Parliamentary Committees

Subordinate legislation tabled between 30 April 2013 and 4 June 2013

Report No. 24
Agriculture, Resources and Environment Committee
July 2013

Agriculture, Resources and Environment Committee

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1 Introduction

1.1 Role of the Committee

The Agriculture, Resources and Environment Committee (the committee) is a portfolio committee established by the Legislative Assembly on 18 May 2012 under the *Parliament of Queensland Act 2001*.[1] It consists of government and non-government members. The committee's primary areas of responsibility are: the Department of Agriculture, Fisheries and Forestry; the Department of Environment and Heritage Protection; and the Department of Natural Resources and Mines.

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 advises of subordinate legislation examined and, where applicable, presents any concerns the committee has identified in respect of subordinate legislation tabled between 20 March and 30 April 2013 that are within its portfolio responsibilities. Unless expressly noted below, no issues were identified.

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
61	Nature Conservation and Other Legislation Amendment and Repeal Regulation (No.1) 2013	21 May 2013	11 September 2013
62	Aboriginal Land Amendment Regulation (No.3) 2013	21 May 2013	11 September 2013
66	Plant Protection Amendment Regulation (No.2) 2013	21 May 2013	11 September 2013
67	Proclamation made under the Electronic Conveyancing National Law (Queensland) Act 2013	21 May 2013	11 September 2013
68	River Improvement Trust Amendment Regulation (No.1) 2013	21 May 2013	11 September 2013
70	Nature Conservation (Protected Areas) Amendment Regulation (No.1) 2013	4 June 2013	16 October 2013
71	Water Amendment Regulation (No.2) 2013	4 June 2013	16 October 2013
80	Plant Protection Amendment Regulation (No.3) 2013	4 June 2013	16 October 2013
81	Rural and Regional Adjustment Amendment Regulation (No.3) 2013	4 June 2013	16 October 2013
82	Nature Conservation (Protected Areas) Amendment Regulation (No.2) 2013	4 June 2013	16 October 2013
83	Environmental Protection Amendment Regulation (No.1) 2013	4 June 2013	16 October 2013
84	Natural Resources and Mines Legislation Amendment Regulation (No.2) 2013	4 June 2013	16 October 2013

2 Issues identified in particular subordinate legislation

2.1 SL 61 Nature Conservation and Other Legislation Amendment and Repeal Regulation (No.1) 2013

The objective of SL 61 is to amend the Nature Conservation (Wildlife Management) Regulation 2006 to:

- Allow commercial whale watching in State waters outside of marine parks (generally in waters off the Gold and Sunshine Coasts);

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

- Allow for the continuation of dolphin feeding at Tin Can Bay in an environmentally responsible way;
- Amend the marine mammal approach distances for vessels and aircraft for greater consistency with the Australian National Guidelines for Whale and Dolphin Watching 2005; and
- Simplify and streamline the declaration process for areas of special management and special management whales and dolphins and introduce special management provisions for dugongs to facilitate comparable protection for these animals.

Whales, dolphins and dugongs in Queensland are currently managed under the Nature Conservation (Whales and Dolphins) Conservation Plan 1997 and the Nature Conservation (Dugong) Conservation Plan 1999. The conservation plans are due to expire in August 2013. The amendment regulation incorporates the conservation plans into the Nature Conservation (Wildlife Management) Regulation 2006.

The amendment regulation also amends subordinate legislation under the *Marine Parks Act 2004* to remove legislative duplication and ensure greatest possible consistency across Queensland waters for matters including prescribed whale and dolphin approach distances and the behaviour of vessels, aircraft and persons in the vicinity of whales and dolphins.

In addition, the amendment regulation amends the State Penalties Enforcement Regulation 2000 for infringement notice offences and associated fines to support enforcement functions for the new arrangements and remove reference to the repealed conservation plans.

Potential FLP Issues and Comments

Section 361 – Temporal special management areas

Regard for rights and liberties of individuals Legislative Standards Act 1992, section 4 – new offences and temporary special management areas, clear and precise Legislative Standards Act 1992, section 4(3)(k)

Potential FLP issue and comment

The committee notes that proposed new section 361 provides for declarations of temporary special management areas (TSMA). A TSMA declaration under section 361 may declare the caution zone, no-approach zone, prescribed distance and prohibited activities for the TSMA. A declaration must state the nature of the offence arising from each declaration and the maximum penalty for the offence. These declarations are made by the chief executive and published in the gazette, a newspaper, online or on a sign.

A number of new sections inserted in the Nature Conservation (Wildlife Management) Regulation 2006 may depend on the provisions of a special management declaration. There are four categories of sections dependent on the TSMA, as follows:

1 – maximum penalty may depend on temporary special management declaration – sections 338E, 338G, 338F, 338H, 338I, 338J, 338K, 338P;

2 – prescribed distance may depend on temporary special management declaration – sections 338L, 338M;

3 – both maximum penalty and prescribed distance may depend on temporary special management declaration – sections 338O, 338Q; and

4 – prohibited activity may depend on temporary special management declaration – section 338R.

The explanatory notes (at page 5) state that these amendments are intended to achieve increased operational efficiency.

Each of the sections listed above create offences. Therefore these sections may have the potential to impact on the rights and liberties of individuals and raises the question as to whether the power given to the chief executive has sufficient regard to FLP's.

The committee notes that as a consequence of the temporary declarations made under section 361 it may not be possible from reading the regulation for a user of the legislation to be clear on what distance is permissible or the amount of penalty.

Therefore it raises the question as to whether proposed new section 361 and parts of sections 338E, 338G, 338F, 338H, 338I, 338J, 338K, 338P, 338L, 338M, 338O, 338Q and 338R has sufficient regard to the rights and liberties of individuals.

Regard for the institution of Parliament, inappropriate matter for subordinate legislation Legislative Standards Act 1992, section 5(c)

As mentioned above, declarations of TMSA's under section 361 are made by the chief executive and published in the gazette, a newspaper, online or on a sign. These temporary declarations are made initially for a period of 60 days and may be extended for a further period of up to 120 days and are not subject to the scrutiny of the Legislative Assembly. The extension of these declarations is also not subject to the scrutiny of the Legislative Assembly. This can be contrasted with a similar repealed provision of the *Nature Conservation (Whales and Dolphins) Conservation Plan 1997*, section 17.

Before a TMSA is extended, the chief executive must publish a notice about the proposed extension and have regard to public submissions received. However, the committee notes that the public consultation period of 7 days for an extension is relatively short.

It may be argued that these temporary declarations are an inappropriate delegation of legislative power and that section 361 and parts of sections 338E, 338G, 338F, 338H, 338I, 338J, 338K, 338P, 338L, 338M, 338O, 338Q and 338R may not have sufficient regard for the institution of Parliament.

Section 367 temporary special management marine mammals

Proposed new section 367 provides for declarations of temporary special management marine mammals. These declarations are made by the chief executive and published in the gazette, a newspaper, online or on a sign. A temporary special management marine mammal declaration may declare the caution zone, no-approach zone, prescribed distance and speed for approaching a mammal. The declaration must state the nature of the offence arising from the declaration and the maximum penalty. This declaration may arguably be an inappropriate delegation of legislative power. It may be preferable for provisions of this nature to be set out in the regulation, which has the benefit of scrutiny of the Legislative Assembly.

Explanatory Notes Comments

Consultation

The explanatory notes tabled with the amendment regulation describe public consultation undertaken as part of the marine mammal legislation review. The committee is of the view that the explanatory notes could have outlined the results of consultation, explained the changes made as a result of consultation and identified the groups and persons consulted. If this information was included, the explanatory notes would comply to a greater extent with the '*Guidelines for the preparation of explanatory notes'* issued by the Department of the Premier and Cabinet.

The explanatory notes do not identify the issues of fundamental legislative principle identified above. Apart from this, the explanatory notes tabled with the amendment Regulation comply with part 4 of the *Legislative Standards Act 1992.*

Committee's request for advice

The committee sought the Department's advice as to how the temporary special management area (TSMA) declarations will work in practice by asking the Department to provide examples and also whether the regulation will be sufficiently clear enough in circumstances where declarations are made by TSMA's.

The committee also asked the department to comment on the rationale for delegating power to the chief executive for temporary special management areas and temporary special management marine mammals

and whether the department believes the seven day public consultation period is sufficient for an extension of a TSMA.

The department's advice:

The department provided the following advice in relation to the committee's queries.

1. *The department does not envisage making TMSA's on a regular basis; rather the intention is that this management tool would be applied, where required, in response to unusual, unforeseen or emergency situations. Some examples may include:*

    a. *Where dugong habitat (seagrass beds) is impacted following a natural disaster such as a major flood, resulting in reduced food and starvation, lower vessel speed limits could be introduced in the area to help reduce threats to and disturbance of herds as they recover from the habitat loss.*

    b. *Temporarily restricting activities within an area where a pod of dolphins may have become trapped (such as an estuary or river), in order to help expedite dolphin movement or return to their regular waters, unhindered by anthropogenic disturbance.*

    It is incorrect to state that a declaration of a TSMA made under section 361, or a declaration of a temporary special management marine mammal made under section 367, is 'published in the gazette, a newspaper, online or on a sign' (with the implication being that any one of these methods used in isolation would suffice).

    Sections 361 and 367 both require that a declaration notice be published in one of the following ways:

    - *in the gazette; or*
    - *in a newspaper circulating generally throughout Queensland and in a newspaper circulating generally in the area of the special management area/marine mammal; or*
    - *in a newspaper circulating generally throughout Queensland and online and, if practicable, on a sign in the area of the special management area/marine mammal.*

    Additionally, a declaration notice may also be published in any other way the chief executive considers appropriate (e.g. media releases, radio announcements, publication on other websites, etc.), aimed at ensuring the broadest coverage of the declaration notice, relevant to the target audience.

    The department anticipates using the most appropriate means of publication applicable to each situation, as determined on a case by case basis, to ensure the greatest awareness of temporary special management area declarations and any applicable restrictions.

    Additionally, the department would look at applying vessel approach distance and speed restrictions under a TSMA declaration that were consistent with those applicable under other provisions of the legislation, to build community and stakeholder familiarity with 'standardised' approach distances and speeds.

    For example, under a TSMA, whale approach distances (typically 100m – whale 'no approach zone') could be restricted to 300m (consistent with the whale 'caution zone') or 500m (consistent with the special management marine mammal 'no approach zone').

    Also, under a TSMA declaration, vessel speeds could be restricted to 6 knots and 'no wake speed' (consistent with vessel speeds within the caution zone of a marine mammal). This restriction is already a stated example under the temporary special management area provision.

2. *The chief executive's power to make TSMA and temporary special management marine mammal declarations is consistent with other state legislation serving a similar purpose, providing a consistent management framework for the marine environment.*

For example, under the Marine Parks Regulation 2006, the chief executive may declare by gazette notice all or part of a marine park to be a 'restricted access area' to, for example, conserve or protect the natural resources in the marine including to, for example, prevent the harassment, reduced health or injury of animals in the marine park or part or protect a breeding area for native wildlife.

Although the repealed Nature Conservation (Whales and Dolphins) Conservation Plan 1997 (section 17(3)) stated that a notice extending a special interest whale or dolphin declaration was 'subordinate legislation', the department's in-house legal advice (12 July 2010) was that 'despite section 17(3) of the conservation plan stating that a notice extending a special interest declaration is subordinate legislation, a review of the relevant provisions of the Statutory Instruments Act 1992 (Section 9 Meaning of subordinate legislation) and the Nature Conservation Act 1992 leads to a conclusion that the extension declaration is not subordinate legislation' and that 'a notice extending the declaration can still be made via section 17(2) of the conservation plan (Section 17(2) another notice may extend the declaration)'. Therefore, the making and, where required, extension of a special interest whale or dolphin declaration had, in effect, not been subject to the scrutiny of the Legislative Assembly under the former legislative framework.

The consultation period prior to extending a TSMA declaration is specified as being 'at least seven days', therefore a longer period of time could be allowed where practicable.

Committee Comment

The committee thanks the department for its response and for the further advice provided in relation to TSMA's in general, and the chief executive's power to make TSMA's and temporary special management marine mammal declarations.

2.2 SL 80 Plant Protection Amendment Regulation (No.3) 2013

The Plant Protection Amendment Regulation (No.3) 2013 (the Amendment Regulation) amends the Plant Protection Regulation 2002 (the Regulation) to:

- reduce red tape and alleviate the burden on industry and government in dealing with strawberry plant pest. Given these viruses are now endemic in Queensland, the department considers the regulatory controls are no longer needed;
- enhance the profitability of Queensland's grape growing industry by complying with interstate quarantine requirements and contributing towards Queensland achieving Phylloxera Exclusion Zone status; and
- reduce the regulatory burden on banana growers and government and facilitate the use of cheaper and more effective treatment methods.

The Amendment Regulation also clarifies the use of registered agricultural chemical products and ensures consistent use of terminology of prescribed treatment methods.

Potential FLP Issues and Comments

Legislative Standards Act 1992, section 4(5)(e) - Sufficient regard to the institution of Parliament – Sub-delegation

Potential FLP issue and comment

Section 11 of the *Plant Protection Act 1989* provides that the Governor in Council may by regulation, or, if the Minister considers it urgent, by notice, declare any area to be a pest quarantine area. Such a regulation or notice may impose duties upon owners of land within the pest quarantine area, including the treatment or destruction of plants, soil or appliances in the area.

The Regulation currently specifies treatment methods for banana plants in pest quarantine areas (see treatment methods A, B, C and D in schedule 5 to the Regulation). The treatment methods in schedule 5 are quite specific, e.g. they state where to inject treatments and how to dispose of plants and soil etc.

Section 5 of the Amendment Regulation inserts new section 28A into the Regulation to provide the chief executive with the power to approve a method for treating banana plants. The new power is in addition to the various treatment methods currently set out in the Regulation.

Section 4(5)(e) of the *Legislative Standards Act 1992* provides that subordinate legislation should allow the sub-delegation of power delegated by an Act only –

- in appropriate cases and to appropriate persons; and
- if authorised by an Act.

The committee notes that the new power at section 28A of the Regulation may be considered sub-delegation, (i.e. a person delegating legislative power that has been delegated to them by legislation) and raises the question of whether the Amendment Regulation has sufficient regard to the institution of Parliament.

The significance of providing for matters to be dealt with by mechanisms such as approved treatment methods, is that, because they are not subordinate legislation, they are not subject to the tabling and disallowance provisions of Part 6 of the *Statutory Instruments Act 1992,* and therefore are not subject to parliamentary scrutiny.

The explanatory notes do not make reference to the chief executive's new power to approve treatment methods, and therefore make no assessment of any potential fundamental legislative principle (FLP) issues raised by the new power.

When considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, the former Scrutiny of Legislation Committee took into account the importance of the subject dealt with and matters such as the practicality of including those matters entirely in subordinate legislation.

New section 28A(2) of the Regulation provides that the chief executive may only approve a treatment method if he or she is reasonably satisfied that the method is effective and appropriate, having regard to:

- the purpose of the method; and
- the associated risks to human health, the environment, trade, and crop and animal safety.

New section 28A(3) and (4) also provide that the chief executive must publish an approved treatment method on the department's website and that the approval may only last for a maximum of 6 months. It is considered that the chief executive of the responsible department would be an appropriate person to whom such a power could be delegated.

It is also arguable that given the criteria at section 28A(2), the time limits, and detailed and technical nature of any approved treatment method, it is appropriate for such matters to be approved by the chief executive, rather than be included in subordinate legislation. Approved treatment methods will also be made publicly available.

However, the Regulation currently specifies treatment methods for banana plants in pest quarantine areas, which are detailed and technical (ie. treatment methods A, B, C and D in schedule 5 to the Regulation). This raises the question of why additional treatment methods may now be approved by the chief executive, rather than specified in the Regulation. The explanatory notes are silent on this issue.

Section 11 of the Act does not appear to authorise a regulation or notice to delegate a power to the chief executive to approve treatment methods in addition to those listed in the Regulation. It is therefore unclear under which provision the chief executive's new power to approve treatment methods has been made.

The potential FLP issues raised by new section 28A of the Regulation are brought to the committee's attention for its consideration. In reaching a view on whether the new power for the chief executive has sufficient regard to FLPs, the committee may wish to seek information from the department about the intended use of the new power and clarification about the power under which new section 28A of the Regulation was made.

Explanatory Notes Comments

The explanatory notes tabled with the amending Regulation generally comply with part 4 of the *Legislative Standards Act 1992.* However, the explanatory notes make no mention of the new power for the chief executive to approve treatment methods and do not identify this new power as raising any potential FLP issues.

Committee's request for advice

The committee sought further advice from the department as to the intended use of the new power which authorises delegation to the chief executive to approve treatment methods. The committee asked the department to provide some examples in which the approval of treatment methods by the chief executive would be used.

The department's advice:

The department provided the following advice in relation to the committee's query.

The Department of Agriculture, Fisheries and Forestry (DAFF) thanks the Committee for raising these issues and provides the following information by way of response, for the Committee's information.

The objective of the legislation is to provide a mechanism that enables the chief executive to approve alternative treatment methods for banana plant diseases in the pest quarantine area, which land owners can use to discharge their obligations under the legislation until such time as the Plant Protection Regulation 2002 (the Regulation) is amended to prescriptively include these methods. The ability of the chief executive to approve such new treatment methods will ensure there is no time lag in their implementation, whilst the Regulation is being amended.

The provisions of section 28A of the Plant Protection Amendment Regulation (No.3) 2013 (SL No. 80), provide for a more flexible, responsive and timely means of approving alternative and more effective methods of treatment of banana pests and diseases and enables quicker adoption by industry of these new methods.

Prior to the provisions of SL No. 80 being introduced, the Regulation provided that where a land owner was required to treat a banana disease, only those treatment methods prescribed in Schedule 5, items 1 to 4 of the Regulation could be used to discharge the obligation to treat the pest or disease concerned. As the Committee has noted, the treatment methods in Schedule 5 are detailed and of a technical nature.

Research into the efficacy of different treatment methods is continuing to identify new methods that are effective in controlling banana pests. In practice, such methods are identified through the National Registration Scheme (NRS), a national system which determines the suitability of Agricultural and Veterinary (AgVet) chemicals for particular uses and assesses the potential risks to human health, the environment, trade, crop and animal safety. The Australian Pesticides and Veterinary Medicines Authority (APVMA) administers the NRS and evaluates, registers and regulates AgVet chemicals up to their point of sale. States and Territories are responsible for the control of use of approved AgVet chemicals.

Consequently, even if research identifies more effective and less costly treatment methods and the APVMA has undertaken extensive evaluation of new and variations of existing AgVet chemicals, their adoption and use by industry in Queensland cannot be undertaken until such time as the Regulation is amended to provide for their use.

As the Committee may be aware, the process of amending subordinate legislation can sometimes be lengthy with many factors influencing the timely progression of amendments to the Regulation. Prior to

SL No. 80, there was no formal mechanism that allowed land owners to use more effective and less costly alternative treatments in the interim, while the Regulation was being amended. Section 28A of SL No. 80 addresses this deficiency by enabling the chief executive to approve alternative treatment methods, whilst maintaining sufficient rigor to ensure the appropriate use of this power.

In terms of general comments, DAFF respectfully points out that in the course of certifying legislation the Office of the Queensland Parliamentary Counsel (OQPC) has regard to whether proposed legislation is lawful and has sufficient regard to fundamental legislative principles. DAFF however acknowledges the fact that the Explanatory Notes do not address or explain the new power of the chief executive to approve alternative treatment methods and apologises for this oversight which has resulted in the Committee's enquiry to further clarify this matter.

DAFF notes that the Committee in its consideration of SL No. 80, has directed attention to section 11 of the Plant Protection Act 1989 (the Act). In particular section 11(2A) provides that a Regulation may include requirements for the treatment or destruction of plants in a pest quarantine area. These requirements further detail the obligations of land owners under section 11(2)(b) of the Act.

It is DAFF's view, and also that of OQPC, that it is not necessary to prescriptively set out the entire set of treatment methods at any point in time for a particular disease only in the Regulation. These requirements may reside in both the Regulation and outside of the Regulation (i.e. in the chief executive's approved treatment methods as displayed on DAFF's website). However, as SL No. 80 provides an interim mechanism for more flexible and timely approval of treatment methods until the Regulation can be amended, the "authoritative source" for all treatment methods will ultimately be the Regulation.

DAFF notes the Committee's request for further advice as to the intended use of the new power provided in s28A which enables the chief executive to approve treatment methods. DAFF intends to use this new power primarily for the banana bunchy top (BBTV) disease. The use of this power will not however be constrained to this disease.

Treatment methods A, B, C and D under schedule 5 of the Regulation are prescribed for treating banana plants with notifiable/prescribed pests. For example, landowners with bananas infested with banana bunchy top (BBTV) are obliged to treat infested plants by spraying the plant with dieseline or kerosene; and treating it using treatment method A, B or C.

The chief executive's new approved treatment method does not remove landowner's access to the existing treatment methods A, B or C, rather it extends landowners access to new, more effective control methods as they are developed by industry and are approved by the Australian Pesticides and Veterinary Medicines Authority (APVMA) for use under the national registration scheme for AgVet chemicals.

The Australian banana industry has invested heavily to eradicate bunchy top from northern New South Wales and south east Queensland and is undertaking further research and development with DAFF on improving BBTV control methods on plants under suboptimal conditions, such as cold stress, drought, etc. Once these treatment methods have been risk assessed and given time limited approval by the APVMA, approval to use the new methods for BBTV by the banana industry inspectors, appointed under both Queensland and New South Wales legislation for banana BBTV regulation is critical for the success of the project. The ability of the chief executive to approve such new treatment methods will ensure there is no time lag in their implementation, whilst the Regulation is being amended.

This proposed new treatment method includes four procedures which are to be applied in the following order:

1. *the application of a registered agricultural marker dye (red) where bunches are present, and*
2. *the application of glyphosate for plant destruction, and*
3. *the application of imidacloprid, and*
4. *The application of paraffinic oil, for the control of the aphid vector, as outlined in the directions for use below.*

- *spray any bunches with a registered agricultural marker dye to make them unsuitable for human or animal consumption*
- *prepare a solution of glyphosate (450 g/L) at a concentration of 200 mL product per 1 L water; and*
- *Apply 5-15 mL of the prepared glyphosate solution per pseudostem by stem injection.*
- *prepare a solution of imidacloprid (350 g/L) at a concentration of 100 mL product per 100 mL water; and*
- *apply 35-60 mL of the prepared imidacloprid solution per pseudostem by stem injection.*
- *prepare a solution of paraffinic oil (815 g/L) at a concentration of 10 mL product per 1 L water; and*
- *apply as a foliar spray to infested plants and on live plants within a radius of 10 m from each infested plant.*
- *No fruit from plants treated under this permit can be sold or consumed.*

Should there be any consideration of a perceived negative impact upon persons by the power afforded the chief executive in s28A of SL No. 80, this can be addressed as follows:-

- *The approval of alternative treatment methods is by an officer at a sufficiently senior level (i.e. the chief executive) who has to be satisfied on reasonable grounds that the alternative method is effective and appropriate whilst having regard to the factors stated (i.e. the purpose of the method and its associated risks). There is also sufficient prescription surrounding the circumstance in which the chief executive may approve an alternative treatment method to address any issues of inappropriate use of the power. In practice, this power would be exercised by the chief executive where an appropriate method had been identified and approved through the National Registration Scheme for AgVet Chemicals.*
- *There is transparency to the exercise of the power in that the chief executive is obliged to publish the alternative treatment method on DAFF's website which is publicly accessible.*
- *The approval is not indefinite, i.e. it is constrained to a limited lifespan (6 months or earlier if stated) therefore the chief executive's approval is specifically intended to only apply for as long as reasonably required to allow the development of an amendment Regulation to prescribe the alternative treatment method in the Regulation.*
- *SL No.80 does not make an absolute obligation on persons to only use the alternative treatment to discharge their obligation to treat plant diseases under the legislation. The subordinate legislation still allows the use of the treatments already prescribed for the stated banana plant diseases. A person may simply choose to use an alternative treatment method (if one is approved by the chief executive) where they determine its application is effective and appropriate in their particular circumstance.*
- *Whilst the approvals that may be made by the chief executive on alternative treatments are not in themselves subordinate legislation, the legislation which establishes the mechanism for the chief executive to approve alternative treatments (i.e. SL No.80) is subordinate legislation and is therefore subject to scrutiny (as is currently being exercised by the Committee) and subject to disallowance by Parliament. As each alternative treatment method approved by the chief executive, is progressively included in the Regulation over time, the process of amending the Regulation to include these new methods will involve the scrutiny of the Committee, the Governor in Council and also be subject to disallowance by Parliament. In addition, as with any* proposed *regulatory amendment, the Office of Best Practice Regulation, within the Queensland Competition Authority, is consulted with regard to regulatory impact statement considerations.*

In conclusion, DAFF is of the view that the power afforded the chief executive under s28A is sufficiently defined, constrained and appropriate to provide for the flexible and timely implementation of new treatment methods which will ultimately be prescribed in the Regulation, for the benefit of industry and ultimately consumers. The process of consideration of new and variations of existing AgVet chemicals and methods for the use of those chemicals through the National Registration Scheme, which the chief executive would have regard to in approving new treatment methods, combined with the safeguards to the exercise of the chief executive's power, in DAFF's view, justify this subordinate legislation.

Committee Comment

The committee thanks the department for its response and notes the advice provided by the department in relation to the oversight in not addressing in the explanatory notes the new powers given to the chief executive. The committee is satisfied with the further information provided by the department regarding the application of fundamental legislative principles.

3 Recommendation

Recommendation

The committee recommends that the Legislative Assembly note this report and the committee's conclusion that subordinate legislation nos. 61,62, 66-68, 70, 71, & 80-84, raise no issues regarding the application of fundamental legislative principles.

Ian Rickuss MP
Chair
June 2013