stated that the core aim of dedicating new or amending existing protected areas is to ‘permanently preserve, to the greatest extent possible, the area’s natural condition, to protect the area’s cultural resources and values and provide for ecologically sustainable activities and ecotourism’.<sup>28</sup>

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<sup>27</sup> Public Health (Further Extension of Declared Public Health Emergency–COVID-19) Regulation (No. 4) 2021, human rights certificate, p 11.

<sup>28</sup> Forestry and Other Legislation Amendment Regulation (No. 3) 2021, explanatory notes, p 2.

### **5.1 Fundamental legislative principle issues and explanatory notes**

No FLP issues were identified. The explanatory notes comply with part 4 of the LSA.

### **5.2 Human rights considerations and certificate**

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

## **6 Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021**

The Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021 permits the chief executive to approve an authority for:

- BAI Communications Pty Ltd to operate and maintain an existing communications facility at the Mount Blackwood site in Pioneer Peaks National Park
- Optus Infrastructure Pty Ltd to install and maintain underground fibre optic cabling in Magnetic Island National Park from Arcadia Bay to Horseshoe Bay
- BAI Communications Pty Ltd operate and maintain an existing communications facility at the Mount Bellenden Ker site in Wooroonooran National Park.<sup>29</sup>

### **6.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness. The explanatory notes comply with part 4 of the LSA.

### **6.2 Human rights considerations**

The committee identified one potential human rights issues relating to the subordinate legislation.

#### **6.2.1 Cultural rights**

The HRA provides that persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture and to practise their religion.<sup>30</sup> The HRA also recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.<sup>31</sup>

The changes to infrastructure within national parks could limit a person's cultural rights to engage with community and their traditionally owned or otherwise occupied lands and waters. The human rights certificate states that the applications for the changes to infrastructure under the *Nature Conservation Act 1992* considered the impact on the Yuwibara, Wanyurr Majay and Wulgurukaba Peoples, then continues:

Given that the nature of this legislation is administrative, and its effect is limited to two established communications sites and a site which was previously disturbed for the construction of a walking track, it is not anticipated that this legislation will affect the scope of the cultural rights of First Nations people.<sup>32</sup>

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<sup>29</sup> Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021, explanatory notes, pp 2-3.

<sup>30</sup> HRA, s 27.

<sup>31</sup> HRA, s 28.

<sup>32</sup> Nature Conservation (Protected Areas Management) (Communications and Electrical Distribution Facilities) Amendment Regulation 2021, human rights certificate, pp 4-5.



Committee comment

The committee is satisfied that any limitation of human rights is reasonable and demonstrably justified.

**6.3 Human rights certificate**

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

**7 Environmental Legislation (Fee Unit Conversion) Amendment Regulation 2022**

The Environmental Legislation (Fee Unit Conservation) Amendment Regulation 2022 converts regulatory fees for the Department of Environment and Science for 2021-22 from fee dollars to fee units.<sup>33</sup>

The explanatory notes stated that the conversion from fee dollars to fee units under the *Acts Interpretation Act 1954* provides a mechanism understood by the community and industry to maintain price relativity, aiding the Government to formulate the State and departmental budgets.<sup>34</sup>

**7.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no FLP issues with the subordinate legislation. The explanatory notes comply with part 4 of the LSA.

**7.2 Compatibility with human rights and human rights certificate**

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

**8 Recommendation**

The committee recommends that the House notes this report.



Aaron Harper MP

**Chair**

**Health and Environment Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Aaron Harper MP, Member for Thuringowa

Mr Robert (Rob) Molhoek MP, Member for Southport

Mr Stephen (Steve) Andrew MP, Member for Mirani

Ms Ali King MP, Member for Pumicestone

Ms Joan Pease MP, Member for Lytton

Mr Sam O'Connor MP, Member for Bonney

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<sup>33</sup> Environmental Legislation (Fee Unit Conversion) Amendment Regulation 2022, explanatory notes, p 2. These regulatory fee conversions are in line with Queensland Treasury's Principles for Fees and Charges policy.

<sup>34</sup> Environmental Legislation (Fee Unit Conversion) Amendment Regulation 2022, explanatory notes, p 2.