

**Subordinate legislation  
tabled 14 June – 8 August 2017**

**Report No. 45, 55th Parliament**  
**Agriculture and Environment Committee**  
October 2017

## **Agriculture and Environment Committee**

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## 1 Introduction

### 1.1 Role of the committee

The Agriculture and Environment Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility are:

- Agriculture, Fisheries and Rural Economic Development
- Environment and Heritage Protection, and
- National Parks and the Great Barrier Reef.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

### 1.2 Aim of this report

This report advises of portfolio subordinate legislation (SL) that the committee has examined.

## 2 Subordinate legislation considered

The table below lists the SL considered and the deadline for Members to give notice in the House of a disallowance motion under Standing Order 59<sup>2</sup> in respect of any of the legislation.

SL No	SL	Tabled On	Disallowance Date
90	Biosecurity (White Spot Syndrome Virus) Amendment Regulation 2017	08/08/2017	26/10/2017
97	Waste Reduction and Recycling and Other Legislation Amendment Regulation (No. 1) 2017		
111	Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2017		
112	Farm Business Debt Mediation Regulation 2017		
120	Nature Conservation (Administration) (Fees) Amendment Regulation 2017		
123	Rural and Regional Adjustment (White Spot Disease Concessional Loan Scheme) Amendment Regulation 2017		
129	Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2017		

<sup>1</sup> *Parliament of Queensland Act 2001*, section 88 and Standing Order 194.

<sup>2</sup> Section 50 of the *Statutory Instruments Act 1992* provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a Member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

SL No	SL	Tabled On	Disallowance Date
130	Nature Conservation (Protected Areas Management—Dryander and Woondum National Parks) Amendment Regulation 2017		
132	Forestry (State Forests) (Beerwah and Glen Rock) Amendment Regulation 2017		
133	Nature Conservation (Protected Areas Management) (Cooroibah Conservation Park) Amendment Regulation 2017		

### 3 Findings and recommendations

#### 3.1 Biosecurity (White Spot Syndrome Virus) Amendment Regulation 2017

The Biosecurity (White Spot Syndrome Virus) Amendment Regulation 2017 establishes the whole of the State of Queensland as a biosecurity zone for the white spot syndrome virus. The establishment of the biosecurity zone is directed at reducing the spread of the white spot syndrome virus from currently infected areas in Queensland to uninfected areas in Queensland and interstate.

The Amendment Regulation imposes restrictions on the movement of potential carriers of the white spot syndrome virus in the biosecurity zone. This means that decapod crustaceans (such as prawns) and polychaete worms (such as blood and beach worms) cannot be removed from the regulated area. There are, however, some exemptions to these movement restrictions which are outlined in the Amendment Regulation.

While the Amendment Regulation declares the whole of Queensland as a biosecurity zone, it also enables the Chief Executive to establish particular areas in which lesser restrictions apply. The explanatory notes state that this is necessary to enable timely adjustment to the area where movement restrictions apply to reflect new knowledge about where the white spot syndrome virus is present in the wild. According to the explanatory notes, it is proposed that the Chief Executive would provide that the movement restrictions would apply only to areas in the known infected area in South East Queensland.<sup>3</sup>

In addition to the movement restrictions, the Amendment Regulation prohibits fishing within drainage or intake channels used by prawn aquaculture farms and within 100 metres of an intake or outlet of these channels. The owners of prawn aquaculture farms are required to erect a sign to ensure that fishers can identify where the fishing restrictions apply.

According to the explanatory notes, the restrictions on fishing will initially only apply to channels used by prawn aquaculture farms which are, or have been, infected with white spot syndrome virus. The virus has only been found in prawn aquaculture farms in the Coomera electorate district. Therefore, initially, it is proposed that the Chief Executive would provide that the fishing restrictions would only apply to areas in the Coomera electorate district area where prawn aquaculture farms are located.<sup>4</sup>

The explanatory notes state that industry stakeholders were consulted about the proposed amendments, and while some stakeholders were concerned about the exemptions to the movement restrictions, they were generally supportive of the proposed regulation.<sup>5</sup>

<sup>3</sup> Explanatory notes, p 2.

<sup>4</sup> Explanatory notes, p 3.

<sup>5</sup> Explanatory notes, pp 5-6.

***Potential fundamental legislative principle issue***

The regulatory provisions in this Amendment Regulation place restrictions on the movement of potential carriers of the white spot syndrome virus and on fishing in certain areas that apply to all persons. Therefore, the Amendment Regulation has the ability to impact on the ordinary activities of commercial and recreational fishers and others dealing with seafood products. This is a potential breach of the principle that legislation should not, without sufficient justification, unduly restrict ordinary activity.

However, because of the seriousness of the white spot syndrome virus and the risk of further spread of the virus, it is arguable that these restrictions are justified.

The explanatory notes detail that the Amendment Regulation attempts to limit the impact on the rights and liberties of individuals by targeting only those carriers that pose the greatest risk of spreading the virus. Exemptions are also provided in relation to the movement of carriers that are cooked or passing through the regulated areas in sealed containers.<sup>6</sup>

The explanatory notes also detail that the power of the Chief Executive to, by notice, establish biosecurity areas where lesser restrictions apply will enable the restrictions to be flexibly applied only to small areas.<sup>7</sup>

***Committee comment***

In light of the justification provided in the explanatory notes, and the intention of the Amendment Regulation, the committee is satisfied that sufficient regard to the rights and liberties of individuals has been provided in this instance.

The Amendment Regulation raises no fundamental legislative principle issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

**3.2 Waste Reduction and Recycling and Other Legislation Amendment Regulation (No. 1) 2017**

The objective of the Waste Reduction and Recycling and Other Legislation Amendment Regulation (No. 1) 2017 is to amend the expiry of provisions in the Environmental Protection Regulation 2008 and Waste Reduction and Recycling Regulation 2011 relating to local government administration of waste management activities. According to the explanatory notes, these provisions were only continued in State legislation as a transitional measure to allow for local government waste management activities to continue while consultation could be undertaken with key stakeholders about alternative arrangements.<sup>8</sup>

These provisions were due to expire on 1 September 2016 and were extended by the Waste Reduction and Other Regulation Amendment Regulation (No.1) 2016 to expire on 1 July 2017. A negotiated agreement has been reached with key stakeholders for a further extension of 12 months, extending the expiry until 1 July 2018.

According to the explanatory notes, local governments and the waste industry were consulted about the extension of the expiry date.<sup>9</sup>

***Committee comment***

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

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<sup>6</sup> Explanatory notes, p 4.

<sup>7</sup> Explanatory notes, p 4.

<sup>8</sup> Explanatory notes, p 2.

<sup>9</sup> Explanatory notes, p 3.

### **3.3 Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2017**

The objective of the Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2017 is to amend certain regulatory fees and charges within the Agriculture and Fisheries portfolio. These fees have been indexed by the approved Government indexation factor, which is 3.5% for 2017-18.

The indexed fees have been rounded to the nearest coinable amount as per the *Queensland Government Principles for Fees and Charges 2012*. However, some fees have been charged per unit and these fees have not been rounded because payees would generally have a large number of units.

According to the explanatory notes, fees for the Stocked Impoundment Permit Scheme (SIPS) in the Fisheries Regulation 2008 will not increase. Government policy is to fix SIPS fees for five-year periods from 1 July 2016. The fees will increase every five years by the cumulative amount of the government indexation rate and then be rounded to the next highest dollar to increase efficiency at the point of collection. The next indexation will be in the 2021-22 financial year.

Certain fees prescribed in the Fisheries Regulation 2008 are not indexed because they have, or will, become obsolete due to changes in Queensland's planning legislation.

#### **Committee comment**

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

### **3.4 Farm Business Debt Mediation Regulation 2017**

The purpose of the subordinate legislation is to prescribe, for the purposes of s 18 of the *Farm Business Debt Mediation Act 2017*, the process for choosing a mediator to conduct mediation between a farmer and a mortgagee in relation to a farm business debt.

The *Farm Business Debt Mediation Act 2017*, which received assent on 30 March 2017, provides a process for the efficient and equitable resolution of farm business debt matters between mortgagees and farmers. In the event that the farmer and the mortgagee have agreed to mediation for a farm business debt, s 18 of the Act provides that the parties must choose a mediator and the mediator must be chosen in a way prescribed by regulation.

The Farm Business Debt Mediation Regulation 2017 prescribes the process by which farmers nominate mediators, advise mortgagees of their nominations and the timeframes in which to do so. The farmer must nominate at least three mediators, in order of preference, from which the mortgagee may choose a mediator. The subordinate legislation also prescribes the process by which mortgagees accept or refuse proposed nominees, and the timeframes in which they are to respond to the farmer and provide copies of documentation to the Queensland Rural and Industry Development Authority.

According to the explanatory notes, the Department of Agriculture and Fisheries did not undertake consultation in relation to the subordinate legislation itself as the matter the subject of the subordinate legislation was consulted on during the development of the *Farm Business Debt Mediation Act 2017*.

#### **Committee comment**

The Farm Business Debt Mediation Regulation 2017 raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

### **3.5 Nature Conservation (Administration) (Fees) Amendment Regulation 2017**

The objective of the Nature Conservation (Administration) (Fees) Amendment Regulation 2017 is to amend certain regulatory fees for the Department of National Parks, Sport and Racing. The stock grazing permit and apiary permit fees have been subject to the annual review required under Government policy. Queensland Treasury approved for the 2017-18 stock grazing and apiary permits fees to be reduced to the 2015-16 fee amount.

**Potential breach of s 24, Legislative Standards Act 1992**

The explanatory notes do not contain information about whether consultation took place (except to state that the Office of Best Practice Regulation was not consulted) and accordingly do not strictly comply with s 24(4) of the *Legislative Standards Act 1992*. However, it is likely that consultation was considered unnecessary given the purpose of the Amendment Regulation is to reduce fees payable for permits. The explanatory notes tabled with the amending Regulation otherwise comply with part 4 of the *Legislative Standards Act 1992*.

**Committee comment**

The committee is concerned about the lack of details regarding consultation in the explanatory notes, as required by s 24(4) of the *Legislative Standards Act 1992*. However, the committee is satisfied that consultation may have not been necessary because the Amendment Regulation reduces fees. The committee notes that the reason for no consultation should, nevertheless, have been stated in the explanatory notes.

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes substantially comply with the *Legislative Standards Act 1992*.

**3.6 Rural and Regional Adjustment (White Spot Disease Concessional Loan Scheme) Amendment Regulation 2017**

The objectives of the Rural and Regional Adjustment (White Spot Disease Concessional Loan Scheme) Amendment Regulation 2017 are to:

- provide for the approval of the White Spot Disease Concessional Loan Scheme, to be administered by the Queensland Rural and Industry Development Authority
- amend the interest rate setting provision of the Primary Industry Productivity Enhancement Scheme (PIPES), and
- provide for the approval of the Business Improvement Concessional Loan Scheme, to be administered by the Queensland Rural and Industry Development Authority.

**White Spot Disease Concessional Loan Scheme**

The White Spot Disease Concessional Loan Scheme provides assistance to prawn farmers whose prawn farming primary production enterprises are directly affected by white spot disease to help the enterprises recover from the impact of the disease. Concessional loans of up to \$3 million are available to prawn farming enterprises in the Logan River or Albert River catchments directly affected by the white spot disease to conduct eligible activities. Examples of eligible activities include:

- improving productivity and viability
- improving the biosecurity controls of the enterprise (e.g. through the use of bird nets, fencing, water treatment), and
- diversifying prawn farming (e.g. buying infrastructure necessary for farming a marine species other than prawns).

**Interest rate for PIPES**

The PIPES program provides concessional loans to primary producers looking to establish a primary production enterprise (the first start program) or to improve the sustainability of an existing primary production enterprise (the sustainability program). Under the Rural and Regional Adjustment Regulation 2011, the Queensland Rural and Industry Development Authority may agree to fix the interest rate for periods of one, three or five years. The interest fixed for the loan is determined by the authority based on the 'base lending rate' when the interest rate is fixed.

Under the pre-amended Rural and Regional Adjustment Regulation 2011, 'base lending rate' was defined to mean 'the rate decided by the authority for each 6 month period in each year that is the 1,

3 or 5 year lending rate, as appropriate, of the Queensland Treasury Corporation, plus 1%'. The Amendment Regulation amends the definition to remove the reference to the six month period and the 'plus 1%' margin. The Queensland Rural and Industry Development Authority will be able to charge interest rates when appropriate and at a margin that it decides, provided the Minister approves of that margin. This provides the authority with greater flexibility in determining the appropriate concessional rate of interest.

### **Business Improvement Concessional Loan Scheme**

The Queensland Rural and Industry Development Authority administers the Farm Business Concessional Loans Scheme on behalf of the Federal Government. The Federal Government has recently introduced a new sub-component to this scheme, called the Business Improvement Concessional Loan Scheme. Business Improvement Concessional Loans are available to assist eligible farmers who have exhausted their Farm Household Allowance (an income support payment available to primary producers in difficulty). The loans can only be used for debt restructuring.

The Amendment Regulation amends the Rural and Regional Adjustment Regulation 2011 to include this new component of the Farm Business Concessional Loans Scheme as an approved assisted scheme to be administered by the Queensland Rural and Industry Development Authority.

### **Committee comment**

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

## **3.7 Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2017**

The objectives of the Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2017 are to:

- dedicate areas of State land as national park, increasing the area of eight existing national parks (Daintree National Park, Girringun National Park, Great Sandy National Park, Lamington National Park, Magnetic Island National Park, Main Range National Park, Mount Barney National Park and Pumicestone National Park)
- dedicate areas of State land as conservation park, creating one new conservation park (Cooribah Conservation Park) and increasing the area of one existing conservation park (Mount Kinchart Conservation Park)
- declare three new nature refuges (Bosel's Nature Refuge, Kings Plains – Alkoomie Nature Refuge and Sandy Falls Nature Refuge), and
- revoke one nature refuge (Wairambar Rainforest Nature Refuge).

The explanatory notes state that there is the occasional need to revoke the dedication or declaration of areas from the protected area estate 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 with respect to traditional lore and island custom, or effect the termination of a nature refuge in accordance with the terms of a conservation agreement.

Under s 44 of the *Nature Conservation Act 1994*, written notice must be given to all landholders affected by a proposal for the declaration of land as a nature refuge. Under s 45 of the *Nature Conservation Act 1994*, the Minister and landholder must agree on the proposal and terms of the conservation agreement for the nature refuge. Further, if the land is subject to a lease, resource tenure or encumbrance, the written consent of the leaseholder, tenure holder or person entitled to the benefit of the encumbrance is required.

According to the explanatory notes, consultation on the amendments to declare the new nature refuges, where relevant, included native title claimants, holders or their representatives, Indigenous

Land Use Agreement parties, mining interest holders, financial institutions, sublessees, covenant holders and easement holders. Landholders were closely involved in the development of their conservation agreements. Responses and consent were received from consulted parties where relevant.

**Committee comment**

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

**3.8 Nature Conservation (Protected Areas Management—Dryander and Woondum National Parks) Amendment Regulation 2017**

The objective of the Nature Conservation (Protected Areas Management—Dryander and Woondum National Parks) Amendment Regulation 2017 is to amend Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2006 to permit proposed service facility uses within Dryander National Park and Woondum National Park. The proposed uses have been assessed and meet the requirements for the grant of an authority under s 35(1)(b) of the *Nature Conservation Act 1992*.

The explanatory notes state that officers of the Department of National Parks, Sport and Racing consulted with the applicants for the relevant permits and the key stakeholders. The explanatory notes state ‘Standard notification or consultation includes addressing Native title and other agencies where joint land administration arrangements occur.’<sup>10</sup> The explanatory notes do not state whether there were any joint land administration arrangements for the land the subject of these amendments or whether the ‘standard notification or consultation’ was carried out for these amendments.

**Committee comment**

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

**3.9 Forestry (State Forests) (Beerwah and Glen Rock) Amendment Regulation 2017**

The Forestry (State Forests) (Beerwah and Glen Rock) Amendment Regulation 2017 amends the Forestry (State Forests) Regulation 1987 to add and remove areas that are set apart and declared as state forest.

The Amendment Regulation revokes the setting apart and declaration of an area of 7.358 hectares of Beerwah State Forest for public works (council depot) and community (rural fire brigade) purposes. This formalises the tenure of a Sunshine Coast Regional Council works depot and the co-locating of the Beerwah & District Rural Fire Brigade.

The Amendment Regulation also sets apart and declares a parcel of 210 hectares of unallocated State land as part of the Glen Rock State Forest.

According to the explanatory notes, consultation occurred with private stakeholders and the Sunshine Coast Regional Council. All parties supported the amendments and no changes to the Amendment Regulation were required as a result of the consultation.<sup>11</sup>

**Committee comment**

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

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<sup>10</sup> Explanatory notes, p 3.

<sup>11</sup> Explanatory notes, p 2.

### **3.10 Nature Conservation (Protected Areas Management) (Cooroibah Conservation Park) Amendment Regulation 2017**

The objective of the Nature Conservation (Protected Areas Management) (Cooroibah Conservation Park) Amendment Regulation 2017 is to establish Noosa Shire Council as trustee of Cooroibah Conservation Park (the park). The park is a 163 hectare area that was dedicated as a conservation park under the Nature Conservation (Protected Areas) Regulation 1994 on 28 July 2017.

The appointment of Noosa Shire Council as trustee is intended to provide for stable and appropriate management of the park, and the natural and cultural values therein, by an appropriate and qualified body. Noosa Shire Council will be responsible for day-to-day management of the park, including all associated management costs. The Department of National Parks, Sport and Racing retains some powers, such as the power to authorise activities such as grazing, commercial activities and lighting of fires.

The explanatory notes state that Noosa Shire Council was consulted on the proposed trusteeship and supported the amendment. The Amendment Regulation gives effect to a management agreement negotiated between Noosa Shire Council and the Department of National Parks, Sport and Racing, which details agreed-upon management responsibilities for both parties.<sup>12</sup>

#### **Committee comment**

The Amendment Regulation raises no fundamental legislative principles issues, and the explanatory notes comply with the *Legislative Standards Act 1992*.

<b>Recommendation 1</b>
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The committee recommends that the Legislative Assembly notes the contents of this report.
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J.C. Kelly  
**Chair**

October 2017

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<sup>12</sup> Explanatory notes, p 3.