

State Development and Regional Industries Committee

Report No. 15, 57th Parliament

Subordinate legislation tabled between 16 June 2021 and 31 August 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 16 June 2021 and 31 August 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
69	Rural and Regional Adjustment (Tourism Business Professional Advice Rebate Scheme) Amendment Regulation 2021	31 August 2021	18 November 2021
70	Water (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
71	Water Plan (Fitzroy Basin) Amendment Plan 2021	31 August 2021	18 November 2021
72	Water Amendment Regulation 2021	31 August 2021	18 November 2021
76	Fisheries Legislation Amendment Declaration 2021	31 August 2021	18 November 2021
78	Planning Legislation (Fees and Other Amounts) Amendment Regulation 2021	31 August 2021	18 November 2021
85	Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
86	Rural and Regional Adjustment (Work in Paradise Incentive Scheme and Another Matter) Amendment Regulation 2021	31 August 2021	18 November 2021
88	South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021	31 August 2021	18 November 2021
101	State Development and Public Works Organisation Amendment Regulation 2021	31 August 2021	18 November 2021

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

Subordinate legislation tabled between 16 June 2021 and 31 August 2021

103	Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2021	31 August 2021	18 November 2021
105	Water Amendment Regulation (No. 2) 2021	31 August 2021	18 November 2021
106	Water Supply (Safety and Reliability) Regulation 2021	31 August 2021	18 November 2021
108	Rural and Regional Adjustment (Horticulture Irrigation Pricing Rebate Scheme and Other Matters) Amendment Regulation 2021	31 August 2021	18 November 2021
109	Rural and Regional Adjustment (COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021	31 August 2021	18 November 2021
110	Rural and Regional Adjustment (Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021	31 August 2021	18 November 2021
129	Agricultural Chemicals Distribution Control Regulation 2021	31 August 2021	18 November 2021
134	Rural and Regional Adjustment (COVID-19 Marine Tourism Assistance Scheme—Round 2) Amendment Regulation 2021	31 August 2021	18 November 2021
135	Fisheries (Saucer Scallops) Amendment Declaration 2021	31 August 2021	18 November 2021

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

3 Summary of committee consideration of the subordinate legislation

The committee identified no issues regarding the policy to be given effect by the subordinate legislation or its lawfulness.

The committee considered a number of fundamental legislative principle issues as part of its examination. In all cases the committee was satisfied that any potential breaches of fundamental legislative principle were appropriate and sufficiently justified.

All explanatory notes accompanying the subordinate legislation complied with requirements of section 24 of the LSA.

The committee considered a number of potential human rights limitations resulting from the subordinate legislation. In all cases, the committee was satisfied that the limitations were reasonable and demonstrably justified.

All human rights certificates provided with the subordinate legislation provided a sufficient level of information to facilitate understanding of the subordinate legislation's compatibility with human rights.

Each item of subordinate legislation considered is discussed in further detail below.

4 Rural and Regional Adjustment (Tourism Business Professional Advice Rebate Scheme) Amendment Regulation 2021

The Queensland Government announced a \$2 million Queensland Tourism Business Counselling Service (Counselling Service) in response to the impacts of the COVID-19 pandemic on tourism businesses in Queensland. The objective of SL No. 69 is to implement Stage 3 of the Counselling Service

which enables eligible businesses in a tourism industry to access the Rural and Regional Professional Advice Rebate to offset the cost of obtaining certain professional advice.³

Under the scheme, eligible businesses can access rebates to offset the cost of professional financial, legal and/or human resources advice.⁴ The rebate will cover 50 per cent of eligible costs, up to a maximum of \$2,500 per applicant (excluding GST).⁵

4.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

The explanatory notes tabled with SL 69 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

The human rights certificate tabled with SL 69 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Water (Fees) Amendment Regulation 2021

The objective of the Water (Fees) Amendment Regulation 2021 (SL No. 70) is to index fees in the Water Regulation 2016 in line with the Government indexation rate which is 1.7 per cent.⁶ The Water Regulation 2016 sets fees and charges payable under the *Water Act 2000*, including water licence fees.

5.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

5.2 Explanatory notes

The explanatory notes tabled with SL 70 comply with part 4 of the LSA.

5.3 Human rights considerations

The subordinate legislation raises no human rights issues.

5.4 Human rights certificate

The human rights certificate tabled with SL 70 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 Water Plan (Fitzroy Basin) Amendment Plan 2021

The objective of the Water Plan (Fitzroy Basin) Amendment Plan 2021 (SL No. 71) is to provide a framework for the allocation and sustainable management of surface water associated with the proposed Rookwood Weir.⁷ Specifically, SL No. 71:

- states principles for allocating water released from the strategic infrastructure unallocated water reserve for infrastructure on the Fitzroy River
- establishes the Rookwood Weir Water Supply Scheme and its trading zones

³ SL No. 69, s 4 (schedule 19, s 1); explanatory notes, p 1.

⁴ SL No. 69, s 4 (schedule 19, s 2); explanatory notes, p 2.

⁵ SL No. 69, explanatory notes, p 2. See also SL No. 69, s 4 (schedule 19, s 5).

⁶ SL No. 70, explanatory notes, p 1.

⁷ SL No. 71, explanatory notes, p 1; SL No. 71, s 2.

- states water allocation security objectives for future water allocations granted from the Rookwood Weir Water Supply Scheme
- transitions rules for seasonal water assignment and water sharing for the Don and Dee groundwater management area and Prospect Creek and Upper Callide groundwater management area from the Water Regulation 2016 into the plan.⁸

The draft water plan was subject to consultation with ‘a range of groups including local governments, peak agricultural bodies, industry groups, environmental groups and Aboriginal groups’.⁹ Members of the public were also able to contact the department or SunWater with queries related to the draft amendment plan. The explanatory state:

Eleven submissions were received and were considered in finalising the plan. One submission received resulted in the inclusion of two new specific surface water outcomes related to town water supply security. The remainder of submissions received raised no issues that resulted in a change of substance to the draft water plan. Further information about the consultation process and outcomes of community consultation are outlined in a separate document, the *Water Plan (Fitzroy Basin) Amendment Plan 2021* Minister’s Consideration Report.¹⁰

The human rights certificate added that targeted consultation will continue on the operational statutory instruments associated with Rookwood Weir through 2021 and 2022.¹¹

6.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

6.2 Explanatory notes

The explanatory notes tabled with SL 71 comply with part 4 of the LSA.

6.3 Human rights considerations

In the human rights certificate accompanying the regulation, the responsible Minister identifies the rights to take part in public life, the rights to property, and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples as being potentially relevant to the legislation.¹² In all cases, the Minister concluded that these rights are not limited.¹³

6.3.1 Public life, property rights and cultural rights – HRA sections 23, 24 and 28

In relation to taking part in public life, the Minister advised of the consultation processes adopted in developing the subordinate legislation, discussed above.

In relation to a person’s property rights, the Minister notes:

I consider that property are not limited or interfered with by the *Water Plan (Fitzroy Basin) Amendment Plan 2021*. The property with regards to this right within the *Water Plan (Fitzroy Basin) Amendment Plan 2021* are water allocations, which is a water title separate from land.

Changes being made to the water amendment plan do not impact existing water allocations authorised under the *Water Act 2000* or their existing water management arrangements in the area of the plan subject to the amendment. Furthermore, the amendment plan does not affect existing statutory rights under the *Water Act 2000* with regards to the property rights of a water allocation, or the statutory rights with regards to accessing water on property that currently exist.¹⁴

⁸ SL No. 71, explanatory notes, pp 1-2.

⁹ SL No. 71, explanatory notes, p 3.

¹⁰ SL No. 71, explanatory notes, p 3.

¹¹ SL No. 71, human rights certificate, p 2.

¹² See sections 23, 24 and 28 of the HRA.

¹³ SL No. 71, human rights certificate, p 1.

¹⁴ SL No. 71, human rights certificate, p 2.

In relation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, the Minister states:

The *Water Plan (Fitzroy Basin) Amendment Plan 2021* maintains the current context of cultural rights and values of Aboriginal and Torres Strait Islander communities in the Rookwood Weir area.¹⁵

Committee comment

The committee is satisfied with the Minister's explanation that the subordinate legislation does not limit a person's rights to take part in public life and the rights to property. The committee is also satisfied that the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are not limited by the subordinate legislation.

6.4 Human rights certificate

The human rights certificate tabled with SL 71 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Water Amendment Regulation 2021

The objective of the Water Amendment Regulation 2021 (SL No. 72) is to amend the Water Regulation 2016 (Water Regulation) by removing the:

- sub-area water sharing rules for the Don and Dee groundwater sub-area
- Prospect Creek and Upper Callide groundwater sub-areas water sharing rules for the Prospect and Upper Callide groundwater sub-areas.

From the commencement of SL No. 71, these areas will be managed under the Water Plan (Fitzroy Basin) 2011 and the Fitzroy Basin Water Management Protocol.¹⁶

7.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

7.2 Explanatory notes

The explanatory notes tabled with SL 72 comply with part 4 of the LSA.

7.3 Human rights considerations

The subordinate legislation raises no human rights issues.

7.4 Human rights certificate

The human rights certificate tabled with SL 72 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 Fisheries Legislation Amendment Declaration 2021

The objectives of the Fisheries Legislation Amendment Declaration 2021 (SL No. 76) are to amend the Fisheries Declaration 2019 to:

- declare the total quota entitlement for certain fisheries, in accordance with relevant harvest strategies (east coast inshore, sea cucumber, coral, shell grit, trochus, commercial crayfish and rocklobster, and commercial crab fisheries)

¹⁵ SL No. 71, human rights certificate, p 3.

¹⁶ SL No. 72, explanatory notes, p 1. Also see SL No. 71 above.

- regulate certain species to reduce or restrict take, once the new prescribed commercial catch limits are reached (school mackerel, yellowfin bream, dusky flathead, sea mullet, spotted mackerel, tailor, black jewfish, shark and ray, and hammerhead shark).¹⁷

The explanatory notes state that ‘extensive consultation’ has taken place on the fisheries reforms, via fishery-specific working groups, the Sustainable Fisheries Expert Panel and various discussion papers as well as public consultation on the fishery harvest strategies themselves.¹⁸

8.1 Issues of fundamental legislative principle

8.1.1 Rights and liberties of individuals – right to conduct business

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals.¹⁹ Regulation of business interferes with a person’s right to conduct business in the way they consider appropriate.²⁰ SL No. 76 could be considered inconsistent with this fundamental legislative principle because it places restrictions on commercial fishers.

The explanatory notes set out the intended benefits of SL No. 76:

Restricting total quota entitlements and prescribed commercial catch limits to sustainable levels will ensure that Queensland’s fisheries will not be overexploited and can be rebuilt or maintained at the target reference point of 60 per cent biomass (as a proxy for Maximum Economic Yield or MEY), consistent with the policy objectives of the Strategy. Building and maintaining fish stocks to MEY will promote the most economically efficient use of the resource and provide for resilience in the system and enable fast recovery from adverse environmental conditions. Total quota entitlements and prescribed commercial catch limits will, therefore, maximise the performance of the fishery to meet environmental, social and economic management objectives.

Unlike previous fisheries management arrangements that were costly to administer, inflexible and increasingly ineffective in ensuring the suitability of fisheries resources, quota-managed fisheries strike a balance between ensuring the economic viability of commercial fishing sectors and managing the long-term sustainability of the targeted species, within existing Governmental resources.²¹

Committee comment

The committee is satisfied that any potential breach of the fundamental legislative principle relating to a person’s right to conduct business in a way they consider appropriate, is sufficiently justified.

8.2 Explanatory notes

The explanatory notes tabled with SL 76 comply with part 4 of the LSA.

8.3 Human rights considerations

8.3.1 Property rights – section 24 of HRA

A person must not be arbitrarily deprived of their property.²² SL No. 76 could impact a person’s property rights because it imposes restrictions on the take of certain species once the prescribed commercial catch for that species reaches a certain amount.

In explaining the balance between the limitation and the human right, the responsible Minister states:

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

¹⁷ SL No. 76, explanatory notes, p 3.

¹⁸ SL No. 76, explanatory notes, p 7.

¹⁹ LSA, s 4(2)(a).

²⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 118.

²¹ SL No. 76, explanatory notes, pp 6-7.

²² HRA, s 24.

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.²³

Committee comment

The committee is satisfied that any potential limitation to property rights is reasonable and demonstrably justified.

8.3.2 Cultural rights

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.²⁴ The responsible Minister advises that a limitation on the cultural rights of Aboriginal and Torres Strait Islander peoples arises due to restrictions placed on the commercial take of certain fisheries resources by SL No. 76.²⁵

In discussing the balance between the limitation and the human right, the Minister explains:

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.²⁶

Committee comment

The committee is satisfied that the potential limitation on cultural rights is reasonable and demonstrably justified.

8.4 Human rights certificate

The human rights certificate tabled with SL 76 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

9 Planning Legislation (Fees and Other Amounts) Amendment Regulation 2021

The Planning Legislation (Fees and Other Amounts) Amendment Regulation 2021 (SL No. 78) amends the Planning Regulation 2017 to increase fees charged as part of development assessment applications and tribunal proceedings and prescribed amounts charged by local governments with Local Government Infrastructure Plans, to reflect the annual government indexation rate of 1.7 percent.²⁷

SL No. 78 also amends the Regional Planning Interests Regulation 2014 to increase assessment application fees and the mitigation values for strategic cropping of land by 1.7%.²⁸

Prescribed amounts under Schedule 16 of the Planning Regulation 2017 (i.e charges for providing trunk infrastructure in relation to development) are increased by 1.49% in line with the producer price index.²⁹

9.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

²³ SL No. 76, human rights certificate, p 5.

²⁴ HRA, s 28.

²⁵ SL No. 76, human rights certificate, p 6.

²⁶ SL No. 76, human rights certificate, p 7.

²⁷ SL No. 78, explanatory notes, p 1.

²⁸ SL No. 78, explanatory notes, p 2.

²⁹ SL No. 78, explanatory notes, p 2.

9.2 Explanatory notes

The explanatory notes tabled with SL 78 comply with part 4 of the LSA.

9.3 Human rights considerations

The subordinate legislation raises no human rights issues.

9.4 Human rights certificate

The human rights certificate tabled with SL 78 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

10 Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2021

The Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2021 (SL No. 85) amends the following regulations to increase relevant fees and charges by 1.7 per cent in line with the 2021-2022 government indexation rate:

- Agricultural Chemicals Distribution Control Regulation 1998
- Animal Care and Protection Regulation 2012
- Animal Management (Cats and Dogs) Regulation 2019
- Biosecurity Regulation 2016
- Brands Regulation 2012
- Chemical Usage (Agricultural and Veterinary) Control Regulation 2017
- Drugs Misuse Regulation 1987
- Fisheries (General) Regulation 2019
- Food Production (Safety) Regulation 2014
- Veterinary Surgeons Regulation 2016.³⁰

10.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

10.2 Explanatory notes

The explanatory notes tabled with SL 85 comply with part 4 of the LSA.

10.3 Human rights considerations

The subordinate legislation raises no human rights issues.

10.4 Human rights certificate

The human rights certificate tabled with SL 85 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

11 Rural and Regional Adjustment (Work in Paradise Incentive Scheme and Another Matter) Amendment Regulation 2021 (SL No. 86)

The Rural and Regional Adjustment (Work in Paradise Incentive Scheme and Another Matter) Amendment Regulation 2021 (SL No. 86) amends the RRA Regulation to establish the 'Work in Paradise Incentive Scheme' as an approved assistance scheme under the Rural and Regional Adjustment Act (RRA Act), thereby providing for QRIDA to administer the scheme.³¹

³⁰ SL No. 85, explanatory notes, pp 1-2.

³¹ SL No. 86, explanatory notes, p 2.

The Work in Paradise Scheme is part of a program to offer incentives to secure a job in a tourism business in a regional Queensland area. Under the scheme, eligible job seekers can be paid up to 3 incentive instalments (\$500 per instalment), and a \$250 relocation travel bonus.³²

SL No. 86 also establishes the North Queensland Recovery and Resilience (Stream 2) Grants Scheme—Land Management (North & Far North Queensland Monsoon Trough, 25 January–14 February 2019) (the Commonwealth Scheme) under the RRA Act. The Commonwealth Scheme ‘is intended to help eligible landholders with future disaster preparedness of their property and improve environmental outcomes through improved land management practices’.³³

11.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

11.2 Explanatory notes

The explanatory notes tabled with SL 86 comply with part 4 of the LSA.

11.3 Human rights considerations

The subordinate legislation raises no human rights issues.

11.4 Human rights certificate

The human rights certificate tabled with SL 86 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

12 South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021 (SL No. 88)

The South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021 (SL No. 88) replaces the South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010 (the 2010 regulation), which applies specific general directors’ duties and related provisions derived from the *Corporations Act 2001* (Cth) to board members and officers of distributor-retailers.³⁴

After consultation with the relevant distributor-retails (Unitywater and Urban Utilities), the 2010 regulation was remade by SL No. 88 in the same form (except for the removal of one redundant clause relating to the transfer of assets from local governments).³⁵

According to the explanatory notes, SL No. 88:

... sets out the minimum standards of corporate conduct that are not otherwise set out in Queensland law, but which are common across Australian business and which Board members and officers are generally familiar with. The courts have developed considerable case law about the legal obligations of corporations over time. The Regulation contributes to the overall effectiveness of the standards of corporate conduct applicable to distributor-retailers.³⁶

12.1 Issues of fundamental legislative principle

The explanatory notes do not raise any issues of fundamental legislative principle. The committee identified one potential issue, which is discussed below.

³² SL No. 86, explanatory notes, pp 2-3.

³³ SL No. 86, explanatory notes, p 2.

³⁴ SL No. 88, human rights certificate, p 1.

³⁵ SL No. 88, explanatory notes, pp 1, 3. SL No. 88 commenced on 30 June 2021. The 2010 regulation would have expired on 31 August 2021.

³⁶ SL No. 88, explanatory notes, p 2.

12.1.1 Rights and liberties of individuals - Penalties

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.³⁷

A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy. ... Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.³⁸

SL No. 88 replicates a number of offence provisions that existed in the 2010 regulation, namely:

- if a board member or officer is reckless or intentionally dishonest and fails to exercise their powers in good faith or a proper purpose (maximum penalty 20 penalty units, \$2,757)³⁹
- if a board member or officer uses their position dishonestly or recklessly to gain an advantage for themselves or someone else (maximum penalty 20 penalty units, \$2,757)⁴⁰
- if a person who gains information because they are an officer or a board member and uses that information dishonestly or recklessly to gain an advantage for themselves or someone else (maximum penalty 20 penalty units, \$2,757).⁴¹

The penalties for the offences contained in SL No. 88 are the same as those in the 2010 regulation.

Committee comment

The committee is satisfied that the penalties are relevant and proportionate.

12.2 Explanatory notes

The explanatory notes tabled with SL 88 comply with part 4 of the LSA.

12.3 Human rights considerations

12.3.1 Freedom of expression and public life – HRA sections 21 and 23

According to the human rights certificate, SL No. 88 could limit the right to freedom of expression and the right to take part in public life as it requires board members to uphold standards of corporate behaviour which include acting in the best interests of the organisation rather than their individual interests.⁴²

The responsible Minister provides the following justification for any limitation on the human rights:

I consider that the purpose of promoting corporate social responsibility and accountability while also ensuring the public's interests are meaningfully represented by board members and officers, outweigh the negative impact of the approval of the Regulation have on these individuals' right to freedom of expression and the right to take part in public life.⁴³

Committee comment

The committee is satisfied that any limitations on a person's right to freedom of expression and the right to take part in public life are reasonable and demonstrably justified, in this circumstance.

³⁷ LSA, s 4(2)(a).

³⁸ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

³⁹ SL No. 88, s 9(1).

⁴⁰ SL No. 88, s 9(2).

⁴¹ SL No. 88, s 9(3).

⁴² SL No. 88, human rights certificate, p 2.

⁴³ SL No. 88, human rights certificate, p 3.

12.4 Human rights certificate

The human rights certificate tabled with SL 88 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

13 State Development and Public Works Organisation Amendment Regulation 2021

The State Development and Public Works Organisation Amendment Regulation 2021 (SL No. 101) amends the State Development and Public Works Organisation Regulation 2020 (SDPWO Regulation) to require:

- the Coordinator-General to undertake the reserved works on the Currumbin Eco Parkland project, and the Minister for Economic Development Queensland to undertake all other parts of the project works
- the Coordinator-General to undertake the reserved works on the Far North Queensland Health and Innovation Precinct project and the Cairns and Hinterland Hospital and Health Service to undertake all other parts of the project works
- the Coordinator-General to undertake the reserved works on the Toowoomba to Warwick Water Pipeline project and the Queensland Bulk Water Supply Authority to undertake all other parts of the project works.⁴⁴

The committee conducted a public briefing with the Office of the Coordinator General to understand more about the powers provided under the amendment regulation. The committee canvassed issues including: the role of the Coordinator-General, the purpose of the amendment regulation, consultation undertaken and the human rights implications of the amendment regulation.

The transcript is available on the committee's web pages here: www.parliament.qld.gov.au/sdric

13.1 Issues of fundamental legislative principle

13.1.1 Rights and liberties of individuals – Acquisition of property

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation provides for the compulsory acquisition of property only with fair compensation.⁴⁵

The powers of the Coordinator-General that may be used with respect to the projects included by SL No. 101 in the SDPWO Regulation as planned development include a power to take land. The SDPWO Act requires that the process stated in the *Acquisition of Land Act 1967* (ALA) applies for the taking of land and the payment of compensation.⁴⁶

At the public briefing, the Assistant Coordinator General provided further information on the process:

In the case of compensation we do generally follow the processes of the Acquisition of Land Act. Those processes allow for a valuation to be undertaken at commercial rates. In all cases we will engage independent commercial valuers. Where agreement has failed to be reached between the acquiring party and the landowner there are then processes to ultimately reach agreement or to resolve the amount of compensation. That could in time include going to the Land Court to seek a judgement to resolve the

⁴⁴ SL No. 101, s 3 (SDPWO Regulation, new pt 4, divs 8-10). The reserved works means the parts of the works that, in the circumstances, can be carried out only with the exercise of a power the Coordinator-General may exercise under the Act only for or in connection with works undertaken by the Coordinator-General. This could include, for example, the acquisition of land, access to land, and the opening or closing of roads: See also SL No. 101, explanatory notes, pp 1-3.

⁴⁵ LSA, s 4(3)(i).

⁴⁶ SDPWO Act, s 125.

value of the land. However, I think the important point is that compensation ultimately payable has a very established process to determine that compensation.⁴⁷

Committee comment

The committee is satisfied that sufficient regard has been paid to the rights and liberties of individuals and that the legislation provides for an established process for the compulsory acquisition of property only with fair compensation.

13.1.2 General rights and liberties of individuals

The SDPWO Act gives the Coordinator-General powers with respect to land in connection with certain works. These include that the Coordinator-General, his or her delegate, an officer, employee or an authorised person may:

- enter upon any land
- occupy any land, including erecting workshops and other buildings
- deposit materials such as gravel and sand on any land.

Where practicable, at least 7 days notice of the intention to enter the land has to be given to the occupier of the land or, if there is no occupier, the owner of land.⁴⁸ It is an offence for a person to wilfully obstruct, or attempt to obstruct, any person in the exercise of such powers.⁴⁹

A person who claims to have suffered damage resulting from an exercise of the power to enter any land may apply for and be awarded compensation.⁵⁰ The SDPWO Act provides that the application must be made using the process in the ALA and the assessment of compensation is generally prescribed by that Act.⁵¹

The powers relating to entry to land may affect the rights and liberties of a person by limiting what they are able to do with their land.

While the explanatory notes do not directly address this potential breach of fundamental legislative principles, they relevantly advise: 'The Coordinator-General's functions and powers under the SDPWO Act are intended to facilitate large-scale and complex projects while ensuring their environmental and social impacts are properly managed'.⁵²

Committee comment

The committee is satisfied that SL No. 101 has sufficient regard to the rights and liberties of individuals with regard to the Coordinator-General's powers to enter land, given the intended benefits of the projects, the availability of compensation.

13.2 Explanatory notes

The explanatory notes tabled with SL 101 comply with part 4 of the LSA.

13.3 Human rights considerations

13.3.1 Property rights and cultural rights – HRA sections 24 and 28

The Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning, Hon Steven Miles MP, was of the view that SL No. 101 may limit the right to property and cultural rights.

⁴⁷ Public briefing transcript, 25 October 2021, Brisbane, p 3.

⁴⁸ SDPWO Act, s 136.

⁴⁹ SDPWO Act, s 137.

⁵⁰ SDPWO Act, s 139.

⁵¹ SDPWO Act, s 139.

⁵² SL No. 101, explanatory notes, p 3.

According to the human rights certificate, the limitations are justifiable and necessary to achieve the purpose of the regulation which is to provide the Coordinator-General with the functions and powers to facilitate the:

- Far North Queensland Health and Innovation Precinct, which would provide better health care for Far North Queensland and assist to transition Cairns Hospital to a university hospital;
- Currumbin Eco Parkland, which would see the creation of one of the largest parks in Australia and could feature recreational facilities for families, sporting clubs and schools, protections for local koala habitats (including fodder eucalypt plantation), eco-tourism facilities to support more tourism jobs and nature based recreational trails;
- Toowoomba to Warwick Water Pipeline, which would allow a new raw water pipeline connecting water supply to Warwick from the Wivenhoe Dam via Toowoomba, to ensure the long-term water security for the Southern Downs region.⁵³

Committee comment

The committee is satisfied that any limitation on a person's right to property and cultural rights are reasonable and demonstrably justified.

13.4 Human rights certificate

The human rights certificate tabled with SL 101 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

14 Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2021 (SL No. 103)

The Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2021 (SL No. 103) amends the RRA Regulation to increase the maximum amount of an exceptional circumstances grant from \$25,000 to \$75,000.⁵⁴

The increase in grant follows consultation with primary producers and agricultural industry groups, who contended that \$25,000 was insufficient to support the recovery of the communities affected by the natural disasters. In April 2021, the Prime Minister announced that the maximum recovery grant would be increased from \$25,000 to \$75,000.⁵⁵

The grant applies to two recent natural disasters in Queensland (Tropical Cyclone Niran and the flooding in the south of the state) and to any future disaster events for which the Special Disaster Assistance Recovery Grants Scheme is activated.

However, under the RRA Regulation, the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities may specify an amount less than \$75,000 as the maximum amount of assistance that may be given to an eligible entity for the event.⁵⁶

The transitional provisions provide that the greater maximum amount applies to applications for assistance made, but not decided, before the Minister amended the assistance establishment notice to increase the maximum total amount, and those applications made after that.⁵⁷

14.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

⁵³ SL No. 101, human rights certificate, pp 2-3.

⁵⁴ SL No. 103, explanatory notes, p 2; SL No. 103, s 4.

⁵⁵ SL No. 103, explanatory notes, p 1.

⁵⁶ SL No. 103, explanatory notes, p 2.

⁵⁷ SL No. 103, s 3 (RRA Regulation, new s 15).

14.2 Explanatory notes

The explanatory notes tabled with SL 103 comply with part 4 of the LSA.

14.3 Human rights considerations

The subordinate legislation raises no human rights issues.

14.4 Human rights certificate

The human rights certificate tabled with SL 103 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

15 Water Amendment Regulation (No. 2) 2021 (SL No. 105)

The objectives of the Water Amendment Regulation (No. 2) 2021 (SL No. 105) are to amend the Water Regulation 2016 to: dissolve the Yambocully Water Board to convert to an alternative institutional structure, Yambocully Water Proprietary Limited; prescribe metered entitlements in the Burdekin Basin water plan area; and make minor clarifying amendments.⁵⁸

The Yambocully Water Board requested it be dissolved and its assets and liabilities transferred to Yambocully Water Proprietary Limited.⁵⁹ Ratepayers were consulted, and voted in favour of the conversion.⁶⁰ The explanatory notes state the key benefit of the change is that the entity will be able to operate 'more independently and efficiently in a way that best fits the scale of its operations'.⁶¹

In relation to metered entitlements, the explanatory notes identify the following benefits:

- security of existing entitlements by minimising the risk of excess or unauthorised water use;
- facilitating accurate monitoring of usage by water users;
- improved planning and management of water resources; and
- enabling water trading for water allocations and tradeable water licences.⁶²

According to the explanatory notes, during the development of the Water Amendment Plan (Burdekin Basin) 2019, metering was discussed with users 'and was generally accepted and supported'.⁶³

15.1 Issues of fundamental legislative principle

No issues of fundamental legislative principles were identified.

15.2 Explanatory notes

The explanatory notes tabled with SL 105 comply with part 4 of the LSA.

15.3 Human rights considerations

15.4 Property rights – HRA section 24

The responsible Minister considers the right to property may be limited by the requirement for metering in certain subcatchments in the Burdekin Basin because the holders of water authorisations that are prescribed as metered entitlements will have additional regulatory requirements that are subject to compliance provisions.⁶⁴

⁵⁸ SL No. 105, explanatory notes, p 1.

⁵⁹ SL No. 105, explanatory notes, p 1.

⁶⁰ SL No. 105, explanatory notes, p 3.

⁶¹ SL No. 105, explanatory notes, p 3.

⁶² SL No. 105, explanatory notes, p 3.

⁶³ SL No. 105, explanatory notes, p 3.

⁶⁴ SL No. 105, human rights certificate, p 1.

The human rights certificate justifies the limitation as follows:

... While prescribing metered entitlements does introduce additional obligations on water users, the limitation is not a substantial restriction on a person's ability to use or enjoy their property. The purpose of the limitation (metering obligations) is to support the sustainable management of water resources by ensuring the objectives of the *Water Plan (Burdekin Basin) 2007* are being met. Supporting the objectives and outcomes of the water plan will ultimately benefit all individual's property rights (water rights) by continuing to provide long-term protection and sustainability of water entitlements.⁶⁵

In addition:

The Amendment Regulation does not arbitrarily deprive a person of their property as metering obligations are considered reasonable and necessary in the context of accessing the water (property) right. Metered entitlements are not new and exist in many areas across Queensland. The requirement for metering is consistent with current water planning processes and policies for the sustainable management of water resources.⁶⁶

Committee comment

The committee is satisfied that any potential limitation on a person's property rights in this circumstance is reasonable and demonstrably justified

15.5 Human rights certificate

The human rights certificate tabled with SL 105 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

16 Water Supply (Safety and Reliability) Regulation 2021

The Water Supply (Safety and Reliability) Regulation 2021 (SL No. 106) repeals and replaces the Water Supply (Safety and Reliability) Regulation 2011, with some minor amendments.⁶⁷

SL No. 106 prescribes the dams for which flood mitigation manuals and flood reports must be submitted (North Pine, Somerset and Wivenhoe Dams). It also prescribes Pioneer Valley Water Co-operative Limited (PVWater) as a related entity of a relevant infrastructure owner. This allows PVWater to operate as the registered service provider under the *Water Supply (Safety and Reliability) Act 2008* for the irrigation scheme at Mackay.⁶⁸

16.1 Issues of fundamental legislative principle

No issues of fundamental legislative principles were identified.

16.2 Explanatory notes

The explanatory notes tabled with SL 106 comply with part 4 of the LSA.

16.3 Human rights considerations

The subordinate legislation raises no human rights issues.

16.4 Human rights certificate

The human rights certificate tabled with SL 106 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁶⁵ SL No. 105, human rights certificate, pp 3-4.

⁶⁶ SL No. 105, human rights certificate, p 2.

⁶⁷ The minor amendments are identified on page 2 of the explanatory notes.

⁶⁸ Water Supply (Safety and Reliability) Amendment Regulation (No. 1) 2013, explanatory notes, p 2.

17 Rural and Regional Adjustment (Horticulture Irrigation Pricing Rebate Scheme and Other Matters) Amendment Regulation 2021

The Rural and Regional Adjustment (Horticulture Irrigation Pricing Rebate Scheme and Other Matters) Amendment Regulation 2021 (SL No. 108) amends the RRA Regulation to establish the Horticulture Irrigation Pricing Rebate Scheme (HIP rebate scheme) as an approved assistance scheme under the RRA Act.⁶⁹ The purpose of the HIP rebate scheme is to give rebates to operators of horticultural enterprises who have been supplied water by Seqwater or SunWater.⁷⁰

To be eligible for a rebate, the applicant must have:

- paid an eligible water bill; and
- used a portion of the water the subject of the eligible water bill to grow horticulture crops; or
- previously irrigated horticultural crops, but did not do so with water the subject of the eligible water bill because an insufficient water allocation was announced; or
- grown horticulture crops using water other than water the subject of the eligible water bill.⁷¹

If eligible, the person will receive a rebate of 35% to offset the cost of water used to irrigate horticultural crops.⁷²

SL No. 108 also amends the Farm Management Grants Scheme (schedule 30 of the RRA Regulation) 'so it can be used to deliver farm management grants which are a component of the Queensland Government's Drought Reform Policy and of the Farm Business Resilience Planning Program (FBRP), an initiative of the Future Drought Fund of the Australian Government and delivered in Queensland by the Queensland Government'.⁷³ The explanatory notes advise that SL No. 108:

- clarifies that the professional advice costs which are eligible for a rebate may be in relation to the acquisition of an interest in a primary production enterprise or particular aspects of the management of a primary production enterprise decided by the Minister to be professional advice to which the scheme applies
- provides that QRIDA can only pay rebates for eligible costs under the scheme if there remains a sufficient allocation of money for that aspect of the scheme
- makes other minor changes to eligibility and processes for the scheme to better align with the FBRP.⁷⁴

17.1 Issues of fundamental legislative principle

17.1.1 Institution of Parliament – subdelegation of power

As stated in the explanatory notes, schedule 30 currently includes a potential breach of the principle that legislation must have sufficient regard to the institution of Parliament because it subdelegates power without the express authority of the Act. That is, while the Act requires the details of an assistance scheme to be prescribed by regulation, the regulation subdelegates to the Minister power

⁶⁹ SL No. 108, explanatory notes, p 2. See above under the heading of *SL No. 69 Rural and Regional Adjustment (Tourism Business Professional Advice Rebate Scheme) Amendment Regulation 2021* for more information about QRIDA and approved assistance schemes.

⁷⁰ SL No. 108, s 1.

⁷¹ SL No. 108, explanatory notes, p 2. See also SL No. 108, s 4.

⁷² SL No. 108, s 3. The amount of the payment is calculated using the formulas in section 7.

⁷³ SL No. 108, explanatory notes, p 2.

⁷⁴ SL No. 108, explanatory notes, p 3.

to decide which particular aspects of the management of a primary production enterprise are professional advice to which the scheme applies.⁷⁵

The explanatory notes provide the following justification:

... The power delegated to the Minister is constrained to this one detail of eligibility. It enables the scheme to be used to provide assistance in a range of similar circumstances without a disproportionate need to seek Executive Council consideration of variations in the type of advice proposed to be eligible. The Amendment Regulation does not alter this aspect of the scheme and it is proposed to be relied on to enable the use of the scheme for Queensland's participation in the FBRP.⁷⁶

Committee comment

The committee is satisfied that any breach of the fundamental legislative principle relating to the institution of Parliament is justified in this circumstance.

17.2 Explanatory notes

The explanatory notes tabled with SL 108 comply with part 4 of the LSA.

17.3 Human rights considerations

The subordinate legislation raises no human rights issues.

17.4 Human rights certificate

The human rights certificate tabled with SL 108 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

18 Rural and Regional Adjustment (COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021

The Rural and Regional Adjustment (COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021 (SL No. 109) amends the RRA Regulation to establish the COVID-19 business support grants scheme as an approved assistance scheme under the RRA Act.⁷⁷

The policy objective of SL No. 109 is to enable QRIDA 'to give grants of up to \$5,000 (excluding GST) to eligible businesses and non-profit organisations to provide these businesses with relief and support'.⁷⁸ Assistance is not, however, intended to compensate eligible entities for loss of income suffered as a result of a lockdown event.⁷⁹

Business and non-profit organisations are eligible for assistance if they meet criteria which include that the business or organisation:

18.1 Issues of fundamental legislative principle

18.1.1 Institution of Parliament – Subdelegation of power

The RRA Act provides that a regulation approving a scheme must set out the scheme in detail. However, rather than providing a closing date for applications in the subordinate legislation (such as in SL No. 108 (discussed above)), SL No. 109 provides that an application for assistance under the scheme must be made by the closing day for applications stated by QRIDA on its website.

⁷⁵ SL No. 108, explanatory notes, p 4; Rural and Regional Adjustment Regulation 2011, schedule 30, s 4.

⁷⁶ SL No. 108, explanatory notes, p 4

⁷⁷ SL No. 109, explanatory notes, p 2. See above under the heading of *SL No. 69 Rural and Regional Adjustment (Tourism Business Professional Advice Rebate Scheme) Amendment Regulation 2021* for more information about QRIDA and approved assistance schemes.

⁷⁸ SL No. 109, explanatory notes, p 1. See also Rural and Regional Adjustment (COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021, ss 1, 2, 7.

⁷⁹ SL No. 109, s 2(2).

The explanatory notes explain the issue regarding fundamental legislative principles:

Subordinate legislation should have sufficient regard to the institution of Parliament, including by only allowing the subdelegation of power delegated by an Act only in appropriate cases and to appropriate persons...

The subordinate legislation potentially infringes this fundamental legislative principle by allowing the scheme's closing date for applications to be determined administratively and notified on QRIDA's website. This may be inconsistent with this fundamental legislative principle as it permits the legislative power of Parliament to be subject to a decision made administratively. ...

According to the explanatory notes, the potential infringement is justified 'to provide some flexibility to extend the close (beyond the currently proposed three months) if this becomes necessary'.⁸⁰ Under the provision, however, the date could be brought forward as there are no stipulations in SL No. 109 that the closing date can only be extended if it is changed.

Committee comment

The committee is satisfied that the potential breach of the fundamental legislative principle relating to the institution of Parliament is justified in the circumstances.

18.2 Explanatory notes

The explanatory notes tabled with SL 109 comply with part 4 of the LSA.

18.3 Human rights considerations

The subordinate legislation raises no human rights issues.

18.4 Human rights certificate

The human rights certificate tabled with SL 109 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

19 Rural and Regional Adjustment (Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021

The Rural and Regional Adjustment (Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021 (SL No. 110) amends the RRA Regulation to enable QRIDA to provide increased assistance to eligible businesses under the COVID-19 business support grants scheme (August 2021) (August 2021 scheme).⁸¹

The increased funding is available because, on 13 August 2021, the Commonwealth and Queensland Governments agreed to jointly and equally fund assistance to businesses and non-profit organisations impacted by the lockdown areas directions. This increased the value of the assistance package from an estimated \$260 million to an estimated \$600 million.⁸²

The eligibility criteria for the scheme remain the same.

The amount of assistance payable to eligible businesses and non-profit organisations is:

- \$10,000 to small businesses with a payroll of less than \$1.3 million - an increase of \$5,000 compared to the existing Scheme;

⁸⁰

⁸¹ SL No. 110, explanatory notes, p 1. See above under the heading of *SL No. 69 Rural and Regional Adjustment (Tourism Business Professional Advice Rebate Scheme) Amendment Regulation 2021* for more information about QRIDA and approved assistance schemes. See above under the heading of *SL No. 109 Rural and Regional Adjustment (COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021* for information about the establishment of the COVID-19 business support grants scheme (August 2021).

⁸² SL No. 110, explanatory notes, p 1.

- \$15,000 to medium sized businesses with payroll between \$1.3 million and \$10 million (inclusive) - an increase of \$10,000 compared to the existing Scheme;
- \$30,000 to large sized tourism and hospitality businesses with payroll of greater than \$10 million – an increase of \$25,000 compared to the existing Scheme.⁸³

19.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

19.2 Explanatory notes

The explanatory notes tabled with SL 110 comply with part 4 of the LSA.

19.3 Human rights considerations

The subordinate legislation raises no human rights issues.

19.4 Human rights certificate

The human rights certificate tabled with SL 110 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

20 Agricultural Chemicals Distribution Control Regulation 2021 (SL No. 129)

The objective of the Agricultural Chemicals Distribution Control Regulation 2021 (SL No. 129) is to replace the Agricultural Chemicals Distribution Control Regulation 1998 (1998 regulation) which expired on 31 August 2021.⁸⁴

Together with the *Agricultural Chemicals Distribution Control Act 1966* (the ACDC Act), SL No. 129 provides the legislative framework that controls the distribution of agricultural chemicals using aircraft or ground equipment in Queensland. The ACDC Act provides the criteria and process for applying for pilot chemical rating licences, aerial distribution contractor licences, commercial operators' licence and ground distribution contractor licences,⁸⁵ whilst SL No. 129 provides the qualifications required for these licences and establishes a register of licenses.⁸⁶

According to the explanatory notes, SL No. 129 makes only minor changes to the 1998 regulation. These include:

- updating minimum training requirements for obtaining and holding licences for aerial and ground distribution of agricultural chemicals, as agreed to at various National Agriculture Ministers' Forums
- updating superseded licence qualification competency units to maintain currency
- updating the particulars to be included on the licence register
- removing the restriction on opening containers of volatile chemicals (because this risk is now adequately managed by label instructions)
- clarifying the offences which apply to aerial and ground distribution of agricultural chemicals and those which apply to aerial or ground distribution of regulated chemicals in hazardous areas only
- making other minor amendments to modernise the regulation.⁸⁷

⁸³ SL No. 110, explanatory notes, p 2.

⁸⁴ SL No. 129, explanatory notes, p 1.

⁸⁵ *ACDC Act, parts 3 and 4.*

⁸⁶ SL No. 129, parts 3 to 5.

⁸⁷ SL No. 129, explanatory notes, pp 1-2.

The explanatory notes state that key stakeholders consulted were supportive of remaking the expiring regulation with the proposed changes.⁸⁸

20.1 Issues of fundamental legislative principle

20.1.1 Rights and liberties of individuals - disclosure of private or confidential information

The right to privacy, and the disclosure of private or confidential information, are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of individuals.⁸⁹

Section 13 of SL No. 129 may breach this fundamental legislative principle because it requires a licensee's personal information (that is, their name, suburb, licence number, licence type and licence date of commencement/expiry) to be kept on a register that is available to the public for inspection.⁹⁰

The explanatory notes provide the following justification:

... the potential breach is justified because it is the most efficient way for the public to verify that persons are appropriately licensed to distribute agricultural chemicals and hence enable them to avoid engaging persons who are unlicensed and, therefore, may not be qualified to distribute agricultural chemicals. Distribution by persons who are unqualified may result in significant adverse consequences to human health and trade through the contamination or destruction of crops and livestock.⁹¹

It is the ACDC Act itself that provides for the keeping of a register and that it be made available to the public.⁹² SL No. 129 sets out the particulars of licensees that shall be kept on the register, and attempts to mitigate some privacy concerns by only including a licensee's suburb on the register rather than a full address.⁹³

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

20.1.2 Penalties

Whether legislation has sufficient regard to rights and liberties of individuals⁹⁴ depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence.

SL No. 129 contains three penalty provisions, each with a maximum penalty of 20 penalty units (\$2,757):

- section 14 provides that a pilot in command must not carry out aerial distribution unless each spray nozzle used to carry out the distribution is fitted with a positive and effective leakproof cut-off system.
- section 15 provides that a pilot in command or licensed commercial operator must not carry out the aerial distribution or the ground distribution with equipment, or under meteorological conditions, that might reasonably be expected to cause damage or injury to a crop the pilot or operator did not intend to treat by the distribution, or to stock.
- section 30 provides that a person must not, in applying for a licence or distribution permit, state anything to the chief executive the person knows is false or misleading in a

⁸⁸ SL No. 129, explanatory notes, p 5.

⁸⁹ LSA, s 4(2)(a).

⁹⁰ SL No. 129, s 13 and ACDC Act, s 24. See also SL No. 129, explanatory notes, p 4.

⁹¹ SL No. 129, explanatory notes, p 4.

⁹² ACDC Act, s 24.

⁹³ SL No. 129, explanatory notes, p 4.

⁹⁴ LSA, s 4(2)(a).

material particular; or give the chief executive a document the person knows is false or misleading in a material particular.

Similar penalty provisions existed in the 1998 regulation.⁹⁵

In relation to the section 30 offence of providing false and misleading information to the chief executive as part of an application for a licence or distribution permit, the explanatory notes state:

The creation of the offence is warranted in the public interest because of the significant risks unqualified persons may pose to the environment, human health, social amenity and the economy through the inappropriate distribution of agricultural chemicals were they to obtain a licence or permit on the basis of false or misleading information.⁹⁶

Whilst the explanatory notes did not provide specific justifications for the inclusion of two penalty provisions (sections 14 and 15), the contents of the two penalty provisions and their maximum penalties are consistent with those in the 1998 regulation.⁹⁷ Further, the ACDC Act provides that regulations can impose penalties not exceeding 35 penalty units.⁹⁸

Committee comment

The committee is satisfied that the penalties imposed by SL No. 129 are proportionate and relevant.

20.2 Explanatory notes

The explanatory notes tabled with SL 129 comply with part 4 of the LSA.

20.3 Human rights considerations

20.3.1 Right to privacy – HRA section 25

As noted above SL No. 129 prescribes personal information that must be included in a register of licensees which may impact a person's right to privacy.⁹⁹

The human rights certificate states the purpose of this limitation is to avoid the public engaging persons who are unlicensed to distribute agricultural chemicals, which could result in significant adverse consequences to human health and trade through the contamination or destruction of crops and livestock.¹⁰⁰ Specifically:

A public register that includes the licensee's name, suburb, licence type and number, date of commencement, date of expiry and any other information a standards officer thinks appropriate, limits the right to privacy and reputation because it allows for the disclosure of licence holder information.

Balanced against this limitation is the importance of ensuring the provision of information needed by members of the public that will enable them to avoid engaging persons who are unlicensed, and hence may not be qualified to distribute agricultural chemicals. Without such a mechanism for providing this information, the public can have no confidence that the person they are engaging to distribute agricultural chemicals is licensed to do so and can do it correctly. Incorrectly distributing agricultural chemicals could have significant consequences, including to human health, trade, safety of the food chain and the destruction of agricultural crops and livestock.¹⁰¹

⁹⁵ See, SL No. 135 of 1998, ss 28, 29, 44. Note the previous offence relating to providing false or misleading information to the chief executive (s 44) did not apply specifically to the application process for a licence or distribution permit, whereas the new s 30 offence does.

⁹⁶ SL No. 129, explanatory notes, p 4.

⁹⁷ See, SL No. 135 of 1998, ss 28, 29.

⁹⁸ ACDC Act, s 48(n).

⁹⁹ HRA, s 25.

¹⁰⁰ SL No. 129, human rights certificate, p 2.

¹⁰¹ SL No. 129, human rights certificate, p 3.

Committee comment

The committee is satisfied that the limitation of a person's right to privacy is reasonable and demonstrably justified in the circumstance.

20.4 Human rights certificate

The human rights certificate tabled with SL 129 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

21 Rural and Regional Adjustment (COVID-19 Marine Tourism Assistance Scheme—Round 2) Amendment Regulation 2021 (SL No. 134)

The objective of this subordinate legislation is to provide the second round of assistance to help marine tourism businesses that have suffered losses of income because of the COVID-19 travel restrictions, by offsetting the cost of renting berths at privately-owned or privately-operated marinas located in eligible local government areas.¹⁰² Eligible businesses may receive up to \$20,000.¹⁰³

To be eligible, a business must meet the following criteria"

- has ordinarily provided tourism services using one or more eligible boats, and must have had at least one employee, since 1 April 2021
- is headquartered in Queensland
- has suffered a loss of income because of COVID-19 travel restrictions
- must either have had a turnover of at least \$75,000 in at least one of the 3 previous financial years or, if the business had been operating for less than a financial year, reasonably be expected to achieve a turnover of at least \$75,000 in the 2021-2022 financial year.¹⁰⁴

21.1 Issues of fundamental legislative principle

21.1.1 Institution of Parliament – subdelegation of power

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act.¹⁰⁵

SL No. 134 infringes on this fundamental legislative principle because the RRA Act requires the detail of a scheme to be prescribed in regulation¹⁰⁶ but SL No. 134¹⁰⁷ enables the tourism chief executive to add local government areas to the definition of 'eligible local government area'.¹⁰⁸

The explanatory notes justify the inconsistency with fundamental legislative principles:

Enabling the chief executive to make and publish a notice of additional eligible local government areas (LGAs) will facilitate timely delivery of much-needed financial assistance to tourism businesses in those LGAs should it become necessary. Requiring the subordinate legislation to be amended each time a new LGA was to be included in the scheme would compromise the timeliness of providing the assistance.¹⁰⁹

¹⁰² SL No. 134, explanatory notes, p 1. See above under the heading of *SL No. 69 Rural and Regional Adjustment (Tourism Business Professional Advice Rebate Scheme) Amendment Regulation 2021* for more information about QRIDA and approved assistance schemes.

¹⁰³ SL No. 134, s 13; SL No. 134, explanatory notes, p 2.

¹⁰⁴ SL No. 134, explanatory notes, p 2.

¹⁰⁵ LSA, s 4(5)(e).

¹⁰⁶ See RRA Act, s 11(2).

¹⁰⁷ See SL No. 134, s 11 (new section 6(1)(o) of schedule 18 of the RRA Regulation).

¹⁰⁸ SL No. 134, explanatory notes, p 3.

¹⁰⁹ SL No. 134, explanatory notes, p 3.

Committee comment

The committee is satisfied that the inconsistency with fundamental legislative principles is sufficiently justified in this circumstance.

21.2 Explanatory notes

The explanatory notes tabled with SL 134 comply with part 4 of the LSA.

21.3 Human rights considerations

The subordinate legislation raises no human rights issues.

21.4 Human rights certificate

The human rights certificate tabled with SL 134 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

22 Fisheries (Saucer Scallops) Amendment Declaration 2021 (SL No. 135)

The key objective of the Fisheries (Saucer Scallops) Amendment Declaration 2021 (SL No. 135) is to prevent the take of saucer scallops in the southern inshore and central trawl regions to protect saucer scallop stocks and to allow recovery of saucer scallop stocks. The closure is proposed to remain in place until saucer scallop stocks have rebuilt to a 30 per cent biomass level. The 2021 stock assessment estimates the 2020 spawning biomass of saucer scallops in southern inshore trawl region is 12 per cent of the unfished biomass.¹¹⁰

According to the explanatory notes, 'urgent significant management action is required to protect and allow the recovery of saucer scallop stocks'.¹¹¹ Other objectives of SL No. 135 are to:

- continue to prevent the take of saucer scallop in the southern offshore trawl regions during the saucer scallop spawning season
- continue restrictions on the use and possession of trawl nets within the southern inshore trawl region and southern offshore trawl regions at certain times, including during the saucer scallops spawning season.¹¹²

Consultation was undertaken on the regulation and all stakeholders agreed in principle on the need for management action to address sustainability concerns but there was no consensus on the type of management action or the period of the action.¹¹³

Industry stakeholders were concerned about the impacts of closing the fishery, including unemployment and financial hardship. The Great Barrier Reef Marine Park Authority was supportive of stopping the take of scallops to enable the biomass to recover.¹¹⁴

The explanatory notes advise that the option progressed in SL 135 'represents a balanced approach by providing protection for saucer scallops consistent with stock assessment recommendations and simultaneously enabling some access to the species to mitigate economic impacts on industry'.¹¹⁵

¹¹⁰ SL No. 134, explanatory notes, p 3.

¹¹¹ Explanatory notes, p 2.

¹¹² SL No. 135, explanatory notes, p 2.

¹¹³ SL No. 135, explanatory notes, pp 5-6.

¹¹⁴ SL No. 135, explanatory notes, pp 5-6.

¹¹⁵ SL No. 135, explanatory notes, p 6.

22.1 Issues of fundamental legislative principle

Fundamental legislative principles require that legislation has sufficient regard to the rights and liberties of individuals. Regulation of business interferes with a person's right to conduct business in the way they consider appropriate.¹¹⁶

SL No. 135 may be inconsistent with fundamental legislative principles because it interferes with a person's right to conduct business by preventing or restricting the taking and/or possession of saucer scallops in certain places at certain times.

The explanatory notes state that any inconsistency with fundamental legislative principles is justified because:

... these measures are necessary to allow the biomass of the species to recover to a sustainable level to protect the financial viability of the commercial fishery long-term, and to sustain the species for future generations. Further, these amendments still allow for fishers to use and possess their gear at other times and does not prevent fishers from taking other species targeted in the East Coast Trawl fishery, such as prawns and bugs.¹¹⁷

Committee comment

The committee is satisfied that any inconsistency with fundamental legislative principles is sufficiently justified, in this circumstance.

22.2 Explanatory notes

The explanatory notes tabled with SL 135 comply with part 4 of the LSA.

22.3 Human rights considerations

The human rights certificate states that SL No. 135 impacts on a person's property rights¹¹⁸ and the cultural rights of Aboriginal peoples and Torres Strait Island peoples¹¹⁹ because it restricts or prevents the take of saucer scallops.¹²⁰

The human rights certificate advises that not taking significant management action would likely mean that saucer scallop stock would never recover to sustainable levels.¹²¹ The human rights certificate adds:

The need to allow the scallop biomass to rebuild to sustainable levels, by restricting access to scallops in certain regions, so that the fishery is available over the long-term and for future generations outweighs the short-term impacts on [primary commercial fishing licence] holders, because they can fish elsewhere for scallops and/or take different species. The combination of restricting and preventing the take of saucer scallops in the relevant trawl regions is the most balanced option, providing protection for saucer scallops consistent with stock assessment recommendations, and simultaneously enabling some access to the species to mitigate the impact on human rights.¹²²

In relation to cultural rights, the human rights certificate states:

The Amendment Declaration will not restrict Aboriginal and Torres Strait Islander peoples from undertaking cultural harvest. The Queensland Government uses other policies and tools to ensure Aboriginal and Torres Strait Islander peoples are able to maintain and strengthen their distinctive spiritual, material and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition ... and to conserve and protect the environment and productive capacity of their waters and coastal seas ... Further, the Amendment Declaration does not restrict the

¹¹⁶ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 118.

¹¹⁷ SL No. 135, explanatory notes, p 5.

¹¹⁸ HRA, s 24.

¹¹⁹ HRA, s 28.

¹²⁰ SL No. 135, human rights certificate, pp 1-2.

¹²¹ SL No. 135, human rights certificate, p 3.

¹²² SL No. 135, human rights certificate, p 4.

locations, or times, that Aboriginal and Torres Strait Islander peoples can fish, or restrict the amount they can catch under cultural harvest.¹²³

¹²³ SL No. 135, human rights certificate, p 4.

Committee comment

The committee is satisfied that any limit on property or cultural rights is reasonable and demonstrably justifiable in accordance with section 13 of the HRA, in this circumstance.

22.4 Human rights certificate

The human rights certificate tabled with SL 135 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

23 Recommendation

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



Chris Whiting MP

Chair

November 2021

State Development and Regional Industries Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
Members	Mr Michael Hart MP, Member for Burleigh
	Mr Robbie Katter MP, Member for Traeger
	Mr Jim Madden MP, Member for Ipswich West
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