

**Portfolio subordinate legislation  
tabled between 15 November 2011  
and 14 February 2012**

**Report No. 15**

**Finance and Administration Committee**

June 2012

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## FINANCE AND ADMINISTRATION COMMITTEE

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## 1. Introduction

### 1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 18 May 2012.<sup>1</sup> The Committee's primary areas of responsibility are: Premier and Cabinet; and Treasury and Trade.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation;
- b) the application of fundamental legislative principles to the legislation; and
- c) for subordinate legislation – its lawfulness.

### 1.2 Aim of this report

This report presents the committee's findings from its consideration of items of subordinate legislation tabled between 15 November 2011 and 14 February 2012 that fall within its portfolio responsibilities.

### 1.3 Findings and recommendations

The Committee recommends that the Legislative Assembly note the subordinate legislation tabled between 15 November 2011 and 14 February 2012 and considered by the Committee. The Committee did not identify any significant issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.

## 2. Subordinate legislation considered

The following table lists the subordinate legislation considered by the Committee and the deadline in each case for Members to give notice in the House of a disallowance motion in accordance with Standing Order 59.<sup>2</sup>

SL No 2011	Subordinate Legislation	Tabled Date	Disallowance Date <sup>3</sup>
281	<i>South East Queensland Water (Restructuring) Amendment Regulation (No.1) 2011</i>	14 February 2012	11 July 2012
294	<i>Superannuation (State Public Sector) Amendment Notice (No.2) 2011</i>	14 February 2012	11 July 2012
295	<i>Resources Legislation Amendment Regulation (No.1) 2011</i>	14 February 2012	11 July 2012
301	<i>Integrity Regulation 2011</i>	14 February 2012	11 July 2012

<sup>1</sup> *Parliament of Queensland Act 2001*, s.88 and Standing Order 194

<sup>2</sup> Section 50 of the *Statutory Instruments Act 1992* provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a Member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

<sup>3</sup> Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

SL No 2012	Subordinate Legislation	Tabled Date	Disallowance Date <sup>4</sup>
3	<i>Superannuation (State Public Sector) Amendment of Deed Regulation (No.1) 2012</i>	14 February 2012	11 July 2012
22	<i>Government Owned Corporations (NQBP Amalgamation) Regulation 2012</i>	14 February 2012	11 July 2012

### 3. Issues for consideration

The Committee identified potential fundamental legislative principle (FLP) and/or other issues with the following subordinate legislation highlighted in the table:

- *South East Queensland Water (Restructuring) Amendment Regulation (No.1) 2011*
- *Resources Legislation Amendment Regulation (No.1) 2011*
- *Superannuation (State Public Sector) Amendment of Deed Regulation (No.1) 2012*

#### 3.1 *South East Queensland Water (Restructuring) Amendment Regulation (No.1) 2011*

The purpose of this regulation is to put into practice issues anticipated in the amendments made to the South East Queensland Water (Restructuring) Act (SEQWR) in the *Revenue and other Legislation Amendment Bill 2011*.

The objectives of the regulation are to:

- assign the State of Queensland responsibility for current and future claims against Queensland Water Infrastructure Pty Ltd (QWI);
- transfer residual assets and liabilities of QWI to the State;
- provide that the State is the successor in law of QWI in relation to the assets, liabilities and instruments acquired or assumed by the State; and
- allow the company to be deregistered under the *Corporations Act 2001* (Cwth).

QWI was established in 2006 as a special purpose vehicle (SPV) company with the main object of developing the Wyaralong and Traveston Crossing Dam projects. The company also delivered the Cedar Grove Weir and Bromelton Off-stream Storage projects on behalf of the Co-ordinator General in 2009. The company is wholly owned by the Queensland government.

With the decision not to proceed with the Traveston Crossing Dam the assets, liabilities and management facilities were transferred to the Coordinator General in June 2010 by way of a commercial agreement. The assets, liabilities and instruments associated with the Wyaralong Dam project were transferred to the Queensland Bulk Water Supply Company (Seqwater) by way of regulation in July 2011.

The QWI has fulfilled its company objects and purposes, and it is now intended that QWI be deregistered and all outstanding claims, assets and liabilities will be transferred to the State.

In late 2010 the government announced a revised operating strategy for the manufactured water assets to reflect the improvement in water security in SEQ. The *Revenue and other Legislation Amendment Bill 2011* passed in April 2011 instituted the processes for this restructure to occur.

<sup>4</sup> Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

### **3.1.1 Fundamental legislative principles issues**

The Committee considered that the subordinate legislation may not have sufficient regard for the rights and liberties of individuals.

The explanatory notes state that the regulation may raise some issues with regard to the FLPs, but these issues have been thoroughly considered. It further states that these provisions were justified to the Parliament in the explanatory notes for the *Revenue and other Legislation Amendment Bill 2011* which inserted the authorising law into the SEQWR Act. Section 109 enables a regulation to dissolve a new water entity (the *first entity*) if all of its assets and liabilities have been transferred to another relevant water entity or have been otherwise disposed of.

The explanatory notes acknowledge that third party rights may be affected by allowing the transfer of assets, liabilities, instruments and legal proceedings (current or prospective) by regulation without their consent. The explanatory notes advise that these provisions do not override the substance of third party rights or enhance any rights being conferred on the relevant water entities.

The provision was justified on the basis that they are necessary to ensure that restructures can be completed in a timely and efficient manner and to provide certainty to those affected by a regulation that transfers made under the regulation are legally valid.

This issue was examined and reported upon by the former Scrutiny of Legislation Committee (SLC) when considering the *Revenue and Other Legislation Amendment Bill 2011*. Note clause 98 is the relevant section referred to in the Legislation Alerts.

### **3.1.2 Lawfulness**

The regulation is lawful and within regulatory power.

### **3.1.3 Committee comments**

The Committee is satisfied that the FLP issues raised in this regulation have been considered by the House during its consideration of the *Revenue and Other Legislation Amendment Bill 2011* and that the regulation raises no additional matters.

## **3.2 Resources Legislation Amendment Regulation (No.1) 2011**

The regulation has three policy objectives:

- Amendment of the *Mineral Resources Act 1989* and the *Petroleum and Gas (Production and Safety) Act 2004* to allow for collection of royalty payments to be made monthly from 1 January 2012 as announced in the 2011-12 State Budget. Currently the time for paying royalties is linked to the time for lodging a royalty return. This can be quarterly or annually depending on the act and the size of the operation.
- Amendment of the *Mineral Resources Act 1989* to allow for the date for quarterly returns to be specified by the Minister to allow for the transition to calendar quarter returns for all returns.
- Amendment of the *Mineral Resources Act 1989* to alter the definition of the Hedge settlement rate. The act currently defines this to be 'the average spot USD/AUD exchange rate worked out by AAP-Reuters at 9:45am on the day'(AAP Reuters rate). The WM/Reuters Australian Fix 10:00am rate (WM/Reuters rate) has replaced the AAP Reuters rate as the methodology and timing for calculating an Australian dollar reference rate and industry has been using the WM/Reuters rate for royalty purposes since then. The alteration of the definition therefore requires amendment to reflect this change.

The explanatory notes state that the Queensland Resources Council (QRC) and the Australian Petroleum Production and Exploration Association (APPEA) were consulted regarding the implementation arrangements for the monthly payment of royalties. They indicated support for the method for determining monthly royalty payments. QRC indicated a preference to defer the publicly announced state date of 1 January 2012 for monthly royalty payments. The explanatory notes are silent about the reasons.

The explanatory notes state that the Queensland Office for Regulatory Efficiency (QORE) was consulted regarding compliance with the Regulatory Assessment Statement system and they advised that the amendments relating to monthly royalty payments are exempt from the Regulatory Assessment Statement system as they were announced as part of the 2011-12 State Budget. A Preliminary Impact Assessment is required for the other amendments.

The Hedge Settlement Rate, as set by the Australian Foreign Exchange Committee, changed from the AAP Reuters rate to the WM/Reuters rate as of 1 July 2008.

### **3.2.1 Fundamental legislative principles issues**

The Committee identified no FLP issues.

### **3.2.2 Lawfulness**

The regulation is lawful and within regulatory power.

### **3.2.3 Committee comments**

The Committee sought additional information from the Minister regarding:

- the reasons for QRC's request to defer the state date for monthly royalty payments;
- whether the Preliminary Impact Assessment had been completed; and
- the timing of the change in the Hedge Settlement Rate.

The Treasurer and Minister for Trade advised the Committee that QRC wished to defer the commencement date to 1 July 2012 to provide its members with longer to make any system and administrative changes needed. However, the government decided to proceed with implementation on the date announced in the budget. The monthly royalty payment arrangements have now been in place since 1 January 2012 and have operated effectively and efficiently with no concerns raised by industry.

In relation to the Preliminary Impact Assessment, the Treasurer and Minister for Trade advised that the assessment was completed and that assessment found that the proposals would not impose significant impacts on the community, business or government, or part thereof and therefore a Regulatory Assessment Statement was not required.

The Treasurer and Minister for Trade also advised that industry has used the WM/Reuters rate for royalty purposes since 1 July 2008. The amendment gives clear legislative support for that practice.

## **3.3 Superannuation (State Public Sector) Amendment of Deed Regulation (No.1) 2012**

The policy objective of the Amendment of Deed Regulation is to amend the *Superannuation (State Public Sector) Deed 1990* to reflect recent changes to Commonwealth legislation which allows proceeds of crime to be recovered from superannuation benefits on receipt of a forfeiture order made by a court and to reflect the transfer of the administration of the early release of superannuation on compassionate grounds from the Australian Prudential Regulation Authority (APRA) to the Chief Executive Medicare. The subordinate legislation also makes some minor technical amendments to ensure consistency of the terms used in the QSuper Deed.

### **3.3.1      *Fundamental legislative principles issues***

The Committee considered that the subordinate legislation may not have sufficient regard for the rights and liberties of individuals.

The amendment regulation was made on 25 January 2012. Sections 4, 6 and 7 commence retrospectively on 1 November 2011. Sections 4, 6 and 7 amend the QSuper Deed to change the administration for the early release of benefits on compassionate grounds from APRA to the Chief Executive Medicare. This is not considered to be an objectionable case of retrospective commencement, as these amendments appear to operate to the benefit of persons other than the government.

### **3.3.2      *Lawfulness***

The regulation is lawful and within regulatory power.

### **3.3.3      *Committee comments***

The Committee is satisfied that the FLP issues raised in this regulation are reasonable. The Committee is also satisfied with the additional explanations provided by the Treasurer and Minister for Trade.

