Parliamentary Committees

Subordinate legislation tabled between 4 June and 5 August 2014

Report No. 48
Agriculture, Resources and Environment Committee
October 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 4 June and 5 August 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 5 August 2014 and have a disallowance date of 30 October 2014. Unless expressly noted below, no issues were identified.

SL No	Subordinate Legislation	Tabled On	Disallowance Date
82	Stock Identification Amendment Regulation (No.1) 2014	05/08/14	30/10/14
92	Rural and Regional Adjustment Amendment Regulation (No.3) 2014	05/08/14	30/10/14
111	Proclamation made under the Agricultural College Amendment Act 2014	05/08/14	30/10/14
112	Agricultural College Consequential Amendments Regulation (No.1) 2014	05/08/14	30/10/14
113	Agriculture and Fisheries Legislation Amendment Regulation (No.1) 2014	05/08/14	30/10/14
114	Rural and Regional Adjustment Amendment Regulation (No.4) 2014	05/08/14	30/10/14
115	Environment and Heritage Protection Legislation Amendment Regulation (No.1) 2014	05/08/14	30/10/14
116	Proclamation made under the Land and Other Legislation Amendment Act 2014	05/08/14	30/10/14
117	Land and Other Legislation Amendment Regulation (No.1) 2014	05/08/14	30/10/14
134	Environmental Protection Amendment Regulation (No.2) 2014	05/08/14	30/10/14
135	River Improvement Trust Amendment Regulation (No.1) 2014	05/08/14	30/10/14
136	Petroleum and Gas (Production and Safety) Amendment Regulation (No.1) 2014	05/08/14	30/10/14
142	Water Resource Plans Amendment Plan (No.1) 2014	05/08/14	30/10/14
144	Proclamation made under the Environmental Offsets Act 2014	05/08/14	30/10/14
145	Environmental Offsets Regulation 2014	05/08/14	30/10/14
146	Environmental Offsets (Transitional) Regulation 2014	05/08/14	30/10/14
162	Nature Conservation Legislation Amendment Regulation (No.2) 2014	05/08/14	30/10/14
163	Nature Conservation (Wildlife Management) and Another Regulation Amendment Regulation (No.1) 2014	05/08/14	30/10/14

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 SL113 - Agricultural and Fisheries Legislation Amendment Regulation (No.1) 2014

The Explanatory Notes (at page 2) advise that the main objective of SL113 is to provide for an increase in certain fees in the following regulations within the Minister for Agriculture, Fisheries and Forestry's portfolio by the annual indexation rate for fees and charges of 3.5 percent.

Agricultural Chemicals Distribution Control Regulation 1998
Animal Care and Protection Regulation 2012
Animal Management (Cats and Dogs) Regulation 2009
Apiaries Regulation 1998
Brands Regulation 2012
Chemical Usage (Agricultural and Veterinary) Control Regulation 1999
Drugs Misuse Regulation 1987
Fisheries Regulation 2008
Land Protection (Pest and Stock Route Management) Regulation 2003
Nature Conservation (Administration) Regulation 2006
Stock Regulation 1988
Veterinary Surgeons Regulation 2002

SL113 also makes an amendment to the *Veterinary Surgeons Regulation 2002* to remove the fees relating to secondary registration for veterinary surgeons from schedule 3. These fees are no longer applicable as the requirement to pay the fees was removed from the *Veterinary Surgeons Act 1936* by the *Agriculture and Forestry Legislation Amendment Act 2013*.

It also makes an amendment to section 69 of the *Fisheries (Coral Reef Fin Fish) Management Plan 2003* to correct a referencing error.

Potential FLP issues and comments

A perusal of the amended fees shows that most have been increased by 3.5% as advised by Queensland Treasury. In circumstances where the increase is beyond 3.5% the actual monetary increase is minimal in most cases. For example, clause 20, inserting new Schedule 9, increases the fee at Table 4, 4(b)(ii) (page 17) from $33.55 to $35.00. This represents a 4.3% increase or $1.45. At Table 4, 4(a) the amount is increased by 3.9% from $7.70 to $8.00, an increase of 30 cents.

However, at clause 18(1) (page 10), amending section 710(3) of the Fisheries Regulation 2008 – Applicable fees if development application relates to more than 1 development – the fees are increased from $13,786.70 to $15,744.10 and $2,710.55 to $3,095.35. This represents an increase of 14.2% in relation to both amounts, significantly more than the indexation rate advised by Queensland Treasury.

The Explanatory Notes do not comment on these 14.2% increases.

Committee's request for advice

The committee sought advice from the Department of Agriculture, Fisheries and Forestry regarding the rationale for:

- adopting a different rounding policy for fees at Table 4 (stocked impoundment permits), and
- increasing fees in clause 18 by more than the indexation figure of 3.5% advised by the Queensland Treasury and Trade.

Department's advice

Adopting a rounding policy for fees at Table 4 (Stocked impoundment permits)

Stocked impoundment permits fees are administered on behalf of the Department by 150 community-based collection agents located at various dam sites. As part of the annual indexation of regulatory fees relating to the Stocked Impoundment Permit Scheme (SIPS), the Department

had obtained approval to round the 2014-2015 SIPS fees to the nearest whole dollar. This would reduce the administrative burden on small businesses collecting the fees as they would not be required to carry small change.

For example, the fee for a 1 year permit in 2013-2014 was $38.60. If the standard rounding policy was applied to this fee, it would be $39.95 in 2014-2015. However, rounding to the nearest whole dollar makes the fee $40.00. The additional 5 cents to round to the nearest whole dollar means the fee increased by 3.63%.

Increasing fees in clause 18 by more than the indexation figure of 3.5% advised by Queensland Treasury and Trade.

Clause 18 of the amendment regulation amends the example provided in section 710 of the Fisheries Regulation 2008 by updating the figures used in the example provided for section 710(3):

> *On the notification day, the relevant assessment fee for a development application for development 1 would be $15744.10 (previously $13786.70) and for development 2 would be $3095.35 (previously $2710.55). The relevant assessment fee for the development application is therefore $15744.10 (previously $13786.70).*

As noted in section 710, the relevant assessment fees relating to developments are stated in Schedule 8. The actual fee increases for Schedule 8 are provided by clause 19 of the amendment regulation. For example, clause 19(6) provides for an increase from $15211.70 to $15744.10 and clause 19(4) provides for an increase from $2990.70 to $3095.35. The increase in the assessment fees from 2013-2014 to 2014-2015 is in line with the annual indexation rate for fees and charges of 3.5 percent.

The example in section 710(3) has been amended to update the amounts in the example to correspond to the 2014-2015 fees in Schedule 8. The assessment fees in the example had not been correspondingly updated at the same time as previous increases had been made to the fees under Schedule 8.

Committee comment

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

The committee understands that the value of the increase in the figures to be amended in clause 18 for the example, and difference to figures in clause 19, is owing to the fact that the example has not been updated in recent years and is not reflective of an increase in actual fees.

2.2 SL 134 Environmental Protection Amendment Regulation (No.2) 2014

SL134 seeks to achieve the following:

- remove requirements to consider matters of national environmental significance (MNES) when making an environmental management decision where an environmental approval has been issued under the *State Development and Public Works Organisation Act 1971*
- provide that MNES do not need to be considered at a State level unless it is required by an approval bilateral
- increase fees by applying the government indexation factor of 3.5% and rounding the indexed fees in accordance with the department's current rounding policy
- increase fees for certain environmental authority functions
- provide for reduced annual fees for environmental authority holders for higher risk resource activities where the site is no longer active but in active rehabilitation
- prescribe a lower AES for dimension stone mining, clay pit mining and gemstone mining;
- remove now redundant fees that apply for development approvals
- increase the fee for submitting an environmental impact statement (EIS) to provide for additional resources to cover the cost of assessing projects on behalf of the Australian Government, and

- amend the definition of 'category B environmentally sensitive area' so that it does not apply to development carried out in accordance with an exemption certificate under the *Queensland Heritage Act 1992*.

Potential FLP issues and comments

The regulation breaches section 4(3)(g) of the *Legislative Standards Act 1992* which provides that legislation should not adversely affect rights and liberties, or impose obligations, retrospectively.

Clause 4 amends section 51(1)(d) of the *Environmental Protection Regulation 2008* in order that matters of national environmental significance (MNES) do not need to be considered at a State level unless it is required by an approval bilateral agreement. The amendment allows the provision to operate retrospectively from 9 May 2014.

The Explanatory Notes (at page 3) address the retrospective nature of the amendment as follows:

> *However this retrospective provision does not adversely affect rights and liberties or impose obligations. It merely ensures that there is no duplication and overlap between the Federal approval of MNES and the State approval. In addition, the requirement to consider MNES was only inserted on 9 May 2014, so the period of retrospectivity is also small. The amendment will better enable the department to fulfil its obligations to assess and approve projects under the Environment Protection and Biodiversity Conservation Act 1999 (Cth).*

Clause 4 also amends section 51 to remove the requirement for the administering authority to consider MNES when making an environmental management decision where an environmental approval has been issued under the new Part 4A of the *State Development and Public Works Organisation Act 1971*. The Explanatory Notes advise that currently, the administering authority must consider MNES when making a decision about an environmental authority, regardless of whether an environmental approval has been issued under the *State Development and Public Works Organisation Act 1971*.

The Explanatory Notes (at page 3) address the retrospective nature of the amendment as follows:

> *The provision that removes the requirement for the administering authority to consider MNES when making an environmental management decision where an environmental approval has been issued under the new Part 4A of the State Development and Public Works Organisation Act 1971 also potentially raises the FLP that legislation should not be retrospective if it adversely affects rights and liberties or imposes obligations, since this provision commences on the commencement of the Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Act 2014, part 3, division 2 which could potentially commence prior to 1 July 2014. However this retrospective provision does not adversely affect rights and liberties or impose obligations. It merely ensures that there is no duplication caused by the introduction of Part 4A of the State Development and Public Works Organisation Act 1971.*

Another of the objectives of SL134 is to index fees by 3.5% as advised by Queensland Treasury and Trade. Clause 5 seeks to amend fees in section 120 of the *Environmental Protection Regulation 2008* by 3.5%. However, the clause also amends the definition of 'M' to add a new paragraph that increases the annual fee unit payable by higher risk resource activities by 200%.

The Explanatory Notes (at page 5) advise that

> *To minimise the immediate impact on business, the increase in annual fees for higher risk sources activities is provided for through a four year staged fee increase, with an increase of 50% of the 2014-15 fee per year.*

Clause 11 increases the fee for submitting an EIS in schedule 10, part 1, item 2 by $70,000.

The Explanatory Notes (at page 8) advise the following in relation to this increase:

This fee increase is required as a result of the commitment between the Queensland and Australian Governments to secure an Approval Bilateral Agreement. Due to this agreement, the department will incur additional costs, since it will assume the responsibility to assess and approve projects under the Environmental Protection and Biodiversity Conservation Act 1999 (Cth). Furthermore, without additional resources to cover the cost of assessing projects on behalf of the Australian Government, the department will take considerably more time to assess and approve environmentally sensitive projects. The fee increase will allow the department to obtain additional resources and expertise to ensure that it can fulfil its obligations under the Approval Bilateral Agreement whilst minimising project approval timeframes.

Committee's request for advice

The committee sought advice from the Department of Environment and Heritage Protection in relation to the following:

- with respect to Clause 4, the rationale for the date of 9 May and further information as to how duplication will be avoided with the Commonwealth legislation
- with respect to Clause 4, any consultation undertaken with respect to removing the requirement for the administering authority to consider MNES when making an environmental management decision where an environmental approval has been issued under the new Part 4A of the *State Development and Public Works Organisation Act 1971*, and the results of any consultation, and
- with respect to Clauses 5 and 11, how many applicants will be affected by the substantial fee increases, and what consultation and/or information has occurred/is planned.

Department's advice

With respect to Clause 4, the rationale for the date of 9 May and further information as to how duplication will be avoided with the Commonwealth legislation.

Clause 4 amends section 51(1)(d) so that matters of national environmental significance (MNES) need only be considered, in addition to other requirements, if a bilateral agreement requires them to be considered. This amendment changes the previous amendment regulation (the Environmental Protection Amendment Regulation (No. 1) 2014) which inserted the reference to MNES into section 51 for the first time. That amendment commenced on 9 May 2014. The rationale for selecting 9 May 2014 was therefore to have the amended wording take effect from the date of commencement of the previous amendment.

By making the amendment to section 51(1)(d) in this amendment regulation retrospective to 9 May 2014, this ensures that the State need only consider additional MNES requirement when required to under a bilateral agreement. Until such time as a bilateral agreement is in place, the relevant MNES are considered as part of the approval process conducted under the Environment Protection and Biodiversity Conservation Act 1999 (Cwth). The amendment therefore ensures that duplication with the Commonwealth legislation is avoided.

With respect to Clause 4, any consultation undertaken with respect to removing the requirement for the administering authority to consider MNES when making an environmental management decision where an environmental approval has been issued under the new Part 4A of the State Development and Public Works Organisation Act 1971, and the results of any consultation.

The intention of clause 4 was to remove the requirement to consider MNES in addition to the other requirements in s51(1) of the Environmental Protection Regulation 2008 when MNES would also have been considered in the assessment process under the State Development and Public Works Organisation Act 1971 (State Development Act).

The Sustainable Planning (Infrastructure Charges) and Other Legislation Amendment Bill 2014 introduced the environmental approval framework into the State Development Act. The amendment in the Environmental Protection Amendment Regulation (No. 1) 2014 was made prior to the

passage of that Bill. Consequently, the original reference to MNES in section 51(1)(d) did not refer to the environmental approval framework under the State Development Act as it did not exist at the time.

No external consultation was undertaken on this amendment as it simply corrects an overlap between the MNES environmental approval under the State Development Act and the assessment requirements for the environmental authority under the Environmental Protection Act 1994.

With respect to Clauses 5 and 11, how many applicants will be affected by the substantial fee increases, and what consultation and/or information has occurred/is planned.

Clause 5

The increased fee for resource activities with an AES of 120 or greater affects 194 current operators.

Consultation on the increased fees was undertaken with Queensland Treasury and Trade and the Department of the Premier and Cabinet.

Because the increase in fees formed a part of the budget, no wider consultation was undertaken prior to the date of the 2014-15 budget announcement (3 June 2014). This was in recognition of the fact that it is normal practice for the government to maintain confidentiality on budget measures until the budget is publically released and hence the normal consultation processes which would occur for non-budget measures were not possible in this instance.

To provide as much notice as possible about the increased annual fees, contact was made with affected businesses on 3 June 2014. On this date, the department sent letters to the 194 affected operators advising of the fee increases. In addition, the department has directly responded to inquiries received on the fee increases.

The department also published two fact sheets on the fee increases on its website.

http://www.ehp.qld.gov.au/land/mining/pdf/rescoure-ea-annual-fee-increase-em1360.pdf

http://www.ehp.qld.gov.au/licences-permits/pdf/application-fee-increase-em1307.pdf

Clause 11

On average it is estimated that nine new environmental impact statements (EISs) could be reasonably expected to be submitted per year. However, it should be noted that the resource sector is cyclical and there will be peaks and troughs in the actual numbers of EISs received year by year.

Consultation on the increased fees was undertaken with Queensland Treasury and Trade and the Department of the Premier and Cabinet.

Because the increase in fees formed a part of the budget, no wider consultation was undertaken prior to the date of the 2014-15 budget announcement (3 June 2014). This was in recognition of the fact that it is normal practice for the government to maintain confidentiality on budget measures until the budget is publically released and hence the normal consultation processes which would occur for non-budget measures were not possible in this instance.

The department's website has been updated to reflect the increased fee.

http://www.ehp.qld.gov.au/management/impact-assessment/eis-processes

A regulatory update was also prepared to advise of the increased fee. This regulatory update is accessible on the department's website and was also sent to subscribers of the EHP Compliance Update newsletter.

https://www.ehp.qld.gov.au/management/compliance-enews.html

Committee comment

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

3 Recommendation

The committee recommends that the Legislative Assembly note this report and the committee's conclusion that subordinate legislation covered (nos. 82, 92, 111, 112, 113, 114, 115, 116, 117, 134, 135, 136, 142, 144, 145, 146, 162 and 163) raise no issues regarding the application of fundamental legislative principles.

Ian Rickuss MP
Chair
October 2014