

Health and Environment Committee

Report No. 25, 57th Parliament

Subordinate legislation tabled between 22 June 2022 and 16 August 2022

1 Aim of this report

This report summarises the Health and Environment Committee’s findings following its examination of subordinate legislation within its portfolio areas tabled between 22 June 2022 and 16 August 2022. 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
77	Medicines and Poisons (Medicines) Amendment Regulation 2022	16 August 2022	28 October 2022
85	Waste Reduction and Recycling and Other Legislation Amendment Regulation 2022	16 August 2022	28 October 2022
86	Proclamation – <i>Health and Other Legislation Amendment Act 2022</i>	16 August 2022	28 October 2022
87	Health Legislation Amendment Regulation 2022	16 August 2022	28 October 2022
92	Forestry (State Forests) and Other Legislation Amendment Regulation 2022	16 August 2022	28 October 2022

¹ Section 4 of the *Legislative Standards Act 1992* 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 *Parliament of Queensland Act 2001*, s 93.

⁴ *Legislative Standards Act 1992*, Part 4.

⁵ 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 (see HRA, s 41(1)-(3)).

103	Nature Conservation (Protected Areas) (Cangen-Yangan Indigenous Joint Management Area) Amendment Regulation 2022	16 August 2022	28 October 2022
106	Nature Conservation (Protected Areas Management) (Toohey Forest Conservation Park) Amendment Regulation 2022	16 August 2022	28 October 2022

* 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 regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified in the subordinate legislation. FLP issues considered by the committee in relation to SL No. 77 and SL No. 87 are detailed in this report. The explanatory notes tabled with the subordinate legislation comply with the requirements of s 24 of the LSA.

Potential human rights issues were identified only in relation to SL No. 77 and SL No. 87. These issues are outlined in this report. The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with human rights.

4 SL No. 77 Medicines and Poisons (Medicines) Amendment Regulation 2022

4.1 Objective

The objective of the Medicines and Poisons (Medicines) Amendment Regulation 2022 (SL No. 77) is to amend the Medicines and Poisons (Medicines) Regulation 2021 to reflect changes to the Australian Government *Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard) and to update references to other external documents.⁶ SL No. 77 also makes the following technical amendments:

- updates references to a new version of the extended practice authority for Aboriginal and Torres Strait Islander health practitioners
- updates references to a new version of the *Guidelines for use of scheduled medicines* made by the Optometry Board of Australia (Optometry Guidelines)
- authorises specialist medical practitioners in respiratory and sleep medicine to prescribe, give a treatment dose, administer, give a purchase order, and possess certain restricted medicines, consistent with the approach that applied under the repealed Health (Drugs and Poisons) Regulation 1996
- specifies whether certain restricted medicines are for human use or for human oral use, and includes *ivermectin* in the list of restricted medicines, consistent with the Poisons Standard
- enables certain classes of approved persons, including a new class (gastroenterologists and hepatologists), to deal with *ivermectin* for human oral use, consistent with the Poisons Standard
- updates the requirements for sending prescriptions electronically to ensure these apply to all prescriptions
- amends the definition of ‘shared clinic’ to ensure settings that supply or administer medicines to animals are required to prevent unauthorised access and manage inappropriate use of the medicines

⁶ Updated external documents: Extended Practice Authority ‘Aboriginal and Torres Strait Islander Health Practitioners’ (Version 2); Optometry Board of Australia – Guidelines for use of scheduled medicines, 10 December 2021.

- streamlines the use of electronic prescription systems by removing the requirement for both words and numbers to be included in an electronic prescription, while retaining their use for written prescriptions to describe the quantity of medicine to be dispensed
- replaces the phrase ‘minimum standard pack’ with ‘smallest available size of manufacturer’s pack of the medicine’.⁷

4.2 Consistency with fundamental legislative principles

The committee considered the following issues in regard to the subordinate legislation’s consistency with FLPs.

4.2.1 Institution of Parliament – Subdelegation of power – external documents

Subordinate legislation should allow for the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by the Act itself.⁸ The significance of this requirement is that external documents, such as extended practice authorities and guidelines, are not subject to parliamentary scrutiny through the tabling and disallowance provisions of subordinate legislation.⁹

4.2.1.1 New version of an extended practice authority

Section 232 of the *Medicines and Poisons Act 2019* permits the chief executive of Queensland Health to make an extended practice authority authorising an approved person to deal with a regulated substance.¹⁰ An extended practice authority of this kind may specify several things, for example:

- the places or circumstances that an approved person may deal with the regulated substance
- conditions of dealing with the substance
- requirements for the approved person to hold particular qualifications
- the route of administration, dose, and duration for regulated substances.¹¹

Schedule 1 of the *Medicines and Poisons (Medicines) Regulation 2021* is updated to reflect the name and version of an extended practice authority each time a new version is made and a copy of the authority is tabled as extrinsic material.¹² In this instance, a new version of the Aboriginal and Torres Strait Islander health practitioner extended practice authority was included in schedule 1.¹³

The explanatory notes provide the following justification for SL No. 77 to refer to extended practice authorities:

It is considered the rigour surrounding the development of extended practice authorities, their use in ensuring Queenslanders receive health care based on best clinical practice and the detailed nature of the documents, justifies the need to sub-delegate by referring to external documents in the *Medicines Regulation*.¹⁴

4.2.1.2 Guidelines for use of scheduled medicines

The *Medicines and Poisons (Medicines) Regulation 2021* refers to the Optometry Board of Australia Optometry Guidelines. The Optometry Guidelines state things such as which medicines an optometrist can deal with and how they are to prescribe and administer those medicines. For the Optometry Board of Australia to amend the Optometry Guidelines, it must follow a process governed by the Health

⁷ SL No. 77, explanatory notes, pp 1-2.

⁸ *Legislative Standards Act 1992*, s 4(5)(e).

⁹ Alert Digest 1999/04, p 10, para 1.66, see OQPC, *The OQPC Notebook*, p 170.

¹⁰ SL No. 77, explanatory notes, p 10.

¹¹ SL No. 77, explanatory notes, p 10.

¹² SL No. 77, explanatory notes, p 11.

¹³ SL No. 77, s 8 (*Medicines and Poisons (Medicines) Regulation 2021*, schedule 1).

¹⁴ SL No. 77, explanatory notes, p 11.

Council and approved by the Minister for Health in each jurisdiction. SL No. 77 amends the Medicines and Poisons (Medicines) Regulation 2021 to reflect a new version of the Optometry Guidelines.¹⁵

The explanatory notes state that a 'rigorous process'¹⁶ is undertaken to amend the Optometry Guidelines and that the potential breach of FLPs is justified 'as it will support national consistency in the authorised scope of medicines dealings for optometrists and makes it clear the version of the guidelines these practitioners are authorised to use'.¹⁷

Committee comment

The committee is satisfied that there has been sufficient regard to the Institution of Parliament given:

- the detail to be provided in an extended practice authority
- the level of parliamentary oversight afforded by the requirement that an extended practice authority must be approved by regulation
- that a copy of the updated extended practice authority must be tabled.

Similarly, the committee is satisfied that the references to the updated Optometry Guidelines will support national consistency and make clear the version of the Optometry Guidelines practitioners are to use, noting that a copy of the new version of the Optometry Guidelines was tabled.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.4 Human rights considerations

The committee considered the following human rights issues in relation to SL No. 77.

4.4.1 Right to health services

Every person has the right to access health services without discrimination.¹⁸ This means 'a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realisation of the highest attainable standard of health'.¹⁹

SL No. 77 regulates some medicines, meaning that certain medicines can only be prescribed and dispensed by, and to, specific people. However, this limitation is required to mitigate the risks of substance abuse or misuse by vulnerable persons.²⁰ Because this limitation cannot be achieved in a less restrictive way, and because the right to life which is achieved by protecting vulnerable persons from substance abuse and misuse outweighs the right to access health services, this limitation is considered to be demonstrably justified.²¹

4.4.2 Right to property

A person must not be arbitrarily deprived of their property.²² Property can include income from work.²³

The human rights certificate for SL No. 77 details a restriction on the right to property through the regulation of medicines. This regulatory framework permits only certain professions to prescribe and

¹⁵ SL No. 77, explanatory notes, pp 11-12.

¹⁶ SL No. 77, explanatory notes, p 11.

¹⁷ SL No. 77, explanatory notes, p 12.

¹⁸ HRA, s 37.

¹⁹ SL No. 77, Human rights certificate, p 4.

²⁰ SL No. 77, Human rights certificate, p 5.

²¹ SL No. 77, Human rights certificate, p 5.

²² HRA, s 24(2).

²³ SL No. 77, Human rights certificate, p 5.

dispense certain medications, essentially restricting the way in which a person can carry out their professional duties. However, this does not deprive a person of the ability to work in their chosen profession, or the ability to earn income from that profession. Rather, such a regulatory framework is intended to ensure the safety of the broader community.

Committee comment

The committee is satisfied that the right to property is not enlivened by SL No. 77, and that any limitation on the right to access health services is reasonable and demonstrably justified. The committee considers the subordinate legislation is compatible with human rights.

4.5 Human rights certificate

The human rights certificate tabled with SL No. 77 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 SL No. 85 Waste Reduction and Recycling and Other Legislation Amendment Regulation 2022

5.1 Objective

The objective of the Waste Reduction and Recycling and Other Legislation Amendment Regulation 2022 (SL No. 85) is to provide for:

- a differentiated levy zone, creating a metropolitan levy zone (local government areas in South East Queensland) and a regional levy zone (local government areas not in South East Queensland)²⁴
- an annual levy rate increase for the metropolitan levy zone of \$10.00 per tonne
- an annual levy rate increase for regional levy zone by the consumer price index
- the continuation of annual payments to local governments disposing of municipal solid waste in metropolitan and regional levy zones
- an extension to the application of the discounted rate for the waste levy for residue waste to 30 June 2026
- change to the definition of exempt waste to include waste from Norfolk Island
- changes to the definition of exempt waste to extend the exemption for road planning generated by or for an eligible local government until 30 June 2023
- changes to the threshold limit for storage of lead acid batteries, increasing the limit from 4 tonnes up to 45 tonnes or 3,000 intact used lead batteries.²⁵

The amendments related to levy rates and levy zones and continuation of annual payment arrangements were announced by the Queensland Government in 2021 in order to provide certainty for local governments, business and industry regarding future levy rate increases and payments.²⁶

The amendments related to Norfolk Island are required because Queensland assumed administrative responsibility for Norfolk Island in January 2022, taking over from the New South Wales Government. The inclusion of waste received from Norfolk Island as exempt waste, will help reduce the cost of disposal of this waste in the short term as Norfolk Island works towards sustainable options for on-island management.²⁷

The amendments related to increasing the storage threshold limit for storage of lead acid batteries are required to increase the quantity of used batteries that can be stored before an environmental

²⁴ SL No. 85, explanatory notes, p 1.

²⁵ SL No. 85, explanatory notes, pp 1-2.

²⁶ SL No. 85, explanatory notes, p 2.

²⁷ SL No. 85, explanatory notes, p 2.

authority is required. This would enable businesses in regional areas to store sufficient quantities of batteries to make it viable for transporters to collect them for recycling.²⁸

5.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Human rights considerations

The committee considers that SL No. 85 raises no human rights issues.

5.5 Human rights certificate

The human rights certificate tabled with SL No. 85 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 SL No. 86 Proclamation – Health and Other Legislation Amendment Act 2022

6.1 Objective

The objectives of the Proclamation made under the *Health and Other Legislation Amendment Act 2022* (SL No. 86) are to:

- commence the following provisions on 1 July 2022 —
 - part 3, divisions 1 to 3, 5 and 6 of the *Health and Other Legislation Amendment Act 2022*
 - schedule 1, part 2, amendments of the *Ambulance Service Act 1991*
 - schedule 1, part 2, amendments of the *Mental Health Act 2016*
 - schedule 1, part 2, amendments of the *Radiation Safety Act 1999*
- commence the provisions that are not in force and not otherwise commenced under SL No. 86 on 15 September 2022.

According to the explanatory notes, commencement of these provisions ‘will support the delivery of health services in Queensland and ensure that health portfolio legislation operates effectively’.²⁹

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 considers that the Proclamation raises no human rights issues.

6.5 Human rights certificate

The human rights certificate tabled with SL No. 86 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 SL No. 87 Health Legislation Amendment Regulation 2022

7.1 Objective

The Health Legislation Amendment Regulation 2022 (SL No. 87) has 6 objectives.

²⁸ SL No. 85, explanatory notes, p 2.

²⁹ SL No. 86, explanatory notes, p 1.

First, SL No. 87 amends the Mental Health Regulation 2017 to prescribe an additional cohort of medical practitioners as psychiatrists.³⁰ Currently, international medical graduates with overseas qualifications in psychiatry are granted a general registration by the Medical Board of Australia. If their psychiatry qualifications are assessed by the Royal Australian and New Zealand College of Psychiatrists (RANZCP) as 'substantially comparable' to Australian psychiatric qualifications recognised by a fellowship with the RANZCP, these medical practitioners are permitted to practise in staff specialist positions in the field of psychiatry while they undertake a 12-month pathway to fellowship with the RANZCP.³¹

Despite this, the Mental Health Regulation 2017 does not include this class of medical practitioner as an authorised psychiatrist under the *Mental Health Act 2016*. This creates challenges for mental health services in ensuring coverage of staff specialists in psychiatry who can treat patients for the purposes of the *Mental Health Act 2016*.³² SL No. 87 amends the Mental Health Regulation 2017 to ensure this class of medical practitioners falls within the definition of psychiatrist.

Second, SL No. 87 amends the Public Health Regulation 2018 to prescribe monkeypox as a notifiable condition.³³ When a person is suspected to have, or has, a notifiable condition, doctors, persons in charge of hospitals, and directors of pathology laboratories are required to immediately notify the chief executive of Queensland Health.³⁴

Third, SL No. 87 amends the Public Health Regulation 2018 to prescribe a disclosure agreement between Resources Safety and Health Queensland (RSHQ) and Queensland Health.³⁵

RSHQ was established in 2020 as an independent body responsible for regulating safety and health in the State's resources industries.³⁶ Under the *Public Health Act 2005*, the chief executive of Queensland Health is able to disclose confidential information to an entity of the State if the disclosure is required or permitted under an agreement between the chief executive or the State and the other entity. This agreement must be prescribed by regulation.³⁷

A notifiable dust lung disease (NDLD) is a prescribed respiratory condition (e.g. mesothelioma or chronic obstructive pulmonary disease) when caused by occupational exposure to inorganic dust. Medical practitioners are required to notify the chief executive of Queensland Health about cases of NDLD so these can be included on the NDLD Register. Strict confidentiality and disclosure obligations apply to the information stored on the NDLD Register.³⁸ The disclosure agreement prescribed in the Public Health Regulation 2018 by SL No. 87 would permit Queensland Health to share relevant confidential information from the NDLD Register with RSHQ.³⁹

Fourth, SL No. 87 amends the Hospital and Health Boards Regulation 2012 to enable audiologists, dieticians, exercise physiologists, orthoptists, orthotists/prosthetists, social workers, and speech pathologists to access healthcare information on *The Viewer*. *The Viewer* is 'a read-only web-based application that displays a consolidated view of patients' clinical and demographic information from a variety of Queensland Health clinical and administrative systems'.⁴⁰ (The committee's consideration

³⁰ SL No. 87, explanatory notes, p 1.

³¹ SL No. 87, explanatory notes, p 2.

³² SL No. 87, explanatory notes, p 3.

³³ SL No. 87, explanatory notes, p 1.

³⁴ SL No. 87, explanatory notes, p 3.

³⁵ SL No. 87, explanatory notes, pp 4-5.

³⁶ SL No. 87, explanatory notes, p 5.

³⁷ See *Public Health Act 2005*, s 279AO. SL No. 87, explanatory notes, p 5.

³⁸ SL No. 87, explanatory notes, p 5.

³⁹ SL No. 87, explanatory notes, p 6.

⁴⁰ SL No. 87, explanatory notes, p 6.

of this aspect of SL No. 87 was informed by a briefing on, and demonstration of, *The Viewer* provided by Queensland Health officers.)⁴¹

Fifth, SL No. 87 makes some amendments to the corresponding provisions in the Mental Health Regulation 2017 relevant to the interstate transfer of patients.⁴²

Sixth, SL No. 87 amends the Radiation Safety Regulation 2021 to:

- remove the requirement to prescribe by regulation the identity verification documents that are required to be provided with all applications for instruments under the *Radiation Safety Act 1999*
- insert a requirement that the applications that are prescribed by regulation must be accompanied by proof of the applicant's identity to the satisfaction of the chief executive.⁴³

This amendment is to enable Queensland Health to more efficiently set appropriate proof of identity requirements.⁴⁴

7.2 Consistency with fundamental legislative principles

The committee identified potential FLP issues in relation to SL No. 87. The committee's consideration of these issues is set out in sections 7.2.1 and 7.2.2 below.

7.2.1 Rights and liberties of individuals — Delegation of administrative power in appropriate cases and to appropriate people

7.2.1.1 *Psychiatrists*

Legislation should only allow the delegation of administrative power in appropriate cases and to appropriate persons.⁴⁵

As noted above, SL No. 87 amends the Mental Health Regulation 2017 definition of a psychiatrist to include a medical practitioner with general registration from the Medical Board of Australia whose specialist qualifications in psychiatry have been assessed by RANZCP as substantially comparable. The recognition enables these medical practitioners to be employed in the field of psychiatry while completing a 12-month pathway fellowship with the RANZCP.⁴⁶

It is consistent with the Health Practitioner Regulation National Law (National Law) and the Mental Health Regulation 2017 that a medical practitioner's expertise to practise in a specialist field in the medical profession is made by the nominated national specialist medical college.⁴⁷ The explanatory notes state:

Given the RANZCP's existing role in determining the suitability of a medical practitioner to practise in the field of psychiatry, which is recognised and incorporated through the accreditation framework in the National Law, it is considered appropriate to refer to RANZCP's accredited program of study as a basis for determining who is suitable to exercise the statutory functions of a psychiatrist under the [*Mental Health Act 2016*].

The requirement that an international medical practitioner must be actively working toward fellowship with RANZCP provides an additional layer of protection by ensuring these practitioners can only be appointed as an authorised psychiatrist under the [*Mental Health Act 2016*] if they are on a recognised path that will lead to Fellowship within a certain time.⁴⁸

⁴¹ Private briefing, Brisbane, 10 October 2022.

⁴² SL No. 87, explanatory notes, p 7.

⁴³ SL No. 87, explanatory notes, p 7.

⁴⁴ SL No. 87, explanatory notes, p 7.

⁴⁵ *Legislative Standards Act 1992*, s 4(3)(c).

⁴⁶ SL No. 87, explanatory notes, pp 1-2.

⁴⁷ SL No. 87, explanatory notes, p 11.

⁴⁸ SL No 87, explanatory notes, p 12.

Committee comment

The committee considers the power to determine who is considered a ‘psychiatrist’ under the *Mental Health Act 2016* is appropriately delegated to RANZCP under SL No. 87, and as such is consistent with FLPs.

7.2.1.2 The Viewer

As noted above, SL No. 87 amends the Hospital and Health Boards Regulation 2012 to enable audiologists, dieticians, exercise physiologists, orthoptists, orthotists/prosthetists, social workers and speech pathologists to access public healthcare information on *The Viewer*. Determining who fits the criteria to be classified as one of these allied health professionals is largely based on the relevant professional body’s decisions on accreditation, certification and membership. The explanatory notes give examples of this process:

... for a person providing a social work service to be a prescribed health professional (and be authorised to access The Viewer), they must be an ordinary member of the Australian Association of Social Workers, other than a retired ordinary member. A person providing dietetics services must be accredited by Dieticians Australia as a Provisional Accredited Practising Dietician, a Full Accredited Practising Dietician, an Advanced Accredited Practising Dietician or a Fellow of Dieticians Australia.⁴⁹

Permitting these health professional bodies to determine eligibility is a delegation of administrative power. However, these various bodies are recognised within each profession for their registration functions. The decision-making processes for accreditation, certification or membership are made in accordance with their formal registration frameworks. Further, being recognised by a professional body as fitting one of the relevant allied health categories does not mean a practitioner is granted immediate access to *The Viewer*. The person must also undergo the Queensland Health registration process.⁵⁰

Committee comment

The committee considers the delegation of administrative power to health professional bodies is appropriate as they are best placed to consider if a person has the skills and qualifications required to satisfy the requirements to practice, and as such is consistent with FLPs.

7.2.2 Rights and liberties of individuals — Privacy

7.2.2.1 Monkeypox

Legislation must have sufficient regard to the rights and liberties of individuals.⁵¹ The disclosure of confidential information and the doctor-patient relationship are considered relevant to the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.⁵²

As noted above, SL No. 87 amends the Public Health Regulation 2018 to prescribe monkeypox as a notifiable condition.⁵³ When a person is suspected to have, or has a notifiable condition, doctors, persons in charge of hospitals and directors of pathology laboratories are to notify the chief executive of Queensland Health.⁵⁴ Being quickly notified of a case of monkeypox allows Queensland Health to initiate contact tracing to minimise further transmission, better understand the epidemiology of monkeypox, develop strategies to protect public health, and manage any cases or potential outbreaks.⁵⁵

⁴⁹ SL No. 87, explanatory notes, p 15.

⁵⁰ SL No. 87, explanatory notes, p 15.

⁵¹ *Legislative Standards Act 1992*, s 4(2)(a).

⁵² OQPC, *Fundamental Legislative Principles*: The OQPC Notebook, p 113.

⁵³ SL No. 87, explanatory notes, p 1.

⁵⁴ SL No. 87, explanatory notes, p 3.

⁵⁵ SL No. 87, human rights certificate, p 6.

There are penalties within the *Public Health Act 2005* for persons involved in the administration or enforcement of the notifiable conditions register who disclose confidential information.⁵⁶ Sections 78 - 88 of the *Public Health Act 2005* provide the limited circumstances that disclosure of confidential information is permitted.

Committee comment

The committee considers the impacts on the rights and liberties of individuals are justified given the public health benefits of identifying a case of monkeypox. The potential impacts are also limited by the penalty provisions, and the provisions providing the circumstances for limited disclosure of information. Consequently, the committee considers the subordinate legislation has sufficient regard for FLPs.

7.2.2.2 Information sharing between Queensland Health and RSHQ

The amendment to the Public Health Regulation 2018 in SL No. 87 concerning the agreement between Queensland Health and RSHQ, impacts an individual's right to privacy. The explanatory notes outline the purpose of the agreement:

The agreement between Queensland Health and RSHQ allows Queensland Health to disclose, at monthly intervals, notifications made to the NDLD Register, including the confidential information of individuals about whom the notification was made.⁵⁷

Queensland Health and RSHQ are under statutory obligations which dictate how they must collect, store, use and disclose confidential information.⁵⁸ Further, the agreement provides that confidential information must be used for the purpose of facilitating RSHQ's statutory functions and prohibits the disclosure of confidential information by RSHQ unless expressly allowed by the agreement, authorised in writing by the chief executive of Queensland Health, or where required or permitted under an Act or other law. The disclosure of confidential information under the agreement is also subject to targeted audits.⁵⁹ If there are concerns raised about RSHQ's compliance with the agreement, Queensland Health or its nominated auditor may enter RSHQ's premises and inspect their records to audit RSHQ's compliance.⁶⁰

Committee comment

The committee considers that the impact on individuals' privacy is limited by the safeguards within the relevant legislation and the agreement between RSHQ and Queensland Health. In addition, the impact on rights and liberties can be justified by the wider benefits to public health resulting from Queensland Health sharing information with RSHQ, considering the role of RSHQ in monitoring, regulating and protecting the health and safety of workers in the resources industry. Based on this analysis, the committee is satisfied that the subordinate legislation has sufficient regard for FLPs.

7.2.2.3 The Viewer

The aim of the subordinate legislation, to expand the number of health professionals who can access *The Viewer*, is to improve the quality and continuity of care of patients in Queensland, particularly patients who move from hospital settings to the community or residential settings. *The Viewer* allows health workers to access information about their patient's relevant public healthcare interactions.⁶¹

The Viewer contains operational safeguards to ensure health professionals protect the personal information that is contained on the system, such as:

⁵⁶ A maximum of 50 penalty units; *Public Health Act 2005*, s 77.

⁵⁷ SL No. 87, explanatory notes, p 13.

⁵⁸ *Information Privacy Act 2009*; *Public Health Act 2005*; and *Resources Safety and Health Queensland Act 2020*.

⁵⁹ SL No. 87, explanatory notes, pp 13-14.

⁶⁰ SL No. 87, explanatory notes, p 14.

⁶¹ SL No. 87, explanatory notes, p 14.

- each user is required to prove their identity to obtain access
- each user must continue to provide their credentials at each log on
- each user's access is recorded in audit files, allowing for regular usage checks by Queensland Health
- *The Viewer* can only be accessed through a read-only secure access portal, after a stringent registration process⁶²
- patient searches can only be completed using a set of unique patient identifiers, ensuring the patient is known to the health practitioner undertaking the search.⁶³

There are also statutory safeguards to protect the privacy and confidential information of patients. It is an offence to both inappropriately access information on *The Viewer* and to disclose confidential information unless the disclosure is required or permitted by law.⁶⁴

Committee comment

The committee considers that the benefits of permitting health professionals to access their patients' medical histories outweigh the potential impacts on a patient's right to privacy and the protection of the confidential information stored on *The Viewer*. The operational and statutory safeguards appear rigorous, and confidential information is to be used for the benefit of the patient. Therefore the committee considers that SL No. 87 has sufficient regard for FLPs.

7.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.4 Compatibility with human rights

The committee identified potential human rights issues in relation to SL No. 87, which are outlined in section 7.4.1 below.

7.4.1 *Human Rights Act 2019*, section 25 – Right to privacy

Every person has the right not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.⁶⁵

7.4.1.1 *Monkeypox*

The amendment prescribing monkeypox as a notifiable condition limits a person's right to privacy. A person may not wish to disclose their diagnosis, however SL No. 87 places legal obligations on relevant people (doctors, persons in charge of hospitals, directors of pathology laboratories) to report such a diagnosis to Queensland Health.

The purpose of the amendment is to protect the health of the public by managing any cases of potential outbreaks of monkeypox.⁶⁶ Being quickly notified of a case of monkeypox allows Queensland Health to initiate contact tracing to minimise further transmission, better understand the epidemiology of monkeypox, develop strategies to protect public health, and manage any cases or potential outbreaks.⁶⁷

7.4.1.2 *Information sharing between Queensland Health and RSHQ*

The amendment to the Public Health Regulation 2018 prescribing the agreement between Queensland Health and RSHQ limits a person's right to privacy. This is because the agreement permits

⁶² Registration process includes confirming personal identity, qualifications and professional registrations.

⁶³ SL No. 87, explanatory notes, p 14.

⁶⁴ *Hospital and Health Boards Act 2011*: ss 142A, 161C.

⁶⁵ HRA, s 25.

⁶⁶ SL No. 87, human rights certificate, p 5.

⁶⁷ SL No. 87, human rights certificate, p 6.

a person's medical history related to any conditions that must be recorded on the NDLD Register to be shared between Queensland Health and RSHQ.

The purpose of this amendment is to permit RSHQ to access confidential information in order to perform its statutory functions.⁶⁸ The safeguards discussed in section 7.2.2.2 above, including both Queensland Health and RSHQ being subject to privacy legislation, the ability to audit the release of confidential information, and the agreement setting out the scope in which confidential information can be disclosed, help to restrict the limitations on the right to privacy.⁶⁹

As well as these safeguards, the limitations on the right to privacy can be justified by the wider benefits to public health by Queensland Health sharing information with RSHQ, considering the role of RSHQ in monitoring, regulating and protecting the health and safety of workers in the resources industry.

7.4.1.3 *The Viewer*

Expanding the categories of health professionals able to access *The Viewer* limits a person's right to privacy. This is because their personal medical information is available to a health professional involved in their care.

The purpose of expanding access to *The Viewer* to additional health professionals is to improve the quality and continuity of healthcare in Queensland. It is intended to support better health outcomes for patients, particularly patients moving from hospital settings to the community or residential settings, as health workers are able to obtain information about their patients' relevant public health interactions.⁷⁰

As discussed in section 7.2.2.3 above, there are both operational and statutory safeguards in place to ensure that the information is only used in appropriate circumstances, and by an appropriate health professional. Further, a person must be registered with their relevant professional body, and undergo the Queensland Health registration process.

Committee comment

While SL No. 87 limits the right to privacy in some aspects, there are no less restrictive and reasonably available ways to achieve the same outcomes, and therefore the committee is satisfied that the limitations are reasonable and demonstrably justified in each case.

The committee considers the subordinate legislation is compatible with human rights in accordance with s 13 of the HRA.

7.5 Human rights certificate

The human rights certificate tabled with SL No. 87 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 SL No. 92 Forestry (State Forests) and Other Legislation Amendment Regulation 2022

8.1 Objectives

The objectives of the Forestry (State Forests) and Other Legislation Amendment Regulation 2022 (SL No. 92) are to:

- redescribe the entirety of Byfield State Forest⁷¹

⁶⁸ SL No. 87, human rights certificate, p 7; statutory functions include: protecting the safety and health of persons in the resources industry, regulating safety and health in the resources industry, and monitoring compliance with legislative obligations in the resources industry.

⁶⁹ SL No. 87, human rights certificate, p 8.

⁷⁰ SL No. 87, human rights certificate, p 9.

⁷¹ SL No. 92, explanatory notes, p 2.

- revoke the Pelion Forest Reserve and subsequently dedicate it as part of the existing Eungella National Park⁷²
- revoke the Tumoulin Forest Reserve, and subsequently dedicate it as the new Tumoulin National Park⁷³
- redescribe the Cape Upstart National Park and the Porcupine Gorge National Park⁷⁴
- redescribe the Bakers Creek Conservation Park⁷⁵
- declare 3 new nature refuges (Beau Vallon Nature Refuge, Gillies Ridge Nature Refuge, and Natural Bridge Nature Refuge)⁷⁶
- declare an additional area part of the Possum Lane Nature Refuge and redescribe the area of the nature refuge⁷⁷
- revoke part of the Rainbow Nature Refuge and redescribe the area of the nature refuge.⁷⁸

According to the explanatory notes, the 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'.⁷⁹

SL No. 92 includes minor administrative amendments, such as updating the plans that define the boundaries of state forests or protected areas using contemporary spatial technology, and correction of administrative errors within the regulation. The reasons these updates are required include miscalculations of an area, boundary consolidation following tenure actions, tidal boundary changes, and updating plan information to improve clarity, accuracy and transparency of the protected area and forest estate reporting system.⁸⁰ SL No. 92 also provides for an updated plan of Byfield State Forest, Cape Upstart National Park and Bakers Creek Conservation Park.⁸¹

8.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

8.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.4 Human rights considerations

The committee considers that the Proclamation raises no human rights issues.

8.5 Human rights certificate

The human rights certificate tabled with SL No. 92 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁷² SL No. 92, explanatory notes, pp 2, 3.

⁷³ SL No. 92, explanatory notes, pp 2, 3.

⁷⁴ SL No. 92, explanatory notes, p 3.

⁷⁵ SL No. 92, explanatory notes, p 3.

⁷⁶ SL No. 92, explanatory notes, p 3.

⁷⁷ SL No. 92, explanatory notes, p 3.

⁷⁸ SL No. 92, explanatory notes, p 4.

⁷⁹ SL No. 92, explanatory notes, p 2.

⁸⁰ Correcting administrative errors and amending descriptions will meet description requirements under the *Land Act 1994*; SL No. 92, explanatory notes, p 2.

⁸¹ SL No. 92, explanatory notes, p 2.

9 SL No. 103 Nature Conservation (Protected Areas) (Cangen-Yangan Indigenous Joint Management Area) Amendment Regulation 2022

9.1 Objectives

The objectives of the Nature Conservation (Protected Areas) (Cangen-Yangan Indigenous Joint Management Area) Amendment Regulation 2022 (SL No. 103) are to provide for the joint management of protected areas on Moreton Island (Mulgumpin) and to make minor amendments to correct a previous administrative error in the area and description of Gheebulum Kunungai (Moreton Island) National Park.⁸² SL No. 103 achieves these objectives by amending the Nature Conservation (Protected Areas) Regulation 1994.⁸³

According to the explanatory notes, SL No. 103 will allow for the joint management of the national parks between the Aboriginal Traditional Owners and Aboriginal People particularly concerned with the land and the Queensland Government. In addition:

Implementation will result in a number of economic benefits to the local and regional economy as part of the joint management arrangements. These primarily include the generation of employment opportunities directly for the Quandamooka People, the sharing of cultural knowledge and practices through undertaking park management activities consistent with Quandamooka Aboriginal tradition, and protection of the Island's unique natural environment from inappropriate development.⁸⁴

9.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

9.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.4 Human rights considerations

The committee considered the following human rights issue in relation to SL No. 103.

9.4.1 *Human Rights Act 2019*, section 28 — Cultural rights — Aboriginal peoples 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.⁸⁵ The HRA recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.⁸⁶

In the human rights certificate accompanying the regulation, the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs states her opinion that the regulation is compatible with the HRA because it does not limit human rights.⁸⁷

The Minister states that '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

⁸² SL No. 103, explanatory notes, pp 1, 2.

⁸³ By amending Schedule 2 'National parks' and Schedule 4A 'Indigenous joint management areas'; SL No. 103, ss 3, 4.

⁸⁴ SL No. 103, explanatory notes, p 3.

⁸⁵ HRA, s 27.

⁸⁶ HRA, s 28(1).

⁸⁷ SL No. 103, human rights certificate, p 3.

ecotourism'.⁸⁸ The Minister notes that as part of the consent determination process,⁸⁹ the State and the Quandamooka Yoolooburrabee Aboriginal Corporation, the representatives of the Quandamooka People, agreed to work towards the joint management of protected areas on Moreton Island.⁹⁰

The Minister further states:

The amendment of the protected area and declaration of an Indigenous joint management 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.⁹¹

Committee comment

Although legislation amending existing protected areas can have a potential indirect impact or create limitations on cultural rights in relation to the land, the committee is satisfied that, while engaged, cultural rights are not limited by SL No. 103. The committee is satisfied that the subordinate legislation is compatible with human rights.

9.5 Human rights certificate

The human rights certificate tabled with SL No. 103 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

10 SL No. 106 Nature Conservation (Protected Areas Management) (Toohey Forest Conservation Park) Amendment Regulation 2022

10.1 Objectives

The Nature Conservation (Protected Areas Management) (Toohey Forest Conservation Park) Amendment Regulation 2022 (SL No. 106) amends the Nature Conservation (Protected Areas Management) Regulation 2017⁹² to establish the Brisbane City Council (BCC) as trustee of the Toohey Forest Conservation Park.⁹³

SL No. 106 requires the BCC to manage Toohey Forest Conservation Park according to the conditions detailed in the management agreement between the BCC and Department of Environment and Science and the relevant legislation.⁹⁴

According to the explanatory notes, SL No. 106 will 'achieve park management efficiencies and acknowledge BCC's already existing adjoining land management responsibilities' and:

... ensures the conservation of nature while allowing for the social, cultural and commercial use of protected areas in a way that is consistent with the natural and cultural and other values of the areas.⁹⁵

10.2 Consistency with fundamental legislative principles

No FLP issues were identified by the committee.

⁸⁸ SL No. 103, human rights certificate, p 2.

⁸⁹ On 27 November 2019, the Federal Court of Australia made a native title consent determination recognising the Quandamooka People's native title rights on Moreton Island (Mulgumpin); SL No. 103, human rights certificate, p 2.

⁹⁰ SL No. 103, human rights certificate, p 2.

⁹¹ SL No. 103, human rights certificate, p 2.

⁹² In accordance with the *Nature Conservation Act 1992*, s 31.

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

⁹⁴ SL No. 106, explanatory notes, p 2.

⁹⁵ SL No. 106, explanatory notes, pp 1, 2.

10.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

10.4 Human rights considerations

The committee considers that SL No. 106 raises no human rights issues.

10.5 Human rights certificate

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

11 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

Chair

October 2022

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