

Transport and Resources Committee

Report No. 1, 57th Parliament

Subordinate legislation tabled between 10 July 2020 and 5 October 2020

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 10 July 2020 and 5 October 2020.

It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992 (LSA)*.¹ The report also outlines the committee’s consideration of compliance with the *Human Rights Act 2019 (HRA)* and the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
106	Land Regulation 2020	10 July 2020	2 December 2020
93	Proclamation—Natural Resources and Other Legislation (GDA2020) Amendment Act 2020 (commencing remaining provisions)	14 July 2020	3 December 2020
94	Natural Resources and Other Legislation (GDA2020) Amendment Regulation 2020	14 July 2020	3 December 2020
95	Biosecurity (Siam Weed and Other Matters) Amendment Regulation 2020	14 July 2020	3 December 2020
105	Proclamation No. 3—Natural Resources and Other Legislation Amendment Act 2019 (commencing remaining provisions)	14 July 2020	3 December 2020
107	Natural Resources, Mines and Energy Legislation (Fees) Amendment Regulation 2020	14 July 2020	3 December 2020
108	Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020	14 July 2020	3 December 2020
109	Proclamation—Mineral and Energy Resources and Other Legislation Amendment Act 2020 (commencing remaining provisions)	14 July 2020	3 December 2020

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, section 41.

118	Coal Mining Safety and Health (Methane Monitoring and Ventilation Systems) Amendment Regulation 2020	14 July 2020	3 December 2020
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*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

The committee identified no significant issues regarding the policy, consistency with FLPs or the lawfulness of the subordinate legislation. However, the committee identified minor FLP issues in relation to SL 94, 95, 96, 106 and 108, as outlined below. The committee considers that the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA. The committee has raised concerns, however, about the content of the explanatory notes tabled with SL 108.

The committee considers that SL 106 and 108 raise potential human rights issues, which are discussed below. The human rights certificates tabled with the subordinate legislation, in accordance with section 41 of the HRA, provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

4 Land Regulation 2020 (SL 106)

The regulation is made in reliance, in part, on section 23 of the *COVID-19 Emergency Response Act 2020* (Emergency Response Act).⁴ The Emergency Response Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency. In broad terms, section 23 provides an additional regulation-making power in relation to the treatment of retail leases, including:

- prohibiting the recovery of possession and termination of a lease
- regulating or preventing the exercise or enforcement of other rights of a lessor
- exempting lessees from the operation of a provision of an Act, and
- prescribing matters relating to disputes.⁵

The Emergency Response Act provides that a regulation made under section 23 must declare that it is made under that section and expire on 31 December 2020.⁶ The committee notes that the regulation does not comply with this requirement, as it contains no such declaration.

Regulations made under section 23 must be tabled within 14 days of notification (rather than the usual 14 sitting days).⁷ The committee notes that the regulation complies with this requirement, having been notified on 26 June 2020 and tabled on 10 July 2020.

The regulation remakes the Land Regulation 2009, otherwise due to expire automatically on 1 September 2020.⁸ The remade regulation is substantially the same, but contains some amendments which the explanatory notes state are 'to improve its effectiveness and efficiency'.⁹

The stated objectives of the regulation are to:

³ *Human Rights Act 2019*, section 41.

⁴ Division 2 of Part 11 of this regulation amends the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020.

⁵ *COVID-19 Emergency Response Act 2020*, section 23(1).

⁶ *COVID-19 Emergency Response Act 2020*, section 23(4) and 23(6).

⁷ *COVID-19 Emergency Response Act 2020*, section 23(7).

⁸ By virtue of section 54(1) of the *Statutory Instruments Act 1992*.

⁹ Land Regulation 2020, explanatory notes, p 1.

- continue the key operational arrangements for the state land framework for the efficient administration of the *Land Act 1994* (Land Act)
- implement the outcomes of the sunset review of the expiring Land Regulation 2009, including to align the model by-law provisions and competitive land ballot process
- operationalise amendments made to the Land Act by the *Natural Resources and Other Legislation Amendment Act 2019*
- clarify, restructure and modernise the regulations made under the Land Act, and
- amend the Land (COVID-19 Emergency Response – Waiver and Deferral of Rents and Instalments) Regulation 2020 and the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 to update cross-referenced provisions.¹⁰

4.1 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.

4.1.1 Section 4(2)(a) of the *Legislative Standards Act 1992* – Rights and liberties of individuals

Whether legislation has sufficient regard to the rights and liberties of individuals, includes whether, for example, it does not, without sufficient justification, unduly restrict ordinary activity.

Section 67(2)(b) of the regulation provides for the cancellation of a licence or permit to occupy, as a potential consequence for failing to pay rent, instalments or penalty interest. The committee considers that removing a person's licence or permit to occupy state land could be seen to deprive the person of the ability to carry out ordinary activities.

Sections 80 to 85 of the regulation place restrictions on the use of a declared beach area, including restrictions on camping, lighting fires, littering, taking a dog without a leash and accessing temporarily closed areas. The provisions limit an individual's ability to use a public area, without restrictions imposed, which may impact on their rights and liberties.

Committee comment

The committee notes that these issues of fundamental legislative principle are not raised in the explanatory notes. However, the committee notes that the FLP issues arise in the context of a remake of a previous regulation and the proposed provisions replicate those contained in the previous regulation. The committee also notes that a similar issue, arising in the context of rights under the HRA, is canvassed in the human rights certificate.

The committee is satisfied that any potential breach of fundamental legislative principle is justified in the circumstances.

¹⁰ Land Regulation 2020, explanatory notes, p 2.

4.1.2 Section 4(5)(e) of the *Legislative Standards Act 1992* – Sub-delegation of power

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, it allows the sub-delegation of a power delegated by an Act only:

- in appropriate cases and to appropriate persons; and
- if authorised by an Act.¹¹

The power to grant a deferral of rent and instalments for a declaration of hardship area is contained in the Land Regulation 2020 at Division 6. Section 1(k) of Schedule 1B of the Land Act provides for this matter to be included in a regulation, so it is, therefore, authorised by an Act.

The explanatory notes state that:

Replacing the gazettal of hardship declarations with their publication on a Queensland Government website, supports affected persons to better understand the effect on their interests. Notification on the website provides a more contemporary and accessible approach, than publishing a gazette notice. The same approach has been adopted for the publication and notification of adoption of the model by-laws for trust land. Further, online publication provides a timelier and cost effective approach. For completeness, the Land Regulation also provides the option for a notice to be issued directly to the affected tenure holders when a hardship deferral declaration is extended, and/or when fixing a new payment day for hardship deferral declaration areas.¹²

Committee comment

The committee is satisfied that the sub-delegation of power in this instance is appropriate and authorised by an Act.

4.2 Human rights considerations

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

- with the human rights protected by the HRA, and
- 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.

4.2.1 Section 15 of the *Human Rights Act 2019* - Recognition and equality before the law

Section 15 of the HRA provides that every person is equal before the law.

Sections 11 and 18 of the regulation provide that for certain operational reserves and the granting of some unallocated state land the purchase price is decided in the way the Minister considers appropriate.

The committee notes that these provisions allow discretionary decision making by the Minister about the purchase price for certain state land, which can lead to inequitable disposal of state land as market value may not always be applied.

The Minister states:

The need to include Ministerial discretion when deciding the purchase price for certain state land outweighs any potential impact on the right of equality before the law. The purpose of the limitation is to allow for the consideration of community and state interests specific to the existing/proposed use of the operational reserve or unallocated state land.¹³

¹¹ *Legislative Standards Act 1992*, section 4(5)(e).

¹² Land Regulation 2020, explanatory notes, p 7.

¹³ Land Regulation 2020, human rights certificate, p 3.

4.2.2 Section 24 of the *Human Rights Act 2019* - Property rights

Section 24 of the HRA provides that a person must not be arbitrarily deprived of their property.

Section 67(2)(b) of the regulation provides for the cancellation of a licence or permit to occupy as a potential consequence for failing to pay rent, instalments or penalty interest.

The committee notes that the removal of the licence or permit to occupy deprives a licensee or permit holder the right to use state land to generate profits by cancelling a licence or permit to occupy.

The Minister states:

While the cancellation of a licence or permit to occupy does engage individual property rights, the execution of such a power would not be applied initially following non-payment. It would be a final option following the application of other approaches to assist the licensee or permit holder make payment.¹⁴

... as licences and permits to occupy are not considered to create ownership in land under the Land Act, the limitation on property rights is considered reasonable when compared to the broader public interest in achieving a return on the use and occupation of state land.¹⁵

4.2.3 Section 19 of the *Human Rights Act 2019* - Freedom of movement

Section 19 of the HRA provides that every person lawfully in Queensland has the right to move freely within Queensland.

Sections 80 to 85 of the regulation place restrictions on the use of a declared beach area, including restrictions on camping, lighting fires, littering, taking a dog without a leash and accessing temporarily closed areas.

The committee notes that the restrictions on use for declared beach areas limit the ability of people to move through, remain in, or enter areas of public space.

The Minister states:

The purpose of restricting some uses and some access to declared beach areas is the safety of the public using these areas. The state government has a duty of care to ensure that public spaces are safe to use, and while this may place some restrictions on an individual's rights to move freely through these areas, public safety is of priority concern. This purpose does limit this human right as a result.¹⁶

4.2.4 Section 28 of the *Human Rights Act 2019* - Cultural rights of Aboriginal and Torres Strait Islander peoples

Section 28 of the HRA provides that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and provides for a number of specific rights, including to enjoy, maintain, control, protect and develop their identity and cultural heritage and to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection.

The restrictions on the use of declared beach areas in section 80 to 85 of the regulation could have the effect of interfering with the cultural right of Aboriginal and Torres Strait Islander peoples.

¹⁴ Land Regulation 2020, human rights certificate, p 4.

¹⁵ Land Regulation 2020, human rights certificate, p 5.

¹⁶ Land Regulation 2020, human rights certificate, p 5.

The Minister states:

*The restrictions on use are relatively limited in scope, and have the distinct purpose of protecting public safety. The broader public interest of both indigenous and non-indigenous people is promoted by this policy approach, which is considered a reasonable limitation on the human right of interfering with the cultural right of Aboriginal peoples and Torres Strait Islanders to practice their culture.*¹⁷

Committee comment

The committee is satisfied that the above limitations of human rights are reasonably and demonstrably justified.

5 Proclamation—Natural Resources and Other Legislation (GDA2020) Amendment Act 2020 (commencing remaining provisions) (SL 93)

The proclamation fixed a commencement date of 1 July 2020 for the remaining provisions of the *Natural Resources and Other Legislation (GDA2020) Amendment Act 2020*.

5.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

5.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues. A human rights certificate was not required to be tabled with the subordinate legislation.¹⁸

6 Natural Resources and Other Legislation (GDA2020) Amendment Regulation 2020 (SL 94)

The regulation amends a number of existing regulations to support the adoption of the new national standard of measurement of position, Geocentric Datum Australia 2020 (GDA2020), for the future collection and provision of location data.

The Australian Government has adopted GDA 2020 as the latest national standard for measurement of position by making a determination under the *National Measurement Act 1960* (Cwlth). A geodetic datum is used to define the shape and size of the earth and provide the reference point for coordinate systems, so that locations can be identified with consistency. GDA 2020 replaces the previous standard, GDA94.

The regulation changes relevant provisions in the Chemical Usage (Agricultural and Veterinary) Control Regulation 2017, the Mineral Resources Regulation 2013 and the Vegetation Management Regulation 2012, that specify the format for the collection or provision of position information, to require position information to be provided consistent with the GDA2020 standard.

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.

¹⁷ Land Regulation 2020, human rights certificate, p 7.

¹⁸ Section 41(4A) of the *Human Rights Act 2019* provides that a human rights certificate is not required, if the legislation is a proclamation that fixes a single day for the commencement of all of the provisions of an Act that are not in force.

6.1.1 Section 4(5)(e) of the *Legislative Standards Act 1992* – Institution of Parliament

In setting a definition by reference to a determination made under a Commonwealth Act, the regulation could be considered to have insufficient regard to the sovereignty and the institution of the Queensland Parliament.¹⁹

The explanatory notes state:

*...To mitigate possible undermining of the sovereignty and the institution of the Queensland Parliament, the definition is set by reference to the GDA2020 determination as it stands at a specific date. This means should there be a change to the GDA2020 determination under the National Measurement Act, Queensland's legislation remains unaffected. For example, it would be necessary to amend the Survey and Mapping Infrastructure Regulation 2014 to apply a new datum for future collection and provision of position information.*²⁰

The former State Development, Natural Resources and Agricultural Industry Development Committee (former committee) considered a similar issue regarding the institution of Parliament in its examination of the Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019.

Committee comment

The committee concurs with the former committee that given the definition is set by reference to the GDA2020 determination at a specific date, and any change to apply a new datum would require an amendment to the relevant regulations, which would be tabled in the Parliament, the regulation has sufficient regard to the institution of Parliament.²¹

6.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

7 Proclamation No. 3—Natural Resources and Other Legislation Amendment Act 2019 (commencing remaining provisions) (SL N105)

The proclamation fixes 1 July 2020 for the commencement of the remaining provisions of the *Natural Resources and Other Legislation Amendment Act 2019*.

7.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

7.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues. A human rights certificate was not required to be tabled with the subordinate legislation.²²

¹⁹ An example of the typical definition inserted by the regulation is: *GDA2020* means the Reference Frame under the *National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017* (Cwlth) as in force on 1 July 2020.

²⁰ Natural Resources and Other Legislation (GDA2020) Amendment Regulation 2020, explanatory notes, p 5.

²¹ State Development, Natural Resources and Agricultural Industry Development Committee, Report No. 44, 56th Parliament, *Natural Resources and Other Legislation (GDA2020) Amendment Bill 2019*, pp 15-16.

²² Section 41(4A) of the *Human Rights Act 2019* provides that a human rights certificate is not required, if the legislation is a proclamation that fixes a single day for the commencement of all of the provisions of an Act that are not in force.

8 Natural Resources, Mines and Energy Legislation (Fees) Amendment Regulation 2020 (SL 107)

The regulation increases fees for the Department of Natural Resources, Mines and Energy, in accordance with the Government indexation rate for 2020-21 of 1.8 per cent.

8.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified. The increases accord with the indexation rate (noting the application of the rounding policy).

8.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

9 Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020 (SL No. 108)

The regulation aims to align respiratory health surveillance requirements for other mining and quarry workers with recent statutory reforms to protect coal mine workers from the hazards associated with respirable coal mine dust, following the re-identification of coal workers' pneumoconiosis in the coal mining industry in May 2015.

The regulation amends the Mining and Quarrying Safety and Health Regulation 2017 by:

- requiring site senior executives to arrange respiratory health surveillance for mineral mine and quarry workers
- allowing site senior executives to assess the risk of respiratory hazards, and if they determine the risk is so low, it can be managed without respiratory health surveillance
- requiring respiratory health surveillance to be undertaken prior to commencing work in the industry and then at least once every five years while working
- stating the content of respiratory health surveillance, such as a chest X-ray dual-read to the international standard, and a lung function test by spirometry
- enabling workers to request a respiratory health surveillance assessment on retirement from the industry
- enabling an appropriate doctor to delay a respiratory health surveillance examination by up to 12 months, where they deem the associated risk of delay to be lower than exposing the worker to the examination, and
- allowing eligible retired and former mineral mine and quarry workers to request free respiratory health surveillance, arranged and paid for by the chief executive of the department administering the regulation and available once every five years.²³

9.1 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.

9.1.1 Section 4(2)(a) *Legislative Standards Act 1992* – Rights and liberties of individuals – privacy and confidentiality

The right to privacy and confidentiality of information is relevant in the consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

²³ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 2.

The regulation provides that an appropriate doctor may disclose the outcome of a health surveillance of a worker to the site senior executive. While this does not extend to a copy of the whole medical record (which requires the worker's written consent to disclose), the information to be disclosed includes private and confidential information. This requirement for disclosure could, therefore, be seen as not having sufficient regard to a worker's rights and liberties.

The explanatory notes state:

*... this is required to ensure the effective management of risk by the site senior executive. As such, it is considered that the benefit of disclosure of this information outweighs any negative impact on the privacy of the worker.*²⁴

The committee notes that there are also a number of provisions that protect a person's personal information from being misused (including section 255 of the *Mining and Quarrying Safety and Health Act 1999* and section 120 of the *Mining and Quarrying Safety and Health Regulation 2017*).

Committee comment

The committee considers that the potential impact on individual rights and liberties is justified in the circumstances.

9.1.2 Section 4(2)(a) of the *Legislative Standards Act 1992* – Rights and liberties of individuals – penalties – proportionality

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by the legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

*... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*²⁵

Section 14 of the regulation amends Schedule 5A of the *Mining and Quarrying Safety and Health Regulation 2017* to provide for a civil penalty for non-compliance with health surveillance obligations regarding mineral and quarry workers. This adds to the current provision for a civil penalty for a breach of obligations regarding health assessments. Health surveillance checks monitor the changes in a worker's health as a result of exposure to a hazard.²⁶ Such breaches are breaches of 'category 3 obligations' for which the civil penalty is 500 penalty units.²⁷

The explanatory notes state:

*Civil penalties are necessary to provide for action to be taken to address non-compliance, in particular where a breach requires direct redress and is sufficiently significant to warrant a financial penalty.*²⁸

²⁴ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 8.

²⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

²⁶ Section 150A of the *Mining and Quarrying Safety and Health Regulation 2017* provides that penalties under schedule 5A are prescribed as a civil penalty obligation under section 246E of the *Mining and Quarrying Safety and Health Act 1999* (the Act).

²⁷ The penalties contained in schedule 5A cover three categories of obligations – category 1, 2 or 3. Section 246F of the Act provides that the penalty attaching to a category 1 obligation is 1000 penalty units, for a category 2 obligation 750 penalty units, and a category 3 obligation 500 penalty units.

²⁸ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 6.

The explanatory notes further state:

*Schedule 5A ... [provides] that a civil penalty may be imposed for failure to meet obligations pertaining to health assessments of workers. Health assessments monitor the workers' ability to tolerate a hazard without harm, whilst health surveillance checks for changes in the workers' health as a result of exposure to a hazard. Health assessment and health surveillance are equally important in ensuring the safety and health of workers. The amendments aim to ensure that similar action can be taken where there is a breach relating to health surveillance. The penalty provisions for health assessments and health surveillance are the same.*²⁹

In summary, the civil penalties are provided for in the *Mining and Quarrying Safety and Health Act 1999* (the Act). Section 14 of the regulation amends and extends the reach of those current penalties to breaches of obligations regarding health surveillance. The penalties are paid by *relevant corporations* (see section 246F of the Act). This is relevant in considering any impact on rights and liberties of individuals, noting that the fundamental legislative principles are expressed to relate to sufficient regard for rights and liberties of individuals.

Committee comment

The committee considers that, in the circumstances, the extension of civil penalties to such breaches is reasonable and proportionate.

9.1.3 Section 4(5)(e) of the *Legislative Standards Act 1992* – Institution of Parliament – sub-delegation of power

The regulation provides that respiratory health surveillance includes a chest examination, chest X-ray that is dual-read to the International Labour Organization (ILO) standard, a spirometry test and comparison with previous spirometry results. The regulation defines 'ILO guidelines' as the guidelines called *Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses* published by the International Labour Organization. These guidelines are available at the ILO website. The regulation references the published guidelines, rather than a specific edition.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.³⁰

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the guidelines) 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 House, 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 guideline is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House. As the regulation references the published guidelines, rather than a specific edition, any update of the guidelines does not come before the Parliament for consideration.

The explanatory notes expand on the nature of the guideline:

The Guideline is the globally recognised and accepted standard since 1950 and was developed by technical experts from across the world, following extensive consultation with international peak bodies, government bodies and experts.

²⁹ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 6.

³⁰ *Legislative Standards Act 1992*, section 4(5)(e).

... The ILO standard consists of a scale of increasing severity of abnormalities and a set of reference X-ray images for each category. The guidelines also include technical requirements for viewing equipment, image quality ratings, and methods for describing shape and position of abnormalities in the lungs... To achieve consistency and implement best practice across the sector, the Amendment Regulation proposes the use of this international guideline as a standard in the mineral mine and quarry sector.³¹

The explanatory notes further state:

... The guideline is highly technical and updates have focussed on providing new standard reference X-ray images. Given its stability and global use for seven decades, it is extremely unlikely that Queensland would take a conflicting view on any future changes to the standards. The proposed approach will ensure that legislative framework remains aligned with industry expectations and standards, and ensures that the latest standards can be adopted effectively and efficiently. In addition, the guidelines are amended infrequently, following extensive consultation with international peak bodies, government bodies and experts.³²

Committee comment

Noting the technical nature of the guideline, the committee is satisfied that referring to the guideline is appropriate and justified, and that sufficient regard has been given to the institution of Parliament.

9.2 Explanatory notes

Under the heading *Consistency with fundamental legislative principles*, the explanatory notes state:

*The Amendment Regulation is consistent with FLPs, however, where it is possible that certain provisions may be considered inconsistent with FLPs, justifications for sufficient regard to the FLPs, or for the inconsistencies are provided in the following.*³³

The explanatory notes then proceed to consider various issue of fundamental legislative principle (including the inconsistencies with fundamental legislative principles discussed above).

Committee comment

The committee considers that this approach does not satisfy the provisions of the LSA, which require an explanatory note for subordinate legislation to include in clear and precise language:

*... a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.*³⁴

The committee considers that a more appropriate approach in dealing with a regulation's consistency with fundamental legislative principles is to acknowledge any inconsistency with, or breach of, the fundamental legislative principles, and then proceed to address the reasons for any inconsistency, including any justifications for any breach. The explanatory notes otherwise comply with part 4 of the LSA.

³¹ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 7.

³² Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 7.

³³ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, explanatory notes, p 6.

³⁴ *Legislative Standards Act 1992*, section 24(1)(i).

9.3 Human rights considerations

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

- with the human rights protected by the HRA, and
- 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

9.3.1 Section 25 of the *Human Rights Act 2019* - Right to privacy and reputation

Section 25 of the HRA provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

The regulation provides for mandatory respiratory health surveillance for current and former mineral mine and quarry workers. The right to privacy is impacted by the regulation in a number of ways.

Firstly, there is an obligation imposed on the Site Senior Executive (SSE) to arrange for workers who are not low risk to undertake prescribed medical examinations by an appropriate doctor prior to commencing work, and then at least once every five years. The committee notes that a person's privacy will be impacted by undergoing these examinations.

Further, an obligation is imposed on an appropriate doctor to provide information regarding the medical examination to the SSE (and to the Department for former workers). This disclosure of a person's personal information impacts on their privacy.

In relation to the medical examination of a worker, the Minister states:

... The purpose of this limitation on their right to privacy is to ensure that workers' respiratory health is monitored to identify any anomalies or changes in lung function, so action can be taken to prevent it from progressing to a point where it has an impact on the person's quality of life.³⁶

In relation to the disclosure by a doctor to the SSE of personal information, the Minister states:

... A health surveillance report will provide information about the effect on a person's health related to the person's exposure to a hazard at a mine and the need, if any, for remedial action. Whilst this report will not include the medical record of the examination it does contain personal information, such as their name and date of birth, and date examinations were undertaken, which may potentially limit the worker's right of privacy.³⁷

Further:

Any potential impact on privacy and reputation is outweighed by the benefits to the worker and their families, SSE and wider community in ensuring that respiratory diseases are identified early so that the worker's ongoing exposure to hazards can be effectively managed.³⁸

³⁵ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, human rights certificate, p 7.

³⁶ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, human rights certificate, p 3.

³⁷ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, human rights certificate, p 3.

³⁸ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, human rights certificate, p 5.

9.3.2 Section 37 of the *Human Rights Act 2019* - Right to health services

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

The SSE is required to arrange a health surveillance report with an *appropriate doctor*. The regulation requires an appropriate doctor to be appropriately qualified and have demonstrated knowledge of the risks associated with activities performed by workers at the specific mine.

By restricting examinations to appropriate doctors with specific skills and experience, the regulation could be seen as limiting the right to access health services.

The Minister states:

*The purpose of the limitation on the right of access to health services is to ensure that workers are examined by suitably qualified and experienced doctors to ensure appropriate detection of abnormalities or changes in lung functions that may lead to a diagnosis of lung disease. The elements of availability and accessibility are balanced against the elements of acceptability and adequacy.*³⁹

Further:

*Any potential impact on the right of access to health services is outweighed by the benefits to the worker, SSE and wider community in ensuring that the medical examinations are undertaken by medical providers with the necessary skills and experience to be able to identify early signs of respiratory disease.*⁴⁰

Committee comment

The committee is satisfied that the above limitations of human rights are reasonably and demonstrably justified.

10 Proclamation—Mineral and Energy Resources and Other Legislation Amendment Act 2020 (commencing remaining provisions) (SL 109)

The proclamation sets various commencement dates for the remaining provisions of the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*.

10.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

10.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

11 Coal Mining Safety and Health (Methane Monitoring and Ventilation Systems) Amendment Regulation 2020 (SL 118)

The objective of the regulation is to clarify and improve requirements for methane monitoring and ventilation systems in underground coal mines.

11.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

11.2 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

³⁹ Mining Safety and Health Legislation (Health Surveillance) Amendment Regulation 2020, human rights certificate, p 6.

⁴⁰ Human rights certificate, p 6.

12 Recommendation

The committee recommends that the House notes this report.



Shane King MP

Chair

November 2020

Transport and Resources Committee

Chair

Deputy Chair

Members

Shane King MP, Member for Kurwongbah

Lachlan Millar MP, Member for Gregory

Colin Boyce MP, Member for Callide

Jessica Pugh MP, Member for Mount Ommaney

Les Walker MP, Member for Mundingburra

Trevor Watts MP, Member for Toowoomba North