

## Health, Environment and Agriculture Committee

### Report No. 1, 57th Parliament

### Subordinate legislation tabled between 11 October 2023 and 24 October 2023

#### Acknowledgements

The Health and Environment Committee ceased to exist on 13 February 2024 following a motion agreed to by the Legislative Assembly. Its portfolio responsibilities were transferred to the Health, Environment and Agriculture Committee, including the Subordinate legislation tabled between 11 October 2023 and 24 October 2023.

The former Health and Environment Committee had adopted its Report No. 45, 57th Parliament Subordinate legislation tabled between 11 October 2023 and 24 October 2023, prior to its dissolution. The Health, Environment and Agriculture Committee has accepted the report unamended and agreed to its tabling in the Legislative Assembly as Report No. 1, 57th Parliament Subordinate legislation tabled between 11 October 2023 and 24 October 2023.

#### Health, Environment and Agriculture Committee

<b>Chair</b>	Mr Aaron Harper MP, Member for Thuringowa
<b>Deputy Chair</b>	Mr Robert (Rob) Molhoek MP, Member for Southport
<b>Members</b>	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Mr Craig Crawford MP, Member for Barron River
	Mr James Martin MP, Member for Stretton
	Mr Samuel (Sam) O'Connor MP, Member for Bonney



## Health and Environment Committee

### Report No. 45, 57th Parliament

## Subordinate legislation tabled between 11 October 2023 and 24 October 2023

### 1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 11 October 2023 and 24 October 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs),<sup>1</sup> its compatibility with human rights,<sup>2</sup> and its lawfulness.<sup>3</sup> It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),<sup>4</sup> and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).<sup>5</sup>

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
145	Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2023	24 October 2023	7 March 2024
146	Health Legislation Amendment Regulation (No. 2) 2023	24 October 2023	7 March 2024
147	Nature Conservation and Other Legislation (K'gari) Amendment Regulation 2023	24 October 2023	7 March 2024
148	Nature Conservation (Protected Areas Management) (Apiary Areas) Amendment Regulation 2023	24 October 2023	7 March 2024

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

### 3 Committee consideration of the subordinate legislation

No significant issues were identified with the policy, consistency with FLPs, lawfulness, or human rights compatibility of the Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2023, the Nature Conservation and Other Legislation (K'gari) Amendment Regulation 2023, or the Nature Conservation (Protected Areas Management) (Apiary Areas) Amendment Regulation 2023.

The committee considered potential FLP and human rights issues in relation to the Health Legislation Amendment Regulation (No. 2) 2023 which are discussed in section 5 of this report. The committee

<sup>1</sup> *Legislative Standards Act 1992*, s 4.

<sup>2</sup> *Human Rights Act 2019*, s 8.

<sup>3</sup> *Legislative Standards Act 1992*, Part 4.

<sup>4</sup> *Legislative Standards Act 1992*, Part 4.

<sup>5</sup> *Human Rights Act 2019*, s 41.

was ultimately satisfied that the subordinate legislation is consistent with FLPs and compatible with human rights.

The committee is satisfied that the explanatory notes tabled with the subordinate legislation comply with part 4 of the LSA, and the accompanying human rights certificates provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

A brief overview of the subordinate legislation is provided in the following sections.

#### **4 SL No. 145 – Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2023**

The objective of the Health Practitioner Regulation National Law and Other Legislation Amendment (Postponement) Regulation 2023 (SL No. 145) is to extend the period before the automatic commencement of uncommenced provisions<sup>6</sup> of the *Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022* (Amendment Act).<sup>7</sup> SL No. 145 postpones the automatic commencement of these provisions to 21 October 2024.<sup>8</sup>

The Amendment Act amends the following legislation:

- the *Health Ombudsman Act 2013*
- the Health Practitioner Regulation National Law (National Law), as set out in the schedule to the *Health Practitioner Regulation National Law Act 2009*
- the Queensland application and modification provisions in the *Health Practitioner Regulation National Law Act 2009*.<sup>9</sup>

Section 2 of the Amendment Act provides for a number of provisions to commence on a date to be fixed by proclamation. The explanatory notes indicate that this was done to:

- provide time for regulators to update their administrative systems and guidance materials
- allow for further stakeholder education and preparation, and
- allow time for jurisdictions to pass their own corresponding or adopting legislation to apply the amendments, as is required in certain States, for reforms where national consistency is critical.<sup>10</sup>

While some of the provisions set out in section 2 commenced by proclamation on 15 May 2023, the remaining provisions which have yet to be proclaimed would have automatically commenced on 22 October 2023. According to the explanatory notes, extending the period before automatic commencement of the remaining provisions is ‘necessary to allow time for other jurisdictions to give effect to the amendments, allowing them to commence nationally at the same time’.<sup>11</sup>

---

<sup>6</sup> Those not commenced by Proclamation No. 1 – Health Practitioner Regulation National Law and Other Legislation Amendment Act 2022 (commencing certain provisions), <https://www.legislation.qld.gov.au/view/whole/html/asmade/sl-2023-0037>; see also Amendment Act, s 2.

<sup>7</sup> SL No. 145, s 2; explanatory notes, pp 1-2.

<sup>8</sup> SL No. 145, explanatory notes, p 2. SL No. 144, s 2.

<sup>9</sup> SL No. 145, human rights certificate, p 1.

<sup>10</sup> SL No. 145, explanatory notes, p 2.

<sup>11</sup> SL No. 145, explanatory notes, p 2.

Under the *Acts Interpretation Act 1954* a regulation may extend the period before the automatic commencement of a postponed law<sup>12</sup> to not more than 2 years from the date of assent.<sup>13</sup> The date of assent of the Amendment Act was 21 October 2022.<sup>14</sup>

The explanatory notes advise that the ‘decision to postpone commencement of the remaining provisions of the Amendment Act was made in consultation with the Queensland Office of the Health Ombudsman, the Australian Health Practitioner Regulation Agency, and departments with responsibility for health in all States, Territories and the Australian Government’.<sup>15</sup>

## 5 SL No. 146 – Health Legislation Amendment Regulation (No. 2) 2023

The Health Legislation Amendment Regulation (No. 2) 2023 (SL No. 146) amends a range of Queensland Health subordinate legislation as set out below.

### Public Health Regulation 2018 (Public Health Regulation)

SL No. 146 will:

- make Acute Post Streptococcal Glomerulonephritis (APSGN)<sup>16</sup> a clinical diagnosis condition
- remove haemolytic uraemic syndrome (HUS) as a pathological diagnosis notifiable condition
- remove COVID-19 as a provisional diagnosis notifiable condition or a pathology request notifiable condition
- remove flavivirus infections and COVID-19 as conditions which are notified immediately.<sup>17</sup>

The Public Health Regulation prescribes notifiable conditions, which are medical conditions that must be reported to the Notifiable Conditions Register because they pose a significant risk to public health. In regard to the addition of APSGN as a clinical diagnosis condition, the explanatory notes state that this will ensure surveillance data may be utilised to inform appropriate public health action and to prevent spread and secondary cases of APSGN. The data may also be used to create a detailed baseline epidemiology of the condition.<sup>18</sup>

According to the explanatory notes, the re-designation of HUS, COVID-19 and flavivirus infections is due to changes in the risks presented by these existing notifiable conditions and the public health practice protocols for managing the risks. The explanatory notes state that ‘these changes will align the notification framework with contemporary public health practices, to ensure that only information required to manage public health is collected’.<sup>19</sup>

### Radiation Safety Regulation 2021 (Radiation Safety Regulation)

SL No. 146 will:

- remove reference to a superseded International Commission on Radiological Protection (ICRP) document and insert a reference to the replacement ICRP document

---

<sup>12</sup> *Acts Interpretation Act 1954*, s 15DA: postponed law means an Act or provision of an Act that does not commence on the assent day because a provision of an Act postpones its commencement until a day fixed under an instrument.

<sup>13</sup> *Acts Interpretation Act 1954*, s 15DA(2),(3).

<sup>14</sup> SL No. 145, explanatory notes, p 1.

<sup>15</sup> SL No. 145, explanatory notes, p 3.

<sup>16</sup> APSGN is an injury to the kidneys caused by the body’s immune response to an infection from a bacterium called Group A Streptococcus. This infection, and the chronic diseases arising from the immune response to the infection, disproportionately affect Aboriginal and Torres Strait Islander communities, particularly children; SL No. 146, explanatory notes, p 2.

<sup>17</sup> SL No. 146, explanatory notes, p 1.

<sup>18</sup> SL No. 146, explanatory notes, p 3.

<sup>19</sup> SL No. 146, explanatory notes, p 3.

- clarify that the fee exemption for applying for an additional use licence does not apply to a prescribed licensee whose only other use licence is a deemed licence.<sup>20</sup>

The explanatory notes advise that under the Radiation Safety Regulation, a person who is already the holder of a use licence (to use a radiation source for diagnostic or therapeutic purposes) may apply for a subsequent use licence without having to pay an application fee. The fee exemption recognises that as the department can rely on its previous consideration of the applicant's suitability, it does not incur the full cost of processing a new application. An unintended consequence of the fee exemption is that it applies to prescribed licensees (a prescribed licensee is a person who is deemed to hold a use licence without having to apply, be assessed or pay the associated fee). It was not the policy intent that prescribed licensees could rely on their deemed licence to obtain multiple additional use licenses without needing to apply for the licence, pay the application fee, or undergo the vetting process, and SL No. 146 will close this loophole.<sup>21</sup>

SL No. 146 also amends the following subordinate legislation to update references to agreements, published documents and interstate legislation:

- Mental Health Regulation 2017 – to update the prescribed corresponding law of another jurisdiction, by replacing the reference to the *Mental Health Act 2014* (Vic) with a reference to the *Mental Health and Wellbeing Act 2022* (Vic)<sup>22</sup>
- Hospital and Health Boards Regulation 2023 – to facilitate the continued disclosure of confidential information between Queensland Health and Queensland Corrective Services by replacing the reference to an existing prescribed memorandum of understanding with a reference to the more recently executed information sharing agreement<sup>23</sup>
- Health Ombudsman Regulation 2014 – to prescribe interim prohibition orders and prohibition orders made pursuant to the *Health and Disability Services (Complaints) Act 1995* (WA) as corresponding interstate interim orders and corresponding interstate orders, respectively.<sup>24</sup>

## 5.1 Consistency with fundamental legislative principles

### 5.1.1 Rights and liberties of individuals – reasonable and fair treatment

The reasonable and fair treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.<sup>25</sup> Provisions imposing liability should be fair and reasonable both in relation to the circumstances in which the liability is imposed, but also in relation to any exemptions or defences.<sup>26</sup>

The amendments to the Radiation Safety Regulation which remove the fee exemption for certain types of licensees potentially impacts on the rights of those individuals, as they will be required to pay a fee when they were previously exempt.<sup>27</sup>

The explanatory notes state that any potential inconsistency with FLPs is justified as 'prescribed licensees were never intended to receive the fee exemption and this amendment merely puts them in the same position as all other licensees'.<sup>28</sup>

<sup>20</sup> SL No. 146, explanatory notes, p 2.

<sup>21</sup> SL No. 146, explanatory notes, pp 2-3.

<sup>22</sup> SL No. 146, explanatory notes, pp 2, 4.

<sup>23</sup> SL No. 146, explanatory notes, pp 2, 4.

<sup>24</sup> SL No. 146, explanatory notes, pp 2, 5.

<sup>25</sup> *Legislative Standards Act 1992*, s 4(2)(a). Office of the Queensland Parliamentary Counsel (OQPC), 'Fundamental legislative principles: the OQPC Notebook', p 133.

<sup>26</sup> SL No 146, explanatory notes, p 8; OQPC, Notebook, p 133.

<sup>27</sup> SL No 146, explanatory notes, p 8.

<sup>28</sup> SL No 146, explanatory notes, p 8.

**Committee comment**

Given that SL No. 146 is designed to align the fee exemption categories under the Radiation Safety Regulation with the original policy intent, the committee is satisfied that any inconsistency with FLPs is justified in the circumstances.

**5.1.2 Rights and liberties of individuals – privacy**

The right to privacy, including the disclosure of private or confidential information, is relevant to whether legislation has sufficient regard to rights and liberties of individuals. The right to privacy is also relevant to the subordinate legislation's compatibility with human rights and is discussed in this context in section 5.2.1 below.

**5.2 Compatibility with human rights****5.2.1 Right to privacy and reputation**

SL No. 146 potentially limits the right to privacy by making APSGN a clinical diagnosis notifiable condition, meaning it must be reported when diagnosed. A patient's confidential information will be reported to the Chief Executive of Queensland Health and recorded. A notification may trigger a public health response, including contact tracing and intervention with household contacts.<sup>29</sup>

According to the human rights certificate, the purpose of making APSGN a notifiable condition is to prevent further cases through intervention:

Notification of APSGN facilitates public health responses to cases and outbreaks. It is also known that APSGN cases are at high risk of hospitalisation, there are significantly higher APSGN rates occurring among Aboriginal and Torres Strait Islander communities and responses to outbreaks in vulnerable communities require early recognition to be effective.<sup>30</sup>

SL No. 146 also potentially limits the right to privacy by prescribing an information-sharing agreement between Queensland Health and Queensland Corrective Services, which allows the disclosure of confidential information in relation to persons in custody.<sup>31</sup>

According to the human rights certificate, the purpose of the agreement between Queensland Health and Queensland Corrective Services is to 'share information within a custodial environment to enable the timely delivery of health services to persons in custody and the safe, secure, and effective supervision and management of those persons'.<sup>32</sup> The ability to share information between Queensland Health and Queensland Corrective Services already exists through a memorandum of understanding, which is being replaced by a new information sharing agreement as a result of a recommendation of a coronial finding delivered in relation to a death in custody.<sup>33</sup>

The limitation in both circumstances involves information being disclosed for specific purposes.<sup>34</sup> The human rights certificate advises that the new information-sharing agreement with Queensland Corrective Services will be supported by operating guidelines, 'to ensure only information which assists with health service delivery and the safe management of persons in custody is disclosed'.<sup>35</sup> In addition, the explanatory notes advise that the information collected regarding APSGN will be protected by the confidentiality provisions of the *Public Health Act 2005*.<sup>36</sup>

<sup>29</sup> SL No. 146, human rights certificate, p 5.

<sup>30</sup> SL No. 146, human rights certificate, p 5.

<sup>31</sup> SL No. 146, human rights certificate, p 5.

<sup>32</sup> SL No. 146, human rights certificate, p 6.

<sup>33</sup> SL No. 146, human rights certificate, p 3.

<sup>34</sup> SL No. 146, human rights certificate, p 6.

<sup>35</sup> SL No. 146, human rights certificate, p 6.

<sup>36</sup> SL No. 146, explanatory notes, p 8.

### **Committee comment**

The committee is satisfied that SL No. 146 is compatible with human rights.

## **6 SL No. 147 – Nature Conservation and Other Legislation (K’gari) Amendment Regulation 2023**

The Nature Conservation and Other Legislation (K’gari) Amendment Regulation 2023 (SL No. 147) makes consequential amendments to the following regulations to update references to ‘K’gari’ from ‘Fraser Island’ to reflect the renaming of the island on 7 June 2023:<sup>37</sup>

- Environmental Protection (Water and Wetland Biodiversity) Policy 2019
- Nature Conservation (Animals) Regulation 2020
- Nature Conservation (Protected Areas Management) Regulation 2017.

## **7 SL No. 148 – Nature Conservation (Protected Areas Management) (Apiary Areas) Amendment Regulation 2023**

The Nature Conservation (Protected Areas Management) (Apiary Areas) Amendment Regulation 2023 (SL No. 148) supports the implementation of provisions contained in part 4, division 3 of the *Nature Conservation and Other Legislation Amendment Act 2022* (NCOLA Act), which automatically commenced on 22 October 2023.<sup>38</sup>

The NCOLA Act provisions provide:

- a 20-year extension for beekeeping on apiary areas within national parks
- that the Minister may recommend to the Governor in Council the making of a regulation prescribing apiary areas in certain circumstances
- that the chief executive may grant apiary permits for apiary areas prescribed in regulation if the grant complies with any requirements prescribed in regulation for apiary areas
- that a regulation may prescribe requirements about apiary sites in an apiary area or limits on the number of apiary sites for an apiary area.<sup>39</sup>

SL No. 148 prescribes apiary areas where beekeeping may continue in national parks, requirements with which the chief executive must comply when granting apiary permits, and certain requirements and limits in relation to apiary sites in an apiary area.<sup>40</sup>

## **8 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP  
**Chair**

**February 2024**

<sup>37</sup> SL No. 147, explanatory notes, p 1. On 7 June 2023, Fraser Island was renamed K’gari under the *Place Names Act 1994*, reflecting the traditional name used by the Butchulla People for the Island.

<sup>38</sup> SL No. 148, explanatory notes, p 1.

<sup>39</sup> SL No. 148, explanatory notes, pp 1-2.

<sup>40</sup> SL No. 148, explanatory notes, p 2; human rights certificate, p 1. See specifically SL No. 148, s 4 (Apiary permits for national parks), s 5 (Restriction about protected areas and apiary sites for grant of permit), s 7 (Matters to be stated in authority) and s 8 (Prescribed forest reserves for temporary continuation of beekeeping).

**Health and Environment Committee**

<b>Chair</b>	Mr Aaron Harper MP, Member for Thuringowa
<b>Deputy Chair</b>	Mr Robert (Rob) Molhoek MP, Member for Southport
<b>Members</b>	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Mr James Martin MP, Member for Stretton
	Mr Andrew Powell MP, Member for Glass House