

Health and Environment Committee

Report No. 30, 57th Parliament

Subordinate legislation tabled between 13 October 2022 and  
29 November 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 13 October 2022 and 29 November 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),<sup>1</sup> its compatibility with human rights,<sup>2</sup> and its lawfulness.<sup>3</sup> It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),<sup>4</sup> and the compliance of the human rights certificates with the *Human Rights Act 2019* (HRA).<sup>5</sup>

**2 Subordinate legislation examined**

No.	Subordinate legislation	Date tabled	Disallowance date*
158	Forestry (State Forests) and Other Legislation Amendment Regulation (No. 2) 2022	29 November 2022	19 April 2022
159	Private Health Facilities (Standards) Amendment Notice 2022	29 November 2022	19 April 2022
166	Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2022	29 November 2022	19 April 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> 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.

<sup>2</sup> Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

<sup>3</sup> *Parliament of Queensland Act 2001*, s 93.

<sup>4</sup> *Legislative Standards Act 1992*, Part 4.

<sup>5</sup> 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. The explanatory notes tabled with the subordinate legislation largely comply with the requirements of s 24 of the LSA.

No human rights issues were identified in relation to the subordinate legislation. 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. 158 Forestry (State Forests) and Other Legislation Amendment Regulation (No. 2) 2022

#### 4.1 Objectives

The objectives of the Forestry (State Forests) and Other Legislation Amendment Regulation (No. 2) 2022 (SL No. 158) are to:

- revoke the declaration of part of the state plantation forest designation on Yurol State Forest, near Tewantin
- redescribe the entirety and subsequently revoke parts of Yurol State Forest and Ringtail State Forest, near Tewantin
- revoke parts of 2 national parks –
  - revoke part of Castle Tower National Park, near Gladstone, to allow for the area to be dedicated as freehold and transferred to the Gladstone Area Water Board for public water storage purposes
  - revoke part of Mount Coolum National Park to allow for Sunshine Coast Council to raise and upgrade the existing bund wall to offset flood risks increased by the Sunshine Coast Airport Expansion Project
- redescribe the entirety of Conondale National Park, Eungella National Park, and Halifax Bay Wetlands National Park
- increase the area of 4 national parks –
  - Freshwater National Park, near Brisbane
  - Mount Walsh National Park, near Maryborough
  - Oakview National Park, near Gympie
  - dedicate parts of Yurol State Forest and parts of Ringtail State Forest as part of the existing Tewantin National Park
- dedicate the new Broad Sound Islands Conservation Park, near Mackay
- redescribe the Conondale Conservation Park
- increase the area of the existing Mon Repos Conservation Park, near Bundaberg
- redescribe the existing Conondale Resources Reserve
- declare an area adjoining Cania Gorge National Park and Coomingleh State Forest as the new 3 Moons Nature Refuge
- redescribe the entirety of Horseshoe Bay Nature Refuge on Magnetic Island, and the entirety of Cobbold Gorge Nature Refuge near Georgetown
- revoke part of Sacred Nature Refuge near Pomona and subsequently redescribe the entirety of the nature refuge.<sup>6</sup>

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<sup>6</sup> SL No. 158, explanatory notes, pp 1-2.

#### **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. 158 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **5 SL No. 159 Private Health Facilities (Standards) Amendment Notice 2022**

#### **5.1 Objective**

The objective of the Private Health Facilities (Standards) Amendment Notice 2022 (SL No. 159) is to notify the making of the amended Private Health Facilities *Credentials and Clinical Privileges Standard* (Standard) which applies to licensed private health facilities in Queensland.<sup>7</sup>

The changes to the Standard are to support the commencement of the *Voluntary Assisted Dying Act 2021* on 1 January 2023. The changes allow private health facilities ‘to recognise the Queensland Health authorisation of voluntary assisted dying practitioners providing voluntary assisted dying services in private health facilities’.<sup>8</sup> This means that private health facilities do not need to undertake local credentialing of these practitioners.<sup>9</sup> The explanatory notes state that this approach ‘is intended to reduce the regulatory burden for private health facilities’.<sup>10</sup>

#### **5.2 Consistency with fundamental legislative principles**

The committee identified the following potential FLP issue in relation to SL No. 159.

##### **5.2.1 Institution of Parliament**

Fundamental legislative principles require that legislation has sufficient regard to the institution of Parliament.<sup>11</sup>

The Standard is not subordinate legislation and therefore it is not subject to the requirements of Part 6 of the *Statutory Instruments Act 1992* (Statutory Instruments Act) relating to notification, tabling and disallowance. The requirements in Part 6 of the Statutory Instruments Act ensure that the Legislative Assembly is aware of subordinate legislation and enable it to consider the subordinate legislation within a certain time of it being notified, and to disallow it.

The explanatory notes set out reasons for the Standard not being in subordinate legislation:

... the technical nature of the requirements outlined in the Standard, and its use in ensuring the safety and protection of Queenslanders receiving health care at private health facilities, justifies the need for the making of a Standard as an external document.<sup>12</sup>

SL No. 159 brings to the attention of the Legislative Assembly, the amendment of the Standard.

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<sup>7</sup> SL No. 159, explanatory notes, p 1.

<sup>8</sup> SL No. 159, explanatory notes, p 2.

<sup>9</sup> SL No. 159, explanatory notes, p 2.

<sup>10</sup> SL No. 159, explanatory notes, p 2.

<sup>11</sup> *Legislative Standards Act 1992*, s 4(2)(b).

<sup>12</sup> SL No. 159, explanatory notes, p 3.

The Minister for Health and Ambulance Services, Hon Yvette D’Ath MP, tabled a copy of the updated Standard on 22 November 2022. This tabling is not required under the *Private Health Facilities Act 1999*<sup>13</sup> but the availability of the updated Standard assists the Parliament’s consideration of SL No. 159. The explanatory notes state that the amended Standard is also available on the Queensland Health website.<sup>14</sup>

### **Committee comment**

Given the amended Standard was tabled in the Legislative Assembly and that it deals with technical matters relating to the credentialing of certain medical practitioners, the committee is satisfied that SL No. 159 has sufficient regard to the institution of Parliament.

### **5.3 Explanatory notes**

The explanatory notes do not provide an explanation of *how* the legislation is consistent with the policy objectives of the *Private Health Facilities Act 1999*, as required by s 24(1)(e) of the LSA, stating only that SL No. 159 is consistent with the policy objectives of the authorising Act. The explanatory notes otherwise 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. 159 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **6 SL No. 166 Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2022**

### **6.1 Objectives**

The objectives of the Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2022 (SL No. 166) are to:

- update the prescription, conservation status and taxonomy of 26 fauna species and 11 flora species to reflect recent scientific assessment and prescribe a new version of the Queensland Environmental Offsets Policy, amended to reflect updates to classification and taxonomy of species
- make minor amendments to provisions applying to animal authorisations and protected plant harvesting licences
- clarify when demerit points associated with infringement notices issued are accumulated.<sup>15</sup>

### **6.2 Consistency with fundamental legislative principles**

The committee identified the following potential FLP issue in relation to SL No. 166.

#### **6.2.1 Institution of Parliament**

##### **6.2.1.1 Subdelegation of a power**

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on

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<sup>13</sup> Section 12 of the *Private Health Facilities Act 1999* provides that the notice must state the places where copies of the standard and the provisions of any document applied, adopted or incorporated by the standard are available for inspection, without charge, during normal business hours.

<sup>14</sup> SL No. 159, explanatory notes, p 3.

<sup>15</sup> SL No. 166, explanatory notes, pp 1-4. See also SL No. 166, human rights certificate, pp 1-2.

whether, for example, the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- in appropriate cases and to appropriate persons, and
- if authorised by an Act.<sup>16</sup>

The *Environmental Offsets Act 2014* provides that an environmental offsets policy is a document prescribed under a regulation to be an environmental offsets policy. If the policy is amended, the amendment does not take effect for the Act until the policy, as amended, is prescribed to be an environmental offsets policy.<sup>17</sup>

SL No. 166 prescribes a new version of the Queensland Environmental Offsets Policy in the Environmental Offsets Regulation 2014. The updates reflect updates to classification and taxonomy of species prescribed in schedule 1 of the Nature Conservation (Animals) Regulation 2020 and schedule 1 of the Nature Conservation (Plants) Regulation 2020.<sup>18</sup>

The updated Queensland Environmental Offsets Policy (version 1.13), along with previous versions, is available on the Queensland Government website.<sup>19</sup> The policy is quite lengthy and detailed.

### **Committee comment**

Noting that the *Environmental Offsets Act 2014* enables an environmental offsets policy to be prescribed under regulation and amended using the same process, and that the Queensland Environmental Offsets Policy was prepared by the Department of Environment and Science, the committee is satisfied that the subordinate legislation has sufficient regard to the institution of Parliament.

### **6.3 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

### **6.4 Human rights considerations**

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

## **7 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

**Chair**

**February 2023**

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<sup>16</sup> LSA, s 4(5)(e).

<sup>17</sup> *Environmental Offsets Act 2014*, s 12.

<sup>18</sup> SL No. 166, explanatory notes, p 3.

<sup>19</sup> See Queensland Government, 'Legislation – Environmental offset framework', <https://www.qld.gov.au/environment/management/environmental/offsets/legislation>.

**Health and Environment Committee**

<b>Chair</b>	Mr Aaron Harper MP, Member for Thuringowa
<b>Deputy Chair</b>	Mr Robert (Rob) Molhoek MP, Member for Southport
<b>Members</b>	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Mr Samuel (Sam) O'Connor MP, Member for Bonney
	Ms Joan Pease MP, Member for Lytton