

State Development and Regional Industries Committee

Report No. 18, 57th Parliament

Subordinate legislation tabled between 12 October and 16 November 2021

1 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
160	Rural and Regional Adjustment (Drought Preparedness Grant Scheme) Amendment Regulation 2021	16 November 2021	31 March 2022
162	Fisheries Legislation Amendment Declaration (No. 2) 2021	16 November 2021	31 March 2022
163	Economic Development (Southport PDA) Amendment Regulation 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.

2 Summary of committee findings

The committee examined subordinate legislation within its portfolio areas tabled between 13 October 2021 and 16 November 2021. No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified. The committee was also satisfied that the subordinate legislation was compatible with human rights.

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 breach of principle was appropriate and sufficiently justified.

The committee considered the compliance of the explanatory notes with Part 4 of the *Legislative Standards Act 1992* (LSA). In all but one case, the subordinate legislation fully complied with the requirements of the LSA. The Rural and Regional Adjustment (Drought Preparedness Grant Scheme) Amendment Regulation 2021, while acknowledging that consultation took place, did not include an outline of consultation results as required by section 24(2)(a)(ii) of the LSA. As such, the committee has written to the Department of Agriculture and Fisheries for further information, and will publish the response on the committee's website before the disallowance date.

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

The committee concluded that 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.

A summary of the committee's examination is discussed further in the remainder of this report.

3 Rural and Regional Adjustment (Drought Preparedness Grant Scheme) Amendment Regulation 2021 – SL No. 160

3.1 Overview

The policy objective of SL No. 160 is to allow the Queensland Rural and Industry Development Authority (QRIDA) to administer a new scheme of financial assistance for primary producers that will improve drought preparedness – The Drought Preparedness Grant Scheme.¹

The Scheme will provide a 25 per cent rebate on new capital infrastructure identified in the applicant's resilience plan that is done to improve the drought preparedness of his or her primary production enterprise. An example is the purchase and installation of new water infrastructure or fodder storage facilities. The maximum amount payable under the scheme will be \$50,000.²

The explanatory notes state that industry and producers were consulted as part of the independent Drought Program Review and that the Scheme was developed with input from the Drought Reform Working Group, which comprises major agricultural industry organisations such as Queensland Farmers' Federation, AgForce, Queensland Dairyfarmers' Organisation and Canegrowers.³ The explanatory notes did not contain any further information on the results of that consultation.

3.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified by the committee.

3.2.1 Explanatory notes

As noted above, the explanatory notes do not include an outline of results of consultation in accordance with section 24(2)(a)(ii) of the *Legislative Standards Act 1992* (LSA). The explanatory notes otherwise comply with part 4 of the LSA.

The committee has written to the Department of Agriculture and Fisheries for further information on the results of the consultation done in relation to the amendment regulation, and will publish this on the committee's website before the disallowance date.

3.3 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights.⁴

3.3.1 Human rights certificate

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

¹ SL 160, Explanatory notes, p 1.

² SL 160, Explanatory notes, p 2.

³ SL 160, Explanatory notes, p 4.

⁴ Section 8 of the *Human rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision 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 the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

4 Fisheries Legislation Amendment Declaration (No. 2) 2021 - SL No. 162

4.1 Overview

The main objective of this declaration is to implement the harvest strategies approved for the east coast trawl fishery.⁵ A further objective is to adjust the total quota entitlement (or Total Allowable Commercial Catch) consistent with the approved Commercial trawl fishery (Fin Fish) Stout Whiting harvest strategy.⁶

4.1.1 Commercial Trawl Fishery (Fin Fish) (CTFFF)

The CTFFF (also known as the stout whiting or T4 fishery) is a quota-managed fishery in waters between 20 and 50 fathoms between Sandy Cape and the Gold Coast. The CTFFF is managed by a total quota entitlement for prescribed whiting (currently 1,192 tonnes for the 2021 fishing season), and a total quota entitlement for goatfish and yellowtail scad (currently 100 tonne each for the 2021 fishing season).⁷

The declaration prescribes a total quota entitlement for prescribed whiting in the CTFFF at 1,281 tonnes, effective from 1 January 2022. According to the explanatory notes, this '89 tonne increase to the total quota entitlement of prescribed whiting is consistent with the Commercial Trawl Fishery (Fin Fish) Stout Whiting Harvest Strategy.'⁸ There are no changes to the total quota entitlement for goatfish or yellowtail scad.⁹

The explanatory notes state that the prescribed total quota entitlement was discussed with the participants in the CTFFF in June and the Stout Whiting Workshop in August 2021. The working group and fishery participants were supportive of the proposed total quota entitlement increase for the 2022 season consistent with harvest strategy decision rules.¹⁰

4.2 Consistency with fundamental legislative principles

4.2.1 Ordinary activities should not be unduly restricted

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.¹¹

The concept of liberty requires that an activity (including a business activity) should be lawful unless there is a sufficient reason to declare it unlawful by an appropriate authority.¹²

The declaration impacts on the right to conduct business without interference as 'it restricts the commercial catch of fish by imposing total quota entitlements or regional effort caps.'¹³

The explanatory notes state:

... potential breaches [of fundamental legislative principle] are likely to be justified on the basis that allowing commercial fishing must be balanced with the environmental, social and economic benefits from appropriate sustainable management of fisheries resources.¹⁴

⁵ SL No. 162, explanatory notes, p 2.

⁶ SL No. 162, explanatory notes, p 3.

⁷ SL No. 162, explanatory notes, p 2.

⁸ SL No. 162, explanatory notes, p 4.

⁹ SL No. 162, explanatory notes, p 3.

¹⁰ SL No. 162, explanatory notes, p 5.

¹¹ *Legislative Standards Act 1992* (LSA), s 4(2)(a).

¹² Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 118.

¹³ SL No. 162, explanatory notes, p 5.

¹⁴ SL No. 162, explanatory notes, p 5.

4.2.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.3 Compatibility with human rights

The committee considered a number of potential limitations resulting from the subordinate legislation, including the right to property, and cultural rights. In each of the cases, the committee was satisfied that limitations were reasonable and demonstrably justified.

4.3.1 Right to property

All persons have the right to own property and a person must not be arbitrarily deprived of the person's property.¹⁵ The declaration impacts on a person's right to property because it restricts how the holder of effort units can use those effort units, effectively preventing fishing from occurring once the effort cap for a region has been reached.¹⁶

According to the human rights certificate, the purpose of the limitation is to:

... implement harvest strategies for these commercial fisheries, which have been developed in collaboration with key stakeholders to achieve ecological, economic and/or social objectives for these fisheries. It recognises that natural resources are limited and must be managed, which is a relevant consideration in modern society. The limitations on this right are, therefore, consistent with a free and democratic society based on human dignity, equality and freedom.¹⁷

4.3.2 Cultural rights

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.¹⁸ The declaration may impact 'the availability of fishery resources to traditional owners directly if they are involved in commercial fishing or indirectly because restrictions on commercial fishing will impact on cultural fishing for the same fish stocks.'¹⁹

According to the human rights certificate, 'Aboriginal peoples and Torres Strait Islander peoples will still be able to maintain their distinctive relationship with waters and coastal seas under Aboriginal tradition or Island custom through traditional fishing methods.'²⁰ Further:

... preserving Queensland's fisheries resources from potential overfishing helps to protect Aboriginal people's and Torres Strait Islander people's traditional cultural rights and connection to these waters and is consistent with their right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.²¹

4.3.3 Human rights certificate

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

¹⁵ HRA, s 24.

¹⁶ SL No. 162, human rights certificate, p 2.

¹⁷ SL No. 162, human rights certificate, p 3.

¹⁸ HRA, s 28.

¹⁹ SL No. 162, human rights certificate, p 2.

²⁰ SL No. 162, human rights certificate, p 4.

²¹ SL No. 162, human rights certificate, p 4.

5 Economic Development (Southport PDA) Amendment Regulation 2021 - SL No. 163

5.1 Overview

The regulation amends the Economic Development Regulation 2013 to update the Southport regulatory map to reflect the inclusion of an additional 3.5 hectares in the Priority Development Area (PDA).²² According to the explanatory notes:

Since declaration of the Southport PDA on 4 October 2013, the Gold Coast City Council (the council) has undertaken improvement works to the Broadwater Parklands. Stage 3 of the Southport Broadwater Parklands Master Plan was delivered by the council in 2015–2016 and included the creation of an additional 3.5 hectares of public parkland through reclamation of land from the Broadwater. The reclaimed land was located outside the gazetted Southport PDA boundary.²³

The regulation will have the effect of including this extent of reclaimed land in the PDA. The land is currently used as public parkland and the inclusion of this land in the PDA will not result in any change to its current land use.²⁴

Section 40F of the *Economic Development Act 2012* (ED Act) provides that a regulation may amend a declaration regulation made under section 34 or 37 of the ED Act to include additional land (a minor boundary change) to the PDA declared under the declaration regulation. According to the explanatory notes, the proposed amendment to the boundary is determined to be minor and promotes the proper orderly planning, development and management of the additional land to be included in the PDA.²⁵

5.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

5.2.1 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Compatibility with human rights

5.3.1 Freedom of expression

Every person has the right to hold and express an opinion without interference, and to seek, receive and impart information and ideas of all kinds.²⁶

As a result of the regulation an additional 3.5 hectares of land will be added to the Southport PDA which means the Southport PDA development scheme will apply to that land. This may limit a person's freedom of expression, in that the manner in which a person may make a submission on development applications regarding that land will be regulated by the ED Act.²⁷ Further, under the ED Act, making a submission during public notification of a development application does not afford the submitter the right to appeal the decision on the development application.²⁸

The purpose of the limitation, according to the human rights certificate, is to align the boundary of land that was reclaimed after the PDA was declared to allow for a streamlined land use planning and development assessment framework to apply to the entire area of land under the PDA. A further purpose is to facilitate broader economic development and development for community purposes.²⁹

²² SL No. 163, explanatory notes, p 1; SL No. 163, s 3.

²³ SL No. 163, explanatory notes, p 1.

²⁴ SL No. 163, human rights certificate, p 1.

²⁵ SL No. 163, explanatory notes, p 2.

²⁶ HRA, s 21.

²⁷ SL No. 163, human rights certificate, p 3.

²⁸ SL No. 163, human rights certificate, p 2.

²⁹ SL No. 163, human rights certificate, p 3.

In assessing the balance between the purpose of the limitation and the human right, the human rights certificate concludes:

Given that the extent of land to be included in the PDA will continue to be used as public parkland and zoned as such, it is considered reasonable and justifiable to limit the right of an individual member of the public to be able to appeal a development assessment decision.³⁰

5.3.2 Right to a fair hearing

A party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.³¹

SL No. 163 may limit this right, in that a person who makes a submission on a development application under the PDA does not have the right to appeal the decision on the development application.³²

According to the human rights certificate, this limitation 'is necessary to promote efficient development in the PDA'.³³ Further:

The amendment to the PDA boundary only seeks to include 3.5 hectares of reclaimed land in the PDA. Given its location immediately adjoining the PDA's open space precinct and the consistency of the precinct with the current use of the land, it is considered that the inclusion of this land in the PDA promotes the proper and orderly planning, development, and management of the land.³⁴

In assessing the balance between the purpose of the limitation and the human right, the human rights certificate concludes:

Given the benefits of including this additional land in the PDA and that there will be no significant change in land use as a result, impacts to landholders who may be limited in their exercise to appeal a decision on a development application are considered reasonable. Decisions may still be subject to right to information and judicial review proceedings.³⁵

5.3.3 Human rights certificate

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.

The committee considered a number of potential limitations resulting from the subordinate legislation, including the right to property, and cultural rights. In each of the cases, the committee was satisfied that limitations were reasonable and demonstrably justified.

³⁰ SL No. 163, human rights certificate, p 3.

³¹ HRA, s 31.

³² SL No. 163, human rights certificate, p 3.

³³ SL No. 163, human rights certificate, p 4.

³⁴ SL No. 163, human rights certificate, p 4.

³⁵ SL No. 163, human rights certificate, p 5.

6 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

March 2022

State Development and Regional Industries Committee

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