

**Subordinate legislation
tabled 14 September – 11 October 2016**

Report No. 30, 55th Parliament
Agriculture and Environment Committee
January 2017

Agriculture and Environment Committee

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1 Introduction

1.1 Role of the committee

The Agriculture and Environment Committee is a portfolio committee established by the Legislative Assembly on 27 March 2015 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 and fisheries; sport and racing; environment and heritage protection; and national parks and the Great Barrier Reef.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 (SL) that the committee has examined.

2 Subordinate legislation considered

The table below lists the subordinate legislation considered. The deadline for Members to give notice in the House of a disallowance motion under Standing Order 59³ in respect of any of the legislation is 16 February 2017.

SL No	Subordinate Legislation	Tabled On	Disallowance Date
167	Animal Care and Protection Regulation (No.1) 2016	11.10.16	16.02.17
172	Environmental Protection Amendment Regulation (No.2) 2016		
178	Fisheries Amendment Regulation (No.2) 2016		
182	Agriculture and Other Legislation Amendment Regulation (No.2) 2016		
183	Rural and Regional Adjustment (Primary Industry Production Enhancement Scheme) Amendment Regulation 2016		

3 Findings and recommendations

The committee brings the following issues to the attention of the House.

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.

³ Section 50 of the *Statutory Instruments Act 1992* provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a Member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

3.1 SL 167 Environmental Care and Protection Regulation (No.1) 2016

The purpose of the Animal Care and Protection Amendment Regulation (No. 1) 2016 (the Regulation) is to modify the substantive amendments contained in part 3 of the Agriculture and Other Legislation Amendment Regulation (No. 1) 2016 (the amendment Regulation) to provide that the amendments do not apply until 20 April 2017.

Part 3 of the Animal Care and Protection Amendment Regulation (No. 1) 2016 (the amendment Regulation) contained amendments to the Animal Care and Protection Regulation 2012 to complete the implementation of the national Model Code of Practice for the Welfare of Animals – Pigs, endorsed by all Australian States and Territories on 20 April 2007. A separate commencement clause was not included in the amendment Regulation to ensure the delayed commencement of part 3, with the effect that part 3 commenced simultaneously with the remainder of the amendment Regulation on 27 May 2016.

This Amendment Regulation allows Queensland pork producers a longer lead time (to 20 April 2017) to achieve compliance with the new national Model Code of Practice for the Welfare of Animals – Pigs which imposes new requirements for the keeping of pigs in stalls. The Queensland Productivity Commission considers this Amendment Regulation to be machinery in nature and, therefore, did not require a regulatory impact statement.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.2 SL 172 Environmental Protection Amendment Regulation (No.2) 2016

The objective of the Environmental Protection Amendment Regulation (No.2) 2016 (the Amendment Regulation) is to amend the Environmental Protection Regulation 2008 to update the waste tracking provisions relating to the submission of prescribed information to the administering authority and the fee associated with each submission.

The Amendment Regulation amends existing sections of the Environmental Protection Regulation 2008 (EP Regulation) to detail the three types of prescribed forms that the prescribed information can be submitted to the administering authority on, and the fees associated with the use of the different types of the prescribed forms. Under the EP Regulation, waste handlers must submit tracking information when transporting trackable waste.⁴

According to the Explanatory Notes, the Amendment Regulation restructures the fees that the Department of Environment and Heritage Protection charges waste operators to lodge information about waste they handle. Previously, operators could lodge information via paper certificates (paying \$3.40 to the department to lodge each paper certificate) or in bulk via a spreadsheet submitted by email, for which there was a once-only setup charge and no ongoing fees.

The changes to fees address a number of policy issues with the previous fee structure:

- the previous fees did not cover the department's costs to manually process waste returns, and
- companies paid different fees depending on whether they submitted their waste data using paper forms or spreadsheets submitted by email.

Waste companies and movements of trackable waste

The department advised the committee that 1,370 companies held waste related environmental authorities, as at 28 August 2016. Of these companies, 1,321 used paper certificates to lodge information about waste they transport, and 49 companies, representing four per cent of the waste industry, had arrangements with the department to provide their waste information using spreadsheets.⁵ Of the 527,015

⁴ A complete list of regulated, trackable waste is contained in Schedule 2E of the EP Regulation.

⁵ The administering chief executive of the department must give approval for the information to be submitted in a form other than a paper certificate. This is known as an approval of ways (AOW).

waste movements that occurred during 2015, approximately 60 per cent of all transactions (283,113 movements in total) were made by the 49 companies using email spreadsheets.⁶

According to the department:

These waste handlers generally move the highest risk waste including clinical waste, grease trap waste, oils and oily waste and tyres. These activities represent the highest environmental risk. The situation prior to the regulatory amendment allowed these largest waste handlers to avoid paying for the regulation of the industry.⁷

The Explanatory Notes state that the entry and verification of information from paper certificates and the uploading of bulk data from spreadsheets has generated a significant amount of manual effort for the department, and neither of the previous fees were indicative of the actual effort required by the department to regulate the waste industry.

Changes to waste returns and lodgement fees

Under the Amendment Regulation, waste operators now have three options for lodging prescribed waste information to the department, with new increased fees as follows:

- Paper form - \$5.30
- Electronic form - \$3.10, and
- Spreadsheet form - \$2.20 per transportation recorded in the spreadsheet.

The Amendment Regulation also imposes a new charge of \$2.20 for each transportation of trackable waste. This charge applies to each movement of trackable waste, regardless of the reporting form used.

The table below, from the department's advice to the committee, provides an indication of the changes to fees from waste returns under the previous and new fee structures, based on 2014 returns data (being the most complete set). Based on waste movements during 2014, aggregate fees collected from waste operators under the new fee structure imposed by the Amendment Regulation are likely to more than double the fees collected under the previous structure.

	Previous Fee Structure		New Fee Structure	
	Fee	Revenue	Fee	Revenue
Paper Based WTC (intrastate)	\$3.30	\$660,000.00	\$5.30	\$318,000.00
Paper Based WTC (interstate)	\$3.30	\$4,290.00	\$5.30	\$6,890.00
Electronic Transactions (bulk upload online AOW)	0.00	0.00	\$2.20	\$638,000.00
Electronic Transactions (single WTC online)	Not applicable	Not applicable	\$3.10	\$434,000.00
Total Revenue		\$664,290.00		\$1,396,890

Source: Department of Environment and Heritage Protection 2016, Correspondence 9 December.

Regulatory impacts

According to the Explanatory Notes, the Office of Best Practice Regulation (OBPR) did not require the department to undertake a Regulatory Impact Statement for the Amendment Regulation.

Consultation with the waste industry

The Explanatory Notes mention 'extensive consultation' with waste industry stakeholders to demonstrate the 'Connect' system and to inform of changes to the fees. The Explanatory Notes state that 'Endorsement was received by waste industry stakeholders', however, it is not clear from the Notes what the waste industry stakeholders actually endorsed.

⁶ Department of Environment and Heritage Protection 2016, Correspondence, 9 December.

⁷ Department of Environment and Heritage Protection 2016, Correspondence, 9 December.

In its advice to the committee, the department clarified:

The key industry groups that have been involved in consultation are – WRIQ, Australian Council of Recycling (ACOR) and the Waste Management Association of Queensland (WMAA). These industry groups represent the majority of waste handlers in Queensland. The purpose of involving these stakeholders ensured that the department received comment about whether the regulatory amendment would result in improved industry equity, and that the change to an online platform achieved the waste industry's calls to phase out paper based waste transport certificates.

Consultation commenced with WRIQ in late November 2015, with a demonstration of Connect and explanation about the new processes that Connect will bring with it, including the ability to submit WTCs online, which replaces the need to manually complete a WTC. WRIQ represents most large waste handlers. WRIQ endorsed Connect, along with agreeing to participate in a pilot of the system. WRIQ expressed strong support for the phasing out of the manual WTC system.⁸

And, in relation to consultation on the changes to fees:

In early July 2016, the department contacted WRIQ for the purposes of providing a presentation to the Chief Executive Officer, WRIQ, Rick Ralph and WRIQ members. On 14 July 2016, senior executives of the department met with Mr Ralph and provided a presentation that outlined specifically the department's intent to change the fee structure.

At that meeting, Mr Ralph supported and endorsed the fee changes and indicated clearly to the department's representatives that members of the waste industry would merely pass on the changes as part of existing commercial arrangements. Mr Ralph continued WRIQ's calls for the department to phase out paper based WTC and make all of the waste industry submit online through Connect. Mr Ralph wanted the department at this meeting to commit that this would be a priority for the department and expressed a need for a timeline for the department to work towards. Mr Ralph also offered to send any communications to the waste industry about the fee change.

The department embarked on a series of consultation activities from 20 July 2016 to inform waste handlers and peak stakeholders of fee change, regulatory amendment and the introduction of Connect and to seek feedback and comments.

The consultation occurred through email and mail out (where an email address was unable to be located, or instances where notification was received that the email bounced back). This resulted in 1292 emails and 175 letters being sent to all waste related environmental authorities, and key groups such as WRIQ, ACOR, and WMAA. This consultation email was opened by 45.82% and from that, the department received 27 written submissions. The department then considered the submissions and produced a consultation report which was made available publically on the department's website.⁹

The Explanatory Notes also state that comments from waste-related environmental authority holders on the proposed changes to the fee structure and submission process '... have been considered and affected in how the department will provide guidance to the industry about the new structure or prescribed forms, Connect and fees.'¹⁰

The department explained that 46 per cent of responses to its consultation provided positive support for the benefits that the new processes for lodging waste data, and that 22 per cent of respondents provided feedback on the fee change. The three key issues related to: the commencement date for the new fees structure, the cost of postage for paper WTC, and alternative fee structure proposals.¹¹

⁸ Department of Environment and Heritage Protection 2016, *Correspondence*, 9 December.

⁹ Department of Environment and Heritage Protection 2016, *Correspondence*, 9 December.

¹⁰ Explanatory Notes, p.3.

¹¹ Department of Environment and Heritage Protection 2016, *Correspondence*, 9 December.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

The Amendment Regulation will help to ensure that the costs of administering the waste industry are met by industry participants, and that the fees charged for lodging waste returns are equitable for all participants, regardless of the method use for lodging the required information.

3.3 SL 178 Fisheries Amendment Regulation (No.2) 2016

The objective of the Regulation is to amend Schedule 3 of the Fisheries Regulation 2008 to include two new Fish Habitat Areas (FHA) at Leekes Creek, Great Keppel Island and Calliope River, Gladstone, and to expand the existing Fitzroy River declared FHA.

The declaration of Leekes Creek and Calliope River FHAs and amendment of the Fitzroy River declared FHA is implemented by the addition and amendment of the plan number and specific land parcels listed for inclusion and exclusion in the Fisheries Regulation 2008.

According to the Explanatory Notes, the declarations of two new FHAs and the expansion of an existing area in the Fitzroy River will add almost 50,000 hectares to Queensland's declared FHA network. These declarations will protect fish habitats within their boundaries from the impacts of coastal development, while still allowing '...community access, boating and commercial, recreational and traditional fishing.'

The Explanatory Notes note that two rounds of consultation sought submissions from adjacent landholders, local, state and federal government agencies, Traditional owners, conservation groups and non-government agencies, business and the general public. The Explanatory Notes discuss the outcomes of those consultation processes and note that the majority of submissions received were supportive of the expansion of the FHA network.

The Queensland Productivity Commission (Office of Best Practice Regulation) did not require the department to complete a regulatory impact statement for the Amendment Regulation.

Restrictions on development that apply

The committee sought clarification from the department as to the forms of coastal development that are by the Amendment Regulation within the newly established and expanded fish habitat areas (FHAs). The department advised:

Two approvals are required to conduct development works in declared FHAs – (1) a resource allocation authority (RAA) under the Fisheries Act 1994 for interference with the area and (2) a development approval under the Sustainable Planning Act 2009 for building and/or operational works if not self- assessable development.

An RAA may only be issued in a declared FHA for a prescribed development purpose specified in section 214 of the Fisheries Regulation 2008. Coastal development that is not for a prescribed development purpose cannot be permitted.

The prescribed development purposes for a management A FHA are:

- *restoring the fish habitat or natural processes*
- *managing fisheries resources or fish habitat (e.g. a public boardwalk to prevent trampling of sensitive fish habitats)*
- *research, including monitoring or educating*
- *ensuring public health or safety (e.g. signage to warn the public of a safety hazard)*
- *providing public infrastructure to facilitate fishing (e.g. a public boat ramp)*
- *providing subterranean public infrastructure if the chief executive is satisfied the surface of the area can be restored, after completion of the works or activity, to its condition before the performance of the works or activity (e.g. a buried pipeline)*

- *constructing a temporary structure*
- *maintaining a structure that was constructed before the area was declared an FHA*
- *maintaining a structure, other than a structure mentioned in the dot point above, that has been lawfully constructed.*

The prescribed development purposes for a management B FHA are all of the above, and:

- *constructing a permanent structure on tidal land or within the area (e.g. a private jetty)*
- *depositing material for beach replenishment in the area.*¹²

Impacts of development restrictions

The committee sought clarification from the department as to the impact of the restrictions imposed by the Amendment Regulation on existing users of the FHAs, local residents, businesses, landholders and development applications. The department advised:

Applications for RAAs and development approvals will be required for development that is not self- assessable.

Certain minor, low impact works in declared FHAs are authorised under self-assessable codes for development. Development works that meet the provisions of the codes do not require development applications. The relevant self-assessable codes are:

- *MP02 Maintenance works on existing lawful structures (other than powerlines and on-farm drains) in a declared FHA or involving the removal, destruction or damage of marine plants*
- *MP04 Maintenance works on powerlines or associated powerline infrastructure in a declared FHA or involving the removal, destruction or damage of marine plants*
- *MP05 Works for educational, research or monitoring purposes in a declared FHA or involving the removal, destruction or damage of marine plants*
- *MP06 Minor impact works in a declared FHA or involving the removal, destruction or damage of marine plants.*

Day-to-day community use, legal fishing and boating are not affected by FHA declaration.

Further information on the three declared FHAs that are the subject of the Fisheries Amendment Regulation (No. 2) 2016 is outlined below.

Fitzroy River declared FHA

The expanded Fitzroy River declared FHA near Rockhampton is a management A area. Exclusions around Port Alma and the existing navigation channel allow for continuation of maintenance dredging and spoil disposal. The expansion of the Fitzroy River declared FHA aligns with the intent of the Sustainable Ports Development Act 2015 to provide for the protection of the Great Barrier Reef World Heritage Area through managing port-related development in and adjacent to the area, and is an action under the Reef 2050 Long-Term Sustainability Plan.

Balban Dara Guya (Leekes Creek) declared FHA

The Balban Dara Guya (Leekes Creek) declared FHA, Great Keppel Island, is primarily a management A area, with four small management B areas. During consultation with the Keppel Islands' Traditional Owners, the Woppaburra, it was determined that the management B areas would be incorporated adjacent to their land leases to accommodate for potential future maritime access infrastructure (e.g. vessel moorings).

¹² Department of National Parks, Sport and Racing 2016, *Correspondence*, 7 December.

Dē-răl-lǐ (Calliope River) declared FHA

The Dē-răl-lǐ (Calliope River) declared FHA, Gladstone, is a management B area. The FHA adjoins numerous private properties and declaration as a management B area allows for approval of appropriate private access structures (e.g. private boat ramps). The declared FHA has a mid-stream boundary upstream of the Old Bruce Highway bridge to accommodate a landholder with long-term future commercial development plans that may require significant/multiple infrastructure to access the River.¹³

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.4 SL 182 Agriculture and Other Legislation Amendment Regulation (No.2) 2016

The *Agriculture and Other Legislation Amendment Act 2015* (AOLA Act) was assented to on 22 October 2015 and amended a number of Acts including the *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act) and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (CUC Act). The amendments to the ACDC Act recognise civil aviation authorisations required by persons to undertake agricultural chemical distribution activities without being prescriptive of the specific authorities required and to recognise equivalent qualifications.

The objective of the Agriculture and Other Legislation Amendment Regulation (No. 2) 2016 (the Regulation) is to provide for the continued licensing of persons and contractors involved in the distribution of agricultural chemicals from both aircraft and ground equipment. It is also necessary to make consequential amendments to the *Agricultural Chemicals Distribution Control Regulation 1998* (ACDC Regulation) to reflect the changes made to the ACDC Act.

Similarly, amendments are required to the *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (CUC Regulation) to update specific competencies for prescribed qualifications and to reflect the structure for recognition of equivalent qualifications also adopted by the ACDC Act.

This Amendment Regulation addresses two separate issues relating to the use of agricultural chemicals in Queensland – the expanded use of unmanned aerial vehicles (UAVs) and providing the department greater flexibility to recognise equivalent qualifications relating to the use of veterinary and agricultural chemicals.

The changes to section 48 of the *Agricultural Chemicals Distribution Control Act 1966* are intended to streamline and update applications, licences and qualifications for the distribution of agricultural chemicals by aircraft and ground equipment, and also align terminology with generic aviation terms. These changes accommodate the rise in the use of unmanned aerial vehicles (UAVs) in more expanded roles within the agriculture industry not previously contemplated in the legislation.

The changes to the *Chemical Usage (Agriculture and Veterinary) Control Regulation 1999* are intended to update specific competencies for prescribed qualifications and to reflect the structure of recognition of equivalent qualifications also adopted by the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*. These amendments provide flexibility to allow the regulation to accommodate qualification changes over time without the need for continual amendment.

Institution of Parliament - Legislative Standards Act 1992, section 4(5)(e)

Section 6 of the Regulation replaces section 7 (Pilot chemical rating licence – prescribed qualification) and 8 (Unrestricted commercial operator's licence – prescribed qualification) of the ACDC Regulation. New sections 7(5)(b) and section 8(2)(b) provide the chief executive the power to accept the successful completion of training, the chief executive reasonably considers to be substantially equivalent to the qualifications for the issue of a pilot chemical rating licence and an unrestricted commercial operator's licence. The qualifications are set out at section 7(4) and section 8(1)(a).

¹³ Department of National Parks, Sport and Racing 2016, *Correspondence*, 7 December.

The power of the chief executive to make a determination in this instance may be considered a questionable sub-delegation of power as the Act provides in part, that a person may apply for either licence if they have the qualification prescribed by regulation. This potentially breaches section 4(5) of the *Legislative Standards Act 1992* which provides that the sub-delegation of power delegated by an Act should occur only in appropriate cases and to appropriate persons.

The Explanatory Notes (at page 3) acknowledge the potential FLP and provide the following justification:

This potential FLP is mitigated by the fact that the subordinate legislation prescribes the qualifications required for both licences even though it provides for alternative qualifications to be considered by the chief executive. The power to decide the prescribed qualifications for the issue of these licences is not entirely delegated to the chief executive and the chief executive is further constrained in the exercise of this power as he must consider the successful training to be substantially equivalent to the prescribed qualifications.

Delegation of the power is appropriate in the circumstance because it provides greater flexibility to keep pace with changing courses and their availability and to adopt new training options in a timely manner. The subordinate legislation balances the use of prescriptive regulation with the consideration of alternative qualifications. This acknowledges that the prescribed qualifications for these types of licences are subject to constant review and amendment.

The powers delegated to the chief executive are also viewed as more in the administrative realm as opposed to a legislative one, as they can be considered to establish when the prescribed qualification setting provisions apply.

Committee comment

The committee considers the provisions to be appropriate in the circumstances given the justification provided in the Explanatory Notes. In reaching a determination that an individual has equivalent qualifications, the chief executive will be guided by the qualifications listed. The committee also notes that the qualifications required to issue a pilot chemical rating licence and an unrestricted commercial operator's licence are quite substantial, as set out at sections 7(4) and 8(1)(a).

The Explanatory Notes comply with the *Legislative Standards Act 1992*.

3.5 SL 183 Rural and Regional Adjustment (Primary Industry Productivity Enhancement Scheme) Amendment Regulation 2016

The Primary Industry Productivity Enhancement Scheme (PIPES) is a QRAA administered program which provides concessional loans to assist the development of the agricultural sector. The scheme has two components: a Sustainability component that supports farm investments which improve productivity and sustainability; and a First Start component which assists those looking to establish themselves as primary producers.

The objective of the Rural and Regional Adjustment (Primary Industry Productivity Enhancement Scheme) Amendment Regulation 2016 is to amend schedule 1 of the Rural and Regional Adjustment Regulation 2011 to align the Regulation with the recommendations of the PIPES Review.

The scheme was reviewed as part of the Government's Rural Assistance Package announced as part of the 2016-17 budget. The changes to PIPES made by this Amendment Regulation include:

- doubling the Sustainability loan limit from \$650,000 to \$1.3 million
- increasing the First Start loans from \$650,000 to \$2 million
- removing the maximum loan limit for livestock, plant and machinery of \$200,000
- allowing for the ability to fix interest rates at any time during the loan
- allowing for greater flexibility in the setting of interest only periods
- allowing for the ability to consolidate loans within the one stream i.e. more than one First Start loan could be consolidated and more than one Sustainability Loan could be consolidated into the one loan of that stream, and
- minor changes to general eligibility requirements to improve accessibility of the scheme.

According to the Explanatory Notes AgForce, the Queensland Farmers' Federation and the Australian Bankers Association have supported these changes.

Committee comment

The Amendment Regulation raises no FLP issues, and the Explanatory Notes comply with the *Legislative Standards Act 1992*.

Recommendation 1

The committee recommends that the Legislative Assembly notes the contents of this report.

A handwritten signature in blue ink that reads "D. Pegg". The signature is written in a cursive style with a large initial 'D'.

Duncan Pegg MP
Chair

January 2017