Parliamentary Committees

Health and Environment Committee

Report No. 42, 57th Parliament

Subordinate legislation tabled between 14 June 2023 and 22 August 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 14 June 2023 and 22 August 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*
51	Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2023	22 August 2023	16 November 2023
68	Nature Conservation and Other Legislation (Commercial Activity Permit Fees) Amendment Regulation 2023	22 August 2023	16 November 2023
75	Waste Reduction and Recycling (Annual Payments to Local Governments) Amendment Regulation 2023	22 August 2023	16 November 2023
76	Nature Conservation (Protected Areas) (National Parks—Aboriginal Land) Amendment Regulation 2023	22 August 2023	16 November 2023
77	Nature Conservation and Other Legislation Amendment Regulation 2023	22 August 2023	16 November 2023
82	Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2023	22 August 2023	16 November 2023
100	Hospital and Health Boards Regulation 2023	22 August 2023	16 November 2023
106	Waste Reduction and Recycling (Expansion of Container Refund Scheme) Amendment Regulation 2023	22 August 2023	16 November 2023

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

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.

3 Committee consideration of the subordinate legislation

The committee identified some issues regarding consistency with FLPs in relation to SL No. 100 which are discussed in this report. No significant issues regarding the policy, human rights compatibility or lawfulness of the subordinate legislation were identified by the committee.

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.

4 SL No. 51 – Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2023

4.1 Objectives

The Medicines and Poisons (Medicines) Amendment Regulation (No. 2) 2023 (SL No. 51) amends the Medicines and Poisons (Medicines) Regulation 2021 (Medicines Regulation) to:

- remove barriers and facilitate ease of access to naloxone by:
  - allowing for access to naloxone without an approvals process by any organisation, including registered and unregistered healthcare workers, social services, the Queensland Ambulance Service (QAS), police and justice services
  - allowing both pharmacies and wholesale suppliers to supply naloxone to these organisations
  - removing the requirement for pharmacists to label with a patient's name
  - exempting naloxone from offences for supply and administration and any other requirements allowing peer-to-peer distribution[6]
- enable psychiatrists to prescribe, administer, give a purchase order and possess N, α-dimethyl-3,4-(methylenedioxy)phenylethylamine (MDMA) for the treatment of post-traumatic stress disorder (PTSD) and psilocybine for treatment resistant depression[7]
- restrict follitropin delta, sitaxentan and alefacept to prescribers with the same qualifications as those in Appendix D of the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons (Poisons Standard), enabling:
  - endocrinologists, gynaecologists and obstetricians to prescribe, give a treatment dose, dispense, administer, give a purchase order and possess follitropin delta
  - cardiologists, respiratory and sleep medicine specialists, rheumatologists, and specialist physicians to prescribe, give a treatment dose, dispense, administer, give a purchase order and possess sitaxentan
  - dermatologists to prescribe, give a treatment dose, dispense, administer, give a purchase order and possess alefacept[8]
- update a reference to a new version of the Departmental Standard – Storage Standard for S8 Medicines (Storage Standard) to enable the storage of Schedule 8 medicines in locked but unattended operational QAS vehicles by inserting a separate provision for ambulance officers[9]
- update a reference to a new version of the Registered Nurses' Extended Practice Authority (EPA) to:

6 SL No. 51, explanatory notes, pp 1, 7.

7 To align with changes to the Commonwealth Standard for the Uniform Scheduling of Medicines and Poisons (Poisons Standard) in down-scheduling MDMA and psilocybine from a schedule 9 to a schedule 8 medicine. SL No. 51, explanatory notes, pp 1, 8.

8 SL No. 51, explanatory notes, pp 1, 8.

9 SL No. 51, explanatory notes, pp 2, 4, 8.

- clarify the suitability of qualified sexual and reproductive health nurses and expedite the employment of appropriately trained staff, including by providing that a registered nurse may work under part C of the EPA, if they have completed a sexual health program of study approved by the employing relevant health service or non-government organisation
- facilitate registered nurses administering the Japanese encephalitis virus vaccine, including by removing the requirement for registered nurses to work under an immunisation program.[10]

4.2 Consistency with fundamental legislative principles

4.2.1 Sufficient regard to the institution of Parliament – external documents

In making references to external documents, such as EPAs and departmental standards, which are not required to be tabled and are not subject to the disallowance provisions in the *Statutory Instruments Act 1992,* SL No. 51 could be considered to have insufficient regard to the institution of Parliament, and therefore be inconsistent with FLPs.

An EPA is a document certified by the chief executive of Queensland Health (or delegate) that sets out matters of technical detail for how an approved person can carry out a regulated activity with a regulated substance.[11] A departmental standard provides task-specific guidance for professionals and industry about interacting with a regulated substance.[12]

The explanatory notes seek to justify the delegation of legislative power by asserting that the inclusion of a list of EPAs and departmental standards in the schedule of the Medicines Regulation 'creates certainty for the relevant professions and the public'.[13] Further, while there is no statutory requirement to table an EPA or standard, the explanatory notes state:

> … the rigour surrounding the development of extended practice authorities and departmental standards, and the level of parliamentary oversight afforded by the requirement that extended practice authorities and departmental standards must be approved by regulation justifies the need to sub-delegate by referring to external documents in the Medicines Regulation. Queensland Health has made a commitment to table any extrinsic material referenced in legislation in the Legislative Assembly. Tabling the updated extended practice authority or departmental standard provides the Legislative Assembly with an opportunity to consider the extended practice authority or departmental standard and any conditions imposed under it when scrutinising the Regulation.[14]

Details of the external documents are provided below.

4.2.1.1 <u>New versions of extended practice authorities</u>

Under the *Medicines and Poisons Act 2019* (Act), an EPA 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
- require the approved person to hold particular qualifications or training to deal with the registered substance.[15]

The explanatory notes advise that an EPA includes details, such as the specific dose, quantity, duration and restrictions placed on substances and the circumstances in which they may be administered, and

[10] SL No. 51, explanatory notes, pp 2, 8, 9, 11.

[11] SL No. 51, explanatory notes, p 12.

[12] SL No. 51, explanatory notes, p 12.

[13] SL No. 51, explanatory notes, p 13.

[14] SL No. 51, explanatory notes, p 13.

[15] *Medicines and Poisons Act 2019*, s 232; SL No. 51, explanatory notes, p 11.

is 'monitored and updated, when necessary, to align with best clinical practice and is published on the Queensland Health website'.[16]

According to the explanatory notes, EPAs 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. Schedule 1, part 1 (Approved extended practice authorities) of the Medicines Regulation details the name of each extended practice authority made by the chief executive and its version number. The regulation is updated to reflect the name and new version number of the extended practice authority each time a new version is made. A copy of the updated extended practice authority is tabled as extrinsic material each time the regulation is amended. 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.[17]

4.2.1.2 New versions of departmental standards

The Act empowers the chief executive or their delegate to make a departmental standard about carrying out a regulated activity with a regulated substance and other matters relating to the purposes and administration of the Act.[18]

The explanatory notes contend that, due to the technical and scientific nature of the regulated activities and substances that evolve with best practice and consultation, 'it is not considered appropriate or possible for the content of the departmental standards to be included in the legislation'.[19]

According to the explanatory notes, the standards align with industry best practice, are published on the Queensland Health website, and are subject to consultation with relevant expert individuals and organisations when made or amended.[20] Additionally, they are updated regularly, with consideration given to setting the minimum safety and accountability criteria that must be met in relation to particular activities: 'Consideration is given to changes in technology, changes to clinical treatment with medicines, for example monitored medicines, and changes at a national level in relation to the monitored medicine database systems'.[21]

The explanatory notes also state that departmental standards are:

> … outcome focused and list options to achieve the desired outcomes, which would not be suitable for inclusion in a prescriptive requirement in a regulation. Schedule 1, part 2 (Approved departmental standards) of the Medicines Regulation details the name of each departmental standard made by the chief executive and its version number. The regulation is updated to reflect the name and new version number of the departmental standard each time a new version is made. A copy of the updated departmental standard is tabled as extrinsic material each time the regulation is amended.[22]

Committee comment

The committee is satisfied that any breach of FLPs arising from the updating of the EPA and Storage Standard is justified, considering the detail in the documents, that there is the opportunity for parliamentary oversight when the Medicine Regulation is amended to include new or amended EPAs

16 SL No. 51, explanatory notes, p 12.

17 SL No. 51, explanatory notes, p 12.

18 *Medicines and Poisons Act 2019*, s 233.

19 SL No. 51, explanatory notes, p 12.

20 SL No. 51, explanatory notes, p 12.

21 SL No. 51, explanatory notes, p 12.

22 SL No. 51, explanatory notes, pp 12-13.

or standards, and that copies of the approved EPA and Storage Standard were tabled in the Legislative Assembly.

4.1 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.1 Compatibility with human rights

4.1.1 Right to access health services

Every person has the right to access health services without discrimination.[23] This means 'a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health'.[24]

SL No. 51 makes provision for a range of authorisations[25] defining the scope of permitted activities under the Act, which effectively limit access to medicines and therefore the right to access health services.[26]

The human rights certificate concedes that, although SL No. 51 enhances the right to access health services by expanding access to one medicine, naloxone, it continues to limit the right to access health services by placing restrictions on who may deal with other medicines:

> The purpose of imposing restrictions on dealings with medicines is to mitigate the risk of misuse or substance abuse by vulnerable persons. This is necessary to ensure that those who possess the appropriate knowledge and training and have a thorough understanding of the risks of medicines, have oversight and control over medicines. These restrictions support the overall purpose of the Medicines Regulation in protecting human life, which is consistent with the values of our society.[27]

According to the human rights certificate:

- SL No. 51 is unlikely to lead to any increased misuse of medicines in the community
- health practitioners and workers are required to follow relevant professional practice standards
- the improved service available for patients at risk of opioid overdose outweighs any potential increased risk of misuse.[28]

Committee comment

The committee considers that SL No. 51 has struck an appropriate balance between the need to ensure medicines are not misused and the need to improve access to health services for the public. The committee is therefore satisfied that limitations on the right to access health services arising from SL No. 51 are reasonable and justifiable and the subordinate legislation is compatible with human rights.

4.2 Human rights certificate

The human rights certificate tabled with SL No. 51 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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23 HRA, s 37.

24 SL No. 51, human rights certificate, p 5.

25 Such as approved EPAs and departmental standards in schedule 1 of the Medicines Regulation, and classes of approved persons authorised to carry out dealings stated in schedules 3 to 15 of the Medicines Regulation.

26 SL No. 51, human rights certificate, p 2.

27 SL No. 51, human rights certificate, p 5.

28 SL No. 51, human rights certificate, p 5.

5 SL No. 68 – Nature Conservation and Other Legislation (Commercial Activity Permit Fees) Amendment Regulation 2023

5.1 Objective

The Nature Conservation and Other Legislation (Commercial Activity Permit Fees) Amendment Regulation 2023 (SL No. 68) applies a 10 per cent Goods and Services Tax (GST) increase to Commercial Activity Permit (CAP) daily site fee units for the Department of Environment and Science (DES) for 2023-24, in accordance with the relevant Australian Taxation Office private GST Ruling.[29]

5.2 Consistency with fundamental legislative principles

No FLP issues 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. 68 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 SL No. 75 – Waste Reduction and Recycling (Annual Payments to Local Governments) Amendment Regulation 2023

6.1 Objective

The Waste Reduction and Recycling (Annual Payments to Local Governments) Amendment Regulation 2023 (SL No. 75) provides for payments for the 2026-27 financial year to local governments affected by the waste levy. The purpose of the payments is to ensure there is no direct cost to households when local governments dispose of municipal solid waste at levyable waste disposal sites.[30]

6.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.4 Compatibility with human rights

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

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[29] The 2023-24 amended CAP daily site fee units will apply the Acts Interpretation (Fee Unit) Regulation 2022 fee unit value to calculate the 2023-24 dollar values; SL No. 68, explanatory notes, pp 1, 2.

[30] SL No. 75, human rights certificate, p 1.

7 SL No. 76 – Nature Conservation (Protected Areas) (National Parks—Aboriginal Land) Amendment Regulation 2023

7.1 Objective

The Nature Conservation (Protected Areas) (National Parks—Aboriginal Land) Amendment Regulation 2023 (SL No. 76) redescribes Boodjamulla (Lawn Hill) National Park and dedicates part of it as the new Boodjamulla National Park (Aboriginal Land).[31]

The explanatory notes outline the process relating to the change:

> Under the *Commonwealth Native Title Act 1993*, on 9 December 2010, a determination was made that native title exists over an area including Boodjamulla (Lawn Hill) National Park. The Queensland Government made a commitment to resolve the Waanyi people's claim under the *Aboriginal Land Act 1991* (ALA) over the land.
>
> [SL No. 76] is part of Tranche One of the associated Boodjamulla land dealing proposing that two parcels of national park land become both Aboriginal freehold land under the ALA upon delivery of the deed of grant on 23 June 2023 and dedicated as national park (Aboriginal land) under the NC Act [*Nature Conservation Act 1992*] on 30 June 2023. The balance of Boodjamulla (Lawn Hill) National Park is proposed to be dedicated as Boodjamulla National Park (Aboriginal land) by September 2025. This proposal will enable the Waanyi people's co-stewardship of protected areas. …[32]

The human rights certificate further notes that the:

> redescribing and dedication of parts of Boodjamulla (Lawn Hill) National Park 'relates to an Indigenous Land Use Agreement (ILUA) to be authorised by the Native Title Parties and the State' whereby 'Waanyi Native Title Aboriginal Corporation … will lease the national park (Aboriginal land) to the State in perpetuity, pursuant to section 284 of the ALA, for the purposes of the management of the national park land under the NC Act'.[33]

7.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

7.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.4 Compatibility with human rights

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

7.5 Human rights certificate

The human rights certificate tabled with SL No. 76 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 SL No. 77 – Nature Conservation and Other Legislation Amendment Regulation 2023

8.1 Objectives

The Nature Conservation and Other Legislation Amendment Regulation 2023 (SL No. 77) amends the:

- Nature Conservation (Animals) Regulation 2020 and the Nature Conservation (Plants) Regulation 2020, as relevant, to:
  - update the conservation status and taxonomy of native fauna and flora species
  - clarify matters relating to animals kept after death and the circumstances in which a protected animal may be taken from an airport

31 SL No. 76, explanatory notes, p 1.

32 SL No. 76, explanatory notes, p 1.

33 SL No. 76, human rights certificate, p 2.

  - specify conditions for taking humane actions under a damage mitigation permit (DMP) and a flying-fox roost management permit
  - no longer permit the grant of a DMP for the shooting of flying-foxes for crop protection purposes
  - provide a transitional permit period of 3 years for affected fruit growers to assist with the phase-out of flying-fox lethal management practices
  - clarify provisions relating to the taking of flying-foxes to ensure it is humane
  - list particular fish kept under the 'exempt animal' category to allow for recreational and commercial keep and use
  - allow for the recreational keeping and use of particular newly protected fish species
- Environmental Offsets Regulation 2014 to prescribe a new version of the Queensland Environmental Offsets Policy
- Nature Conservation (Koala) Conservation Plan 2017 (Koala Plan) to:
  - increase the maximum distance rehabilitated koalas can be released from their rescue locations
  - clarify the considerations for the determination of koala habitat areas.[34]

8.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

8.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.4 Compatibility with human rights

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

9 SL No. 82 – Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2023

9.1 Objective

The Tobacco and Other Smoking Products and Other Legislation Amendment Regulation 2023 (SL No. 82) prescribes matters supporting the implementation of the licensing and illicit tobacco provisions in the *Tobacco and Other Smoking Products Amendment Act 2023*.[35] This includes prescribing:

- licence fees[36]
- licence display requirements
- invoicing requirements
- the amount which constitutes a 'commercial quantity' for illicit tobacco.

[34] SL No. 77, explanatory notes, p 5.

[35] SL No. 82, explanatory notes, p 2.

[36] The explanatory notes (pp 4, 5) advise that the amounts of the licence fees have been set to ensure full cost recovery for the licensing scheme and to fund additional compliance activities, and that they are not intended to operate as penalties or as barriers to entry to the industry or to generate a profit for government.

9.2 Consistency with fundamental legislative principles

9.2.1 Rights and liberties of individuals

To have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.[37]

SL No. 82 prescribes many of the offences introduced into the *Tobacco and Other Smoking Products Act 1998* (TOSPA) by the *Tobacco and Other Smoking Products Amendment Act 2023* as penalty infringement notice (PIN) offences under the *State Penalties Enforcement Regulation 2014*.[38] The penalties for these PIN offences range from 2 to 20 penalty units ($309.60 to $3,096) for an individual.

The explanatory notes advise that the PIN amounts prescribed in SL No. 82 are 'consistent with similar offences in both the TOSPA and other health portfolio legislation'.[39]

The explanatory notes also describe benefits offered by PINs:

> PINs provide a more immediate deterrent than commencing lengthy prosecution action. By avoiding a prosecution, PINs reduce demand on Queensland courts while still maintaining a person's right to access the judicial system if they wish to challenge the offence. The option of a PIN also advantages alleged offenders by giving them an alternative to court-based prosecution.[40]

Without the option of PINs, the only punitive action that could be taken for the contravention of the TOSPA would be prosecution action, which, according to the human rights certificate, has 'significant cost and resource implications and is usually reserved for the most serious breaches of the Act [TOSPA]'.[41]

Committee comment

In light of the advantages that PINs can provide and that the PIN amounts are consistent with those for similar offences, the committee is satisfied that SL No. 82 has sufficient regard to rights and liberties of individuals.

9.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.4 Compatibility with human rights

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

9.5 Human rights certificate

The human rights certificate tabled with SL No. 82 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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37 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook* (*Notebook*), 2008, p 120. See also LSA, s 4(2)(a).

38 State Penalties Enforcement Regulation guidelines provide that PINs are not prescribed for 'complex offences or where discretionary elements are involved': SL No. 82, human rights certificate, p 5. These guidelines are administered by the Department of Justice and Attorney-General.

39 SL No. 82, explanatory notes, p 5.

40 SL No. 82, explanatory notes, p 5.

41 SL No. 82, human rights certificate, p 6.

10 SL No. 100 – Hospital and Health Boards Regulation 2023

10.1 Objective

The Hospital and Health Boards Regulation 2023 (SL No. 100) replaces the Hospital and Health Boards Regulation 2012 (2012 Regulation) to allow for the continued effective operation of the *Hospital and Health Boards Act 2011* (HHB Act).[42]

In order to support the operation of the HBB Act, SL No. 100 prescribes various matters, including:

- the name of each Hospital and Health Service (HHS) and geographical area covered by each HHS[43]
- employment matters, including arrangements for the movement of staff between health system employers
- requirements for health equity strategies, clinician engagement strategies and consumer and community engagement strategies
- matters relating to the functioning of Hospital and Health Boards (HHBs), such as the requirement for a HHB to have a safety and quality committee, finance committee and audit committee
- procedures for HHB committees, such as requirements relating to the keeping of minutes and the conduct of meetings
- setting requirements for minimum nurse-to-patient and midwife-to-patient staffing in hospitals, and minimum nurse and registered nurse percentages and minimum average daily resident care hours in State aged care facilities
- defining a 'reportable event' for which a root cause analysis may be conducted
- listing of prescribed information sharing agreements under which Queensland Health may disclose confidential information to prescribed entities which evaluate, manage, monitor or plan health services
- prescribing certain health professionals who may access confidential patient information through an information system, known as *The Viewer*.[44]

10.2 Consistency with fundamental legislative principles

10.2.1 Administrative decision-making

SL No. 100 provides that:

- the relevant chief executives of the employers may agree to move a health service employee from one health system employer[45] to another[46]
- where the chief executive[47] considers the movement is necessary to mitigate a significant risk to the public sector health system, they may give a written direction to a health service employee that the employee is to be moved from one health system employer to another[48]

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42 The 2012 Regulation was due to expire on 31 August 2022. The Statutory Instruments Regulation 2022 exempted the 2012 Regulation from expiry until 31 August 2023. SL No. 100, explanatory notes, p 1.

43 Other than Children's Health Queensland, which functions in various areas across Queensland.

44 SL No. 100, explanatory notes, p 2.

45 A 'health system employer' is an HHS or the department; SL No. 100, s 6.

46 SL No. 100, s 7(2)(a).

47 Being, the chief executive of the department (Queensland Health) i.e. the Director-General.

48 SL No. 100, s 7. Before giving the written direction, the chief executive must consult with the health service chief executive of any service in which the employee is and will be employed.

- with the approval of the Minister,[49] a health service chief executive[50] may be moved from a HHS to the department (or between HHSs), by agreement between the HHB chair and the chief executive[51] (or between the relevant HHB chairs)[52]
- on the recommendation of the chief executive[53] and where the chief executive considers the movement is necessary to mitigate a significant risk to the public sector health system, a health service chief executive may be moved between health system employers by a written direction from the minister.[54]

10.2.1.1 Whether administrative power is sufficiently defined and subject to appropriate review

Whether legislation has sufficient regard to rights and liberties of individuals, depends on whether it makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[55]

In addressing the respective delegations of administrative power to the chief executive and the minister, the explanatory notes assert that the administrative powers are sufficiently defined, because SL No. 100 sets out clear criteria,[56] that is, that the movement must be 'necessary to mitigate significant risk to the public sector health system'.[57]

The explanatory notes state that the delegations are subject to appropriate safeguards and review rights,[58] and that the length of time provided to employees to establish reasonable grounds for refusing the movement will vary depending on the circumstances.[59]

Power to move an employee or chief executive differ depending on whether 'by agreement' or 'by written direction'

The powers under SL No. 100 requiring movement of a health service employee or health service chief executive *upon the making of a written direction* may only be exercised in circumstances where the movement is necessary to mitigate significant risk to the public sector health system, and where the individual concerned has not demonstrated reasonable grounds for refusing the movement. In contrast, the powers under SL No. 100 requiring such movement *upon agreement*[60] are not subject to

49 Being, the Minister for Health, Mental Health and Ambulance Services and Minister for Women.

50 A 'health service chief executive' is appointed to manage an HHS; HHB Act, s 33, schedule 2.

51 That is, the Director-General.

52 SL No. 100, s 8.

53 That is, the Director-General.

54 SL No. 100, s 8. Before giving the written direction, the chief executive must consult with the chair of any Services in which the health service chief executive is and will be employed.

55 LSA, s 4(3)(a).

56 SL No. 100, ss 7(3), 8(4).

57 SL No. 100, explanatory notes, p 4.

58 For example, according to the explanatory notes, the individual concerned must be allowed a reasonable time to establish reasonable grounds for refusing the movement (SL No. 100, ss 11(2), 12(2)). If such grounds are established, the proposed movement is cancelled and the refusal must not be used to prejudice the employee's prospects for future promotion or advancement; SL No. 100, explanatory notes, p 4.

59 The explanatory notes provide an example where a health service employee is moved on medical grounds where, due to a medical condition, they are unable to perform their substantive role at their HHS, but could perform another role available at a different HHS. According to the explanatory notes, given this employee may need to investigate the health care options to treat their condition at the new location, they may require a longer period to establish reasonable grounds to refuse the movement; SL No. 100, explanatory notes, p 4.

60 That is, agreement between the relevant chief executives of the employers - for the movement of health service employees; or between the HHB chair and the chief executive (or between the relevant HHB chairs) - for the movement of health service chief executives.

the requirement that the movement is necessary to mitigate significant risk to the public sector health system.

Decisions about reasonable grounds for refusing to move

Although the relevant employee will have the opportunity to establish reasonable grounds for refusing the movement (regardless of whether the movement is required as a result of agreement or written direction), the employee will effectively be seeking to prove those grounds to the same decision-maker (or one of the same decision-makers) who has made the decision to move that employee.[61] That is, the person who decides whether the employee has established reasonable grounds to refuse the movement, is not independent of the decision-maker who has decided the employee is to be moved.

Of itself, this may arguably be considered reasonable and part of the one decision-making process, except that there does not appear to be any other mechanism available for the employee to seek an internal or external review of the original decision to move the employee (or the decision as to whether reasonable grounds has been established to refuse the movement).

Additionally, there does not appear to be any avenue for a dissatisfied employee to apply to a court or tribunal, such as the Queensland Civil and Administrative Tribunal, for such a review. However, it would appear that an aggrieved employee would be potentially able to access the statutory orders of review provisions in the *Judicial Review Act 1991*,[62] although such a review would not consider the merits of the decision, just whether it was properly made.

Termination of employment for refusing to move

SL No. 100 may potentially have even greater consequences for the rights and liberties of individuals, because if (after failing to establish reasonable grounds for refusing the movement) the relevant health service employee (or health service chief executive) refuses the movement, the relevant chief executive of the health system employer from which the employee is moved (or the HBB chair for the HHS from which the health service chief executive is moved):

- may end the employee's or the health service chief executive's employment by giving signed notice (if the movement is by agreement)
- must end the employee's or the health service chief executive's employment by signed notice (if the movement is by written direction).[63]

10.2.1.2 Reasonableness and fairness

Parliamentary committees have considered the reasonableness and fairness of treatment of individuals is also relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.[64]

The explanatory notes also address the employment provisions in SL No. 100 in terms of whether they are reasonable and fair. SL No. 100 provides that, if a provision in a health employee's contract is inconsistent with a movement under the above-discussed provisions, the movement takes effect despite the inconsistency.[65] The explanatory notes seek to justify this provision, stating that:

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61 That is, whichever of the following is applicable: one of the two chief executives who agreed to move the health service employee (being, the chief executive of the health system employer from which the employee is moved); one of the decision-makers who agreed to move the health service chief executive (being, the HBB chair for the service from which the health service chief executive is moved); the chief executive of the department who provided the written direction to move to the health service employee; the minister who provided the written direction to move to the health service chief executive.

62 *Judicial Review Act 1991*, s 20.

63 SL No. 100, ss 11(4) or 12(4), respectively.

64 OQPC, N*otebook*, p 133. See also LSA, s 4(2)(a).

65 SL No. 100, s 9(3).

> … section 66 of the Act provides the conditions of employment for health service employees which include: provisions of the [HHB] Act; the *Industrial Relations Act 2016*; the *Public Sector Act 2022* including any directive under that Act that applies to the employee; an industrial instrument that applies to the employee; health employment directives and the employee's contract. The employee's contract is not the only consideration when determining the employee's rights and obligations as a health service employee – a number of other considerations, laws and instruments also apply. It is appropriate to designate which conditions are to prevail in circumstances of inconsistency between the employment conditions.[66]

The explanatory notes contend that any potential unfairness is mitigated by the fact that a movement will be cancelled if the employee establishes reasonable grounds for refusing the movement.[67]

Committee comment

The committee notes that the decision-makers prescribed in SL No. 100 occupy suitably high office with the expectation that they possess commensurate skills and experience. The committee would anticipate that these decision-makers would also appear to have an interest in making appropriate and reasonable decisions that support the optimal operation of the department and/or relevant HHS and, where required, must mitigate significant risk to the public sector health system.

The committee also notes that the employment provisions and the provision that a movement takes effect despite inconsistency with an employee's contract in SL No. 100 are substantially similar to the provisions set out in the 2012 Regulation (which SL No. 100 is replacing).

The committee is satisfied that the powers in SL No. 100 to require movement of the specified employees in circumstances where the individual concerned has not demonstrated reasonable grounds for refusing the movement, has sufficient regard to the rights and liberties of individuals, such that the administrative decision-making powers are sufficiently defined and subject to appropriate review and the provisions are reasonable and fair.

10.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

10.4 Compatibility with human rights

10.4.1 Right to privacy and reputation

A person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and not to have their reputation unlawfully attacked.[68]

SL No. 100:

- provides that a health system employer may transfer or disclose particular personal information of an individual[69] to another health service employer, where the person who the information is about is being considered for appointment or is appointed by the second health system employer[70]
- provides that a Quality Assurance Committee may make certain information available to the public, including the full name and qualifications of each committee member, their office or position in the committee and a summary of their experience as relevant to the committee[71]

66 SL No. 100, explanatory notes, p 9.

67 SL No. 100, explanatory notes, p 9.

68 HRA, s 25.

69 According to the human rights certificate (SL No. 100, p 5), this is restricted to information the first health system employer collected or held in relation to the person's employment or appointment with the employer.

70 SL No. 100, human rights certificate, p 5.

71 SL No. 100, human rights certificate, p 5.

- prescribes certain entities[72] who a designated person may disclose confidential information to, for particular purposes relevant to evaluating, managing, monitoring or planning health services, including relating to the implementation and management of the National Disability Insurance Scheme[73]
- prescribes particular agreements which allow information sharing, including agreements between Queensland and other jurisdictions,[74] as well as agreements and memorandums of understanding between Queensland Health and other Queensland Government entities[75]
- prescribes the health professionals that may access the prescribed information system under section 161C of the HBB Act,[76] and prescribes *The Viewer*[77] as a prescribed information system.[78]

10.4.1.1 Disclosure of information between health service employers

The human rights certificate concedes that these provisions could breach the right to privacy by allowing personal information of an employee to be disclosed from one health service employer to another, but that the disclosure is justified because 'it helps to ensure the suitability of those appointed within the public sector health system, which in turn supports the health and safety of the community'.[79]

10.4.1.2 Quality assurance committee

The human rights certificate concedes that these provisions represent a minor infringement of the committee members' privacy, as 'the information being shared relates to their professional capacity', but is information that 'the individual may already make publicly available in different contexts'.[80]

According to the human rights certificate, the limitation on the right to privacy is considered justified:

> The sharing of information helps to enhance transparency and instil public confidence in the Quality Assurance Committee, which in turn supports continual improvement in public sector health service outcomes for all patients.[81]

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72 Including, Services Australia for maintaining the Australian Immunisation Register, Australian Orthopaedic Association for the specified purpose, Florey Institute of Neuroscience and Mental Health for the specified purpose, National Disability Insurance Agency and certain Queensland Government agencies.

73 SL No. 100, human rights certificate, p 6.

74 Including, for example, bilateral agreements relating to funding of admitted patient services provided to each other's residents, an intergovernmental agreement relating to the Electronic Donor Record and an agreement between the Queensland and Commonwealth government regarding the Rheumatic Fever Strategy.

75 SL No. 100, human rights certificate, pp 6-7.

76 Including, health professionals registered under the Health Practitioner Regulation National Law (National Law) (such as, the Aboriginal and Torres Strait Islander health practice, dental practice, medical practice, midwifery and nursing, occupational therapy, optometry, pharmacy, and psychology practices), and a range of other health professions that are not registered under the National Law, but are accredited by other professional bodies, such as dieticians, social workers and speech pathologists.

77 The Viewer is a read-only web-based application that displays a consolidated view of patients' clinical and demographic information from a variety of Queensland Health clinical and administrative systems.

78 SL No. 100, human rights certificate, p 7.

79 SL No. 100, human rights certificate, pp 5, 11.

80 SL No. 100, human rights certificate, p 11.

81 SL No. 100, human rights certificate, p 11.

10.4.1.3 Prescribed entities

The human rights certificate concedes that prescribing such entities[82] may be seen to infringe the privacy of individuals, because 'it will allow personal information about individuals who have received public sector health services to be disclosed to the entities'.[83]

However, the human rights certificate contends that such disclosure is justified, to support the prescribed entities in performing their functions:

> These functions ensure the effective operation of the public sector health system and promote the health and wellbeing of Queenslanders. The [HHB] Act contains safeguards to ensure that any infringement of privacy is as limited as possible. This includes the requirement in section 150 of the [HHB] Act that the disclosure must be for the specific purpose of evaluating, managing, monitoring or planning health services as stated in the regulation …[84]

10.4.1.4 Prescribed agreements

The human rights certificate concedes that prescribing particular agreements which allow information sharing may be seen to infringe upon the privacy of individuals because:

> … this will allow for the disclosure of information that will identify individuals as past or current recipients of public sector health services, and in doing so, disclose their personal information, including their sensitive health information.[85]

According to the human rights certificate, allowing limited disclosure of information under information sharing agreements is justified because 'it supports the health and wellbeing of individuals and the community'.[86] Additionally, the human rights certificate identifies 'a number of safeguards to ensure that any infringement of privacy is as limited as possible, and to prevent further disclosure of personal information shared under prescribed agreements'.[87]

10.4.1.5 Prescribed information system

The human rights certificate concedes that replicating these provisions of the 2012 Regulation may infringe the privacy of individuals, because 'it will allow prescribed health professionals to continue to access *The Viewer* and the personal information contained within'.[88]

In seeking to justify the limitation to privacy, the human rights certificate observes that allowing the prescribed categories of allied health professionals access to *The Viewer* will have:

> ... significant benefits for the health of the persons whose information is accessed or shared. Prescribed health professionals will have timely access to relevant health information, such as information about the condition of the person, previous treatment provided and discharge summaries, that supports them to consider and deliver the most appropriate care for their patient. Allowing … access … will also reduce the administrative burden associated with making individual requests for the release of confidential information, allowing the health professionals to focus on providing patient care.[89]

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82 Under section 150(b) of the Act.

83 SL No. 100, human rights certificate, p 6.

84 SL No. 100, human rights certificate, p 11.

85 SL No. 100, human rights certificate, p 7.

86 SL No. 100, human rights certificate, p 12.

87 Including, the requirements that: the Director-General must consider the disclosure is in the public interest, the recipient must not give it to anyone else unless allowed to do so by the agreement or in writing by the Director-General, and the recipient must ensure the confidential information is used only for the purpose for which it was given under the agreement. Additionally, the prescribed agreements contain confidentiality protocols that restrict the use of the information to only the prescribed entity for the prescribed purpose. SL No. 100, human rights certificate, p 11.

88 SL No. 100, human rights certificate, p 7.

89 SL No. 100, human rights certificate, p 12.

Additionally, the human rights certificate states that:

- the limitation on the right to privacy is mitigated by the significant legislative and operational safeguards in place that protect personal information from being inappropriately accessed[90]
- under the HBB Act, it is an offence for a practitioner health professional to inappropriately access information in *The Viewer* that is not directly related to the provision of care or treatment to the person[91]
- Queensland Health conducts audits to ensure patient information is being used appropriately and investigates and acts on any inappropriate use of information, in accordance with the provisions of the *Information Privacy Act 2009*.[92]

Committee comment

The committee is satisfied that the subordinate legislation is compatible with the right to privacy and reputation set out in s 25 of the HRA.

10.5 Human rights certificate

The human rights certificate tabled with SL No. 100 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

11 SL No. 106 – Waste Reduction and Recycling (Expansion of Container Refund Scheme) Amendment Regulation 2023

11.1 Objective

The Waste Reduction and Recycling (Expansion of Container Refund Scheme) Amendment Regulation 2023 (SL No. 106) amends the Waste Reduction and Recycling Regulation 2011 to remove the exclusion for glass wine and pure spirit bottles, making them eligible for a 10 cent refund under Queensland's container refund scheme.[93]

11.2 Consistency with fundamental legislative principles

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

11.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

11.4 Compatibility with human rights

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

11.5 Human rights certificate

The human rights certificate tabled with SL No. 106 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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90 For example, each person is required to prove their identity to obtain system access to The Viewer; every user's access to and activity on The Viewer is recorded in audit files, allowing for regular usage checks by Queensland Health; health practitioners can only access The Viewer through a read-only secure access portal known as the Health Provider Portal; patient searches can only be undertaken in The Viewer based on a set of unique patient identifiers; and a patient can opt out of having their information shared with health professionals through The Viewer. SL No. 100, human rights certificate, p 12.

91 The maximum penalty for breaching this requirement is 600 penalty units ($92,880). SL No. 100, human rights certificate, p 12.

92 SL No. 100, human rights certificate, p 12.

93 SL No. 106, explanatory notes, pp 1, 2.

12 Recommendation

The committee recommends that the House notes this report.

Aaron Harper MP
Chair

October 2023

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 James Martin MP, Member for Stretton
	Mr Andrew Powell MP, Member for Glass House