

**Portfolio subordinate legislation
tabled between 15 November and
27 November 2012**

Report No. 25

Finance and Administration Committee

March 2013

FINANCE AND ADMINISTRATION COMMITTEE

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Chair's Foreword

This report presents the Committee's findings from its consideration of items of subordinate legislation tabled between 15 November and 27 November 2012 that fall within its portfolio responsibilities. The Committee did not identify any significant issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.

Michael Crandon MP

Chair

March 2013

1. Introduction

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 2012.¹ 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.

2. Findings and recommendations

The Committee recommends that the Legislative Assembly note the subordinate legislation tabled between 15 November and 27 November 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.

3. 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 59.²

| SL No 2012 | Subordinate Legislation | Tabled Date | Disallowance Date ³ |
|------------|--------------------------------------------------------------------------|------------------|--------------------------------|
| 198 | <i>Queensland Competition Authority Amendment Regulation (No.1) 2012</i> | 27 November 2012 | 18 April 2013 |
| 206 | <i>Trans-Tasman Mutual Recognition (Endorsement) Notice 2012</i> | 27 November 2012 | 18 April 2013 |

4. Issues for consideration

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

- *Trans-Tasman Mutual Recognition (Endorsement) Notice 2012*

¹ *Parliament of Queensland Act 2001*, s.88 and Standing Order 194

² 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.

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

4.1 SL No 206 of 2012 – Trans-Tasman Mutual Recognition (Endorsement) Notice 2012

The *Trans-Tasman Mutual Recognition Act 1997* (Cth) provides for the recognition within Australia of regulatory standards adopted in New Zealand regarding certain goods and occupations. The *Trans-Tasman Mutual Recognition (Queensland) Act 2003* has adopted the Commonwealth Act as a law of Queensland.

Under the Commonwealth Act, a jurisdiction endorses a regulation if the designated person for the jurisdiction (ie the Governor in Queensland) publishes a gazette notice setting out and endorsing the terms of the regulation before it is made. The Queensland Act provides that the gazette notice made by the Governor endorsing the regulation is subordinate legislation. A regulation cannot be made under the Commonwealth Act unless all of the participating jurisdictions have endorsed the regulation.

The objective of the gazette notice is to set out and endorse a regulation to be made by the Governor-General under the Commonwealth Act.

The regulation under the Commonwealth Act amends schedule 2 of the Commonwealth Act in order to provide that certain legislation of Western Australia (WA) relating to the sale of weapons is permanently exempted from the mutual recognition arrangements under the Commonwealth Act. Without this regulation being enacted, the principles of mutual recognition that apply under the Commonwealth Act permit the sale of weapons which may be lawfully sold in New Zealand in WA, overriding the provisions of the WA Weapons Acts.

It should be noted that the weapons legislation of the other Australian and New Zealand jurisdictions have all been previously permanently exempted from the mutual recognition arrangements under the Act. WA's weapons legislation has not been permanently exempted because WA was not a signatory to the Commonwealth Act at the time the participating jurisdictions reached an agreement regarding the existing permanent exemptions.

4.1.1 Fundamental legislative principles issues

The Committee identified that the notice endorses a Commonwealth regulation that implements a national scheme. It noted that the former Scrutiny of Legislation Committee (SLC) frequently considered legislation implementing national schemes of legislation to see whether the legislation had sufficient regard to the institution of Parliament.

The Committee considered that in this case the notice does have sufficient regard to the institution of Parliament because any participating jurisdiction can refuse to endorse the making of a Commonwealth regulation and refusal of any one jurisdiction to endorse the making of a Commonwealth regulation will mean that the Commonwealth regulation cannot be made.

4.1.2 Lawfulness

The regulation is lawful and within regulatory power.