

## State Development and Regional Industries Committee

### Report No. 8, 57th Parliament

Subordinate legislation tabled between 27 November 2020 and 23 February 2021

#### 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 27 November 2020 and 23 February 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA)<sup>1</sup> and discusses the committee's consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
257	Rural and Regional Adjustment (Commonwealth Schemes) Amendment Regulation 2020	23 February 2021	13 May 2021
267	Fisheries Quota (Commercial Trawl Fishery (Fin Fish)—Prescribed Whiting) Amendment Declaration 2020	23 February 2021	13 May 2021

#### 3 Committee consideration of the subordinate legislation

The committee identified no significant issues regarding the policy, consistency with FLPs or the lawfulness of the subordinate legislation. The committee considers that the explanatory notes and human rights certificates accompanying the subordinate legislation comply with the requirements of the LSA and the HRA respectively.

The committee identified one human rights issue in relation to the Fisheries Quota (Commercial Trawl Fishery (Fin Fish)—Prescribed Whiting) Amendment Declaration 2020 (SL 267) which proposes a quota on commercial fishing and may limit the cultural rights of Aboriginal and Torres Strait Islander peoples by reducing the availability of this fishery resource to traditional owners. This matter is discussed within the report below.

#### 4 Rural and Regional Adjustment (Commonwealth Schemes) Amendment Regulation 2020 (SL No. 257)

The *Rural and Regional Adjustment Act 1994* establishes the Queensland Rural Industry Development Authority (QRIDA) to administer approved assistance schemes to assist primary producers, small business and other sectors during periods of temporary difficulty, or to otherwise benefit the

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

<sup>2</sup> *Human Rights Act 2019*, s 41.

Queensland economy. Section 10 of that Act provides that QRIDA may give financial assistance only under an approved scheme.

This amendment regulation allows QRIDA to administer 3 new assistance schemes on behalf of the Australian government to support disaster recovery from the monsoonal flooding in January and February 2019<sup>3</sup>. Schemes include:

- North Queensland Economic Diversification Grants (North & Far North Queensland Monsoon Trough, 25 January–14 February 2019)
- North Queensland Resilient Kids Grants Program (North & Far North Queensland Monsoon Trough, 25 January–14 February 2019)
- North Queensland Telecommunications and Energy Improvement Grants (North & Far North Queensland Monsoon Trough, 25 January–14 February 2019).<sup>4</sup>

The explanatory notes state that the Australian National Drought and North Queensland Flood Response and Recovery Agency and QRIDA were involved in the development of the guidelines for the schemes. The explanatory notes also state that the proposal was exempted from regulatory impact analysis as it ‘does not add to the burden of regulation and is unlikely to result in significant adverse impacts’.<sup>5</sup>

#### **4.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **4.2 Explanatory notes**

The explanatory notes tabled with SL 257 comply with part 4 of the LSA.

#### **4.3 Human rights considerations**

The subordinate legislation raises no human rights issues.

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

Section 41 of the HRA requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation. The human rights certificate tabled with SL 257 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **5 Fisheries Quota (Commercial Trawl Fishery (Fin Fish)-Prescribed Whiting) Amendment Declaration 2020 (SL No. 267)**

The objective of the declaration is to prescribe a total quota entitlement for prescribed whiting in the commercial trawl fishery (fin fish) for the 2021 fishing season.

The commercial trawl fishery (fin fishery) is also known as the stout whiting or T4 fishery. The total quota entitlement allows for the take of prescribed whiting, which includes both stout whiting and red spot whiting. For the 2021 fishing season, the prescribed total quota entitlement is 1,192 tonnes, an increase of 86 tonnes from the previous year.<sup>6</sup>

The explanatory notes state that the purpose of restricting the prescribed whiting total quota entitlement is ‘to ensure that the fishery will not be overexploited, and can continue to rebuild to a

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<sup>3</sup> Explanatory notes, SL 257, p 1.

<sup>4</sup> Explanatory notes, SL 257, pp 1-3.

<sup>5</sup> Explanatory notes, SL 257, p 3.

<sup>6</sup> Explanatory notes, SL 267, p 2.

target reference point of 60% biomass, consistent with the policy objectives of the Sustainable Fisheries Strategy'.<sup>7</sup>

The explanatory notes states that the Department of Agriculture and Fisheries consulted with the two active operators in the fishery area in 2020. Both operators agreed to the proposed quota entitlement.<sup>8</sup>

### **5.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

### **5.2 Explanatory notes**

The explanatory notes tabled with SL 267 comply with part 4 of the LSA.

### **5.3 Human rights considerations**

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with Section 13 of that Act.

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

In the human rights certificate accompanying the regulation, the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities (the Minister) states an opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>9</sup> and
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified.<sup>10</sup>

The committee raises one human rights issue.

#### **5.3.1 Cultural rights (S28 HRA)**

Section 28 of the HRA recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights.

The regulation imposes a quota on commercial fishing. The certificate states that this may impact Aboriginal and Torres Strait Islander peoples as it may reduce the availability of this fishery to traditional owners, thereby limiting their ability to maintain and strengthen their relationship with waters and coastal seas.<sup>11</sup>

Aboriginal or Torres Strait Islander peoples are not restricted from using traditional fishing methods, provided any catch is not sold commercially.<sup>12</sup> The Minister concluded in the certificate:

Balanced against this limitation is the importance of preserving Queensland's fisheries resources from overfishing for all fishing sectors, which also, importantly, helps to protect Aboriginal peoples' and Torres Strait Islander peoples' traditional cultural rights and connection to these waters. Therefore, the rights are only limited in a broad-scale commercial fishing context, where a lack of limitation could result in

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<sup>7</sup> Explanatory notes, SL 267, p 3.

<sup>8</sup> Explanatory notes, SL 267, p 3.

<sup>9</sup> Human rights certificate, SL 267, p 1.

<sup>10</sup> Human rights certificate, SL 267, p 7.

<sup>11</sup> Human rights certificate, SL 267, p 4.

<sup>12</sup> Human rights certificate, SL 267, p 5.

depletion of fish stocks and, therefore, impact on achieving the purpose of ensuring the long-term sustainability of fish stocks in Queensland.<sup>13</sup>

*Committee comment*

The committee notes the explanation of the Minister of the need to balance cultural rights against the need to preserve Queensland's fisheries resources from overfishing for all fishing sectors, including Aboriginal and Torres Strait Islander people. The committee is satisfied that the impact is reasonable and demonstrably justified.

**5.4 Human rights certificate**

The human rights certificate tabled with SL 267 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

**6 Recommendation**

The committee recommends that the House notes this report.



Chris Whiting MP

**Chair**

**April 2021**

**State Development and Regional Industries Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Chris Whiting MP, Member for Bancroft

Mr Jim McDonald MP, Member for Lockyer

Mr Michael Hart MP, Member for Burleigh

Mr Robbie Katter MP, Member for Traeger

Mr Jim Madden MP, Member for Ipswich West

Mr Tom Smith MP, Member for Bundaberg

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<sup>13</sup> Human rights certificate, SL 267, p 5.