

Innovation, Tourism Development and Environment Committee

Report No. 21, 56th Parliament

Subordinate legislation tabled between 12 June 2019 and 20 August 2019

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 12 June 2019 and 20 August 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

2 Subordinate legislation examined

SL No	Subordinate legislation	Date tabled	Disallowance date
108	Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2019	20 August 2019	24 October 2019
124	Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019	20 August 2019	24 October 2019
133	State Penalties Enforcement (Waste) Amendment Regulation 2019	20 August 2019	24 October 2019
137	Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019	20 August 2019	24 October 2019
141	Environmental Protection (Pig Keeping) Amendment Regulation 2019	20 August 2019	24 October 2019
150	Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019	20 August 2019	24 October 2019
151	Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019	20 August 2019	24 October 2019
153	Environmental Protection (Air) Policy 2019	20 August 2019	24 October 2019
154	Environmental Protection (Noise) Policy 2019	20 August 2019	24 October 2019
155	Environmental Protection Regulation 2019	20 August 2019	24 October 2019
156	Environmental Protection (Water and Wetland Biodiversity) Policy 2019	20 August 2019	24 October 2019

3 Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2019 – (SL 108)

The policy objective of the Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2019 is to increase penalties for feeding or disturbing dingoes on K’gari (Fraser Island), following a number of recent attacks on the island.

The provisions introduce a new penalty specifically for feeding or disturbing a dingo on K’gari of 80 penalty units (\$10,444) with a penalty infringement notice fine of 16 penalty units (\$2,088). The notes state that the penalties for feeding or disturbing an animal that is dangerous, venomous or capable of injuring a person (other than a dingo on K’gari) will remain unchanged at a maximum of 40 penalty units (\$5,222) with a penalty infringement notice fine of three penalty units (\$391.65).¹

No direct community consultation has occurred regarding the new fees, however, the explanatory notes explain that given the recent dingo attacks, the Government sought to act quickly as part of an ongoing commitment to safety in relation to dingo interactions on the Island.²

3.1 Fundamental legislative principle issues – rights and liberties of individuals

Section 4(2)(a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals. The amendment regulation adds new penalties for existing offences relating to feeding or disturbing dingoes on K’gari. The creation of new offences and penalties may affect the rights and liberties of individuals.

The Office of the Queensland Parliamentary Counsel Notebook (OQPC) states: ‘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.’³

The explanatory notes provide the following justification for the increased penalties:

*The consequences of dingo attacks for people on K’gari are extremely serious and can be fatal. In response to a number of recent attacks on the Island, the Government announced a significant increase in penalties for feeding or disturbing dingoes as part of a broader strategy seeking to reduce the risk posed to humans by dingoes to a low level.*⁴

The number of penalty units is authorised by the Parliament, as the Legislative Assembly has previously endorsed an approach for penalties of up to 165 penalty units through acceptance of section 175 of the *Nature Conservation Act 1992*.

3.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

3.3 Committee comment

The committee notes the potential impact on the rights and liberties of individuals as a result of the introduction of new offences and penalties under the regulation. On balance, having considered the objectives of the regulation, the committee is satisfied that the penalty is appropriate and proportionate and that any potential breach of fundamental legislative principle is sufficiently justified.

¹ Under the nature conservation regulations, ‘disturb’ includes approaching, harassing, teasing or touching an animal (Explanatory notes, p 2).

² Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2019, explanatory notes, p 6.

³ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

⁴ Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2019, explanatory notes, p 5.

4 Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019 – (SL 124)

The policy objective of the Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019 is to amend the Environmental Protection Regulation 2008⁵ by:

- correcting an administrative error in the transitional provisions so that existing environmentally relevant activities (ERA) approvals for tyre recycling, autoclaving, waste disposal and waste transfer activities correctly transition to the new ERA framework
- correcting an error to enable annual fees for regulated waste transport activities to be correctly calculated when vehicles are added or removed within an annual period
- clarifying the regulatory requirements for on-farm composting activities to reduce unnecessary duplication in regulation
- clarifying the regulatory requirements that apply to government entities when waste generated from road or railway maintenance activities is transported to and stored on state land
- making other minor amendments to correct clerical and administrative errors.⁶

The explanatory notes state that consultation on the proposed amendment relating to on-farm composting of organic wastes has taken place with key industry stakeholders including the Waste Recycling Industry Association Queensland, Queensland Farmers' Federation (QFF) and the Australian Lot Feeders Association, and that those organisations support the amendment.⁷

The notes state that no additional external consultation was undertaken in relation to the remaining amendments as they correct technical errors or are machinery in nature.⁸

4.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

4.3 Committee comment

The committee is satisfied that the Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

5 State Penalties Enforcement (Waste) Amendment Regulation 2019 – (SL 133)

The policy objective of the State Penalties Enforcement (Waste) Amendment Regulation 2019 (SL 133) is to amend Schedule 1 of the State Penalties Enforcement Regulation 2014 to include offences and infringement notice offences relating to the waste levy framework.⁹

⁵ In Queensland, the *Environmental Protection Act 1994* and its subordinate legislation, the *Environmental Protection Regulation 2008*, provide a framework for classifying waste and regulating waste management activities which have the potential to cause environmental harm. These are referred to as the regulated waste categorisation framework and the waste-related environmentally relevant activity framework. (Explanatory notes, p 1)

⁶ Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019 explanatory notes, p 2.

⁷ Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019 explanatory notes, p 3.

⁸ Environmental Protection and Other Legislation (Waste) Amendment Regulation 2019 explanatory notes, p 3.

⁹ State Penalties Enforcement (Waste) Amendment Regulation 2019, explanatory notes, p 2.

The notes advise that the amendments are primarily administrative in nature and the new offences relate to obligation of operators of waste disposal sites including remitting waste levy, use of weighbridges, measuring waste, monitoring systems, waste data returns and record keeping.¹⁰

5.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

5.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

5.3 Committee comment

The committee is satisfied that the State Penalties Enforcement (Waste) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

6 Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019 - (SL 137)

The policy objective of the Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019 is to amend the Nature Conservation (Protected Areas Management) Regulation 2018 to permit the operation and maintenance of two service facilities (for a communications use) within the Woondum National Park.¹¹

The Nature Conservation Act 1992 provides strict criteria which must be satisfied before an application to install, maintain, or use infrastructure on national parks can be approved. The proposed use for the two service facilities at Woondum National Park has been assessed and has met the necessary requirements.¹²

Before a permit can be granted, the use and relevant national park must be prescribed in Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017.¹³ The Amendment Regulation inserts this wording accordingly.

6.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

6.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

6.3 Committee comment

The committee is satisfied that the Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

¹⁰ State Penalties Enforcement (Waste) Amendment Regulation 2019, explanatory notes, pp 1-2.

¹¹ Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019, explanatory notes, p 2.

¹² Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019, explanatory notes, p 2.

¹³ Nature Conservation (Protected Areas Management) (Woondum National Park) Amendment Regulation 2019, explanatory notes, p 2.

7 Environmental Protection (Pig Keeping) Amendment Regulation 2019 – (SL 141)

The policy objective of the Environmental Protection (Pig Keeping) Amendment Regulation 2019 is to reduce the aggregate environmental scores for each of the three thresholds for pig keeping.¹⁴

The notes state that the amendments followed a review of the aggregate environmental scores for the pig keeping environmentally relevant activities (ERAs) thresholds, which identified that the air emissions calculated for the scores at the time were not representative of current standard industry practice in Queensland.¹⁵ The scores were recalculated based on new information regarding the environmental risk of the activities.

The notes also stated that the regulation will result in a reduction in the annual fee payable for an environmental authority for carrying out this ERA. The Queensland Budget 2019-20 estimated the reduction to be \$150,000 per annum.¹⁶

Consultation was undertaken with the QFF and Australian Pork Limited on reducing the aggregate environmental scores, and both organisations support the reduction.¹⁷

7.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

7.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

7.3 Committee comment

The committee is satisfied that the Environmental Protection (Pig Keeping) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

8 Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019 - (SL 150)

The policy objective of the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019 is to:

- amend the Environmental Offsets Regulation 2014 to update the Environmental Offsets Policy to include reference to special wildlife reserves as a category of protected area
- amend the Environmental Protection Regulation 2008 to add the new class of protected area, special wildlife reserves to the definition of Category A environmentally sensitive areas
- amend the Nature Conservation (Protected Area Management) Regulation 2017 to identify which restrictions and offences apply to private protected areas, particularly the new class, special wildlife reserves
- update Schedule 1 of the State Penalties Enforcement Regulation 2014 to accommodate amended section references as a consequence of this amendment regulation.¹⁸

¹⁴ The environmental risk is represented by the aggregate environmental score, which is calculated on the basis of an environmental emissions profile that takes into account the emissions to water, air and land, and a site attribute score for each threshold of an activity (Explanatory notes, p 1).

¹⁵ Environmental Protection (Pig Keeping) Amendment Regulation 2019, explanatory notes, p 2.

¹⁶ Environmental Protection (Pig Keeping) Amendment Regulation 2019, explanatory notes, p 2.

¹⁷ Environmental Protection (Pig Keeping) Amendment Regulation 2019, explanatory notes, p 3.

¹⁸ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 2.

The explanatory notes state that the special wildlife reserves are a new class of private protected area introduced by the *Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Act 2019*. The new class has been created 'to allow for areas of privately owned or managed land to be recognised for their exceptional natural and/or cultural values, by providing protection equivalent to that of a national park'.¹⁹ The notes also state that to meet the objective of the new class, appropriate compliance tools are required.²⁰

8.1 Issues of fundamental legislative principle – rights and liberties of individuals and the institution of Parliament

Section 4(2)(a) and (b) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals and the institution of Parliament. The regulation raises a number of potential issues in this regard.

Rights and liberties of an individual

The regulation raises a potential issue in relation to the creation of special wildlife reserves could affect the use and enjoyment of this land by the owner or manager of the land.

The explanatory notes provide the following justification:

Declarations of special wildlife reserves are of a voluntary nature only. As this class of protected area has only just been created, there are no existing landholders who can be impacted by the restrictions or offences for special wildlife reserves.

*Declaration of a restricted access area on a private protected area can only occur with the consent of the landholder of that land. As a result there is no risk of impacting upon the landholder's rights.*²¹

Penalties

Former committees have accepted that legislative power to create offences and prescribe penalties may be delegated in limited circumstances, provided certain safeguards were observed. This included that maximum penalties in regulations should be limited, generally, to 20 penalty units. Penalties should also be reasonable and proportionate.

The regulation includes in clauses 34 to 46 and 48 to 54, a number of maximum penalties that exceed 20 penalty units. The explanatory notes provide the following justification:

*... given the authorisation in section 175(2)(t) of the Nature Conservation Act 1992, and the equivalent current offence provisions for national parks having identical offence penalties, these penalty levels are considered appropriate.*²²

Review rights

Section 48 of the *Nature Conservation (Protected Areas Management) Regulation 2017* allows the chief executive to grant permission for a controlling activity.²³ The refusal of the chief executive to grant a permission for a controlling activity is not subject to appeal or review. Paragraph 4(3)(a)

¹⁹ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 1.

²⁰ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 1.

²¹ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 3.

²² Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 3.

²³ A "controlling activity" is an activity that the chief executive considers to be reasonable and necessary to significantly reduce the population of, or eradicate, wildlife that is not native wildlife, in a protected area.

Legislative Standards Act 1992 states that legislation has sufficient regard to rights and liberties of individuals if the administrative power provided for is sufficiently defined and subject to appropriate review.

The explanatory notes provide the following explanation:

This absence of review rights might be seen to breach the fundamental legislative principle that rights and liberties, or obligations, should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. However, this is consistent with the current approach for other protected areas.²⁴

The explanatory notes also advise that:

Clause 21 of the Amendment Regulation seeks to apply section 48 of the Nature Conservation (Protected Area Management) Regulation 2017 on private protected areas. This section may apply in the rare circumstance where additional feral animal or pest plant control is required in addition to those already authorised under the conservation agreement or management program for the private protected area. In these cases, the chief executive is best placed to decide whether an activity is, in the particular circumstances, 'reasonable and necessary to significantly reduce the population of, or eradicate, wildlife that is not native wildlife' and to take account of the associated environmental and safety issues. Given the elements of informed judgement involved in considering the decision, the review process is considered unlikely to change the outcome.²⁵

Written approval of chief executive

In clauses 34, 35, 41, 44, 46, 47, 49, 52, 53 and 54, a particular activity or action cannot be conducted without the 'written approval' of the chief executive. However, the regulation does not specify how a person applies for a written approval or the process for deciding such approvals.

This is potentially inconsistent with section 4(3) *Legislative Standards Act 1992* which requires that administrative power should be sufficiently defined.

The explanatory notes provide the following justification:

As with national parks, the process for applying for written approvals varies according to the circumstances. Written approvals are commonly granted to authorise a supplementary aspect of another activity and are therefore 'applied for' in the broader context of seeking authorisation for the other activity. On special wildlife reserves, activities will largely be authorised under the associated conservation agreement or management program. However, there may be some circumstances where the landholder is required to undertake some unforeseen additional activity in order to ensure appropriate management of the property. For example, the landholder may need to erect a temporary fencing structure on the property while undertaking some rehabilitation works. In such a case, the application and approval process generally would be relatively straightforward, and the landholder would contact the department directly in the normal manner in order to arrange the necessary approval.²⁶

8.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

²⁴ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 3.

²⁵ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, pp 3-4.

²⁶ Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019, explanatory notes, p 4.

8.3 Committee comment

The committee notes the potential FLP issues and the justifications provided. The committee is satisfied that, on balance, the Nature Conservation (Special Wildlife Reserves) and Other Legislation Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

9 Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019 - (SL 151)

The policy objective of the Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019 is to amend the Nature Conservation (Wildlife Management) Regulation 2006 to:

- insert a definition of 'infrastructure' in the Wildlife Management Regulation, for the purposes of Chapter 4, to include buildings or other structures built or used for any purpose
- update section 43 and schedule 2 of the Wildlife Management Regulation to refer to the relevant sections of the Commonwealth Great Barrier Reef Marine Park Regulations 2019 instead of the replaced Great Barrier Reef Marine Park Regulations 1983
- update section 43 to refer to the Marine Parks (Moreton Bay) Zoning Plan 2008 and the Marine Parks (Great Sandy) Zoning Plan 2017.²⁷

The explanatory notes advise the amendments will ensure that:

- people will be able to clear using these firebreak and maintenance exemptions for all intended buildings and structures in the future
- provisions reference the correct sections of the Commonwealth Great Barrier Reef Marine Park Regulations 2019 instead of the replaced Great Barrier Reef Marine Park Regulations 1983
- the definition of traditional use of marine resources agreement includes reference to the *Marine Parks (Moreton Bay) Zoning Plan 2008* and the *Marine Parks (Great Sandy) Zoning Plan 2017*.²⁸

9.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

9.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

9.3 Committee comment

The committee is satisfied that the Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

10 Environmental Protection (Air) Policy 2019 - (SL 153)

The policy objective of the Environmental Protection (Air) Policy 2019 is to replace the Environmental Protection (Air) Policy 2008 which expired on 1 September 2019.

²⁷ Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019, explanatory notes, p 2.

²⁸ Nature Conservation (Wildlife Management) (Infrastructure) Amendment Regulation 2019, explanatory notes, p 3.

The purpose of the Environmental Protection (Air) Policy 2019 is to achieve the object of the *Environmental Protection Act 1994* in relation to the air environment.

The explanatory notes state:

*The Environmental Protection (Air) Policy 2019 is to be made in substantially similar form to the existing legislation. Amendments are confined primarily to the drafting style to ensure the legislation reflects current drafting practice. Some provisions have been renumbered as a result. Other amendments have been made to clarify the intent of the provisions, and update the air quality objectives to reflect contemporary standards.*²⁹

The explanatory notes provide a detailed overview of consultation, including releasing a draft of the Environmental Protection (Air) Policy 2019, consulting directly with key stakeholders, including industry representatives, environmental groups, technical consultants and local government, and consulting with the Office of Best Practice Regulation. The notes also detailed changes that were made to the draft policy, where appropriate, and as a result of consultation with industry representatives.³⁰

10.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

10.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

10.3 Committee comment

The committee is satisfied that the Environmental Protection (Air) Policy 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

11 Environmental Protection (Noise) Policy 2019 (SL 154)

The policy objective of the Environmental Protection (Noise) Policy 2019 (SL 154) is to replace the Environmental Protection (Noise) Policy 2008 which expired on 1 September 2019.

The purpose of the Environmental Protection (Noise) Policy 2019 is to achieve the object of the *Environmental Protection Act 1994* in relation to the noise environment.

The explanatory notes state:

*The Environmental Protection (Noise) Policy 2019 is substantially similar to the existing legislation, with only minor amendments. There have been a number of amendments made to the drafting style to ensure the legislation reflects current drafting practice. Some provisions have been renumbered as a result. Other amendments have been made to clarify the intent of provisions.*³¹

The explanatory notes provided a detailed overview of consultation, including releasing a draft of the Environmental Protection (Noise) Policy 2019, consulting directly with key stakeholders, including industry representatives, environmental groups, technical consultants and local government, and consulting with the Office of Best Practice Regulation. The notes also detailed changes that were made to the draft policy, where appropriate, and as a result of consultation with industry representatives.³²

11.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

²⁹ Environmental Protection (Air) Policy 2019, explanatory notes, p 1.

³⁰ Environmental Protection (Air) Policy 2019, explanatory notes, p 3.

³¹ Environmental Protection (Noise) Policy 2019, explanatory notes, p 1.

³² Environmental Protection (Noise) Policy 2019, explanatory notes, pp 2-3.

11.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

11.3 Committee comment

The committee is satisfied that the Environmental Protection (Noise) Policy 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

12 Environmental Protection Regulation 2019 (SL 155)

The policy objective of the Environmental Protection Regulation 2019 is to replace the Environmental Protection Regulation 2008 which expired on 1 September 2019.

The explanatory notes state:

*The Environmental Protection Regulation 2019 is in substantially similar form to the existing legislation. Amendments have been made to reflect current drafting practice and ensure the continued effective operation of the regulation.*³³

12.1 Issues of fundamental legislative principle

Provisions

The regulation inserts into the Environmental Protection Regulation 2019 reference to a number of external documents:

- sections 22, 24, 152, 153
- section 164(5), definition 'emission scores profile'
- section 187
- schedule 8, definition 'regulated structure'
- schedule 19, definitions 'Australian water quality management guidelines', 'high consequence dam' and 'noise measurement manual'.

Potential FLP issues

Incorporating external documents that are not subject to Parliamentary scrutiny potentially raises an issue about whether there is an appropriate delegation of legislative power.

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act
- in appropriate cases and to appropriate persons.³⁴

Authorised by an Act

Section 104 of the *Biosecurity Act 2014* and section 318E of the *Environmental Protection Act 1994* allow either the making of a code of practice by regulation or the Minister may make codes of practice.

Appropriate cases and to appropriate persons

In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered the importance of the subject dealt with, the commercial or technical nature of the

³³ Environmental Protection Regulation 2019, explanatory notes, p 2.

³⁴ Section 4(5)(e) of the *Legislative Standards Act 1992*.

subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.³⁵

The explanatory notes provide the following:

*The external documents referenced contain highly technical information and guidance, and it is not considered practical to include all of these details in the regulation. All of the documents are readily available on the department's website, or other external websites. Any significant amendments to these documents will generally only be done in consultation with relevant stakeholders. For these reasons, it is considered that the references to the external documents in the regulation are justified.*³⁶

12.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

12.3 Committee comment

The committee notes the potential FLP issues and the justifications provided. The committee is satisfied that, on balance, the Environmental Protection Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

13 Environmental Protection (Water and Wetland Biodiversity) Policy 2019 (SL 156)

The policy objective of the Environmental Protection (Water and Wetland Biodiversity) Policy 2019 is to replace the Environmental Protection (Water) Policy 2009 which expired on 1 September 2019.

The explanatory notes provide that the regulation is substantially similar to the existing regulation, with only minor amendments.³⁷ The notes explain that the Environmental Protection (Water and Wetland Biodiversity) Policy 2019 will provide for the same matters as the expiring legislation, with the addition of wetland environmental values which have been transferred across from the Environmental Protection Regulation 2008.³⁸ The policy title has been changed to reflect the inclusion of wetland environmental values and wetland mapping under this policy.³⁹

The explanatory notes provided a detailed overview of consultation, including releasing a draft of the Environmental Protection (Water) Policy 2019, consulting directly with key stakeholders, including industry representatives, environmental groups, technical consultants and local government, and consulting with the Office of Best Practice Regulation. The notes also detailed changes that were made to the draft policy, where appropriate, and as a result of consultation with industry representatives and environmental groups.⁴⁰

13.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

13.2 Explanatory notes

The explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

³⁵ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

³⁶ Environmental Protection Regulation 2019, explanatory notes, p 5.

³⁷ Environmental Protection (Water and Wetland Biodiversity) Policy 2019, explanatory notes, pp 1-2.

³⁸ Environmental Protection (Water and Wetland Biodiversity) Policy 2019, explanatory notes, p 2.

³⁹ Environmental Protection (Water and Wetland Biodiversity) Policy 2019, explanatory notes, p 4.

⁴⁰ Environmental Protection (Water and Wetland Biodiversity) Policy 2019, explanatory notes, pp 3-4.

13.3 Committee comment

The committee is satisfied that the Environmental Protection (Water and Wetland Biodiversity) Policy 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

14 Committee consideration of the subordinate legislation

The committee did not identify any significant issues relating to the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles or the lawfulness of the subordinate legislation examined.

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

15 Recommendation

The committee recommends that the House notes this report.



Duncan Pegg MP

Chair

October 2019

Innovation, Tourism Development and Environment Committee

Chair	Mr Duncan Pegg MP, Member for Stretton (Chair),
Deputy Chair	Mr Jon Krause MP, Member for Scenic Rim (Deputy Chair)
Members	Ms Sandy Bolton MP, Member for Noosa
	Mr Mark Boothman MP, Member for Theodore
	Ms Cynthia Lui MP, Member for Cook
	Mrs Charis Mullen MP, Member for Jordan