

State Development, Natural Resources and Agricultural Industry Development Committee

Report No. 34, 56th Parliament

Subordinate legislation tabled between 3 April 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 3 April 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
48	State Development and Public Works Organisation (State Development Areas) (Tropical North) Amendment Regulation 2019	30 April 2019	4 September 2019
52	Proclamation made under the <i>Mineral, Water and Other Legislation Amendment Act 2018</i>	30 April 2019	4 September 2019
53	Resources Legislation Amendment Regulation 2019	30 April 2019	4 September 2019
56	Biosecurity and Other legislation Amendment Regulation 2019	30 April 2019	4 September 2019
57	Rural and Regional Adjustment (Commonwealth Scheme – North and Far North Queensland Flood Disaster) Amendment Regulation 2019	30 April 2019	4 September 2019
59	Planning (Minor Changes of Use) Amendment Regulation 2019	30 April 2019	4 September 2019
61	Fisheries (Sustainability of Molluscs and Black Jewfish) Amendment Regulation 2019	30 April 2019	4 September 2019

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified.

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

4 State Development and Public Works Organisation (State Development Areas) (Tropical North) Amendment Regulation 2019

The objective is to declare the Tropical North State Development Area as a State Development Area (SDA).

SDAs may be established to promote economic development in Queensland. SDAs are intended to:

- provide guidance and development certainty to industry
- provide coordinated and streamlined timely assessment of development
- control development in a way that considers existing and surrounding development
- recognise and manage environmental, cultural, and social values.¹

The declaration of the Tropical North SDA is aimed at facilitating the timely development of the Tropical North Global Tourism Hub and managing the integration and coordinated planning of key adjoining sites and transport routes.²

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

5 Proclamation made under the *Mineral, Water and Other Legislation Amendment Act 2018*

The objective is to fix a commencement date of 19 April 2019 for certain provisions of the *Mineral, Water and Other Legislation Amendment Act 2018*, including provisions relating to:

- changes to the statutory negotiation process for a conduct and compensation agreement and a make good agreement
- simplifying of reporting requirements and enhancing the operation of various resources Acts.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

6 Resources Legislation Amendment Regulation 2019

The amendment regulation amends the following:

- Mineral and Energy Resources (Common Provisions) Regulation 2016
- Mineral Resources Regulation 2013
- Petroleum and Gas (General Provisions) Regulation 2017
- Water Regulation 2016.

Mineral and Energy Resources (Common Provisions) Regulation 2016

The changes include:

- amending the notice requirements for the statutory negotiation process for the negotiation of a conduct and compensation agreement
- requiring certain content for an arbitration election notice given under section 91A of the *Mineral and Energy Resources (Common Provisions) Act 2014*

¹ Explanatory notes, p 2.

² Explanatory notes, p 2.

- prescribing the Resolution Institute as the prescribed Alternative Dispute Resolution (ADR) institute if parties cannot reach agreement under section 88 of that Act
- prescribing the Resolution Institute and the Queensland Law Society as the prescribed arbitration institutes that parties may approach if they cannot agree on an arbitrator under section 91A of that Act
- requiring resource authority holders to provide *A Guide to Land Access in Queensland* (published by the Department of Natural Resources, Mines and Energy) to a landholder when giving an initial entry notice or if issuing a landholder with a notice of intent to negotiate a conduct and compensation agreement or deferral agreement.

Mineral Resources Regulation 2013

The changes include:

- prescribing the matters to be complied with when plugging and abandoning a water monitoring bore
- requiring a mining claim and mining lease holder to provide a copy of *A Guide to Landholder Compensation for Mining Claims and Mining Leases* (also published by the department), within five days of applying to renew a mining claim or mining lease
- prescribing the notices and a report that must be lodged by coal or oil shale mining lease holders who are mining coal seam gas or incidental coal seam gas under the authority of the *Mineral Resources Act 1989*.

Petroleum and Gas (General Provisions) Regulation 2017

The amendments include:

- providing that security in the form of an unconditional security issued by a financial institution may be lodged for a petroleum tenure as well as other petroleum authorities
- clarifying reporting requirements for data collected after carrying out a seismic or technical survey as to what 'area' means when compiling an index for the report.

Water Regulation 2016

The amendments include prescribing:

- certain additional requirements for an arbitration election notice under section 433A of the *Water Act 2000*
- the Resolution Institute as the prescribed ADR institute if an ADR facilitator or type cannot be agreed upon by the parties under section 426 of that Act
- the Resolution Institute and the Queensland Law Society as the prescribed arbitration institutes that parties may approach if they cannot agree on an arbitrator under section 433A of that Act.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

7 Biosecurity and Other legislation Amendment Regulation 2019

The objectives are to:

- address the biosecurity risks associated with unauthorised entry into places where animals are kept, including by animal activists
- provide for enforcement action to be taken in swift response to these risks

- The subordinate legislation provides for a new offence for a person entering, presenting at, or leaving a management area for a biosecurity management plan without complying with the measures stated in the plan, unless the person has a reasonable excuse
- A registered biosecurity entity or holder of an exhibited animal authority may make a biosecurity management plan. The biosecurity management plan must be kept as a separate document and be available on request during ordinary business hours. A sign must also be displayed at the management area which is subject to the measures specified in the biosecurity management plan.

Fundamental legislative principle issues

7.1 Section 4(2)(a) *Legislative Standards Act 1992* – sufficient regard to the rights and liberties of individuals - offences and penalties

Clause 3 introduces new section 41C, which makes it an offence for a person to enter, present at or leaving a management area and not complying with the plan, without a reasonable excuse. The penalty is a maximum of 20 penalty units (currently, \$2611).

The offence provisions will not apply if:

- the person does not and could not have reasonably have known that a biosecurity management plan applied to the management area
- the entity that made the plan has not complied with the requirements to keep the biosecurity management plan as a separate document and have it available for inspection during ordinary business hours, or
- the entity that made the plan has not complied with the requirements to install signage for the management area.

The regulation aims to allow for swift action to be taken by prescribing the new offence as an infringement notice offence under the *State Penalties Enforcement Act 1999*:

A penalty infringement notice (PIN) will provide an alternative to prosecution through the court system. It will allow biosecurity inspectors and authorised persons, including those police appointed as inspectors under the Biosecurity Act 2014, and police officers to impose a response in the form of an immediate fine for people found committing the new offence.³

This will allow biosecurity inspectors and authorised persons, including police appointed as inspectors under the *Biosecurity Act 2014*, and police officers to impose immediate fines that carry a penalty for an individual of 5 penalty units (\$652.75)

From an FLP perspective:

- Legislation should have sufficient regard to the rights and liberties of individuals, including unduly restricting ordinary activity without sufficient justification.
- Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation.

The introduction of the new offence could be seen as interfering with the ordinary activities of an individual.

³ Explanatory notes, p 3.

The explanatory notes give this as background and justification:

Unauthorised entry to places where animals are kept by animal activists in Queensland is occurring more frequently and without notice. These activities are generally undertaken with flagrant disregard for the biosecurity risks they may pose and requirements under the biosecurity plan for the place in which livestock producers, animal exhibitors and others who keep animals may have made significant investments. Livestock producers, in particular, have increasingly expressed their concerns about the potential for unauthorised entry to spread diseases onto, within or from their premises.⁴

Additionally, the explanatory notes state:

[The provision] is justified because of the significant biosecurity harms to the Queensland agricultural industry and regional communities that could result from a person:

- *introducing a disease onto a livestock production premises; or*
- *undertaking activities which may spread disease within a facility; or*
- *carrying a disease out of a place.⁵*

The explanatory notes advise that the penalty of 20 penalty units is comparable to the penalties imposed in the *Summary Offences Act 2005* for trespass.

The committee sought additional information from Biosecurity Queensland and the Department of Agriculture and Fisheries on the reason for the regulation and its operation. The committee were advised:

In 2017-18 the gross value of our animal products industry including cattle and calves, poultry, pigs, eggs and milk—those industries that could be affected by animal disease risks—was approximately \$6.5 billion. Government has moved quickly to implement added biosecurity penalties in the light of the spike in unauthorised access by activists and those potential devastating biosecurity outcomes.⁶

Committee Comment

In light of the justification provided, the safeguards providing for a ‘reasonable excuse’, and the policy aims of the regulation, the committee is satisfied that sufficient regard has been given to an individual’s rights and liberties and that the penalties are not disproportionately high.

7.2 Section 4(2)(b) Legislative Standards Act 1992 – sufficient regard to the institution of Parliament

New section 41B allows a registered biosecurity entity or an exhibited animal authority to make a biosecurity management plan, setting out reasonable measures to prevent, control or stop the spread of biosecurity matter from a designated place, or a place where an exhibited animal is kept under the authority, respectively.

The committee were informed that:

The regulation amendment consolidates the strategic implementation of biosecurity management plans for the long-term biosecurity of Queensland’s production livestock industries. In recent years there have been significant efforts made by government, industry and other stakeholders to encourage those who keep animals to develop and deliver these plans for their property.⁷

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 4.

⁶ Mr Bell, Biosecurity Queensland, Department of Agriculture and Fisheries, Hansard transcript, Brisbane, 10 June 2019, p 2.

⁷ Mr Bell, Biosecurity Queensland, Department of Agriculture and Fisheries, Hansard transcript, Brisbane, 10 June 2019, p 2.

A Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons according to section 4(4)(a) *Legislative Standards Act 1992*. The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.⁸

These provisions could be regarded as a sub-delegation of legislative power, on the basis that the biosecurity plans are made by registered biosecurity entities and can be used to determine if a person has committed an offence.

The explanatory notes provide the following justification:

*These provisions are justified because the person making the biosecurity management plan has unique knowledge about what activities occur at the place including which activities might pose a risk and what would be reasonable and practical measures to prevent, control or stop the spread of biosecurity matter into, at or from the place.*⁹

The explanatory notes also state that the registered biosecurity entity or holder of an exhibited animal authority must keep the biosecurity management plan as a separate document and make it available for inspection on request during ordinary business hours.

Committee Comment

The committee is satisfied that there has been sufficient regard for the institution of Parliament and the sub-delegation of power is appropriate.

7.3 Section 4(3)(d) *Legislative Standards Act 1992* – reversal of the onus of proof

New section 41C requires a person to comply with measures in a biosecurity management plan unless the person has a reasonable excuse. The person charged would bear the onus of proof to show he or she had a reasonable excuse.

This could be seen as reversing the onus of proof. Legislation that requires an accused person to prove innocence by, for example, disproving a fact the prosecution would normally be obliged to prove, or that otherwise affects the onus of proof, might adversely impact the rights and liberties of individuals under section 4(3)(d) of the *Legislative Standards Act 1992* and should be justified.¹⁰

By way of justification, the explanatory notes provide:

*The reversal of the onus of proof is justified because the offence involves matters which would be within the defendant's knowledge and/or on evidence which would be available to them.*¹¹

Committee Comment

As noted, the matters likely to amount to a reasonable excuse would likely be within the knowledge of the person charged, rather than that of the prosecution or its witnesses. Therefore, the committee is satisfied that sufficient justification has been provided in relation to the reverse onus of proof.

⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 145.

⁹ Explanatory notes, p 5.

¹⁰ Office of the Queensland Parliamentary Counsel, *Principles of good legislation: OQPC guide to FLPs - Reversal of Onus of Proof*, p 3.

¹¹ Explanatory notes, p 6.

8 Rural and Regional Adjustment (Commonwealth Scheme – North and Far North Queensland Flood Disaster) Amendment Regulation 2019

The objective is to empower the Queensland Rural and Industry Development Authority to administer the *North Queensland floods (North and Far North Queensland Monsoon Trough, 25 January – 14 February 2019) Restocking, Replanting and On-farm infrastructure grants* scheme on behalf of the Commonwealth Government.¹²

After consultation with primary producers, local government and agricultural industry groups, the Commonwealth Government identified the existing joint Commonwealth-State Disaster Recovery Funding Arrangements (DRFA) as insufficient, following recent natural disasters, with the maximum grant available under the DRFA being \$75,000.

- The new assistance scheme was announced by the Prime Minister on 23 March 2019. An applicant will be able to receive a maximum of \$400,000 under both programs.¹³

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

9 Planning (Minor Changes of Use) Amendment Regulation 2019

Previous amendments to the Planning Regulation 2017 made certain low impact container refund points that complied with set criteria, a Minor Change of Use (so that a development application is not required). These provisions were prescribed to expire on 1 May 2019.

The amendment regulation extends this sunset date to 1 November 2019, to continue to support the CRS and allow additional sites to be established as a Minor Change of Use.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

10 Fisheries (Sustainability of Molluscs and Black Jewfish) Amendment Regulation 2019

The objectives are to:

- address sustainability concerns for black jewfish and reduce the potential for black marketing of this fishery resource by, for example, prescribing commercial and recreational catch limits
- address sustainability concerns for gastropods and bivalve molluscs by preventing the taking of bivalve molluscs and gastropods in the Moreton Bay Marine Park.

Fundamental legislative principle issues

10.1 Section 4(2)(a) *Legislative Standards Act 1992* – rights and liberties of an individual

The proposed amendments impose:

- restrictions on the form in which black jewfish can be possessed on a boat
- catch limits for black jewfish for commercial and recreational fishers
- a ban on the taking of bivalve molluscs and gastropods in the Moreton Bay Marine Park.

These amendments will affect the rights and liberties of fishers. It is noted that during consultation, some commercial fishers stated that the requirement to keep black jewfish whole would affect their ability to store fish on board due to freezer space limitations.¹⁴

¹² Explanatory notes, p 2.

¹³ Explanatory notes, p 2.

¹⁴ Explanatory notes, p 5.

The explanatory notes provide the following justifications in relation to black jewfish:

The rights of recreational fishers are also affected because their take and possession limit has been reduced from two black jewfish to one. Failing to decrease this limit allows fishers to keep a quantity of fish that may facilitate black marketing, given that recreationally caught fish can be illegally transferred into the commercial sector relatively easily, and this increases the incentive to take and possess the fish.

Implementing this amendment regulation is necessary to reduce the risk of the black jewfish becoming overfished and to ensure that the black jewfish population remains sustainable in the future.¹⁵

Further, in relation to the restrictions on gastropods and bivalve molluscs, the explanatory notes provide:

In the past, possession limits for shellfish have not proved to be an adequate tool to manage the sustainability of gastropods and bivalve molluscs ... The populations of gastropods and bivalve molluscs are fragile, and these amendments prohibiting the taking of gastropods and bivalve molluscs in the Moreton Bay Marine Park are necessary to ensure that the capacity of these species to recover is not impeded.¹⁶

The explanatory notes outline that in relation to black jewfish there is an anticipated lost income opportunity for commercial fishers, estimated to be \$360,000 per year.¹⁷ The committee sought additional information from the department on the number of commercial fishers which will be effected by the regulation and how the anticipated income lost was calculated. The department informed the committee that:

In the 10 years from 2008 to 2017, an average of 38 licence holders on the east coast and 32 licences on the Gulf of Carpentaria (GoC) reported catches of black jewfish. In 2018 this increased to 75 licence holders on the east coast and 41 licences in the GoC. All fishers continue to have access to black jewfish following the implementation of the 20 tonne total allowable commercial catch (TACC) on the east coast and 6 tonne TACC in the GoC. The change in management means that their access is restricted based on the availability of the TACC. Once the TACC is reached all access is closed until the following fishing season, which may affect their proportional share of the catch.

Fisheries Queensland initially calculated the \$360 000 economic impact figure based on 2017 catches of around 53 tonnes. It is important to note that this estimated loss of income is based on exceptionally high catches in recent years compared to the long term lower catch before the species was targeted in any significant way. These exceptionally high catches are not sustainable in the long term and therefore high returns cannot be sustained either over the long term... In the longer term, ensuring the fishery is operating at a sustainable level will ensure ongoing access and a stable economic return.¹⁸

Committee Comment

Given these sustainability concerns, the committee is satisfied that any impact on individual rights and liberties has been sufficiently justified.

¹⁵ Explanatory notes, p 4.

¹⁶ Explanatory notes, p 4.

¹⁷ Explanatory notes, p 4.

¹⁸ Department of Agriculture and Fisheries, correspondence dated 19 July 2019, pp2-3.

11 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

August 2019

State Development, Natural Resources and Agricultural Industry Development Committee

Chair	Mr Chris Whiting MP, Member for Bancroft (Chair)
Deputy Chair	Mr Pat Weir MP, Member for Condamine (Deputy Chair)
Members	Mr David Batt MP, Member for Bundaberg
	Mr James (Jim) Madden MP, Member for Ipswich West
	Mr Brent Mickelberg MP, Member for Buderim
	Ms Jessica (Jess) Pugh MP, Member for Mount Ommaney