

**Subordinate legislation
tabled 30 November 2016 – 14 February 2017**

Report No. 34, 55th Parliament
Agriculture and Environment Committee
May 2017

Agriculture and Environment Committee

Chair	Mr Joe Kelly MP, Member for Greenslopes
Deputy Chair	Mr Pat Weir MP, Member for Condamine
Members	Mrs Julieanne Gilbert MP, Member for Mackay Mr Robbie Katter MP, Member for Mount Isa Mr Jim Madden MP, Member for Ipswich West Mr Lachlan Millar MP, Member for Gregory
Committee Staff	Mr Rob Hansen, Committee Secretary Ms Scarlett Stephan, Assistant Committee Secretary Ms Alana Darling Acting Committee Support Officer
Technical Scrutiny Secretariat	Ms Renee Easten, Research Director Mr Michael Gorringer, Principal Research Officer Ms Lorraine Bowden, Committee Support Officer
Contact details	Agriculture and Environment Committee Parliament House George Street Brisbane Qld 4000
Telephone	07 3553 6662
Fax	07 3553 6699
Email	aec@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/aec

1 Introduction

1.1 Role of the committee

The Agriculture and Environment Committee is a portfolio committee established by the Legislative Assembly on 27 March 2015 under the *Parliament of Queensland Act 2001*.¹ It consists of government and non-government members. The committee's primary areas of responsibility are: agriculture, fisheries and rural economic development; environment and heritage protection; and national parks and the Great Barrier Reef.²

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation
- b) the application of fundamental legislative principles to the legislation, and
- c) for subordinate legislation – its lawfulness.

1.2 Aim of this report

This report advises of portfolio subordinate legislation (SL) that the committee has examined.

2 Subordinate legislation considered

The table below lists the subordinate legislation considered and the deadline for Members to give notice in the House of a disallowance motion under Standing Order 59³ in respect of any of the legislation.

SL No	Subordinate Legislation	Tabled On	Disallowance Date
235	Forestry and Nature Conservation Legislation (Beerwah and Mooloolah River) Amendment Regulation 2016	14/02/2017	25/05/2017
238	Fisheries (East Coast Trawl) (Scallops) Amendment Management Plan 2016		
242	Nature Conservation (Protected Areas) (Nature Refuges) Amendment Regulation 2016		
243	Nature Conservation (Protected Areas) (Wuthathi) Amendment Regulation 2016		
246	Nature Conservation (Macropod Harvest Period 2017) Notice 2016		
003	Environmental Protection Amendment Regulation (No. 1) 2017		

3 Findings and recommendations

The committee brings the following issues to the attention of the House.

3.1 SL 235 Forestry and Nature Conservation Legislation (Beerwah and Mooloolah River) Amendment Regulation 2016

On 2 November 2016, the Legislative Assembly agreed to a resolution that requests the Governor in Council to:

- revoke by regulation the dedication of parts of a State Forest, and
- dedicate by regulation the revoked areas of the aforementioned State Forest as a national park, under section 30 of the *Nature Conservation Act 1992*.

¹ Section 88 *Parliament of Queensland Act 2001* and Standing Order 194.

² Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

³ Section 50 of the *Statutory Instruments Act 1992* provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a Member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

In accordance with the resolution of the Legislative Assembly, the objective of the Forestry and Nature Conservation Legislation (Beerwah and Mooloolah River) Amendment Regulation 2016 is to revoke parts of Beerwah State Forest to allow the areas to be dedicated as Mooloolah River National Park.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.2 SL 238 Fisheries (East Coast Trawl) (Scallops) Amendment Management Plan 2016

The objective of the Fisheries (East Coast Trawl) (Scallops) Amendment Management Plan 2016 (the Management Plan 2016) is to implement sustainability measures that provide for the recovery of the stocks of scallops and to restore fishery levels for the long term. These measures include permanently closing the scallop replenishment areas prescribed in the Fisheries (East Coast Trawl) Management Plan 2010 (the Management Plan 2010) and implementing a winter spawning closure for scallops from 1 May to 31 October each year for the whole of the East Coast Trawl Fishery waters during which the taking and possession of saucer scallops will be prohibited.

Saucer scallops are found in Queensland waters from Noosa to Rockhampton, with approximately 140 trawl operators harvesting scallops. The catch rate from January 2015 to April 2016 was the lowest in the recorded history of the fishery. In consultation with industry, the Department of Agriculture and Fisheries has determined that the failure to take appropriate action in response to the findings of the latest assessment report would jeopardise the sustainability of the scallop fishery.

The Management Plan 2016 makes changes to the Management Plan 2010 including:

- amending section 21 to prohibit the possession or use of a trawl net and remove prescribed periods for Scallop Replenishment Areas (SRAs)
- amending section 10 to provide that a person must not in the regulated period take or possess saucer scallops in the east coast trawl fishery waters, and
- amending sections 40(b), 116(5)(b), 117, 128(2) and 129 to permit the use of nets (that meet the prescribed requirements for primarily taking scallops) during the winter closure to take Moreton Bay bugs.

Potential FLP issue

The amendments to sections 10 and 21 will prevent licence holders from harvesting scallops in certain areas and therefore will affect their commercial harvesting businesses. This potentially breaches section 4(2)(a) of the *Legislative Standards Act 1992* which provides that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes (at page 4) acknowledge the effect the amendments will have and provide the following justification:

...prohibiting the activities is justified because the right of a licence holder to take and possess scallops in the regulated waters needs to be balanced with the need to manage and sustain the stock of scallops for future generations.

Similarly, the amendment of section 21 and Part 2 of Schedule 1 of the Plan to provide that the Scallop Replenishment regulated waters remain permanently closed is also a potential breach of the principle that legislation should have sufficient regard to the rights and liberties of individuals because it expands prohibition on trawling in the regulated waters to every year. The permanent closure is justified because the right of a licence holder to trawl in the waters needs to be balanced with the need to manage and sustain the stock of scallops for future generations.

Committee comment

The committee note that the catch levels of scallops are continuing to decline, and that the Amendment Management Plan 2016 is designed to implement sustainability measures to provide for the recovery of scallop stocks and restore the viability of the industry for the long term. However, the committee notes

that fishing is not the only cause of declining scallop takes, and that catchment water quality and the general health of the reef ecosystem are also key factors. The committee recommends that the Department undertake a survey of scallop numbers in conjunction with the industry, both inside and outside the protected zone. This would provide some up to date data on both protected and commercial zones.

In light of the justification provided, and the intention of the Amendment Management Plan 2016, the committee is satisfied that sufficient regard to the rights and liberties of individuals has been provided in this instance.

The Amendment Management Plan raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.3 SL 242 Nature Conservation (Protected Areas) (Nature Refuges) Amendment Regulation 2016

The Nature Conservation (Protected Areas) (Nature Refuges) Amendment Regulation 2016 (the Regulation) amends Schedule 5 of the Nature Conservation (Protected Areas) Regulation 1994 to declare five new nature refuges, amend eleven existing nature refuges and revoke four existing nature refuges.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.4 SL 243 Nature Conservation (Protected Areas) (Wuthathi) Amendment Regulation 2016

Section 42AA of the *Nature Conservation Act 1992* provides for the dedication of Cape York Peninsula national park as national park (Cape York Peninsula Aboriginal land). Section 42AC of the *Nature Conservation Act 1992* provides for the dedication of other land as national park (Cape York Peninsula Aboriginal land).

The objective of the Nature Conservation (Protected Areas) (Wuthathi) Amendment Regulation 2016 (the Regulation) is to dedicate an area of unallocated State land and two existing national parks, as national park (Cape York Peninsula Aboriginal land) tenure.

To achieve this, it amends the Nature Conservation (Protected Areas) Regulation 1994 -

- Sched.2 – to revoke two existing national parks entirely, and
- Sched 4 - to dedicate three new national parks (Cape York Peninsula Aboriginal land).

According to the Explanatory Notes, the Aboriginal people particularly concerned with the land, the Wuthathi Aboriginal Corporation, the Cape York Land Council Aboriginal Corporation, the Balkanu Cape York Development Corporation and the Cook Shire Council were consulted in relation to creation of the protected areas. All parties agreed to the proposed actions.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.5 SL 246 Nature Conservation (Macropod Harvest Period 2017) Notice 2016

Policy objectives

Section 10(1) of the Nature Conservation (Macropod) Conservation Plan 2005 (the Plan) provides that the Minister, by written notice (a harvest period notice), may declare a harvest period for macropods.

The objective of the harvest period notice is to regulate the commercial and recreational harvest of macropods in a manner that ensures sustainable harvest levels are maintained. The three species of macropods to be harvested are the eastern grey kangaroo (*Macropus giganteus*), the red kangaroo (*Macropus rufus*) and the common wallaroo (*Macropus robustus*).

To achieve its objective, the harvest period notice will:

- Declare a harvest period (1 January-31 December 2017) for harvest macropods

- Allow the lawful harvesting of the three species of macropods
- Define particular areas where harvesting of macropods can occur
- Define the maximum amount of macropods harvested from a particular area.

Consultation has occurred with the Department of Environment and Heritage Protection's Macropod Management Unit in relation to the provisions contained in the harvest period notice. There has been no wider consultation given that requirements imposed on stakeholders by the 2017 harvest period notice will not differ from those imposed by the 2016 harvest period notice.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.6 SL 003 Environmental Protection Amendment Regulation (No. 1) 2017

The objective of the Amendment Regulation is to amend the Environmental Protection Regulation 2008 to approve a guideline [Issuing 'chain of responsibility' environmental protection orders under Chapter 7, Part 5, Division 2 of the Environmental Protection Act 1994](#), made by the chief executive on 22 December 2016 and published on the department's website.

The statutory guideline, was recommended by the committee in its report on the Environmental Protection (Chain of Responsibility) Amendment Bill 2016.⁴ The guideline clarifies who (as a 'related person' for an entity) the department may issue an environmental protection notice to ensure that unfinished rehabilitation of spent mine sites is completed:

Recommendation 4

The committee recommends that the Bill be amended to require the Minister to table in Parliament a statutory guideline that will stipulate the manner in which the Department of Environment and Heritage Protection as the administering authority will administer the provisions contained in clause 7 section 363AB, including the department's consideration of the factors listed at subsection 363AB(4) for determining a person's 'relevant connection' to a company.

The [Queensland Government's response](#) to the report, tabled on 21 April 2016 by Minister Miles during the Second Reading Debate for the Bill, advised:

The government supports this recommendation and will amend the Bill to provide that the administering authority must have regard to any criteria stated in a guideline made by the chief executive in deciding who is a 'related person' to which an environmental protection order should be issued.

The proposed guideline will also address other aspects of the new provisions, including decisions about which of the related persons of a company an environmental protection order should be issued to.

According to the Explanatory Notes, extensive consultation was undertaken in the development of the statutory guideline. This consultation included publication of a draft guideline for comment, and the formation of a working group to guide its development. The working group included representatives of key stakeholder groups including the Queensland Law Society, Queensland Resources Council, Australian Bankers' Association, Environmental Defenders Office, Chamber of Commerce and Industry Queensland, Queensland Environmental Law Association, Australian Institute of Company Directors and Australian Petroleum Production and Exploration Association.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

⁴ [Agriculture and Environment Committee, 2016, Report No.16, 55th Parliament: Environmental Protection \(Chain of Responsibility\) Amendment Bill 2016, April.](#)

Recommendation 1

The committee recommends that the Legislative Assembly notes the contents of this report.

Recommendation 2

In relation to SL 238 Fisheries (East Coast Trawl) (Scallops) Amendment Management Plan 2016

The committee recommends that the Department of Agriculture and Fisheries undertake a survey of scallop numbers in conjunction with the industry, both inside and outside the protected zone.

Minister responsible: Minister for Agriculture and Fisheries and Minister for Rural Economic Development

A handwritten signature in black ink, appearing to read 'Joe Kelly', is positioned above the printed name.

Joe Kelly MP
Chair

May 2017