

Health and Environment Committee

Report No. 43, 57th Parliament

Subordinate legislation tabled between 23 August 2023 and 12 September 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 23 August 2023 and 12 September 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*
122	Forestry (State Forests) and Other Legislation Amendment Regulation (No. 2) 2023	12 September 2023	30 November 2023
127	Waste Reduction and Recycling Regulation 2023	12 September 2023	30 November 2023
131	State Penalties Enforcement and Other Legislation Amendment Regulation 2023	12 September 2023	30 November 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 identified potential FLP issues in relation to SL No. 127, which are discussed in this report. However, the committee was ultimately satisfied that the subordinate legislation is consistent with FLPs. No 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.

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. 122 – Forestry (State Forests) and Other Legislation Amendment Regulation (No. 2) 2023

4.1 Objective

The Forestry (State Forests) and Other Legislation Amendment Regulation (No. 2) 2023 (SL No. 122):

- revokes parts of Beerwah State Forest to accommodate the upgrade of Bells Creek Arterial Road on the Sunshine Coast
- revokes the entirety of Beerwah Forest Reserve, dedicates the area as part of the existing Glass House Mountains Conservation Park, and re-describes the conservation park
- increases the area of national parks –
 - Barnard Island Group National Park, near Cairns
 - Family Islands National Park, near Cairns
 - Frankland Group National Park, near Cairns
 - Goold Island National Park, near Ingham
 - Lindeman Islands National Park, near Mackay
 - Molle Islands National Park, near Mackay
 - Mount Archer National Park, near Rockhampton
 - Whitsunday Islands National Park, near Mackay
- re-describes the entirety of Castle Tower National Park, near Gladstone
- revokes the entirety of Glen Idle Nature Refuge, near Cairns, due to termination of the conservation agreement
- revokes parts of Messmate Nature Refuge, near Ingham, declares parts in the nature refuge, and subsequently re-describes the entirety of the nature refuge
- revokes parts of Mount Murchison Nature Refuge, near Biloela, and subsequently re-describes the entirety of the nature refuge
- re-describes nature refuges –
 - Egerton Nature Refuge, near Montville
 - Koolewong Nature Refuge, near Mapleton
 - Long Grass Nature Refuge, near Toowoomba
 - Scotney Nature Refuge, near Stanthorpe
- declares new nature refuges –
 - Cootharaba Nature Refuge, near Boreen Point
 - Kangaby Nature Refuge, near Gin Gin
 - Saxum Floribunda Nature Refuge, near Toowoomba
 - The Limberlost Nature Refuge, near Stanthorpe.⁶

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 Compatibility with human rights

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

⁶ SL No. 122, explanatory notes, p 1.

4.5 Human rights certificate

The human rights certificate tabled with SL No. 122 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 SL No. 127 – Waste Reduction and Recycling Regulation 2023

5.1 Objectives

The Waste Reduction and Recycling Regulation 2023 (SL No. 127) replaces the Waste Reduction and Recycling Regulation 2011 (2011 Regulation)⁷ to provide for the effective operation of the *Waste Reduction and Recycling Act 2011* (WRR Act).⁸

According to the explanatory notes, SL No. 127 is ‘in substantially similar form to the existing legislation’ and is characterised as a remake, which clarifies policy intent, removes redundant provisions and reduces regulatory burden on stakeholders.⁹

The explanatory notes state that SL No. 127 meets its objectives by:

- setting standards, controls or procedures for the manufacture, generation, sale, use, transport, receipt, storage, treatment or disposal of waste, including for –
 - dealing with polychlorinated biphenyls (PCBs)
 - managing clinical and related waste
 - used packaging materials
 - storage, disposal, receipt or treatment of waste or equipment for dealing with waste
- describing waste reporting requirements and identifying reporting entities
- giving effect to the container refund scheme by stating the refund rate for people returning empty beverage containers; defining a ‘small beverage manufacturer’ and the frequency of their payments; setting scheme targets; and providing for refund sharing arrangements
- providing a framework for the effective operation of the waste levy, including by –
 - defining the types of waste to which the levy applies
 - stating the applicable levy rates for each type of waste and levy zone
 - prescribing a range of matters (such as, the specified local government areas, rate of payments to local governments, recycling activities, discounted rate for the waste levy, and requirements for a resource recovery area and for measuring the specified waste)
 - providing the specified formulas for calculating the waste levy rate
 - identifying exempt types of wastes and categories of waste disposal sites
 - providing the criteria for deciding the specified applications
 - providing for the specified efficiency thresholds and discounted levy rates.¹⁰

The explanatory notes¹¹ identify the following notable changes between SL No. 127 and the 2011 Regulation:

⁷ In accordance with s 54 of the *Statutory Instruments Act 1992*, the expiry date of the 2011 Regulation is 31 August 2023; SL No. 127, explanatory notes, p 1.

⁸ As confirmed as necessary by a review of the 2011 Regulation; SL No. 127, explanatory notes, pp 1, 2.

⁹ SL No. 127, explanatory notes, pp 1, 6.

¹⁰ SL No. 127, explanatory notes, pp 2-3.

¹¹ SL No. 127, explanatory notes, pp 3-4.

- amendments associated with the description of the waste levy rate and its application according to the zone of origin and destination of the disposed waste¹²
- insertions to give effect to the announced ban on additional single-use plastic items,¹³ including the ban on single-use heavyweight plastic shopping bags¹⁴
- allowing the expiry of sections of the current framework which are not utilised.

5.2 Consistency with fundamental legislative principles

5.2.1 Rights and liberties of individuals – offences

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.¹⁵

SL No. 127 provides for a number of offences with a range of penalties up to a maximum penalty of 20 penalty units (\$3,096.00),¹⁶⁻¹⁷ and a maximum infringement notice fine of 2 penalty units (\$309.60) for individuals.¹⁸ The offences with higher penalties are for matters such as:

- failing to send specified waste to a licensed treatment facility for treatment
- disposing of specified waste to landfill
- using specified equipment if the person knows, or ought reasonably to know, that the equipment contains the specified PCB material
- a person who operates premises at which clinical waste, or related waste, is generated failing to ensure the waste is segregated into specified categories, or failing to comply with specified storage requirements
- specified persons failing to dispose of a hypodermic needle, or other sharp, in the specified way
- the specified brand owner failing to take reasonable steps to achieve a recovery rate¹⁹ of at least 70 per cent for the financial year.

SL No. 127 continues the majority of offence provisions from the 2011 Regulation. According to the explanatory notes, these are required to support implementation of SL No. 127 and the WRR Act.²⁰

In addressing whether the legislation has sufficient regard to the rights and liberties of individuals, the explanatory notes state that the offence provisions:

... are only made where it is appropriate and necessary to ensure the effective enforcement of waste management and resource recovery requirements, such as the handling of potentially harmful waste materials, and the implementation of the waste disposal levy. The offences are reasonable and

¹² According to the explanatory notes: 'This amendment will not have any effect on the operational application of the waste levy or waste levy rates'; SL No. 127, explanatory notes, p 3.

¹³ Including cotton buds with a plastic stem; expanded polystyrene loose packaging (packing peanuts); and personal care and cleaning products containing rinseable plastic microbeads.

¹⁴ By providing that a plastic shopping bag of 35 microns or more is a banned bag unless it is capable of meeting stated reusability design standards for size and durability; and contains at least 80 per cent recycled content (if it is a non-compostable bag).

¹⁵ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook (Notebook)*, 2008, p 120. See also LSA, s 4(2)(a).

¹⁶ The value of a penalty unit is \$154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

¹⁷ SL No. 127, ss 52, 53, 55 - 58, 60 - 67, 76, 77.

¹⁸ SL No. 127, Schedule 14.

¹⁹ The recovery rate, of a brand owner for a period, is the rate at which consumer packaging material is recovered by or for the brand owner for the period, expressed as a percentage, worked out using the specified formula; SL No. 127, s 72.

²⁰ SL No. 127, explanatory notes, p 5.

proportionate to environmental, social and economic risks associated with the activities and are consistent with the way existing offences are established under the Act.²¹

Committee comment

The committee notes that SL No. 127 continues the majority of the offences in the 2011 Regulation, and that the penalties appear proportionate to the offences and are consistent with the WRR Act. Consequently the committee is satisfied that SL No. 127 has sufficient regard to rights and liberties of individuals and is therefore consistent with FLPs.

5.2.2 Institution of Parliament – external documents; chief executive to prepare guidelines

Whether legislation has sufficient regard to the institution of Parliament depends on 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.²²

SL No. 127 incorporates references to a range of external documents, such as guidelines and standards, including:

- *Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1, The Guidelines*²³
- *Queensland Acid Sulfate Soil Technical Manual—Soil Management Guidelines*²⁴
- *Schedule B3—Guideline on Laboratory Analysis of Potentially Contaminated Soils*²⁵
- the criteria for deciding residue waste discounting applications, which prescribes that the chief executive may make comparisons with industry benchmarks and best practice guidelines²⁶
- *Australian/New Zealand Standard for Reusable containers for the collection of sharp items used in human and animal medical application*²⁷
- *Australian Standard for Non-reusable containers for the collection of sharp medical items used in health care areas*.²⁸

By referencing external documents, SL No. 127 is effectively sub-delegating legislative power. The explanatory notes seek to justify this by stating that the external documents referenced:

... contain highly technical information and guidance, and it is not considered practical to include all of these details in the regulation. All of the documents are readily available on the DES [Department of

²¹ SL No. 127, explanatory notes, p 5.

²² LSA, s 4(5)(e).

²³ Published by the Australian and New Zealand Environment and Conservation Council (2018), <https://www.waterquality.gov.au/sites/default/files/documents/anzecc-armcanz-2000-guidelines-vol1.pdf>. The guideline is incorporated for the purposes of prescribing types of exempt waste for the definitions of 'waste disposal site' (WRR Act, s 8A) and 'exempt waste' (WRR Act, s 26); SL No. 127, ss 6, 8 and schedule 13; explanatory notes, p 5.

²⁴ Published on the Queensland Government website (version 4), <https://www.publications.qld.gov.au/dataset/cf17fb49-0ea5-4dee-82c9-32e09bf1eab5/resource/6d880993-4b80-45e3-9110-5c24fa7a7e75/download/queensland-ass-management-guideline-2014.pdf>; SL No. 127, s 7; explanatory notes, p 5.

²⁵ Made and published by the National Environment Protection Council, <https://www.nepc.gov.au/sites/default/files/2022-09/schedule-b3-guideline-laboratory-analysis-potentially-contaminated-soils-sep10.pdf>. The guideline is incorporated for the purposes of determining when the chief executive must refuse an exempt waste application relating to earth contaminated with a hazardous contaminant for land recorded in the specified register; SL No. 127, s 10; explanatory notes, p 6.

²⁶ For the purposes of s 46 of the WRR Act; SL No. 127, s 22; explanatory notes, p 6.

²⁷ AS/NZS 4261:1994, published jointly by Standards Australia and Standards New Zealand; SL No. 127, s 64; explanatory notes, p 6.

²⁸ AS 4031-1992, published by Standards Australia; SL No. 127, s 64; explanatory notes, p 6.

Environment and Science] website, or other external websites. Any significant amendments to these documents will generally only be done in consultation with relevant stakeholders.²⁹

Additionally, SL No. 127 requires the chief executive to prepare guidelines for working out the coverage of PCBs on the surface area of PCB-contaminated metal (PCB guidelines), and publish them on the DES website.³⁰ Although not addressed by the explanatory notes in terms of its consistency with FLPs, this provision sub-delegates legislative power to the chief executive to prepare the PCB guidelines, which will result in an additional sub-delegation of legislative power to an external document (being the PCB guidelines themselves).

SL No. 127 does not provide details of criteria for, or requirements about, how the chief executive must exercise the power to prepare the PCB guidelines. Given the explanation in the explanatory notes to justify the incorporation of a range of external documents, namely that the content of those documents is technical in nature, a similar level of complexity may apply to the PCB guidelines.

It appears that the chief executive will be able to use their discretion in the preparation of these guidelines, including by selecting what expert or industrial expertise is utilised in their preparation and their final form. The PCB guidelines (like the aforementioned incorporated external documents) are published on the DES website.³¹

The PCB guidelines will not be required to be tabled in the Legislative Assembly and will not be subject to a disallowance motion.³² Similarly, any future amendment to the PCB guidelines will not be subject to Parliamentary scrutiny and will not be subject to potential disallowance. However, the PCB guidelines (and any future amended version) are (or will) be accessible on the DES website and it is (or will) be possible for a Member of the Parliament to ask the Minister questions in the Parliament about them.

Committee comment

Given the technical nature of the information to be included, the committee considers the sub-delegation of power by referencing external documents and by requiring the chief executive to prepare the PCB guidelines is appropriate in the circumstances. The committee notes that the external documents are readily available on the DES website, or other external websites, as are the PCB guidelines. Therefore, the committee is satisfied that in these circumstances, the sub-delegation of legislative power has sufficient regard to the institution of Parliament and is not inconsistent with FLPs.

5.1 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.1 Compatibility with human rights

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

5.2 Human rights certificate

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

²⁹ SL No. 127, explanatory notes, p 6.

³⁰ SL No. 127, s 50.

³¹ See Waste Management Guideline: Identifying and managing equipment containing polychlorinated biphenyls PCBs, https://environment.des.qld.gov.au/__data/assets/pdf_file/0035/88982/pr-gl-managing-pcb-equipment.pdf.

³² See *Statutory Instruments Act 1992*, ss 49, 50.

6 SL No. 131 – State Penalties Enforcement and Other Legislation Amendment Regulation 2023

6.1 Objective

The State Penalties Enforcement and Other Legislation Amendment Regulation 2023 (SL No. 131) amends the penalties for penalty infringement notices (PINs) issued under the State Penalties Enforcement Regulation 2014 (SPER) for transport offences that are cross-referenced to Department of Transport and Main Roads (TMR) legislation in the following Queensland Parks and Wildlife Service (QPWS) legislation:

- Forestry Regulation 2015 (Forestry Regulation), s 28
- Nature Conservation (Protected Areas Management) Regulation 2017 (NC Regulation), s 123
- Recreation Areas Management Regulation 2017 (RAM Regulation), s 18.³³

According to the explanatory notes, prior to the commencement of SL No. 131 on 15 September 2023, there was a disparity between the penalties for PINs issued under QPWS legislation when compared with PIN penalties issued under TMR legislation for the same offence.³⁴

The human rights certificate states that by amending SPER to increase the PIN penalties for the specified vehicle related offences, SL No. 131 ensures that vehicle-related PINs can be issued in QPWS areas for the same PIN penalty amount by QPWS authorised officers as those issued by Queensland Police officers.³⁵

The offences and their amended infringement notice penalties are:

- failure to comply with requirements on drivers and passengers about properly wearing seatbelts in motor vehicles (increase from 2 to 7.5 penalty units (\$309.60 to \$1,161.00))
- failure to wear an approved motorbike helmet while riding, or being a passenger on, a motorbike, quadbike or utility off road vehicle (increase from 2 to 3 penalty units (\$309.60 to \$464.40))
- driving a motor vehicle without due care and attention (increase from 2 to 4 penalty units (\$309.60 to \$619.20) for the NC Regulation and RAM Regulation, and new infringement notice of 4 penalty units (\$619.20) in the Forestry Regulation)
- dangerous driving of vehicles other than motor vehicles and driving a vehicle other than a motor vehicle without due care and attention (new infringement notice of 2 penalty units (\$309.60) in the Forestry Regulation).³⁶

SL No. 131 also:

- removes a duplicated offence of s 29 of the Forestry Regulation for failure to wear a motorbike helmet while riding a quad bike³⁷
- amends the offence provisions in the Forestry Regulation, the NC Regulation and the RAM Regulation that cross-reference s 83 of the *Transport Operations (Road Use Management) Act 1995* (TORUM). These offence provisions are amended to clarify that the offence applies only to s 83(1)(c) of the TORUM, which is driving without due care and attention other than where the person causes death of, or grievous bodily harm to, another person. Offences involving death or grievous bodily harm will continue to be investigated by the Police.³⁸

³³ SL No. 131, explanatory notes, p 2.

³⁴ SL No. 131, explanatory notes, p 2.

³⁵ SL No. 131, explanatory notes, p 2.

³⁶ SL No. 131, human rights certificate, p 2.

³⁷ SL No. 131, human rights certificate, p 2.

³⁸ SL No. 131, human rights certificate, p 2.

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. 131 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

October 2023

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

Mr James Martin MP, Member for Stretton

Mr Andrew Powell MP, Member for Glass House