

**Subordinate legislation tabled between  
11 September and 29 October 2013**

**Report No. 36**  
**Agriculture, Resources and Environment**  
**Committee**  
February 2014

## **Agriculture, Resources and Environment Committee**

<b>Chair</b>	Mr Ian Rickuss MP, Member for Lockyer
<b>Deputy Chair</b>	Ms Jackie Trad MP, Member for South Brisbane
<b>Members</b>	Mr Jason Costigan MP, Member for Whitsunday Mr Sam Cox MP, Member for Thuringowa Mr Shane Knuth MP, Member for Dalrymple Mrs Anne Maddern MP, Member for Maryborough Mr Michael Trout MP, Member for Barron River
<b>Committee Staff</b>	Mr Rob Hansen, Research Director Ms Sarah McCallan, Principal Research Officer Ms Rhia Campillo, Executive Assistant
<b>Technical Scrutiny Secretariat</b>	Mr Peter Rogers, Acting Research Director Mr Michael Gorringe, Principal Research Officer Ms Tamara Vitale, Executive Assistant
<b>Contact details</b>	Agriculture, Resources and Environment Committee Parliament House George Street Brisbane Qld 4000
<b>Telephone</b>	+61 7 3406 7908
<b>Fax</b>	+61 7 3406 7070
<b>Email</b>	<a href="mailto:AREC@parliament.qld.gov.au">AREC@parliament.qld.gov.au</a>
<b>Web</b>	<a href="http://www.parliament.qld.gov.au/AREC">www.parliament.qld.gov.au/AREC</a>

## 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*.<sup>1</sup> 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 portfolio subordinate legislation tabled between 11 September and 29 October 2013 that the committee has examined and presents any concerns the committee has identified. Unless expressly noted below, no issues were identified.

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
181	Proclamation made under the <i>Waste Reduction and Recycling and Other Legislation Amendment Act 2013</i>	15 October 2013	6 March 2014
182	Waste Reduction and Recycling and Other Legislation Amendment Regulation (No.1) 2013	15 October 2013	6 March 2014
188	Nature Conservation Legislation Amendment Regulation (No.2) 2013	15 October 2013	6 March 2014
189	Proclamation made under the <i>Land, Water and Other Legislation Amendment Act 2013</i>	15 October 2013	6 March 2014
190	Water and Another Regulation Amendment Regulation (No.1) 2013	15 October 2013	6 March 2014
193	Plant Protection Amendment Regulation (No.6) 2013	15 October 2013	6 March 2014
194	Rural and Regional Adjustment Amendment Regulation (No.6) 2013	15 October 2013	6 March 2014
195	Petroleum and Gas (Production and Safety) Amendment Regulation (No.1) 2013	15 October 2013	6 March 2014
199	Food Production (Safety) Amendment Regulation (No.1) 2013	15 October 2013	6 March 2014
202	Animal Management (Cats and Dogs) Amendment Regulation (No.1) 2013	29 October 2013	20 March 2014
203	Nature Conservation Legislation Amendment Regulation (No.3) 2013	29 October 2013	20 March 2014
204	Environment and Heritage Protection Legislation Amendment Regulation (No.1) 2013	29 October 2013	20 March 2014

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

## 2 Issues identified in particular subordinate legislation

### 2.1 SL 182 Waste Reduction and Recycling and Other Legislation Amendment Regulation (No.1) 2013

The objective of SL182 is to amend the Waste Reduction and Recycling Regulation 2011 to:

- give effect to amendments to the *Waste Reduction and Recycling Act 2011* as a result of the repeal of the waste levy
- enable a local government to designate a waste area for collection of waste by the local government, and
- enable a local government to determine the frequency of servicing for waste collection.

SL182 also repeals specific sections of the Environmental Protection (Waste Management) Regulation 2000 in relation to:

- design rules for portable toilets, other waste equipment and sanitary conveniences
- specific regulatory requirements for sanitary conveniences where the local government arranges for the removal and disposal of nightsoil, and
- the provision stating the specific frequency for waste collection where the local government provides the service.

The Regulation amends the Environmental Protection Regulation 2008 to:

- correct drafting errors in relation to specific environmentally relevant activities including intensive livestock, asphalt manufacture and chemical storage
- exclude certain wastes from the definition of regulated waste, and
- clarify the application of the aggregate environmental score in relation to resource activities.

#### Potential FLP Issues and Comments

***Legislative Standards Act 1992, s.4(2)(a), (3)(k) – Sufficient regard for the rights and liberties of individuals, unambiguous and drafted in a sufficiently clear and precise way - Section 6 – amendment of Environmental Protection Regulation 2008, schedule 2A***

Section 6 of the Amendment Regulation amends the Environmental Protection Regulation 2008, schedule 2A, table item 8. The explanatory notes at pages 6 to 7 attempt to explain the amendment made by section 6.

As presently drafted, it may be argued that section 6 may be ambiguous and not drafted in a sufficiently clear and precise way. Therefore it may not have sufficient regard for the rights and liberties of individuals.

***Legislative Standards Act 1992, s.4(2)(b), (5)(c) – Sufficient regard to the institution of Parliament – matter appropriate to subordinate legislation – Section 21 – amendment of Waste Reduction and Recycling Regulation 2011, part 3***

Section 21 of the Amendment Regulation inserts new section 9 into the Waste Reduction and Recycling Regulation 2011 to prescribe all waste disposal sites for the purposes of the *Waste Reduction and Recycling Act 2011*, section 52. Breach of section 52 carries a penalty of 300 penalty units, that is, \$330,000.00. This amendment indicates that a policy decision has been made for the obligation contained in section 52 of the *Waste Reduction and Recycling Act 2011* to apply to all waste disposal sites. If that is the case, it would be preferable for the Act to be amended to reflect this.

Amending the Act in this way would also accord with the view of the former Scrutiny of Legislation Committee, that ‘the principal means of creating offences should always be through Acts of Parliament rather than delegated legislation’.

On the basis of this principle, it is preferable for an entire offence to be contained in an Act, and not have aspects of an offence provision prescribed by regulation. This is especially the case where breach of a provision has a significant penalty.

As presently drafted it could be argued that section 21 arguably does not contain matter appropriate to subordinate legislation and may not have sufficient regard for the institution of Parliament.

### **Explanatory Notes Comments**

The explanatory notes tabled with the Amendment Regulation are detailed and comply with part 4 of the *Legislative Standards Act 1992*.

However, on page 14 of the explanatory notes, under the heading 'Section 23', the notes appear to contain an error in that they refer to 'section 40(b) of the Act' instead of section 40(b) of the Regulation.

### **Committee's request for advice**

The committee sought the following advice from the department:

1. further information as to the rationale behind section 6 in relation to the amendment of the Environmental Protection Regulation 2008, schedule 2A, table, item 8
2. whether section 52 of the *Waste Reduction and Recycling Act 2011* applies to all waste disposal sites and if so, why the Act wasn't amended to reflect this, and
3. whether there is an error in the explanatory notes in that the reference to 'section 40(b) of the Act' should instead be to section 40(b) of the Regulation.

### **The department's advice**

The department provided the committee with the following advice:

1. Section 6 amends schedule 2A of the Environmental Protection Regulation 2008 to clarify the annual fee when a resource activity includes other ancillary activities.

Item 8 of the schedule currently refers to a petroleum activity, other than a petroleum activity mentioned in items 1 to 7, that includes 1 or more prescribed ERAs for which an aggregate environmental score (AES) is stated.

However, because of the nature of sections 18 and 19 of the *Environmental Protection Act 1994*, it is arguable that a petroleum activity cannot include an activity prescribed to be an environmentally relevant activity (ERA) by schedule 2 (a 'prescribed ERA'). However, it is quite clear that operators can and do carry out these activities as part of their environmental authority for the petroleum activity. This has caused confusion about when this fee is payable.

Environmental authorities contain a schedule of activities which are authorised under the authority. For resource activities, this includes a list of ancillary activities which are carried out as part of the resource activity, which would be prescribed ERAs if it wasn't for the fact that the environmental authority is for a resource activity.

In addition, the combination of the old schedules 5 and 6 into schedule 2A and the redrafting of section 120 of the Environmental Protection Regulation 2008 have caused confusion with terminology. Consequently, it provides greater clarity if item 8 applies to petroleum or GHG storage activities that include 1 or more activities mentioned in schedule 2 that have an AES. This item only applies if items 1 to 7 do not apply, since a petroleum activity can involve both a high hazard dam (for example) and an activity described in schedule 2. Since the annual fee must be based on the highest AES, and item 6 has a higher AES than item 8, the annual fee would be based on the AES of 165 in this example.

Essentially, the amendment to the item 8 of the schedule is as per the following mark-up:

“a petroleum activity or GHG storage activity, other than a petroleum an activity mentioned in any of items 1 to 7, that includes 1 or more prescribed ERAs activities mentioned in schedule 2 for which an aggregate environmental score AES is stated”

Taking each change in turn:

- The words “or GHG storage activity” were required to be added because item 1 is not a petroleum activity. Consequently, the existing wording was internally inconsistent.
- The deletion of “a petroleum” and insertion of “an” and “any of” is a consequence of this amendment.
- The deletion of “prescribed ERAs” and insertion of “activities mentioned in schedule 2” is explained in the explanatory notes. Essentially, it results from a technical legal argument that is creating administrative problems but would result in an increase in red tape for the majority of operators if it was upheld.
- The deletion of “aggregate environmental score” and insertion of “AES” is because the acronym is defined in the dictionary to the Regulation.

Consequently, the amendment does not contravene the fundamental legislative principle about clarity of drafting because the amendment makes the fee schedule more legally clear or corrects errors in the drafting. The amendments make it more clear when the fee is payable and removes the technical legal argument which created doubt for some operators about which fee applied to their project.

2. Section 21 amends the Waste Reduction and Recycling Regulation 2011 to insert a new section prescribing waste disposal sites for the purposes of section 52 of the *Waste Reduction and Recycling Act 2011*.

Section 52(1) states that this section applies to a waste disposal site prescribed under a regulation. Section 9 of the Amendment Regulation prescribes the sites to which section 52 applies, stating that all waste disposal sites are prescribed sites for the purpose of reporting under section 52 of the *Waste Reduction and Recycling Act 2011*. Section 52(2) provides that the operator of the waste disposal site must, on or before the day prescribed under a regulation, give the chief executive a return in the approved form (a waste data return) for the period prescribed under a regulation (a reporting period). Section 52(4) provides that a regulation may prescribe different reporting periods for waste disposal sites of different types or sizes.

Section 10 of the Amendment Regulation provides the prescribed day for a relevant schedule 5 site and for all other waste disposal sites that are not a relevant schedule 5 site. Section 11 of the Amendment Regulation then goes on to prescribe the reporting period for a relevant schedule 5 site and for all other sites.

This is not a departure from previous requirements prior to the repeal of the waste levy where all levyable waste disposal sites were required to provide a waste data return within a specific timeframe – whether monthly or annually. Levyable waste disposal site (applies) to any waste facility to which all of the following applied:

- levyable waste may be delivered to the facility,
- the operator of the facility is required to hold a registration certificate for the disposal of waste at the facility, and
- waste delivered to the facility commonly includes waste that is subsequently disposed of to landfill at the facility.

This definition implies that all waste facilities may at some time be a levyable waste disposal site; the term levyable was only relevant for those sites located within the prescribed levy zone and therefore required to remit a levy payment.

The same tonnage split of more than 5000 tonnes (as provided in the definition for relevant schedule 5 site) is used to distinguish between those sites that are required to report quarterly and those that are required to report annually.

When read in conjunction with sections 9, 10 and 11 of the Amendment Regulation, and in the context of the previous application of requirements prior to amendment of the Act through the *Waste Reduction and Recycling and Other Legislation Amendment Act 2013*, there is no requirement to amend the Act as the sites to which the reporting requirements apply remains the same.

3. There is an error in the Explanatory Notes. The amendment for section 23 of the Amendment Regulation in relation to changing the terminology from registration certificate to environmental authority is for section 40(b) of the Waste Reduction and Recycling Regulation 2011 not the Act.

## **2.2 SL 188 Nature Conservation Legislation Amendment Regulation (No.2) 2013**

The objective of SL188, the Nature Conservation Legislation Amendment Regulation (No.2) 2013, is to amend the Nature Conservation (Administration) Regulation 2006, Nature Conservation (Koala) Conservation Plan 2006, Nature Conservation (Wildlife Management) Regulation 2006 and Nature Conservation (Wildlife) Regulation 2006 to:

- streamline administrative processes associated with damage mitigation permits
- address health and safety issues associated with removing and relocating 'near threatened' and 'threatened' wildlife from premises
- remove legislative requirements around the export of animals which duplicate Commonwealth legislation, and
- correct errors and omissions and clarify the intent of previously ambiguous provisions.

### **Potential FLP Issues and Comments**

#### **Rights and liberties of individuals *Legislative Standards Act 1992*, section 4(3)(k) – unambiguous, clear and precise**

Part 2 of the Amendment Regulation which amends the Nature Conservation (Administration) Regulation 2006 contains the following potential drafting errors:

- in section 3, the reference to section 12(d) should be section 12(c)
- in section 4(2), the reference to section 21(1)(d) should be section 21(1)(c), and
- in section 4(4), the reference to (1)(d) should be (1)(c).

### **Explanatory Notes Comments**

The Explanatory Notes tabled with the Amendment Regulation include the information required under section 24 of the *Legislative Standards Act 1992*.

However, there appears to be an error in the 'Notes on provisions' section on page 4. The explanation of the purpose of clause 10 refers to amendments to schedule 3 of the Nature Conservation (Administration) Regulation 2006. These amendments are actually made by clause 13 of the Amendment Regulation.

The effect of this potential error is that the description in the Explanatory Notes of the clause 11 describes the effect clause 10, the description of clause 12 describes the effect of clause 11, and the description of clause 13 describes the effect of clause 12.

### **Committee's request for advice**

The committee sought advice from the department as to whether an error exists in the 'Notes on provisions' section on page 4 of the explanatory notes as described above and, if so, the steps to remedy this error.

### **The department's advice**

The department provided the committee with the following advice:

Clauses 10 – 13 of the explanatory notes are referenced incorrectly, as indicated by the committee. The department will prepare an erratum to the explanatory notes, correcting the clause numbering and sequencing, for tabling in the legislative assembly during the parliamentary recess.

### **2.3 SL 189 Proclamation made under the *Land, Water and Other Legislation Amendment Act 2013***

The Proclamation commenced on 27 September 2013 for certain provisions of the *Land, Water and Other Legislation Amendment Act 2013* that amend the *Water Act 2000*.

### **Potential FLP Issues and Comments**

No issues of fundamental legislative principle detected.

### **Explanatory Notes Comments**

It would appear that the explanatory notes tabled with the proclamation do not comply with part 4 of the *Legislative Standards Act 1992* (the LSA).

The explanatory notes include the information required by section 24(1)(a) to (c) of the LSA. The explanatory notes also include, for certain provisions commenced by the proclamation, a brief statement of the way the policy objective will be achieved and why that way is reasonable and appropriate, as required under section 24(1)(d) of the LSA. It is unclear, however, why this information is provided for some provisions, but not others.

It also appears that the explanatory notes do not include the information required by section 24(1)(e) to (i) and do not comply with the requirement at section 24(2) of the LSA to include a brief statement about consultation.

Section 24(4) of the LSA provides that if for any reason an explanatory note does not include the information mentioned in section 24(1) or (2), the explanatory note must state the reason for non-inclusion. The Explanatory Notes tabled with the proclamation do not include such a statement.

### **Committee's request for advice**

The committee sought advice from the department as to whether part 4 of the *Legislative Standards Act 1992* was considered when preparing the explanatory notes for SL189.

### **The department's advice**

The department provided the committee with the following advice:

Part 4 of the *Legislative Standards Act 1992* (the LSA) was considered when preparing the explanatory notes for SL189.

SL189 was prepared in conjunction with SL190 (Water and Another Regulation Amendment Regulation (No. 1) 2013). SL190 provides the changes to the Water Regulation 2002 and Sustainable Planning Regulation 2009 necessary to support the commencement of the provisions identified in SL189. It was the Department's intention that the explanatory notes for SL189 and SL190 be read together. As such, the explanatory notes for SL189 note that the commencement of the provisions will coincide with amendments to the necessary regulations. More detailed information related to the matters in the LSA was incorporated in the explanatory notes for SL190.

The explanatory notes for SL189 and SL190 are structured by topic area. In relation to the explanatory notes for SL189, the topic areas refer to the key provisions of the *Land, Water and Other Legislation Amendment Act 2013* (LWOLA) that relate to that area. The provisions not specifically referred to are all consequential changes. For example, sections 289A, 292, 303, 304 and the amendments to the *Petroleum*



*Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2007*, the Sustainable Planning Regulation 2009 and various water resource plans are all consequential changes that update cross references to section 20 of the Water Act – section 20 of the Water Act was amended by section 290 of LWOLA in relation to low risk activities. As such, the department considers that the information provided in accordance with section 24(1)(d) of the LSA was provided for all provisions of SL189.

#### **2.4 SL 195 Petroleum and Gas (Production and Safety) Amendment Regulation (No.1) 2013**

The Petroleum and Gas (Production and Safety) Amendment Regulation (No.1) 2013 (the Amendment Regulation) amends provisions in the Petroleum and Gas (Production and Safety) Regulation 2004 about the Petroleum and Gas Safety and Health Fee (the Fee). The amendments:

- introduce a capping mechanism on Fee categories within the upstream sector (e.g. drilling wells, exploration activities, pipelines) to manage growth and ensure revenue collected by charging the Fee provides for full cost recovery of the regulatory activity, while not exceeding what is required
- reduce the minimum amount charged for LPG delivery networks and introduce measures to control revenue collected under Category 10 (LPG delivery network)
- remove the reference of ‘use’ for biogas and exempt those that are producing and processing gas for research and trial purposes from the Fee
- remove unnecessary reporting requirement for specific categories and reduce reporting requirements from four times a year to once a year
- clarify what information is required from clients, and
- restructure sections of the Regulation for easier referencing.

#### **Potential FLP Issues and Comments**

##### **Rights and liberties of individuals *Legislative Standards Act 1992*, section 4(3)(k) – unambiguous, clear and precise**

Section 3 of the Amendment Regulation replaces the current section 88G of the Regulation which provides that the LPG Australia safety management plan is the prescribed generic safety management plan for Liquid Petroleum Gas (LPG) delivery networks and bulk fuel gas storage facilities.

The Editor’s Note after section 88G(3) of the Regulation states that a copy of the LPG Australia safety management plan is available on the Department of Natural Resources and Mining’s website.

##### **Rights and liberties of individuals *Legislative Standards Act 1992*, section 4(2)(a) - Fees**

The Amendment Regulation does not alter the majority of the existing fees in the Regulation.

The main changes are to amend the methodology for calculating the fee for category 3 (petroleum explorers) and reduce the fee paid by Category 13 (major gas consumers). While the changes to the methodology for calculating some fees may lead to an increase in the fees paid, it is considered that these should not be significant.

#### **Explanatory Notes Comments**

The Explanatory Notes tabled with the Amendment Regulation comply with part 4 of the *Legislative Standards Act 1992* (LSA).

Government agencies are required to seek the independent Office of Best Practice Regulation’s advice as to whether a Regulatory Impact Statement (RIS) is required for any regulatory proposal. A Consultation RIS and Decision RIS were prepared for the proposals to amend the Fee.

Section 24(3) of the LSA provides that the explanatory notes for significant subordinate legislation must be accompanied by the regulatory impact statement prepared for the subordinate legislation. The Decision RIS relating to the Amendment Regulation was notified on the Queensland legislation website on 4 October 2013, alongside the Amendment Regulation and Explanatory Notes.

### **Committee's request for advice**

The committee asked the department where the Australia safety management plan can be found on its website.

### **The department's advice**

The department advised the committee that the document can be found at <http://mines.industry.qld.gov.au/safety-and-health/technical-information.htm>.

## **2.5 SL 203 Nature Conservation Legislation Amendment Regulation (No.3) 2013**

The Nature Conservation Legislation Amendment Regulation (No.3) 2013 (the Amendment Regulation) amends the Nature Conservation (Forest Reserves) Regulation 2000 and the Nature Conservation (Protected Areas) Regulation 1994 to revoke the dedication of parts of Tewantin National Park and Yurol Forest Reserve.

### **Potential FLP Issues and Comments**

No issues of fundamental legislative principle detected.

#### Authorising law

Section 32 of the *Nature Conservation Act 1992* (the Act) provides that the Governor in Council may, by regulation, revoke the dedication of a protected area in whole or part. Section 32(2) of the Act provides that such a regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days' notice has been given, passed a resolution requesting the Governor in Council to make the revocation.

Section 70E of the Act provides that the Governor in Council may, under a regulation, revoke the dedication of a forest reserve or a part of a forest reserve. Section 70E(2) of the Act provides that such a regulation may be made only if the Legislative Assembly has, on a motion of which at least 28 days' notice has been given, passed a resolution requesting the Governor in Council to make the revocation.

However, it is unclear from the information provided in the Explanatory Notes whether the Legislative Assembly has passed the motions required under sections 32 and 70E of the Act.

### **Explanatory Notes Comments**

The explanatory notes tabled with the Amendment Regulation generally comply with part 4 of the *Legislative Standards Act 1992*.

The explanatory notes state that the Amendment Regulation is consistent with the objectives of the Act (at page 2). The Explanatory Notes do not include, however, any information to substantiate this statement. The objectives of the Act, as provided for at section 4, is the conservation of nature while allowing for:

- the involvement of indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom
- the use and enjoyment of protected areas by the community, and
- the social, cultural and commercial use of protected areas in a way consistent with the natural and cultural and other values of the areas.

### **Committee's request for advice**

The committee sought advice from the department in relation to the following issues:

1. Whether the Legislative Assembly has passed the motions required under sections 32 and 70E of the Act, and
2. Further information supporting the statement that the Amendment Regulation is consistent with the objectives of the Act.

### **The department's advice**

The department provided the committee with the following advice:

1. The motions received the assent of the Legislative Assembly on 21 August 2013 (see page 2703 of Hansard, Wednesday 21 August 2013).
2. The proposed actions:
  - a. provide for important road safety and alignment upgrades of the Bruce Highway – Cooroy Connection Road (Elm Street)
  - b. would adversely affect the protected area estate and lead to the destruction of environmental values. Utilising the revocation provisions in the Act, the exclusion of those parts of the estate affected by this activity will ensure that protected areas can be used and managed in accordance with the objectives of the Act.

### **Committee Comment**

The committee thanks the Department of Natural Resources and Mines and the Department of Environment and Heritage Protection for their responses in relation to SL 182, 188, 189, 195 and 203.

The committee notes that the department has undertaken to prepare an erratum to the explanatory notes for SL188 in relation to the errors identified by the committee.

The committee is satisfied with the information provided by the departments 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. 182, 188, 189, 195 and 203 raise no issues regarding the application of fundamental legislative principles.



Ian Rickuss MP  
Chair  
February 2014