Parliamentary Committees

Agriculture, Resources and Environment Committee

June 2012

Report No. 2

Report on Subordinate Legislation
SL 217, 218, 220, 221, 224 & 225 tabled 15.11.11

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 (Nos. 218, 220, 221, 224 & 225) tabled on 15 November 2011 and considered by the committee. The committee did not identify any significant issues of concern regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.

Subordinate legislation examined

The committee has considered the following subordinate legislation, tabled on 15 November 2011 and for which the disallowance date is 6 June 2012:

SL	Subordinate Legislation
218	<u>Vegetation Management and Other Legislation Amendment Regulation (No. 1) 2011</u> The object of this subordinate legislation is to establish application and amendment fees for the new Alternative Management Plan (AMP) framework that streamlines and provides an alternative to the existing approval process through the *Sustainable Planning Act 1999* for obtaining approvals for certain vegetation clearing work, and to make AMPs non-assessable development. Given that fees imposed in this regulation are quite substantial, the committee asked the department to clarify what consultation was undertaken by it with stakeholder groups on the fees, and the outcomes of that consultation. **The department's advice:** Under the *Vegetation Management Act 1999* the fees for individual area management plans (AMP) are greater than vegetation clearing applications. However, as AMPs last 10 years (compared with 5 years for vegetation clearing applications), there is still a small fee saving to individual landholders when applying for single issue AMP. The saving for landholders will increase as the AMP application includes more clearing purposes (such as thinning, fodder harvesting, encroachment, establishment of necessary infrastructure) and more properties. For example: vegetation clearing applications for single clearing purpose for 40 properties

	over a 10 year period would cost the landholders $28,240. Under the AMP structure the total fee payable by the 40 properties owners is $7,000. If the AMP were to include multiple clearing purposes the saving to landholders significantly increases. The proposed fee structure is designed to be tiered to provide an incentive for larger groups of landholders, or organisations such as local government, industry or natural resource management groups, to work collectively in developing the AMP and the vegetation clearing activities. The fees have been calculated to reflect the costs involved with administering the framework and in line with the fundamental legislative principles, do not unfairly burden any person or group. Compliance cost calculations on business have been undertaken, comparing the previous assessment framework against the new, more flexible AMP framework. These calculations have yielded a saving to business of approximately $577,000 per year through the introduction of the AMP framework. These savings are largely centred on reduced application preparation costs. Queensland Office of Regulatory Efficiency (QORE) advised that the amendment regulation has satisfied the requirements of the regulatory assessment statement system. Additionally, a landholder may choose to continue to apply for individual vegetation clearing applications rather than participate in an AMP, if they believe that that approach would be the cheapest alternative. AgForce Queensland and the Desert Channel Queensland and South West Natural Resource Management groups were actively consulted in the development of the regulation amendments. These groups are currently undertaking four pilot projects which are anticipated to finish at the end of June 2012. General support was obtained on the AMP framework from Queensland Farmers Federation, Regional Groups Collective for natural resource management groups, Queensland Murray Darling Committee, World Wildlife Fund, Queensland Conservation Council, The Wilderness Society, and Wildlife Preservation Society Queensland. **The committee is satisfied with the advice.**
220	<u>Forestry and Nature Conservation Legislation Amendment Regulation (No. 4) 2011</u> The objective of this subordinate legislation is to provide protected areas to ensure the protection of biological diversity, ecosystems, cultural heritage values, wildlife corridors and landscape values. The committee asked the department to clarify: • how are protected areas and the extent of buffer zones determined? • how is the size determined and by whom? • what will be the impact on private landholders? • what consultation has the department undertaken with landholders and peak bodies? **The department's advice:** This action occurred as a result of the Eastern Kuku Yalanji receiving a Federal Court approved native title consent determination in December 2007 subject to a number of Indigenous Land Use Agreements (ILUAs). The determination primarily covered the Daintree National Park, Timber Reserve 165 and a number of council trustee reserves. The ILUAs between the State, Wet Tropics Management Authority and Eastern Kuku Yalanji made provision for the granting of 63,000ha of Aboriginal freehold land (48,000ha of ALA with a conservation agreement and 15,000ha for community development purposes) and the gazettal of 78,000ha of new national park (part is Ngalba Bulal which also includes the existing Cedar Bay National Park). **The committee notes the advice provided by the department on the background policy to the regulation, however, looks forward to a response that actually addresses the four specific requests for advice. While the committee appreciates the purposes of the regulation, it remains concerned that the wording of the explanatory note to the regulation does not provide the information required by s.24 of the *Legislative Standards Act 1992* about the subordinate legislation in 'clear and precise language'.**

221	Survey and Mapping Infrastructure (Survey Standards—Requirements for Mining Tenures) Notice (No. 1) 2011 The objective of this subordinate legislation is to set surveying standards under the *Surveying and Mapping Infrastructure Act 2003,* s.6 for the surveying of mining and petroleum tenures. The committee noted that the practice of encapsulating survey standards as an appendix to a regulation to enable their ready modification by the department, without actually tabling the standards in Parliament, means that Parliament never actually sees the survey standards. The committee asked the department to clarify whether this practice gives sufficient regard to the institution of Parliament. **The department's advice:** The notice under Section 9 of the *Survey and Mapping Infrastructure Act 2003* is subordinate legislation which does two things: 1. it establishes the commencement date for the survey standards, and 2. it advises that a copy of the survey standards may be obtained from the department's web site. Because the location of the standards is advised in the notice, when the notice is tabled Parliament effectively has before it the same information as if the standards themselves were tabled. Parliament's option to disallow the notice under Section 50 of the Statutory Instruments Act 1992 effectively gives it the option to disallow the standards themselves, since the notice commences the standards. Standards made under the *Survey and Mapping Infrastructure Act 2003* can be over 150 pages long. It is the department's understanding that Section 9 of the *Survey and Mapping Infrastructure Act 2003* was drafted in the way it is in order that sufficient regard is given to the institution of Parliament; particularly the requirement that the standards can be commenced only by the making of a notice which is subordinate legislation. Under the previous legislation, standards were set by the Surveyors Board without a requirement to obtain such approvals. There is a further, practical consideration. Surveying standards are essentially technical documents drafted by the department's senior survey staff, fur use by the surveying industry. If the standards themselves were to be made subordinate legislation, the Legislation Handbook requires that they be drafted by the Office of the Queensland Parliamentary Counsel (OQPC). The drafting of these technical documents by OQPC would be significant departure from the normal regulatory drafting undertaken by OQPC. **The committee is satisfied with the advice.**
224	Fisheries Amendment Regulation (No. 3) 2011 The objective of this subordinate legislation is to incorporate minor amendments in the Fisheries Regulation 2008. These amendments involve removal of certain unnecessary regulatory burden requirements such as the removal of some possession restrictions allowing increased flexibility relating to what fishing apparatus may be used, expanding the list of noxious fish, and amending certain descriptions of regulated waters. The committee noted that the department conducted no consultation on this regulation, and did not prepare a Regulatory Impact Statement (RIS), on advice from the Queensland Office for Regulatory Efficiency. The committee sought assurances from the department that the changes will not have detrimental effects on commercial fishing businesses, and on recreational fishing. **The department's advice:** The department advised that the changes incorporated were a suite of inconsequential amendments which did not have an impact on recreational or commercial fishers. Fisheries Queensland consulted the then Queensland Office of Regulatory Efficiency (QORE) for approval not to proceed with a RIS.

	A brief explanation of why consultation was not necessary for each of the amendments is provided below: • removal of certain unnecessary regulatory burden requirements – these actually reduced red tape and allowed greater flexibility for commercial fishers to conduct their operations. • allowing increased flexibility relating to what fishing apparatus may be used. • expanding the list of noxious fish. QORE considered that comparable consultation had been undertaken at a national level and therefore further consultation was not necessary. • amending certain descriptions of regulated waters – for declared Fish Habitat Areas this involved the description of boundaries to cadastral boundaries which was a commitment undertaken following advice from OQPC. For commercial fishing boundaries, this involved clarification of latitudes and longitudes. **The committee is satisfied with the advice.**
225	<u>Food Production (Safety) Amendment Regulation (No. 1) 2011</u> The objective of this subordinate legislation is to increase the fees in the Food Production (Safety) Regulation 2002, Sch 1 related to accreditation and approval as an auditor. **The increased fees are in line with the CPI and thus lawful and within power.**

Agriculture, Resources and Environment Committee

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