

**Subordinate legislation tabled between
19 March and 6 May 2014**

Report No. 43
Agriculture, Resources and Environment
Committee
August 2014

Agriculture, Resources and Environment Committee

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1 Introduction

1.1 Role of the Committee

The Agriculture, Resources and Environment 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: agriculture, fisheries and forestry; environment and heritage protection; and natural resources and mines.²

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 30 October 2013 and 11 February 2014 that the committee has examined and presents any concerns the committee has identified. All the items of subordinate legislation covered by this report were tabled on 11 February 2014 and have a disallowance date of 8 May 2014. Unless expressly noted below, no issues were identified.

SL No	Subordinate Legislation	Tabled On	Disallowance Date
31	Proclamation made under the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2014	1/4/14	6/8/14
32	Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014	1/4/14	6/8/14
33	Proclamation made under the Land, Water and Other Legislation Amendment Act 2013	1/4/14	6/8/14
36	Aboriginal Land Amendment Regulation (No. 2) 2014	6/5/14	27/8/14
51	Rural and Regional Adjustment Amendment Regulation (No. 2) 2014	6/5/14	27/8/14
54	Nature Conservation (Protected Areas) Amendment Regulation (No. 1) 2014	6/5/14	27/8/14

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

² Schedule 6 of the Standing Rules and Orders of the Legislative Assembly of Queensland.

2 Issues identified in particular subordinate legislation

2.1 SL 31 Proclamation made under the Nature Conservation (Protected Plants) and Other Legislation Amendment Bill 2014

The Proclamation commenced, on 31 March 2014, the remaining provisions of the Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013 (the Act).

FLP Issues and Comments

No issues of fundamental legislative principle were detected.

Comments regarding the Explanatory Notes

Section 24(2) of the *Legislative Standards Act 1992* requires that explanatory notes must provide information about the consultation that took place on the subordinate legislation or, if no consultation took place, a statement of the reason for no consultation.

The Explanatory Notes tabled with the proclamation refer to consultation undertaken prior to the passage of the Act, but make no reference to consultation on the actual proclamation. They also do not clearly and precisely state the authorising law under which the proclamation is made, as required by section 24(1)(b) of the *Legislative Standards Act 1992*.

Committee's request for advice

The committee sought clarification from the Department of Environment and Heritage Protection (DEHP) regarding consultation on the proclamation and, whether this should have been noted in the explanatory notes. The committee also invited the department to comment on the apparent non-compliance with the *Legislative Standards Act 1992* in relation to sl. 31.

Department's advice

Consultation

The specific commencement date of the protected plants legislative amendments was not consulted on through a public consultation process; however, implementation of a revised protected plants management framework was publicly identified as an action in the Queensland Government's July- December 2013 Six Month Action Plan. During the final round of public consultation in late 2013/early 2014, the EHP advised stakeholders it anticipated the new framework would be implemented in March 2014. The Department of Premier and Cabinet and Queensland Treasury and Trade were consulted on the actual commencement date of 31 March 2014 and indicated that they supported the making of the proclamation.

Authorising law- The proclamation was made under the Nature Conservation (Protected Plants) and Other Legislation Amendment Act 2013.

Information omitted from the explanatory notes

In preparing the explanatory notes for the proclamation, DEHP followed past departmental practice, which dictated the information that was to be included. This format has not been queried previously, and no concerns were raised by the Office of the Queensland Parliamentary Counsel.

Committee comment

The committee notes and is satisfied with the department's advice.

2.2 SL 32 Nature Conservation and Other Legislation Amendment and Repeal Regulation (No. 1) 2014

The *Nature Conservation and Other Legislation Amendment and Repeal Regulation (No.1) 2014* (the Amendment Regulation) forms the second stage of amendments to implement a new legislative

framework for protected plants following the enactment of the *Nature Conservation (Protected Plants) and Other Legislation Act 2013* (the Act).

The Amendment Regulation amends the *Nature Conservation (Administration) Regulation 2006* (the Administration Regulation) to:

- replace the current eleven types of licences, permits and authorities with three licences and permit types;
- introduce a new fee system for protected plant licences and permits; and
- specify administrative requirements for the new permit and licences.

The Amendment Regulation amends the *Nature Conservation (Wildlife Management) Regulation 2006* (the Wildlife Management Regulation) to:

- remove the regulation of the trade of protected plants, where lawful records are kept of trade and movement
- remove the regulation of least concern protected plants for harvesting, growing and clearing activities where the plants do not form supporting habitat of endangered
- vulnerable or near threatened plants
- introduce a protected plant harvesting licence for the harvest of whole protected plants or plant parts, where the applicant can demonstrate the sustainability of the harvest
- introduce a protected plant growing licence to regulate the sustainable harvest of whole protected plants or plant parts, for the cultivation or propagation of protected plants
- introduce a risk-based framework for the regulation of clearing activities to provide that a permit will only be required for high risk activities
- provide an exemption from a clearing permit for low risk clearing activities, and
- introduce new offences, exemptions and definitions to support the new framework.

***Rights and liberties of individuals – flora survey trigger map – access to information
Parliamentary Scrutiny – publication of guidelines***

Section 247 defines the meaning of a ‘flora survey trigger map’ called the ‘Flora Survey Trigger Map for Clearing Protected Plants in Queensland’, that has been developed for the purpose of clearing protected plants in Queensland, specifically to enable identification of high risk areas where a flora survey is required. Section 247(1) also provides that the map will be ‘held’ by the department and amended from time to time under section 251.

Section 248 defines the meaning of a ‘high risk area’ and prescribes how a ‘high risk area’ is established, and identified. ‘High risk areas’ will be shown on the flora survey trigger map. This broad based approach focuses efforts on high risk areas.

The Explanatory Notes state:

*Clearing within a high risk area will require the applicant to conduct a flora survey in accordance with the flora survey guidelines, to identify the presence or absence of endangered, vulnerable or near threatened plants.*³

Section 249 defines a ‘clearing impact area’, and establishes that a ‘clearing impact area’ only applies to an area identified as a ‘high risk area’.

Section 250 defines ‘flora survey’ and ‘flora survey report’ (a survey undertaken to identify whether plants that are endangered, vulnerable or near threatened wildlife are present within a clearing impact area), and section 251 provides that the chief executive must review and, if necessary, amend the flora survey

³ Nature Conservation and Other Legislation Amendment and Repeal Regulation (No.1) 2014, Explanatory Notes, page 19.

trigger map, at least every 12 months. Section 251(2) provides that the chief executive may review or amend the map at any time. Section 252 establishes that the chief executive must make the current version of the flora survey trigger map publicly available in a way the chief executive considers appropriate, which may include publishing the map in a website.

Section 253 establishes that the chief executive, may, by gazette notice, approve or make guidelines about the conduct of a flora survey. Section 253(3) establishes that the chief executive must publish a copy of the flora survey guidelines as in force from time to time, on the department's website.

Committee's request for advice

Given that the flora survey trigger map (which may be updated at the chief executive officer's discretion) will categorise high risk areas, which will subsequently require a flora survey, and a flora survey report, and that the maximum penalty for providing inaccurate or misleading information in a flora survey report is 165 penalty units (\$18,150), the committee sought DEHP's advice regarding the strategies that the chief executive will utilise to ensure the flora survey trigger map is easily accessible and widely available.

Furthermore, given that the flora survey guidelines will not be tabled as subordinate legislation and, therefore, will be not subject to parliamentary scrutiny, the committee sought the department's views on whether publication of the flora survey guidelines on the department's website is adequate pursuant to section 253 of the *Nature Conservation Act 1992*.

Department's advice

Strategies for ensuring accessibility and availability of flora survey trigger map

On commencement of the new protected plants framework on 31 March 2014, EHP advised stake holders of the new requirements, including the need to check the flora survey trigger map prior to undertaking clearing. Communication included emails/letters to key stakeholders (including industry sector representatives), persons who had made a submission during the final round of consultation, existing permit and licence holders, holders of existing clearing permit 'class exemptions' and other relevant government departments, as well as extensive information published on the EHP website.

Under the legislation, the chief executive is required to make the current version of the trigger map publicly available for inspection; for example, by making it available for inspection on a website. The trigger map is published on the EHP website, and is easily accessible via a link on the protected plants home page.

The dataset comprising the map is publicly available on the Queensland Government Information Service (QGIS) website. QGIS is a Queensland Government initiative to enable public access to a range of spatial and associated government data.

Adequacy of publishing flora survey guidelines on the EHP website

Although not a statutory requirement, the Minister for Environment and Heritage Protection requested in a letter to the Clerk of the Parliament dated 3 April 2014 that the flora survey guidelines be tabled in the Legislative Assembly, concurrent with the tabling of the Code of Practice for the Harvest and Use of Protected Plants and its accompanying explanatory notes.

Under the legislation, the chief executive may make flora survey guidelines about the conduct of a flora survey by gazette notice, which ensures public notification that guidelines have been made. The legislation specifies that the chief executive must publish the guidelines on the EHP website. The current guidelines are published on the EHP website, and are easily accessible via a link on the protected plants home page.

The flora survey guidelines were subject to extensive public and stakeholder consultation during their development, including input from the Queensland Herbarium and an external review process, and EHP considers there is a high level of awareness of the guidelines, and the

requirements specified therein, amongst industry and environmental consultants responsible for conducting flora surveys.

Consultation included discussions with key stakeholders, including the Queensland Resources Council and representatives from the petroleum and gas, electricity and agricultural sectors. A final draft of the guidelines was reviewed by an external environmental consultancy firm, selected through a request for offer process, which provided advice regarding recommended changes and additions prior to finalisation.

Committee comment

The committee notes and is satisfied with the department's advice.

2.3 SL 33 Proclamation made under the Land, Water and Other Legislation Amendment Act 2013

The Proclamation commenced, on 31 March 2014, part 9, division 3 of the *Land, Water and Other Legislation Amendment Act 2013* (the Act).

Comments regarding the Explanatory Notes

Consultation

Section 24(2) of the *Legislative Standards Act 1992* requires that explanatory notes must provide information about the consultation that took place on the subordinate legislation or, if no consultation took place, a statement of the reason for no consultation.

The committee notes that the explanatory notes tabled with the proclamation only refer to consultation undertaken during preparation of the Bill, and make no reference to consultation on the proclamation. The explanatory notes (p.2) do, however, refer to the committee's inquiry into the Bill, though, this does not relate to the department's obligation to consult on its legislation.

Title of the explanatory notes

The explanatory notes are titled 'Proclamation'. The committee notes that the general practice is for the title of explanatory notes to be the short title of the relevant primary legislation – in this instance the *Land, Water and Other Legislation Amendment Act 2013*. The explanatory notes also do not state the short title of the instrument as is required by section 24(1) of the *Legislative Standards Act 1992*.

Committee's request for advice

The committee requested information from the Department of Natural Resources and Mines (DNRM) on whether any consultation was undertaken on the proclamation and whether this should have been noted in the explanatory notes. The committee also sought comments on the naming of the explanatory notes and the apparent non-compliance with the *Legislative Standards Act 1992* for inclusion in the committee's report to parliament.

Department's advice

Consultation was undertaken during the development of the Bill, however specific consultation on the proclamation was not undertaken.

The Valuation Reform Reference Group was advised of the email service address option becoming available prior to the commencement of the provision.

The department notes the concerns raised by the Committee in relation to the naming of the explanatory notes and has put in place processes to ensure consistency wherever possible, with other Government agencies.

Committee comment

The committee notes and is satisfied with the department's advice.

3 Recommendation

The committee recommends that the Legislative Assembly note this report and the committee's conclusion that the subordinate legislation covered (nos. 31, 32, 33, 36, 51, 54) raise no issues regarding the application of fundamental legislative principles.

A handwritten signature in blue ink, appearing to read 'Ian Rickuss'.

Ian Rickuss MP
Chair
August 2014