

## Natural Resources, Agricultural Industry Development and Environment Committee

Report No. 7, 56<sup>th</sup> Parliament

Subordinate legislation tabled between 20 May 2020 and 16 June 2020

### 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 20 May 2020 and 16 June 2020. 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 identifies any issues identified by the committee in its consideration of the human rights certificate tabled with the subordinate legislation.<sup>2</sup> Section 8 of the *Human Rights Act 2019* (Human Rights Act) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the Human Rights Act. Section 13 of the Human Rights Act provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
77	Environmental Protection (Reef Protection Measures) Amendment Regulation 2020	16 June 2020	3 December 2020

\*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

No significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified. The committee considers the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

The committee considers that SL 77 raises no human rights issues. The human rights certificate tabled with the subordinate legislation provides 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*, Part 4.

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

<sup>3</sup> *Human Rights Act 2019*, s 41.

## **4 Environmental Protection (Reef Protection Measures) Amendment Regulation 2020 (SL 2020 No. 77)**

The objective is to amend the *Environmental Protection Regulation 2019* to delay the date on which the new requirements for ‘no net decline’ in Great Barrier Reef water quality from new agricultural and industrial development (e.g. sewage treatment, waste disposal, certain mining activities, and land-based aquaculture) in the Great Barrier Reef catchment until 1 June 2021 (previously 1 June 2020).

The explanatory notes set out these reasons for the deferral:

*These requirements will be delayed from taking effect to allay potential impacts on stakeholders and the government during the COVID-19 pandemic. The pandemic is expected to have a significant impact on the capacity of the agricultural sector and industry to adequately prepare for the new regulatory requirements.<sup>4</sup>*

...

*Providing more time for the agricultural sector and other affected industries to prepare for the regulatory changes will also allow them to continue to focus on responding to the impacts of the COVID-19 pandemic in the short term.*

*Deferring commencement of the regulatory requirements will reduce or defer costs to industry for new cropping or horticulture activities and new industrial activities at a time of high economic uncertainty. This will be in the form of avoided or deferred application preparation and lodgement costs for new cropping or horticulture activities and avoided or deferred potential costs related to complying with the conditions of an environmental authority for new cropping and new industrial activities.*

*The COVID-19 pandemic has also adversely impacted the capacity of government to implement the new regulatory requirements. Deferring commencement will defer implementation costs to government and provide additional time to complete necessary implementation activities, such as stakeholder consultation, that are hindered by COVID-19 related restrictions.*

As to possible adverse environmental impacts of the deferral of the operation of the new requirements, the explanatory notes state:

*The environmental impacts of deferring commencement of the regulatory requirements for a relatively short period of time [are] unlikely to be significant. This is because the effects of the COVID-19 pandemic [are] likely to stall or decrease, for the foreseeable future, the already low estimated growth in demand for new agricultural and industrial development in the Great Barrier Reef catchment.<sup>5</sup>*

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

The committee identified no issues regarding the subordinate legislation’s consistency with FLPs or its lawfulness.

### **4.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

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<sup>4</sup> Explanatory notes, pp 1 and 2.

<sup>5</sup> Explanatory notes, p 2.

### 4.3 Human rights considerations

Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with Section 13 of that Act.

Section 13 of the *Human Rights Act 2019* provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

In the human rights certificate accompanying the subordinate legislation, the Minister states that the Regulation is compatible with human rights.

The committee considers that the subordinate legislation raises no human rights issues.

### 4.4 Human rights certificate

Section 41 of the *Human Rights Act 2019* requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation.

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

## 5 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

**Chair**

**August 2020**

### Natural Resources, Agricultural Industry Development and Environment Committee

**Chair**

Mr Chris Whiting MP, Member for Bancroft (Chair)

**Deputy Chair**

Mr Pat Weir MP, Member for Condamine (Deputy Chair)

**Members**

Mr David Batt MP, Member for Bundaberg

Mr James (Jim) Madden MP, Member for Ipswich West

Mr Brent Mickelberg MP, Member for Buderim

Ms Jessica (Jess) Pugh MP, Member for Mount Ommaney