

State Development, Natural Resources and Agricultural Industry Development Committee

Report No. 30, 56th Parliament

Subordinate legislation tabled between 13 February 2019 and 2 April 2019

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 13 February 2019 and 2 April 2019. 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*.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
6	Planning (Excluded Development) Amendment Regulation 2019	26 February 2019	16 May 2019
8	Rural and Regional Adjustment (North and Far North Queensland Flood Disaster Recovery Funding) Amendment Regulation 2019	26 February 2019	16 May 2019
11	Water Plan (Condamine and Balonne) 2019	26 February 2019	16 May 2019
12	Water Plan (Border Rivers and Moonie) 2019	26 February 2019	16 May 2019
20	Aboriginal Land (Minjerrabah) Amendment Regulation 2019	26 March 2019	13 June 2019
25	Biosecurity (Citrus Canker) Amendment Regulation 2019	26 March 2019	13 June 2019
26	Rural and Regional Adjustment (Extension of Funding for North and Far North Queensland Flood Disaster) Amendment Regulation 2019	26 March 2019	13 June 2019
37	Biosecurity (Fees for Registered Biosecurity Entities) Amendment Regulation 2019	2 April 2019	21 August 2019

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified.

The explanatory notes tabled with the regulations comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

4 Planning (Excluded Development) Amendment Regulation 2019

The objective is to correct what is described in the explanatory notes as an ‘unintended’ change to the definition of ‘excluded development’ in Schedule 24 of the *Planning Regulation 2017* - to clarify that development applications for development within a biodiversity development offset area (BDOA) will need to be made, prior to the expiry of the BDOA.

The explanatory notes state:

*Without this correction and clarification, it has been misinterpreted to mean the development needs to have been carried out prior to the declaration expiry date.*¹

BDOAs were a mechanism made under the repealed State Planning Policy 2/10 Koala Conservation in South East Queensland and Statutory Guideline 01/10 Biodiversity development offset area – koala conservation. BDOAs provided an opportunity for improved connectivity for koalas on parcels of high biodiversity value land within the SEQ region.²

As part of the planning reform agenda, SPRPs were repealed and the relevant provisions were incorporated into the Planning Regulation 2017, but with an unintended change to the wording of ‘excluded development’. The explanatory notes state that the Amendment Regulation corrects this.³

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Planning (Excluded Development) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

5 Rural and Regional Adjustment (North and Far North Queensland Flood Disaster Recovery Funding) Amendment Regulation 2019

The objective is to empower the Queensland Rural and Industry Development Authority to provide Category C assistance grants of up to \$75,000 to primary producers impacted by the monsoon trough and significant rainfall and flooding in North and Far North Queensland in late January and early February 2019.

The subordinate legislation also relaxes the normal requirements for application and record keeping in relation to Category C grants for eligible primary producers impacted by the monsoon trough and significant rainfall and flooding in North and Far North Queensland in late January and early February 2019.⁴

Natural disaster assistance policy in Australia is delivered through the joint Commonwealth-State Disaster Recovery Funding Arrangements (DRFA). DRFA assistance, including Category C grants for primary producers, has been activated in response to this disaster. The Australian and Queensland governments have also agreed to increased assistance under the DRFA for primary producers affected by this event. As a special assistance measure, the maximum amount of a Category C assistance grant for primary producers affected by this event is to increase from \$25,000 to \$75,000.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

¹ Explanatory notes, p 1.

² Explanatory notes, p 1.

³ Explanatory notes, p 2.

⁴ Explanatory notes, p 2.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Rural and Regional Adjustment (North and Far North Queensland Flood Disaster Recovery Funding) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

6 Water Plan (Condamine and Balonne) 2019

The objective is to sustainably manage underground water, overland flow and surface water resources in the Condamine and Balonne plan area.

The water plan provides for the management of water resources by:

- defining the availability of underground water, overland flow and surface water resources in the plan area
- identifying reserves and mechanisms for dealing with future water requirements; and
- providing a framework for sustainably managing and allocating water.⁵

Mr Wiskar from the Department of Natural Resources, Mines and Energy informed the committee that:

*As required under the act, the water plans are intended to provide a long-term, sustainable balance between the needs of urban and rural water users in the plan areas and environmental water needs both within the catchments and downstream. As subordinate legislation, the previous water plans were due to expire on 1 July this year. The development of the new plans has been carefully timed to ensure they are enforced before that date.*⁶

The explanatory notes state that:

The water plan has been developed in close consultation with the Murray-Darling Basin Authority and the Commonwealth to ensure that they deliver on commitments to protect environmental water including Commonwealth held entitlements.

Key changes to the water plan in response to issues raised include:

- *amended environmental flow objectives for underground water to better enable trading while maintaining the productive yield of the aquifer and base flow to watercourses,*
- *inclusion of a new outcome to drive improved understanding of, and reverse where possible, environmental degradation caused by taking or interfering with water,*
- *more clearly defined outcomes for Aboriginal people, and*
- *stronger regulation for taking and measuring overland flow including the take of contaminated agricultural runoff.*⁷

Mr Wiskar from the Department of Natural Resources, Mines and Energy noted that:

The new plans build on the success of previous plans without reducing the amount of water available for users or the environment. Both include new, more targeted plan outcomes and objectives for protection of water entitlements and critical environmental flows. They also include new outcomes to recognise Aboriginal values and uses of water. Both plans include new measures which are intended to guide implementation of water plans; for example, by establishing time frames for better metering and measurement, releasing of unallocated water

⁵ Explanatory notes, p 1.

⁶ Mr Wiskar, DNRME, Hansard transcript, Brisbane, 1 May 2019, pp 2-3.

⁷ Explanatory notes, p 3.

*reserves, monitoring and evaluation strategies, and for reporting on various matters including Aboriginal water needs and the effectiveness of water markets within each water plan area.*⁸

The committee were informed that:

*... the Condamine-Balonne water plan provides for the reduction of particular groundwater entitlements in the Central Condamine Alluvium. This was done in partnership with an industry led proposal to support the Commonwealth water recovery of 35 gigalitres of groundwater. This has been a highly successful strategy with essentially all recovery achieved, subject to finalisation of accepted tenders, where multiple previous attempts to recover this water had failed. The Condamine-Balonne water plan also includes improved flow event management rules to improve delivery of environmental flows to the Narran Lakes and the Culgoa flood plain. These iconic assets are recognised internationally as critically important bird breeding habitats. This has been achieved without reducing the water available to agricultural water users in this area.*⁹

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Water Plan (Condamine and Balonne) 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The committee commends DNRME and DES for the rigorous and scientific approach taken in the development of the draft water plans.¹⁰

7 Water Plan (Border Rivers and Moonie) 2019

The objective is to sustainably manage underground water, overland flow and surface water resources in the Border Rivers and Moonie plan area.

The water plan provides for the managing of water resources by:

- defining the availability of underground water, overland flow and surface water resources in the plan area
- identifying reserves and mechanisms for dealing with future water requirements; and
- providing a framework for sustainably managing and allocating water.

The Basin is required to submit their final water plans to the Murray-Darling Basin Authority by 28 February 2019 for assessment against the Basin Plan 2012 and subsequent accreditation under the *Commonwealth Water Act 2007*.

The explanatory notes state:

The water plan provides for numerous benefits including:

- *strengthening recognition and understanding of cultural values and uses of water for Aboriginal people in plan outcomes and measures,*
- *meeting Sustainable Diversion Limits and Commonwealth accreditation requirements in line with the Basin Plan 2012,*
- *expanding the productive use of water through unallocated water reserves for future water demand including Emu Swamp Dam,*

⁸ Mr Wiskar, DNRME, Hansard transcript, Brisbane, 1 May 2019, p 4.

⁹ Mr Wiskar, DNRME, Hansard transcript, Brisbane, 1 May 2019, p 5.

¹⁰ Hansard transcript, Brisbane, 1 May 2019.

- creation of tradable water allocations and optimisation of existing water markets,
- improving measurement and compliance of water take, and
- enhanced environmental flow management and protection rules.¹¹

Additionally, the explanatory notes indicate that the following changes in the water plan were made following consultation:

- amended environmental flow objectives for underground water to better enable trading while maintaining the productive yield of the aquifer and base flow to watercourses,
- inclusion of a new outcome to drive improved understanding of, and reverse where possible, environmental degradation caused by taking or interfering with water,
- more clearly defined outcomes for Aboriginal people, and
- stronger regulation for taking and measuring overland flow including the take of contaminated agricultural runoff.¹²

Mr Wiskar from the Department of Natural Resources, Mines and Energy informed the committee that:

With regard to the Border Rivers-Moonie water plan, the new Border Rivers-Moonie water plan replaces two separate water plans which have been combined for reasons of administrative efficiency. This change has no impact on the water management arrangements in the water plan or the supporting instruments. The Border Rivers-Moonie water plan includes improved arrangements for the management of connected surface water and groundwater in the highly productive Stanthorpe region. This, along with the creation of tradeable water allocations and a water market, is expected to drive a significant expansion of high-value agriculture in this region. This approach was also developed in close partnership with industry and local government stakeholders through a specially established community reference panel. The Border Rivers-Moonie water management protocol, which implements the water plan, also includes new water accounting arrangements for overland flow developed in consultation with industry, although this particular arrangement is not directly dependent on the water plan provisions.¹³

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Water Plan (Border Rivers and Moonie) 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The committee commends DNRME and DES for the rigorous and scientific approach taken in the development of the draft water plans.¹⁴

8 Aboriginal Land (Minjerribah) Amendment Regulation 2019

The objective is to amend the Aboriginal Land Regulation 2011 to:

- declare areas of available State land as transferable land

¹¹ Explanatory notes, p 2.

¹² Explanatory notes, p 3.

¹³ Mr Wiskar, DNRME, Hansard transcript, Brisbane, 1 May 2019, p 5.

¹⁴ Hansard transcript, Brisbane, 1 May 2019

- change the boundaries of Redland City for the purpose of the *Aboriginal Land Act 1991*.

The change to the boundaries of Redland City will enable parcels of land within that city to be available State land for the purposes of the *Aboriginal Land Act 1991*, in turn allowing them to be declared by regulation as available State land that is transferable land for the purposes of the *Aboriginal Land Act 1991*.¹⁵

Mr Nicholas from Land and Native Title Services, Department of Natural Resources, Mines and Energy informed the committee:

... the regulation had its infancy with the native title determination for Minjerribah. That successful outcome occurred back in 2011 with the Quandamooka people where the Federal Court determined that for the unallocated state land on Minjerribah native title rights and interests did exist and they were exclusive native title rights and interests. A determination of native title does not deliver any land ownership outcomes. Importantly, it recognises native title rights and interests but, for the state to deliver land or property ownership outcomes, the state negotiated an Indigenous Land Use Agreement with the Quandamooka people in 2011.

The parcels of land that are subject to the regulation to be declared as transferable are outcomes of the Indigenous Land Use Agreement which was registered with the National Native Title Tribunal on 8 December 2011, to which the state is a party and to which there is approval from the government to progress with delivering on those outcomes. The Indigenous Land Use Agreement provides, amongst other things, that these two parcels of unallocated state land be transferred as inalienable freehold under the Aboriginal Land Act. All parcels are proposed to be declared as prescribed protected areas, or Indigenous joint management areas, in the North Stradbroke Island region under the Nature Conservation Act. The two parcels are described as lot 3 on SP310010 and lot 12 on SP304074 and are located on North Stradbroke Island and cover a total area of about 280 hectares.

... the parcels are within Redland City. Under the Aboriginal Land Act, we cannot transfer land that is within the boundaries of the city. The regulation will also give effect to removing those parcels from the boundaries of the city with regard to the Aboriginal Land Act. It does not change the boundaries of the city itself; it just enables that land to be declared transferable land. The intention is that the amendment regulation will amend the 2011 regulation to declare lot 3 and lot 12 as transferable land and to change the boundaries of Redland City.¹⁶

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Aboriginal Land (Minjerribah) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

9 Biosecurity (Citrus Canker) Amendment Regulation 2019

The objective is to minimise the risk of citrus canker (*Xanthomonas citri* pv. *citri*) in Queensland. Citrus canker is not known to be present in Queensland, but was detected in April 2018 in the Northern Territory and confirmed in May 2018. Detections in the north of Western Australia, linked to nursery plants imported from Darwin, have also been confirmed.¹⁷

¹⁵ Explanatory notes, p 1.

¹⁶ Mr Nicholas, DNRME, Hansard transcript, Brisbane, 1 May 2019, 2.

¹⁷ Explanatory notes, p 1.

The regulation prohibits potential carriers of citrus canker from entering Queensland from another state or territory where citrus canker has been found, unless certain conditions have been met.

The prohibition on entry will apply to:

- the plants (which includes fruit) listed in the new schedule 7A of the regulation as citrus canker carriers, and
- soil or appliances (apparatus, equipment, machinery or vehicles) that have come into contact with a plant that is a citrus canker carrier.¹⁸

The regulation provides for three exceptions to the prohibition on the movement of citrus canker carriers into Queensland from another state where citrus canker has been found:

- A person is allowed to move the carrier under a biosecurity authorisation.
- A person may move the carrier from an area of another state that has been certified by that other state to be free from citrus canker.
- A carrier that meets the risk minimisation requirements for that carrier. (In this case, the person must obtain an acceptable biosecurity certificate stating that the carrier meets the risk minimisation requirements.)

The explanatory notes state:

The subordinate legislation will permanently transition the risk minimisation measures from the Movement Control Order (MCO) that was made by the chief executive under the Act on 24 December 2018 into the Regulation. The subordinate legislation broadly reflects the MCO, but provide greater certainty to industry by creating a permanent regulatory response.¹⁹

Fundamental legislative principle issues

The regulatory provisions included in this regulation place restrictions on the movement of citrus canker carriers in Queensland. This has the ability to impact on the ordinary activities of people involved in the industry. This involves a potential breach of the principle that legislation should have sufficient regard to the rights and liberties of individuals, which in turn includes the notion that legislation should not unduly restrict ordinary activity.²⁰

By way of justification, the explanatory notes provide:

The prohibition is justified because of the risk citrus canker poses to Queensland's horticulture industry. Additionally, the subordinate legislation limits the impact on those affected by providing a number of exceptions to the general prohibition on entry.²¹

Given that the three exceptions listed above appear to balance the restrictions placed upon the activities of persons with the need to adequately guard against biosecurity risks, the committee is satisfied that sufficient regard has been given to the rights and liberties of individuals.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Biosecurity (Citrus Canker) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

¹⁸ Explanatory notes, p 2.

¹⁹ Explanatory notes, p 2.

²⁰ Section 4(2)(a) of the *Legislative Standards Act 1992*. See also Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

²¹ Explanatory notes, p 3.

10 Rural and Regional Adjustment (Extension of Funding for North and Far North Queensland Flood Disaster) Amendment Regulation 2019

The objective is to empower the Queensland Rural and Industry Development Authority to provide Category C assistance grants of up to \$50,000 to small businesses and non-profit organisations impacted by the monsoon trough and significant rainfall and flooding in North and Far North Queensland in late January and early February 2019.

The recent Rural and Regional Adjustment (North and Far North Queensland Flood Disaster Recovery Funding) Amendment Regulation 2019 (subordinate legislation No.8 of 2019) relates to assistance to primary producers, whereas this regulation deals with grants to small businesses and non-profit organisations.

Category C assistance grants can be used for a range of clean up and restoration activities to support the recovery of primary producers, small businesses and not for profit organisations impacted by a severe natural disaster.²²

This is a special assistance measure agreed to by the Australian and Queensland governments to increase the maximum grant from \$25,000 to \$50,000.²³

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Rural and Regional Adjustment (Extension of Funding for North and Far North Queensland Flood Disaster) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

11 Biosecurity (Fees for Registered Biosecurity Entities) Amendment Regulation 2019

The objectives are to:

- provide financial relief to currently registered biosecurity entities in various specified remote local government areas by exempting them from paying the next due registered biosecurity entity renewal fee
- ensure that renewal fees for non-commercial entities can be waived, consistent with the waiver for initial registration. (This means that registered biosecurity entities who keep animals on a non-commercial basis do not have to pay either the registration fee or renewal fee associated with being a registered biosecurity entity.)

Under the *Biosecurity Act 2014* registrable biosecurity entities must apply for and maintain registration as a registered biosecurity entity. The exempted local authority areas experienced significant and unprecedented livestock losses due to the flooding in North and North West Queensland in January and February 2019.²⁴

The explanatory notes state that:

The main policy objective of the amendment regulation is to provide financial relief to currently registered biosecurity entities in the identified local government areas by exempting them from

²² Explanatory notes, p 1.

²³ Explanatory notes, p 2.

²⁴ Those areas are Cloncurry, McKinlay, Richmond, Flinders, Winton, Carpentaria and Burke Shire local government areas.

*paying the next registered biosecurity entity renewal fee.*²⁵

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

Committee comment

The committee is satisfied that the Biosecurity (Fees for Registered Biosecurity Entities) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

12 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

May 2019

State Development, Natural Resources and Agricultural Industry Development Committee

Chair	Mr Chris Whiting MP, Member for Bancroft (Chair)
Deputy Chair	Mr Pat Weir MP, Member for Condamine (Deputy Chair)
Members	Mr David Batt MP, Member for Bundaberg Mr James (Jim) Madden MP, Member for Ipswich West Mr Brent Mickelberg MP, Member for Buderim Ms Jessica (Jess) Pugh MP, Member for Mount Ommaney

²⁵ Explanatory notes, p 1.