



State Development, Natural Resources and Agricultural Industry
Development Committee

Subordinate legislation tabled between 19 September and 16 October 2018
Report No. 21, 56th Parliament

Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 19 September and 16 October 2018. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

Subordinate legislation examined:

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
149	Fisheries (Regulated Periods) Amendment Regulation 2018	16 October 2018	28 February 2019
153	Coal Mining Safety and Health (Respirable Coal Dust) Amendment Regulation 2018	16 October 2018	28 February 2019

Committee consideration of the subordinate legislation

1.1. Fisheries (Regulated Periods) Amendment Regulation 2018 (SL No. 149)

The objective is to:

- amend the regulated period (or closure) for the taking and possession of spanner crabs from 20 November - 20 December to 1 November - 15 December
- prescribe the closure on the take of coral reef fin fish for the years 2018 to 2023.

A regulated person must not take a spanner crab in the regulated waters during the closure or possess a spanner crab taken during the closure. A closure period for taking of spanner crabs and coral reef fin fish is prescribed in order to protect adult spanner crabs when they are known to reproduce and spawn.

The explanatory notes state that assessments have shown that spanner crabs spawn at an earlier period than previously believed. In order to protect spanner crab stocks, the closure commencement

is to be moved to the beginning of November. This will also allow the commercial sector to gain greater access to the lucrative Christmas market. However, the closure period will extend from 30 to 45 days.¹

In relation to the closure of the coral reef fin fish take, the Fisheries Regulation 2008 prescribed dates for the closures for the years 2014 to 2018. The amendment regulation proposes to set the dates for the years 2018 to 2023.

Potential FLP issue - section 4(2) Legislative Standards Act 1992

The amendment of the closure period of the catch of spanner crabs to an earlier date and extending it to 45 days may impact the ordinary activities of commercial and recreational fishers and others dealing with spanner crab products. This is a potential breach of the fundamental legislative principle that legislation should not unduly restrict ordinary activity without sufficient justification.

However, the explanatory notes state that the amendments will provide greater protection to spanner crab stocks while providing the commercial sector with improved access prior to the Christmas period when seafood prices are higher.²

Further, the explanatory notes provide that the extended closure period (and earlier date) will have a beneficial impact on spawning and the productivity of stock.³ During consultation, industry strongly advocated for the proposed change to the closure.⁴

Committee comment

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

The committee notes that under the heading *Consistency with fundamental legislative principles*, the explanatory notes state:

*The subordinate legislation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the Legislative Standards Act 1992.*³

This statement does not comply with the requirements for explanatory notes set out in Part 4 of the *Legislative Standards Act 1992* which, inter alia, require explanatory notes to include:

*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.*⁴

In this instance, the statement in the explanatory notes does not address the issue of consistency and reasons for any inconsistency.

The explanatory notes otherwise comply with the requirements set out in part 4.

1.2. Coal Mining Safety and Health (Respirable Coal Dust) Amendment Regulation 2018

The objective is to enhance the protection of mine workers against adverse health effects from exposure to respirable coal dust. This will be achieved by reducing the prescribed Occupational Exposure Limit (OEL) for respirable coal dust from 3mg/m³ to 2.5mg/m³.

Workers who are exposed to respirable coal dust at levels that exceed OELs are potentially at risk of developing occupational lung diseases such as coal workers' pneumoconiosis'

¹ Explanatory notes, p 2.

² Explanatory notes, p 2.

³ Explanatory notes, p 3.

⁴ Explanatory notes, p 4.

The explanatory notes explain that Safe Work Australia is currently completing a review of workplace exposure standards in relation to workplace contaminants and including respirable coal dust and silica.⁵ The current amendment introduces a reduction in the OEL for respirable coal dust as a phased reduction of exposure levels, in anticipation of the outcome of the Safe Work Australia review.⁶

This interim reduction will commence on 1 November 2018 to provide an appropriate transition period for industry. Once SWA's recommendations are available, it is proposed to reduce OELs for respirable coal dust and silica to align with these recommendations through further regulation amendments at that time.⁷

Committee comment

The committee is satisfied that the Coal Mining Safety and Health (Respirable Coal Dust) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

Recommendation

The committee notes that the explanatory notes for SL No.149 - Fisheries (Regulated Periods) Amendment Regulation 2018 does not comply with the *Legislative Standards Act 1992*. The committee draws this to the attention of the Legislatively Assembly.

The committee recommends that the Legislatively Assembly notes this report.



Chris Whiting MP

Chair

February 2019

State Development, Natural Resources and Agricultural Industry Development Committee

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⁵ Explanatory notes, p 1.

⁶ Explanatory notes, p 1.

⁷ Explanatory notes, p 2.