

## Agriculture, Resources and Environment Committee

September 2012

Report No. 8

### Report on Subordinate Legislation

**SL 76, 77, 84, 85, 86, 87, 92, and 98 tabled 10.7.12**

**and SL 101, 105, 106 and 113 tabled 31.7.12**

The Agriculture, Resources and Environment Committee is responsible for examining subordinate legislation within its portfolio areas of agriculture, fisheries, forestry, the environment, natural resources and mines. In its examination of subordinate legislation, the committee is required to consider the policy to be given effect, the application of fundamental legislative principles and the lawfulness of the subordinate legislation (s.93(1) *Parliament of Queensland Act 2001*). The committee's responsibility also includes monitoring the operation of the *Statutory Instruments Act 1992* as it relates to subordinate legislation. The committee reports to the Legislative Assembly periodically on all subordinate legislation which it considers, and separately where the committee has concerns about consistency with fundamental legislative principles and related issues.

### Recommendation

The committee recommends that the Legislative Assembly note the subordinate legislation SL 76, 77, 84, 85, 86, 87, 92, and 98 tabled 10.7.12 and SL 101, 105, 106 and 113 tabled 31.7.12, and considered by the committee. The committee has examined the legislation and has identified a number of minor instances of non-compliance with the requirements of the *Legislative Standards Act 1992* and the *Statutory Instruments Act 1992*.

### Subordinate legislation examined

The committee has considered the following subordinate legislation, tabled on 10 July 2012 and 31 July 2012 and for which the **disallowance dates are 31 October 2012, 14 November 2012, and 15 November 2012:**

SL	Subordinate Legislation examined
76	<p><b><i>Rural and Regional Adjustment Amendment Regulation (No.4) 2012</i></b></p> <p>The objective of SL 76 is to amend Schedule 15 of the Regulation to introduce a final purchase date for the Queensland Government Solar Hot Water Rebate Scheme administered by QRAA.</p> <p>Hot water systems purchased after the final purchase date will no longer be eligible for the rebate under the Solar Hot Water Scheme. Applicants who have both purchased and installed a system prior to the final purchase date will have six months from their date of purchase to submit their application for a rebate.</p> <p>An applicant who has purchased a system before the final purchase date but has not installed the system will be required to install their system no later than five weeks after the final</p>

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	<p>purchase date and submit their application for rebate prior to 14 weeks from the final purchase date.</p> <p>The intention of this amendment regulation is to end the Solar Hot Water Rebate Scheme. However, it is not easy to discern the closing dates for the scheme from reading the amendment regulation. The term ‘eligibility period’ is similarly confusing and appears to have different meanings for different circumstances.</p> <p>Given the current wording, the committee noted the potential for homeowners and others to experience difficulties interpreting the regulation, and questioned whether the regulation is unambiguous and drafted in a sufficiently clear and precise way.</p> <p>In addition, the <i>Legislative Standards Act 1992</i> section 24(2) requires an explanatory note for subordinate legislation to include information about consultation. It appears that the solar hot water industry was not consulted on the amendment to the regulation. The committee noted, however, that the department proposed to notify industry participants, suppliers, and installers of the changes once the proposed legislation commences. The notes do not state why the industry was not consulted which is required under section 24(2)(b).</p> <p><b>Committee’s request for advice:</b></p> <p>The Committee requested advice from the Department of Agriculture, Fisheries and Forestry as to how workable the regulation will be in practice given the concerns outlined above. The Committee also requested advice on the apparent absence of consultation on this regulation.</p> <p><b>The department’s advice:</b></p> <p>It should be noted that while the Department of Agriculture, Fisheries and Forestry (DAFF) is the department with portfolio responsibility for the <i>Rural and Regional Adjustment Regulation 2011</i> under which the Queensland Government Solar Hot Water Rebate Scheme (the Scheme) resides, the Scheme was implemented at the request of the former Office of Clean Energy (OCE) which is now part of the Department of Energy and Water Supply (DEWS). DEWS was responsible for the policy which underpinned the Scheme.</p> <p>The purpose of the subordinate legislation was to close the Scheme to new applicants as part of the Government’s election commitment to fix the state’s finances and get the state back on track. The cost savings from closing the Scheme was part of the Government’s plan to meet this commitment.</p> <p><u>Issue 1: How workable the regulation will be in practice?</u></p> <p>To respond to the Committee’s concerns regarding the community’s interpretation of this subordinate legislation, DAFF is advised by DEWS that since the commencement of this subordinate legislation, DEWS’ call centre statistics indicate only an average of 12 calls have been received per week in relation to the Scheme. Of these, none are calls from industry and of the calls from the general public, none question eligibility.</p> <p>It appears that the Committee’s query with regard to the subordinate legislation being drafted in a clear and precise way focuses on two aspects: that of determining the actual dates relevant to the Scheme; and the fact that the term “eligibility period” has different meanings for different categories of applicants.</p>

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	<p>Whilst it is acknowledged that it is generally simpler to state a date in legislation rather than refer to the commencement date of a provision, this was not a practical option for the following reasons:-</p> <ol style="list-style-type: none"> <li>(1) It was impossible to know at the outset of drafting a precise date on which the Scheme could be closed such that the closure date would coincide exactly with the date of notification of the subordinate legislation in the Government Gazette (the Gazette). If the subordinate legislation had prescribed a precise date for closure of the Scheme and this date was any later than the actual commencement date (i.e. notification in the Gazette), then the community would have been informed of the Government’s intention to close the Scheme and its objective of making savings would be compromised.</li> <li>(2) Conversely, if the subordinate legislation had prescribed a precise date of closure of the Scheme and, for whatever reason, the subordinate legislation was notified in the Gazette (i.e. commenced) after the closure date, then the subordinate legislation would purport to apply retrospectively.</li> <li>(3) The difficulties with prescribing an exact date of closure of the Scheme meant that final dates to allow for receipt of applications could also not be prescribed with any degree of certainty. Hence the subordinate legislation was drafted to express the timeframes for receipt of applications in terms of months and weeks for the different categories of applicants.</li> </ol> <p>It is considered that prescribing the closure date as taking effect on the commencement of the subordinate legislation, was necessary to effectively close the Scheme to new applicants in order to achieve the policy objective of making budget savings whilst not forewarning the industry or the community of its closure.</p> <p>The term “eligibility period”, as the Committee points out, does apply differently for different circumstances or categories of applicants. Government’s intention in this regard as conveyed by the former OCE to DAFF at the time, was that applicants be afforded different periods in which to lodge applications based upon whether a solar hot water system was installed at the time the legislation commenced. Given Government’s policy direction on this matter it was unavoidable for the eligibility periods to apply any other way.</p> <p><u>Issue 2: Consultation</u></p> <p>DEWS, as the policy owner for the Scheme, provided instruction to DAFF on Government’s intention to close the Scheme to new applicants.</p> <p>DAFF advises that the Government’s intention, as conveyed by the former OCE at the time the subordinate legislation was being developed, was that consultation was not to be undertaken prior to the commencement of the legislation.</p> <p>OCE also advised DAFF at that time that to undertake consultation prior to the commencement of the subordinate legislation, would inform industry of the Government’s intention to close the Scheme to new applicants and thereby heighten the risk of creating a flood of applications. DAFF was advised at the time that, had consultation been undertaken, this would potentially have created a “mass sell” of solar hot water systems and potentially an over-commitment by industry to install within the eligibility period.</p>

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	<p>OCE further advised that ultimately such a situation would have placed an unreasonable cost burden on Government and would have undermined Government's objective of achieving savings.</p> <p><b>Committee comment:</b></p> <p>The Committee thanks the department for its response and notes the reasons given for the scheme's closing date and the consultation process.</p>
77	<p><b><i>Waste Reduction and Recycling Amendment Regulation (No.1) 2012</i></b></p> <p>The objective of SL 77 is to cease the operation of the waste levy from 1 July 2012.</p> <p><b>Committee comment:</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
84	<p><b><i>Rural and Regional Adjustment Amendment Regulation(No.5) 2012</i></b></p> <p>The objective is to extend the closing date for the recovery grants (in response to the flooding and Tropical Cyclone Yasi in 2011 and the flooding in South West Queensland in early 2012) from 30 June 2012 and 30 July 2012, respectively, to 31 October 2012. The amendment regulation also extends the date to which applicants must keep records for audit purposes to 31 October 2012.</p> <p><b>Committee comment:</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
85	<p><b><i>Rural and Regional Adjustment Amendment Regulation(No.6) 2012</i></b></p> <p>The objective of SL 85 is to introduce a scheme, to be known as the 'Hendra virus PPE Rebate Scheme' to assist eligible applicants to offset the purchase costs of prescribed personal protective equipment (PPE) for the testing of animals for Hendra virus.</p> <p>The first rebate is a start-up rebate of \$250 per eligible veterinary surgeon employed or engaged in the applicant's veterinary practice.</p> <p>The second rebate is a replenishment rebate for re-stocking of eligible items of PPE which have been used in the veterinary practice for the sampling and disease testing of suspect Hendra virus horses. The amount of \$250 is payable for each approved test.</p> <p><b>Committee comment:</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>

86	<p><b><i>Environmental Protection (Water) Amendment Policy (No.1) 2012</i></b></p> <p>The objective of SL 86 is to extend by one year the date by which certain local governments must develop and start implementing an environmental plan, and to correct a minor drafting error to section 19(5).</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
87	<p><b><i>Land Amendment Regulation(No.2) 2012</i></b></p> <p>The objective of SL 87 is to amend the Land Regulation 2009 to prescribe percentages to cap increases in rent for certain State land leases. The <i>Land Act 1994</i> section 183AA ‘Protection against particular undue rental increases’ establishes a scheme to cap rental increases for relevant leases, licences and permits. A maximum percentage increase is to be prescribed by regulation. These rental increase caps may apply if the Minister considers the increase is an undue increase. The Minister has a wide discretion.</p> <p>These prescribed percentages are currently 20% and 50%. The amendment regulation sets out percentages ranging between 50% and 100%.</p> <p>Category 11 (primary production) – existing 20% cap is being removed</p> <p>Category 12 (residential) - additional exemptions included, existing 50% cap, caps range between 50% - 100% between 2013 and 2015</p> <p>Category 13 (business and government core business) – additional exemptions included, existing 50% cap, cap increased from 50% to 100%</p> <p>Category 16 (divestment) - cap increased from 50% to 100%.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
92	<p><b><i>Agriculture and Fisheries Legislation Amendment Regulation(No.1) 2012</i></b></p> <p>The objective of SL 92 is to amend the following regulations to implement increases to certain prescribed regulatory fees by the annual rate for indexing fees and charges (3.5 per cent) and to make minor revision amendments that have been identified by the Office of the Queensland Parliamentary Counsel:</p> <ul style="list-style-type: none"> <li>• <i>Agricultural Chemicals Distribution control Regulation 1998</i> (Schedule 2)</li> <li>• <i>Animal Care and Protection Regulation 2002</i> (Schedule 2)</li> <li>• <i>Animal management (Cats and Dogs) Regulation 2009</i> (Schedule 3)</li> <li>• <i>Apiaries Regulation 1998</i> (Section 25)</li> <li>• <i>Brands Regulation 1998</i> (Schedule 7)</li> <li>• <i>Chemical Usage (Agricultural and Veterinary) Control Regulation 1998</i> (Section 27)</li> <li>• <i>Drugs Misuse regulation 1987</i> (Section 28)</li> <li>• <i>Fisheries Regulation 2008</i> (Section 709 and Schedule 8)</li> <li>• <i>Land Protection (Pest and Stock Route Management) Regulation 2003</i> (Schedule 5)</li> <li>• <i>Nature Conservation (Administration) Regulation 2006</i> (Schedule 3, Part 2, Division 1)</li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Stock Regulation 1998</i> (Schedule 7)</li> <li>• <i>Veterinary Surgeons Regulation 2002</i> (Schedule 3)</li> </ul> <p>The current CPI for Brisbane for this quarter is 1.7%. The Cabinet Budget Review Committee has determined that fee increases as of 1 July 2012 would be 3.5%. None of the fee increases contained in this regulation exceed 3.5%. As such the fee increases are all allowable.</p> <p>The explanatory notes tabled with the Notice are complaint in that they contain the information required under s.24.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
98	<p><b><i>Chicken Meat Industry Committee Regulation 2012</i></b></p> <p>The objective of SL 98 is to replace, without any changes, the Chicken Meat Industry Committee Regulation 2011, which would otherwise expire on 1 September 2012 under the <i>Statutory Instruments Act 1992</i>, to enable the continued funding of the Chicken Meat Industry Committee by the chicken meat industry.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
101	<p><b><i>Food Production (Safety) Amendment Regulation(No.1) 2012</i></b></p> <p>The objective of SL 101 is to impose two requirements at the primary production and processing stage to reduce contamination of poultry, poultry carcasses and poultry meat by pathogenic <i>Campylobacter</i> and <i>Salmonella</i> by amending the Regulation to include Standard 4.2.2 of the Australia New Zealand Food Standards Code.</p> <p><b>Committee Comment</b></p> <p>The committee did not identify any fundamental legislative principle issues, however, noted that the regulation prescribes penalties of 50 penalty units and 20 penalty units for seemingly comparable offences (see e.g.: ss.133G and 133H, compare s.133J).</p> <p><b>Committee’s request for advice:</b></p> <p>The committee sought advice from the department regarding how the penalties in the regulation were set.</p> <p><b>The department’s advice:</b></p> <p>The penalty provisions mentioned (sections 133G, 133H &amp; 133J) are all new and relate to the new National Standard for Poultry Meat.</p>

	<p>Section 133J is very similar in nature to existing general provisions contained in sections 39-40 of the Regulation. These provisions relate to maintenance and hygiene etc. of premises, equipment and vehicles, and all carry a maximum penalty of 20 penalty units.</p> <p>In contrast other provisions, such as sections 133G, 133H and 133I, all carry a maximum penalty of 50 penalty units and are all more significant matters in terms of food safety outcomes for poultry meat. That is, matters such as waste disposal, the health and hygiene of poultry handlers and skills and knowledge of poultry handlers are all considered critical to food safety outcomes and hence carry the maximum penalty of 50 penalty units.</p> <p><b>Committee Comment</b></p> <p>The Committee thanks the department for this response.</p>
105	<p><b><i>Natural Resources and Mines Legislation Amendment Regulation (No.1) 2012</i></b></p> <p>The objective of SL 105 is to index regulatory fees for the Department of Natural Resources and Mines and to make minor amendments identified by the Office of the Queensland Parliamentary Counsel. Regulatory fees are reviewed annually in accordance with government policy. According to advice from Queensland Treasury, the Cabinet Budget Review Committee has determined that fee increases from 1 July 2012 will be 3.5%.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
106	<p><b><i>Exotic Diseases in Animals (Avian Paramyxovirus) Amendment Notice (No.1) 2012</i></b></p> <p>The objective of SL 106 is to declare that the movement of pigeons, pigeon eggs and pigeon fittings into Queensland from New South Wales and Victoria is restricted. This is because of the detection of <i>avian paramyxovirus</i> in Victoria. <i>Avian paramyxovirus</i> in pigeons is a highly contagious viral infection that is present in most countries outside Australia. It causes high rates of mortality in infected pigeon flocks but could potentially infect other domesticated and wild birds including commercial poultry.</p> <p><b>Committee Comment</b></p> <p>The committee notes that the regulation may affect the rights and liberties of individuals since it restricts the movement of pigeons, their eggs, and fittings into the State from New South Wales and Victoria. However, in light of the potential risks posed by the disease, the impact on rights and liberties can be justified.</p>

113	<p><b><i>Nature Conservation (Wildlife) Amendment Regulation (No.1) 2012</i></b></p> <p>The objective of SL 113 is to ensure that conservation and land use restrictions involving species are commensurate with their status.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
114	<p><b><i>Environment and Heritage Protection Legislation Amendment Regulation (No.1) 2012</i></b></p> <p>The objective of SL 114 is to index regulatory fees for the Department of Environment and Heritage Protection by 3.5%. Cabinet determined on 25 June 2012 that general indexation of fees and charges is to be set at 3.5% unless approved otherwise.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>
115	<p><b><i>Mineral Resources Amendment Regulation (No.2) 2012</i></b></p> <p>The objective of SL 115 is to remove Schedule 3 (restricted areas) of the <i>Mineral Resources Regulation 2003</i>. Restricted areas ('RAs') are parcels of land exempt from having exploration or mining permits activated over them. Instead of dealing with RAs in the regulation, it is proposed to deal with them by gazettal with the approval of the Minister. This is to reduce the complexity of the <i>Mineral Resources Regulation 2003</i> and improve the speed and efficiency with which RAs can be repealed and land released by the Department for Natural Resources and Mines for applications in the future.</p> <p><b>Committee Comment</b></p> <p>There are no potential FLP issues of concern. This SL is lawful and within power.</p>



## **Agriculture, Resources and Environment Committee**

<b>Chair</b>	<b>Mr Ian Rickuss MP</b> , Member for Lockyer
<b>Deputy Chair</b>	<b>Ms Jackie Trad MP</b> , Member for South Brisbane <b>Mr Jason Costigan MP</b> , Member for Whitsunday <b>Mr Sam Cox MP</b> , Member for Thuringowa <b>Mr David Gibson MP</b> , Member for Gympie <b>Mr Shane Knuth MP</b> , Member for Dalrymple <b>Mr Jon Krause MP</b> , Member for Beaudesert <b>Mrs Anne Maddern MP</b> , Member for Maryborough
<b>Committee Staff</b>	<b>Mr Rob Hansen</b> – Research Director <b>Mr Michael Gorringe</b> – Principal Research Officer <b>Ms Stephanie Cash</b> - Executive Assistant
<b>Contact details</b>	Agriculture, Resources and Environment Committee Parliament House George Street Brisbane Qld 4000
<b>Telephone</b>	+61 7 3406 7908
<b>Fax</b>	+61 7 3406 7070
<b>Email</b>	<a href="mailto:arec@parliament.qld.gov.au">arec@parliament.qld.gov.au</a>
<b>Web</b>	<a href="http://www.parliament.qld.gov.au/arec">www.parliament.qld.gov.au/arec</a>