

State Development and Regional Industries Committee

Report No. 12, 57th Parliament

Subordinate legislation tabled between 21 April 2021 and 15 June 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 21 April 2021 and 15 June 2021. 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* (LSA)¹ 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.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
49	Water Plan (Mary Basin) (Postponement of Expiry) Notice 2021	15 June 2021	27 October 2021
50	Planning (COVID-19 Vaccination Service) Amendment Regulation 2021	15 June 2021	27 October 2021
53	Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021	15 June 2021	27 October 2021
57	Animal Care and Protection (Codes of Practice) Amendment Regulation 2021	15 June 2021	27 October 2021

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Committee consideration of the subordinate legislation

The committee identified no issues regarding the policy to be given effect by the subordinate legislation. The committee considered a number of fundamental legislative principle issues as part of its examination however, in all cases was satisfied that potential breaches were appropriate and sufficiently justified. All explanatory notes complied with requirements of section 24 of the LSA.

The committee also considered a number of potential human rights limitations resulting from the subordinate legislation. In all cases, the committee was satisfied that limitations were reasonable and demonstrably justified. The committee was also satisfied that the human rights certificates provided a sufficient level of information to facilitate understanding of the subordinate legislation's compatibility with human rights.

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

4 Water Plan (Mary Basin) (Postponement of Expiry) Notice 2021 (SL No. 49)

The Water Plan (Mary Basin) 2006 (the water plan) sets out the rules and requirements that guide the day-to-day management of surface water and groundwater in the plan area to achieve certain outcomes and objectives. The purpose of this subordinate legislation is to postpone the expiry of the water plan to 28 May 2024.³ The water plan would otherwise expire on 1 September 2021.⁴

Postponing the expiry will allow for:

- sustainable water management arrangements to remain in place for users
- additional assessment and adequate consultation with key stakeholders by the Department of Regional Development, Manufacturing and Water (the department) to address current and emerging issues as part of the process to replace the water plan.⁵

According to the explanatory notes, the department conducted a public consultation between 27 May 2021 and 30 July 2021, and will consider submissions in the drafting of the replacement water plan.⁶

4.1 Issues of fundamental legislative principle

Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. Under the LSA, legislation must have: sufficient regard to the rights and liberties of individuals; and the institution of Parliament.

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

The explanatory notes tabled with SL 49 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 the responsible Minister for the subordinate legislation to prepare a human rights certificate for the legislation.

The human rights certificate tabled with SL 49 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Planning (COVID-19 Vaccination Service) Amendment Regulation 2021 (SL No. 50)

The purpose of the subordination legislation is to support the timely roll out of the COVID-19 vaccination program by streamlining statutory planning processes for the establishment of health care services that deliver Federal and State government COVID-19 vaccination services.⁷ The provisions introduced by the regulation are time limited and expire on 31 December 2021.⁸

Under the current planning framework, the development of some COVID 19 vaccination services may require development approval from local government. The subordinate legislation amends the

³ Section 56(2) of the *Water Act 2000*.

⁴ *Water Act 2000*, s 53. Note: Under section 55 of the *Water Act 2000*, the Minister may postpone the expiry of an existing plan while a water plan is being replaced, but cannot postpone the expiry for more than three years. The postponement is within the three year period.

⁵ Explanatory notes, p 1.

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 2.

⁸ Sections 3, 4 and 5 of the regulation.

Planning Regulation 2017 to provide that COVID-19 vaccination services are ‘acceptable development’, meaning that planning approval for a material change of use will not be required.⁹ According to the explanatory notes, this will reduce the ‘administrative burden, time and costs associated with preparing and submitting planning applications associated with a COVID-19 vaccination service’.¹⁰

5.1.1 Issues of fundamental legislative principle

5.1.2 Rights and liberties of individuals (S 4(2)(a) LSA)

The subordinate legislation potentially limits the general rights of individuals because any opportunity to view, comment or appeal a development application is not available to affected individuals.

Committee comment

The committee is satisfied that the potential impact on a person’s rights to consider a development application is justified given the importance of a timely vaccine roll out and the temporary nature of the regulation.

5.2 Explanatory notes

The explanatory notes 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 Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning (Deputy Premier) states an opinion that the regulation is compatible:

- with the human rights protected by the HRA¹¹
- with the HRA because it does limit, restrict or interfere with a human right, but the limitation is reasonable and demonstrably justified.¹²

The committee considered two human rights issues.

5.3.1 Recognition and equality before the law (S15 HRA)

Section 15 of the HRA provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

The subordinate legislation provides that COVID-19 vaccination services are considered acceptable development.¹³ This means that these services are essentially given an exemption to general planning laws that apply to others.

The Deputy Premier provides the following justification:

⁹ Explanatory notes, p 2 and ss 3, 4 and 5 of the regulation.

¹⁰ Explanatory notes, p 2.

¹¹ Human rights certificate, p 1.

¹² Human rights certificate, p 5.

¹³ Human rights certificate, pp 2-3.

The purpose of this limitation is to protect public interest by allowing for the establishment of temporary COVID-19 vaccination services. The community expectation would be for the planning framework to quickly respond to the roll out of Queensland's COVID-19 vaccination program by ensuring the establishment of certain uses that provide an essential community need are able to operate during this time.¹⁴

Committee comment

The committee is satisfied that the limitation on the right to recognition and equality before the law is reasonable and demonstrably justified.

5.3.2 Freedom of expression (S 21 HRA)

Section 21 of the HRA provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

Under the regulation, certain individuals will not have an opportunity to view, comment or appeal relevant development applications.¹⁵

The Deputy Premier provides the following explanation:

The limitation to freedom of expression by not providing for third parties to view, comment or appeal a development application for a temporary COVID-19 vaccination service is justifiable to respond to the delivery of the Queensland's COVID-19 vaccination program and to meet community need.¹⁶

The Deputy Premier gives details of the processes in place to minimise potential planning impacts:

The temporary nature of the COVID-19 vaccination service means that any planning impacts are anticipated to be minor. QH [Queensland Health] intends to minimise planning impacts of the COVID-19 vaccination services on surrounding areas through the application of an Assurance Plan which must be complied with in order to establish and operate COVID-19 vaccination services in accordance with the COVID-19 vaccination code under the Health (Drugs and Poisons) Regulation 1996.¹⁷

Committee comment

The committee acknowledges the temporary nature of the vaccine services and the application of an Assurance Plan by Queensland Health to minimise planning impacts. The committee is satisfied that the limitation on the right to freedom of expression is reasonably and demonstrably justified.

5.4 Human rights certificate

The human rights certificate tabled with SL 50 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 Fisheries Quota (Reef Line Commercial Fishery) Amendment Declaration 2021 (SL No. 53)

In accordance with the *Queensland Sustainable Fisheries Strategy 2017-2027*, predetermined rules determine the biennial total quota entitlements for species within the fishery. The objective of the declaration is to prescribe the total quota entitlement for the Reef Line Commercial Fishery, operating predominantly in the Great Barrier Reef Marine Park:

- for regulated coral trout, 963 tonnes – a reduction of 200 tonnes, from the previous year

¹⁴ Human rights certificate, p 3.

¹⁵ Human rights certificate, p 4.

¹⁶ Human rights certificate, p 4.

¹⁷ Human rights certificate, p 4.

- for redthroat emperor, 558 tonnes – a reduction of 52.88 tonnes, from the previous year.¹⁸

The explanatory notes explain that this is to:

... ensure that the fishery will not be overexploited and can continue to rebuild to a target reference point of 60 per cent biomass (as a proxy for Maximum Sustainable Yield), consistent with the policy objectives of the Queensland Sustainable Fisheries Strategy 2017-2027.¹⁹

Consultation with the Reef Line Fishery Working Group, made up of industry stakeholders and government representatives, took place in April 2021. According to the explanatory notes, the working group unanimously agreed on the total quota entitlement effected by the subordinate legislation.²⁰

6.1 Fundamental legislative principle issues

6.1.1 Rights and liberties of individuals (S 4(2)(a) LSA)

Legislation should not unduly restrict ordinary activities without sufficient justification. Legislation should also not unduly limit the right to conduct business without interference.²¹

Reducing the quota entitlements for coral trout and redthroat emperor could limit an individual's general rights and liberties by limiting the rights of reef line commercial fishers to conduct their business, with corresponding economic impacts.

Committee comment

The committee is satisfied that the potential breach is reasonable and sufficiently justified, given the importance of ensuring that the Reef Line Commercial fishery is sustainable in the long term.

6.2 Explanatory notes

The explanatory notes did not address the potential breach of fundamental legislative principle discussed above. The explanatory notes otherwise comply with part 4 of the LSA.

6.3 Human rights considerations

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

- with the human rights protected by the HRA²²
- with the HRA because it may limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.²³

The committee considered two human rights issues.

6.3.1 Property rights (S 24 HRA)

Section 24 of the HRA provides that all persons have the right to own property and a person must not be arbitrarily deprived of property. The quota imposed by the subordinate legislation could be seen as breaching this human right as they reduce how much regulated coral trout and redthroat emperor fishers can take from the Reef Line Commercial Fishery.

The Minister justifies the limitation as follows:

¹⁸ Explanatory notes, p 2.

¹⁹ Explanatory notes, p 3.

²⁰ Explanatory notes, p 2.

²¹ Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, p 118.

²² Human rights certificate, p 1.

²³ Human rights certificate, p 6.

The purpose of the limitation is to continue to ensure the long-term sustainability of the fishery resource. The Amendment Declaration sets out what the commercial fishing sector can harvest. It restricts the ability for overfishing to occur, which would deplete fish stocks. The purpose of the limitation recognises that natural resources are limited and must be managed, which is a relevant consideration in modern society.²⁴

When assessing the balance between the limitation and its purpose, the Minister concluded:

The setting of a total quota entitlement in the Reef Line Commercial Fishery may limit the property rights of line unit holders by reducing the availability of this fishery resource for commercial fishers. Balanced against this limitation is the importance of preserving Queensland's fisheries resources from overfishing. Therefore, the rights are only limited in a broad-scale commercial fishing context, where a lack of limitation could result in depletion of fish stocks and, therefore, impact on achieving the purpose of ensuring the long-term sustainability of fish stocks in Queensland.²⁵

Committee comment

The committee is satisfied that any limit on property rights is reasonable and demonstrably justified.

6.3.2 Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (S 28 HRA)

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

The certificate states that the quotas imposed for regulated coral trout and redthroat emperor may limit the human rights of Aboriginal and Torres Strait Islander peoples under sections 28(2)(d) and (e) of the HRA because they might reduce the availability of this fishery resource to traditional owners.²⁶

In assessing the balance between the limitation and the purpose of the subordinate legislation, the Minister states:

The setting of a total quota entitlement in the Reef Line Commercial fishery may limit the cultural rights of Aboriginal and Torres Strait Islander peoples by reducing the availability of this fishery resource to traditional owners. This, among other outcomes, may affect their right to maintain their distinctive spiritual, material and economic relationship with the land and waters.

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 depletion of fish stocks and, therefore, impact on achieving the purpose of ensuring the long-term sustainability of fish stocks in Queensland.²⁷

Committee comment

The committee acknowledges the potential impact of the regulation on the cultural rights of some Aboriginal and Torres Strait Islander peoples. Based on the explanation provided by the Minister and the need to protect the long term sustainability of the fishery, the committee is satisfied that the limitation is reasonable and demonstrably justified.

6.4 Human rights certificate

The human rights certificate tabled with SL 53 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

²⁴ Human rights certificate, p 3.

²⁵ Human rights certificate, p 3.

²⁶ Human rights certificate, p 5.

²⁷ Human rights certificate, p 5.

7 Animal Care and Protection (Codes of Practice) Amendment Regulation 2021 (SL No. 57)

The Queensland *Animal Care and Protection Act 2001* (the Act) promotes the responsible care and use of animals. Under the Act, animal welfare codes of practice, promote consistency in animal welfare standards.

The purpose of SL 57 is to implement nationally agreed standards for the welfare of cattle, sheep, and livestock held in depots and saleyards.

All States and Territories, through the Agricultural Ministers Forum, agreed to the implementation of nationally consistent standards and guidelines to replace the Model Codes for cattle and sheep in January 2016 and for livestock held at saleyards and depots in February 2018.²⁸

The regulation prescribes three new compulsory codes of practice: schedule 2A – code of practice about sheep; schedule 2B – code of practice about cattle; schedule 3AA – code of practice for livestock at depots and saleyards. The regulation also amends schedule 3 of the Act (codes of practice for transport of livestock).²⁹

The explanatory notes describe the benefits of the codes as follows:

The Codes of Practice will provide clear minimum standards of care including veterinary care and adequate provision of food, water and shelter which achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals. They will address painful husbandry procedures such as castration, spaying, dehorning, tail docking and mulesing, as well as regulate practices such as tethering animals and the use of dogs to manage livestock.

Another benefit of the codes is that they provide confidence that livestock industries are meeting community and consumer expectations. Livestock industries are becoming increasingly dependent on community confidence in the appropriate regulation of animal welfare. Domestic and international markets and retailers have increasingly focused on animal welfare as an important consideration for market access, consumer confidence and of product quality. Clear consistent standards demonstrate to our trading partners that the risks to animal welfare resulting from painful husbandry procedures such as castration, tail docking and mulesing, and confinement issues are being minimised by legislation.³⁰

According to the explanatory notes, there will be minimal negative impact on stakeholders from implementing the national standards.³¹

The notes also advise that an extensive, national public consultation process, including a national RIS process, informed development of the Australian Animal Welfare Standards and guidelines. Further adding, that that a communication plan will be implemented to raise awareness of the mandatory changes amongst Queensland stakeholders.³²

7.1 Fundamental legislative principle issues

7.1.1 Rights and liberties of individuals (S 4(2)(a) LSA)

Legislation should not unduly restrict ordinary activities without sufficient justification. Legislation should not unduly limit the right to conduct business without interference.³³

²⁸ Explanatory notes, p 2.

²⁹ Explanatory notes, p 2.

³⁰ Explanatory notes, p 2.

³¹ Explanatory notes, p 4.

³² Explanatory notes, pp 5-6.

³³ Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, p 118.

The codes of practice will prescribe minimum standards for animal welfare, which will impose obligations and burdens on individuals responsible for their care and the way a person may operate their business, without interference.

The explanatory notes provide this justification:

The *Animal Care and Protection Act 2001* already prescribes a duty of care on persons in charge of an animal and various animal welfare offences including a cruelty offence. Making these specific codes of practice provides more certainty about standards of care and handling which reflect community values and expectations about how livestock should be cared for and handled. They will also demonstrate to international partners that animal welfare risks are being appropriately managed.³⁴

Committee comment

The committee is satisfied that the potential impact on the rights and liberties of individuals are reasonable the sufficiently justified.

7.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.3 Human rights considerations

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

- with the human rights protected by the HRA³⁵
- with the HRA because it does limit, restrict or interfere with a human right, but the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.³⁶

The committee raises one human rights issue.

7.3.1 Freedom of movement (S 19 HRA)

Section 19 of the HRA provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

The codes of practice will impose a number of obligations on persons who have responsibility for the care and handling of livestock. The Minister notes the impact on a person's right to freedom of movement in the certificate:

The limitations on the right to freedom of movement within the amendments to this regulation require persons to be at a location to fulfil the obligations including the provision of food and water, minimising the risk of severe weather conditions to livestock, the exercise of tethered livestock, and the conduct of health inspections.³⁷

The Minister discusses the purpose of the limitations in the certificate:

In each of the cases where the right to freedom of movement is limited, the limitation helps to achieve the following purposes of the *Animal Care and Protection Act 2001*:

- (a) promote the responsible care and use of animals;
- (b) provide standards for the care and use of animals that –

³⁴ Explanatory notes, pp 4-5.

³⁵ Human rights certificate, p 1.

³⁶ Human rights certificate, p 7.

³⁷ Human rights certificate, p 6.

- (i) achieve a reasonable balance between the welfare of animals and the interests of persons whose livelihood is dependent on animals; and
- (ii) allows for the effect of advancements in scientific knowledge about animal biology and changes in community expectations about practices involving animals; and
- (c) protect animals from unjustifiable, unnecessary or unreasonable pain.³⁸

The Minister then states:

Each of the limitations to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by another person taking responsibility for the animals, depots or saleyards in the person's absence. For example, an owner or operator of a depot or saleyard may employ a person to carry out the responsibilities including providing feed and water, carrying out health and facility inspections.³⁹

And, further:

As the limitations have very limited scope and persons subject to them have the ability to move freely through complying with simple requirements, the limitations provide an appropriate balance between the purpose of the limitation and the impact of the limitation on the affected person and are, therefore, justified.⁴⁰

Committee comment

The committee notes the explanation provided by the Minister that the regulation implements nationally agreed codes of practice. The committee is satisfied that any potential limitation on freedom of movement is reasonable and sufficiently justified.

7.4 Human rights certificate

The human rights certificate tabled with SL 57 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 Recommendation

The committee recommends that the House note the contents of this report.



Chris Whiting MP

Chair

September 2021

State Development and Regional Industries Committee

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³⁸ Human rights certificate, p 6.

³⁹ Human rights certificate, p 7.

⁴⁰ Human rights certificate, p 7.