QUEENSLAND PARLIAMENT
COMMITTEES

Health, Environment and Agriculture Committee

Report No. 2, 57th Parliament

Subordinate legislation tabled between 25 October 2023 and 14 November 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 25 October 2023 and 14 November 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs),[1] its compatibility with human rights,[2] and its lawfulness.[3] It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),[4] and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).[5]

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
152	Medicines and Poisons (Medicines) Amendment Regulation (No. 3) 2023	14 November 2023	21 March 2024
154	Proclamation No. 1—Health and Other Legislation Amendment Act 2023 (commencing certain provisions)	14 November 2023	21 March 2024
158	Health and Other Legislation Amendment (Postponement) Regulation 2023	14 November 2023	21 March 2024
159	Radiation Safety Amendment Regulation 2023	14 November 2023	21 March 2024
160	Rural and Regional Adjustment (Primary Producer Flood Management Grants Scheme) Amendment Regulation 2023	14 November 2023	21 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 Proclamation No. 1—Health and Other Legislation Amendment Act 2023, the Health and Other Legislation Amendment (Postponement) Regulation 2023, or the Radiation Safety Amendment Regulation 2023.

1 *Legislative Standards Act 1992,* s 4.

2 *Human Rights Act 2019*, s 8.

3 *Legislative Standards Act 1992*, Part 4.

4 *Legislative Standards Act 1992*, Part 4.

5 *Human Rights Act 2019*, s 41.

The committee considered potential FLP and human rights issues in relation to the Medicines and Poisons (Medicines) Amendment Regulation (No. 3) 2023 and the Rural and Regional Adjustment (Primary Producer Flood Management Grants Scheme) Amendment Regulation 2023, which are discussed in this report. The committee 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. 152 – Medicines and Poisons (Medicines) Amendment Regulation (No. 3) 2023

The objective of SL No. 152 is to amend the Medicines and Poisons (Medicines) Regulation 2021 (Regulation) to refer to a new version of the Pharmacists Extended Practice Authority (Pharmacists EPA), which:

- expands the range of vaccines pharmacists are authorised to administer in Queensland to include –
  - Hepatitis B
  - Varicella
  - Meningococcal B
  - Human papillomavirus (HPV)
  - Typhoid
  - Zoster, and
  - Japanese encephalitis
- extends the age range for patients that pharmacists may vaccinate to include children aged two years and older, with the exception of influenza and COVID-19 vaccines
- provides that the age limitations for influenza and COVID-19 vaccines will continue to be those recommended in the Australian Immunisation Handbook and the recommendations of the Australian Technical Advisory Group on Immunisation (ATAGI) respectively
- enables pharmacists to vaccinate in the following locations and clinical settings, in addition to community pharmacies and public sector hospitals –
  - a private hospital
  - a public sector health service facility (e.g. community clinics, public residential aged care, and services provided in corrective services and youth detention centres)
  - a general practice
  - an Aboriginal or Torres Strait Islander health service
  - an aged care facility.[6]

SL No. 152 also amends the Regulation to allow pharmacists employed at a community pharmacy, private health facility or health service to:

- administer scheduled medicines, other than vaccines, in a variety of health contexts including –
  - a Schedule 2 (S2) or Schedule 3 (S3) medicine—for example, a pharmacist may administer topical hydrocortisone cream in a Hospital and Health Service outpatient clinic to a patient for the purpose of demonstration

[6] SL No. 152, explanatory notes, p 2. See also Queensland Government, *Extended Practice Authority – 'Pharmacists' – Version 4,* https://www.health.qld.gov.au/__data/assets/pdf_file/0027/1108944/epa-pharmacists.pdf.

- a Schedule 4 (S4) or Schedule 8 (S8) medicine on a prescription—for example, a pharmacist working at a community pharmacy may administer a dose of subcutaneous denosumab for the treatment of osteoporosis on the valid prescription of an authorised prescriber
- any medicine on a standing order—for example, a pharmacist may administer salbutamol, naloxone or glyceryl trinitrate under a standing order at a public sector health service for emergency management
- an S4 or S8 medicine in accordance with the medicine's approved label—for example, a pharmacist working in a community pharmacy may administer by subcutaneous injection a dose of dulaglutide, to support diabetes management, in accordance with its dispensed label for the purposes of education or to facilitate compliance where a patient may be unable to store this medicine appropriately

- possess an S4 or S8 medicine for the purposes of administration.[7]

4.1 Consistency with fundamental legislative principles

4.1.1 Regard to the institution of Parliament – external documents

External documents, such as extended practice authorities (EPAs) and guidelines, are generally not required to be tabled and are not subject to the disallowance provisions in the *Statutory Instruments Act 1992.* As a result, they could be considered to have insufficient regard to the institution of Parliament, and therefore to be inconsistent with fundamental legislative principles.[8]

New versions of extended practice authorities

The *Medicines and Poisons Act 2019* provides that the chief executive of Queensland Health may make an EPA authorising an approved person to deal with a regulated substance.[9] An EPA may specify:

- the places or circumstances that an approved person may deal with the regulated substance
- conditions on dealing with the substance
- requirements for the approved person to hold particular qualifications or training.[10]

The explanatory notes advise that an EPA 'sets out matters of technical detail for how an approved person can carry out a regulated activity with a regulated substance', including details such as 'the route of administration, the specific dose, quantity, duration and restrictions placed on substances and the circumstances in which they may be administered'.[11]

According to the explanatory notes, EPAs are monitored and updated regularly to align with clinical best practice.[12] The Regulation is updated to reflect the name and version of an EPA each time a new version is made. In this instance, a new version of the Pharmacists EPA was included in the Regulation.[13]

While there is no statutory requirement to table an EPA, the EPA approved in SL No. 152 was tabled on 30 October 2023 as extrinsic material and is therefore readily available for scrutiny by the Queensland Parliament. EPAs are also published on the Queensland Health website.[14]

The explanatory notes provide the following justification for the approval in SL No. 152 of the new or updated EPA:

7 SL No. 152, explanatory notes, pp 2-3.

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

9 SL No. 152, explanatory notes, p 8.

10 *Medicines and Poisons Act 2019*, s 232.

11 SL No. 152, explanatory notes, p 8.

12 SL No. 152, explanatory notes, p 8, 9.

13 SL No. 152, s 4 (Medicines and Poisons (Medicines) Regulation 2021, sch 1).

14 SL No. 152, explanatory notes, p 9.

Including a list of extended practice authorities in the schedule of the Medicines Regulation creates certainty for the relevant professions and the public about the status of extended practice authorities published on the Queensland Health website and the date when these took effect.

It is considered the rigour surrounding the development of extended practice authorities and the level of parliamentary oversight afforded by the requirement that extended practice authorities must be approved by regulation justifies the need to sub-delegate by referring to external documents in the Medicines Regulation. Queensland Health has made a commitment to table any extrinsic material referenced in legislation in the Legislative Assembly. Tabling the updated Extended Practice Authority provides the Legislative Assembly with an opportunity to consider the Extended Practice Authority and any conditions imposed under it when scrutinising the Regulation.[15]

Committee comment

The committee is satisfied that any breach of fundamental legislative principle arising from the reference to an external document (a new version of the Pharmacists EPA) in SL No. 152 is justified. The committee considers that a level of parliamentary oversight is provided because an EPA must be approved by regulation, a copy of the EPA approved in SL No. 152 was tabled, and the tabled document is detailed.

4.2 Compatibility with human rights

4.2.1 Right to health services

Every person has the right to access health services without discrimination.[16] 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'.[17]

SL No. 152 makes provision for a range of authorisations for the purposes of the *Medicines and Poisons Act 2019*, such as, approved EPAs and departmental standards in schedule 1 of the Regulation, and classes of approved persons authorised to carry out dealings stated in schedules 3 to 15 of the Regulation.[18] In that regard, the limits, restrictions and conditions in the authorisations effectively limit access to medicines and, therefore, the right to access health services.[19]

According to the human rights certificate, this limitation is required to mitigate the risks of substance abuse or misuse by vulnerable persons, and is required to ensure 'that those who possess the appropriate knowledge and training … have oversight and control over medicines'.[20]

The human rights certificate asserts that SL No. 152 'balances the need to ensure medicines are not misused with the need to improve access to health services for the public'.[21]

Committee comment

The committee is satisfied that SL No. 152 is compatible with human rights.

5 SL No. 154 – Proclamation No. 1 – Health and Other Legislation Amendment Act 2023 (commencing certain provisions)

The objective of SL No. 154 is to commence certain provisions of the *Health and Other Legislation Amendment Act 2023*. The provisions, and commencing dates, are set out below.

15 SL No. 152, explanatory notes, p 9.

16 *Human Rights Act 2019*, s 37.

17 SL No. 152, human rights certificate, p 5.

18 SL No. 152, human rights certificate, p 3.

19 SL No. 152, human rights certificate, p 3.

20 SL No. 152, human rights certificate, p 5.

21 SL No. 152, human rights certificate, p 5.

Provisions to commence on 15 November 2023:[22]

- amendments[23] to the *Mental Health Act 2016* to –
  - remove the requirement that adults entitled to waive the right to representation before the Mental Health Review Tribunal must do so in writing
  - restrict the provision of records or transcripts of Mental Health Review Tribunal proceedings that are made under the *Recording of Evidence Act 1962*
- amendments[24] to the *Radiation Safety Act 1999* to –
  - make operational and technical amendments to ensure a person does not receive greater than a specified dose of ionising radiation
  - stipulate when a regulation may prescribe particular radioactive materials as exempt from the requirements in the *Radiation Safety Act 1999*
- amendments[25] to the *Recording of Evidence Act 1962* to establish a statutory framework for recording prescribed tribunal proceedings and providing access to copies of records and transcriptions of those proceedings
- amendments[26] to the *Transplantation and Anatomy Act 1979* to –
  - ensure efficient processes for the supply of human tissue products for essential health purposes
  - support consistent and practical processes for the donation of human tissue.

Provisions to commence on 1 May 2024:[27]

- amendments[28] to the *Hospital and Health Boards Act 2011* to –
  - strengthen protections for the wellbeing of the public health workforce by requiring Hospital and Health Boards and Hospital and Health Services to proactively consider staff health, safety and wellbeing
  - clarify when healthcare security officers may direct persons to leave public healthcare premises.

6 SL No. 158 – Health and Other Legislation Amendment (Postponement) Regulation 2023

The objective of SL No. 158 is to extend the period before the automatic commencement of part 5, division 3 of the *Health and Other Legislation Amendment Act 2023* to the end of 2 May 2025.[29] The provisions will now automatically commence on 3 May 2025.[30]

Part 5, division 3 of the *Health and Other Legislation Amendment Act 2023* amends the *Public Health Act 2005* to modernise the Queensland Cancer Register by expanding notification requirements. According to the explanatory notes, 'a delayed commencement is required for these provisions to ensure that the relevant activities, including installation of technology for radiology practices,

22 See SL No. 154, explanatory notes, pp 1-2; SL No. 154, schedule (item 1).

23 Part 4 of the *Health and Other Legislation Amendment Act 2023*.

24 Part 6 of the *Health and Other Legislation Amendment Act 2023*.

25 Part 7 of the *Health and Other Legislation Amendment Act 2023*.

26 Part 8 of the *Health and Other Legislation Amendment Act 2023*.

27 See SL No. 154, explanatory notes, p 2; SL No. 154, schedule (item 2).

28 Part 2 of the *Health and Other Legislation Amendment Act 2023*.

29 SL No. 158, explanatory notes, p 1. See also *Health and Other Legislation Amendment Act 2023*, s 2(b).

30 SL No. 158, s 2.

stakeholder education, updating approved forms and providing resources for the public online and at health sites, can first be completed'.[31]

Under the *Acts Interpretation Act 1954,* a regulation may extend the period before the automatic commencement of a postponed law[32] to not more than 2 years from the date of assent.[33] The date of assent of the *Health and Other Legislation Amendment Act 2023* was 2 May 2023.[34] These provisions have yet to be proclaimed and, unless delayed, would have automatically commenced on 3 May 2024.

7 SL No. 159 – Radiation Safety Amendment Regulation 2023

SL No. 159 amends the Radiation Safety Regulation 2021 (Radiation Safety Regulation) to:

- clarify requirements for disposal of a person's bodily waste where the person has been administered a radioactive substance as part of a diagnostic or therapeutic procedure[35]
- omit an offence which has been moved into the *Radiation Safety Act 1999* (Radiation Safety Act).[36]

The Radiation Safety Regulation (s 60) currently provides that a person who possesses a mineral substance that is radioactive material, but that is not a radioactive substance, must ensure another person does not receive a total effective radiation dose from the mineral substance above 1 millisievert per year for public exposure of a person, or more than 20 millisieverts per year if the person is exposed in the course of their employment. The *Health and Other Legislation Amendment Act 2023* moved this offence provision from the Radiation Safety Regulation into new s 42A of the Radiation Safety Act, and increased the penalty to 100 penalty units, to align with similar offences. SL No. 159 makes the requisite changes to the Radiation Safety Regulation.

8 SL No. 160 – Rural and Regional Adjustment (Primary Producer Flood Management Grants Scheme) Amendment Regulation 2023

SL No. 160 amends the Rural and Regional Adjustment Regulation 2011 to provide for a scheme of financial assistance for primary producers impacted by eligible disasters in late 2021 – early 2022.[37]

The measure was agreed by the Australian Government on 18 May 2022 under the joint Commonwealth State Disaster Recovery Funding Arrangements to provide additional support for the recovery from the disaster events impacting on southern Queensland during late 2021 and early 2022. Under the new scheme, eligible primary producers are able to obtain assistance of up to $7,500 for eligible professional advice[38] to improve the resilience of their primary production enterprise to

---

31 SL No. 158, explanatory notes, p 2.

32 *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.

33 *Acts Interpretation Act 1954*, s 15DA(2),(3).

34 See *Health and Other Legislation Amendment Act 2023.*

35 SL No. 159, explanatory notes, pp 1-3; SL No. 159, s 7.

36 SL No. 159 amends the Radiation Safety Regulation by deleting section 60 (contained in part 8, division 1, subdivision 5) and moving prescribed dose limits to new section 58A; SL No. 159, ss 4, 5; explanatory notes, pp 1-2.

37 SL No. 160, explanatory notes, p 1.

38 Applicants must provide the Queensland Rural and Industry Development Authority with an endorsement by an Industry Recovery and Resilience Officer that the professional advice activity is eligible (ie. the activity will improve the resilience to flooding and high rainfall) and a copy of the flood management plan for the enterprise.

flooding and high rainfall. Applicants under this scheme can seek a rebate for eligible activities already undertaken since the announcement of the assistance on 18 May 2022.[39]

8.1 Consistency with fundamental legislative principles

8.1.1 Regard to the institution of Parliament – delegation of legislative power

Subordinate legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons.[40]

The definition of 'defined disaster area' in SL No. 160 is not completely contained within SL No. 160 as it relies on non-legislative material - the definition refers to local government areas identified in disaster activation documents as particular areas.[41] SL No. 160 identifies 4 relevant documents, which are published on the Queensland Reconstruction Authority's website.[42] There is no discussion in the explanatory notes about the reference to external documents.

Committee comment

The committee is satisfied that the subdelegation of legislative power by reference to an external document has sufficient regard to the institution of Parliament in this instance. While there is no discussion in the explanatory notes about the reference to external documents, the documents were prepared by the government, are available on the website, and their use appears sensible in the circumstances.

9 Recommendation

The committee recommends that the Legislative Assembly notes this report.

Aaron Harper MP
Chair

February 2024

Health, Environment and Agriculture 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
	Mr Craig Crawford MP, Member for Barron River
	Mr James Martin MP, Member for Stretton
	Mr Samuel (Sam) O'Connor MP, Member for Bonney

39 SL No. 160, explanatory notes pp 1-2; ss 1, 2, 7.

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

41 That is, as a DRFA Activated Area; and an area eligible for DRFA assistance measure 'Disaster Assistance (Primary Producers) Loans'.

42 See SL No. 60, s 4.