

Innovation, Tourism Development and Environment Committee Report No. 15, 56th Parliament Subordinate legislation tabled between 8 February 2019 and 12 February 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 8 February 2019 and 12 February 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* (LSA).

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
5	Queen's Wharf Brisbane (Leasehold Land) Declaration 2019	8 February 2019	1 May 2019
4	Nature Conservation (Protected Areas Management) (Main Range National Park) Amendment Regulation 2019	12 February 2019	2 May 2019
198	Environmental Protection (Waste ERA Framework) Amendment Regulation 2018	12 February 2019	2 May 2019
211	Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018	12 February 2019	2 May 2019
220	Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2018	12 February 2019	2 May 2019
221	Nature Conservation (Protected Areas Management) (Conondale and Other National Parks) Amendment Regulation 2018	12 February 2019	2 May 2019
222	Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018	12 February 2019	2 May 2019
226	Nature Conservation (Macropod Harvest Period 2019) Notice 2018	12 February 2019	2 May 2019

3 Queen's Wharf Brisbane (Leasehold Land) Declaration 2019 (SL 5)

The policy to be given effect by the Queen's Wharf Brisbane (Leasehold Land) Declaration 2019 is to allow:

- the State of Queensland to enter into development and long-term leases of Queen's Wharf Brisbane, in accordance with the Queen's Wharf commercial agreement

- the land declared in the declaration to be leased to the State under the *Land Act 1994* for the purposes of recreation and cultural facilities, including associated infrastructure, for the Queen's Wharf priority area.

A leasehold declaration is required to allow a sublease to be issued to Destination Brisbane Consortium before construction on the Neville Bonner Bridge can commence.¹

Committee comment

The committee is satisfied that the Queensland's Wharf Brisbane (Leasehold Land) Declaration 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The explanatory notes comply with part 4 of the LSA.

4 Nature Conservation (Protected Areas Management) (Main Range National Park) Amendment Regulation 2019 (SL 4)

The objective of the Nature Conservation (Protected Areas Management) (Main Range National Park) Amendment Regulation 2019 is to provide for a new permitted use in a national park. Two new ecocamps will be constructed and managed within Main Range National Park. Both lease areas and ecocamps will be managed and operated by Spicers Retreats, Hotels and Lodges Pty Ltd.

Before the chief executive may grant a Section 35 authority for the above activities, the uses and the relevant national park must be prescribed in Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017. The amendment regulation amends Schedule 3 to include these uses.

Committee comment

The committee is satisfied that the Nature Conservation (Protected Areas Management) (Main Range National Park) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The explanatory notes comply with part 4 of the LSA.

5 Environmental Protection (Waste ERA Framework) Amendment Regulation 2018 (SL 198)

The objective of the Environmental Protection (Waste ERA Framework) Amendment Regulation 2018 is to amend the Environmental Protection Regulation 2008 to reform and modernise the waste-related environmentally relevant activities (ERAs), in order to provide improved risk-based regulation of waste management activities through:

- improved risk-based regulation for waste management activities
- improved support for new and emerging waste management technologies
- clearer regulatory requirements and expectations for all waste management activities
- consistent application of the regulatory requirements across all waste management activities.

Schedule 2 of the Environmental Protection Regulation 2008 contains 12 ERAs which relate to waste management. Each ERA has a corresponding annual fee determined by the level of environmental risk posed by the activity being undertaken. The overall risk of an activity is generally determined by a combination of factors, including the risk associated with the waste type(s) being managed, the amount of waste being managed and the type of process being undertaken.

¹ Queen's Wharf Brisbane (Leasehold Land) Declaration 2019, explanatory notes, p 1.

The explanatory notes explain:

Introducing a new waste-related ERA framework with the Environmental Protection (Waste ERA Framework) Amendment Regulation 2018 (amendment regulation) will allow the overall risk of waste management activities to be more accurately assessed, determined by the classification of waste and the type and scale of the process being undertaken, so that an appropriate level of regulation can be applied. The new waste-related ERA framework will also provide improved regulation and clear regulatory support for new and emerging technologies and is expected to provide cost savings for facilities that manage low-risk or low volumes of waste.²

Committee comment

No issues of fundamental legislative principle were identified.

The committee notes that the explanatory notes generally comply with the requirements of the LSA. However, the committee had concerns regarding the extent to which the information provided in the explanatory notes satisfies the requirements of section 24(2)(ii) of the LSA (results of consultation undertaken).

The committee notes that the explanatory notes provides detail on the way consultation was undertaken and advises that the results are discussed in the Decision Regulatory Impact Statement (RIS). The committee considered that it might have been of more assistance to interested parties if the explanatory notes included a summary of the results of consultation, or at least advice as to where those results can be accessed.

The committee sought additional information from the Department of Environment and Science (the department) in regards to results of consultation for the Environmental Protection (Waste ERA Framework) Amendment Regulation 2018.

In response, the department advised that a Consultation RIS was released in June 2017, and included consideration of the impact of the proposed waste ERA framework changes. Thirty-six submissions to the Consultation RIS were received, with all submissions supporting the preferred policy option, 'however concerns were raised around specific elements of the proposal'.³

The department further advised:

To address the concerns the department undertook further review and amended the waste ERA framework proposal.

Many of the ERAs proposed in the consultation RIS include a category for facilities that receive general waste. Submissions noted that the risks associated with general waste streams can vary significantly and that providing a single category for sites receiving general waste did not acknowledge this variance.

...

² Environmental Protection (Waste ERA Framework) Amendment Regulation 2018, explanatory notes, p 2.

³ Department of Environment and Science, *SL 198 - Environmental Protection (Waste ERA Framework) Amendment Regulation 2018, Explanatory Notes Supplementary Information*, p 1.

To address this, new ERA threshold categories have been introduced under ERA54 (mechanical waste processing or treatment), ERA60 (waste disposal) and ERA62 (waste transfer and resource recovery) to delineate between facilities that accept:

- only inert waste, such as bricks, pavers, ceramics, concrete, glass, steel or other materials that will not biodegrade over time*
- non-putrescible waste that does not contain food, or other readily decomposable organics and would include wastes such as clean paper, cardboard or timber*
- putrescible general wastes that do not fall within the definition of inert or non-putrescible waste.*

The inert and non-putrescible waste categories have a reduced annual fee to reflect that they have a lower risk profile, compared to facilities accepting putrescible or regulated wastes.⁴

The committee is satisfied with the additional information provided by the department.

6 Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018 (SL 211)

The objective of the Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018 is to facilitate the Cairns Shipping Development Project (CSDP) by amending the existing exclusion around the Port of Cairns navigation channel in the Trinity Inlet Declared Fish Habitat Area to allow capital and maintenance dredging of a new navigation channel alignment.

The explanatory notes state that the amendments result from the Coordinator-Generals' report for the CSDP, which assessed an Environmental Impact Statement (EIS) under the *State Development Public Works Organisation Act 1971*:

The Coordinator-General's report recommended that the CSDP proceed with conditions, and that the proponent had provided sufficient information to assess potential changes required to the Trinity Inlet declared [Fish Habitat Area]. In order for the Department of Environment and Science (the department) to meet the Coordinator-General's report findings, the Fisheries Regulation 2008 must be amended to allow dredging to occur.⁵

The explanatory notes explain:

When the FHA [Fish Habitat Area] was declared in 1998, an exclusion of 100 metres either side of the marked navigation channel was made to cater for future planned expansion of the navigation channel to allow for access by larger vessels. While this exclusion largely caters for the proposed CSDP navigation channel expansion, approximately 7.98 hectares of the channel expansion overlaps with the existing FHA. The amendments to the declared FHA plan will exclude this area from the declared FHA, while adding an equivalent area from the current exclusion area to the declared FHA. There will be no net loss of area from the declared FHA as a result of these amendments to facilitate the new navigation channel alignment.⁶

⁴ Department of Environment and Science, *SL 198 - Environmental Protection (Waste ERA Framework) Amendment Regulation 2018, Explanatory Notes Supplementary Information*, p 1.

⁵ Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018, explanatory notes, p 1.

⁶ Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018, explanatory notes, p 2.

Committee comment

The committee is satisfied that the Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The committee sought additional information from the department in regards to results of consultation for the Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018.

In response, the department advised that community and stakeholder consultation was undertaken by the proponent as part of the EIS process for the CSDP, noting that the need to amend the Trinity Inlet declared Fish Habitat Area (FHA) through an amendment to the Fisheries Regulation 2008, was included in the EIS.⁷

The department further advised:

No specific consultation was carried out in relation to the proposed amendments to the Trinity Inlet declared FHA as the requirement to amend the FHA was included in the EIS and the Coordinator-General found that adequate community engagement had been carried out by the CSDP proponent.

...

The Department of Environment and Science is unaware of any direct opposition from stakeholders or the community to the proposed changes to the Trinity Inlet declared FHA as part of the CSDP.

...

In general, the report indicated broad support for the CSDP project proceeding in relation to benefits to the local and regional economy, and important social outcomes including job creation.⁸

The committee is satisfied with the additional information provided by the department.

7 Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2018 (SL 220)

The objectives of the Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2018 are to:

- increase the areas of three existing national parks and one existing conservation park, by dedicating areas of unallocated State land as national park and conservation park
- alter the names of two existing national parks
- redescribe one existing national park and one existing conservation park, following the completion of up-to-date plans
- dedicate three new conservation parks
- revoke the dedication of parts of one existing resources reserve to rectify an erroneous dedication of state land
- declare two new nature refuges
- increase the area of two existing nature refuges

⁷ Department of Environment and Science, *SL 211 - Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018*, p 1.

⁸ Department of Environment and Science, *SL 211 - Fisheries (Trinity Inlet Declared Fish Habitat Area) Amendment Regulation 2018*, p 1.

- rename part of one existing nature refuge
- redescribe six nature refuges to rectify administrative errors.

The explanatory notes state that the amendment regulation is consistent with the objectives of the *Nature Conservation Act 1992* and explains:

*There is also the occasional need to revoke the dedication of areas from the forest reserve and protected area estates to correct boundary inconsistencies or historic incursions, achieve more effective management boundaries, allow for the upgrade or expansion of public infrastructure or to recognise the rights and interests of Aboriginal people and Torres Strait Islander people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom.*⁹

Committee comment

The committee is satisfied that the Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The explanatory notes comply with part 4 of the LSA.

8 Nature Conservation (Protected Areas Management) (Conondale and Other National Parks) Amendment Regulation 2018 (SL 221)

The objective of the Nature Conservation (Protected Areas Management) (Conondale and Other National Parks) Amendment Regulation 2018 is to allow the following uses of a National Park under section 35 of the *Nature Conservation Act 1992*:

- operation and maintenance of an existing service facility (for a communications use) by the Public Safety Business Agency, within Conondale National Park
- operation and maintenance of an existing service facility (for a water supply use) by the Whitsunday Regional Council, within Conway National Park
- operation and maintenance of an existing service facility (for a water supply use) by Seqwater, within Glass House Mountains National Park.

Before the chief executive may grant a Section 35 authority for the above activities, the uses and the relevant national parks must be prescribed in Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017. The amendment regulation amends Schedule 3 to include these uses.

Committee comment

No issues of fundamental legislative principle were identified.

The committee notes that the explanatory notes generally comply with the requirements of the LSA.

9 Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018 (SL 222)

The objective of the Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018 is to allow the following uses, by National Park Pty Ltd (trading as O'Reilly's Rainforest Retreat), within a National Park, under section 35 of the *Nature Conservation Act 1992*:

- construction, refurbishment, maintenance and use of a campground and buildings or other associated structures within Lamington National Park

⁹ Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2018, explanatory notes, p 2.

- maintenance and use of caretaker premises associated with that campground within Lamington National Park.

Before the chief executive may grant a Section 35 authority for the above activities, the uses and the relevant national park must be prescribed in Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017. The amendment regulation amends Schedule 3 to include these uses.

The explanatory notes state that the amendment regulation is consistent with the objectives of the *Nature Conservation Act 1992* and 'ensures the conservation of nature while allowing for the social, cultural and commercial use of protected areas in a way that is consistent with the natural, cultural and other values of the areas'.¹⁰

Committee comment

No issues of fundamental legislative principle were identified.

The committee notes that the explanatory notes generally comply with the requirements of the LSA. However, the committee had concerns regarding the extent to which the information provided in the notes satisfies the requirements of section 24(2)(ii) of the LSA (results of consultation undertaken).

The committee sought additional information from the department in this respect.

In response, the department advised:

*The proposal for National Park Pty Ltd to revitalise and take over the ongoing management of Green Mountains Campground (within Lamington National Park) has been largely supported by key stakeholder groups, including: the Gondwana World Heritage Scientific and Community Advisory Committee; the National Parks Association of Queensland; and Traditional Owners representing the Wangerriburra People, and other members of the public. For many, the proposal is not a significant concern since the action is proposed for an existing, pre-disturbed area of the National Park whereby camping will continue to be made available for public use.*¹¹

The department advised that it held various consultation sessions, including: an open day at Green Mountains Camping Area at which the department staff and O'Reilly's staff engaged with approximately 250 members of the public; meetings with the Gondwana Rainforests Technical and Scientific Advisory Committee and Community Advisory Committees; engagement with the National Parks Association of Queensland; and with the Traditional Owners, representing the Wangerriburra People.¹²

The department reported that feedback has been appropriately managed, recorded and considered during the assessment of the detailed proposal by the department, as well as in the development of lease conditions.¹³

The committee is satisfied with the information provided by the department.

¹⁰ Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018, explanatory notes, p 2.

¹¹ Department of Environment and Science, *SL 222 - Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018, Explanatory Notes Supplementary Information*, p 1.

¹² Department of Environment and Science, *SL 222 - Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018, Explanatory Notes Supplementary Information*, pp 1-3.

¹³ Department of Environment and Science, *SL 222 - Nature Conservation (Protected Areas Management) (Lamington National Park) Amendment Regulation 2018, Explanatory Notes Supplementary Information*, p 3.

10 Nature Conservation (Macropod Harvest Period 2019) Notice 2018 (SL 226)

The objective of the Nature Conservation (Macropod Harvest Period 2019) Notice 2018 is to declare by written notice, a harvest period for macropods.

The Macropod Conservation Plan provides that a written notice (a harvest period notice) may be prepared to declare a macropod harvest period (MHP).

Key purposes of the Macropod Conservation Plan include allowing the ecologically sustainable use of macropods taken from the wild and minimising the impact of taking macropods on nature. The policy objective of the Macropod Harvest Period 2019 Notice operates within these overarching purposes, to regulate the harvest of macropods in a manner that ensures sustainable harvest levels are maintained.

A harvest period notice is issued on an annual basis, in order to ensure the quotas are reflective of any changes in estimated population size of harvest macropod species.

The explanatory notes state:

*... there has not been any increase in threat levels to species of macropods harvested under the 2018 Notice, the MHP 2019 Notice will be purely administrative in nature and will not impose any additional requirements or costs on macropod harvesters, landholders or the government.*¹⁴

Committee comment

The committee is satisfied that the Nature Conservation (Macropod Harvest Period 2019) Notice 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The explanatory notes comply with part 4 of the LSA.

11 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 LSA.

Recommendation

The committee recommends that the House notes this report.



Duncan Pegg MP

Chair

April 2019

Innovation, Tourism Development and Environment Committee

Chair

Deputy Chair

Members

Mr Duncan Pegg MP, Member for Stretton (Chair),
Mr Jon Krause MP, Member for Scenic Rim (Deputy Chair)
Ms Sandy Bolton MP, Member for Noosa
Mr Mark Boothman MP, Member for Theodore
Ms Cynthia Lui MP, Member for Cook
Mrs Charis Mullen MP, Member for Jordan

¹⁴ Nature Conservation (Macropod Harvest Period 2019) Notice 2018, explanatory notes, p 2.