

State Development, Natural Resources and Agricultural Industry
Development Committee

Report No. 41, 56th Parliament

Subordinate legislation tabled between 21 August 2019 and
3 September 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 21 August 2019 and 3 September 2019. 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).

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
157	Rural and Regional Adjustment (Taxi and Limousine Business Support Grants Scheme) Amendment Regulation 2019	3 September 2019	28 November 2019
158	Rural and Regional Adjustment (Farming in Reef Catchments Rebate Scheme) Amendment Regulation 2019	3 September 2019	28 November 2019
159	Water Plan (Burdekin Basin) (Postponement of Expiry) Notice 2019	3 September 2019	28 November 2019
172	Fossicking Regulation 2019	3 September 2019	28 November 2019
173	Proclamation made under the Natural Resources and Other Legislation Amendment Act 2019	3 September 2019	28 November 2019
174	Land Title Amendment Regulation 2019	3 September 2019	28 November 2019
177	Animal Management (Cats and Dogs) Regulation 2019	3 September 2019	28 November 2019
178	Fisheries (Commercial Fisheries) Regulation 2019	3 September 2019	28 November 2019
179	Fisheries (General) Regulation 2019	3 September 2019	28 November 2019
180	Fisheries (General) (Vessel Tracking) Amendment Regulation 2019	3 September 2019	28 November 2019
181	Fisheries Amendment Declaration 2019	3 September 2019	28 November 2019

The committee notes that a disallowance motion in respect to the following three regulations was debated on 15 October 2019, and not agreed to:

- Fisheries (Commercial Fisheries) Regulation 2019, Subordinate Legislation No. 178 of 2019
- Fisheries (General) (Vessel Tracking) Amendment Regulation 2019, Subordinate Legislation No. 180 of 2019
- Fisheries Amendment Declaration 2019, Subordinate Legislation No. 181 of 2019.¹

3 Committee consideration of the subordinate legislation

3.1 Rural and Regional Adjustment (Taxi and Limousine Business Support Grants Scheme) Amendment Regulation 2019 (SL 157)

The objective is to establish the Taxi and Limousine Business Support Grants Scheme (TLBSG scheme) as an 'approved scheme' under the *Rural and Regional Adjustment Act 1994*. The objective of the TLBSG scheme is to provide for assistance to eligible holders of eligible licences to use business improvement services or financial advocacy services for adjusting to changes in the taxi service industry or limousine service industry.

The TLBSG scheme will provide co-contribution grants to taxi and limousine licence holders, with matched funding of up to \$5,000 for individuals and up to \$20,000 for a group of licence holders, to use a business improvement service.² The explanatory notes outline that to be eligible to receive a grant under the TLBSG scheme, an applicant must:

- *hold a current taxi or limousine licence;*
- *have held a taxi or limousine licence immediately before 11 August 2016;*
- *be a Queensland-based personalised transport business;*
- *have not paid in part or in full for business improvement services or financial advocacy services without confirmation that the grant funding is approved;*
- *where applicable, ensured the eligible business improvement services or financial advocacy services will be provided by an eligible service provider; and*
- *have not already received assistance under the Scheme for the eligible licence.*³

Committee comment

The committee is satisfied that this regulation does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes tabled with the amendment regulation comply with part 4 of the LSA.

3.2 Rural and Regional Adjustment (Farming in Reef Catchments Rebate Scheme) Amendment Regulation 2019 (SL 158)

The objective is to establish the Farming in Reef Catchments Rebate Scheme (FRCR scheme) as an approved scheme under the *Rural and Regional Adjustment Act 1994*. The objective of the FRCR scheme is to provide for assistance to primary producers for primary production enterprises in eligible areas to obtain eligible professional advice from an approved agricultural adviser.

The FRCR scheme will provide rebates of up to \$1,000 to support eligible primary producers to meet minimum practice standards for improved water quality in the Great Barrier Reef catchment.

¹ Queensland Parliament, Record of proceedings, 15 October 2019, p 3175.

² Explanatory notes, p 2.

³ Explanatory notes, p 2.

Eligible applicants under the scheme include beef, sugar cane and banana primary producers within the Great Barrier Reef catchment. The regions included in the Great Barrier Reef catchment are the Burdekin, Wet Tropics, Burnett Mary, Mackay/Whitsundays, Fitzroy and Cape York regions as shown on the map titled 'Great Barrier Reef catchment and river basins' which can be obtained from the Department of Environment and Science.⁴

Committee comment

The committee is satisfied that this regulation does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes tabled with the amendment regulation comply with part 4 of the LSA.

3.3 Water Plan (Burdekin Basin) (Postponement of Expiry) Notice 2019 (SL 159)

The objective is to postpone the expiry of the Water Plan (Burdekin Basin) 2007.

The explanatory notes provide:

The Water Plan (Burdekin Basin) 2007 continues to be appropriate for the plan area and the water plan outcomes in general, are being achieved. Postponing the expiry of the water plan until 1 September 2023 will ensure that sustainable water management arrangements remain in place for Burdekin water users, including the Burdekin Haughton Water Supply Scheme and Bowen Broken Water Supply Scheme. It will also allow the Department of Natural Resources, Mines and Energy to undertake additional assessment of plan outcomes and where appropriate, address issues prior to the plan's expiry in 1 September 2023.⁵

The explanatory notes state:

The community in areas affected by the amendment plan have been consulted throughout all stages of the amendment process via:

- *the Upper Burdekin Basin Water Consultation Group;*
- *public information sessions;*
- *meetings with key stakeholder groups including the local government;*
- *public submissions on the draft amendment plan; and*
- *discussions with individuals about issues raised during public information sessions or in submissions.⁶*

Committee comment

The committee is satisfied that the Water Amendment Plan (Burdekin Basin) 2019 does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.4 Fossicking Regulation 2019 (SL 172)

Section 54 of the *Statutory Instruments Act 1992* (Statutory Instruments Act) provides that subordinate legislation expires 10 years after its making, unless a regulation is made exempting it from expiry. The Fossicking Regulation 2009 came into effect in 2009 and was due to expire on 1 September 2019.

The explanatory notes state:

The Regulation is made in substantially similar form to the Fossicking Regulation 2009, except where amendments have been made to correct errors, update reference standards, update

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 1.

⁶ SL 120, explanatory notes, p 3.

*wording based on current drafting style or incorporate changes as a result of the review and consultation processes.*⁷

The Fossicking Regulation 2019 also includes consequential amendments to the Mineral Resources Regulation 2013 and the State Penalties Enforcement Regulation 2014. These amendments give effect to recent amendments to the *Mineral Resources Act 1989* and update the *State Penalties Enforcement Regulation 2014* to reflect the change in numbering to sections that are prescribed penalty infringement notice provisions.

Committee comment

The committee is satisfied that this regulation does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.5 Proclamation made under the Natural Resources and Other Legislation Amendment Act 2019 (SL 173)

The objective is to fix a commencement date of 30 September 2019 for certain provisions of the *Natural Resources and Other Legislation Amendment Act 2019*.

Committee comment

The committee is satisfied that this regulation does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.6 Land Title Amendment Regulation 2019 (SL 174)

The objective of the amendment regulation is to relax the current requirement for heavier density paper for survey plans.

The explanatory notes provide:

Survey plans are currently required to be prepared on A3 size paper sheets of a density of no less than 130 grams per square metre rather than regular office-use bond paper of 80 grams per square metre in density. This is due largely to the historical desire for the paper to be robust enough to withstand multiple hand drawn changes and corrections by surveyors. Such practices have been superseded by computer aided drafting software and there is no longer a need to use the heavier density paper for producing survey plans.

...

*Relaxing the current requirement for survey plans to be prepared on paper of a density of no less than 80 grams per square metre rather than the heavier 130 grams per square metre creates consistency with the paper density requirements for other forms lodged in the titles registry and will support high speed scanning of survey plans that may in the future be lodged electronically as image files.*⁸

Committee comment

The committee is satisfied that this regulation does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.7 Animal Management (Cats and Dogs) Regulation 2019 (SL 177)

The explanatory notes state that the policy objective of the Animal Management (Cats and Dogs) Regulation 2019 (the new Regulation) is to ensure that adequate controls are in place for the management of cats and dogs in Queensland by prescribing matters that assist in the effective administration of, and help achieve the purposes of, the *Animal Management (Cats and Dogs) Act 2008* (the Act).

⁷ Explanatory notes, p 2.

⁸ Explanatory notes, pp 1-2.

The Act provides for the identification of cats and dogs, registration of dogs, and the effective management of regulated dogs; to promote responsible ownership of cats and dogs; and promote the responsible breeding of dogs in Queensland.

The new Regulation will replace the Animal Management (Cats and Dogs) Regulation 2009 (the expired Regulation) which was due to expire on 1 September 2019 under the automatic expiry provisions in part 7 of the Statutory Instruments Act. The explanatory notes point out:

There are, however, several minor differences between the new Regulation and the expired Regulation. Changes have been made to modernise requirements and make them more consistent with other jurisdictions; implement controls for local governments to manage dogs which pose a risk to the community; and ensure that cats and dogs that have become lost can be reunited with their owners as quickly and efficiently as possible. These changes relate to identifying tags, enclosures and signs for regulated dogs, which includes declared dangerous dogs, declared menacing dogs and restricted dogs.

Fundamental legislative principle

The committee considered the following potential breaches of FLP.

Legislation should have sufficient regard to rights and liberties of individuals⁹

Privacy

Part 7 contains provisions concerning information to be contained in registers about regulated dogs maintained by local governments and exchanged between the chief executive officers of local government and the Chief Executive.

This may be seen to be a breach of the FLP that legislation should have sufficient regard to rights and liberties of individuals, in that it involves a breach of an individual's right to privacy.

The explanatory notes give this justification:

... the privacy of individuals is protected to the extent that access to registers kept by the Chief Executive is restricted to persons who are performing functions under the Act or persons who need the information in the register about a specific dog for a particular purpose. The exchange of information is justified to ensure effective oversight and appropriate enforcement of requirements for relevant dogs in Queensland.¹⁰

Legislation should not, without sufficient justification, unduly restrict ordinary activity¹¹

Identification devices

Section 4 prescribes the requirements for prescribed permanent identification devices (PPID). Section 6 prescribes the way a dog or cat is to be tattooed to recognise that it has been desexed. In relation to regulated dogs, ss 9 to 12 prescribe requirements for tags, enclosures, signage and information required.

These requirements impose additional obligations and burdens on individuals. This may be seen to be a breach of the FLP that legislation should have sufficient regard to rights and liberties of individuals, including by not, without sufficient justification, unduly restricting ordinary activity.

In relation to PPIDs, the explanatory notes provide the following justification:

The standardisation of PPIDs used to identify cats and dogs in Queensland, although a small impost, can be justified to ensure consistency with other Australian jurisdictions. Standardisation

⁹ Legislative Standards Act 1992, s 4(2)(a).

¹⁰ Explanatory notes, p 3.

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

*of PPIDs will assist Queensland cats and dogs which are lost in other jurisdictions, to be reunified with their owners.*¹²

The explanatory notes state, relevant to the tattooing of desexed cats and dogs:

*The provision also reduces the burden on local government by providing officers with an easy means of visually determining if a cat or dog has been de-sexed. This avoids a cat or dog undergoing unnecessary veterinary examination to determine whether it has been de-sexed.*¹³

In relation to regulated dogs, the explanatory notes state:

*The restrictions on ordinary activity imposed on owners of relevant dogs by the requirements of these sections is justified when considering the potential serious injury that can be inflicted, and the fear these dogs may cause to people and other animals. It is reasonable, on balance, to impose these measures to ensure that relevant dogs are under effective control and to alert the community as to their presence at a property.*¹⁴

Legislation should allow the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act¹⁵

The new Regulation incorporates Australian Standards AS 5018 and AS 5019 as requirements with which a PPID must comply. These standards were also in the expired Regulation, however, the new Regulation incorporates versions of these standards from time to time, rather than the version that is in place on commencement of the new Regulation.

The incorporation of Australian Standards is an example of sub-delegation. Australian Standards are documents made by entities outside of the framework of government and this may be perceived as delegating law-making powers to those entities.

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.¹⁶

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in part 6 of the Statutory Instruments Act.

Where there is, incorporated into the legislative framework of the state, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the Legislative Assembly, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of parliament.

The Australian Standards are not contained in the subordinate legislation in their entirety, and as such their content does not come to the attention of the Legislative Assembly.

The explanatory notes state:

*The incorporation of Australian Standards is common practice in State and Commonwealth legislation. The incorporation of Australian standards in the new Regulation is needed to ensure national consistency for regulated dog signage and the devices used to permanently identify cats and dogs throughout Australia, which helps to ensure that Queensland cats and dogs that become lost interstate are able to be easily returned to their Queensland owners.*¹⁷

¹² Explanatory notes, p 3.

¹³ Explanatory notes, p 4.

¹⁴ Explanatory notes, p 4.

¹⁵ *Legislative Standards Act 1992*, s 4(5)(e).

¹⁶ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 170.

¹⁷ Explanatory notes, p 5.

The explanatory notes further explain the technical nature of the matters contained within the standards:

*...These technical specifications are, in part, not suitable for inclusion in legislation due to their technical and detailed nature. Each Australian Standard included pertains to very specific subject matter, which has a very limited application and subsequent impact on the community.*¹⁸

Committee comment

The committee notes that the Australian Standards are not contained in the subordinate legislation in their entirety, and as such do not come to the attention of the Legislative Assembly. However, given these technical specifications are, in part, not suitable for inclusion in legislation due to their technical and detailed nature, the committee is satisfied with this justification.

The committee considers that given the purpose of the Act there is sufficient justification for the outlined breaches of FLP discussed above.

Explanatory notes

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

3.8 Fisheries (Commercial Fisheries) Regulation 2019 (SL 178)

Together with the Fisheries (General) Regulation 2019 (General Fisheries Regulation), the Fisheries (Commercial Fisheries) Regulation 2019 (Commercial Fisheries Regulation) replaces the expired Fisheries Regulation 2008 (the expired Fisheries Regulation) 'with the aim of delivering a more modern regulatory approach'.¹⁹

The stated overarching objective is to provide for the effective management and utilisation of Queensland's commercial fisheries in accordance with the objectives of the *Fisheries Act 1994*.²⁰

The expired Fisheries Regulation expired on 31 August 2019 under the automatic expiry provisions of the Statutory Instruments Act.

The explanatory notes observe of the expired Fisheries Regulation:

*The management arrangements in the expired Regulation were the result of many years of ad hoc amendments rather than strategic management, leaving it complex, inefficient and not effective in controlling effort and/or catch in most of Queensland's commercial fisheries. It did not support best practice fisheries management or modern regulatory approaches and, therefore, does not meet the needs of the Strategy or the community and would limit the effectiveness of harvest strategies to achieve agreed objectives and targets for Queensland's fisheries resources.*²¹

The explanatory notes outline that the following amendments to commercial fishing rules are implemented in the Commercial Fisheries Regulation:

- *supporting compliance by preventing the use of tender boats if there is no primary vessel nominated against the commercial fishing boat licence;*
- *aligning the quota year for Queensland's quota-managed fisheries by adjusting the Spanner Crab Fishery quota year;*
- *making access to all commercial fisheries through fishery symbols consistent by limiting the issue of C2 fishery symbols;*

¹⁸ Explanatory notes, p 5.

¹⁹ Explanatory notes, p 1.

²⁰ Explanatory notes, p 1.

²¹ Explanatory notes, p 2.

- *clarifying the limited nature entry of commercial fisheries by restricting 'new' fishery symbols from being written on licences;*
- *enhancing the chance of survival for seagrass after taking bloodworms by clarifying how seagrass must be handled;*
- *increasing transparency for legitimate commercial fishing activities conducted from shore by requiring authority details to be displayed adjacent to land-based collection points;*
- *increasing the commercial spanner dilly crab possession limit to 85, and increasing the use of dillies to 50 for single crew vessels and 75 for vessels where there are at least two crew on board to ensure undersized spanner crabs can be appropriately handled; and ...*

The following urgent sustainability action for commercial fishing is to be implemented in the Commercial Fisheries Regulation:

- *prohibiting the use of net apparatus to take snapper.*²²

The committee took a briefing from the Department of Agriculture and Fisheries (DAF) in September 2019 to consider the changes to fisheries regulation in Queensland. The committee were informed:

The second regulation that has been created is the Fisheries (Commercial Fishing) Regulation 2019. That outlines the specific rules for individual fisheries. If you want to learn about the Spanish mackerel fishery you can go to that commercial fishing regulation and it will talk about the fishery area, the symbol that is required, the gear that is required and things like that...

*For the commercial fishery sector, there was a new seasonal closure for snapper and pearl perch, which runs from 15 July to 15 August each year. There is a new total allowable commercial catch limit of 42 tonnes for snapper and 15 tonnes for pearl perch. Currently, there is no limit at all on those species in the commercial sector.*²³

Fundamental legislative principle

The committee considered the following potential breaches of FLP.

Legislation should have sufficient regard to rights and liberties of individuals²⁴

The regulation includes various provisions which will affect a person's right to conduct a fishing business without interference, by imposing limits on what can be carried out under various licences as authorisations and conditions. These impositions could be seen to breach the FLP that legislation have sufficient regard to the rights and liberties of individuals.

The explanatory notes state:

*... the authorisations and conditions imposed on these licences is justified on the basis that they support a sustainable commercial fishing industry.*²⁵

The regulation imposes restrictions on writing fishery symbols on commercial fishing boat licences and commercial harvest fishery licences in certain circumstances. The explanatory notes provide the following justification:

*... the restrictions are justified because they keep the entry to commercial fisheries limited which ensures the value of commercial fishing boat licences and commercial harvest fishery licences is maintained and supports a sustainable commercial fishery industry.*²⁶

²² Explanatory notes, p 3.

²³ Ms Andersen, Department of Agriculture and Fisheries, public briefing transcript, Brisbane, 16 September 2019, pp 2-3.

²⁴ *Legislative Standards Act 1992*, s 4(2)(a).

²⁵ Explanatory notes, p 29.

²⁶ Explanatory notes, p 30.

The regulation also imposes a finite quota for certain fisheries that is distributed unequally amongst licence holders, and once licence holders have used their quota, they are no longer able to carry out the activities authorised under the licence. The explanatory notes provide the following justification:

... this limitation is justified on the basis that without having a quota for the fishery, the species may become overfished and the longevity of the commercial fishery may become jeopardised.²⁷

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification²⁸

Section 74 and 82 provide for a deduction of effort units in certain circumstances, in relation to vessel tracking equipment or manual reporting. Effort units relate to the amount of fishing allowable under certain licences. The committee sought additional information from DAF in regard to the deduction of effort units. Ms Anderson from DAF informed the committee:

The way the trawl fishery is managed at the moment is that they have an allocation of the number of effort units they can expend each year, and that is effectively the number of nights they can fish. Instead of saying you have 50 nights, you get 10,000 effort units. The effort units are related to the size of your vessel. If you have a larger vessel and the hull units are larger, then it takes more effort units to have a night fished. It is about making sure that, when we are managing a fishery based on the amount of effort that is going into fishing, we are doing that based on the power of the vessel and how effective they are at fishing. An effort unit effectively just gets turned into a night that you are allowed to fish. When your vessel tracking unit is going, if you go fishing you are automatically deducted a night regardless of where you are.²⁹

Both sections also provide that the deduction of effort units will not apply if the licence holder satisfies the Chief Executive by written notice that the boat was not used on the relevant day. This has the effect of reversing the onus of proof as the licence holder is required to prove that the boat was not used on the particular day. Whether legislation has sufficient regard to the rights and liberties of individuals depends on, for example, whether the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.³⁰

The explanatory notes provide the following justification:

... the reversal of 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.³¹

Legislation should allow the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act³²

Section 81 provides that one of the ways a notice may be given to the Chief Executive is using vessel tracking equipment, and that the Chief Executive may make guidelines about how to give the notice using vessel tracking equipment. The explanatory notes recognise that by allowing the deduction of effort units to be dependent on a guideline that is not subject to Parliamentary scrutiny may be a breach of the FLP that legislation has sufficient regard to the institution of Parliament.

The explanatory notes state:

It is not mandatory that the chief executive make guidelines or that the licence holder complies with them but where a guideline is made it assists licence holders in complying with the notice requirements. This guideline approach is justified because it can facilitate internal and external

²⁷ Explanatory notes, p 30.

²⁸ *Legislation Standards Act 1992*, s 4(3)(d).

²⁹ Public briefing transcript, Brisbane, 16 November 2019, p 7.

³⁰ *Legislation Standards Act 1992*, s 4(3)(d).

³¹ Explanatory notes, p 30.

³² *Legislative Standards Act 1992*, s 4(5)(e).

reviews where the guidelines may be put into evidence to demonstrate that the licence holder complied with the notice requirements.

Additionally the guideline approach is justified because it would be overly burdensome on Parliament's time to consider changes to the guidelines each time they occur. It is 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.³³

Whether or not the power to make the guidelines is mandatory is irrelevant to a consideration of any issue of FLP. It is the conferral (the sub-delegation) of the power which enlivens the issue of FLP here.

Committee comment

Given the policy intent of the *Fisheries Act 1994*, the committee is satisfied that any breaches of FLP are justified.

Explanatory notes

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

The explanatory notes detail a consultation process which commenced with a review by MRAG Asia Pacific in 2014, followed by the release in 2016 of the *Green Paper on fisheries management reform in Queensland*, and in June 2017 the *Queensland Sustainable Fisheries Strategy 2017-2027*, 'triggering a detailed engagement process, along with the clear Government policy direction outlined in [a] Directions Paper', and conclude:

Given the comprehensive consultation process ... a full Regulatory Impact Statement (RIS) has not been prepared. A Supporting Impact Statement was prepared.³⁴

The explanatory notes further provide:

In exempting the fisheries reforms from a more detailed RIS the Government commits to undertaking a Post Implementation Review, consistent with the Queensland Guide to Better Regulation, within two years of the commencement of the full suite of fisheries reforms (i.e. 1 July 2022). The Queensland Government has initiated a new study into the contribution Queensland's commercial fisheries, seafood processing sector and related businesses make to the State's economy and community generally. The outcomes of this research will help the Government to better understand and minimise the impact of fisheries management on these sectors. It will also establish an important baseline that can be used to monitor the impact and benefit of the Strategy over the next 10 years.³⁵

3.9 Fisheries (General) Regulation 2019 (SL 179)

The objective is to provide for the use and management of Queensland's fisheries resources and fish habitats in accordance with the objectives of the *Fisheries Act 1994*.

The General Fisheries Regulation replaces the Fisheries Regulation 2008 which expired on 31 August 2019.

The committee took a briefing from DAF in September 2019 to consider the changes to fisheries regulation. The committee were informed:

The remake of the regulation that has just occurred for 1 September 2019 splits the fisheries regulation into two components. The first component is the Fisheries (General) Regulation 2019. This includes a lot of the generic provisions, definitions, some of the concepts in terms of

³³ Explanatory notes, p 31.

³⁴ Explanatory notes, p 33.

³⁵ Explanatory notes, p 33.

*interpreting the legislation, how authorities are issued under the act, some of the fish habitat area legislation, the offence provisions under the regulations and other matters.*³⁶

Fundamental legislative principle

The committee considered the following potential breaches of FLP.

Legislation should have sufficient regard to rights and liberties of individuals³⁷

The General Fisheries Regulation imposes a number of restrictions on the issue of authorities (licences). This affects the ordinary activities of an individual and could be seen as involving a breach of the FLP that sufficient regard be given to the rights and liberties of an individual.

The explanatory notes provides the following justification:

*The provisions which restrict the issue of authorities are all justified on the basis that they support the viability of commercial fishing, sustainable fisheries management and fish habitats.*³⁸

The regulation imposes a number of record keeping requirements on parties involved in the trade and commerce of fisheries resources and are intended to prevent black market activity and collusion by assisting in verifying details provided on dockets and logbooks. The explanatory notes provide the following justification:

*Record keeping requirements are justified because they assist in enforcement and compliance as they allow the information in logbooks and dockets and other records to be verified.*³⁹

Legislation should allow the sub-delegation of a power delegated by an Act only in appropriate cases and if authorised by an Act⁴⁰

Section 84 states that the vessel tracking equipment on a boat is to be installed in a way stated in the vessel tracking standard. This provision prescribes an external document that is not subject to parliamentary scrutiny. This can be regarded as involving a breach of the FLP that sufficient regard be given to the institution of parliament.

The explanatory notes provide the following justification:

*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 vessel tracking standard based on the department's expertise and knowledge.*⁴¹

Committee comment

Given the policy intent of the *Fisheries Act 1994*, the committee is satisfied that any breaches of FLP are sufficiently justified.

Explanatory notes

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

³⁶ Ms Andersen, Department of Agriculture and Fisheries, public briefing transcript, Brisbane, 16 September 2019, p 2.

³⁷ *Legislative Standards Act 1992*, s 4(2)(a).

³⁸ Explanatory notes, p 13.

³⁹ Explanatory notes, p 13.

⁴⁰ *Legislative Standards Act 1992*, s 4(5)(d).

⁴¹ Explanatory notes, p 15.

The explanatory notes detail the same consultation process as that noted above, under SL 178 of 2019, and again conclude:

*Given the comprehensive consultation process ... a full Regulatory Impact Statement (RIS) has not been prepared. A Supporting Impact Statement was prepared.*⁴²

Again, the explanatory notes state:

*In exempting the fisheries reforms from a more detailed RIS the Government commits to undertaking a Post Implementation Review, consistent with the Queensland Guide to Better Regulation, within two years of the commencement of the full suite of fisheries reforms (i.e. 1 July 2022). The Queensland Government has initiated a new study into the contribution Queensland's commercial fisheries, seafood processing sector and related businesses make to the State's economy and community generally. The outcomes of this research will help the Government to better understand and minimise the impact of fisheries management on these sectors. It will also establish an important baseline that can be used to monitor the impact and benefit of the Strategy over the next 10 years.*⁴³

3.10 Fisheries (General) (Vessel Tracking) Amendment Regulation 2019 (SL 180)

The objective is to implement the next stage of vessel tracking by extending vessel tracking to all remaining fishing boats (excluding charter vessels).

The regulation:

- requires all commercial fishing vessels to install and use vessel tracking requirements from 1 January 2020
- applies vessel tracking requirements to a tender boat whenever its primary boat is being used
- clarifies the requirements in the event of malfunction of vessel tracking equipment in primary and tender boats.

Fundamental legislative principle

The committee considered the following potential breaches of FLP.

Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference⁴⁴

The regulation inserts provisions which affect the way an individual can operate a fishing business, relating to the use of tracking equipment on fishing boats.

This effect on a person's ordinary activities can be seen as involving a breach of the FLP that legislation should have sufficient regard to an individual's rights and liberties.

The explanatory notes offer the following justification:

*The purpose of vessel tracking is to enable real-time monitoring of the commercial fishing fleet to support more accurate fisheries information and improve compliance. The consequences of unmanaged access to fisheries resources, without vessel tracking, is less accurate information, the need for more precautionary management which may further restrict commercial fishing and potentially severely impact the future sustainability of fisheries resources, and a risk to maintaining Commonwealth wildlife trade operation accreditations, under the Environment Protection Biodiversity Conservation Act 1999, for commercial fisheries are the justification for the restrictions on commercial fishers.*⁴⁵

⁴² Explanatory notes, p 17.

⁴³ Explanatory notes, p 17.

⁴⁴ *Legislative Standards Act 1992*, s 4(2)(a).

⁴⁵ Explanatory notes, p 4.

Legislation should have sufficient regard to rights and liberties of individuals⁴⁶

Clause 4 introduces an amendment to include additional authorities (type of licences) in which vessel tracking requirements will apply.

The implementation of vessel tracking impacts on an individual's privacy and confidentiality as it reports personal information to the department. This is a breach of the FLP that legislation has sufficient regard to the rights and liberties of an individual, including their rights to privacy and confidentiality.

The explanatory notes state:

While there may be a concern about the collection of private information, the implementation of vessel tracking is justified because it forms an integral part of contemporary fisheries management and compliance.⁴⁷

The explanatory notes also set out a number of safeguards to protect an individual's information from being misused.

Committee comment

The committee notes the safeguards provided to protect the private information collected in relation to vessel tracking. Given the policy intent of the *Fisheries Act 1994*, the committee is satisfied that any breaches of FLP are sufficiently justified.

Explanatory notes

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

The explanatory notes refer to consultation that has taken place, including the release of the *Green Paper on fisheries management reform in Queensland*, the *Draft Vessel Tracking Guidelines* and the *Discussion Paper on proposed changes to the Fisheries Regulation 2008*, and supporting impact statement.

3.11 Fisheries Amendment Declaration 2019 (SL 181)

The objective is to amend the Fisheries Declaration 2019.

The Fisheries Amendment Declaration 2019 (Amendment Declaration) implements reforms that are essential for long-term sustainability and profitability, including:

- increasing the king threadfin minimum legal size from 60 cm to 65 cm for the taking or possessing of the fish by all fishers in waters other than the Gulf of Carpentaria
- implementing small prawn strip closures in the Southern Offshore Trawl Management region
- making a number of changes to in-possession limits for recreational fishers in relation to certain species
- establishing a recreational boat limit for high-value black-market species (e.g. black jewfish, mud crabs, snapper etc.)

The Amendment Declaration also makes a number of changes:

- to ensure the sustainability of scallop, snapper and pearl perch
- to standardise fishing rules and support compliance
- to reduce red tape and remove unnecessary restrictions.

⁴⁶ *Legislative Standards Act 1992*, s (4)(2)(a).

⁴⁷ Explanatory notes, p 5.

Fundamental legislative principle

The committee considered the following potential breaches of FLP.

Legislation should have sufficient regard to rights and liberties of individuals⁴⁸

Recreational fishers

A number of provisions will affect the ordinary activity of recreational fishers through various restrictive measures, including:

- imposing closures relating to certain species in certain areas or at certain times
- extending the period of a closure for certain species
- restricting ways of taking fish
- requiring certain fish to be possessed only in a certain form
- restricting the size and number of fish taken.

These restrictions imposed on the ordinary activity of recreational fishers can be regarded as involving a breach of the FLP that legislation should have sufficient regard to the rights and liberties of individuals.

The explanatory notes set out a number of specific justifications, which can be summarised in this statement:

*The consequences of unmanaged access to fisheries resources which may severely impact the future sustainability of fisheries are the basis for the restrictions on all fishers.*⁴⁹

Commercial fishers

A number of provisions will restrict the ordinary activity of commercial fishers, including the right to conduct business without interference. These provisions include:

- imposing additional closures for certain species in certain areas and times
- extending the period of a closure for certain species
- restricting ways of taking fish
- requiring certain fish to be possessed only in a certain form
- restricting the size and number of fish taken.

By restricting the ordinary activity of a commercial fisher and their ability to conduct business without interference, the legislation breaches the FLP that sufficient regard be given to the rights and liberties of an individual.

The explanatory notes again set out a number of specific justifications and make this general statement:

*The consequences of unmanaged access to fisheries resources, which may severely impact the future sustainability of fisheries and risk export accreditations for commercial fisheries, are the basis for the restrictions on commercial fishers.*⁵⁰

Clauses 11 and 15 provide for provisions that extend the period of a closure. The explanatory notes explain that the closures provide protection for the species involved.

Clause 13 provides for the introduction of provisions restricting ways of taking fish. The explanatory notes provide the following justification:

⁴⁸ *Legislative Standards Act 1992*, s 4(2)(a).

⁴⁹ Explanatory notes, p 9.

⁵⁰ Explanatory notes, p 13.

*The prohibition is justified on the basis that the Mary River cod has an 'endangered' status under the federal Environment Protection and Biodiversity Conservation Act 1999, and that no line fishing will help to protect and allow the species to recover.*⁵¹

Items 14 and 18 of schedule 3 prohibits a person from possessing mulloway and scaly jewfish in a form other than the whole while on a boat. The explanatory notes provide the following justification:

*These new restrictions are justified on the basis that these species are similar in appearance to black jewfish, and allowing the processing of these species at sea to continue may be exploited, which will undermine the measures intended to ensure the sustainability of the black jewfish and mitigate black marketing.*⁵²

Committee comment

The committee is satisfied that any breaches of FLP are sufficiently justified.

Explanatory notes

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

Again, the explanatory notes detail the same consultation process as that noted above, under SL 178 of 2019, and again conclude:

*Given the comprehensive consultation process ... a full Regulatory Impact Statement (RIS) has not been prepared. A Supporting Impact Statement was prepared.*⁵³

The explanatory notes further provide:

*In exempting the fisheries reforms from a more detailed RIS the Government commits to undertaking a Post Implementation Review, consistent with the Queensland Guide to Better Regulation, within two years of the commencement of the full suite of fisheries reforms (i.e. 1 July 2022). The Queensland Government has initiated a new study into the contribution Queensland's commercial fisheries, seafood processing sector and related businesses make to the State's economy and community generally. The outcomes of this research will help the Government to better understand and minimise the impact of fisheries management on these sectors. It will also establish an important baseline that can be used to monitor the impact and benefit of the Strategy over the next 10 years.*⁵⁴

3.12 Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2019 (SL 160)

Part 7 of the Statutory Instruments Act is designed to require regular review of Queensland's subordinate legislation by causing most subordinate legislation to automatically expire on 1 September first occurring after the tenth anniversary of the day of its making.

Section 56A(1) of the Statutory Instruments Act allows a regulation to be made to exempt subordinate legislation from expiry for one year on the following grounds:

- replacement subordinate legislation is being drafted and is proposed to be made before the stated period ends;
- the subordinate legislation is not proposed to be replaced or preserved when it expires at the end of the stated period; or
- the Act or provision under which or in relation to which the subordinate legislation or part of the subordinate legislation is made or preserved is subject to review.

⁵¹ Explanatory notes, p 15.

⁵² Explanatory notes, p 15.

⁵³ Explanatory notes, p 18.

⁵⁴ Explanatory notes, p 19.

Subordinate legislation may also be further extended for a period of not more than one year under section 56A(2) if the Act or provision under which or in relation to which the subordinate legislation or part of the subordinate legislation is made or preserved is subject to review.

Section 56A(4) requires that:

Within 7 sittings days after the extension regulation is made, the responsible Minister for the subordinate legislation being exempted must table in the Legislative Assembly a report stating—

- (a) how the Act or provision is subject to review; and
- (b) if subsection (6)(a) applies—
 - (i) the extent to which the Act or provision is being reviewed; and
 - (ii) when the Minister expects the review to end.⁵⁵

3.12.1 Electricity Regulation 2006, Energy and Water Ombudsman Regulation 2007 and Gas Supply Regulation 2007

On 2 October 2019 the Minister for Natural Resources, Mines and Energy, the Hon Dr Anthony Lynham, tabled a report in the Legislative Assembly pursuant to s 56A(4) of the Statutory Instruments Act regarding the Electricity Regulation 2006, Energy and Water Ombudsman Regulation 2007 and Gas Supply Regulation 2007 to further extend the expiry date of the regulations for a period of one year to 31 August 2020.

The report states that:

*The regulations are being assessed as part of a broader review of Queensland's state-based energy laws in light of significant changes occurring in the energy sector... The aim of the review is to ensure the regulations and other state-based energy legislation continue to deliver a net public benefit, are relevant and effective, and do not inhibit opportunities or create perverse outcomes... It is anticipated that a consultation regulatory impact statement will be released in 2019 and that the review will conclude by end 2020.*⁵⁶

3.12.2 Stock Route Management Regulation 2003

On 2 October 2019 the Minister for Natural Resources, Mines and Energy, the Hon Dr Anthony Lynham, tabled a report in the Legislative Assembly pursuant to section 56A(4) of the Statutory Instruments Act regarding the Stock Route Management Regulation 2003 to further extend the expiry date of the regulations for a period of one year to 31 August 2020.

The report states that:

A review of the Regulation was initiated in July 2018 and includes a review of the Stock Route Network Management Strategy, in accordance with Chapter 3, Part 2 of the Stock Route Management Act 2002.

To date, the review process has involved a financial analysis of the costs and benefits of Queensland's stock route network and in April 2019, the public release of a discussion paper. Further consultation is occurring through three regional workshops and one workshop in Brisbane from late August through to early October 2019... The Office of the Queensland Parliamentary Counsel is currently in the process of drafting the new regulation. Future consultation on the draft new regulation will then be undertaken before the regulation and new Stock Route Management Strategy are finalised. It is necessary to maintain the relevant current

⁵⁵ Statutory Instruments Act 1992, s 56A.

⁵⁶ Hon Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy, Report to the Legislative Assembly pursuant to section 56A(4) of the Statutory Instruments Act 1992, Electricity Regulation 2006, Energy and Water Ombudsman Regulation 2007 and Gas Supply Regulation 2007, 2 October 2019.

*provisions of the Regulation to ensure appropriate management of stock routes until the review is finalised. The review will conclude by the end of 2019.*⁵⁷

3.12.3 Agricultural Chemicals Distribution Control Regulation 1998

On 14 October 2019, the Minister for Agricultural Industry Development and Fisheries, the Hon Mark Furner tabled a report to the Legislative Assembly pursuant to section 56A(4) of the Statutory Instruments Act, regarding the Agricultural Chemicals Distribution Control Regulation 1998 to further extend the expiry date of the regulations for a period of one year to 31 August 2020.

The report states:

The exemption from expiry of the Agricultural Chemicals Distribution Control Regulation 1998 has been extended on the grounds that the parent Act is subject to review. The parent Act is the Agricultural Chemicals Distribution Control Act 1966.

*In April 2018, Agriculture Ministers' Forum (AGMIN), agreed to a second tranche of national reforms that would nationally harmonise licensing and minimum training requirements for fee-for-service users of AgVet chemicals. The national harmonisation of AgVet chemicals is ongoing and further reforms will be considered at subsequent AGMIN forums... Until the national reforms are implemented it is desirable that the existing legislation, including the Agricultural Chemicals Distribution Control Regulation 1998, be maintained. At its April 2018 meeting, AGMIN agreed to a four-year time limit on implementing agreed harmonisation proposals. This means that the second tranche of the national reforms will need to be implemented by April 2022.*⁵⁸

Committee comment

The committee notes the reasons provided to exempt the above subordinate legislation from expiry are compliant with the Statutory Instruments Act. However, the Statutory Instruments Act is designed to require regular review of Queensland's subordinate legislation, as such the committee believes that section 56A should only be used in limited instances so as to not circumvent the intention of the Act.

4 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Chris Whiting MP

Chair

November 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

⁵⁷ Hon Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy, Report to the Legislative Assembly pursuant to section 56A(4) of the *Statutory Instruments Act 1992*, regarding the Stock Route Management Regulation 2003, 2 October 2019.

⁵⁸ Hon Mark Furner MP, Minister for Agricultural Industry Development and Fisheries, Report to the Legislative Assembly pursuant to section 56A(4) of the *Statutory Instruments Act 1992*, regarding the Agricultural Chemicals Distribution Control Regulation 1998, 14 October 2019.