

Innovation, Tourism Development and Environment Committee

Report No. 24, 56th Parliament

Subordinate legislation tabled between 4 September 2019 and 15 October 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 4 September 2019 and 15 October 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

No.	Subordinate legislation	Date tabled	Disallowance date
187	Environmental Protection (Financial Provisioning) (Transitional) Regulation 2019	15 October 2019	20 February 2020
188	Nature Conservation (Wildlife) and Other Legislation Amendment Regulation 2019	15 October 2019	20 February 2020
189	Waste Reduction and Recycling (Container Refund Scheme – Material Recovery Agreements) Amendment Regulation 2019	15 October 2019	20 February 2020
197	Recreation Areas Management (Fees) Amendment Regulation 2019	15 October 2019	20 February 2020
198	Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019	15 October 2019	20 February 2020
206	Nature Conservation (Protected Areas Management) (Tully Gorge National Park) Amendment Regulation 2019	15 October 2019	20 February 2020

3 Environmental Protection (Financial Provisioning) (Transitional) Regulation 2019 – (SL 187)

The objective is to correct some technical errors that have arisen from the implementation of the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act). The regulation introduces transitional arrangements to ensure that entities that were not intended to be subject to the changes are not captured.

3.1 Issues of fundamental legislative principle – rights and liberties of individuals

Legislative Standards Act 1992 – section 4(2) Legislation should have sufficient regard to the rights and liberties of individuals

Section 4 of the Regulation provides that, for chapter 13, part 27 of the *Environmental Protection Act 1994* (EP Act), a transferee is taken to be a ‘mining EA [environmental authority]’ holder. The explanatory notes state that the transitional provisions apply to the transferee as though the transferee was the previous ‘mining EA holder’. The transferee could find themselves in the situation of committing an offence under section 431A of the EP Act because of an omission of another person; that is, they are deemed to be committing the offence, even though it was a result of the omission of another person. This could be seen to have insufficient regard to the rights and liberties of an individual.

The explanatory notes provide the following justification:

Section 4 is considered justified because it ensures that all EAs issued for site-specific application relating to a mining lease are subject to the same transitional requirements. It would be unreasonable for some of these EAs to be required to have a PRCP [progressive rehabilitation and closure plan] to operate, and for others to not require a PRCP simply because there was a transfer on or after 1 April 2019. This provision ensures that the intent of the MERFP Act can be achieved.¹

3.2 Issues of fundamental legislative principle – retrospectivity

Legislative Standards Act 1992 – section 4(3)(g) Legislation should not adversely affect rights and liberties, or impose obligations, retrospectively

Section 766(2) of the EP Act states a transitional regulation may have retrospective operation to a day that is not earlier than the commencement of the MERFP Act. Section 2 of the Regulation provides that the Regulation is taken to have commenced on 1 April 2019 (the same day the MERFP Act commenced). This could be seen to adversely affect the rights and liberties of a person or impose obligations retrospectively.

The explanatory notes provide the following justification:

In this case, retrospectivity post-commencement of the MERFP Act is justified to ensure that there are consistent transitional provisions for all holders of EAs and small scale mining tenures subject to the new regulatory framework introduced by the MERFP Act. The Transitional Regulation ensures that the intent of the MERFP Act, which was subject to extensive consultation, can be achieved.²

3.3 Explanatory notes

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

3.4 Committee comment

The committee notes the fundamental legislative principle issues relating to the transitional provisions for all holders of EAs in the subordinate legislation, and the justification for this provision provided within the explanatory notes. On balance, the committee is satisfied that the Environmental Protection (Financial Provisioning) (Transitional) Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

4 Nature Conservation (Wildlife) and Other Legislation Amendment Regulation 2019 – (SL 188)

The objective is to amend the Nature Conservation (Wildlife) Regulation 2006 to ensure that conservation and land use measures involving listed species are commensurate with their scientifically determined conservation status.

¹ Explanatory notes, p 5.

² Explanatory notes, p 5.

The Nature Conservation (Wildlife) Regulation 2006 lists the native wildlife species which have been classified as 'extinct in the wild', 'endangered', 'vulnerable', 'near threatened' or 'least concern', based upon factors including their prevalence and the extent and nature of threats to their sustainability.³ This Amendment Regulation, which involves the reclassification of wildlife species' conservation status, are consequential in nature, giving effect to a decision made under the *Nature Conservation Act 1992*. (The conservation status of a species must be listed in the Regulation to give statutory effect to any reclassification.)

The Amendment Regulation also:

- ensures that species' names are accurate and reflect current scientific nomenclature
- amends the Nature Conservation (Wildlife Management) Regulation 2006 to update incorrect references to vegetation clearing code names to remove confusion and ambiguity.

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*.

5.3 Committee comment

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

5 Waste Reduction and Recycling (Container Refund Scheme – Material Recovery Agreements) Amendment Regulation 2019 – (SL 189)

The objective is to amend the Waste Reduction and Recycling Regulation 2011 to allow for the continuation of the safety net default refund sharing by enabling both the Material Recovery Facility operator and the local government to continue to share the refund for eligible beverage containers.

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 Waste Reduction and Recycling (Container Refund Scheme – Material Recovery Agreements) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

6 Recreation Areas Management (Fees) Amendment Regulation 2019 – (SL 197)

The Regulation amends the fee schedule in the Recreation Areas Management Regulation 2017 to provide these vehicle access permit fees for the Minjerribah Recreation Area:

- a) for a term of 1 month or less - \$52.75
- b) for a term of more than 1 month - \$158.00

(Currently, there is a vehicle access permit fee of \$46.80.)

³ Explanatory notes, p 1.

According to the explanatory notes, the objective is 'to better align [vehicle access permit fees for the Minjerrabah Recreation Area] with other declared recreation areas in southern Queensland.'⁴

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 Recreation Areas Management (Fees) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

7 Environmental Protection (Rehabilitation Reform) Amendment Regulation 2019 – (SL 198)

The objectives are to:

- support decisions under the *Environmental Protection Act 1994* in relation to Progressive Rehabilitation and Closure Plan (PRCP) schedules with relevant regulatory requirements
- support implementation of Public Interest Evaluations (PIE)
- set the date for commencement of the PRCP framework (PRCP start date) as 1 November 2019
- make a number of transitional provisions.⁵

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 (Rehabilitation Reform) Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

8 Nature Conservation (Protected Areas Management) (Tully Gorge National Park) Amendment Regulation 2019 – (SL 206)

The objective is to amend Schedule 3 of the Nature Conservation (Protected Areas Management) Regulation 2017 to prescribe a proposed use as a permitted use in a National Park. The proposed use is for the construction, operation and maintenance of a proposed service facility in Tully Gorge National Park (for a water supply use by Cassowary Coast Regional Council).

8.1 Issues of fundamental legislative principle

No issues of fundamental legislative principle were identified.

⁴ Explanatory notes, p 1. On 22 October 2019, the Legislative Assembly debated a motion by the Member for Broadwater Mr Crisafulli MP for disallowance of this regulation. The motion was not agreed to.

⁵ Explanatory notes, p 1.

8.2 Explanatory notes

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

8.3 Committee comment

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

9 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified.

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

10 Recommendation

The committee recommends that the House notes this report.



Duncan Pegg MP

Chair

February 2020

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

RECREATION AREAS MANAGEMENT (FEES) AMENDMENT REGULATION 2019

SUBORDINATE LEGISLATION NO. 197 OF 2019

STATEMENT OF RESERVATION

The Recreation Areas Management (Fees) Amendment Regulation 2019 (the Amendment Regulation) is nothing but a tourism tax on Stradbroke Island.

The regulation's explanatory notes state that no public consultation was undertaken as it is proposed that consultation will be undertaken as 'part of the post-implementation review'. It's clear that, as Labor's own Member for Capalaba stated, this regulation is "*a poor decision that goes against trying to attract more tourism to Straddie*".

The Palaszczuk Labor Government talks about a transition from sand mining but continue to put every hurdle in front of the community to allow this to occur. There was no public consultation with local business owners, residents on the island, the four-wheel-drive community or the local council. This regulation is yet another major blow for the people of North Stradbroke Island at a critical time as sand mining shuts down.

Since the Palaszczuk Labor Government was elected their North Stradbroke Island transition strategy has been in disarray. Labor's State Development Minister has already been dumped as the minister leading the economic transition of North Stradbroke Island. Then during parliamentary estimates last year it was confirmed that only 10% of the \$5 million transition fund announced in December 2016 had been distributed to workers.

Slugging North Stradbroke Island with taxes is not an economic strategy and it does not grow tourism numbers or create jobs. Residents are besides themselves about the Recreation Areas Management (fees) Amendment Regulation 2019. As Redland Mayor Cr Karen Williams has publicly stated, the Palaszczuk Labor Government's decision to introduce this regulation is "*symptomatic of the government not understanding the need to engage with the Straddie community*".

The Palaszczuk Labor Government has an unquenchable thirst for new taxes. Cost of doing business in Queensland continues to steadily rise under the Palaszczuk Labor Government. With nine new or increased taxes ripping \$3.5 billion out of the state economy, each consecutive Labor budget has significantly ratcheted up business uncertainty and regulatory risk.



Jon Krause
Member for Scenic Rim



Mark Boothman
Member for Theodore