

State Development, Natural Resources and Agricultural Industry Development Committee

Report No. 35, 56th Parliament

Subordinate legislation tabled between 1 May and 14 May 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 1 May and 14 May 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
66	Proclamation made under the <i>Economic Development and Other Legislation Amendment Act 2019</i>	14 May 2019	18 September 2019
67	Planning and Environment Court (Mediation) Amendment Rule 2019	14 May 2019	18 September 2019
68	Aboriginal Land (Girramay and Wulli Wulli) Amendment Regulation 2019	14 May 2019	18 September 2019
69	Coal Mining Safety and Health (Requirements for Particular Records) Amendment Regulation 2019	14 May 2019	18 September 2019
70	Proclamation made under the <i>Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019</i>	14 May 2019	18 September 2019
71	Fisheries (Sustainable Fisheries Strategy) Amendment Regulation 2019	14 May 2019	18 September 2019

3 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*.

4 Proclamation made under the Economic Development and Other Legislation Amendment Act 2019

The objective of the Proclamation is to commence Part 14, divisions 3 and Schedule 1, part 2, amendment of the *Dispute Resolution Centres Act 1990* of the *Economic Development and Other Legislation Amendment Act 2019* (the Act) on 13 May 2019.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

5 Planning and Environment Court (Mediation) Amendment Rule 2019

The amendment rule is a consequential amendment to provisions in the *Economic Development and Other Legislation Amendment Act 2019* which provide for the Planning and Environment Court to refer matters to a private mediator.

The objective is to provide for actions that can be undertaken by a mediator in the alternative dispute resolution process. These include convening a without prejudice conference and convening and chairing a mediation for a Planning and Environment Court proceeding if directed by that Court.

The amendment rule also provides for experts to attend a mediation.

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

6 Aboriginal Land (Girramay and Wulli Wulli) Amendment Regulation 2019

The objective is to amend the *Aboriginal Land Regulation 2011* to declare two areas of available State land as transferable land.

In each case, the parcels proposed for declaration are outcomes of an Indigenous Land Use Agreement registered with the National Native Title Tribunal.

The declaration of the available State land as transferable land will allow for the eventual grant of inalienable freehold title to Aboriginal people under the *Aboriginal Land Act 1991*.

Girramay Unallocated State Land

The parcels proposed for regulation are outcomes of an Indigenous Land Use Agreement registered with the National Native Title Tribunal on 8 January 2019, to which the State is a party.

The parcels, described as Lots 3 and 4 on C10412 are located in Ellerbeck, approximately 4 kilometres west of Cardwell and have a total area of 8.094 hectares.¹

Wulli Wulli Unallocated State Land

The parcels proposed for regulation are outcomes of an Indigenous Land Use Agreement registered with the National Native Title Tribunal on 18 May 2018, to which the State is a party.

The parcels, described as Lots 279 and 542 on SP295927 are located in Theodore, approximately 222 kilometres south of Rockhampton, and have a total area of 20.649 hectares.²

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

¹ Aboriginal Land (Girramay and Wulli Wulli) Amendment Regulation 2019, explanatory notes, p 1.

² Aboriginal Land (Girramay and Wulli Wulli) Amendment Regulation 2019, explanatory notes, p 2.

7 Coal Mining Safety and Health (Requirements for Particular Records) Amendment Regulation 2019

The objective is to permit the disclosure of medical record contents for the purpose of an audit under the *Auditor-General Act 2009* (the Auditor-General Act).

The *Coal Mining Safety and Health Regulation 2017* establishes the coal mine workers' health scheme, providing for the health assessment and health surveillance of persons who are, will be or have been coal mine workers. This includes health surveillance of current and former coal mine workers to monitor their potential risk of developing occupational lung diseases such as coal workers' pneumoconiosis.³

Coal mine worker's medical records are collected and held in accordance with requirements in the regulation. Under section 52 of the *Coal Mining Safety and Health Regulation 2017*, the chief executive may disclose the contents of a medical record. Following an amendment to section 52 in 2018, this includes disclosure to:

- another person with the consent of the coal mine worker
- a person to the extent the disclosure is necessary to enable the person to carry out all or part of an assessment or a review under *sections 48 or 48A* of the regulation
- an appropriately qualified person for approved research.

Clause 3 amends section 52 to allow disclosure to:

(d) an authorised auditor, within the meaning of the *Auditor-General Act 2009*, if requested by the authorised auditor under section 47(1) of that Act.

Fundamental legislative principle issues

7.1 Section 4(2)(a) *Legislative Standards Act 1992* – Whether legislation has sufficient regard to the rights and liberties of individuals – right to privacy

Right to privacy

This proposed amendment raises issues of fundamental legislative principle regarding the individual's right to privacy and confidentiality of personal information.

The explanatory notes do not specifically address this issue of fundamental legislative principle but do provide this background to the amendment, including safeguards regarding privacy of the records:

... disclosure to the Queensland Audit Office (QAO) for audit purposes ... is necessary to ensure the ongoing effective operation of the coal mine workers' health scheme in managing the risk and occurrence of mine dust lung disease.

An amendment to the CMSH Regulation is required to permit the disclosure of medical record contents to an authorised auditor if it is reasonably necessary for the purposes of an audit conducted under the Auditor-General Act. Existing confidentiality provisions under section 53 of the Auditor-General Act will provide adequate protection for the contents of medical records obtained for an audit.⁴

Committee Comment

Given the objectives of the *Coal Mining Safety and Health Act 1999*, the coal mine workers' health scheme and that this regulation will assist in determining how effective current measures are in managing the risk and occurrence of mine dust lung disease, the committee is satisfied that issues relating to personal privacy and confidentiality are justified.

³ Explanatory notes, p 1.

⁴ Explanatory notes, p 1.

8 Proclamation made under the Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019

The objective is to fix a commencement date of 28 May 2019 for the uncommenced provisions of the *Fisheries (Sustainable Fisheries Strategy) Amendment Act 2019* (the Amendment Act) which received royal assent on 7 March 2019. The provisions will establish the necessary powers, functions and tools for more sustainable fisheries management.

The commencement of these amendments was delayed to facilitate preparation of a package of complementary amendments to subordinate legislation under the *Fisheries Act 1994* because some provisions of the Amendment Act required support in fisheries subordinate legislation.⁵

The Proclamation will fix the day of commencement of all those provisions of the Amendment Act which are not yet in force on 28 May 2019. Specifically, it will commence:

- part 2, division 3;
- part 3, division 1;
- section 71(2); and
- schedule 1.

Part 2, division 3 of the Amendment Act, amends the particular purposes of the *Fisheries Act 1994* (Fisheries Act) and how it will recognise of the interests of key stakeholder groups. These amendments also clarify the roles of the Minister responsible for fisheries and the Chief Executive, particularly with regard to development and implementation of harvest strategies; resource allocation; and strengthened enforcement powers to address serious fisheries offences such as trafficking.

Part 3, division 1 amends the *Public Interest Disclosure Act 2010* to reflect changed offences under sections 90 and 92 of the Fisheries Act.

Part 3, division 2 amends the *Transport Operations (Marine Safety) Act 1994* to reflect the changed definition of “relevant information” in section 217A of the Fisheries Act.

Schedule 1 makes minor and consequential amendments to the Fisheries Act, principally to omit references to “management plans” and make other amendments to definitions.

The Proclamation will fix the day of commencement of the relevant provisions of the Amendment Act on a date that coincides with the commencement of significant changes to fisheries subordinate legislation to complement the Amendment Act - amendments to the *Fisheries Regulation 2008*; repeal of the *Fisheries (East Coast Trawl) Management Plan 2010*; *Fisheries (Commercial Trawl Fishery—Fin Fish) Quota Declaration 2015*; *Fisheries (Coral Reef Fin Fish) Quota Declaration 2015*; and *Fisheries (Spanner Crab Fishery) Quota Declaration 2015*; and the making of the *Fisheries Declaration 2019* and *Fisheries Quota Declaration 2019*.⁶

Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

9 Fisheries (Sustainable Fisheries Strategy) Amendment Regulation 2019

The policy objectives are primarily to amend the Fisheries Regulation to:

- remove references to management plans in the Regulation and to consolidate relevant provisions of the *Fisheries (East Coast Trawl) Management Plan 2010* (the Trawl Plan) into the Fisheries Regulation. This is necessary as the Amendment Act omits provisions for making

⁵ Explanatory notes, p 2.

⁶ Explanatory notes, p 2.

management plans. It is also consistent with the Queensland Government's commitment under the strategy to 'reduce the volume of fisheries regulation'.

- support the implementation of the strategy by prescribing matters provided for in the Amendment Act including:
 - types of quota authorities
 - vessel tracking installation and use requirements
 - commercial quantities of commercial fish for the new trafficking offence, and
 - the release of some species of non-indigenous fisheries resources into particular Queensland waters.
- omit provisions of the Fisheries Regulation that could be prescribed in a fisheries declaration or quota declaration made by the Chief Executive so they can be more easily amended as required under a harvest strategy
- adopt new terminology introduced by the Amendment Act and adjust any relevant references.⁷

The amendment regulation also amends the State Penalties Enforcement Regulation 2014 to provide for timely and effective enforcement of new offences relating to vessel tracking and the new shark control exclusion zone by providing for the imposition of an immediate fine.

The amendment regulation also effects amendments to other subordinate legislation to reflect new terminology introduced by the Amendment Act and to update relevant references in other Queensland subordinate legislation.

The explanatory notes sets out details of the amendments as follows:

Fisheries Regulation 2008

The subordinate legislation achieves the objectives by:

- repealing the Trawl Plan and incorporating relevant provisions from the Trawl Plan into the Fisheries Regulation;
- omitting fisheries declarations prescribed in the Fisheries Regulation, as these will now be prescribed in a separate fisheries declaration instrument to be made by the Chief Executive;
- updating section references that have altered as a result of the Amendment Act including, for example, 'section 119' to 'section 125A' of the Fisheries Act in the definition of 'fish habitat area code of practice' in section 621(4) of the Fisheries Regulation;
- clarifying, for section 77A of the Fisheries Act, inserted by the Amendment Act, the meaning of when a regulated fishing apparatus is 'stowed and secured' on a boat in a way it will not contravene a regulated fishing apparatus declaration;
- replacing provisions and headings in chapter 5 and chapter 11 that relate to quota authorities including quota entitlements; amending provisions that prescribe the nature and entitlement of Spanish Mackerel (SM) units, line units, Individual Transferable Quota (ITQ) units, and Trawl fishery (fin fish) (T4) ITQ units to replace 'quota' with 'quota entitlement' to reflect the new terminology;
- replacing section 625, which prescribes serious fisheries offences, so that it includes a range of offences being included in the Fisheries Act by the Amendment Act;

⁷ Explanatory notes, p 2.

- inserting new Chapter 13, Part 1B, to provide for vessel tracking requirements and omitting existing sections that relate to Vessel Monitor System (VMS) requirements as they are now redundant;
- inserting new Chapter 13, Part 1B, to provide for vessel tracking requirements and omitting existing sections that relate to Vessel Monitor System (VMS) requirements as they are now redundant;
- inserting new chapter 13, part 2A, to prescribe the commercial quantities of priority fish in schedule 4 for the purposes of the new trafficking of commercial fish offence;
- replacing chapter 15, part 2, to update the provisions that prescribe entities that the Chief Executive may delegate the Chief Executive's functions under section 21 of the Fisheries Act, as amended by the Amendment Act;
- amending section 711 and schedule 9 to restructure the provisions in accordance with contemporary drafting styles;
- omitting redundant definitions and inserting new definitions consistent with the Fisheries Act, as amended by the Amendment Act; and
- correcting typographical errors.⁸

State Penalties Enforcement Regulation 2014

The subordinate legislation prescribes the following new offences in the Fisheries Act, as amended by the Amendment Act, as infringement notice offences under the State Penalties Enforcement Act 1999:

- section 31(1) which provides that a person must not, without reasonable excuse, be in the exclusion zone for a shark control apparatus;
- section 80(2) which provides that the holder, or another person acting under an authority, must ensure that each relevant boat used under the authority has approved vessel tracking equipment installed, and that the equipment is working properly in the prescribed way and during the prescribed periods; and
- section 80(3) which provides that a person must not interfere with the operation of the approved vessel tracking equipment installed on a relevant boat.⁹

Fundamental legislative principle issues

9.1 Section 4(3)(d) *Legislative Standards Act 1992* – Whether legislation reverses the onus of proof in criminal proceedings without adequate justification

Clause 23 creates new offences. It also inserts:

- section 392BU(3) providing that detection by vessel tracking equipment or manual reporting of a boat identified in a trawl fishery 'T1' or 'T2' licence at any time during a day in a prescribed area is evidence that the licence holder has used the boat for a whole fishing or steaming day and will result in a deduction of effort units.
- Section 392BV providing for a deduction of effort units if there has not been any detection by vessel tracking equipment or manual reporting of a boat identified in a 'T1' or 'T2' licence at any time during a day as required by section 80 of the Act.

Each of new section 392BU(3) and 392BV(3) provide that the deduction of effort units will not apply if the licence holder satisfies the chief executive the boat was not used on the relevant day.

⁸ Explanatory notes, pp 2-3.

⁹ Explanatory notes, p 3.

Here, the licence holder would bear the onus of proof of showing that the boat was not used on the relevant day.

This involves a breach of the fundamental legislative principle that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.¹⁰

The explanatory notes state:

*The reversal of the onus of proof is justified because the offences involve matters which would be within the defendant's knowledge and/or on which evidence would be available to them.*¹¹

Committee Comment

The committee notes that since 1999, the Queensland East Coast Trawl Fishery has been managed under a quota based management system that limits the total number of nights which can be fished. Like other types of quota issued under the Fisheries Act, the number of effort units is limited. The existing effort units are transferable however and are frequently traded by commercial fishers.

Vessel tracking has been required in the trawl fishery for many years (section 392BU Fisheries Regulation) and is used to deduct fishing nights from a licence holder's quota. Facility is also provided to allow a fisher to manually report the location of their vessel if their vessel tracking unit fails.

The Fisheries Regulation (Section 392BV) provides that cases where a vessel tracking unit fails (or is turned off) and the fisher does not manually report their vessel's location, effort units will automatically be deducted from the fishers effort unit holdings. In cases where such a deduction has been made but no fishing has occurred, a fisher can provide evidence that this is the case and the effort units will be credited back to their account.

The committee considers that given the well established quota based management system, the objectives of the *Sustainable Fisheries Strategy 2017-2027*, and the requirement to ensure effective enforcement, there is an adequate justification in this instance on the reversal of the onus of proof.

9.2 Section 4(5) Legislative Standards Act 1992 – Whether legislation has sufficient regard for the institution of Parliament

Clause 41 inserts new section 625G, which provides that the vessel tracking standard prescribes the way that approved vessel tracking equipment is installed.

This raises an issue of fundamental legislative principle as to whether the legislation has sufficient regard to the institution of Parliament by allowing an external document that is not subject to Parliamentary scrutiny to prescribe an approved facility.

A standard for the way vessel tracking equipment must be installed can be an extensive, technical document dealing with various types of equipment which is more suited to a standard published by the department. It would be impractical to include the details of installation of equipment in legislation to the degree required to ensure enforceability.

*It would also be overly burdensome on Parliament's time to consider changes to a vessel tracking standard each time they occur. It is, therefore, more practical and timely for the department to make and amend the vessel tracking standard based on the department's expertise and knowledge.*¹²

Committee Comment

The committee is satisfied with the justification provided in the explanatory notes in regard to Clause 41.

¹⁰ *Legislative Standards Act 1992*, section 4(3)(d).

¹¹ Explanatory notes, p 6.

¹² Explanatory notes, p 6.

Clause 23 – new section 392CD(4)

Chapter 7A, part 7, division 4, subdivision 1 prescribes evidentiary provisions for when a whole fishing or steaming day has been used for a boat under a 'T1' or 'T2' licence if detected by vessel tracking equipment or manually reported at any time in particular fishing areas. Part 7, division 2, subdivision 2, prescribes exceptions to the reduction in fishing or steaming days if particular conditions have been met and the boat has been detected by vessel tracking or manually reported. Section 392CD(4) provides that the chief executive may make guidelines on how to use vessel tracking equipment that ensures it is given and received instantaneously and the chief executive can readily access the information.¹³

This also raises the issue of fundamental legislative principle as to whether the legislation has sufficient regard to the institution of Parliament, by allowing the usage of quota entitlement to be dependent on a guideline that is an external document that is not subject to Parliamentary scrutiny.

The explanatory notes state:

It is not mandatory that the Chief Executive make guidelines, but where a guideline is made it assists others to comply with the vessel tracking notice requirements. This guideline approach is justified because it can facilitate internal and external reviews because the guidelines may be put into evidence to demonstrate how the person complied with the notice requirements.

Further, it would also be overly burdensome on Parliament's time to consider changes to the guidelines each time they occur. It is, therefore, more practical and timely for the Chief Executive to exercise administrative power to make and amend guidelines based on the Chief Executive's expertise and knowledge.¹⁴

Committee Comment

The committee is satisfied with the justification provided in the explanatory notes in regard to Clause 23.

10 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

August 2019

State Development, Natural Resources and Agricultural Industry Development 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

¹³ Explanatory notes, p 6.

¹⁴ Explanatory notes, p 7.