

State Development, Natural Resources and Agricultural Industry
Development Committee

Report No. 51, 56th Parliament

Subordinate legislation tabled between 5 February 2020 and
17 March 2020

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 5 February 2020 and 17 March 2020. 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).¹

The report identifies any issues considered by the committee in its examination of the human rights certificates tabled with the subordinate legislation.²

Section 8 of the *Human Rights Act 2019* (Human Rights Act) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the Human Rights Act. Section 13 of the Human Rights Act provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
14	State Development and Public Works Organisation (New Performing Arts Venue) Amendment Regulation 2020	17 March 2020	20 August 2020
15	State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020	17 March 2020	20 August 2020
27	Coal Mining Safety and Health Amendment Regulation (No. 1) 2020	17 March 2020	20 August 2020
28	Regional Planning Interests (North Queensland Strategic Environmental Area) Amendment Regulation 2020	17 March 2020	20 August 2020
29	Rural and Regional Adjustment (Extension of Funding and New Scheme for 2019-2020 Extraordinary Bushfires Disaster) Amendment Regulation 2020	17 March 2020	20 August 2020
	Fisheries Authorising Declaration pursuant to section 39 of the <i>Fisheries Act 1994</i>	17 March 2020	20 August 2020

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

¹ *Legislative Standards Act 1992*, part 4.

² *Human Rights Act 2019*, s 41.

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified. In general, the explanatory notes tabled with the regulations comply with the requirements of s 24 of the LSA except where noted otherwise.

The committee considered human rights issues potentially raised by SL No. 14, SL No. 15, SL No. 28, and Fisheries Authorising Declaration 2020, as noted in this report. However the committee considers any limitation on human rights is reasonable and demonstrably justifiable in each instance. The human rights certificates tabled with the subordinate legislation provided a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

4 State Development and Public Works Organisation (New Performing Arts Venue) Amendment Regulation 2020 (SL 2020 No. 14)

The objective of the subordinate legislation is to insert a new section in the State Development and Public Works Organisation Regulation 2010 to direct the Coordinator-General to undertake certain works. This will allow the Coordinator-General, through the exercise of various functions and powers under the *State Development and Public Works Organisation Act 1971* (SDPWO Act), such as those relating to land access and road closures, to facilitate the New Performing Arts Venue (NPAV) project.⁴

In May 2018, the Queensland Government committed \$125 million over four years to deliver a new 1,500 seat theatre to be co-located with and operated by the Queensland Performing Arts Centre. The Queensland Performing Arts Centre will contribute \$25 million towards the NPAV project and the Department of Environment and Science is responsible for the delivery of the project.⁵

4.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.3 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the Human Rights Act, and
- with the Human Rights Act because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee considered the following issues in its examination of the human rights certificate.

4.3.1 Recognition and equality before the law and freedom of movement

Under s 15 of the Human Rights Act, every person has the right to recognition as a person before the law. The restrictions on accessing infrastructure and public facilities such as roads during construction, affects a person's human rights.

³ *Human Rights Act 2019*, s 41.

⁴ Explanatory notes for SL 2020 No. 14, pp 1-2.

⁵ Explanatory notes for SL 2020 No. 14, p 1.

Section 19 of the Human Rights Act provides that every person lawfully within Queensland has the right to move freely within Queensland. The construction of the NPAV will see road closures and will affect a person's ability to move freely.

In the human rights certificate accompanying the subordinate legislation, the minister provided the following explanation of the limitation of human rights:

The delivery of the NPAV to the Brisbane and greater Queensland community will accommodate the projected population growth and tourism demand and will strengthen Brisbane's cultural tourism offering for continued growth.

The permanent volumetric road closure over the Grey Street road reserve will have no impact and place no limitations on human rights as the closure will occur within the airspace over Grey Street. The potential limitation to Human Rights, being the access to the Grey Street footpath during construction of the NPAV is a possible temporary limitation if the power is exercised in the future, however this will be mitigated through the provision of detours which provide pedestrians and traffic with alternative methods of reaching their destination.⁶

Committee comment

The committee is satisfied that any limitation on human rights is reasonable and demonstrably justifiable, taking into account any limitation will be temporary (during construction) and the overall benefits of the NPAV project.

4.4 Human rights certificate

Section 41 of the Human Rights Act requires that the responsible minister for the subordinate legislation must prepare a human rights certificate for the legislation.

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

5 State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020 (SL 2020 No. 15)

The objective of SL 2020 No. 15 is to add 305 hectares of land to the Cairns South State Development Area (SDA), to support the diversification of the Mulgrave Mill and the broader sugar industry.

The proposed additional land area includes land associated with MSF Sugar's Mulgrave Mill in Gordonvale and its diversification plans, additional land for industrial development opportunities that would add value to the sugar refining process, and rural land to be retained both for cane supply to the Mulgrave Mill and to prevent urban encroachment.⁷

5.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the minister states his opinion that the amendment regulation is compatible:

⁶ State Development and Public Works Organisation (New Performing Arts Venue) Amendment Regulation 2020 Human Rights Certificate, p 3.

⁷ Explanatory notes for SL 2020 No. 15, p 2.

- with the human rights protected by the Human Rights Act, and
- with the Human Rights Act because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee considered the following issues in its examination of the human rights certificate.

5.3.1 Property rights

Under s 24 of the Human Rights Act, a person must not be arbitrarily deprived of their property.

The amendment regulation gives effect to a variation to the boundary of the Cairns South SDA to include additional land. Land within an SDA is subject to compulsory acquisition powers in accordance with s 82 of the SDPWO Act.⁸

In the human rights certificate accompanying the subordinate legislation, the minister explained the limitation on human rights:

*The ability to impinge on someone's property rights arising from the varied SDA is a lawful provision that helps facilitate the purpose of an SDA's declaration... The impact on a person's property rights is limited to the application of the SDPWO Act and the process for compensation under the ALA [Acquisition of Land Act 1967]. The compulsory acquisition of land is not an arbitrary process but an established framework with compensation provisions to facilitate certain lawful objectives.*⁹

The minister also stated:

*There are significant economic benefits to the community in the facilitation of large projects which provide not only jobs, but a more stable and diversified economy. The positive impact to the broader community must be viewed against the backdrop of social and economic impacts to landholders who may be potentially displaced by the exercise of the ability to compulsorily acquire land.*¹⁰

Committee comment

The committee notes that the compulsory acquisition process is governed by a legislative framework and to that extent is not arbitrary, and therefore is satisfied that any limitation on human rights is reasonable and demonstrably justified.

5.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by s 41 of the Human Rights Act). The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 Coal Mining Safety and Health Amendment Regulation (No. 1) 2020 (SL 2020 No. 27)

The objective of the subordinate legislation is to extend transitional periods for compliance with new requirements mainly applying to vehicle access in return airways or controlled ventilation in underground coal mines. The new requirements, and their respective transitional periods to implement the requirements, were introduced through the Coal Mining Safety and Health (Methane

⁸ State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020 Human Rights Certificate, p 2.

⁹ State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020 Human Rights Certificate, p 2.

¹⁰ State Development and Public Works Organisation (State Development Areas) (Cairns South) Amendment Regulation 2020 Human Rights Certificate, p 3.

Monitoring and Ventilation Systems) Amendment Regulation 2019 which commenced on 6 January 2020. The subordinate legislation will extend the transitional periods by three months.¹¹

The extension of the transitional periods is to allow time for further consultation, as some underground coal mine operators have raised technical issues with the amendments.¹²

6.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

6.2 Explanatory notes

The explanatory notes, under the heading 'Consistency with fundamental legislative principles', include this statement:

*The Coal Mining Safety and Health Amendment Regulation (No. 1) 2020 has been drafted to be consistent with fundamental legislative principles, as defined in section 4 of the Legislative Standards Act 1992.*¹³

This statement does not comply with the requirements for explanatory notes set out in part 4 of the LSA which, among other things, require explanatory notes to include:

... a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

In this instance, the statement in the explanatory notes does not provide any assessment of consistency or reasons for any inconsistency.

The explanatory notes otherwise comply with part 4 of the LSA.

Committee comment

The committee considers that the statement provided in the explanatory notes does not address the issue of consistency and that the non-compliance is of concern. The committee brings the matter to the attention of the Department of Natural Resources, Mines and Energy to ensure that all future explanatory notes fully comply with part 4 of the LSA.

6.3 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

6.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by s 41 of the Human Rights Act). The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Regional Planning Interests (North Queensland Strategic Environmental Area) Amendment Regulation 2020 (SL 2020 No. 28)

The objective is to prescribe 'resource activities' as unacceptable land uses in a designated precinct in the North Queensland Regional Plan strategic environmental area. The identification of resource activities as unacceptable uses is to ensure the protection of identified environmental attributes in the designated precinct.

¹¹ Explanatory notes for SL 2020 No. 27, pp 1-2.

¹² Explanatory notes for SL 2020 No. 27, p 2.

¹³ Explanatory notes for SL 2020 No. 27, p 4.

Resource activities are defined in the *Regional Planning Interests Act 2014* to include all mining for coal, minerals, gas, geothermal and petroleum resources, and greenhouse gas storage.¹⁴

7.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

7.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.3 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the minister stated his opinion that the amendment regulation is compatible:

- with the human rights protected by the Human Rights Act, and
- with the Human Rights Act because it does not limit, restrict or interfere with human rights.

The committee considered the following issues in its examination of the human rights certificate.

7.3.1 Property rights

Under s 24 of the Human Rights Act, a person must not be arbitrarily deprived of their property.

In the human rights certificate accompanying the subordinate legislation, the minister stated:

*With respect to property rights the Amendment Regulation will not restrict the right to own property. The Amendment Regulation will only identify resource activity as an unacceptable use on a property that is located in the designated precinct in the North Queensland strategic environmental area.*¹⁵

7.3.2 Aboriginal and Torres Strait Islander peoples

Section 28 of the Human Rights Act provides that the distinct cultural rights of Aboriginal and Torres Strait Islander peoples must not be denied.

In relation to the cultural rights of Aboriginal and Torres Strait Islander peoples, the minister stated:

*The cultural rights of Aboriginal peoples and Torres Strait islander peoples are not restricted by the Amendment Regulation. The provisions only provide for the identification of unacceptable uses of resource activity and will not restrict the practise of culture, including spiritual and economic relationship with their land.*¹⁶

Committee comment

The committee is satisfied that the subordinate legislation does not place any limitations on human rights.

7.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by s 41 of the Human Rights Act). The certificate contained sufficient information to facilitate understanding of the legislation in relation to its compatibility with human rights.

¹⁴ Explanatory notes for SL 2020 No. 28, pp 1-2.

¹⁵ Regional Planning Interests (North Queensland Strategic Environmental Area) Amendment Regulation 2020 Human Rights Certificate, p 2.

¹⁶ Regional Planning Interests (North Queensland Strategic Environmental Area) Amendment Regulation 2020 Human Rights Certificate, p 2.

8 Rural and Regional Adjustment (Extension of Funding and New Scheme for 2019-2020 Extraordinary Bushfires Disaster) Amendment Regulation 2020 (SL 2020 No. 29)

The objective of the amendment regulation is to assist eligible small businesses, non-profit organisations and primary producers directly affected by the 2019-2020 bushfire disaster events with costs associated with immediate recovery activities needed to rebuild their enterprise.¹⁷ The amendments will enable additional grants and loans to be administered by the Queensland Rural and Industry Development Authority (QRIDA).¹⁸

The Emergency Bushfire Response: Small Business, Primary Producer and Non-profit Organisations Concessional Loans and the Emergency Bushfire Response: Non-profit Organisation and Small Business Grants guidelines were developed by the Commonwealth Government when it was identified that the joint Commonwealth-State Disaster Recovery Funding Arrangements (DRFA) Disaster Assistance Loans and Grants were insufficient to support the recovery of communities impacted by the bushfire disaster. The special assistance measure provides for the provision of \$50,000 in emergency grant funding for eligible small businesses and non-profit organisations as well as a maximum loan amount for eligible small businesses, non-profits and primary producers affected by these events of \$500,000. Up to \$15,000 of the grants is cost shared between the Queensland and Federal Governments and the balance of up to \$35,000 is fully funded by the Federal Government. The \$500,000 loans are fully cost shared.¹⁹

The assistance will be available to eligible small businesses, non-profit organisations and primary producers for the DRFA event: Southern Queensland Bushfires 6-12 September 2019 and Eastern Queensland Bushfires 8 November – 19 December 2019 and for other bushfires which may occur in 2019-20.²⁰

8.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

8.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.3 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

8.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation (as required by s 41 of the Human Rights Act). The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

9 Fisheries Authorising Declaration pursuant to section 39 of the *Fisheries Act 1994*

9.1 Authorising declaration

An authorising declaration pursuant to s 39 of the *Fisheries Act 1994* was made on 10 March 2020. The declaration extends a rock lobster fishery area for a three month period. The declaration was tabled on 17 March 2020 together with an accompanying set of explanatory notes and a human rights certificate.

¹⁷ Explanatory notes for SL 2020 No. 29, p 1.

¹⁸ Explanatory notes for SL 2020 No. 29, p 2.

¹⁹ Explanatory notes for SL 2020 No. 29, p 2.

²⁰ Explanatory notes for SL 2020 No. 29, p 3.

Section 40(4) of the *Fisheries Act 1994* provides that the *Statutory Instruments Act 1992*, ss 49, 50 and 51 apply to an urgent declaration or authorising declaration as if it were subordinate legislation. This means that, although the declaration is not subordinate legislation, the tabling and disallowance regime for subordinate legislation applies.

Given that a declaration is not subordinate legislation, other statutory provisions dealing with subordinate legislation do not apply. Firstly, the LSA does not apply. Therefore, for example, the provisions regarding consistency with the FLPs and the requirement to provide an explanatory note do not apply. Secondly, the HRA does not apply. In this instance both a set of explanatory notes and a human rights certificate have been provided.

9.2 Objective of the authorising declaration

The stated objective of the authorising declaration is to alleviate the financial impacts of the novel coronavirus COVID-19 outbreak on the Queensland-managed commercial tropical rock lobster fishery, with the objective of supporting fishing businesses to continue to operate and continue to employ staff while markets are responding to the impacts of COVID-19.²¹

The explanatory notes accompanying the authorising declaration state that this objective will be achieved by allowing commercial fishers to fish in certain waters outside of the commercial crayfish and rock lobster fishery. It is proposed that doing so will offset the loss in value associated with the normal fishery entitlements under the Act, by reducing the distance to travel to fishing grounds and the cost of fishing.

The authorising declaration temporarily expands the commercial crayfish and rocklobster fishery area 'south from latitude 14°S (abutting the existing fishery area's southern boundary) to latitude 18°S (just north of Cardwell)'.²² The explanatory notes state:

*All other authorisations and conditions that apply more generally in the fishery will apply in the expanded fishery area. Given the short-term nature of the authorising declaration, is not expected to impact the sustainability of tropical rocklobster or adversely impact on other persons/sectors accessing fisheries resources in the proposed area or pose a risk to protected species or the marine environment more broadly as the hand collection fishery is highly selective.*²³

9.3 Human rights considerations

9.3.1 Cultural rights

The human rights certificate tabled by the minister canvasses the limitations on s 28 cultural rights resulting in the potential restriction of Aboriginal persons and Torres Strait Islander persons' access to traditionally fish and hunt as a result of the expansion of the fishery area. The minister expresses the view that the impact is short term, is not expected to materially affect the short-term cultural use and connection by Aboriginal persons and Torres Strait Islander persons, and is expected to have little to no effect in the medium or long term.

The minister considers that the declaration is compatible with the Human Rights Act because although it potentially limits the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, this limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Committee comment

The committee is satisfied that the potential limitation on cultural rights of Aboriginal peoples and Torres Strait Islander peoples in this instance is reasonable and justifiable and that the authorising declaration is compatible with the Human Rights Act.

²¹ Explanatory notes for the Fisheries Authorising Declaration 2020, p 1.

²² Explanatory notes for the Fisheries Authorising Declaration 2020, p 1.

²³ Explanatory notes for the Fisheries Authorising Declaration 2020, p 2.

9.3.2 Human rights certificate

A human rights certificate was tabled with the declaration. It provides a sufficient level of information to facilitate understanding of the statutory instrument in relation to its compatibility with human rights.

10 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Chris Whiting MP

Chair

May 2020

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)
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