

**Subordinate Legislation tabled
between 2 May 2018 and
12 June 2018**

Report No. 15, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee
September 2018

State Development, Natural Resources and Agricultural Industry Development Committee

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Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of subordinate legislation tabled between 2 May 2018 and 12 June 2018.

The committee's task was to consider the application of fundamental legislative principles – that is, to consider whether the subordinate legislation has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendation

Recommendation

2

The committee recommends that the Legislative Assembly notes this report.

1. Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 2 May 2018 and 12 June 2018. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

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

Subordinate Legislation examined

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
54	Rural and Regional Adjustment (Solar PV and Battery Energy Storage Systems) Amendment Regulation 2018	12 June 2018	17 October 2018
56	Vegetation Management (Thickened Vegetation) and Other Legislation Amendment Regulation 2018	12 June 2018	17 October 2018
60	Economic Development (Mackay Waterfront PDA) Amendment Regulation 2018	12 June 2018	17 October 2018
63	Natural Resources, Mines and Energy Legislation (Fees) Amendment Regulation 2018	12 June 2018	17 October 2018

1.4 Recommendation

The committee did not identify any significant issues relating to the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles or the lawfulness of the subordinate legislation examined.

The committee notes that the explanatory notes tabled with subordinate legislation Nos. 54, 56, 60 and 63 comply with Part 4 of the *Legislative Standards Act 1992*. The committee made a specific comment about the explanatory notes for SL 2018 No. 63.

Recommendation

The committee recommends that the Legislatively Assembly notes this report.

2. Committee consideration of the subordinate legislation

2.1 Rural and Regional Adjustment (Solar PV and Battery Energy Storage Systems) Amendment Regulation 2018 (SL No. 54)

The explanatory notes outline that the purpose of subordinate legislation No. 54 is ‘to enable the Queensland Rural and Industry Development Authority (QRIDA) to provide financial assistance under a scheme to support residential and business electricity customers with the supply and installation costs of eligible solar and battery systems.’² The assistance scheme is called the Solar PV and Battery Energy Storage Assistance Scheme.

The assistance scheme has two objectives:

- provide assistance to households and small businesses to make electricity more affordable, including by providing assistance to persons not having access to upfront capital to invest in eligible solar PV and eligible battery energy storage systems
- help grow a battery energy storage industry in Queensland.³

Achievement of policy objectives

To achieve these objectives, the subordinate legislation inserts a new Schedule 9 into the Rural and Regional Adjustment Regulation 2011 which allows QRIDA to administer the Solar PV and Battery Energy Storage Assistance Scheme.

Potential FLP issue

Clause 5 of the subordinate legislation, which sets out the assistance scheme, refers to a number of codes when defining terms under the scheme. These include the Building Code of Australia (BCA), the Solar Retailer Code of Conduct and ‘another code of conduct, relating to the supply and installation by solar suppliers of solar PV systems, approved by a relevant entity’⁴ (the codes).

Referring to the codes in this way allows for matters to be dealt with by means other than subordinate legislation. As such, this potentially breaches section 4(5) of the *Legislative Standards Act 1992* which provides that subordinate legislation should have sufficient regard to the institution of Parliament. This principle includes ensuring that an instrument can be subject to scrutiny by the Legislative Assembly.

The significance of dealing with such matters other than by subordinate legislation is that since the relevant document is not subordinate legislation, it is not subject to the tabling and disallowance provisions of Part 6 of the *Statutory Instruments Act 1992*.

² Explanatory notes for SL 2018 No. 54, p 1.

³ Explanatory notes for SL 2018 No. 54, p 1.

⁴ Rural and Regional Adjustment (Solar PV and Battery Energy Storage Systems) Amendment Regulation 2018 (SL 2018 No. 54), cl 5 (Schedule 9, s 1 and s 10).

Committee comment

With respect to the codes, the committee notes that:

- the BCA in its entirety is thousands of pages long and publicly available at <https://abcb.gov.au/ncc-online/NCC>
- the Solar Retailer Code of Conduct is 42 pages long and publicly available at <https://www.solaraccreditation.com.au/retailers.html>

The committee notes that the regulation sets out where the documents are publicly available or information that enables the codes to be located online.

Given the length of the codes and the fact that the regulation refers to the location of the publicly available documents, on balance, the committee considers this approach is appropriate.

On balance, the committee is satisfied that the Rural and Regional Adjustment (Solar PV and Battery Energy Storage Systems) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.2 Vegetation Management (Thickened Vegetation) and Other Legislation Amendment Regulation 2018 (SL No. 56)

The explanatory notes state that the objectives of subordinate legislation no. 56 are to:

- revoke the ‘Managing thickened vegetation clearing code’ and to remake the ‘Managing fodder harvesting’ accepted development vegetation clearing code to correct an error; and
- align provisions in the Environmental Offsets Regulation 2014, the Planning Regulation 2017, the Vegetation Management Regulation 2012 and the Water Regulation 2016 with the *Vegetation Management and Other Legislation Amendment Act 2018*.

Achievement of policy objectives

The explanatory notes provide that ‘revoking the ‘Managed thickened vegetation’ accepted development vegetation clearing code is consistent with the CSIRO’s advice that self-assessable clearing to manage thickened vegetation is not a low ecological risk activity.’⁵ The Vegetation Management (Thickened Vegetation) and Other Legislation Amendment Regulation 2018 will remove this code from Part 2 of the Vegetation Management Regulation 2012.

The remaking of the ‘Managing fodder harvesting’ accepted development vegetation clearing code is intended to correct an error to provide certainty on how that code should be applied.⁶

In addition to the amendments relating to codes, the subordinate legislation also:

- Amends the Environmental Offsets Regulation 2014 to make essential habitat for near threatened species a prescribed environmental matter and gives effect to an updated Environmental Offsets Policy
- Makes consequential amendments to the Planning Regulation 2017 to remove application fees for applications to clear for high value agriculture and irrigated high value agriculture and removes the definitions for high value and irrigated high value agriculture

⁵ Explanatory notes for SL 2018 No. 56, p 1.

⁶ Explanatory notes for SL 2018 No. 56, p 1.

- Makes consequential amendments to the Vegetation Management Regulation 2012 to remove the fees for applicant-driven area management plans and gives effect to an updated 'Managing fodder harvesting' accepted development vegetation clearing code
- Amends the Water Regulation 2016 to add the destruction of vegetation in a watercourse, lake or spring to the activities that are exempt from requiring a riverine protection permit⁷

Potential FLP issue

The *Vegetation Management Act 1999* (VMA) provides that the Minister may make a code (an accepted development clearing code) for clearing of vegetation in relation to certain industries and activities and also for any other matter in regard to clearing vegetation the Minister considers is necessary or desirable for achieving the purpose of the Act.

This provision for the making of codes allows for matters to be dealt with by means other than subordinate legislation. This potentially breaches section 4(5) of the *Legislative Standards Act 1992* which provides that subordinate legislation is to have sufficient regard to the institution of Parliament, including ensuring that an instrument can be subject to scrutiny by the Legislative Assembly.

One outcome of dealing with such matters other than by subordinate legislation is that since the relevant document is not subordinate legislation, it is not subject to the tabling and disallowance provisions of Part 6 of the *Statutory Instruments Act 1992*

The code is not contained in the subordinate legislation in its entirety, and as such its content does not come to the direct attention of the House.

Committee comment

In considering whether it is appropriate for matters to be dealt with by an instrument that is not subordinate legislation, and therefore not subject to direct parliamentary scrutiny, parliamentary committees have considered the importance of the subject dealt with, the commercial or technical nature of the subject-matter, the accessibility of the instrument or document, and the practicality or otherwise of including those matters entirely in subordinate legislation.⁸

In these circumstances, the committee notes that section 190 of the VMA provides that the Minister may make a code (an accepted development clearing code) and therefore the sub-delegation to (re)make the 'Managing fodder harvesting' accepted development vegetation clearing code is authorised.

Further, under the VMA, an accepted development vegetation clearing code does not take effect until it has been approved under a regulation.⁹ Given this, any concerns that the Parliament might have about the content of a code may be alleviated by the ability to move disallowance of the relevant regulation.

⁷ Explanatory notes for SL 2018 No. 56 p 2.

⁸ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

⁹ *Vegetation Management Act 1999*, s 19P.

The committee notes that the code includes detailed information, however the code is publicly available on the Department of Natural Resources, Mines and Energy's website. In these circumstances, the committee considers it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation.

Overall, the committee is satisfied that the Vegetation Management (Thickened Vegetation) and Other Legislation Amendment Regulation 2018 (SL No. 56) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.3 Economic Development (Mackay Waterfront PDA) Amendment Regulation 2018 (SL No. 60)

The explanatory notes provide that the policy objective of subordinate legislation no. 60 is to 'amend the Economic Development Regulation 2013 to declare the Mackay Waterfront Priority Development Area and to make an Interim Land Use Plan regulating development in the area.'¹⁰

Priority Development Areas (PDAs) are declared by regulation under the *Economic Development Act 2012* to provide for a streamlined planning and development framework for particular parts of the State to facilitate economic development, and development for community purposes, in or for the parts.¹¹ Interim Land Use Plans are made to regulate development from the time the PDA is declared until a detailed development scheme is finalised.¹²

According to the explanatory notes, the declaration of this PDA 'will ensure certainty and timing for the redevelopment of the Mackay Waterfront site as a mixed-use precinct including residential, commercial, retail, public realm and open space.'¹³

Committee comment

The committee is satisfied the Economic Development (Mackay Waterfront PDA) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.4 Natural Resources, Mines and Energy Legislation (Fees) Amendment Regulation 2018 (SL No. 63)

The explanatory notes provide that the objective of subordinate legislation no. 63 is to 'index regulatory fees for the Department of Natural Resources, Mines and Energy. Regulatory fees are reviewed annually, in accordance with government policy.'¹⁴

The subordinate legislation will achieve its objective by increasing fees and charges under the Acts administered by the Department of Natural Resources, Mines and Energy (DNRME) through the application of an index figure of 3.5% (with rounding for coinable amounts).¹⁵

¹⁰ Explanatory notes for SL 2018 No. 60, p 1.

¹¹ Explanatory notes for SL 2018 No. 60, p 1.

¹² Explanatory notes for SL 2018 No. 60, p 2.

¹³ Explanatory notes for SL 2018 No. 60, p 2.

¹⁴ Explanatory notes for SL 2018 No. 63, p 2.

¹⁵ Explanatory notes for SL 2018 No. 63, p 2.

Additionally, the subordinate legislation includes a number of minor amendments across legislation administered by DNRME that have been identified by the Office of the Queensland Parliamentary Counsel. These changes include grammar corrections, consistency of wording across regulations, and wording to better reflect the applicable Act.¹⁶

Committee comment

The committee notes that the majority of fee increases are of 3.5% which mirrors the index figure applied (with rounding for 'coinable' amounts) in accordance with the government's indexation policy. There were some increases above 3.5%, likely due to rounding, which ranged from 3.6% (e.g. from \$13.70 to \$14.20 for inspection of register) to 5.9% (e.g. from \$0.38 to \$0.40 for agistment fee - for each tag, for each week).

The committee notes that there was one fee increase of 19% in the Petroleum and Gas (General Provisions) Regulation 2017. This increase was from \$245.35 to \$291.90 for 'the annual fee for pipeline licence holder that is a proportion of the cost of the State's funding commitments to national energy market regulation (for each kilometre of pipeline)'.¹⁷

The committee acknowledges, however, that this annual fee is provided for in section 423 of the *Petroleum and Gas (Production and Safety) Act 2004*, which states:

423 Annual fees

(1) A pipeline licence holder must pay the State an annual licence fee as prescribed under a regulation.

(2) Subsection (3) applies to a pipeline licence holder if a pipeline the subject of the licence is a covered pipeline under the National Gas (Queensland) Law.

(3) The pipeline licence holder must also pay the State an annual fee, that is a proportion of the cost of the State's funding commitments to national energy market regulation, as prescribed by regulation.

(4) The fee mentioned in subsection (3) is calculated based on the kilometres of pipeline the subject of the holder's pipeline licence.

Therefore, the committee is satisfied the Natural Resources, Mines and Energy Legislation (Fees) Amendment Regulation 2018 (SL No. 63) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

¹⁶ Explanatory notes for SL 2018 No. 63, p 2.

¹⁷ SL 2018 No. 63, p 53.

Committee comment - Explanatory notes for SL No. 63

In relation to consultation, the explanatory notes provide:

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. The department applied a self-assessable exclusion from undertaking further regulatory impact analysis (category (h) - Regulatory proposals that put forward standard annual fee variations in line with or below a government endorsed indexation factor).¹⁸

The committee notes that these exclusions apply in relation to the submission of regulatory impact statements in accordance with the Queensland Government Guide to Better Regulation and are referred to under section 24(3) of the *Legislative Standards Act 1992*. However, compliance with this guide and section 24(3) does not necessarily exclude compliance with section 24(2) of the LSA which provides:

(2) The explanatory note must also include—

(a) if consultation took place about the subordinate legislation—

(i) a brief statement of the way the consultation was carried out; and

(ii) an outline of the results of the consultation; and

(iii) a brief explanation of any changes made to the legislation because of the consultation; or

(b) if consultation did not take place—a statement of the reason for no consultation.¹⁹

The committee is satisfied that the explanatory notes for Natural Resources, Mines and Energy Legislation (Fees) Amendment Regulation 2018 (SL No. 63) otherwise comply with part 4 of the *Legislative Standards Act 1992*.

¹⁸ Explanatory notes for SL 2018 No. 63, p 3.

¹⁹ *Legislative Standards Act 1992*, s24(2).

Appendix A – Dissenting Report

Subordinate Legislation Tabled Between 2 May and 12 June 2018 Dissenting Report

The non-government members of the State Development, Natural Resources and Agricultural Industry Development Committee submit this dissenting report to outline the reasons that we oppose the report into subordinate legislation tabled between 2 May and 12 June 2018.

Specifically, the non-government members of the Committee express reservations in relation to the following subordinate legislation:

- Vegetation Management (Thickened Vegetation) and Other Legislation Amendment Regulation 2018 (SL No. 56)

The introduction of the above proposed regulations will have the effect of placing more restrictions on the ability of farmers and graziers to manage vegetation in a sustainable and workable manner. This additional imposition of further complexity and constraints will place a further burden on primary producers at a time when they are already dealing with the effects of a debilitating drought situation, particularly across Western Queensland.

Committee denied a briefing from the Department

During the committee's deliberations on the regulatory changes relating to managing thickened vegetation, the non-government members of the committee requested a briefing from the Department on the impact of proposed amendments.

It was an indictment on the entire committee review process that the government members of the committee voted together to block this request, and in turn members of the committee were denied an opportunity to get a better understating of what they were being asked to vote on.

This fails the good government and accountability test, and should rightfully be condemned. What does the Government have to hide by simply allowing departmental officials the opportunity to explain the impact of proposed regulatory changes?

Removal of thickened vegetation code

The revocation of the 'Managing thickened vegetation' accepted development vegetation clearing code to remake the 'Managing fodder harvesting' accepted development vegetation clearing code has been made to fix an error in the interpretation of the laws.

Whilst the explanatory notes highlight that this is the intended purpose of the amendment, it is not clear what exact error in interpretation is to be fixed.

Removal of high value and irrigated agricultural clearing

While this regulation clearly intends on amending the regulation to reflect the Vegetation Management and Other Legislation Amendment Bill 2018 passed in May, the Liberal National Party remain defiant in its opposition to the removal of clearing for purpose provisions. We believe these provisions are sensible and commonsense measures that allow farmers and agricultural production in this State the opportunity to grow.

Lack of consultation

The non-government members of the committee consider that the lack of consultation in the drafting on these regulation changes around thickened vegetation to be completely unacceptable.

Summary

The non-government members consider that the failure of the government to consider the impact that the proposed changes to regulation will have on agricultural production and rural communities demonstrates that these changes are the result of an ideological crusade. The proposed changes are based on incomplete evidence and do not address the concerns of primary producers across Queensland.

The proposed changes to vegetation management regulations will mean that it is more difficult for graziers to feed livestock in drought, and will make it more difficult for graziers and farmers to produce the food required to feed a growing population while also meeting export demand. The failure to support primary producers through additional full time equivalent (FTE) investment in dedicated extension staff is indicative of this government's lack of consideration for those who will be most impacted by these changes – the farmers and graziers of Queensland.



Pat Weir MP

Deputy Chair

State Development Natural Resources Agricultural Industry Development Committee

19th September 2018

