

Agriculture, Resources and Environment Committee

June 2012

Report No. 4

Report on Subordinate Legislation SL 236, 243, 244, 246 tabled 29.11.11

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 (SL 236, 243, 244, 246) tabled 29.11.11 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 29 November 2011 and for which the disallowance date is 20 June 2012:

SL	Subordinate Legislation
236	<p>Fisheries Legislation Amendment and Repeal Regulation (No 1) 2011</p> <p>The objectives of this subordinate legislation are to declare Pine River Bay (Gulf of Carpentaria) as a Fisheries Habitat Area, repeal the expiring Fisheries (Gulf of Carpentaria Inshore Fin Fish) Management Plan 1999, integrate relevant provisions of the repealed Management Plan into the Fisheries Regulation 2008 and to integrate additional amendments to the Regulation as part of the Management Plan Review.</p> <p>The committee notes that an individual's rights may be adversely affected given that, following surrender of a fish symbol and payment of half yearly fees by the individual, the individual may not have access for the full period covered by the fees paid. However the Fisheries Regulation s.712 contains a provision for the chief executive to waive or refund part of a fee. s.4(2)(a) of Legislative Standards Act 1992.</p> <p>Given an individual's rights may be adversely affected following surrender of a fish symbol and payment of half yearly fees, since then they may not have access for the full period covered by the fees paid, the committee sought advice from the Department of Agriculture, Fisheries and Forestry on the likely extent of impacts on individuals.</p>

	<p>The department's advice:</p> <p>Department of Agriculture, Fisheries and Forestry advised that Fisheries Queensland commercial fishing fees are paid in arrears (i.e. paid after the fishers have undertaken fishing activities). If the fisher does not fish for the entire six months, they are charged a pro-rata rate, for example if they only fished for two months; they are charged the equivalent of two months. Therefore there are no financial impacts on the commercial fisher.</p> <p>The committee is satisfied with the advice.</p>
243	<p><u>Petroleum and Gas (Production and Safety) Amendment Regulation (No.5) 2011</u></p> <p>The objective is to introduce a new code of practice for the construction and abandoning of coal seam gas (CSG) wells to ensure a minimum standard to ensure long-term well integrity and containment of gas, and prevent degradation of ground water resources. Intention is to complement existing rigorous standards under petroleum and gas legislation.</p> <p>The committee sought advice from the Department of Natural Resources and Mines on how the new code of practice for the construction and abandoning of coal seam gas wells, provided by this regulation, will ensure the long-term integrity of gas wells and the protection of ground water resources from degradation.</p> <p>The department's advice:</p> <p>The department advised that the code of practice was facilitated by the former Department of Employment, Economic Development and Innovation (DEEDI) with significant input from the then Department of Environment and Resource Management (DERM) and the coal seam gas (CSG) Industry via the Australian Petroleum Production and Exploration Association (APPEA).</p> <p>The code was developed as a mandatory standard for CSG companies to follow as a minimum requirement to ensure the integrity of the well during its lifespan and ensure the protection of underground aquifers.</p> <p>The <u>Petroleum and Gas (Production and Safety) Act 2004</u> requires each operator to design and construct wells to ensure health and wellbeing of the public and workforce, the implementation of the code provides for improved, and complements existing well management. Although some CSG companies have their own standards and internal risk assessment procedures for well construction and abandonment, the new code has been developed as a minimum standard for construction and abandonment of CSG wells. This ensures that these activities are completed and monitored in a consistent manner so that:</p> <ul style="list-style-type: none"> • the environment, in particular each underground source of water, is protected; • risk to the public and CSG workers is managed to an acceptable level; • appropriate Australian and International standards and requirements are understood and implemented; and • the life of a CSG well is managed effectively through appropriate design, construction, monitoring and abandonment.

	<p>The code addresses principles, mandatory requirements and good industry practice in nine aspects of well construction and abandonment. In particular the cementing of casing, cement test pressures and testing timeframes. Operators must ensure all zones (both hydrocarbon and groundwater) are isolated with a minimum stated strength. All cement returns to surface must be continuously monitored and recorded to confirm the cement effectiveness.</p> <p>Each well must be constructed with a minimum gap of 16mm between the casing and the hole to ensure the cement completely surrounds the well casing. Samples of cement are required to ensure it meets the correct density and strength. The code also provides for the minimum requirements for:</p> <ul style="list-style-type: none"> - well design - casing - cementing - wellheads - drilling fluids - evaluation, logging, testing, coring - well monitoring/maintenance - well abandonment, and - recording and reporting data. <p>The committee is satisfied with the advice.</p>
244	<p><u>Natural Resources and Other Legislation Amendment (Postponement) Regulation 2011</u></p> <p>The objective of this subordinate legislation is to postpone commencement of provisions of the Natural Resources and Other Legislation Amendment Act (No.2) 2010 concerning the inclusion of a new exemption in s.89 of the Nature Conservation Act 1992 to allow a permit to function as an authority for vegetation clearing under the Vegetation Management Act 1999 thereby avoiding duplication.</p> <p>The committee notes that postponing commencement provisions of an Act by regulation raises an FLP issue with respect to regard for the institution of Parliament.</p> <p>The committee sought advice from the Department of Natural Resources and Mines to explain why it is necessary to postpone the commencement of the Natural Resources and Other Legislation Amendment Act (No.2) 2010 Act, and whether using a regulation to postpone the commencement of provisions in the Act gives sufficient regard to the institution of Parliament.</p> <p>The department's advice:</p> <p><u><i>Postponement of Commencement</i></u></p> <p>Currently the assessment of vegetation clearing impacts under the regional vegetation management codes does not include a full assessment of matters for protected plants which occurs under the Nature Conservation Act 1992 (NCA). The regional vegetation management codes rely on an essential habitat map to identify locations of protected plants; this also provides transparent information to development applicants. The current essential habitat mapping layer does not cover all of the protected plants covered by the NCA. As a result amendments to the codes, and potentially the essential habitat mapping layer, are required as part of the implementation of these new arrangements to integrate the requirements of the NCA and the vegetation management codes, reducing red tape.</p>

A project is underway to make these changes to the codes, however the timing of the code amendments is affected by:

- the Department of Environment and Heritage Protection's review of the regulatory framework for protected plants under the NCA currently underway. This review may result in further significant regulatory simplification changes to the assessment process for protected plants; and
- requirements for public consultation and amendment of the [Vegetation Management Regulation 2000](#) to give effect to the amended codes.

As the amendments to the regional vegetation assessment codes would not have been completed prior to 2 December 2011, the commencement of the relevant sections were postponed until 2 December 2012 to ensure that assessment of protected plants were fully incorporated into the regional vegetation management codes after appropriate consultation.

Postponing the commencement meant that the current system for approvals under the VMA and the NCA to clear protected plants continue for up to a maximum of one year. However there may have been greater impacts on business if the amendments were to commence at the end of 2011, as:

- there would have been increased confusion for stakeholders as the exemption would exist but would not be in practical effect as the assessment process of the codes could not be a full assessment of the matters for protected plants;
- the amendment process for the regional vegetation management codes not being able to take advantage of the regulatory simplification being developed as part of the current protected plants regulatory review project.

Sufficient regard to Parliament

Section 15DA of the [Acts Interpretation Act 1954](#) allows for a regulation to extend the period of commencement to no more than 2 years after the assent date (subsection 15DA (3)). There can be no further extensions to the commencement of the provisions under the [Acts Interpretation Act 1954](#). The section 15DA reinforces Parliament's control by setting an outer limit for commencement, to allow ample time for integration into legislation's administrative implementation¹. Limiting the period in which a postponement may occur ensures sufficient regard for the institution of Parliament.

The Regulation has been approved and gazetted by Governor in Council on 25 November 2011 and was tabled in Parliament on 29 November 2011. At that stage the Regulation is subject to disallowance by Parliament. This also ensures that the regulation gives regard to the institution of Parliament.

Background

Currently, the State regulates the clearing of native vegetation for protected plants under both the [Vegetation Management Act 1999 \(VMA\)](#) and the [Nature Conservation Act 1992 \(NCA\)](#). The VMA and the NCA are not integrated, resulting in development applicants needing to seek approval under both Acts for, potentially, the same vegetation clearing activity. The NCA defines what a protected plant is.

The streamlining of permitting requirements under the NCA and VMA was identified as a regulatory simplification reform.

¹ Source: Explanatory notes for the 1994 amendment to the Acts Interpretation Act which inserted section 15DA.

	<p>The Natural Resources and Other Legislation Amendment Act (No.2) 2010 (NROLA(2)) received royal assent on 1 December 2010. Among other streamlining reforms, this Act inserted an exemption into section 89 of the Nature Conservation Act 1992 (NCA), which enables a permit under the Vegetation Management Act 1999 (VMA) to act as an authority to clear under the NCA. This is reliant on an assessment under the regional vegetation management codes or concurrence agency policies (see s.34 of NROLA(2)).</p> <p>Under section 15DA(3) of the <i>Acts Interpretation Act 1954</i>, the Natural Resources and Other Legislation Amendment (Postponement) Regulation 2011 postponed the commencement until 1 December 2012 of:</p> <ul style="list-style-type: none"> • section 34(1) of the NROLA(2) to the extent it inserts a new section 89(1)(e) into the NCA; and • section 34(2) to the extent it inserts the definitions concurrence agency policy, development approval, and regional vegetation management code. <p>The committee is satisfied with the advice.</p>
246	<p>Environmental Protection and Other Legislation Amendment Regulation (No.1) 2011</p> <p>The objective is to amend the Environmental Protection Regulation 2008 and Sustainable Planning Regulation 2009 to support the adoption of State Planning Policy 4/11 <i>Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments (SPP 4/11)</i>. Amendments include those that allow for the chief executive to make minor amendments to the map of referable wetlands, make government supported infrastructure and high impact earthworks for electricity infrastructure self assessable development, identify the required assessable code for such development, and amend the definition of 'high impact earthworks' to include exemptions for routine farm management practices and reinstating earthworks that repair damage due to recent disaster events.</p> <p>The committee requested a written briefing to explain: State Planning Policy 4/11 Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments (SPP 4/11); the need for amendments that allow the Chief Executive to make minor amendments to the map of referable wetlands, and what would constitute 'minor amendments'; and the need to delegate decisions to the Chief Executive regarding the assessment processes for government supported infrastructure and high impact earthworks, and what 'high impact earthworks' are.</p> <p>The department's advice:</p> <p><u>What does SPP 4/11 do and what are 'high impact earthworks'?</u></p> <p>The State Planning Policy 4/11 Protecting Wetlands of High Ecological Significance in Great Barrier Reef Catchments (SPP 4/11) contains planning policies to protect wetlands of high ecological significance (HES wetlands) and an assessment code for high impact earthworks. High impact earthworks are earthworks that drain, fill or divert water from HES wetlands (see below for full definition) such as excavations for roads, dams or subdivisions involving removal of or moving more than 100m³ within 200m of a HES wetland, or more than 1000m³ of material between 200m and 500m from HES wetland. HES wetlands include wetlands listed under the RAMSAR convention and other wetlands that have been assessed as having similar high ecological values. The SPP 4/11 only applies to freshwater wetlands outside of the coastal management district.</p>

The SPP 4/11 commenced on 25 November 2011 replacing a temporary State planning policy which had been made in May 2010 and extended in May 2012 to allow further consultation following extensive flooding in Great Barrier Reef catchments. There were 156 submissions received in response to the consultation.

The definition of high impact earthworks was amended to include additional exemptions for carrying out routine farm management practices in response to issues raised in submissions. The exemptions permit laser levelling that maintains existing contours of the land so routine farm management practices will not trigger assessable development. Exemptions are also included for reinstating earthworks that repair damage from natural events such as flooding or landslides.

The need for amendments that allow the Chief Executive to make minor amendments to the map of referable wetlands, and what would constitute 'minor amendments'

The SPP 4/11 only applies to areas shown as a wetland protection area on the map of referable wetlands. A wetland protection area is an area of hydrological influence up to 500 metres from the edge of a HES wetland. Any substantive amendments to this map require an amending regulation. As a result of the consultation an amendment was made to allow for minor map amendments to occur before a development application is lodged. This will reduce regulatory burden as it provides an opportunity for a person proposing to carry out earthworks to present information to the chief executive (environment) clarifying the extent and type of a wetland or information on the absence of wetland values. The chief executive may, based on this information, remove, but not add, a wetland protection area. This would be regarded as a minor amendment because it allows a change of boundaries to better reflect the wetland values. A change in the extent of a wetland protection area may mean a development application is not required. During the eighteen month period of the temporary State Planning Policy information was presented that warranted three amendments to the map of referable wetlands which were made when the SPP 4/11 commenced. The amendment streamlines the assessment process.

Need to delegate decisions to the Chief Executive regarding the assessment processes for government supported infrastructure and high impact earthworks

The SPP 4/11 contains a self assessable code for government supported transport infrastructure to reduce the regulatory burden and avoid the need for government entities to apply for a development approval. This code applies to earthworks carried out by the Department of Transport and Main Roads, Ergon and Powerlink in wetland protection areas. The delegation to the chief executives of these entities was made to enable them to make decisions under the self assessable code, and streamline the assessment process.

High impact earthworks—

1 *High impact earthworks* means operational work that involves changing the form of land, or placing a structure on land, in a way that diverts water to or from a wetland.

2 However, *high impact earthworks* does not include operational work that is—

- (a) necessary to maintain infrastructure including any core airport infrastructure, buildings, dams, fences, helipads, roads, stockyards, vehicular tracks, watering facilities and constructed drains other than contour banks, other than to source construction material; or
- (b) carried out for a forest practice; or
- (c) excavating not more than 100m³ of material, or using not more than 100m³ of material as fill; or
- (d) excavating not more than 1000m³ of material, or using not more than 1000m³ of material as fill, if the excavating is more than 200m from the wetland in a wetland protection area; or
- (e) excavating to establish underground infrastructure, other than infrastructure for drainage or stormwater flows, if the excavated land is to be restored, as far as practicable, to its original contours after the infrastructure is established; or
- (f) carried out to restore or conserve the ecological processes or hydrological functions of a wetland protection area; or
- (g) carried out completely or partly in a declared fish habitat area or a wild river area, if the work is assessable development under schedule 3, part 1; or
- (h) the constructing or raising of waterway barrier works, if the work is self-assessable development under schedule 3, part 2; or
- (i) carried out under—
 - (i) the [Electricity Act 1994](#), section 101 or 112A; or
 - (ii) the [Fire and Rescue Service Act 1990](#), section 53, 68 or 69; or
 - (iii) a geothermal exploration permit under [the Geothermal Exploration Act 2004](#); or
- (j) the laser levelling of land if the work does not change the previously levelled contours or slope of the land; or
- (k) carried out for government supported transport infrastructure for which the funding and construction arrangements were approved by the State or Commonwealth before 31 October 2011; or
- (l) the maintenance of government supported transport infrastructure, including any of the following relating to the infrastructure—
 - (i) rehabilitation;
 - (ii) replacement;
 - (iii) repair;
 - (iv) recurrent servicing;
 - (v) preventive and remedial action;
 - (vi) removal;
 - (vii) alteration;
 - (viii) maintaining systems and services; or
- (m) carried out within a coastal management district; or
- (n) necessary to reinstate earthworks destroyed by floods or landslides; or
- (o) carried out in tidal water.

The committee is satisfied with the advice.

Agriculture, Resources and Environment Committee

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