

**Health and Environment Committee**

**Report No. 17, 57th Parliament**

**Subordinate legislation tabled between 13 October 2021 and  
16 November 2021**

**1 Aim of this report**

This report summarises the Health and Environment Committee's (committee) findings following its examination of the subordinate legislation within its portfolio areas tabled between 13 October 2021 and 16 November 2021.

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

**2 Subordinate legislation examined**

No.	Subordinate legislation	Date tabled	Disallowance date
158	Forestry and Other Legislation Amendment Regulation (No.2) 2021	26 October 2021	17 March 2022
165	Nature Conservation and Other Legislation Amendment Regulation (No.2) 2021	16 November 2021	31 March 2022

\*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 significant issues regarding the policy, consistency with FLPs, lawfulness or human rights implications of the subordinate legislation. However, the committee considered potential fundamental legislative principle and human rights implications in relation to the Nature Conservation and Other Legislation Amendment Regulation (No.2) 2001 (SL 165).

The committee also raised concerns about the compliance of the explanatory notes tabled with SL 165 with the requirements at section 24 of the LSA.

The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.<sup>3</sup>

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

<sup>2</sup> *Human Rights Act 2019* (HRA), s 41(1) to (3).

<sup>3</sup> HRA, s 41.

## **4 Forestry and Other Legislation Amendment Regulation (No. 2) 2021**

The Forestry and Other Legislation Amendment Regulation (No. 2) 2021:

- re-describes one State forest
- increases the area of seven national parks - Bribie Island National Park, Byfield National Park, Curtain Fig National Park, Gheebulum Kunungai (Moreton Island) National Park, Lockyer National Park, Mount Walsh National Park, Tamborine National Park, Earl Hill Conservation Park and Smithfield Conservation Park
- corrects one previously erroneous national park area description
- increases the area of two conservation parks
- corrects one previously erroneous conservation park area description, and
- declares one new nature refuge - Kurranji Bubu.<sup>4</sup>

The explanatory notes state that stakeholders that currently have, or are likely to have, an interest in the proposal areas have been consulted, including the Traditional Owners of Gheebulum Kunungai (Moreton Island) National Park, Yirrgandji Land and Sea Rangers, the Dawuk Wuru Aboriginal Corporation, Energy Queensland and Powerlink Queensland.<sup>5</sup>

### **4.1 Fundamental legislative principle issues and explanatory notes**

No issues of fundamental legislative principle were identified. The explanatory notes comply with part 4 of the LSA.

### **4.2 Human rights considerations and certificate**

The committee considers that the subordinate legislation raises no human rights issues. A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

## **5 Nature Conservation and Other Legislation Amendment Regulation (No. 2) 2021**

The Nature Conservation and Other Legislation Amendment Regulation (No.2) 2021:

- ensures that the prescription, conservation status and taxonomy of fauna and flora species in the *Nature Conservation Act 1992* reflect the most up-to-date scientific knowledge
- makes consequential amendments to reflect changes to conservation status and taxonomy
- streamlines administrative arrangements to make and publish a macropod harvest period notice (HPN), and
- makes other minor consequential amendments, such as fixing typographical errors.<sup>6</sup>

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<sup>4</sup> SL No. 158, explanatory notes, p 1.

<sup>5</sup> SL No. 158, explanatory notes, pp 5-6.

<sup>6</sup> SL No. 165, explanatory notes, p 1.

## 5.1 Fundamental legislative principle issues

The LSA provides that legislation must have sufficient regard to the institution of Parliament.<sup>7</sup>

A HPN is a notice which declares a period to be a harvest period for taking macropods.<sup>8</sup> HPNs also set quotas for the allowable harvest of particular species of macropods.<sup>9</sup> The committee notes that the Amendment Regulation proposes to remove HPNs from the *Statutory Instruments Regulation 2012* (the SI Regulation).

This will mean that HPNs will no longer be treated as subordinate legislation, and therefore not be required to be tabled in Parliament and possibly subjected to a disallowance motion.<sup>10</sup>

The committee considers that this raises potential fundamental legislative principle issues, in that it proposes to remove HPNs from the scrutiny of the Legislative Assembly.<sup>11</sup> The explanatory notes state that:

The HPN is currently listed in the SI Regulation (Schedule 1, Item 1) and is considered subordinate legislation. Section 11 of the Macropod Plan requires a notice to be made each year by the chief executive. Currently, as subordinate legislation, a HPN must be tabled in Parliament and may be subject to a disallowance motion; however, to date, a HPN has never been challenged or disallowed by Parliament.<sup>12</sup>

The explanatory notes state that ‘the process to draft and make the HPN subordinate legislation can take seven weeks and usually involves only minimal changes each year’. The proposed amendments seek to ‘streamline the process of achieving straightforward and appropriate sub-delegation to the chief executive by removing the requirement for the HPN to be made subordinate legislation’.<sup>13</sup>

The explanatory notes advise that the department will ‘... continue to engage with stakeholders through an annual forum and/or notifications where information is provided on current harvest figures, as well as quotas for the following harvest period and any upcoming changes’.<sup>14</sup>

In addition, the explanatory notes state that ‘The forum and/or notifications provides an opportunity for stakeholders to provide feedback and input’. The explanatory notes state that:

While the forums is held annually, DES also sends notifications to inform stakeholders of immediate changes (e.g. new Code of Practice requirements). Stakeholders are also advised where to locate the updated information on the DES website.<sup>15</sup>

### Committee comment

On balance, the committee is satisfied that the Amendment Regulation has sufficient regard to the institution of Parliament.

In reaching this view, the committee considered that it was appropriate to sub delegate the power to approve the HPN to the chief executive. The committee also noted that the department will continue to engage with stakeholders on proposed changes to HPNs and provide up-to-date information on the department’s website.

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<sup>7</sup> LSA, s 4(2)(b).

<sup>8</sup> SL No. 165, explanatory notes, p 3; *Nature Conservation (Macropod) Conservation Plan 2017*, s 11.

<sup>9</sup> SL No. 165, explanatory notes, p 3; *Nature Conservation (Macropod) Conservation Plan 2017*, s 11.

<sup>10</sup> SL No. 165, explanatory notes, p 3; *Statutory Instruments Regulation 2012*, s 2(3), sch 1.

<sup>11</sup> LSA, s 4(2)(b).

<sup>12</sup> SL No. 165, explanatory notes, p 3.

<sup>13</sup> SL No. 165, explanatory notes, p 5.

<sup>14</sup> SL No. 165, explanatory notes, p 3.

<sup>15</sup> SL No. 165, explanatory notes, p 3.

## **5.2 Explanatory notes**

The committee notes that the explanatory notes do not identify the proposed removal of HPNs from the SI Regulation, as a potential FLP issue.

The committee also notes that the explanatory notes refer to consultation with the committee about this proposal. The explanatory notes state that the committee 'raised no concerns in relation to removing subordinate legislation requirements of the HPN'.<sup>16</sup> The committee considers that this statement does not reflect accurately the committee's correspondence in relation to this matter.

On 5 July 2021, the Minister for the Environment and the Great Barrier Reef wrote to the committee to seek its advice on the proposed amendment and asked whether the committee had any issues with the proposal. The committee responded, on 25 August 2021, stating that it did not have any comments at that stage and looked '... forward to examining the subordinate legislation once it has been tabled in accordance with its statutory functions'.

The committee has now completed its examination of the proposed amendment and commented on the potential FLP issues in this report.

The committee reminds the department to ensure the accuracy of comments contained in explanatory notes. The explanatory notes otherwise comply with part 4 of the LSA.

## **5.3 Consideration of human rights compatibility**

The committee considers that the subordinate legislation raises the following human rights issues.

### **5.3.1 Property rights**

The HRA provides that a person must not be arbitrarily deprived of their property.<sup>17</sup>

The Minister notes, in the human rights certificate, that 'the Amendment Regulation could be perceived to engage property rights as particular animals may have been lawfully kept prior to their classification as 'protected' or 'international''.<sup>18</sup> The Minister advised that:

... whilst the amendments may be perceived to engage property rights under section 24 of the HR Act, these rights are not limited due to the wildlife classifications not resulting in any 'newly protected' species under the NC Act, and that existing permitting arrangements allow these animals to remain property of the person.<sup>19</sup>

### **Committee comment**

The committee is satisfied that the limitation of human rights is reasonable and demonstrably justifiable in the circumstances.

## **5.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation in accordance with section 41 of the HRA. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

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<sup>16</sup> SL No. 165, explanatory notes, p 6.

<sup>17</sup> HRA, s 24.

<sup>18</sup> Human rights certificate, p 2.

<sup>19</sup> Human rights certificate, p 2.

## **6 Recommendation**

The committee recommends that the House notes this report.



Aaron Harper MP

**Chair**

**February 2022**

**Health and Environment Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Aaron Harper MP, Member for Thuringowa

Mr Robert (Rob) Molhoek MP, Member for Southport

Mr Stephen (Steve) Andrew MP, Member for Mirani

Ms Ali King MP, Member for Pumicestone

Ms Joan Pease MP, Member for Lytton

Dr Mark Robinson MP, Member for Oodgeroo