

Innovation, Tourism Development and Environment Committee

Report No. 23, 56th Parliament

Subordinate legislation tabled between 21 August 2019 and 3 September 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 21 August 2019 and 3 September 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
162	Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019	3 September 2019	28 November 2019
175	Marine Parks (Moreton Bay) Zoning Plan 2019	3 September 2019	28 November 2019
176	Marine Parks and Other Legislation Amendment Regulation (No. 2) 2019	3 September 2019	28 November 2019

3 Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019 – (SL 162)

The objective of the regulation is to facilitate the 2019 Gold Coast 600 V8 motor racing event held by prescribing the 2019 Gold Coast 600 as a major event under the *Major Events Act 2014*. The amendment regulation prescribes the event period and periods for carrying out the required temporary works.¹

The explanatory notes describe the economic benefits to be derived from the event as follows:

*The Gold Coast 600 event delivers tourism and economic benefits for the Gold Coast and the State of Queensland. This includes generating local jobs and showcasing the Gold Coast and Queensland to a significant television audience around Australia and overseas. ... The total attendance for the 2018 Gold Coast 600 event was 198 532, reaching a cumulative broadcast audience of 1 370 000.*²

The notes acknowledge that ‘minor administrative costs’ are associated with implementation of the regulation and that ‘economic benefits of the event to the local and state economy strongly outweigh the implementation costs’.³

¹ Explanatory notes, Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019, p 1.

² Explanatory notes, Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019, p 2.

³ Explanatory notes, Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019, p 2.

The notes state that all parties consulted on the regulation, including the City of Gold Coast, supported the regulation.⁴

3.1 Issues of fundamental legislative principle – rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. The event may impact on the rights and liberties of individuals due to inconvenience caused by altered access to roads and paths and the carrying out of temporary works associated with the event.

Clause 4 of the legislation prescribes the major event period (midday 24 October 2019 to 28 October 2019). Clause 5 seeks to limit the impact of temporary works required for the event by setting time limitations for those works. The explanatory notes provide the following justification:

*These limitations will help ensure relevant provisions in the Amendment Regulation do not have a significant impact outside of these times, and help ensure they have sufficient regard for the rights and liberties of individuals who may be inconvenienced by altered roads and paths and the carrying out of temporary works.*⁵

3.2 Explanatory notes

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

3.3 Committee comment

The committee notes the potential impact on the rights and liberties of individuals as a result of the event. On balance, the committee considers that the economic and tourism benefits achieved from the event outweigh the temporary inconvenience caused by road closures and related works. The committee is satisfied that the potential breach in fundamental legislative principle is sufficiently justified.

4 Marine Parks (Moreton Bay) Zoning Plan 2019 – (SL 175)

The objective of the Marine Parks (Moreton Bay) Zoning Plan 2019 is to remake the existing Marine Parks (Moreton Bay) Zoning Plan 2008, with minor amendments, before its expiry under the *Statutory Instruments Act 1992* on 1 September 2019.

The statutory remake of the Zoning Plan is required to ensure the continuity of rules for the protection of the marine park while a more comprehensive review of the Moreton Bay Zoning Plan is undertaken.⁶ The explanatory notes state that the review of the Zoning Plan will commence on finalisation of a similar review which is underway for the Great Sandy Marine Park Zoning Plan.⁷

Public notice on the draft Zoning Plan was undertaken. A total of 21 submissions were received representing a range of stakeholders. The explanatory notes state that there were no objections to the remake proposal, however, that there were mixed views on the management arrangements for the marine park going forward. The explanatory notes state that some stakeholder issues were addressed in the 2019 Zoning Plan whilst others will be examined as part of the broader review process.⁸

4.1 Issues of fundamental legislative principle – institution of Parliament

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the institution of Parliament.

⁴ Explanatory notes, Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019, p 3.

⁵ Explanatory notes, Major Events (Motor Racing Events) (Gold Coast 600) Amendment Regulation 2019, p 3.

⁶ Explanatory notes, Marine Parks (Moreton Bay) Zoning Plan 2019, p 1.

⁷ Explanatory notes, Marine Parks (Moreton Bay) Zoning Plan 2019, p 2; On 5 November 2019 the Queensland Government, Review of the Zoning Plan for Great Sandy Marine Park, <https://www.qld.gov.au/environment/coasts-waterways/marine-parks/zoning/gsmpp>

⁸ Explanatory notes, Marine Parks (Moreton Bay) Zoning Plan 2019, p 5-6.

The former Scrutiny of Legislation Committee adopted a formal policy regarding the level of penalties in subordinate legislation.⁹ That committee accepted that legislative power to create offences and prescribe penalties may be delegated in limited circumstances, provided certain safeguards were observed. This included that maximum penalties in regulations should be limited, generally, to 20 penalty units. The OQPC Notebook states:

*The principal means of creating offences should always be through the Acts of Parliament rather than delegated legislation.*¹⁰

Clause 37 of the Zoning Plan includes a number of penalties of up to 100 penalty units:

- touching, feeding, trapping or attempting to trap a grey nurse shark or using mechanical/electro-acoustic apparatus in a grey nurse shark area
- interfering with a grey nurse shark's natural behaviour in a grey nurse shark area
- failing to comply with a prohibited area notice.¹¹

The explanatory notes acknowledge these penalties and observe that:

*The continuation of penalties at this level may be seen to conflict with the fundamental legislative principle that legislation should have sufficient regard to the institution of Parliament, by placing a penalty of greater than 20 penalty units in subordinate legislation.*¹²

Additionally, section 24(2) of the *Marine Parks Act 2004* states that a zoning plan may provide for a maximum penalty of not more than 165 penalty units for a contravention of the plan. The Regulation adheres to this limit, prescribing up to 100 penalty units.

4.2 Explanatory notes

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

4.3 Committee comment

The committee notes the fundamental legislative principle issue relating to the level of penalties prescribed in the subordinate legislation, and the justification for this provision provided within the explanatory notes. On balance, the committee is satisfied that the Marine Parks (Moreton Bay) Zoning Plan 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

5 Marine Parks and Other Legislation Amendment Regulation (No. 2) 2019 – (SL 176)

The objectives of the Marine Parks and Other Legislation Amendment Regulation (No. 2) 2019 are to:

- update references and section numbers relating to the remake of the Marine Parks (Moreton Bay) Zoning Plan 2019 (discussed in section 4 above) in the Marine Parks Regulation 2017 and the State Penalties Enforcement Regulation 2014
- amend the Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004 to correct a technical error in the boundary description of the Internal Habitat Protection Zone at Rabbit Island
- amend the Marine Parks (Declaration) Regulation 2006 to correct a technical error in the area description of the Broad Sound Segment of the Mackay/Capricorn Management Area, in the Great Barrier Reef Coast Marine Park.¹³

⁹ Scrutiny of Legislation Committee, See *Alert Digest No. 4 of 1996*, (Policy No. 2 of 1996). See also Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 150-151.

¹⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 150-151.

¹¹ Marine Parks (Moreton Bay) Zoning Plan 2019, p 34.

¹² Explanatory notes, Marine Parks (Moreton Bay) Zoning Plan 2019, p 4.

¹³ Explanatory notes, Marine Parks and Other Legislation Amendment Regulation (No. 2) 2019, p 1.

Public consultation on the Amendment Regulation was not undertaken as the amendments are considered to be consequential in nature and correcting technical errors. In recognition of joint management arrangements with the Commonwealth Government in the Great Barrier Reef region, the Great Barrier Reef Marine Park Authority (GBRMPA) was consulted on the amendment of the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* and the *Marine Parks (Declaration) Regulation 2006*. GBRMPA raised no objections to the amendments.¹⁴

5.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

5.2 Explanatory notes

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

5.3 Committee comment

The committee is satisfied that the Marine Parks and Other Legislation Amendment Regulation (No. 2) 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

6 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 the subordinate legislation examined within this report.

The committee notes that the explanatory notes tabled with the regulations comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

7 Recommendation

The committee recommends that the House notes this report.



Duncan Pegg MP

Chair

November 2019

Innovation, Tourism Development and Environment Committee

Chair	Mr Duncan Pegg MP, Member for Stretton (Chair),
Deputy Chair	Mr Jon Krause MP, Member for Scenic Rim (Deputy Chair)
Members	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 Explanatory notes, Marine Parks and Other Legislation Amendment Regulation (No. 2) 2019, p 3.