

Health and Environment Committee

Report No. 40, 57th Parliament

Subordinate legislation tabled between 24 May 2023 and 13 June 2023

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 May 2023 and 13 June 2023. 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 certificate with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
43	Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023	13 June 2023	25 October 2023
45	Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023	13 June 2023	25 October 2023

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

3 Committee consideration of the subordinate legislation

The committee did not identify any significant issues regarding the policy, consistency with fundamental legislative principles, human rights compatibility or lawfulness of the subordinate legislation.

The committee is satisfied that the explanatory notes tabled with the subordinate legislation comply with part 4 of the LSA, and the accompanying human rights certificates provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

¹ *Legislative Standards Act 1992*, s 4.

² *Human Rights Act 2019*, s 8.

³ *Legislative Standards Act 1992*, Part 4.

⁴ *Legislative Standards Act 1992*, Part 4.

⁵ *Human Rights Act 2019*, s 41.

4 SL No. 43 – Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023

4.1 Objective

The Nature Conservation (Protected Areas Management) (Girringun National Park) Amendment Regulation 2023 (SL No. 43) amends the Nature Conservation (Protected Areas Management) Regulation 2017 to permit part of the national park to be used for a communications facility.

SL No. 43 allows the chief executive, at their discretion, to approve an authority for the ‘installation, operation and maintenance of a service facility (for a communication use) by Optus Fixed Infrastructure Pty Ltd (Optus) within Girringun National Park’.⁶

As explained in the human rights certificate tabled with SL No. 43:

Optus has applied to install underground fibre optic telecommunications cable to the site of an existing Telstra communications tower and install associated telecommunications equipment of the tower as a co-user. The total distance of underground cable to be installed is 716 metres, with approximately 130 metres of new construction required and the remainder involving hauling through existing conduit. The cable will follow an alignment at the edge of an existing track and requires a minimal amount of construction. The associated telecommunications equipment will be attached to the existing Telstra tower and will require no new ground disturbance.⁷

The human rights certificate further advises that Optus has provided an application under the *Nature Conservation Act 1992* (NC Act) to propose how the activity will meet the management principles of a National Park, address public interest and to assure that no practicable alternatives exist. The human rights certificate notes that ‘an Environmental Management Plan has been submitted to address the potential impacts of the activity on natural and cultural values of the National Park and outlines management measures proposed to mitigate against these impacts’.⁸

4.2 Consistency with fundamental legislative principles

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

4.1 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.1 Compatibility with human rights

The committee considered the following human rights issues relating to the subordinate legislation.

4.1.1 Right to freedom of movement; Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

The HRA provides that Aboriginal peoples and Torres Strait Islander peoples must not be denied their cultural rights.⁹ It also provides that every person lawfully within Queensland has the right to move freely within Queensland.¹⁰ The human rights certificate notes that the right to freedom of movement ‘means that a person cannot be arbitrarily denied access to areas that are open to the public, such as national parks’.¹¹

SL No. 43 would limit the right to freedom of movement and cultural rights because it would allow Optus (and its contractors) to restrict access by First Nations people and others to the specified area

⁶ SL No. 43, explanatory notes, p 2.

⁷ SL No. 43, human rights certificate, p 2.

⁸ SL No. 43, human rights certificate, p 2.

⁹ *Human Rights Act 2019*, s 28. See also *Human Rights Act 2019*, s 27.

¹⁰ *Human Rights Act 2019*, s 19.

¹¹ SL No. 43, human rights certificate, p 3.

during construction works.¹² The human rights certificate states that the purpose of ‘the temporary closure of the authority area’ is to ensure public safety.¹³ The explanatory notes and the human rights certificate provide no indication of the expected timeframe for the construction works or the restriction on access to the area.

Committee comment

Given that the restriction is intended to be temporary and is to protect the public, the committee is satisfied that the limitations on the right to freedom of movement and cultural rights are reasonable and justifiable in this instance.

4.2 Human rights certificate

The human rights certificate tabled with SL No. 43 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 SL No. 45 – Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023

5.1 Objective

In 2021, the Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021 (SL No. 104 of 2021) amended the Nature Conservation (Protected Areas) Regulation 1994 (Protected Areas Regulation) to omit the Jardine River Resources Reserve and the Heathlands Resources Reserve from the schedule of resources reserves, and to dedicate two lots as Heathlands Resources Reserve. The amendment was required because it had been determined that the 1994 dedication process for the reserves under the NC Act was flawed, apart from a valid road closure in 2017 which resulted in 2 small lots (lots 4 and 5 on SP296927)¹⁴ being dedicated as Heathlands Resources Reserve.¹⁵

The explanatory notes advise that recent field survey work has shown that the plan titled SP296927 is inaccurate and as a result that the dedication of lots 4 and 5 as resources reserve, similar to the rest of the reserve, was also invalid.¹⁶

The dedication of the Heathlands Resources Reserve in 1994 under the NC Act was invalid and beyond power because before being dedicated as resources reserve, the land must first have been Crown Land, and to qualify as Crown Land, the Departmental and Official Purpose (D&OP) Reserve tenure should have been cancelled. There is no evidence that this action occurred.¹⁷

According to the explanatory notes, the omission of the Heathlands Resources Reserve from the schedule of resources reserves in the Protected Areas Regulation means that it will revert to D&OP Reserve, which will enable the Queensland Government to continue land tenure negotiations with First Nations peoples, resulting in Aboriginal freehold land and national park (Cape York Peninsula Aboriginal land).¹⁸

¹² SL No. 43, human rights certificate, pp 3, 5.

¹³ SL No. 43, human rights certificate, pp 3, 4, 5. The Department of Environment and Science notified Garramay People Aboriginal Corporation Registered Native Title Body Corporation of the infrastructure proposal but did not receive a response: SL No. 43, human rights certificate, pp 2-3.

¹⁴ Around 9.205 hectares: SL No. 104 of 2021, s 3.

¹⁵ SL No. 104 of 2021, explanatory notes, p 1.

¹⁶ SL No. 45, explanatory notes, p 2.

¹⁷ SL No. 45, explanatory notes, p 1. The explanatory notes advise that there is no evidence that the D&OP Reserve tenure was cancelled or revoked as a public purpose under the former *Land Act 1962*.

¹⁸ SL No. 45, explanatory notes, p 2. Tenure arrangements are being negotiated with the Atambaya Aboriginal people and the Wuthathi Aboriginal people: SL No. 45, human rights certificate, p 2.

In regard to the process being used to omit the Heathlands Resources Reserve from the protected area estate, the explanatory notes provide:

Generally, the removal of NC Act lands from the protected area estate requires a decision by the Legislative Assembly. In this case the authorising law (the NC Act) is invalid, and the Land Act applies, so a decision of the Legislative Assembly is not required or is appropriate as the Land Act still applies.

The decision to implement the Amendment Regulation relies on section 24AA of the *Acts Interpretation Act 1954* which provides the power to amend or repeal a decision made about a statutory instrument. In this case, the Governor in Council has this delegation.

The *Statutory Instrument Act 1992* (SI Act) also applies to this case in the absence of the NC Act. When the Regulation was made in 1994 Governor in Council did not have the jurisdictional power to include the [Heathlands Resources Reserve] in the statutory instrument. This SI Act supports that the Amendment Regulation aligns the reading of the Regulation with the correct tenure status of the land.

Omitting the land from the Regulation requires the decision of the Governor in Council. From an overarching perspective, though the NC Act is not the correct authorising law, a mechanism must be applied to remove the land from the Regulation which derives its power from the NC Act. In this respect, the Amendment Regulation applies to:

- Section 33 of the NC Act which prescribes that the Governor in Council, by regulation, may change the class of a protected area by dedicating the area as another class of protected area, or, amalgamate protected areas of the same class, and assign a name to the amalgamated area.
- Section 175 of the NC Act prescribes that the Governor in Council may make regulations under this Act.¹⁹

5.2 Consistency with fundamental legislative principles

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

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Compatibility with human rights

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

6 Recommendation

The committee recommends that the House notes this report.



Aaron Harper MP

Chair

September 2023

¹⁹ SL No. 45, explanatory notes, pp 2-3.

Health and Environment Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa
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