

Health and Environment Committee

Report No. 7, 57th Parliament

Subordinate legislation tabled on 23 February 2021

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled on 23 February 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),³ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁴

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
255	Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020	23 February 2021	13 May 2021
258	Forestry (State Forests) and Other Legislation Amendment Regulation 2020	23 February 2021	13 May 2021
259	Nature Conservation (Macropod Harvest Period 2021) Notice 2020	23 February 2021	13 May 2021
260	Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 6) 2020	23 February 2021	13 May 2021

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

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

³ LSA, part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁴ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (HRA, s 41(2)).

5	Health (Drugs and Poisons) (COVID-19 Vaccination Services) Amendment Regulation 2021	23 February 2021	13 May 2021
8	Nature Conservation (Protected Areas) Amendment Regulation 2021	23 February 2021	13 May 2021

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

3 SL No. 255: Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020

Part 7 of the *Transplantation and Anatomy Act 1979* provides for a general prohibition on trading in human tissue and section 42A allows tissue banks to recover costs associated with removing, evaluating, processing, storing or distributing donated tissue, and to sell donated tissue for a cost-recovery amount.⁵

The explanatory notes state:

In 2018, the Australian Commission on Safety and Quality in Health Care released a report of a health service investigation into the Queensland Heart Valve Bank. The Director-General of Queensland Health accepted all recommendations in the report, including the recommendation to combine all existing tissue banks in Queensland into a single structure.⁶

According to the explanatory notes, Metro South Hospital and Health Service (HHS) operates an Organ and Tissue Donation Service, which trades in various types of tissue products under three separate trading entities – the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank. Metro South HHS has committed to the Queensland Tissue Bank becoming the single tissue bank for Queensland, combining the capabilities of the Queensland Bone Bank, Queensland Eye Bank and Queensland Heart Valve Bank.⁷

The purpose of the Transplantation and Anatomy (Tissue Banks) Amendment Regulation 2020 is to amend the Transplantation and Anatomy Regulation 2017 to prescribe the Queensland Tissue Bank as an entity that can recover costs under section 42A of the *Transplantation and Anatomy Act 1979*.⁸

3.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

3.2 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

3.3 Human rights considerations

The committee identified no potential human rights issues relating to the subordinate legislation.

3.3.1 Human rights issues in the regulation

In the human rights certificate accompanying the amendment regulation, the Minister stated that in her opinion the amendment regulation 'is compatible with the human rights protected by the *Human Rights Act 2019*'.⁹

⁵ Explanatory notes, p 1.

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 1.

⁸ Explanatory notes, p 2.

⁹ Human rights certificate, p 1.

3.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

4 SL No. 258: Forestry (State Forests) and Other Legislation Amendment Regulation 2020

The Forestry (State Forests) and Other Legislation Amendment Regulation 2020:

- revokes parts of the state forest and protected area estates to allow for essential uses that are inconsistent with protected area and forestry tenure, such as road infrastructure
- better defines the boundaries of the forestry estate through the completion of a new Administrative Plan using contemporary survey and mapping technology and standards
- increases the area of the protected area estate to allow for the conservation of nature while allowing for the involvement of First Nations peoples in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.¹⁰

Specifically, the regulation:

- provides for the revocation of parts of Booyal State Forest and Cordalba State Forest to allow for upgrades to road infrastructure along the Bruce Highway south-west of Bundaberg
- provides for the revocation of part of Tewantin National Park to allow for road upgrades as part of the Tewantin Bypass
- provides for the dedication of a separate area of unallocated state land as part of Tewantin National Park
- redescribes the entirety of Beerburrum East State Forest (as a result of the use of contemporary survey and mapping technology and standards).¹¹

4.1 Fundamental legislative principle issues

The committee identified no potential FLP issues relating to the subordinate legislation.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

4.3 Human rights considerations

The committee identified 2 potential human rights issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

4.3.1 Human rights issues in the regulation

In the human rights certificate accompanying the amendment regulation, the Minister stated that in her opinion 'the *Forestry (State Forests) and Other Legislation Amendment Regulation 2020* is compatible with the human rights protected by the Human Rights Act 2019'.¹²

The committee considered the following potential human rights issues.

4.3.2 Human Rights Act 2019, section 19 – freedom of movement

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

¹⁰ Explanatory notes, p 1.

¹¹ Explanatory notes, pp 2-3.

¹² Human rights certificate, p 1.

The regulation provides for the addition of land to an existing national park. This tenure of land could be seen as limiting a person's freedom of movement by restricting the use of vehicles and other modes of transport on the land, or by requiring people to only use designated tracks or walk ways.

The Minister advises:

The limitation on the right to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by the relevant person complying with simple requirements, such as using an existing track, alternative path, or less damaging mode of movement (e.g. walking rather than driving) to traverse land and only applies to the land that is being added to the public protected area estate. As the limitation has a very limited scope, and persons subject to it have the ability to move freely throughout Queensland by complying with simple requirements, the limitation provides for an appropriate balance between the purpose of the limitation and the impact on an affected person and is therefore justified.¹³

Committee comment

The committee is satisfied that any limitation on a person's right to freedom of movement is reasonable and demonstrably justified.

4.4 Human Rights Act 2019, section 28 – cultural rights – Aboriginal peoples and Torres Strait Islander peoples

Section 28 of the HRA recognises the distinct cultural rights of Aboriginal and Torres Strait Islander peoples.

The prescribing of additional land as national park could be seen as limiting the rights of Aboriginal and Torres Strait Islander peoples by imposing restrictions on the ways in which the land may be accessed and used. As set forth by the Minister:

Restrictions on the ways that the land may be used and accessed as a result of becoming protected area tenure, or being revoked and opened as road, may limit the ability for Aboriginal peoples and Torres Strait Islander peoples that have a connection to the land under Aboriginal tradition or Island custom, to maintain and strengthen their distinctive spiritual, material and economic relationship with land in certain circumstances.¹⁴

The Minister gives this justification:

... these restrictions help ensure public safety and/or protect and promote the section 28 cultural rights, through the preservation of land in perpetuity, which helps ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to maintain and strengthen their distinctive relationship with the land in the long term.¹⁵

Committee comment

The committee is satisfied that any limitation on the cultural rights of Aboriginal and Torres Strait Islander peoples is reasonable and demonstrably justified.

4.5 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

¹³ Human rights certificate, p 4.

¹⁴ Human rights certificate, pp 5-6.

¹⁵ Human rights certificate, p 6.

5 SL No. 259: Nature Conservation (Macropod Harvest Period 2021) Notice 2020

The *Nature Conservation Act 1992*, provides for the management of wildlife in accordance with conservation plans.¹⁶ The main purpose of the Nature Conservation (Macropod) Conservation Plan 2017 (made pursuant to the *Nature Conservation Act 1992*) is to manage the taking, keeping and use of macropods to ensure the taking, keeping and use is ecologically sustainable and humane.¹⁷ The plan provides that a written notice (a harvest period notice) may be prepared to declare a harvest period.¹⁸

The Nature Conservation (Macropod Harvest Period 2021) Notice 2020 declares a harvest period from 1 January 2021 to 31 December 2021 for harvest macropods.

A harvest period notice is issued by the chief executive annually to declare a harvest period for protected macropods in a given period and sets quotas for the allowable harvest of particular species that are of least concern. This harvest period notice provides for the lawful harvesting of three species of macropod – eastern grey kangaroo, red kangaroo and common wallaroo.¹⁹

Both the harvest period notice²⁰ and the Nature Conservation (Macropod) Conservation Plan 2017 are subordinate legislation.²¹

5.1 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

5.1.1 *Legislative Standards Act 1992, section 4(5)* – institution of Parliament

The harvest period notice sets out conditions on taking harvest macropods, which include that macropods must be harvested in accordance with the 'National code of practice for the humane shooting of kangaroos and wallabies for commercial purposes' (the code). The code is an external document not incorporated into the subordinate legislation.

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:

- if authorised by an Act
- in appropriate cases and to appropriate persons.²²

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is, incorporated into the legislative framework of the state, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament. The law-making power is in effect delegated to an outside body.

In considering whether it is appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have

¹⁶ *Nature Conservation Act 1992*, ss 120H-120K and 175.

¹⁷ Nature Conservation (Macropod) Conservation Plan 2017, s 4.

¹⁸ Nature Conservation (Macropod) Conservation Plan 2017, s 11.

¹⁹ Explanatory notes, p 1.

²⁰ See the Statutory Instruments Regulation 2012, s 2(3) and schedule 1.

²¹ *Nature Conservation Act 1992*, s 120J.

²² LSA, s 4(5)(e).

considered the importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.

The code is a national document intended to guide regulation of humane harvesting practices for the commercial kangaroo industry in Australia. The explanatory notes state that the justification for the incorporation of the code is to comply with Australian Government obligations for sustainable use and export of protected wildlife.²³ Section 6(3) of the harvest period notice sets out the title and date of the code, and where the code can be accessed. Previous harvest period notices have included reference to this code in a similar manner.

Committee comment

In the circumstances, the committee is satisfied that the reference to the code is justified, such that the subordinate legislation has sufficient regard to the institution of Parliament.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

5.3 Human rights considerations

The committee identified no potential human rights issues relating to the subordinate legislation.

5.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provided a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

6 SL No. 260: Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 6) 2020

The regulation further extends the period of a declared public health emergency to allow for emergency powers to be used to reduce the risk of COVID-19 spreading. The regulation extends the declared public health emergency for a further period of 46 days (until the end of 31 March 2021).

The declaration of the public health emergency was made by the Minister on 29 January 2020, and notified in the gazette on 31 January 2020.²⁴ It has previously been extended on a number of occasions. (See SL 7, SL 8, SL 13, SL 154 and SL 249.)

According to the explanatory notes, extending the duration of the declared public health emergency until 31 March 2021 is considered essential to limiting, and responding to, the potential spread of COVID-19 in Queensland.²⁵

Committee comment

The committee appreciates the importance of the extension of this regulation in protecting the health of all Queenslanders by limiting, and responding to, the potential spread of COVID-19 in Queensland.

6.1 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

²³ Explanatory notes, p 3.

²⁴ Explanatory notes, p 2.

²⁵ Explanatory notes, p 3.

6.2 Legislative Standards Act 1992, section 4(2)(a) – rights and liberties of individuals and section 4(3)(e) – power to enter premises

The effect of declaring (and also of extending) a public health emergency is that a number of powers in the *Public Health Act 2005* (Public Health Act) are vested in an ‘emergency officer’ who is responding to the declared public health emergency. These powers include the power to require a person to:

- not enter or not to remain within a place
- stop using a place for a stated purpose
- go to or stay in a stated place
- answer questions.²⁶

An emergency officer also has the power to enter a place to save a human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Reasonable force is permitted to be used to enter a place.²⁷

The emergency officer must make a reasonable attempt to seek consent for entry, but need not do so if the officer believes on reasonable grounds that immediate entry is required.²⁸

Legislation should not, without sufficient justification, unduly restrict ordinary activities. The right to personal liberty is the most elemental and important of all common law rights.²⁹

Entry without consent into any place where a person lives requires the highest justification.³⁰

An individual would normally expect to be able to enjoy freedom of movement. The former Scrutiny of Legislation Committee considered the ultimate question was whether an acceptable balance was struck between the obvious need to adequately protect and promote the health of the public on the one hand and the rights and liberties of the individual on the other.³¹

The explanatory notes provide this advice regarding protections to limit the exercise of the powers of emergency officers:

The powers of emergency officers are discretionary and are only expected to be exercised if there are significant risks to public health. Additionally, the Public Health Act includes protections to limit the exercise of emergency officers’ powers. For example:

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier’s consent to the entry (section 344);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2));
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353); and

²⁶ Public Health Act, s 345.

²⁷ Public Health Act, s 343.

²⁸ Public Health Act, s 344.

²⁹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 96.

³⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 45.

³¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 101.

- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4)).³²

The explanatory notes offer the following justification:

... it is considered that any potential impact the Regulation has on the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the potential spread of COVID-19.³³

The powers described above are already contained within the Public Health Act, and are triggered by the declaration (and any extension) of a public health emergency, in this case due to the outbreak of COVID-19.

Committee comment

Given the overall public health imperative to prevent the spread of COVID-19 in Queensland, the committee is satisfied that any potential breach of FLPs is sufficiently justified.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

6.4 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

6.4.1 Human rights issues in the regulation

In the human rights certificate accompanying the regulation, the Minister states her opinion that the regulation is compatible:

- with the human rights protected by the HRA³⁴
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.³⁵

6.4.2 Human Rights Act 2019, section 19 – freedom of movement

Under section 19 of the HRA, every person has the right to move freely within Queensland and to enter and leave it.

The Regulation provides for the continuation of powers given to emergency officers under the Public Health Act to do the following:

- require a person to not enter or not remain within a place
- stay in a stated place
- stop using a place for a stated purpose.³⁶

This will impact on a person's right to freedom of movement.

6.4.3 Human Rights Act 2019, section 20 – freedom of thought, conscience, religion and belief

Under section 20 of the HRA, every person has the right to freedom of thought, conscience, religion and belief.

³² Explanatory notes, p 4.

³³ Explanatory notes, p 4.

³⁴ Human rights certificate, p 1.

³⁵ Human rights certificate, p 11.

³⁶ Human rights certificate, pp 4-5.

The regulation provides emergency officers the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs.

6.4.4 Human Rights Act 2019, section 21 – freedom of expression

Under section 21 of the HRA, every person has the right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds.

A person's movements may be restricted under this regulation, which may limit the ways in which people can express their opinions and ideas.

6.4.5 Human Rights Act 2019, section 22 – peaceful assembly and freedom of association

Under section 22 of the HRA, every person has the right to peaceful assembly.

The restriction on a person's movements may limit their ability to assemble peacefully.

6.4.6 Human Rights Act 2019, section 27 – cultural rights – generally and Human Rights Act 2019, section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples

Persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture and to practise their religion.

The HRA recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.

The restrictions on a person's movement could limit a person's cultural rights to engage with community and their traditionally owned or otherwise occupied lands and waters.

6.4.7 Human Rights Act 2019, section 23 – taking part in public life

Under section 23 of the HRA, every person has the right to participate in the conduct of public affairs.

The restrictions on a person's movement or ability to interact with other persons may impact on a person's right to take part in public life.

6.4.8 Human Rights Act 2019, section 24 – property rights

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

Emergency officers have the power to:

- demolish structures or other property
- remove an animal, substance or thing from a place
- dispose of an animal, substance or thing at a place
- destroy animals at a place or remove animals for destruction at another place
- take action in relation to property.³⁷

All these actions will impact on a person's property rights and will deprive them of their property.

6.4.9 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Being compelled to provide a name and address and to answer questions limits a person's human right to privacy.

6.4.10 Human Rights Act 2019, section 29 – right to liberty and security of person

Under section 29 of the HRA, a person must not be subject to arbitrary arrest or detention.

³⁷ Human rights certificate, p 6.

The regulation provides powers to emergency officers to restrict people's movements, including requiring a person to self-isolate at home or another premises. This may limit the right to liberty and security because preventing people from leaving their homes or other premises may constitute detention.

6.4.11 Human Rights Act 2019, section 26 – protection of families and children

Under section 26 of the HRA, every child has the right to protection that is in their best interests as a child.

The power to restrict a person's movement may impact children through restriction of movement, contact with other people or restricting access to facilities and events.

6.4.12 Human Rights Act 2019, section 30 – humane treatment when deprived of liberty

Under section 30 of the HRA, a person deprived of liberty must be treated with humanity and respect.

Emergency officers (medical) have the power to order the detention of a person if that person has or may have a serious disease or illness.

6.4.13 Human Rights Act 2019, section 36 – right to education

Under section 36 of the HRA, a child has the right to access primary and secondary education appropriate to their needs.

A child's educational activities may be limited due to restrictions on movement.

Consideration of limitations to human rights

The Minister provides the following collective justification for all these limitations on human rights:

The limitation of human rights is necessary to ensure that public health officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.³⁸

The Minister further states:

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.

Although the Regulation potentially limits many rights, these limitations are minor in nature and the need to protect the right to life for all Queenslanders substantially outweighs any limitation on human rights.³⁹

The Minister also notes these safeguards:

The Public Health Act states that the Regulation can only extend the declared public health emergency and related powers of emergency officers for a period of no more than 90 days. This requirement is an important safeguard as it places an obligation on the Queensland Government to continually assess the need for the declared public health emergency to continue based on the current threat of COVID-19 in Queensland.⁴⁰

Committee comment

The committee is satisfied that any limitation to human rights in the regulation is reasonable and justifiable. The committee notes that the extension regulation is limited by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021*.

³⁸ Human rights certificate, p 9.

³⁹ Human rights certificate, p 10.

⁴⁰ Human rights certificate, p 11.

6.5 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provided a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

7 SL No. 5: Health (Drugs and Poisons) (COVID-19 Vaccination Services) Amendment Regulation 2021

7.1 Background

The rollout of COVID-19 vaccines is guided by the Australian COVID-19 Vaccination Policy (Vaccination Policy).⁴¹ The Vaccination Policy sets out the roles and responsibilities of the Australian Government and state and territory governments to implement a COVID-19 vaccine program in Australia.

Under the Vaccination Policy, the key responsibilities of state and territory governments include:

- ensuring an appropriately qualified and trained workforce for vaccines delivered at their vaccination sites
- authorising the selected workforce to possess and administer COVID-19 vaccines
- providing sites where vaccinations can safely take place
- ensuring immunisation providers remain compliant at all times with their safety, ethical and reporting obligations.⁴²

According to the explanatory notes, due to the nature and scale of the undertaking, the existing provisions of the Health (Drugs and Poisons) Regulation 1996 are not fit for purpose to facilitate all aspects of the rollout.⁴³

7.2 Purpose of the regulation

The Health (Drugs and Poisons) (COVID-19 Vaccination Services) Amendment Regulation 2021 (the regulation) will facilitate the rollout of the COVID-19 vaccine in Queensland.⁴⁴

The explanatory notes state:

Existing requirements in the Health (Drugs and Poisons) Regulation in relation to the business-as-usual model for immunisation, including wholesaling, supply, sale, administration, prescribing, obtaining and issuing will not change. The changes only apply to the rollout of the COVID-19 vaccine where existing arrangements are not appropriate to be used.⁴⁵

The regulation provides for the development of a COVID-19 vaccination code, to be made by the chief executive of Queensland Health or their delegate, which meets Queensland's responsibilities under the Vaccination Policy. The regulation provides that the vaccination code must include requirements in relation to:

- qualifications, training or supervision necessary for workers for declared providers of COVID-19 vaccination services, who will administer the vaccine
- recording of information related to the provision of the services

⁴¹ Explanatory notes, p 2. The Vaccination Policy is available at <https://www.health.gov.au/resources/publications/australian-covid-19-vaccination-policy>. The Vaccination Policy was first endorsed by National Cabinet on 13 November 2020.

⁴² Explanatory notes, p 2.

⁴³ Explanatory notes, p 3.

⁴⁴ Explanatory notes, p 3.

⁴⁵ Explanatory notes, p 3.

- reporting of information, including personal information, about vaccination services.⁴⁶

The regulation also sets out the following operational matters that may be included in the vaccination code:

- specifications for providing the services or setting up COVID-19 vaccination centres
- procedures for prioritising who to vaccinate
- procedures for assessing the health and suitability of persons to be vaccinated
- procedures for safely preparing COVID-19 vaccines or related drugs
- procedures for obtaining selling, supplying, issuing or disposing of COVID-19 vaccines or related drugs
- procedures for safely or securely storing COVID-19 vaccines or related drugs.⁴⁷

The explanatory notes advise that the chief executive will be responsible for declaring persons as 'declared providers' of COVID-19 vaccines and must publish the name of the person and the contact details of the individual who is responsible for overseeing the provision of COVID-19 vaccination services on the Queensland Health website. This will enable members of the general public to check and be satisfied that they are receiving a legitimate COVID-19 vaccine from a government-authorised provider.⁴⁸

The explanatory also state that the regulation:

- authorises providers and workers to carry out activities for providing COVID-19 vaccination services, if they comply with the COVID-19 vaccination code
- includes an information sharing provision to facilitate data sharing with the Australian Government and other agencies to facilitate a safe and effective vaccination program
- provides that if an authorised person, such as a medical practitioner, pharmacist or nurse practitioner, obtains a COVID-19 vaccine under the Australian COVID-19 vaccination arrangements, they are not committing an offence by not obtaining a restricted drug on a purchase order - as would normally be required under section 200 of the Health (Drugs and Poisons) Regulation.⁴⁹

7.3 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

7.3.1 *Legislative Standards Act 1992*, section 4(3)(c) – delegation of administrative power

The regulation provides a number of powers to the chief executive, which may ultimately be delegated to other officers or employees of Queensland Health.⁵⁰ The chief executive will have the power to:

- publish a COVID-19 vaccination code, which states the requirements for providing COVID-19 vaccination services⁵¹
- declare a person to be a declared provider for providing COVID-19 vaccination services⁵²

⁴⁶ Section 6 (213E(2)).

⁴⁷ Section 6 (213E(3)).

⁴⁸ Explanatory notes, p 4.

⁴⁹ Explanatory notes, p 4.

⁵⁰ Under the *Public Service Act 2008*, the chief executive may delegate their powers to appropriate individuals who can make decisions on behalf of the chief executive within the scope of their roles and responsibilities.

⁵¹ Section 6 (s213E(1)).

⁵² Section 6 (s213F(1)).

- publish on Queensland Health’s website the name of each declared provider and the name and contact details of an individual who is responsible for overseeing the provision of the COVID-19 vaccination⁵³
- give personal information to an entity to facilitate the safe and effective therapeutic treatment of persons vaccinated at a COVID-19 vaccination centre, or to report to the entity or facilitate reporting to the entity about the use of COVID-19 vaccines under the Australian COVID-19 vaccination arrangements.⁵⁴

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

Administrative powers should be delegated only to appropriately qualified officers or employees.⁵⁵ The appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.⁵⁶

The explanatory notes set out the processes that will apply to delegations in these circumstances:

Prior to having the delegated authority, the chief executive must satisfy themselves that the relevant employees have the appropriate skills and knowledge to effectively undertake the delegated roles and responsibilities. This includes ensuring relevant employees are aware of their legislative responsibilities, current legislative compliance activities and key documents for legislative compliance and have undertaken all mandatory training outlined in the relevant policies.⁵⁷

The explanatory notes also highlight that Queensland Health undertakes six-monthly reviews of their delegations to ensure that the appropriate persons continue to have delegated authority to make decisions.⁵⁸

The explanatory notes conclude:

It is considered that the rigour around preparing delegations and ensuring only the appropriate people are given the delegation to make decisions on behalf of the chief executive justifies the need to delegate.⁵⁹

Committee comment

In the circumstances, the committee is satisfied that any breach of fundamental legislative principle is justified.

7.3.2 Legislative Standards Act 1992, section 4(2)(a) – general rights and liberties of individuals – right to privacy regarding personal information – information sharing and disclosure

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.⁶⁰

⁵³ Section 6 (s213F(3)).

⁵⁴ Section 6 (s213M(2)).

⁵⁵ The *Acts Interpretation Act 1954*, s 27A contains extensive provisions dealing with delegations.

⁵⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

⁵⁷ Explanatory notes, p 6.

⁵⁸ Explanatory notes, p 6.

⁵⁹ Explanatory notes, p 6.

⁶⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 113.

The explanatory notes address this aspect only in the context of considering whether legislation adversely affects rights and liberties, or imposes obligations, retrospectively.⁶¹ In this instance, there is no retrospective application of the regulation. However, any issue regarding privacy should be considered as an issue affecting rights and liberties of the individual.⁶² This aspect was not addressed in the explanatory notes.

The regulation breaches this fundamental legislative principle as it allows the chief executive of Queensland Health to share personal information about individuals who have been vaccinated. Section 213M in the proposed new Part 9A sets out two circumstances in which the chief executive may give personal information to another entity:

- to facilitate the safe and effective therapeutic treatment of persons vaccinated at COVID-19 vaccination centres, or
- to report to the entity, or facilitate reporting to the entity, in relation to the use of COVID-19 vaccines under the Australian COVID-19 vaccination arrangements.

A specific example of the first circumstance is set out in the regulation – giving personal information to a third party to provide a messaging service to notify vaccinated persons about health matters.⁶³ The explanatory notes state:

... Queensland Health may engage a third-party provider to SMS a person on certain days after receiving the vaccination to determine their health and whether they have encountered any side-effects. The third party may also send reminder messages to ensure the person books in for their second vaccination.⁶⁴

More generally, the explanatory notes provide:

Most COVID-19 vaccines require at least two injections, provided at minimum intervals. Given the large-scale nature of the rollout, it is expected that members of the community may present to a different service or provider to receive their second or subsequent injection. To ensure the vaccine can be delivered safely and effectively, it will be important for Queensland Health to be able to share information about previous vaccinations with providers, such as the type of vaccine received, the date of the first vaccination, the dosage and the individual's personal information so they can be identified.⁶⁵

The explanatory notes state that under Australia's COVID-19 vaccination arrangements the Queensland Government is required to report to the Australian Government on the rollout of the vaccination program.⁶⁶ The chief executive may be required to give personal information to another state entity or an Australian Government entity for monitoring adverse reactions to the vaccination or monitoring the impacts of vaccination.⁶⁷ This provision also enables the Queensland Government to report COVID-19 vaccines to the Australian Immunisation Register.⁶⁸

When considering issues of privacy in relation to health matters, the ultimate question is whether an appropriate balance is struck between the clear need to adequately protect and promote the health of the public on the one hand, and the rights and liberties of the individual on the other.⁶⁹ A relevant

⁶¹ LSA, s 4(3)(g).

⁶² LSA, s 4(2)(a); Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 113.

⁶³ Section 6 (213M(2)(a)).

⁶⁴ Explanatory notes, p 8.

⁶⁵ Explanatory notes, p 7.

⁶⁶ Explanatory notes, p 7.

⁶⁷ Explanatory notes, p 8.

⁶⁸ Amendments have been proposed at the national level to ensure all vaccination providers report to the Australian Immunisation Register, vaccines given, including any COVID-19 vaccines. See *Australian Immunisation Register (Reporting) Bill 2020* (Cth).

⁶⁹ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 115.

consideration is whether there are adequate safeguards in place to protect the confidential nature of the personal health information.

In relation to safeguards, the explanatory notes state:

There are appropriate safeguards to protect personal information, including the requirement that the chief executive must ensure the privacy of any persons to whom the information relates is protected from unjustified intrusion.⁷⁰

The requirement is set out in new s 213M(3) which states ‘the chief executive must ensure the privacy of any persons to whom the information relates is protected from unjustified intrusion, to the extent possible’. It is not clear what would constitute an ‘unjustified intrusion’ or what the appropriate safeguards are in these circumstances. The regulation does provide that requirements regarding the recording of information related to the provision of COVID-19 vaccination services will be contained within the vaccination code.⁷¹

Whilst not addressing the issue in detail, the explanatory notes set out this justification:

Given the important role that monitoring the rollout of the COVID-19 vaccine plays in ensuring the health and wellbeing of individuals receiving the vaccine and for future vaccination participants, it is considered justified that Queensland Health share information, while still ensuring a person’s privacy to the extent possible.⁷²

The committee sought clarification and additional information from Queensland Health in relation to the protection of a person’s privacy and information sharing arrangements. Queensland Health provided the following advice:

- section 213M applies only if vaccinations are administered by or on behalf of the Queensland Government⁷³
- access to the Queensland COVID-19 Vaccine Management System (QCVMS) to record and report information relating to the Queensland COVID-19 vaccination program is restricted to those performing functions under that program (using a role-based access control model)⁷⁴
- all data stored in the QCVMS is encrypted⁷⁵
- the QCVMS captures audit trail entries⁷⁶
- QCVMS data is stored on one secure ICT system managed by Queensland Health⁷⁷
- providers of Queensland Government-controlled COVID-19 vaccination services are required to comply with the National Privacy Principles or the Information Privacy Principles under the *Information Privacy Act 2009* when collecting, storing, using and disposing of personal information.⁷⁸

In addition, Queensland Health referred to the consent form which is provided to patients before vaccination. The form contains a privacy notice outlining that personal information collected by Queensland Health and Hospital and Health Services is handled in accordance with the *Information Privacy Act 2009*. The privacy notice outlines how a person’s personal health information is managed including:

⁷⁰ Explanatory notes, p 8.

⁷¹ Section 6 (213E(2)(b)).

⁷² Explanatory notes, p 8.

⁷³ Queensland Health, Correspondence dated 29 March 2021, p 2, (provided at Appendix A).

⁷⁴ Queensland Health, Correspondence dated 29 March 2021, p 2, (provided at Appendix A).

⁷⁵ Queensland Health, Correspondence dated 29 March 2021, p 2, (provided at Appendix A).

⁷⁶ Queensland Health, Correspondence dated 29 March 2021, p 2, (provided at Appendix A).

⁷⁷ Queensland Health, Correspondence dated 29 March 2021, p 2, (provided at Appendix A).

⁷⁸ Queensland Health, Correspondence dated 29 March 2021, p 3, (provided at Appendix A).

- that contact details, age, gender, Indigenous status, vaccine details and medical numbers are collected to manage recall, reminders, clinical follow up and control and enhanced safety monitoring of vaccines
- a person's private information is given to the Australian Immunisation Register to maintain information about vaccinations of individuals
- relevant medical information including the existence of any medical conditions, allergies, or severe reactions following any vaccine is collected for the assessment of whether and which vaccine should be administered
- all personal information will be securely stored and is accessible only by appropriately authorised officers within Queensland Health
- de-identified data will be shared with the Australian Government and national immunisation safety, monitoring and surveillance organisations for monitoring adverse events after immunisation and evaluating disease prevention and control efforts
- personal information will not be disclosed to other third parties without consent, unless the disclosure is authorised or required by or under law.⁷⁹

Committee comment

Given the measures taken by Queensland Health to protect a person's privacy information, the committee is satisfied that the breach of fundamental legislative principle involved in these infringements on an individual's right to privacy regarding personal health information is justified.

7.3.3 Legislative Standards Act 1992, section 4(5)(e) – institution of Parliament

The regulation provides that the chief executive of Queensland Health may publish a vaccination code that states the requirements for providing COVID-19 vaccination services.

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:

- if authorised by an Act
- in appropriate cases and to appropriate persons.⁸⁰

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is, incorporated into the legislative framework of the state, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

In considering whether it is appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, parliamentary committees have considered the importance of the subject being dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.⁸¹

⁷⁹ Queensland Health, Correspondence dated 29 March 2021, pp 3-4, (provided at Appendix A).

⁸⁰ LSA, s 4(5)(e).

⁸¹ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p 10, paras 1.65-1.67.

The explanatory notes cite the need for flexibility and the technical nature of the subject matter as justifications for the use of a code in these circumstances:

Given the large scale of the rollout, it is expected a number of different service delivery models will be employed and the code will provide the necessary flexibility to ensure appropriate arrangements can be put in place for different settings. ...

The COVID-19 vaccination code will be reviewed and updated to ensure it reflects the latest advice from the Australian Government and the TGA, as well as responds to any emerging issues for the rollout. The vaccination code will be published on the Queensland Health website ... to provide transparency and accountability about the requirement for declared providers and workers. ... Given the detailed and technical nature of the matters required to be set out in the code and the urgent nature of the COVID-19 vaccination rollout, it is considered appropriate for these matters to be set out in the code.⁸²

Committee comment

The committee is satisfied the need for flexibility and the technical nature of the subject matter justify this breach of the principle that legislation has sufficient regard to the institution of Parliament.

7.3.4 Legislative Standards Act 1992, section 4(3)(k) – clear and precise drafting

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a sufficiently clear and precise way.

Generally, definitions applicable to legislation should be included in the legislation itself and not located elsewhere.⁸³

The regulation potentially breaches this fundamental legislative principle because the authorisation of declared providers, and the exclusion of purchase order requirements for particular authorised persons, is done under the ‘Australian COVID-19 vaccination arrangements’, which are defined as ‘the arrangements made under the Australian COVID-19 vaccination policy’.⁸⁴

The regulation does not detail the specific arrangements, contracts or dated documents that are relied upon to form the Australian COVID-19 vaccination arrangements, as those arrangements are not yet complete and may be subject to change to deliver the rollout of COVID-19 vaccinations.⁸⁵

The explanatory notes provide the following justification:

Given the detail contained within the vaccination policy on how the COVID-19 vaccination will be rolled out, including the responsibilities for the Australian, State and Territory Governments and the urgent nature of the COVID-19 vaccination rollout, it is considered appropriate for the Amendment Regulation to incorporate the changing arrangements made under the vaccination policy, rather than being tied to a particular document, contract or other arrangement.⁸⁶

Committee comment

In the circumstances, the committee is satisfied that any breach of fundamental legislative principle is justified.

7.3.5 Consultation

Section 24 of the LSA provides that if consultation did not take place on subordinate legislation, the explanatory notes must contain a statement of the reasons for no consultation.

⁸² Explanatory notes p 7.

⁸³ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 89.

⁸⁴ Section 7 (Dictionary).

⁸⁵ Explanatory notes, p 9.

⁸⁶ Explanatory notes, p 9.

In this regard, the explanatory notes advise that consultation did not take place regarding this regulation, based on perceived urgency:

Specific consultation was not undertaken on the Amendment Regulation due to the urgent timeframes for an imminent rollout of the COVID-19 vaccine. It is important that Queensland removes any legislative barriers, while still ensuring Queenslanders are kept safe during the rollout of the COVID-19 vaccine. It is also important that Queensland be ready to commence vaccinations as soon as vaccines become available.⁸⁷

Committee comment

Given that the vaccination was first endorsed by national cabinet on 13 November 2020, it was possible for consultation to have occurred before the regulation was notified on 29 January 2021.

Whilst consultation did not take place regarding this regulation, the committee notes that the vaccination code will be developed with input from clinicians and experts.⁸⁸

7.4 Explanatory notes

The explanatory notes comply with part 4 of the *LSA*, however, the committee notes that privacy issues were not included as part of the discussion of the general rights and liberties of the individual. As noted above, the treatment in the explanatory notes of the issues of privacy which arise was misconceived in some respects.

7.5 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

7.5.1 Human rights issues in the regulation

In the human rights certificate accompanying the regulation, the Minister states her opinion that the regulation is compatible:

- with the human rights protected by the HRA⁸⁹
- with the HRA because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁹⁰

The committee considered the following potential human rights issues.

7.5.2 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

This regulation limits a person's right to privacy, as it allows the chief executive of Queensland Health to share personal information about individuals who have been vaccinated.⁹¹ An individual's vaccination information can be shared between the Australian Government, Queensland Health and vaccine service providers. It is also contemplated that a person's vaccination information could be shared with a third party provider to seek follow up health information and send vaccine appointment reminders via SMS.⁹²

⁸⁷ Explanatory notes, p 9.

⁸⁸ Explanatory notes, p 7.

⁸⁹ Human rights certificate, p 1.

⁹⁰ Human rights certificate, p 10.

⁹¹ Proposed s 213M sets out the circumstances in which a person's personal information may be disclosed.

⁹² Human rights certificate, p 7.

According to the human rights certificate, the purposes of this limitation on an individual's right to privacy are to allow Queensland Health to fulfil its reporting requirements to the Australian Government and to ensure safe, accessible and effective delivery of the vaccine.⁹³

In considering the balance between the importance of the purpose of the limitation and the importance of preserving the right to privacy, the Minister states:

The benefits of a successful rollout of the COVID-19 vaccine will include reduced exposure to the risk of COVID-19 for individuals, as well as the potential to reach herd immunity and the likelihood of fewer public health restrictions in the future. The rollout will only be successful if vaccines are given at the right times in an easily accessible way for members of the community. This can only be achieved if information is shared between the Australian Government, Queensland Government and service providers.

It is considered that these purposes outweigh the human right to privacy for individuals in the community.⁹⁴

The human rights certificate also notes that safeguards to protect the privacy of individuals will be provided for in the *Australian Immunisation Register Act 2015* (Cth), the national COVID-19 vaccination arrangements between the Australian Government and the states and territories, and the requirements of Queensland's vaccination code.⁹⁵ Further, personal information will be managed in accordance with legislative requirements, including the *Information Privacy Act 2009* (Qld).⁹⁶

Committee comment

The committee is satisfied that any limits on the right to privacy are reasonable and demonstrably justified in the circumstances.

7.5.3 Human Rights Act 2019, section 37 – right to health services

Under section 37 of the HRA, every person has the right to access health services without discrimination.

The regulation may limit this human right, given the staged nature of the rollout of the vaccine. Not every individual will have equal access to the vaccine immediately. Rather the vaccine will be rolled out by priority categories, with those greatest at risk of exposure and the greatest risk of severe disease to be vaccinated first.⁹⁷

The Minister explains the reasons for the staged rollout:

Given the size of the program, it is not logistically possible for all Australians to be offered a vaccine at the same time. There are a number of reasons for this, including the initial limited stock of vaccines, the constraints of the available workforce and the sheer number of vaccinations that will be required. Prioritising those at greatest risk of being exposed to COVID-19 or at greatest risk of severe disease will minimise any potential impact on the overall health system. It also provides a manageable, staged approach to the rollout of the vaccine that provides the greatest equity and the most benefit.⁹⁸

In assessing the balance between the importance of the purpose of the limitation and of the right to access health services without discrimination, the Minister states:

All Queenslanders will have access to COVID-19 vaccines in 2021 as part of the phased rollout. The staged nature of the rollout will prioritise those who have the greatest need and those whose roles in our community expose them to the greatest risk. In turn, this will have the effect of providing the greatest benefit to the community by minimising the potential spread of COVID19, particularly at our borders and in health care settings. The staged rollout is based on expert health advice and takes into account

⁹³ Human rights certificate, pp 6-7.

⁹⁴ Human rights certificate, p 10.

⁹⁵ Human rights certificate, p 10.

⁹⁶ Human rights certificate, p 10.

⁹⁷ Human rights certificate, p 7.

⁹⁸ Human rights certificate, p 7.

logistical and operational considerations. On balance, it will promote and facilitate access to health services for the community in a way that is consistent with a democratic society.⁹⁹

Committee comment

The committee is satisfied that the limit on the right to access health services without discrimination is reasonable and demonstrably justified in the circumstances.

7.6 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provided a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

8 SL No. 8: Nature Conservation (Protected Areas) Amendment Regulation 2021

The Nature Conservation (Protected Areas) Amendment Regulation 2021 increases the area of the protected area estate for the conservation of nature and allows for the involvement of First Nations people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.¹⁰⁰ The objectives are to:

- increase the area of three national parks
- rename two national parks
- increase the area of one resources reserve
- correct three previously erroneous national park area descriptions
- redescribe two national parks and one conservation park
- declare four new nature refuges
- redescribe and alter the name of one nature refuge (due to a replacement conservation agreement and completion of a new plan)
- redescribe and alter the name of one nature refuge to two nature refuges
- redescribe one nature refuge (due to a replacement conservation agreement and completion of a new plan).¹⁰¹

According to the explanatory notes, 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. The Amendment Regulation will result in the addition of land to Deepwater National Park, Halifax Bay Wetlands National Park, Mount Walsh National Park and Flat Top Range Resources Reserve. Additionally, it will result in the declaration of four new nature refuges and increase in the area of two existing nature refuges.¹⁰²

8.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

8.2 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

⁹⁹ Human rights certificate, p 10.

¹⁰⁰ Explanatory notes, p 2.

¹⁰¹ Explanatory notes, p 1.

¹⁰² Explanatory notes, p 2.

8.3 Human rights considerations

The committee identified potential human rights issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

8.3.1 Human rights issues in the regulation

In the human rights certificate accompanying the regulation, the Minister states her opinion that the regulation is compatible:

- with the human rights protected by the HRA¹⁰³
- with the HRA because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.¹⁰⁴

8.3.2 Human Rights Act 2019, section 19 - freedom of movement

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

Clauses 4, 5 and 6 prescribe the addition of land to a number of national parks, resources reserves and nature refuges. The adding of land to national parks, resources reserves and nature refuges will limit the right to freedom of movement as it facilitates the management of this land in a way that restricts free movement of the land in certain circumstances.¹⁰⁵

The Minister sets out the purpose of the limitation:

The purpose of the limitation is to protect the natural and cultural values of the land being added to the protected area estate by reducing the damage that can occur to these lands as a result of access by members of the public.¹⁰⁶

The Minister provides the following justification for the limitation:

... the limitation helps achieve the purpose of ensuring public safety, or preserving 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 by preventing interactions of the public that would cause damage to these areas from the use of vehicles, or other modes of transport, or access by persons.¹⁰⁷

Committee comment

The committee is satisfied that the limitation on a person's right to freedom of movement is reasonable and demonstrably justified.

8.3.3 Human Rights Act 2019, section 28 – Cultural rights of Aboriginal and Torres Strait Islander peoples

Under section 28 of the HRA, it is recognised that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Clauses 4, 5, 6 and 7 prescribe the addition of land to a number of national parks, resources reserves and nature refuges. A person's cultural rights may be limited through restrictions on the ways in which the land may be accessed and used, as the land will now be managed in a particular way.¹⁰⁸

¹⁰³ Human rights certificate, p 1.

¹⁰⁴ Human rights certificate, p 6.

¹⁰⁵ Human rights certificate, p 3.

¹⁰⁶ Human rights certificate, p 3.

¹⁰⁷ Human rights certificate, p 3.

¹⁰⁸ Human rights certificate, p 5.

The Minister sets out the purpose of the limitation as:

... to ensure public safety by restricting access only to areas of constructed tracks or roads and to preserve the natural and cultural values of the land in perpetuity by reducing the damage that can occur to these lands as a result of access by members of the public.¹⁰⁹

The Minister gives this justification for any restrictions on cultural rights:

Restrictions on the ways that the land may be used and accessed as a result of becoming protected area tenure may limit the ability for Aboriginal peoples and Torres Strait Islander peoples, that have a connection to the land under Aboriginal tradition or Island custom, to maintain and strengthen their distinctive spiritual, material and economic relationship with land in certain circumstances. However, these restrictions help ensure public safety and protect and promote the section 28 cultural rights, through the preservation of land in perpetuity, which helps ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to maintain and strengthen their distinctive relationship with the land in the long-term.¹¹⁰

Committee comment

The committee is satisfied that the limitations on Aboriginal and Torres Strait Island peoples' cultural rights are reasonable and demonstrably justified.

8.4 Human rights certificate

As required by section 41 of the HRA a human rights certificate was tabled with the subordinate legislation. It provided a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

9 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

Chair

April 2021

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

Ms Joan Pease MP, Member for Lytton

Dr Mark Robinson MP, Member for Oodgeroo

¹⁰⁹ Human rights certificate, p 5.

¹¹⁰ Human rights certificate, p 6.



Enquiries to: Tricia Matthias
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Queensland Health

Mr Aaron Harper MP
Chair
Health and Environment Committee
Parliament House
BRISBANE QLD 4000

Email: hec@parliament.qld.gov.au

Dear Mr Harper

Thank you for your letter dated 23 March 2021, on behalf of the Health and Environment Committee, in relation to the Committee's examination of subordinate legislation No. 5 of 2021 – Health (Drugs and Poisons) (COVID-19 Vaccination Services) Amendment Regulation 2021 (Amendment Regulation).

To assist the Committee's examination of the Amendment Regulation, the Committee requested Queensland Health provide additional information about the safeguards in place to protect the confidential nature of personal health information.

The information requested by the Committee is outlined in the attachment.

Should you require further information, Queensland Health's contact is Ms Tricia Matthias, Acting Director, Legislative Policy Unit, on telephone [REDACTED]

Yours sincerely

Dr John Wakefield PSM
Director-General

29.3.2021

**Health (Drugs and Poisons) (COVID-19 Vaccination Services)
Amendment Regulation 2021
Response to Health and Environment Committee**

Committee comment

The committee notes that the amendment regulation includes an information sharing provision to facilitate data sharing with the Australian Government and other agencies to facilitate a safe and effective vaccination program (s 213M).

The requirement set out in new s 213M(3) states 'the chief executive must ensure the privacy of any persons to whom the information relates is protected from unjust intrusion, to the extent possible'.

The committee is seeking additional information on what are the appropriate safeguards in place to protect the confidential nature of personal health information.

Departmental response

Under the *Australian COVID-19 Vaccination Policy*, responsibility for the rollout of COVID-19 vaccines is shared between the Australian Government and state and territory governments. For vaccines administered under arrangements with the Australian Government, such as vaccinations by general practitioners and those occurring in residential aged care facilities, Queensland Health does not receive any personal information about the persons being vaccinated and therefore, section 213M of the *Health (Drugs and Poisons) Regulation 1996* does not apply. In these cases, privacy of personal information is managed by the Australian Government. Section 213M only applies if vaccinations are administered by or on behalf of the Queensland Government, with these services referred to as 'Queensland Government-controlled COVID-19 vaccination services'.

The COVID-19 Vaccination Code (Vaccination Code) has been published on the Queensland Health website, in accordance with section 213E of the *Health (Drugs and Poisons) Regulation*. Under the Vaccination Code, declared providers of Queensland Government-controlled COVID-19 vaccination services must use the Queensland COVID-19 Vaccine Management System (QCVMS) to record and report information relating to the Queensland COVID-19 vaccination program, including vaccination data, adverse events and COVID-19 vaccine stock data. If QCVMS is unavailable or unable to be accessed, declared providers must use another system approved by Queensland Health to support the downtime capture and subsequent reporting of information.

The QCVMS has been developed by Queensland Health to provide a single, secure ICT solution for the recording and reporting of all data related to the Queensland Health COVID-19 vaccination program. Access to QCVMS is restricted to those who are performing functions under the Queensland Health COVID-19 Vaccination Program and it uses a role-based access control model to ensure that access to the system is commensurate with the user's role in the vaccination process. All data stored in QCVMS is encrypted. QCVMS also includes an auditing capability that captures audit trail entries for all interactions, including those of administrators. The audit trail records information about the user, date and time, as well as what data was created, read, updated and deleted. The use of QCVMS by providers ensures that all data related to the vaccination program are stored on one secure ICT system managed by Queensland Health.

It is a requirement under the Vaccination Code for declared providers of Queensland Government-controlled COVID-19 vaccination services to also comply with the National Privacy Principles or the Information Privacy Principles under the *Information Privacy Act 2009* when collecting, storing, using and disposing of personal information.

The Vaccination Code also sets out the circumstances in which information collected for providing health services at a Queensland Government-controlled vaccination service may be shared by Queensland Health. It states that information may be shared with entities such as the Australian Government, Therapeutic Goods Administration and other relevant entities to:

- facilitate the safe and effective therapeutic treatment of persons vaccinated at COVID-19 vaccination centres (section 213M(2)(a)), which may include:
 - health service quality and planning;
 - co-ordination of safety monitoring and surveillance of adverse events;
- report to the entity, or facilitate reporting to the entity, in relation to the use of COVID-19 vaccines under the Australian COVID-19 vaccination arrangements (section 213M(2)(b)), which may include:
 - meeting requirements for mandatory reporting to the Australian Immunisation Register;
 - ensuring the effective rollout of the COVID-19 vaccination program is in accordance with the Australian COVID-19 vaccination arrangements and Australian COVID-19 vaccination policy;
- manage COVID-19 vaccine logistics; or
- as otherwise permitted by law.

Before receiving a COVID-19 vaccine, each person must provide informed consent. The COVID-19 Vaccination Consent Form (Annexure 1) and Queensland COVID-19 Vaccination Information (Patient Information sheet) (Annexure 2) are used to obtain consent. These documents are published on the Queensland Health website at:

<https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/novel-coronavirus-qld-clinicians/covid-19-vaccination-information-for-healthcare-workers>

The consent form requires a person to acknowledge that they have read and understood the Queensland COVID-19 Vaccination Information (Annexure 2), prior to providing consent. This patient information sheet contains a privacy notice outlining that personal information collected by Queensland Health and Hospital and Health Services is handled in accordance with the *Information Privacy Act 2009*. Key information for patients included in the privacy notice includes:

- Name, address, phone number, email address, age, gender, Indigenous status, vaccine details and medical numbers are collected in accordance with the *Australian Immunisation Register Act 2015* to manage recall, reminders, clinical follow up and control and enhanced safety monitoring of vaccines. This information is given to the Australian Immunisation Register to maintain information about vaccinations of individuals;
- Personal information is used to administer the Queensland Health COVID-19 immunisation program. Relevant medical information including the existence of any medical conditions, allergies, or severe reactions following any vaccine is collected for the assessment of whether and which vaccine should be administered. If a patient chooses not to provide the information, it may affect Queensland Health's ability to respond and deliver services, including administering the COVID-19 vaccine;
- All personal information will be securely stored and is only accessible by appropriately authorised officers within Queensland Health;

- De-identified data (information that does not identify a person) will be shared with the Australian Government and national immunisation safety, monitoring and surveillance organisations for monitoring adverse events after immunisation and evaluating disease prevention and control efforts; and
- Personal information will not be disclosed to other third parties without consent, unless the disclosure is authorised or required by or under law.

Registered health practitioners are bound by their professional obligations for maintaining confidentiality of patient information and all health providers, including Queensland Health and Hospital and Health Services, are experienced in maintaining patient confidentiality. Inappropriate use of computer systems, such as QCVMS, is an offence under the *Criminal Code Act 1899*. The offence in section 408E (Computer hacking and misuse) carries a maximum penalty of 2 years imprisonment.



**Queensland
Government**

COVID-19 Vaccination Consent

Adult (18 years and over)

Facility:

Medicare number:

Family name:

Given name(s):

Address:

Date of birth:

Age:

Sex: ☐ M ☐ F ☐ I

A. Vaccine details

☐ Pfizer Comirnaty ☐ AstraZeneca

B. Are you or the person to be vaccinated able to make decisions about your healthcare?

☐ Yes → **GO TO** section C

☐ No → **COMPLETE** section B

You must adhere to the Advance Health Directive (AHD), or if there is no AHD, the consent obtained from a substitute decision-maker in the following order: Category 1. Tribunal-appointed guardian; 2. Enduring Power of Attorney; or 3. Statutory Health Attorney.

Name of substitute decision-maker:

Category of substitute decision-maker:

C. Is an interpreter required?

☐ Yes → **COMPLETE** section B

☐ No → **GO TO** section D

If yes, the interpreter has:

☐ provided a sight translation of the informed consent form in person

☐ translated the informed consent form over the telephone

Name of interpreter:

Interpreter code:

Language:

D. Person/substitute decision-maker consent

I acknowledge that:

- I have read and understood the information provided in the “*Queensland COVID-19 Vaccination Information*” resource which includes details regarding all real and potential side effects associated with having the COVID-19 vaccination.
- I am aware I can discuss the benefits and risks of having the COVID-19 vaccination by telephoning 134 COVID (13 42 68) or discuss with my doctor or vaccination centre health professional.
- I understand that consent can be withdrawn at any time before vaccination.

On the basis of the above statements, I hereby give consent to receive/or the person to receive, the recommended doses of the COVID-19 vaccine.

Name of person/substitute decision-maker:

Signature:

Date:

E. Additional health worker comments

COVID-19 vaccination information

Patient information



COVID-19

Coronavirus (COVID-19) can cause serious ongoing health issues, and sometimes death. It is still a new virus and as such we are still learning more about it.

COVID-19 vaccination

Having a COVID-19 vaccine is an important step to take to reduce the serious effects of COVID-19 in people who become infected with the virus. Current evidence shows that people who have received a COVID-19 vaccine have a much lower chance of developing more serious disease from COVID-19 compared to those who did not get the vaccine. Even though the COVID-19 vaccine has been shown to be very effective there is still a chance you may get COVID-19.

Queensland has two COVID-19 vaccines available – the Pfizer vaccine (also known as Comirnaty) and the AstraZeneca vaccine.

Both vaccines are designed to promote our immune system to make antibodies to the spike protein of the virus. This means if you were to ever get the COVID-19 virus, your body is better prepared to fight the illness and reduce its severity.

Importantly, even after vaccination, Queenslanders will still be encouraged to wash their hands regularly and maintain physical distance to help protect yourself and others.

How is the COVID-19 vaccine given?

The vaccine is given via an injection into your upper arm by a health professional who has been trained in giving the COVID-19 vaccine. You must remain in the vaccination clinic for observation for at least 15 minutes after vaccination. Depending on your medical history, you may be asked to wait in the clinic for 30 minutes. To get the full benefit of the vaccine you will need two injections, several weeks apart.

Who can get the COVID-19 vaccine?

The Pfizer vaccine is suitable for people aged 16 years and older.

The AstraZeneca vaccine is suitable for people aged 18 years and older.

Who should not get the COVID-19 vaccine?

You must not get a COVID-19 vaccine if you have had any of the following:

- anaphylaxis (a severe allergic reaction) to a previous dose of the same COVID-19 vaccine
- anaphylaxis after exposure to any ingredient of the COVID-19 vaccine*.

If you have ever had an allergic reaction or anaphylaxis to anything else, including after receiving a vaccine, you can still get the vaccine, but you must tell the immunisation provider beforehand.

If you have recently had any other vaccine (e.g. flu vaccine) you should wait at least 14 days to have the COVID-19 vaccine.

Is the COVID-19 vaccine safe for pregnant and breastfeeding women?

At this stage, COVID-19 vaccines are not routinely recommended to be given during pregnancy as there is limited experience with the use of COVID-19 vaccines in pregnant women. As we learn more about the vaccines, this advice may change. If you are pregnant, think you may be pregnant or are planning to have a baby, ask your doctor or pharmacist for advice before you consider receiving this vaccine.

***Pfizer-Comirnaty BNT162b2 [mRNA] COVID-19 Vaccine includes the following ingredients:** mRNA, ((4-hydroxybutyl)azanediyl) bis(hexane-6,1-diyl)bis (2-hexyldecanoate) (ALC-0315), 2-[(polyethylene glycol)-2000]-N,N-ditetradecylacetamide (ALC-0159), distearoylphosphatidylcholine (DSPC), cholesterol, potassium chloride, monobasic potassium phosphate, sodium chloride, dibasic sodium phosphate dihydrate and sucrose.

***AstraZeneca (ChAdOx1-S) COVID-19 Vaccine includes the following ingredients:** chAdOx1-S, disodium edetate, ethanol absolute, histidine hydrochloride monohydrate, histidine, magnesium chloride hexahydrate, polysorbate 80, sodium chloride and sucrose.

If you are breastfeeding you can receive a COVID-19 vaccine at any time. You do not need to stop breastfeeding before or after vaccination.

What to expect after your vaccination

All medicines and vaccines can cause side effects and most of these are minor effects. However, if you do experience any side effects following vaccination and are worried, contact your GP.

Common side effects

Pfizer	Injection site pain/swelling, tiredness, headache, muscle pain, chills, fever, joint pain.
AstraZeneca	Injection site tenderness/pain/warmth/itching, generally feeling unwell, tiredness, headache, chills or feeling feverish, joint pain or muscle pain, feeling sick (nausea).

Less common side effects

Pfizer	Injection site redness/itching, nausea, enlarged lymph nodes, feeling unwell, pain in the limb, insomnia.
AstraZeneca	Fever, swelling or redness at the injection site.

These side effects are usually mild and usually go away within one or two days. If you experience pain at the injection site or fever, headaches or body aches after vaccination, you can take paracetamol or ibuprofen. These help reduce the above symptoms (you do not need to take paracetamol or ibuprofen before vaccination). If there is swelling at the injection site, you can use a cold compress.

Rare side effects

Pfizer	Severe allergic reaction (anaphylaxis), temporary one-sided facial drooping (also called Bell's palsy).
AstraZeneca	Severe allergic reaction (anaphylaxis).

After you have left the vaccination location, seek medical attention if:

- You think you are having an allergic reaction. Call 000 if you experience severe symptoms, such as difficulty breathing, wheezing, a fast heartbeat or collapsing.
- You are worried about a potential side effect or have new or unexpected symptoms.
- You have an expected side effect of the vaccine which has not gone away after a few days.

COVID-19 testing after vaccination

Some side effects from COVID-19 vaccination might be similar to symptoms of COVID-19 (e.g. fever). Both COVID-19 vaccines do not contain any live virus and cannot cause COVID-19. You do not need to get a COVID-19 test or isolate if you develop general symptoms like fever, headache or tiredness in the first two days after vaccination or if you are sure that you don't have any respiratory symptoms (e.g. runny nose, cough, sore throat, loss of smell or loss of taste).

Where can I get more information or ask questions?

Call 134 COVID (13 42 68) 24 hours, 7 days a week for information on the vaccine or assistance with vaccination bookings or appointment enquiries. You can also ask for an interpreter – it is free.

Stay informed at www.health.gov.au and www.qld.gov.au/covid19vaccine.

Privacy notice: Personal information collected by Queensland Health and the Hospital and Health Services (collectively Queensland Health) is handled in accordance with the *Information Privacy Act 2009*. Queensland Health is collecting your personal information including your name, address, phone number, email address, age, gender, Indigenous status, vaccine details and Medicare number in accordance with *Australian Immunisation Register Act 2015* in order to manage recall, reminders, clinical follow up; or control and enhanced safety monitoring of vaccines. This information will be given to the Australian Immunisation Register for the purpose of maintaining information about vaccinations of individuals. Your personal information will also be used to administer the Queensland Health COVID-19 immunisation program ('Program'). Your relevant medical information including existence of any medical conditions, allergies, or severe reactions following any vaccine will be collected for the assessment of whether and which vaccine you should be administered. If you choose not to provide the information it may affect Queensland Health's ability to respond and deliver services to you, including administering the COVID-19 vaccine to you. All personal information will be securely stored and only accessible by appropriately authorised officers within the Queensland Health. Your de-identified data (information that will not identify you) will be shared with Commonwealth Government and national immunisation safety, monitoring and surveillance organisations for the purpose of monitoring adverse events following immunisation and evaluating disease prevention and control (immunisation) efforts. Your personal information will not be disclosed to other third parties without consent, unless the disclosure is authorised or required by or under law. For information about how Queensland Health protects your personal information, or to learn about your right to access your own personal information, please see our website at www.health.qld.gov.au/global/privacy and www.health.qld.gov.au/system-governance/contact-us/access-info/privacy-contacts.