

## Health, Environment and Agriculture Committee

### Report No. 14, 57th Parliament

#### Subordinate legislation tabled between 1 May 2024 and 11 June 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 1 May 2024 and 11 June 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),<sup>1</sup> its compatibility with human rights,<sup>2</sup> and its lawfulness.<sup>3</sup> It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),<sup>4</sup> and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).<sup>5</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
46	Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2024	21 May 2024	tba
52	Fisheries (Structural Reform Stage 2) and Other Legislation Amendment Regulation 2024	21 May 2024	tba
67	Rural and Regional Adjustment (Fisheries Structural Adjustment Scheme—Stage 3 and Other Matters) Amendment Regulation 2024	11 June 2024	tba

\* The disallowance date is 14 sitting days after the tabling date. Proposed sitting dates are 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 issues in relation to SL No. 52 which are discussed in this report, and was ultimately satisfied that the subordinate legislation is consistent with FLPs. The committee was also satisfied that the subordinate legislation is compatible with human rights.

The explanatory notes tabled with the subordinate legislation generally comply with the requirements of part 4 of the LSA. However the committee has recommended amendment of the explanatory notes for SL No. 52. The human rights certificates accompanying the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to compatibility with the HRA.

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

<sup>1</sup> *Legislative Standards Act 1992*, s 4.

<sup>2</sup> *Human Rights Act 2019*, s 8.

<sup>3</sup> *Legislative Standards Act 1992*, Part 4.

<sup>4</sup> *Legislative Standards Act 1992*, Part 4.

<sup>5</sup> *Human Rights Act 2019*, s 41.

#### **4 SL No. 46 – Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2024**

The Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2024 (SL No. 46) amends the Rural and Regional Adjustment Regulation 2011 to increase the Resilient Homes Assistance Scheme funding threshold for home raising, demolition and replacement, or relocation works to \$150,000, from the existing \$100,000 threshold.

##### **4.1 Consistency with fundamental legislative principles**

No FLP issues were identified.

##### **4.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

##### **4.3 Compatibility with human rights**

The committee is satisfied that the subordinate legislation is compatible with human rights.

##### **4.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

#### **5 SL No. 52 – Fisheries (Structural Reform Stage 2) and Other Legislation Amendment Regulation 2024**

The Fisheries (Structural Reform Stage 2) and Other Legislation Amendment Regulation 2024 (SL No. 52) will:

- amend the Fisheries Declaration 2019 to introduce gillnet-free areas in the Gulf of Carpentaria (Gulf), including northern Gulf waters, Pormpuraaw waters, Topsy Creek, Norman River, and the Western Gulf waters, and consolidate existing net-free areas in the Gulf where relevant
- introduce a new assistance scheme under the Rural and Regional Adjustment Regulation 2011 to:
  - facilitate the voluntary surrender of N3 fishery symbols and licenses for the Gulf region
  - provide loss of income payments for employees (skippers and crew members), owners of licences and holders and lessors of licences impacted by the amendments in SL No. 52.

SL No. 52 also makes some minor amendments for clarity and consistency with other legislation.

##### **5.1 Consistency with fundamental legislative principles**

###### **5.1.1 Ordinary activities should not be unduly restricted**

The rights and interests of commercial fishers will be affected by SL No. 52 due to the restrictions it imposes, such as the prohibition on the taking and possession of fish using gillnets under existing N3 fishery symbols and the creation of new gillnet-free zones.<sup>6</sup> The explanatory notes state that the expansion of gillnet-free zones across the Gulf is necessary to improve protections for threatened, endangered and protected species, many of which migrate between the Gulf and the Great Barrier Reef (GBR).<sup>7</sup> The explanatory notes also state that the introduction of gillnet bans in the GBR was expected to result in a transfer of fishing effort from the GBR to the Gulf, and that the new gillnet-free areas are consistent with, and an extension of, other net-free areas in the Gulf region.<sup>8</sup>

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<sup>6</sup> SL No. 52, explanatory notes, p 12.

<sup>7</sup> SL No. 52, explanatory notes, p 12.

<sup>8</sup> SL No. 52, explanatory notes, p 12.

More than 4000 submissions were received as part of the consultation process, the majority from commercial fishers who had concerns relating to the loss of income to their businesses, the need to buy back fishing assets, flow on impacts to seafood related businesses and effort shift into other fisheries or species of recreational importance.<sup>9</sup> To mitigate the impact on individuals, monetary compensation will be available to affected fishers under the *Rural and Regional Adjustment Regulation 2011*.<sup>10</sup>

#### **Committee comment**

On balance, taking into account the purpose of the regulation and the financial assistance available to affected individuals, the committee considers that impacts of SL No. 52 on individual rights and liberties are sufficiently justified.

### **5.1.2 Sufficient regard to the institution of Parliament – external documents**

Subordinate legislation should allow the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act.<sup>11</sup> Legislation should be subject to parliamentary scrutiny, including the documents relied upon in administering such legislation.<sup>12</sup>

Clause 28 of SL No. 52 inserts a new Schedule 58 into the *Rural and Regional Adjustment Regulation 2011*, which includes a definition of ‘scheme document’ meaning ‘the document called “Fisheries structural adjustment tables—Stage 2”, version 1.0, published on the department’s website’.<sup>13</sup> This is an external document produced by the Department of Agriculture and Fisheries, which is not subject to parliamentary scrutiny.

#### **Committee comment**

The committee considers that SL No. 52 has sufficient regard to the institution of Parliament. We are satisfied that the reference to an external document is justified because the document is defined by its date and version number, requiring any changes to the document to be reflected in an amendment to the regulation, and the document is published on the Department of Agriculture and Fisheries website.

## **5.2 Explanatory notes**

### **5.2.1 Details of consultation with First Nations peoples**

The explanatory notes state that a discussion paper on Gulf gillnet-free areas and fishery reforms was released for public consultation from 10 October 2023 to 11 December 2023, receiving ‘93 per cent support from respondents for the implementation of the proposed gillnet-free zones’ and ‘majority support for extra areas to be protected as gillnet-free areas’ which prompted further consultation and analysis.<sup>14</sup> Consequently, according to the explanatory notes, additional consultation was undertaken in March 2024 with stakeholders including ‘indigenous groups in the Gulf of Carpentaria’, which ‘led to minor adjustments to some of the proposed boundaries to improve enforcement capabilities, mitigate economic impacts and support economic opportunities, views and aspirations of Traditional Owners’.<sup>15</sup>

<sup>9</sup> SL No. 52, explanatory notes, p 14.

<sup>10</sup> SL No. 52, cl 28.

<sup>11</sup> *Legislative Standards Act 1992*, s 4(5)(e).

<sup>12</sup> OQPC, *Notebook*, p 170. See also LSA, s 4(5)(e).

<sup>13</sup> SL No. 52, cl 28 (*Rural and Regional Adjustment Regulation 2011*, sch 58, s 3).

<sup>14</sup> SL No. 52, explanatory notes, p 3.

<sup>15</sup> SL No. 52, explanatory notes, p 3.

The human rights certificate also states that ‘direct consultation and engagement have been undertaken with Traditional Owners of the GoC [Gulf of Carpentaria] with their views and aspirations considered in the final design of areas’.<sup>16</sup>

Contradicting these statements, the explanatory notes state that ‘there was insufficient time for the Taskforce to consult in a respectful way with Reef Traditional Owners and other First Nations peoples’ because of the limited timeframe for the Future Fishing Taskforce (Taskforce) report.<sup>17</sup>

#### **Committee comment**

The committee considers that the explanatory notes for SL No. 52 should be amended to clarify that consultation on the subordinate legislation was undertaken with Aboriginal peoples and Torres Strait Islander peoples.

The explanatory notes otherwise comply with part 4 of the LSA.

#### **Recommendation 1**

The committee recommends that the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities amend the explanatory notes for SL No. 52 Fisheries (Structural Reform Stage 2) and Other Legislation Amendment Regulation 2024, to clarify that consultation on the subordinate legislation was undertaken with Aboriginal peoples and Torres Strait Islander peoples.

### **5.3 Compatibility with human rights**

The committee considered the impact of the subordinate legislation on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples and is satisfied that these rights are not limited as SL No. 52 only seeks to limit commercial fishing in the nominated areas.

### **5.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **6 SL No. 67 – Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2024**

The Rural and Regional Adjustment (Fisheries Structural Adjustment Scheme—Stage 3 and Other Matters) Amendment Regulation 2024 (SL No. 67) amends the Rural and Regional Adjustment Regulation 2011 for stage 3 of structural adjustments,<sup>18</sup> which introduces a new assistance scheme for assisting eligible businesses in adjusting to structural reforms within the Fisheries industry.<sup>19</sup>

### **6.1 Consistency with fundamental legislative principles**

No FLP issues were identified.

### **6.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

### **6.3 Compatibility with human rights**

The committee is satisfied that the subordinate legislation is compatible with human rights.

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<sup>16</sup> SL No. 52, human rights certificate, p 8.

<sup>17</sup> SL No. 52, explanatory notes, p 12.

<sup>18</sup> SL No. 67, explanatory notes, pp 3 and 4.

<sup>19</sup> SL No. 67, explanatory notes, p 4.

#### **6.4 Human rights certificate**

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **7 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



**Aaron Harper MP**  
**Chair**  
**August 2024**

#### **Health, Environment and Agriculture Committee**

<b>Chair</b>	Mr Aaron Harper MP, Member for Thuringowa
<b>Deputy Chair</b>	Mr Robert (Rob) Molhoek MP, Member for Southport
<b>Members</b>	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Hon Craig Crawford MP, Member for Barron River
	Mr James Martin MP, Member for Stretton
	Mr Samuel (Sam) O'Connor MP, Member for Bonney