

Innovation, Tourism Development and Environment Committee Report No. 19, 56th Parliament Subordinate legislation tabled between 1 May 2019 and 11 June 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 1 May 2019 and 11 June 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:

| SL No | Subordinate Legislation | Tabled Date | Disallowance Date |
|-------|---|--------------|-------------------|
| 64 | Marine Parks and Other Legislation Amendment Regulation 2019 | 14 May 2019 | 18 September 2019 |
| 73 | Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019 | 11 June 2019 | 16 October 2019 |
| 93 | Environmental Legislation (Fees) Amendment Regulation 2019 | 11 June 2019 | 16 October 2019 |

3 Marine Parks and Other Legislation Amendment Regulation 2019 – (SL 63)

The policy objectives of the Marine Parks and Other Legislation Amendment Regulation 2019 (SL 63) are to amend the:

- Marine Parks (Great Sandy) Zoning Plan 2017 to create a new designated area for the wreck of the ex-HMAS Tobruk in the Great Sandy Marine Park to allow for management of the dive site; and to correct mapping errors
- State Penalties Enforcement Regulation 2014 to prescribe Penalty Infringement Notice offences for the ex-HMAS Tobruk designated area
- Marine Parks (Declaration) Regulation 2006, the Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004 and the Marine Parks (Moreton Bay) Zoning Plan 2008 to clarify the intent of the 'mangrove line' marine park boundary definitions
- Marine Parks (Moreton Bay) Zoning Plan 2008 and the Marine Parks (Great Sandy) Zoning Plan 2017 grey nurse shark designated area provisions to remove reference to withdrawn Australian Standards and to ensure consistency between provisions in both zoning plans

- Marine Parks (Moreton Bay) Zoning Plan 2008 to make a minor correction in the entry and use provisions for marine national park zones.¹

The explanatory notes state that SL 63 is consistent with the *Marine Parks Act 2004* and the *State Penalties Enforcement Act 1999*.² The notes state that the implementation of SL 63 will not require additional government resources.³

Engagement with key stakeholders and two public consultations have taken place relating to the creation and management of the ex-HMAS Tobruk site. SL 63 is therefore exempt from further public notification. The explanatory notes state that key stakeholder groups supported the proposed management approach for the dive site.⁴ In May 2018, public comment was sought on the declaration of the site as an interim Restricted Access Area. The Department did not amend the proposal in response to issues raised within the four responses received for feasibility, safety and utility reasons.⁵

3.1 Potential fundamental legislation principle issues

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. The regulation raises two potential issues in this regard.

The creation of new offences and penalties affects the rights and liberties of individuals. Section 150 of the *Marine Parks Act 2004* allows for a regulation to prescribe a penalty of up to 165 penalty units (a little over \$22,000) for contravention of a regulation. The regulation prescribes penalties in section 23B of up to 1000 penalty units, which is below this limit.

The explanatory notes state that the penalty infringement notice offences have been developed in accordance with appropriate guidelines to ensure that the penalties are an ‘appropriate and proportionate response to the offending behaviour’.⁶

The OQPC Notebook states: ‘The principal means of creating offences should always be through Acts of Parliament rather than delegated legislation. However, former committees have accepted that legislative power to create offences and prescribe penalties may be delegated in limited circumstances, provided certain safeguards were observed. This included that maximum penalties in regulations should be limited, generally, to 20 penalty units.’⁷

The regulation also imposes restrictions around activities that may be undertaken in and around the ex-HMAS Tobruk. This raises a potential fundamental legislative principle issue in that legislation should not unduly restrict ordinary activity without sufficient justification. While the explanatory notes do not provide specific justification, the notes relevantly state:

*... The objects of the area are to manage and maintain the wreck of the ex-HMAS Tobruk; to provide safe opportunities for public appreciation, understanding and enjoyment of the area; to minimise the damage, disturbance or other interference to the wreck of the ex-HMAS Tobruk caused by entry or use of the area; and to minimise harm or distress to the living organisms in the area, and any disturbance to the other natural resources in the area caused by entry or use of the area.*⁸

¹ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 1.

² Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 5.

³ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 6.

⁴ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 7.

⁵ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 7.

⁶ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 5.

⁷ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, pp 150-151.

⁸ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation 2019, p 3.

3.2 Explanatory notes

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

3.3 Committee comment

The committee notes the potential impact on the rights and liberties of individuals as a result of the introduction of new offences and penalties under the regulation. On balance, having considered the objectives of the regulation, the committee is satisfied that the penalties are appropriate and proportionate and that any potential breach of fundamental legislative principle is sufficiently justified.

4 Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019 – SL 73

The objective of the regulation is to facilitate the 2019 Townsville 400 V8 motor racing event held from 5 to 7 July 2019, by prescribing the 2019 Townsville 400 as a major event under the *Major Events Act 2014*. The amendment regulation prescribes the event period and periods for carrying out the required temporary works.⁹

The explanatory notes describe the economic benefits to be derived from the event as follows:

*The Townsville 400 event delivers tourism and economic benefits for Townsville and the State of Queensland. This includes generating local jobs and showcasing Townsville and Queensland to a significant television audience around Australia and overseas. ... The total attendance for the 2018 Townsville 400 was 137,005, reaching a cumulative broadcast audience of 1,040,000.*¹⁰

The explanatory notes acknowledge that ‘minor administrative costs’ are associated with implementation of the regulation, however that ‘economic benefits of the event to the local and state economy strongly outweigh the implementation costs’.¹¹

Statutory consultees as required under the *Major Events Act 2014*, including the Mayor of Townsville City Council, were consulted as well as V8 Supercars Australia Pty Ltd and Tourism and Events Queensland. The notes state that all parties supported the regulation.¹²

4.1 Potential Fundamental Legislative Principle Issue

It could be argued that the road closures and temporary works required as a result of the event could impact on the rights and liberties of individuals.

Clause 4 of the legislation prescribes the major event period (midday 4 July 2019 to midday 8 July 2019). Clause 5 prescribes the periods for temporary works (between 3 June 2019 and midday on 4 July 2019 and between midday on 8 July 2019, and 20 July 2019). The explanatory notes state:

*These limitations will help ensure relevant provisions in the Amendment Regulation do not have a significant impact outside of these times, and help ensure they have sufficient regard for the rights and liberties of individuals who may be inconvenienced by altered access to roads and paths and the carrying out of temporary works.*¹³

⁹ Explanatory notes, Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019, p 1.

¹⁰ Explanatory notes, Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019, p 2.

¹¹ Explanatory notes, Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019, p 2.

¹² Explanatory notes, Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019, p 3.

¹³ Explanatory notes, Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019, p 2.

4.2 Explanatory notes

Under the heading *Consistency with fundamental legislative principles* the explanatory notes state that the regulation is ‘machinery in nature and consistent with fundamental legislative principles’.¹⁴ The explanatory notes then proceed to address the issues of impacts on the rights and liberties of individuals (including the statement quoted above).

Section 24(1)(i) of the *Legislative Standards Act 1992* requires that the explanatory notes for subordinate legislation 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’. In this context, the generally adopted approach is to acknowledge any inconsistency with, or breach of, the principles, and then proceed to provide the rationale and justification for any such inconsistencies or breaches.

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

4.3 Committee comment

The committee notes the potential impact on the rights and liberties of individuals as a result of the major event. On balance, the committee considers that the economic and tourism benefits for Townsville and the State from hosting the event outweigh the temporary inconvenience caused to local residents by the associated noise, road closures and related works. The committee is therefore satisfied that the potential breach in fundamental legislative principle has been sufficiently justified.

5 Environmental Legislation (Fees) Amendment Regulation 2019 – SL 93

The objective of the amendment regulation is to index regulatory fees and charges prescribed under subordinate legislation administered by the Department of the Environment and Science for 2019-20.

The fees outlined within the subordinate legislation have been subject to an annual review as required under government policy and have been indexed by the approved government indexation factor, confirmed by Queensland Treasury as 2.25 per cent for 2019-20.¹⁵

5.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

5.2 Explanatory notes

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

5.3 Committee comment

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

6 Committee consideration of the subordinate legislation

The committee did not identify any significant issues relating to the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles or the lawfulness of the subordinate legislation examined.

The committee notes that the explanatory notes tabled with the subordinate legislation examined generally comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

¹⁴ Explanatory notes, Major Events (Motor Racing Events) (Townsville 400) Amendment Regulation 2019, p 2.

¹⁵ Explanatory notes, Environment Legislation (Fees) Amendment Regulation 2019, p 2.

7 Recommendation

The committee recommends that the House notes this report.

A handwritten signature in blue ink, reading "D. Pegg". The signature is written in a cursive style, with the first letter of "D" being a large loop and the "Pegg" part being more fluid and connected.

Duncan Pegg MP

Chair

August 2019