Parliamentary Committees

Subordinate legislation tabled between 4 June 2015 and 14 July 2015

Report No. 12, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
November 2015

Infrastructure, Planning and Natural Resources Committee

Chair	Mr Jim Pearce MP, Member for Mirani
Deputy Chair	Mr Michael Hart MP, Member for Burleigh
Members	Mr Glenn Butcher MP, Member for Gladstone
	Mr Shane Knuth MP, Member for Dalrymple
	Mrs Brittany Lauga MP, Member for Keppel
	Mr Lachlan Millar MP, Member for Gregory
Committee Staff	Ms Erin Pasley, Research Director
	Ms Margaret Telford, Principal Research Officer
	Ms Mary Westcott, Principal Research Officer
	Ms Dianne Christian, Executive Assistant
Technical Scrutiny of Legislation Secretariat	Ms Renée Easten, Research Director
	Mr Michael Gorringe, Principal Research Officer
	Ms Kellie Moule, Principal Research Officer
	Ms Tamara Vitale, Executive Assistant
Contact details	Infrastructure, Planning and Natural Resources Committee Parliament House George Street Brisbane Qld 4000
Telephone	(07) 3553 6621
Fax	(07) 3553 6699
Email	ipnrc@parliament.qld.gov.au
Web	www.parliament.qld.gov.au/IPNRC

1. Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 27 March 2015.[1] It consists of government and non-government members.

The committee's areas of portfolio responsibility are:

- Transport, Infrastructure, Local Government, Planning and Trade, and
- State Development, Natural Resources and Mines.[2]

1.2 Aim of this report

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each 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.

This report contains a summary of the committee's examination of subordinate legislation tabled between 4 June 2015 and 14 July 2015 within its portfolio responsibilities. Unless highlighted in the table below, no issues have been identified.

1.3 Subordinate legislation examined

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
39	Natural Resources and Mines Legislation (Fees) Amendment Regulation (No. 1) 2015	14 July 2015	11 November 2015
43	Regional Planning Interests Amendment Regulation (No. 1) 2015	14 July 2015	11 November 2015
44	Sustainable Planning Amendment Regulation (No. 2) 2015	14 July 2015	11 November 2015
50	Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014*	14 July 2015	11 November 2015
51	Petroleum Legislation Amendment Regulation (No. 1) 2015	14 July 2015	11 November 2015
52	Land and Another Regulation Amendment Regulation (No. 1) 2015	14 July 2015	11 November 2015
70	Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015	14 July 2015	11 November 2015

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

2 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 17 July 2015).

1.4 Summary of examination and recommendation

The committee did not identify any significant issues relating to policy, fundamental legislative principles or the lawfulness of the subordinate legislation examined. All explanatory notes tabled with the subordinate legislation complied with Part 4 of the *Legislative Standards Act 1992*.

Recommendation

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

2. Subordinate legislation examined

2.1 Natural Resources and Mines Legislation (Fees) Amendment Regulation (No. 1) 2015 (SL No. 39)

The key objective of the Natural Resources and Mines Legislation (Fees) Amendment Regulation (No. 1) 2015 (SL No. 39) was to index regulatory fees for the Department of Natural Resources and Mines. The Regulation also made minor amendments identified by the Office of the Queensland Parliamentary Counsel.[3]

The explanatory notes advise that an index figure of 3.5% was applied (with rounding for coinable amounts) to the fees. The explanatory notes further state:

> The net present value formula (Section 25C of the *Land Regulation 2009*) has been adjusted in response to advice from the Queensland Treasury Corporation. This is to align this formula with yearly market movements.
>
> Two fees relating to *Land Title Regulation 2005* survey plans have been increased above the indexation rate to incorporate royalty payments that the State has to make to Copyright Agency Limited for each plan copy that is sold.[4]

Committee comment

The committee notes that the regulatory fees were subject to the annual review required under Government policy and then indexed by the approved Government indexation factor, which Queensland Treasury advised to be 3.5% for 2015–16. The exception to this were two fees relating to Land Title Regulation 2005 survey plans that have increased above indexation rates (12.2% and 10.6% respectively) to incorporate royalty payments that the State has to make to Copyright Agency Limited for each plan copy that is sold. The committee is satisfied with the explanation for the increase in two fees above 3.5%.

The committee is satisfied the Natural Resources and Mines Legislation (Fees) Amendment Regulation (No. 1) 2015 (SL No. 39) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness. The explanatory notes tabled with the regulation comply with Part 4 of the *Legislative Standards Act 1992*.

2.2 Regional Planning Interests Amendment Regulation (No. 1) 2015 (SL No. 43)

The objective of the Regional Planning Interests Amendment Regulation (No. 1) 2015 (SL No. 43) (Regulation) was to apply the government indexation rate of 3.5% to application fees in Schedule 4 of the Regulation. The amendments took effect on 1 July 2015.[5]

Committee comment

The committee is satisfied the Regional Planning Interests Amendment Regulation (No. 1) 2015 (SL No. 43) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

---

3 Natural Resources and Mines Legislation (Fees) Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

4 Natural Resources and Mines Legislation (Fees) Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

5 Regional Planning Interests Amendment Regulation (No. 1) 2015, explanatory notes, p 1.

2.3 Sustainable Planning Amendment Regulation (No. 2) 2015 (SL No. 44)

The objectives of the Sustainable Planning Amendment Regulation (No. 2) 2015 (SL No. 44) were to:

- apply the government indexation rate of 3.5% to the following fees:
  - SARA fees prescribed under Schedule 7A (rounded to the next dollar)
  - prescribed matters for Integrated Development Assessment System (IDAS) Part 3 (Division 3 – fees) (rounded to the next dollar)
  - court fees prescribed under Schedule 20 (rounded to the nearest coinable amount)
  - building and development committee fees prescribed under Schedule 21 (rounded to the nearest coinable amount)
- achieve consistency of thresholds for filling and excavating between railways, and state-controlled road and public passenger transport triggers
- remove redundant referral triggers in Schedule 7, table 2, item 47 and table 3, item 26
- clarify the fees payable in Schedule 7A, part 2, item 4
- remove the referral threshold of classrooms from column 2 and 3 of Schedule 9, item 15 so that educational establishments are only referred when there is an increase in student numbers
- amend the definition of the state development assessment provisions (SDAP) in Schedule 26 of the Sustainable Planning Regulation 2009 (SPR) to give effect to the current version of the SDAP[6]
- limit vegetation clearing permitted as exempt development, with a continuing exemption for government supported transport infrastructure
- correct a drafting error by prescribing the applicable codes, laws, policies and matters for code assessment in Schedule 5, part 1, table 3. The amendment also includes a reference to part 1 of Schedule 3 to assist users of the SPR to identify the appropriate sections of the regulation.[7]

With respect to the objective of achieving consistency of thresholds between railways, and state-controlled road and public transport triggers, the explanatory notes state:

> The amendment will include a threshold of more than $50m^3$ for filling and excavating in the triggers for state-controlled roads and passenger transport. The amendment will provide consistency with the existing threshold for railways and reduce the unnecessary referral of minor applications to the State.[8]
>
> …
>
> The $50m^3$ threshold reflects the minimum potential for filling or excavating to impact on the structural integrity of state transport infrastructure. Above this threshold, the location and depth of the filling or excavation relative to the transport infrastructure requires detailed engineering assessment to ensure structural integrity will be maintained.[9]

With respect to the objective of narrowing the scope of allowable native vegetation clearing with a continuing exemption for government supported travel infrastructure, the explanatory notes state:

---

6 The SDAP contains the matters the Chief Executive may have regard to when assessing a development application through SARA: Sustainable Planning Amendment Regulation (No. 2) 2015, p 3.

7 Sustainable Planning Amendment Regulation (No. 2) 2015, explanatory notes, pp 1-3.

8 Sustainable Planning Amendment Regulation (No. 2) 2015, explanatory notes, p 4.

9 Sustainable Planning Amendment Regulation (No. 2) 2015, explanatory notes, p 3.

> The community infrastructure exemption, which was introduced on 2 August 2013, allows unrestricted clearing that is expansive and applies equally to both private and public infrastructure. Projects are only required to align with the list of community infrastructure in schedule 2 of the SPR. Projects are not required to undertake the formal process of designation of land for community infrastructure as set out in Chapter 5 of [the *Sustainable Planning Act 2009*]. The unintended outcome of the exemption has been to allow extensive vegetation clearing without environmental assessment or consultation. The amendment to Schedule 24 narrows the scope of allowable vegetation clearing for community infrastructure projects to situations where the project is designated or government supported transport infrastructure.[10]

The explanatory notes further state that transitional provisions would apply to certain developments made before 1 September 2015.[11]

Committee comment

The committee notes two fee increases are above the Government indexation rate of 3.5%: one from $2.25 to $2.35 (4.4%) relating to copy of a record of the court, and the other from $352 to $365 (3.7%) being the fee relating to an extension request notice for development approvals. The increases are attributable to the Department of Infrastructure, Local Government and Planning's policy for rounding fees and charges.

The committee is satisfied the Sustainable Planning Amendment Regulation (No. 2) 2015 (SL No. 44) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

2.4 Proclamation made under the Mineral and Energy Resources (Common Provisions) Act 2014 (SL No. 50)

The objective of the Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* (SL No. 50) was to commence Chapter 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* on 1 July 2015. The explanatory notes state:

> Chapter 8 of the *Mineral and Energy Resources (Common Provisions) Act 2014* repeals the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* to remove the compulsory requirement for employer and employee superannuation contributions for Queensland coal and oil shale mine workers to be paid into the AUSCOAL Superannuation Fund.[12]

The explanatory notes advise that the proclamation 'is consistent with the objectives of the *Mineral and Energy Resources (Common Provisions) Act 2014*, in particular to repeal the *Coal and Oil Shale Mine Workers' Superannuation Act 1989* to provide freedom of choice to coal and oil shale mine workers with regards to their superannuation fund.'[13]

Committee comment

The committee is satisfied the Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* (SL No. 50) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

[10] Sustainable Planning Amendment Regulation (No. 2) 2015, explanatory notes, p 3.

[11] Sustainable Planning Amendment Regulation (No. 2) 2015, explanatory notes, p 3.

[12] Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014*, explanatory notes, p 1.

[13] Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014*, explanatory notes, pp 1-2.

2.5 Petroleum Legislation Amendment Regulation (No. 1) 2015 (SL No. 51)

The objective of the Petroleum Legislation Amendment Regulation (No. 1) 2015 (SL No. 51) was 'to reduce the burden and cost of reporting by removing unnecessary reports, and reducing the frequency of providing reports or samples where possible.'[14] The Queensland Resources Council and the Australian Petroleum Production and Exploration Association supported the amendments.[15]

The Regulation:

- clarified the information that must be included in a final report for an exploration permit or mineral development licence so that there is no duplication of information already provided.
- removed the requirement for daily drilling reports to be lodged on a daily basis (requiring them only to be lodged once, with the well completion report), while retaining the ability of the chief executive to request daily drilling reports at any time when required. Generally daily drilling reports are not required by the Department of Natural Resources and Mines (department) on a daily basis and the cost of providing and analysing the information 'can be burdensome'.[16]
- removed the requirement on a petroleum tenure holder to lodge a well or bore abandonment report with the well or bore completion report for a petroleum well or bore that is plugged and abandoned before the rig release day for the well or bore. Previously, two reports with duplicate information were required to be submitted.
- removed the requirement on the holder of a pipeline licence for a transmission pipeline to lodge a six-monthly petroleum transmission report. The information is not required by the department and, according to the explanatory notes, '[t]here are adequate quality requirements elsewhere in the legislation.'[17]
- removed the requirement on a petroleum tenure holder to automatically keep and lodge cutting samples from a coal seam gas (CSG) well, but provided the chief executive with the ability to obtain cutting samples from coal seam gas wells when required, such as from areas of geological interest.
- established a framework where core from CSG wells does not have to be kept or lodged, except where the chief executive requires it. Previously a petroleum tenure holder had to keep each core recovered from a petroleum well under the petroleum tenure. This can be costly as each project can produce an extensive amount of core and each core sample needs to be stored in sequence and documented.
- removed the requirement on a holder of a petroleum tenure to keep and lodge all fluid samples but enabled the chief executive to obtain fluid samples where necessary. Previously, if the holder of a petroleum tenure recovered a fluid sample of more than ten litres of liquid petroleum from a petroleum well, the holder had to keep and lodge the sample. The explanatory notes state that these samples 'are not particularly useful for the Department of Natural Resources and Mines'[18] and that there are safety and integrity issues with storage. The safety issues arise because the samples are flammable or combustible liquids. The integrity of the sample can be compromised over time due to the volatile nature of the fluid.[19] A notice that a sample is required to be kept will be given to a tenure holder no later

[14] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 1. It is expected that further tranches of reporting reforms will be progressed: Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

[15] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 8.

[16] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

[17] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.

[18] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.

[19] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.

than five months after the day the sample is recovered and is only likely to be used 'in rare cases, for instance where a new field/horizon is being explored.'[20]

Committee comment

The committee is satisfied the Petroleum Legislation Amendment Regulation (No. 1) 2015 (SL No. 51) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

2.6 Land and Another Regulation Amendment Regulation (No. 1) 2015 (SL No. 52)

The objectives of the Land and Another Regulation Amendment Regulation (No. 1) 2015 (SL No. 52) were to:

- amend the Land Regulation 2009 to continue the rental capping for certain State land leases until 30 June 2016, and
- amend the Land Regulation 2009 and the Land Title Regulation 2005 to clarify that a registration fee is not required when the State is the grantee of a *profit a prendre* over a forest consent area.[21]

Rental capping

The Land Regulation 2009 (Regulation) introduced rent increases for most state leasehold land as well as capping provisions for various categories 'to provide for the orderly transition of rents to reflect the market based rentals and to achieve consistent, impartial and accountable administration of the state land portfolio.'[22]

The rents were capped to alleviate the impact of rental increases but the capping provisions had sunset dates because it was intended that all rents within each category 'would reach the prescribed rental percentage eventually creating equity between leases within each category'. The 2014–15 financial year is the final year that capping applies to the residential (100% cap) and tourism (10% cap) categories.

According to the explanatory notes:

> Tourism leases have had a comparatively low capping rate of 10% compared to the other categories. That low 10% cap was established to assist the tourism sector at a time when the industry faced the threat of the global financial crisis and reduced inbound tourism. These leases are of a commercial nature and the low 10% cap has minimised the financial impact of rent increases for those benefitting lessees during the transition period. However, although it is apparent that continuing capping at 10% will not result in the majority of the remaining leases transitioning to the prescribed rate, termination of the capping at this time could threaten the financial position of those tourism operators. Whilst there are hardship provisions under the *Land Act 1994* which can assist these lessees, additional mitigation measures are needed to ameliorate the impacts of rent increases on these State land lease categories.
>
> …
>
> With the scheduled cessation of capping at the end of 2014/2015 twenty-six leases in the tourism category would have experienced substantial increases over the next financial year. Ten residential tenures would also have experienced substantial increases. The residential category would have had a greater number of impacted leases except that a total of forty three tenures are in receipt of

[20] Petroleum Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 8.

[21] Land and Another Regulation Amendment Regulation (No. 1) 2015, explanatory notes, p 1. A *profit a prendre* is a non-possessory interest in land which gives the holder the right to take from the land owned by another person part of the natural produce grown on that land or part of the natural resources such as petroleum, minerals, soil, earth or rock comprising the land.

[22] Land and Another Regulation Amendment Regulation (No. 1) 2015, explanatory notes, p 1.

residential hardship support which limits their exposure to uncapped rental increases (while the current lessee's financial hardship eligibility persists).

A one year extension of the tourism and residential caps in 2015/2016 will provide the opportunity for a submission to be developed to provide for an acceptable transition for all such leases to the prescribed rent percentage in the following years.[23]

Registration fee for forest conservation area

In certain circumstances, an offer to convert a lease to freehold would be subject to the lessee entering into a forest consent agreement over a forest consent area within the land to be converted. The forest consent agreement must be registered as a *profit a prendre* on the subsequent title of the land converted. The Regulation clarifies that a registration fee is not required when the State is the grantee of the *profit a prendre* that is to be registered.

Committee comment

The committee is satisfied the Land and Another Regulation Amendment Regulation (No. 1) 2015 (SL No. 51) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

2.7 Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015 (SL No. 70)

Section 15DA of the *Acts Interpretation Act 1954* provides that an Act, or a provision of an Act, that does not commence on the date of assent and has not commenced within one year of the assent day automatically commences on the next day. However, within one year of the assent day, a regulation may extend the period before commencement to not more than two years of the assent day.

The objective of the Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015 (SL No. 70) was to postpone the automatic commencement of the uncommenced provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* (the Act) to the end of 26 September 2016, which means that the postponed law will automatically commence on 27 September 2016.

The explanatory notes state that postponement was necessary 'to ensure uncommenced sections do not automatically commence before necessary changes to the *Mineral and Energy Resources (Common Provisions) Act 2014* can be made.' The explanatory notes further state that the Queensland Government 'has committed to repealing and amending aspects of the *Mineral and Energy Resources (Common Provisions) Act 2014*.'[24]

The uncommenced provisions 'relate to mining project applications, migration of some resource laws to a new common Act, new overlapping tenure framework for coal and coal seam gas and other miscellaneous amendments'[25] and fall within the following parts of the Act:

- purposes, application and interpretation of the Act (in Chapter 1 of the Act)
- dealings, caveats and associated agreements (Chapter 2)
- land access (Chapter 3)
- overlapping coal and petroleum resource authorities (Chapter 4)

[23] Land and Another Regulation Amendment Regulation (No. 1) 2015, explanatory notes, pp 2-3.

[24] Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015, explanatory notes, p 1.

[25] Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015, explanatory notes, p 1.

- applications and other documents (Chapter 5)
- miscellaneous provisions (Chapter 6)
- savings and transitional provisions (Chapter 7)
- amendments to the Act, the *Environmental Protection Act 1994*, the G*eothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009*, the *Land Court Act 2000*, the *Mineral Resources Act 1989*, the *Petroleum Act 1923*, the *Petroleum and Gas (Production and Safety) Act 2004*, the *Property Law Act 1974*, the *Torres Strait Islander Cultural Heritage Act 2003* and the Mineral Resources Regulation 2013 (Chapter 9), and
- Schedules 1 (Owners of land) and 2 (Dictionary).

During the committee's Estimates hearing, the Minister for Natural Resources and Mines stated in relation to the repeal of section 47D of the *State Development and Public Works Organisation Act 1971*:

> There are … provisions in the [*Mineral and Energy Resources (Common Provisions) Act 2014*] that have not commenced that would also limit Land Court objection rights. This includes the removal of community objection rights to environmental authority applications, the removal of community objection rights to mining lease applications and the narrowing of grounds for objections. These provisions will be addressed by the government in due course.[26]

Committee comment

The committee is satisfied the Mineral and Energy Resources (Common Provisions) (Postponement) Regulation 2015 (SL No. 70) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with Part 4 of the *Legislative Standards Act 1992*.

Jim Pearce MP
Chair

November 2015

[26] Public hearing transcript, 19 August 2015, p 61.