

Health and Environment Committee

Report No. 33, 57th Parliament

Subordinate legislation tabled between 30 November 2022 and
21 February 2023

1 Aim of this report

This report summarises the findings of the Health and Environment Committee (committee) following its examination of subordinate legislation within its portfolio areas tabled between 30 November 2022 and 21 February 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 certificates with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
170 of 2022	Health and Other Legislation Amendment Regulation 2022	21 February 2023	11 May 2023
178 of 2022	Forestry (State Forests) and Other Legislation Amendment Regulation (No. 3) 2022	21 February 2023	11 May 2023
179 of 2022	Nature Conservation (Protected Areas Management) (Communications and Water Supply Uses) Amendment Regulation 2022	21 February 2023	11 May 2023
180 of 2022	Nature Conservation (Protected Areas Management) (Dularcha and Springbrook National Parks) Amendment Regulation 2022	21 February 2023	11 May 2023
192 of 2022	Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022	21 February 2023	11 May 2023
2 of 2023	Health Legislation Amendment Regulation 2023	21 February 2023	11 May 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

No significant issues were identified with the policy, consistency with FLPs, lawfulness, or compatibility with human rights of the Nature Conservation (Protected Areas Management) (Communications and

¹ *Legislative Standards Act 1992* (LSA), s 4.

² *Human Rights Act 2019* (HRA), s 8.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ LSA, pt 4.

⁵ HRA, s 41.

Water Supply Uses) Amendment Regulation 2022 or the Nature Conservation (Protected Areas Management) (Dularcha and Springbrook National Parks) Amendment Regulation 2022.

The committee identified potential FLP and human rights issues in relation to the Health and Other Legislation Amendment Regulation 2022 and the Health Legislation Amendment Regulation 2023. The committee also identified potential human rights issues in relation to the Forestry (State Forests) and Other Legislation Amendment Regulation (No. 3) 2022 and Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022. These matters are discussed further in the next sections of this report.

However, the committee was ultimately satisfied that all 6 items of subordinate legislation are consistent with FLPs and compatible with human rights.

The explanatory notes tabled with the subordinate legislation comply with the requirements of s 24 of the LSA.

The human rights certificates tabled with the subordinate legislation also generally provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with human rights. However, the human rights certificate for the Forestry (State Forests) and Other Legislation Amendment Regulation (No. 3) 2022 could be clearer as to the grounds on which the Minister's determination of compatibility with human rights was reached. This is discussed further in section 5 of this report.

4 SL No. 170 Health and Other Legislation Amendment Regulation 2022

4.1 Objectives

The objective of the Health and Other Legislation Amendment Regulation 2022 (SL No. 170) is to amend:

- the Hospital and Health Boards Regulation 2012 (HHB Regulation) to:
 - update the definitions of 'reportable events' and 'major capital works'
 - include de-amalgamated local governments⁶ in the list of local government areas covered by the health service areas of their respective hospital and health services (HHSs)
 - remove the requirement for the Minister for Health and Ambulance Services to approve the taking of leases by HHSs if the *Land Act 1994* (Land Act) applies
 - update the positions prescribed as senior health service employees to include new classifications for rural generalist medical officers
 - include the Surgical, Treatment and Rehabilitation Service adult surgical ward as a ward subject to minimum nurse-to-patient ratios
 - prescribe the updated Rheumatic Fever Strategy data sharing agreement as an agreement for which confidential information may be shared under the *Hospital and Health Boards Act 2011*
 - replace the position title of Chief Aboriginal and Torres Strait Islander Health Officer with Chief First Nations Health Officer to reflect a change in the position title in Queensland Health
- the Public Health Regulation 2018 (PH Regulation) to:
 - update the school exclusion period for children with COVID-19 at a school, education and care service, or Queensland Education and Care approved service
- the State Penalties Enforcement Regulation 2015 (SPE Regulation) to:
 - prescribe certain offences in the *Radiation Safety Act 1999* (Radiation Safety Act) as penalty infringement notice offences.⁷

⁶ That is: Douglas Shire Council, Mareeba Shire Council, Livingstone Shire Council and Noosa Shire Council. See SL No. 170, s 9.

⁷ SL No. 170, explanatory notes, pp 1-2.

4.2 Consistency with fundamental legislative principles

4.2.1 Rights and liberties of individuals

4.2.1.1 *Delegation of administrative power*

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons.⁸

Sections 4, 8 and 10 of SL No. 170 lower the level of approval required for the exercise of certain administrative powers. In particular:

- sections 4 and 10 amend the HHB Regulation to omit the requirement that the Health Minister must approve a lease or sublease to which the Land Act applies, with the relevant HHS to now approve those leases and subleases
- section 8 amends the definition of major capital works to exempt particular works from needing to be approved by the Director-General, with the relevant HHS now to approve the works.

Sections 4 and 10

The Land Act generally applies to leases within Aboriginal and Torres Strait Islander communities.⁹ According to the explanatory notes:

The requirement for Health Minister approval for Land Act leases results in time delays to lease dealings in Aboriginal and Torres Strait Islander communities compared to equivalently valued leases in the balance of communities in Queensland. The objective of the Amendment Regulation is to improve the negotiating process for taking leases in Aboriginal and Torres Strait Islander communities, reduce time delays and ensure projects to improve health services in these disadvantaged communities are able to be delivered more efficiently. It will also ensure leases in these communities are treated in the same way as equivalently valued leases in other parts of Queensland.¹⁰

The Health Minister's approval will continue to be required if the value of the lease is \$100,000 or more.¹¹

The explanatory notes state of the delegated power:

Delegation of this administrative power to the HHS is justified as the Health Minister's approval continues to be required depending on the purpose and annual rent payable for the lease or sublease. Also, decisions on the taking of a lease by a HHS are made by appropriately qualified persons employed by the HHS. HHSs continue to be accountable for their decisions to their Board and to Queensland Health by the Service Agreement that applies to the HHS. The combination of the continuing limitation on the delegation of this administrative power and accountability of the HHS justifies this delegation of administrative power.¹²

Section 8

Under the *Hospital and Health Boards Act 2011*, the chief executive is responsible for managing major capital works.¹³ Prior to the amendment made by SL No. 170, the definition of 'major capital works' captured some relatively minor building works and maintenance.¹⁴ According to the explanatory notes, the definition was 'contrary to the intent of the Hospital and Health Boards Act and Regulation' because it resulted in the need for the Director-General of Queensland Health to approve capital works 'that may be of relatively low value and low risk or for routine maintenance, testing or repair tasks that are the responsibility of a HHS'.¹⁵

⁸ LSA, s 4(3)(c).

⁹ SL No. 170, explanatory notes, p 4.

¹⁰ SL No. 170, explanatory notes, p 4.

¹¹ SL No. 170, explanatory notes, p 10.

¹² SL No. 170, explanatory notes, p 13.

¹³ *Hospital and Health Boards Act 2011*, s 8(3)(c).

¹⁴ SL No. 170, explanatory notes, p 3.

¹⁵ SL No. 170, explanatory notes, p 3.

SL No. 170 amends section 37 of the HHB Regulation so that work, other than excluded work, that requires assessment, certification, or approval under an Act, is only prescribed as major capital works if the estimated capital expenditure is \$500,000 or more. 'Excluded work' is work that only involves routine maintenance of, or repairs to, an existing building or other structure.¹⁶

The explanatory notes justify the change of delegation from the chief executive to the HHS as follows:

The amendment delegates further administrative power to a HHS to make decisions about capital works. This delegation of administrative power is justified as capital works that cost less than \$500,000 are low risk in comparison to many capital works projects for the Queensland public health system. HHSs employ appropriately qualified staff to manage capital works projects that are subject to appropriate governance and accountability structures. For these reasons the delegation of these administrative powers is appropriate, and the powers are delegated to appropriate persons.¹⁷

Committee comment

Noting the justifications provided in the explanatory notes for the changes to the delegations of administrative power, the committee is satisfied that the relevant provisions have sufficient regard to the rights and liberties of individuals.

4.2.1.2 Privacy

The right to privacy and the non-disclosure of confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

SL No. 170 prescribes the agreement dated 28 April 2022 called 'National Partnership Agreement on Specified Projects – Schedule E – Rheumatic Fever Strategy' between Queensland and the Commonwealth of Australia as one under which a designated person may disclose confidential information.¹⁸

The agreement provides for:

... the collection and provision of data for national monitoring and reporting of ARF and RHD and measuring program effectiveness in the detection and management of ARF [acute rheumatic fever] and RHD [rheumatic heart disease]. Under this agreement, Queensland Health is required to provide all available and relevant ARF and RHD data as specified by the Commonwealth to the National Coordination Unit and/or directly to the Commonwealth (including the Australian Institute of Health and Welfare).¹⁹

Given that SL No. 170 prescribes the agreement as one under which a designated person may disclose confidential information, it can impact on a person's right to privacy. The explanatory notes justify the disclosure of confidential information on the basis of the expected benefits to be derived from the release of the information and the protections in place:

The aim of sharing information for the Rheumatic Fever Strategy is to improve monitoring and management of ARF and RHD for persons who experience these conditions. A number of safeguards are in place to protect the information that is shared and to ensure that it is only used for the designated purpose. The safeguards include restricting user access to the Rheumatic Heart Disease Register by the use of security profiles ensuring only authorised users have access to the information for the purpose that is intended. The sharing of this confidential information is therefore considered justified due to the benefits provided by the sharing of the information and appropriate safeguards in place to protect the shared information.²⁰

Committee comment

Noting the justification provided in the explanatory notes, the committee is satisfied that the relevant provision has sufficient regard to FLPs.

¹⁶ SL No. 170, s 8.

¹⁷ SL No. 170, explanatory notes, pp 13-14.

¹⁸ SL No. 170, s 13. See also *Hospital and Health Boards Act 2011*, s 151.

¹⁹ SL No. 170, explanatory notes, p 6.

²⁰ SL No. 170, explanatory notes, p 15.

4.2.1.3 Penalties

Penalties need to be considered when determining whether legislation has sufficient regard to the rights and liberties of individuals. Penalties should be proportionate and relevant.²¹

Prior to the commencement of SL No. 170, no offences in the Radiation Safety Act were prescribed as infringement notice offences. This meant that if enforcement action (eg issuing improvement notices and prohibition notices) failed to achieve compliance, the only other enforcement option available to Queensland Health was to prosecute the offence in court.²²

SL No. 170 introduced into the SPE Regulation infringement notice offences and fines for certain breaches of the Radiation Safety Act.²³ The objective of the amendment is ‘to provide inspectors appointed under the Radiation Safety Act, with an alternative prosecution pathway for minor Radiation Safety Act offences’.²⁴ Prosecution through court proceedings will continue to be available for serious breaches or offences.²⁵

The offences for which an infringement notice may be issued include failing to:

- make a notification, or give a copy of a report, to the chief executive as required under the Act;
- return a licence or other instrument to the chief executive in prescribed circumstances;
- notify of a change in circumstances;
- return an identity card; or
- cooperate with a direction of an inspector.²⁶

The explanatory notes state:

These offences are all minor and considered suitable to be dealt with by a fine. Imposing fines for non-compliance with these requirements in the Radiation Safety Act is an appropriate and proportionate response to the offending behaviour.²⁷

In addressing issues relating to FLPs, the explanatory notes state the penalty amounts in SL No. 170 are ‘generally consistent with similar offences and penalty amounts contained in other health portfolio legislation’.²⁸ Further, infringement notices are considered to be ‘an effective enforcement response’ and ‘can help manage demand on Queensland’s courts while maintaining a person’s right to access the judicial system if they wish to challenge the offence for which the infringement notice was issued’.²⁹

Committee comment

Noting that the offences to be included in the SPE Regulation are comparatively minor, that the penalty amounts are generally consistent with those in other health portfolio legislation, and that infringement notices offer a non-prosecutorial action alternative, the committee is satisfied that the amendment to the SPE Regulation has sufficient regard to the rights and liberties of individuals.

²¹ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 120.

²² SL No. 170, explanatory notes, p 8.

²³ SL No. 170, s 20 (Amending sch 1 of the State Penalties Enforcement Regulation 2014, ‘Infringement notice offences and fines for nominate laws’).

²⁴ SL No. 170, explanatory notes, p 9.

²⁵ SL No. 170, explanatory notes, p 9.

²⁶ SL No. 170, explanatory notes, p 11.

²⁷ SL No. 170, explanatory notes, p 11.

²⁸ SL No. 170, explanatory notes, p 15.

²⁹ SL No. 170, explanatory notes, p 15.

4.2.2 Institution of Parliament

4.2.2.1 *Sub-delegation*

Whether subordinate 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.³⁰

The *Public Health Act 2005* (Public Health Act) defines a ‘contagious condition’ as a contagious medical condition prescribed under a regulation as a contagious condition.³¹ Schedule 4 of the PH Regulation sets out the conditions that are contagious conditions, and the prescribed periods for the contagious conditions.³²

SL No. 170 amends the PH Regulation to alter how the end of the prescribed period for COVID-19 is to be determined, with this period now to be determined in reference to the ‘relevant public health direction’ in effect, for which an isolation or quarantine period is prescribed (replacing the particular conditions and timings previously listed).³³ Such a public health direction is a direction given by the chief health officer,³⁴ and given this documentation is external to the Public Health Act and its regulation, it raises a question as to whether this aspect of the regulation has sufficient regard to the institution of Parliament.

It can be noted, however, that public health directions must be brought to the attention of Parliament via tabling.³⁵ On this basis, the explanatory notes contend that the reference to the external document is justified in the circumstances:

Reference to an external document is considered justified as public health directions must be tabled in Parliament within 21 days from when the direction is given. This requirement is created by section 142L(2) of the Public Health Act. Section 142L(2) also provides that if the direction is not tabled within this timeframe, it ceases to have effect. Once the direction is tabled, it will be referred to the relevant portfolio committee of Parliament, under section 93 of the *Parliament of Queensland Act 2001*, so the committee may examine the lawfulness of the direction, the policy to be given effect by the direction and whether the direction is compatible with human rights. The public health direction will be subject to disallowance in accordance with the procedures for disallowing subordinate legislation under section 50 of the *Statutory Instruments Act 1992*.

In addition to these tabling and disallowance provisions, within five days of giving a public health direction, the Chief Health Officer must publish a statement justifying the direction and the reasons for it. The justification statement must include a summary of the Chief Health Officer’s rationale for giving the direction and assess whether the direction is compatible with human rights. The justification statement must also be tabled in Parliament within 21 days so that the portfolio committee may consider it when examining the direction.³⁶

Committee comment

Given that public health directions are brought to the attention of Parliament through tabling, are accompanied by a statement provided by the chief health officer justifying the direction, and are subject to disallowance provisions, the committee is satisfied that the reference to an external document is reasonable and has sufficient regard to the institution of Parliament.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

³⁰ LSA, s 4(5)(e).

³¹ *Public Health Act 2005*, s 158.

³² Public Health Regulation 2018 (Ph Regulation), sch 4; see also ss 35, 36.

³³ SL No. 170, s 17.

³⁴ See *Public Health Act 2005*, s 142E.

³⁵ *Public Health Act 2005*, s 142L(2).

³⁶ SL No. 170, explanatory notes, p 14.

4.4 Human rights considerations

Limitations on the rights to privacy, freedom of movement, liberty, education, the protection of families and children, property rights, the right to a fair hearing and rights in criminal proceedings are discussed in the human rights certificate. A summary of some of the matters raised and considered by the committee is provided below.

4.4.1 Privacy – Rheumatic Fever Strategy

Under the HRA, a person has the right not to have the person’s privacy unlawfully or arbitrarily interfered with.³⁷ As discussed above, SL No. 170 impacts on the right to privacy by prescribing the new information sharing agreement for the Rheumatic Fever Strategy (Strategy), enabling the sharing of confidential client information with bodies outside Queensland Health.³⁸

According to the human rights certificate:

- the interference with privacy is neither unlawful nor arbitrary³⁹
- the Strategy ‘will support the delivery of improved detection, monitoring, and management of acute rheumatic fever and rheumatic heart disease in Aboriginal and Torres Strait Islanders through coordinated disease register and control programs’⁴⁰
- the promotion of health and wellbeing for the community, particularly for those experiencing ARF and RHD, outweighs the restrictions placed on individuals.⁴¹

4.4.2 Freedom of movement and right to education – School exclusion period for children with COVID-19

Every person lawfully within Queensland has the right to move freely within Queensland and to enter it and leave it.⁴² Every child has the right to have access to primary and secondary education appropriate to the child’s needs.⁴³

SL No. 170 limits the right to freedom of movement and a child’s right to education by ‘granting the person in charge of a school, education or care service the ability to manage the child’s attendance if the child is required to isolate or quarantine under a public health direction issued by the Chief Health Officer’.⁴⁴ The human rights certificate states:

Restricting a child with COVID-19 or who is reasonably suspected of having COVID-19 is vital to managing the spread of the virus within school, education and care environments. Isolation and quarantine have been key measures in Queensland’s approach to managing diagnosed cases and close contacts.⁴⁵

The human rights certificate adds:

Prescribing COVID-19 as a contagious condition is in line with the management of conditions such as human influenza with pandemic potential, hepatitis A, measles, meningococcal and gastroenteritis within the school, education and care service environment.

The limitation on the right to education is mitigated by schools providing appropriate educational materials and activities students may complete while not attending school face-to-face. This occurs in a variety of contexts if a student is unable to attend school.⁴⁶

³⁷ HRA, s 25.

³⁸ SL No. 170, human rights certificate, p 3.

³⁹ SL No. 170, human rights certificate, p 4.

⁴⁰ SL No. 170, human rights certificate, pp 3-4.

⁴¹ SL No. 170, human rights certificate, p 4.

⁴² HRA, s 19.

⁴³ HRA, s 36.

⁴⁴ SL No. 170, human rights certificate, p 5.

⁴⁵ SL No. 170, human rights certificate, p 5.

⁴⁶ SL No. 170, human rights certificate, pp 6-7.

Overall, the human rights certificate concludes that the safety and wellbeing of the community outweighs the restrictions placed on individuals.⁴⁷ Further, it is stated that there are no less restrictive or reasonably available ways to achieve the purpose of the provisions, with the certificate also highlighting that: 'The power in the PH Regulation contains a sunset clause to ensure it aligns with the COVID-19 management framework, by ending on 31 October 2023, unless otherwise extended'.⁴⁸

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights, noting the important health and safety-related purposes of the limitations and the relevant safeguards that apply. The committee considers that any limitations or impositions on rights are only to the extent that is reasonable and demonstrably justifiable, in accordance with section 13 of the HRA.⁴⁹

4.5 Human rights certificate

The human rights certificate tabled with SL No. 170 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 SL No. 178 Forestry (State Forests) and Other Legislation Amendment Regulation (No. 3) 2022

5.1 Objective

The Forestry (State Forests) and Other Legislation Amendment Regulation (No. 3) 2022 (SL No. 178):

- revokes the declaration of one nature refuge and parts of one State plantation forest designation
- increases the area of 3 national parks, one conservation park and 5 nature refuges
- declares 6 new nature refuges
- redescribes one nature refuge.⁵⁰

5.2 Consistency with fundamental legislative principles

No FLP issues were identified.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Human rights considerations

5.4.1.1 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

The human rights certificate tabled with SL No. 178 acknowledges that dedicating new or amending existing protected areas may have an 'indirect impact, or create limitations' on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples in relation to land, because it changes the tenure of land in those areas.⁵¹ In the case of SL No. 178, the tenure of land owned by the Department of Environment and Science has been changed to national park.⁵²

⁴⁷ SL No. 170, human rights certificate, p 7.

⁴⁸ SL No. 170, human rights certificate, p 7.

⁴⁹ Section 8 of the HRA relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

⁵⁰ SL No. 178, explanatory notes, p 1.

⁵¹ SL No. 178, human rights certificate, p 2.

⁵² SL No. 178, human rights certificate, p 2.

While initially acknowledging this potential limitation on cultural rights, the Minister for the Environment and the Great Barrier Reef states at the conclusion of the certificate that she considers that SL No. 178 does not limit human rights.⁵³ As such, the certificate does not address the elements of section 13 of the HRA (which are relevant to determining whether any limitation is reasonable and justifiable), which makes it more difficult for other parties to make an assessment in this regard.

The human rights certificate relevantly states elsewhere:

The core aim of dedicating new or amending existing protected areas is to permanently preserve, to the greatest extent possible, the area's natural condition, to protect the area's cultural resources and values and provide for ecologically sustainable activities and ecotourism.⁵⁴

Further, the certificate states:

The dedication of a protected area has the potential to broaden long-term cultural practices to be undertaken on the land through conservation and protection of the environment and productive capacity of the land.⁵⁵

In addition, relevant to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, the explanatory notes state: 'Protected areas ... provide special places for recreation and tourism activities and are often places of important cultural and spiritual significance for Traditional Owners'.⁵⁶

The human rights certificate notes that during consultation on the proposed amendments to the forestry and protected area estates, the department sought 'views in consideration of the *Human Rights Act 2019*, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights', but that it did not receive any written responses in the 28-day consultation period.⁵⁷

Committee comment

The committee is satisfied that any limitation of rights is only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

5.5 Human rights certificate

As noted above, in the human rights certificate tabled with SL No. 178, the Minister acknowledges a potential limitation on cultural rights associated with changes to protected areas, but later states that the regulation's changes to such areas do not limit human rights. As such, where a certificate acknowledging a limitation would normally set out the factors informing the Minister's determination as to whether the limitation is reasonable and demonstrably justifiable (with reference to factors outlined in section 13 of the HRA), detail of this nature has not been provided in this instance.

Noting the explanations provided in the human rights certificate and explanatory notes, it may be that the Minister considers that cultural rights are in this case promoted, rather than limited by the regulation's extension of protected areas. However, the certificate is not explicit in this regard.

Committee comment

The human rights certificate tabled with SL No. 178 covers the matters required to be addressed in a certificate under section 41 of the HRA. However, the certificate could be clearer as to the grounds on which the Minister's determination of compatibility with human rights was made.

⁵³ SL No. 178, human rights certificate, p 3.

⁵⁴ SL No. 178, human rights certificate, p 2.

⁵⁵ SL No. 178, human rights certificate, p 2.

⁵⁶ SL No. 178, explanatory notes, p 5.

⁵⁷ SL No. 178, human rights certificate, p 2.

6 SL No. 179 Nature Conservation (Protected Areas Management)(Communications and Water Supply Uses) Amendment Regulation 2022

6.1 Objectives

The Nature Conservation (Protected Areas Management) (Communications and Water Supply Uses) Amendment Regulation 2022 (SL No. 179) prescribes specified uses in 2 national parks:

- a water supply use in Grey Peaks National Park
- a communications use in D’Aguilar National Park.⁵⁸

The effect of SL No. 179 is to allow the chief executive, at their discretion, to approve an authority under section 35 of the *Nature Conservation Act 1992* (NC Act) for:

- Energex Limited to operate and maintain an existing communications facility within D’Aguilar National Park
- Cairns Regional Council to operate and maintain an existing water facility within Grey Peaks National Park.⁵⁹

The human rights certificate advises:

All the proponents have provided an application under the NC Act to address how the activity will meet the management principles of a National Park, address public interest and to ensure that no practicable alternatives exist. An Environmental Management Plan is 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.⁶⁰

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

7 SL No. 180 Nature Conservation (Protected Areas Management) (Dularcha and Springbrook National Parks) Amendment Regulation 2022

7.1 Objectives

The Nature Conservation (Protected Areas Management) (Dularcha and Springbrook National Parks) Amendment Regulation 2022 (SL No. 180) prescribes specified uses in 2 national parks:

- a water supply use and a sewerage use in Dularcha National Park
- a communications use in Springbrook National Park.⁶¹

⁵⁸ SL No. 179, s 3.

⁵⁹ SL No. 179, human rights certificate, p 2.

⁶⁰ SL No. 179, human rights certificate, p 3.

⁶¹ SL No. 180, s 3.

The effect of SL No. 180 is to allow the chief executive, at their discretion, to approve an authority under section 35 of the NC Act for:

- Unitywater to operate and maintain an existing water facility within Dularcha National Park
- Gold Coast Amateur Radio Society to operate and maintain an existing communication facility within Springbrook National Park.⁶²

As with SL No. 179, the human rights certificate advises:

All the proponents have provided an application under the NC Act to address how the activity will meet the management principles of a National Park, address public interest and to ensure that no practicable alternatives exist. An Environmental Management Plan is 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.⁶³

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 Human rights considerations

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

8 SL No. 192 Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022

8.1 Objectives

The Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022 (SL No. 192):

- revokes the declaration of parts of one state plantation forest
- revokes parts of three state forests
- redescribes and subsequently revokes parts of one state forest and dedicates the area as part of an existing national park
- redescribes parts of one national park
- redescribes part of, and subsequently changes the class of part of, one national park and dedicates the area as part of an existing resources reserve
- revokes parts of two national parks.⁶⁴

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.

⁶² SL No. 180, human rights certificate, p 2.

⁶³ SL No. 180, human rights certificate, p 2.

⁶⁴ SL No. 192, explanatory notes, p 1.

8.4 Human rights considerations

The human rights certificate identifies the right to freedom of movement and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples as rights that may be limited by SL No. 192.⁶⁵ These rights are discussed below. The Minister concluded that any limitation is only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁶⁶

8.4.1 Right to freedom of movement

State forest areas are generally accessible for recreational purposes, such as walking, hiking, mountain biking, and may be available for other activities, such as stock grazing and camping.⁶⁷ Revoking a protected area or state forest may mean that freedom of movement may be limited. In recognition of this, the statement of compatibility observes: ‘The proposed excision areas are typically small in area and, through the revocation application process, the impact on environmental, social and cultural values of the proposed revocation area is assessed’.⁶⁸

8.4.2 Cultural rights—Aboriginal peoples and Torres Strait Islander peoples

The human rights certificate recognises that SL No. 192 may impact on the ability of First Nations peoples to enjoy and exercise their cultural rights ‘by limiting their access to areas following a revocation and by the changes to the physical landscape’.⁶⁹

The human rights certificate states that the limitation on cultural rights is mitigated through the preparation of a cultural heritage management plan in consultation with the traditional owners of the land in accordance with the *Aboriginal Cultural Heritage Act 2003*. Also, native title rights and interests must be satisfied in the revocation process in accordance with the *Native Title (Queensland) Act 1993*.⁷⁰

Views on the impact on human rights, including the impacts of certain changes on Aboriginal peoples’ and Torres Strait Islander peoples’ cultural rights, were sought during the consultation process, but no relevant written responses were received.⁷¹

Committee comment

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

9 SL No. 2 Health Legislation Amendment Regulation 2023

9.1 Objectives

The Health Legislation Amendment Regulation 2023 (SL No. 2) amends the:

- HHB Regulation to prescribe the updated Electronic Donor Record (EDR) Agreement to allow Queensland Health to continue to share confidential patient information with other states and territories and the Commonwealth Organ and Tissue Authority, for organ and tissue donation purposes
- Transplantation and Anatomy Regulation 2017 to remove the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank from the list of entities included in the

⁶⁵ SL No. 192, human rights certificate, p 3. See HRA, ss 19 and 28.

⁶⁶ SL No. 192, human rights certificate, p 4.

⁶⁷ SL No. 192, statement of compatibility, p 3.

⁶⁸ SL No. 192, human rights certificate, p 3.

⁶⁹ SL No. 192, human rights certificate, p 4.

⁷⁰ SL No. 192, human rights certificate, p 4.

⁷¹ SL No. 192, human rights certificate, p 4.

definition of tissue bank, because the functions of these entities are now performed by the Queensland Tissue Bank.⁷²

The EDR provides ‘real time access to essential information about organ and tissue donors to facilitate the organ and tissue donation and transplantation process’.⁷³ In 2022, a new EDR Agreement was signed by all the Australian states and territories and executed by the Commonwealth Government. As a result, to allow Queensland Health to continue to share confidential information with the other states and territories and the Organ and Tissue Authority, SL No. 2 prescribes the updated EDR Agreement as an agreement for which the disclosure of confidential information to the Commonwealth or another state, or to Commonwealth or state entities, is permitted.⁷⁴

9.2 Consistency with fundamental legislative principles

9.2.1 Rights and liberties of individuals

9.2.1.1 Privacy

The right to privacy and the non-disclosure of confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of individuals. These matters are discussed below in section 9.4.1.

9.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.4 Compatibility with human rights

9.4.1 Right to privacy

A person has the right not to have their privacy unlawfully or arbitrarily interfered with.⁷⁵

SL No. 2 could be considered to limit the right to privacy because it prescribes the updated EDR Agreement as an agreement for which Queensland Health may share confidential information under the *Hospital and Health Boards Act 2011*.

The purpose of sharing the information is ‘to promote the health of the people whose information is shared and the wider community’.⁷⁶ According to the human rights certificate tabled with the subordinate legislation, the interference with the right to privacy is not unlawful or arbitrary because it ‘must be done in compliance with the Hospital and Health Boards Act’.⁷⁷ The Minister concluded that, notwithstanding the possible limitation, SL No. 2 is compatible with human rights:

It is considered the overall benefit to the community of improved health outcomes for those requiring organ and tissue transplants provided by the EDR outweighs potential limitations on the right to privacy of donors of organs and tissues.⁷⁸

Committee comment

The committee is satisfied that SL No. 2 has sufficient regard to the rights and liberties of individuals and that the subordinate legislation is compatible with human rights.

⁷² SL No. 2, explanatory notes, p 1.

⁷³ SL No. 2, explanatory notes, p 1.

⁷⁴ SL No. 2, explanatory notes, p 2. See SL No. 2, s 3 (amending the HHB Regulation 2012, sch 3, pt 1 (referenced in s 36); see also *Hospital and Health Boards Act 2011*, s 151(1)(a)(i)(B)).

⁷⁵ HRA, s 25(a).

⁷⁶ SL No. 2, human rights certificate, p 3.

⁷⁷ SL No. 2, human rights certificate, p 3.

⁷⁸ SL No. 2, human rights certificate, p 4.

9.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of SL No. 2 in relation to its compatibility with human rights.

10 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

Chair

May 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 Samuel (Sam) O'Connor MP, Member for Bonney
	Ms Joan Pease MP, Member for Lytton