

Innovation, Tourism Development and Environment Committee Report No.17, 56th Parliament Subordinate legislation tabled between 13 February 2019 and 30 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 30 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
19	Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019	26 March 2019	13 June 2019
31	Nature Conservation (Protected Areas Management) (D'Aguilar National Park) Amendment Regulation 2019	26 March 2019	13 June 2019
32	Queensland Heritage Amendment Regulation 2019	26 March 2019	13 June 2019
33	Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019	26 March 2019	13 June 2019
55	Nature Conservation and Other Legislation Amendment Regulation 2019	30 April 2019	4 September 2019

3 Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019 (SL 19)

The objective of the Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019 is to amend existing regulation to make it more consistent with the *Environmental Protection Act 1994* as amended by the *Mineral and Energy Resources (Financial Provisioning) Act 2018*. Specifically, the amendment regulation will:

- amend the *Environmental Protection Regulation 2008* to clarify fee arrangements for certain applications, prescribe when annual returns are required from certain environmental authorities, and update terminology and cross references to the *Environmental Protection Act 1994*
- amend the *State Penalties Enforcement Regulation 2014* to prescribe new infringement notice offences, amend existing references to penalty infringement notices to reflect current

terminology, and correct references to renumbered sections of the *Environmental Protection Act 1994*.¹

The explanatory notes state that the amendment regulation does not insert any new fees. Rather, it clarifies existing fee arrangements and their application to certain plans.²

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

Committee comment

The committee is satisfied that the Environmental Protection (Financial Provisioning) and Other Legislation 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 *Legislative Standards Act 1992*.

4 Nature Conservation (Protected Areas Management) (D'Aguilar National Park) Amendment Regulation 2019 (SL 31)

The objective of the Nature Conservation (Protected Areas Management) (D'Aguilar National Park) Amendment Regulation 2019 is to amend the *Nature Conservation (Protected Areas Management) Regulation 2017* to permit the operation and maintenance of an existing service facility (for a communications use) within D'Aguilar National Park.³

The Nature Conservation Act 1992 provides strict criteria which must be satisfied before an application to install, maintain, or use infrastructure on national parks can be approved. The proposal for the service facility at D'Aguilar National Park has been assessed and has met the necessary requirements.⁴

Before a permit can be granted, the use and relevant national park must be prescribed in Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017.⁵ The Amendment Regulation inserts this wording accordingly.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

Committee comment

The committee is satisfied that the Nature Conservation (Protected Areas Management) (D'Aguilar 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 *Legislative Standards Act 1992*.

¹ Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019, explanatory notes, pp 1-4.

² Environmental Protection (Financial Provisioning) and Other Legislation Amendment Regulation 2019, explanatory notes, p 3.

³ Nature Conservation (Protected Areas Management) (D'Aguilar National Park) Amendment Regulation 2019, explanatory notes, p 2.

⁴ Nature Conservation (Protected Areas Management) (D'Aguilar National Park) Amendment Regulation 2019, explanatory notes, p 1.

⁵ Nature Conservation (Protected Areas Management) (D'Aguilar National Park) Amendment Regulation 2019, explanatory notes, p 2.

5 Queensland Heritage Amendment Regulation 2019 (SL 32)

The objective of the Queensland Heritage Amendment Regulation 2019 is to give Brisbane City Council the power to give essential repair and maintenance notices under the *Queensland Heritage Act 1992*, which provides for the conservation of Queensland's cultural heritage.⁶

Part 8 of the *Queensland Heritage Act 1992* provides for the chief executive of a local government to give notices about essential repair and maintenance work in relation to local heritage places. In providing authority for this power, the Minister must be satisfied that appropriate procedures are in place for exercising this power. Matters that the Minister should consider are prescribed in section 4 of the *Queensland Heritage Regulation 2015*. The explanatory notes state that:

*The Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts has considered a report prepared by BCC [Brisbane City Council] in respect of the matters described in section 4 of the Queensland Heritage Regulation 2015. The Minister is satisfied BCC has appropriate procedures in place for exercising a power under section 84 of the Act to give essential repair and maintenance notices.*⁷

Section 83 of the *Queensland Heritage Act 1992* requires a local government to be prescribed by a regulation in order to give essential repair and maintenance notices.⁸

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

Committee comment

The committee is satisfied that the Queensland Heritage 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 *Legislative Standards Act 1992*.

6 Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019 (SL 33)

The objective of the Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019 is proposed to commence on 1 July 2019 and forms the final stage of legislative amendments that are required to implement the operation of a waste levy in Queensland.⁹

The *Waste Reduction and Recycling Act 2011* and its subordinate legislation provide the framework for promoting waste avoidance and reduction in Queensland. The Queensland Government is developing a new Waste Management and Resource Recovery Strategy which is underpinned by a new waste levy. In February 2019, the *Waste Reduction and Recycling (Waste Levy) Amendment Act 2019* provided a head of power for the re-introduction of a waste levy in Queensland, to commence in July 2019.¹⁰

The Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019 prescribes details on the key aspects of the waste levy framework. Specifically, the amendment regulation:

- stipulates which local government areas fall within the Queensland waste levy zones
- provides the levy rates for each waste type and a method for calculating the waste levy
- establishes the formula for calculating the annual payment to local government

⁶ Queensland Heritage Amendment Regulation 2019, explanatory notes, pp 1-2.

⁷ Queensland Heritage Amendment Regulation 2019, explanatory notes, p 1.

⁸ Queensland Heritage Amendment Regulation 2019, explanatory notes, p 2.

⁹ Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, p 2.

¹⁰ Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, pp 1-2.

- *prescribes the circumstances for refusal of an exempt waste application*
- *identifies certain exempt wastes for the definition of a waste disposal site*
- *identifies other types of exempt wastes*
- *prescribes the recycling activities for which a residue waste discounting application may be made, recycling efficiency thresholds for these activities, and the discounted levy rate*
- *provides additional requirements for deciding and refusing a residue waste discounting application, and conditions on approvals*
- *provides weight measurement criteria for measuring waste or other material other than by a weighbridge, and*
- *establishes the application and amendment fees payable for exempt waste and residue waste discounting applications and approvals.*¹¹

The explanatory notes state that these amendments are consistent with the main policy objectives of the *Waste Reduction and Recycling Act 2011*, and do not introduce any additional burdens.¹²

Potential fundamental legislative principle issue – regard to the institution of Parliament

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

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.¹³

Part of the rationale for this consideration, is to ensure that there is sufficient parliamentary scrutiny of a delegated legislative power.¹⁴

The Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019 references the following external documents:

- Queensland Acid Sulfate Soil Technical Manual - Soil Management Guidelines v 4.0¹⁵
- Australia and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1, The Guidelines.¹⁶

It could be argued that the above guidelines, and the process by which they are incorporated into the legislative framework, has insufficient regard to the institution of Parliament as they are not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Currently, the guidelines are not contained in the subordinate legislation in their entirety, and as such, their content does not come to the attention of the House. Similarly, while a future amending notice will alert the House that there has been an amendment to the document, it will not contain information about the changes that have been made.

¹¹ Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, p 2.

¹² Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, p 2 and p 6.

¹³ Section 4(5)(e) of the *Legislative Standards Act 1992*

¹⁴ Queensland Government, Department of Premier and Cabinet, Legislation Handbook, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/parliament.aspx>

¹⁵ As published by the Australian and New Zealand Environment and Conservation Council – referenced: Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, p 7.

¹⁶ As published by the Department of Science, Information Technology, Innovation and the Arts – referenced: Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, p 7.

Authorised by an Act

Section 271 of the *Water Reduction and Recycling Act 2011* provides a regulation making power. While it does not specifically address the power to approve external documents by regulation, under subsection (2), a regulation may set out many matters relating to waste. Both documents are described in clause 7 (see new sections 7, 8 and 9) of the Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019.

The sub-delegation of power is authorised, and the notice is subject to disallowance as subordinate legislation

Appropriate cases and to appropriate persons

In considering whether it was appropriate for matters to be dealt with by an instrument other than subordinate legislation, it is appropriate to consider the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.¹⁷

The explanatory notes include these statements regarding the documents:

The guideline [Queensland Acid Sulfate Soil Technical Manual] is technical in nature and not otherwise suitable for incorporation in legislation. This sub-delegation is considered appropriate as it allows for practices relevant for treating and managing the types of waste mentioned to remain contemporary and appropriate.

...

*The guideline [Australian and New Zealand Guidelines for Fresh and Marine Water Quality] is technical in nature and not otherwise suitable for incorporation in legislation. This sub-delegation is considered appropriate as it allows for requirements relevant to water quality for particular uses to remain contemporary and appropriate.*¹⁸

The guidelines contain detailed technical information and are 119 and 314 pages long respectively. It can therefore be accepted that it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation.

Availability of document and parliamentary scrutiny

Concerns about sub-delegation are reduced when the document in question is made available for inspection.

Both sets of guidelines are readily available on the internet, without charge.¹⁹

Committee comment

The committee notes that the guidelines referred to within the subordinate legislation are technical in nature, and that for practical reasons, it is not appropriate for the content of these documents to be included within the subordinate legislation. Under these circumstances, the committee is satisfied that the Reduction and Recycling (Waste Levy) Amendment Regulation 2019 has sufficient regard to the institution of Parliament.

No other fundamental legislative principle issues were identified.

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

¹⁷ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

¹⁸ Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, explanatory notes, p 7.

¹⁹ *Queensland Acid and Sulfate Soil Technical Manual* is available on the Queensland Government Publications website at <https://publications.qld.gov.au>. *Guidelines for Fresh and Marine Water Quality* is available on the Commonwealth Water Quality website at www.waterquality.gov.au.

Nature Conservation and Other Legislative Amendment Regulation 2019 (SL 55)

The objectives of the Nature Conservation and Other Legislation Amendment Regulation 2019 are to:

- declare scientific areas in Bluff and Wongi State Forests to ensure continued preservation and management of environmental values within the forests²⁰
- revoke parts of Beerwah (40 hectares) and Woondum State Forests (25 hectares) to allow for road upgrades²¹
- increase the area of Mount Stowe State Forest with unallocated state land to fulfil, in part, a historic compensation agreement²²
- redescribe six existing State forests (Cardwell, Abergowrie, Calgoa, Alligator Creek, Werribee Creek and Murray Upper State Forests) using contemporary survey and mapping technology and standards²³
- remove joint trusteeship arrangements from seven resources reserves (Abbot Bay, Blackbraes, Lawn Hill (Creek), Lawn Hill (Gorge Mouth), Lawn Hill (Gregory), Lawn Hill (Gregory River Base) and Lawn Hill (Stockyard Creek) and revoke trusts associated with these resources reserves as the Department of Natural Resources, Mines and Energy no longer considers the areas to have significant mineral prospectivity and therefore no longer requires trusteeship²⁴
- upgrade Blackbraes and Paluma Range Resources Reserves to national parks and Abbot Bay Resources Reserve to conservation park, to provide greater conservation of protected areas²⁵
- alter the name of part of Girramay National Park to Gulngay National Park to provide boundary clarity following a recalculation of area using contemporary survey and mapping technology²⁶
- redescribe four existing national parks, one existing conservation park, and one existing resources reserve using contemporary survey and mapping technology and standards²⁷
- revoke the dedication of parts of Family Islands National Park and Tewantin National Park as per proposals tabled in the Legislative Assembly of Queensland and passed by resolution on 20 September 2018,²⁸ and
- declare one new nature refuge (Johns Landing Nature Refuge).²⁹

The explanatory notes state that the proposals are consistent with the objectives of the *Forestry Act 1959* and the *Nature Conservation Act 1992*.³⁰

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

²⁰ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 1-3.

²¹ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 1-3.

²² Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 1-2.

²³ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 1-2.

²⁴ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 4-5.

²⁵ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 4-5.

²⁶ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, p 1 and pp 5-6.

²⁷ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, p 1 and p 5.

²⁸ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, p 1 and p 7.

²⁹ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 1-2.

³⁰ Nature Conservation and Other Legislation Amendment Regulation 2019, explanatory notes, pp 2-3.

Committee comment

The committee is satisfied that the Nature Conservation and Other Legislation 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 *Legislative Standards Act 1992*.

7 Committee consideration of the subordinate legislation

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

While a potential issue was identified with the Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019, the committee is satisfied after consideration, that the subordinate legislation has sufficient regard to the institution of Parliament.

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

8 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Duncan Pegg MP

Chair

June 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

STATEMENT OF RESERVATION

Waste Reduction and Recycling (Waste Levy) Amendment Regulation 2019

As the state struggles under the burden of one of the nation's highest unemployment rates, increasing government debt, skyrocketing cost of living expenses and record levels of congestion, Labor continues to treat Queenslanders as cash cows from which they can extract any sum of money from, for whatever political agenda they want.

Families are already struggling with job security, weekly bills and daily gridlock, and this regulation implements yet another hit to their hip pockets. The Palaszczuk Labor Government, seemingly emboldened by over four years of Government, has moved beyond taxing families by stealth through electricity, water, registration and speeding fines to directly reaching into the pocket of all Queenslanders with this mammoth \$1.3 billion tax grab.

This amendment regulation implements one of seven new taxes that the Palaszczuk Labor Government has introduced. The Premier's guarantee that "Queensland families will not face the cost of this levy" is impossible to fulfil. From Cairns to Currumbin, councils will be forced to hike rates and waste charges as more and more money flows to the Government's coffers in Brisbane. Whether it's a growing family doing a major renovation or a young family buying a new home, they'll all be sluggish. Every customer of every business that is being sluggish will have to pay more. Even retirees in aged care aren't spared.

The LNP fundamentally oppose Labor's continued tax grabs. Queensland cannot tax itself to growth. Make no mistake, when Labor governments are in power, Queenslanders always pay the price. You can't tax your way to growth.

Queensland used to have a reputation as a low-taxing state, encouraging an entrepreneurial spirit where if people had a go and backed themselves, they could make a decent living and get ahead in life.

It's only under an LNP Government that business will have the renewed hope and confidence to invest in Queensland and create more jobs and increase wages.



Jon Krause MP



Mark Boothman MP