

Health, Environment and Agriculture Committee

Report No. 9, 57th Parliament

Subordinate legislation tabled between 20 March 2024 and 16 April 2024

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 20 March 2024 and 16 April 2024. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),⁴ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

| No. | Subordinate legislation | Date tabled | Disallowance date* |
|-----|---|---------------|--------------------|
| 20 | Nature Conservation (Fee Waivers) and Other Legislation Amendment Regulation 2024 | 16 April 2024 | 21 August 2024 |
| 25 | Marine Parks and Other Legislation Amendment Regulation 2024 | 16 April 2024 | 21 August 2024 |
| 26 | Marine Parks (Great Sandy) Zoning Plan 2024 | 16 April 2024 | 21 August 2024 |
| 27 | Nature Conservation Legislation Amendment Regulation 2024 | 16 April 2024 | 21 August 2024 |

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Committee consideration of the subordinate legislation

No issues with the policy or lawfulness of the subordinate legislation were identified. The committee considered potential FLP and/or human rights issues in relation to SL Nos. 25 and 26, which are discussed in this report. In all cases the committee is ultimately satisfied that the subordinate legislation is consistent with FLPs and compatible with human rights.

All explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA and all accompanying human rights certificates provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

A brief overview of the subordinate legislation is provided in the following sections.

¹ *Legislative Standards Act 1992*, s 4.

² *Human Rights Act 2019*, s 8.

³ *Legislative Standards Act 1992*, Part 4.

⁴ *Legislative Standards Act 1992*, Part 4.

⁵ *Human Rights Act 2019*, s 41.

4 SL No. 20 – Nature Conservation (Fee Waivers) and Other Legislation Amendment Regulation 2024

The Nature Conservation (Fee Waivers) and Other Legislation Amendment Regulation 2024 (SL No. 20) amends the Forestry Regulation 2015, Nature Conservation (Protected Areas Management) Regulation 2017 and Recreation Areas Management Regulation 2017.

SL No. 20 waives certain commercial activity permit fees, from 1 January 2024 to 31 March 2024, for tourism businesses conducting their activities in a forestry area, protected area or a recreation area where disaster recovery funding arrangements have been activated for Tropical Cyclone Jasper (activation area).⁶

A map and list of the local government areas within the activation area is published on the Queensland Reconstruction Authority website.⁷

Operators will still be required to lodge returns,⁸ however the fee waiver will allow businesses to retain the daily fees that would otherwise be payable to the State for any tours conducted in these areas.⁹ Refunds will be provided if an operator pays the relevant daily fees during the waiver period.¹⁰

5 SL No. 25 – Marine Parks and Other Legislation Amendment Regulation 2024

The Marine Parks and Other Legislation Amendment Regulation 2024 (SL No. 25) amends various regulations to complement and support the *Marine Parks (Great Sandy) Zoning Plan 2024* (Zoning Plan).¹¹

Fisheries (General) Regulation 2019

SL No. 25 amends the Fisheries (General) Regulation 2019 to implement a range of changes to the boundaries and/or management level in various parts of the declared Fish Habitat Zones within the Great Sandy Marine Park (marine park).¹²

Marine Parks (Declaration) Regulation 2006

SL No. 25 amends the Marine Parks (Declaration) Regulation 2006 to change the description of the marine park's outer boundary to be a 'metes and bounds' description to incorporate 'the full extent and complexity of the tidal land and waters in various estuaries and waterways' that were originally intended to be included within the marine park, and to amend transitional provisions.¹³

Marine Parks Regulation 2017

SL No. 25 amends the Marine Parks Regulation 2017 to make amendments characterised as 'minor and machinery in nature',¹⁴ including to:

- require the chief executive to publish notices when declaring a restricted access area, prescribed commercial activity or special activity on the department's website, and provide the ability, if necessary, to publish the notices in other ways than publishing a notice in a newspaper¹⁵

⁶ SL No. 20, human rights certificate, p 1.

⁷ SL No. 20, explanatory notes, p 1.

⁸ SL No. 20, explanatory notes, p 2.

⁹ SL No. 20, human rights certificate, p 1.

¹⁰ SL No. 20, explanatory notes, p 3.

¹¹ SL No.25, explanatory notes, p 1.

¹² SL No.25, explanatory notes, pp 5, 8, 13.

¹³ SL No.25, explanatory notes, pp 7, 13.

¹⁴ SL No.25, explanatory notes, p 12.

¹⁵ SL No.25, explanatory notes, p 5.

- allow a commercial activity agreement to be issued for a maximum term of up to 15 years¹⁶
- provide the chief executive with the option to issue a written approval for a person to enter a restricted access area or conduct a special activity, in addition to granting a permission or entering into a commercial activity agreement¹⁷
- adapt the reasons for which a restricted access area can be declared under the Nature Conservation (Protected Areas Management) Regulation 2017 to be suitable for marine parks¹⁸
- remove redundant provisions, insert transitional provisions, and amend definitions.¹⁹

State Penalties Enforcement Regulation 2014

SL No. 25 amends the State Penalties Enforcement Regulation 2014 to prescribe a Penalty Infringement Notice (PIN) value for each of the 26 offences in the Zoning Plan, in accordance with the *Guidelines for the prescription of penalty infringement notice offences under the State Penalties Enforcement Regulation 2014*.²⁰

The explanatory notes state:

Several offences have been carried over from the repealed Marine Parks (Great Sandy) Zoning Plan 2017 and others are new, being the result of special management provisions being introduced for new designated areas established within the marine park or new management provisions to protect the natural and cultural resources of the marine park provided for in the zoning plan.²¹

The amendments also remove the PIN value for those offences under the Marine Parks Regulation 2017 that pertain to the return of a permission to the chief executive for permissions that are either amended, suspended or cancelled, as these are no longer required.²²

5.1 Compatibility with human rights

5.1.1 Freedom of movement

SL No. 25 amends the Marine Parks Regulation 2017²³ to expand the reasons that the chief executive may declare a marine park, or a part of a marine park, to be a restricted access area, to include:

- to manage a significant Aboriginal area (or Torres Strait Islander area) in the area in a way that is consistent with Aboriginal tradition (or Island custom)
- to protect infrastructure or equipment for a service in the marine park
- for the orderly or proper management of the area.²⁴

Although the expanded set of reasons included in the restricted access area provisions potentially limit freedom of movement²⁵ by preventing people from moving freely within the relevant areas in the marine park, the human rights certificate states that SL No. 25 enhances ‘the ability to manage areas without any (or significantly reduced) interference from public presence’ and will enable the management of ‘a significant Aboriginal or Torres Strait Islander area in a way that is consistent with Aboriginal or Island custom’.²⁶

¹⁶ This is increased from 10 years. SL No.25, explanatory notes, p 6.

¹⁷ SL No.25, explanatory notes, p 6.

¹⁸ SL No.25, explanatory notes, p 6.

¹⁹ SL No.25, explanatory notes, pp 5-7.

²⁰ SL No.25, explanatory notes, p 9.

²¹ SL No.25, explanatory notes, p 9.

²² SL No.25, explanatory notes, p 9.

²³ Marine Parks Regulation 2017, s 211.

²⁴ SL No. 25, human rights certificate, p 10.

²⁵ *Human Rights Act 2019*, s 19.

²⁶ SL No. 25, human rights certificate, pp 10, 11.

The human rights certificate notes that the Marine Parks Regulation 2017 provides strict requirements for declaring a restricted access area, including public notice and public submission requirements, specified requirements before a declaration may be made, and revocation as soon as practicable once the reason for making the declaration no longer exists.²⁷

Committee comment

Given the purpose of expanding the reasons for declaring a restricted access area is to enable improved management of areas, and the requirements in the regulation for making a declaration of a restricted access area, the committee is satisfied that any potential limitation on freedom of movement is reasonable and sufficiently justified, and that SL No. 25 is compatible with the HRA.

6 SL No. 26 – Marine Parks (Great Sandy) Zoning Plan 2024

The Marine Parks (Great Sandy) Zoning Plan 2024 (SL No. 26) is subordinate legislation made under the *Marine Parks Act 2004* (Act), and replaces the Marine Parks (Great Sandy) Zoning Plan 2017 (repealed zoning plan).²⁸

The key objective of SL No. 26 is to contribute to a comprehensive strategy for conserving the unique environmental, social, cultural and economic values of the marine environment in the Great Sandy Marine Park, and to ensure its sustainable use for present and future generations.²⁹

According to the explanatory notes,³⁰ SL No. 26:

... establishes and defines the location of a network of spatially defined zones which afford different levels of protection and use, details special management arrangements for particular values or uses at specific locations,³¹ and applies offence provisions and penalties for non-compliance with zoning plan requirements.³²

When compared with the repealed zoning plan, SL No. 26 introduces some changes to 'address identified problems and improve conservation of the marine environment within the Great Sandy Marine Park' and to:

... improve clarity, remove obsolete provisions, reduce unnecessary regulatory burden, improve complementarity with the management of other State marine parks, address flow on effects for other proposed zoning plan changes and reflect contemporary legislative drafting standards.³³

6.1 Consistency with fundamental legislative principles

6.1.1 Ordinary activities should not be unduly restricted

SL No. 26 amends provisions that were in the repealed zoning plan, such as to remove the designated Great Sandy Area, expand the area of highly protected zones, and prohibit (or limit) certain forms of commercial fishing³⁴ from parts of the marine park.³⁵

²⁷ SL No. 25, human rights certificate, p 12.

²⁸ SL No. 26, explanatory notes, pp 1, 3.

²⁹ SL No. 26, explanatory notes, p 1.

³⁰ SL No. 26, explanatory notes, p 2.

³¹ For example, via designated area provisions.

³² The objects to be achieved for each zone type are stated in Marine Parks Regulation 2017, sch 1. SL No. 26 includes entry or use provisions for each zone and designated area that specify activities that are either as of right or require permission.

³³ SL No. 26, explanatory notes, p 3.

³⁴ Trawl, line pot net and harvest.

³⁵ SL No. 26, explanatory notes, p 8.

Legislation should not, without sufficient justification, unduly restrict ordinary activities: ‘The most general concept of liberty logically requires that an activity should be lawful unless for a sufficient reason it is declared unlawful by an appropriate authority’.³⁶

Whilst acknowledging that SL No. 26 will result in impacts on the commercial fishing sector to varying degrees, the explanatory notes state:

While the prohibition of large mesh gill nets and ring nets from large areas of the park has significant impacts on the commercial net fishery, other forms of commercial netting that present a lower risk to threatened species (i.e. set pocket, tunnel, ocean beach and bait netting) have been allowed to continue largely unchanged, to maintain some local net caught fish and prawns for supply to the public and to support jobs in the local fishing industry.³⁷

The explanatory notes observe that ‘some commercial fishers operating in affected fisheries in the marine park will need to modify their fishing operations, move to alternative fishing locations to remain economically viable or exit the industry’.³⁸

Given the acknowledged impacts on the right to undertake ordinary activities, the explanatory notes state:

These impacts on individual fishers are being addressed with an impact mitigation package to support fishers and associated post-harvest seafood businesses directly affected by the zoning plan. This package includes ex-gratia payments for lost probable income over 3 years from areas impacted by zoning plan changes, fishing licence and symbol buybacks and support for retraining.³⁹

Committee comment

The committee is satisfied that SL No. 26 has sufficient regard to the rights and liberties of individuals. In seeking to balance the community’s expectation for the protection of an area of high ecological and cultural value, with the rights of businesses extracting natural resources, SL No. 26 provides for reasonable restrictions on ordinary activities. The provision of financial assistance for anticipated lost income for businesses affected by the new zoning plan, including individual fishers operating in the commercial fishing sector, is intended to mitigate the impacts on these businesses.

6.2 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights. Recognition and equality before the law and the right to freedom of movement are discussed below.

6.2.1 Recognition and equality before the law

SL No. 26 prohibits access to 2 small areas of the marine park (total area 4.27km² or 0.07%) with the use of a motorised vessel but allows access with non-motorised vessels.⁴⁰

The human rights certificate acknowledges this may limit the right to recognition and equality before the law⁴¹ by ‘disproportionately impacting on people who have a disability that renders them incapable of operating, or being a passenger in, a non-motorised vessel’.⁴²

Prohibiting motorised vessels is intended to reduce the risk of noise disturbing cultural practices, and the impacts of vessel wash on culturally significant sites.⁴³ The human rights certificate states:

³⁶ Office of the Queensland Parliamentary Counsel (OQPC), ‘*Fundamental legislative principles: the OQPC Notebook*’ (Notebook), p 118.

³⁷ SL No. 26, explanatory notes, pp 8-9.

³⁸ SL No. 26, explanatory notes, p 9. See also the discussion in the human rights certificate (pp 14-22) about limitations on the right to property associated with the fishers operating in affected area.

³⁹ SL No. 26, explanatory notes, p 9.

⁴⁰ SL No 26, human rights certificate, p 5.

⁴¹ *Human Rights Act 2019*, s 15.

⁴² SL No 26, human rights certificate, p 5.

⁴³ SL No 26, human rights certificate, p 6.

Several culturally significant areas have been identified via engagement with First Nations peoples with an interest in these waters and protection of these recognises the priorities and perspectives of First Nations peoples in management of the marine park.⁴⁴

Noting that the designated areas are small in size and the remainder of the marine park may be accessed by motorised vessels, the human rights certificate concludes that any limitation on the right to recognition and equality before the law is reasonable and demonstrably justifiable.⁴⁵

6.2.2 Freedom of movement

SL No. 26:

- restricts public access to the ex-HMAS Tobruk area, unless the person has a permission to enter for diving and snorkelling, particular research or another purpose that is for the benefit of the marine park's natural and cultural resources⁴⁶
- provides that the chief executive may make a prohibited area notice that prohibits entry into a grey nurse shark area or part of the grey nurse shark area, in order for urgent action, needed to deal with a threat to a grey nurse shark in the prohibited area, to be undertaken⁴⁷
- provides for special management provisions in the designated Mon Repos Area between 15 October and 31 May, which include that, between 6pm and 6am, a person cannot enter the area without permission⁴⁸
- prohibits public access to Seasonal Shorebird Closure Areas, without permission, from 1 September to 31 October and between 1 March to 30 April.⁴⁹

The human rights certificate addresses the potential limits on the freedom of movement⁵⁰ as follows:

- allowing access for marine park users to enter the ex-HMAS Tobruk area with a permission only for particular purposes, provides for the long-term protection of the natural, cultural and recreational values of the area⁵¹
- the benefit of enabling the prohibited area notice is to enhance the protection of a critically endangered species (grey nurse sharks), if the need arises⁵²
- expected benefits to threatened species, to the experiences of researchers with permission to enter the Mon Repos Area, and to visitors on tours justify the restriction⁵³
- the relatively minor imposition on a small number of local residents and visitors to the park in 4 small locations (Seasonal Shorebird Closure Areas) is outweighed by the broader benefits to threatened species and potential tourism opportunities.⁵⁴

The human rights certificate concludes that any limitation on the freedom of movement is reasonable and demonstrably justifiable.⁵⁵

⁴⁴ SL No 26, human rights certificate, p 8.

⁴⁵ SL No 26, human rights certificate, p 8.

⁴⁶ SL No 26, s 31. SL No. 26, explanatory notes, p 9.

⁴⁷ SL No 26, s 49. SL No. 26, explanatory notes, p 9.

⁴⁸ SL No 26, s 54.

⁴⁹ SL No 26, s 62.

⁵⁰ *Human Rights Act 2019*, s 19.

⁵¹ Additionally, the explanatory notes contend that restricting access by other marine park users (for example, recreational boat users) separates this activity from diving, which aids in management of the area from a safety and utility perspective. SL No 26, human rights certificate, p 13.

⁵² SL No 26, human rights certificate, p 13.

⁵³ SL No 26, human rights certificate, p 13.

⁵⁴ SL No 26, human rights certificate, p 14.

⁵⁵ SL No. 26, human rights certificate, pp 13, 14.

Committee comment

Taking into account the purpose of SL No. 26, to conserve the unique values of the marine environment in the Great Sandy Marine Park, and the benefits expected to result from the new zoning plan, the committee is satisfied that potential limitations on recognition and equality before the law and freedom of movement are reasonable and demonstrably justifiable, and that SL No. 26 is compatible with the HRA.

7 SL No. 27 – Nature Conservation Legislation Amendment Regulation 2024

The Nature Conservation Legislation Amendment Regulation 2024 (SL No. 27) amends the Nature Conservation (Forest Reserves) Regulation 2000 and the Nature Conservation (Protected Areas) Regulation 1994 to:

- revoke 6 forest reserves for dedication as national parks –
 - Barron Gorge Forest Reserve, near Cairns, and dedicate the area as part of the existing Barron Gorge National Park
 - Dryander Forest Reserve, near Proserpine, and dedicate the area as part of the existing Dryander National Park
 - Kelvin Forest Reserve, near Mackay, and dedicate the area as part of the existing Kelvin National Park
 - Kuranda Forest Reserve, near Cairns, and dedicate the area as part of the existing Kuranda National Park
 - Macalister Range Forest Reserve, near Cairns, and dedicate the area as part of the existing Macalister Range National Park
 - Yabba Forest Reserve 2, near Gympie, and dedicate the area as part of the existing Wrattens National Park
- increase the area of national parks –
 - Broad Sound Islands National Park, near Mackay
 - Curtis Island National Park, near Gladstone
 - Ella Bay National Park, near Innisfail
 - Eubenangee Swamp National Park, near Innisfail
 - Gloucester Island National Park, near Mackay
 - Keppel Bay Islands National Park, near Rockhampton
 - Northumberland Islands National Park, near Mackay
 - Percy Isles National Park, near Mackay
 - Russell River National Park, near Innisfail
 - South Cumberland Islands National Park, near Mackay
 - Wild Cattle Island National Park, near Gladstone
- redescribe the entirety of Eungella National Park, near Mackay, increasing the area of the national park
- increase the area of 2 conservation parks –
 - Broad Sound Islands Conservation Park, near Rockhampton
 - Middle Percy Island Conservation Park, near Mackay
- declare 4 new nature refuges –
 - Bimboola Nature Refuge, near Beechmont
 - Maraverde Nature Refuge, near Mossman
 - Under Milkweed Nature Refuge, near Toowoomba
 - Wyangan Springs Nature Refuge, near Mudgeeraba.⁵⁶

⁵⁶ SL No. 27, explanatory notes, p 1.

According to the explanatory notes, ‘the core aim of dedicating new protected areas is to permanently preserve, to the greatest extent possible, the area’s natural condition, to protect the area’s cultural resources and values and provide for ecologically sustainable activities and ecotourism’.⁵⁷

Revocation of the forest reserves and their subsequent dedication as protected area is ‘part of the long-term forest reserve transfer process in Queensland’.⁵⁸

SL No. 27 also includes minor amendments, such as updating of the plans that define the boundaries of national parks or protected areas using contemporary survey and mapping technology.⁵⁹

8 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP
Chair
July 2024

Health, Environment and Agriculture Committee

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⁵⁷ SL No. 27, explanatory notes, p 1.

⁵⁸ SL No. 27, explanatory notes, p 1.

⁵⁹ SL No. 27, explanatory notes, p 2.