

**Subordinate legislation tabled between
5 May 2015 – 14 July 2015**

Report No. 9, 55th Parliament
Agriculture and Environment Committee
November 2015

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 tabled between 5 May 2015 and 14 July 2015 (listed below) that the committee has examined. All the items of subordinate legislation covered by this report were tabled on 14 July 2015 and have a disallowance date of 11 November 2015. On 17 March 2015, the Minister instructed the Clerk of Parliament to postpone the tabling of SL. Nos. 283, 295, 303, 304, 305, 313, 329 and 330.

Other than the issues discussed in section 2 of this report and relating to SL. Nos. 41, 329 and 330 (as shaded in the table below), no FLP or policy issues were identified by the committee.

SL No	Subordinate Legislation	Tabled On	New Disallowance Date
283	Environmental Protection (Water) Amendment Policy (No. 1) 2014	14/07/2015	11/11/2015
295	Environmental Offsets Legislation Amendment Regulation (No. 1) 2014	14/07/2015	11/11/2015
303	Nature Conservation (Protected Areas) Amendment Regulation (No. 4) 2014	14/07/2015	11/11/2015
304	Nature Conservation (Forest Reserves) Amendment Regulation (No. 1) 2014	14/07/2015	11/11/2015
305	Nature Conservation (Wildlife) Amendment Regulation (No. 2) 2014	14/07/2015	11/11/2015
313	Nature Conservation (Macropod Harvest Period 2015) Notice 2014	14/07/2015	11/11/2015
329	Coastal Protection and Management Amendment Regulation (No. 2) 2014	14/07/2015	11/11/2015
330	Coastal Protection and Management Amendment Regulation (No. 3) 2014	14/07/2015	11/11/2015
37	Nature Conservation (Protected Areas) Amendment Regulation (No.1) 2015	14/07/2015	11/11/2015
40	Racing (Fees) Amendment Regulation (No. 1) 2015	14/07/2015	11/11/2015
41	Nature Conservation and Other Legislation (Fees) Amendment Regulation (No. 1) 2015	14/07/2015	11/11/2015
57	Agriculture and Fisheries Legislation Amendment Regulation (No. 1) 2015	14/07/2015	11/11/2015
58	Exotic Diseases in Animals and Another Regulation Amendment Regulation (No. 1) 2015	14/07/2015	11/11/2015
62	Environment and Heritage Protection Legislation (Fees) Amendment Regulation (No. 1) 2015	14/07/2015	11/11/2015
73	Proclamation – Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015	14/07/2015	11/11/2015
Exempt SL	Code of Practice – for the harvest and use of protected plants	14/07/2015	11/11/2015

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

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

2 Issues identified in particular subordinate legislation

2.1 SL 41 – Nature Conservation and Other Legislation (Fees) Amendment Regulation (No. 1) 2015

The objective of the Regulation is to index regulatory fees for the Department of National Park, Sport and Racing for 2015-16.

Potential issues and comment

The regulatory fees have been subject to the annual review required under Government policy and then indexed by the approved Government indexation factor, which Queensland Treasury has advised to be 3.5 per cent for 2015-16.³

The exception to this is the apiary permit fees which have increased by 12.6 per cent (changes range from \$10-\$57) and the stock grazing permits which have increased by 15 per cent (changes range from \$3-\$15). See Schedule 3, part 1, division 1 (3)(a)-(f) and division 2 (6)(a) and (b).⁴

The explanatory notes state that consultation had been undertaken with the Office of Best Practice Regulation in determining that the amendment was excluded from the requirement to undertake a Regulatory Impact Statement.⁵

However, the notes does not provide any information on whether consultation was conducted in relation to the large increases, particularly with the industry bodies concerned.

In accordance with section 24(2) of the *Legislative Standards Act 1992*, it would be appropriate to have conducted consultation in relation to the fee increases in relation to the apiary and stock grazing permits and provide an outline of the results of any such consultation.

Committee's request for advice

The committee wrote to the Department of Environment and Heritage Protection (DEHP) to query if representatives of the apiary and grazing industries were consulted in relation to the proposed fee increases and, if so, their general view.

Department's advice

The department explained:

Representatives of the apiary and grazing industries were not consulted this year regarding fee increases, but were consulted and agreed to the methodology to determine the fee increases when it was developed a number of years ago. Industry representatives are not consulted each year, when the methodology is applied as they were involved in developing the methodology.

For consistency purposes, the fees for apiary sites and stock grazing permits on national parks mirror those set by the Department of Agriculture and Fisheries (DAF) under the Forestry Act 1959.

Both the 'Capillano Quota Honey Price Index' and 'Queensland Livestock and Meat Authority index' for determining apiary and stock grazing permit fees respectively were set in the early 1990s at the behest of industry. The beekeeping and grazing industries both requested an index specifically applicable to their respective industries and reflective of the prevailing circumstances for their businesses. Both industries wanted an index with the capacity to adjust (rise or fall) to changing economic circumstances of their businesses, rather than consistently rising as per CPI. The indexes were subsequently developed in consultation between industry and government.

³ Nature Conservation and Other Legislation (Fees) Amendment Regulation (No. 1) 2015, explanatory notes p.1

⁴ Technical Scrutiny Secretariat, Correspondence 11 September 2015

⁵ Explanatory notes p.2

The beekeeping industry indicated in mid-2014 that they would like the 'Honey Index' reviewed before the 2016/17 financial year, accepting that, due to review and statutory timeframes, it was not possible to change the index for the 2015/16 financial year.

The Department of Agriculture and Fisheries (DAF) and the Department of National Parks, Sport and Racing (NPSR) have met with industry to discuss their request. Alternative arrangements to the current 'Honey Index' will be prepared by the Queensland Beekeepers Association Inc (QBA) in the new year and presented to representatives from DAF and NPSR for consideration. Consultation will also be undertaken at the next Beekeeping Industry Consultative Committee in April 2016.⁶

Committee comment

The committee is satisfied with the department's advice.

2.2 SL 329 Coastal Protection and Management Amendment Regulation (No. 2) 2014

Sea level rise is a factor determining the boundary of the coastal management district (CMD), which is used by the Sustainable Planning Regulation 2009 to identify the area where certain types of development are triggered for State assessment.

The objective of the regulation is to change State wide coastal mapping used in planning and development so it will no longer be prepared using a specific sea level rise projection. This allows local government to choose the most appropriate projection for their local area.⁷

The explanatory notes outline the amendments to the erosion prone area mapping and that the coastal management district (CMD) has been remapped based on the new erosion prone areas.

Potential issues and comment

Section 57 of the *Coastal Protection and Management Act 1995* (the Coastal Act) requires that before a regulation is made under section 54(1), the Chief Executive must give public notice of the proposed declaration, change or abolition. Section 57 of the Coastal Act also sets out how notice must be given and the timeframe for public submissions.⁸

The committee notes that public notice of the proposed amendment to the CMD was advertised in key Queensland newspapers on Saturday 30 August 2014 or in the next available issue. The explanatory notes state that the Minister has duly considered the submissions made⁹, but the notes do not state the results of the submissions received in relation to the proposed new coastal management district (CMD), in accordance with section 24(2)(ii) of the *Legislative Standards Act 1992*.

Committee's request for advice

The committee asked DEHP to provide further information on the results of this consultation, the submissions and responses to those submissions. The Committee also sought clarification as to whether the LGAQ was consulted and advised of the impacts of the regulation, and their general views.

Department's advice

The department stated:

Thirty one submissions were received in response to the proposal to abolish the existing and declare a new coastal management district (CMD). Under section 57 of the Coastal Act, the Minister must consider all properly made submissions about the proposed CMD. All submissions were recorded and acknowledged on receipt.

⁶ Department of National Parks, Sports and Racing, Correspondence 28 October 2015

⁷ Coastal Protection and Management Amendment Regulation (No. 2) 2014, explanatory notes p.1

⁸ Coastal Protection and Management Amendment Regulation (No. 2) 2014, explanatory notes p.2

⁹ Coastal Protection and Management Amendment Regulation (No. 2) 2014, explanatory notes p.3

A report on the public submissions was prepared and presented to the Minister. The report includes details of the public submissions, proposed action to address concerns and recommendations for further action. The main issues raised by submitters that directly related to the proposed CMD included:

- *objection to the removal of sea level rise projections as a result of climate change in the mapping*
- *objection to the 'snap to boundary' rule which includes the entire lot in the CMD where only a portion of the lot is designated as an erosion prone area*
- *questioning whether lots should be in or out of the CMD based on the mapping rules.*

Issues raised in the submissions were considered and the proposed CMD mapping was modified where this was justified.

The report also includes a submission analysis table (Attachment 3 to the report)¹⁰ which provides analysis, recommended decisions and reasons in relation to issues raised. The report advises that there were no issues identified that would prevent the amendment of the CMD and recommended proceeding with the regulation amendment.¹¹

In relation to whether LGAQ was consulted, the department advised:

The department advised LGAQ by written notice of the proposed CMD changes and provided a notification to be included in the LGAQ circular in August 2014 to ensure individual councils were aware of the proposal. The LGAQ did not make a submission on the proposal.

In addition to the public notices, the department provided written notice of the proposal to all coastal local governments and invited their submissions.

In December 2014, a further LGAQ circular was prepared which advised them and councils that the CMD had been amended and had come into force through a regulation amendment.¹²

Committee comment

The committee is satisfied with the department's advice.

2.3 SL 330 Coastal Protection and Management Amendment Regulation (No. 3) 2014

On 7 March 2014, an IDAS self-assessable code was made that applies to minor public marine development (i.e. public boat ramps, pontoons and jetties) under the *Sustainable Planning Act 2009*.¹³

The objective is to amend new parts of the *Integrated Development Assessment System (IDAS) Code for self-assessable development for tidal works, or works completely or partly within a coastal management district* (self-assessable code) in the Coastal Protection and Management Regulation 2003. The Department of Environment and Heritage Protection proposes to extend the range of works to which the code applies.¹⁴

¹⁰ Department of Environment and Heritage Protection, *Proposal to abolish existing and declare a new coastal management district*. Public Submission Report November 2014

¹¹ Department of Environment and Heritage Protection, Correspondence 3 November 2015

¹² Department of Environment and Heritage Protection, Correspondence 3 November 2015

¹³ Coastal Protection and Management Amendment Regulation (No. 3) 2014, explanatory notes p.1

¹⁴ Coastal Protection and Management Amendment Regulation (No. 3) 2014, explanatory notes p.1

Potential FLP issue and comment

Section 4(5)(e) of the *Legislative Standards Act 1992* provides that whether subordinate legislation has sufficient regard to the institution of parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.

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*.¹⁵

Authorised by an Act

Section 167 of the *Coastal Protection and Management Act 1995* provides that the Governor-in-Council may make regulations to declare a statutory instrument or another document to be a code for IDAS under the *Sustainable Planning Act 2009*.

Section 23 of the *Statutory Instruments Act 1992* provides that if an Act authorises the making of a statutory instrument with respect to a matter, the statutory instrument may make provision for the matter by applying, adopting or incorporating another document.

It would therefore appear that the sub-delegation is authorised.¹⁶

Appropriate cases and to appropriate persons

In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, the former Scrutiny of Legislation Committee (SLC) considered the importance of the subject dealt with and matters such as the practicality or otherwise of including those matters entirely in subordinate legislation.¹⁷

The Self-assessable Code includes detailed criteria for the self-assessment. It is, therefore, arguable that it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation.¹⁸

Availability of document and parliamentary scrutiny

The former SLC’s concerns about sub-delegation were reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and attached to the subordinate legislation, or required to be tabled with the subordinate legislation and made available for inspection.¹⁹

It is noted that the Self-assessable Code is incorporated by the Amendment Regulation. The document is available on the Department’s website, however it does not appear that it is intended that it will be tabled in Parliament.²⁰

It is also noted that the Self-assessable Code cannot be changed or replaced unless the Regulation is amended to prescribe a new or amended version of the Self-assessable Code by reference to a new date of issue. This is the case with the current Amending Regulation.²¹

Currently, the Self-assessable Code is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House. Similarly, while a [future] Amendment

¹⁵ Technical Scrutiny Secretariat, Correspondence 27 April 2015

¹⁶ Technical Scrutiny Secretariat, Correspondence 27 April 2015

¹⁷ Alert Digest 1999/04, p. 10, paras 1.65-167

¹⁸ Technical Scrutiny Secretariat, Correspondence 27 April 2015

¹⁹ Technical Scrutiny Secretariat, Correspondence 27 April 2015

²⁰ Technical Scrutiny Secretariat, Correspondence 27 April 2015

²¹ Technical Scrutiny Secretariat, Correspondence 27 April 2015

Regulation will alert the House that there has been an amendment to the document (e.g. if the future Amendment Regulation states that it is replacing Self-assessable Code with a new Self-assessable Code), it will not contain information about the changes that have been made.²²

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the Self-assessable Code) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.²³

The explanatory notes outline that this Regulation is consistent with the main objects of the Coastal Act to provide for the protection, conservation, rehabilitation and management of the coastal zone, including its resources and biological diversity; and ensure decisions about land use and development safeguard life and property from the threat of coastal hazards.²⁴

The committee queries whether the Amendment Regulation has sufficient regard to the institution of parliament when the Self-assessable Code is not contained in the subordinate legislation in its entirety. However, it is noted that the Minister has provided detailed information about changes to the Self-assessable Code (including the reasons for, and the nature of, the changes) in the explanatory notes to help ensure that the House is informed. This was also consistent with previous Technical Scrutiny Secretariat advice.

The explanatory notes do not address the potential FLP issues set out above.

Committee's request for advice

The committee sought clarification from DEHP why the issue of whether the regulation has sufficient regard to Parliament was not included in the notes. The Committee requested that the department ensure explanatory notes for future amendments to the Regulation address this potential FLP issue.

The Committee also asked if the department could also advise whether the LGAQ was consulted and advised of the impacts of the regulation, and their general views.

Department's advice

The department explained:

The department considers that regulation amendment had sufficient regard to Parliament and that the explanatory notes includes details on the changes to the self-assessable code. While the code is not contained in subordinate legislation in its entirety and as such its content does not come to the attention of the House, the explanatory notes outlines the changes that have been made. The explanatory notes outline that changes to the code have been made which apply to following new works:

- *storm water infrastructure;*
- *certain work involving boardwalks, beach access and viewing structures, netted swimming enclosures and pedestrian/bikeway bridges;*
- *beach re-profiling and beach nourishment;*
- *demolition of structures below high-water mark;*
- *management of natural waterway mouth across a beach;*
- *reconstruction of a functional seawall or revetment; and*

²² Technical Scrutiny Secretariat, Correspondence 27 April 2015

²³ Technical Scrutiny Secretariat, Correspondence 27 April 2015

²⁴ Coastal Protection and Management Amendment Regulation (No. 3) 2014, explanatory notes p.2

- *reconstruction or maintenance of a road, carpark or path, and addition of a footpath to a road.*

The department considers that the explanatory notes provided a sufficiently detailed overview of the code and its purpose in the explanatory notes. Including the 79 acceptable outcomes that new works must potentially meet and the process for complying with the code in the explanatory notes would be of little additional benefit. As noted in the questions for the department by the AEC, the code is available on the Department's website for further confirmation on what the code contained, along with questions and answers to provide more information.

Overall, the self-assessable code and the process by which it is incorporated into the legislative framework does have sufficient regard to the institution of parliament because it is appropriate that delegated matters be dealt with through an alternative process to the subordinate legislation, taking into account:

- *the importance of the subject dealt with*
- *the practicality or otherwise of including those matters entirely in subordinate legislation*
- *the commercial or technical nature of the subject matter.*

Noting the above, the department notes the Committee's suggestion to ensure that the explanatory notes for future amendments to the Regulation comprehensively includes the changes to the code to ensure the House is duly informed.²⁵

In response to the Committee's question about the consultation with LGAQ, the department advised:

A draft of the additional parts to the self-assessable code and an information sheet was provided to LGAQ and all relevant local councils in October 2014 along with an invitation to make comment about the proposal. This was also included in an LGAQ circular to local governments.

Stakeholders had three weeks in which to provide comments. Stakeholders were also provided with contact information and the opportunity to discuss the proposal with EHP directly if desired.

While LGAQ were satisfied to allow individual local councils to make comments on the code, they did show support for the reduction of assessment timeframes and costs associated with routine low risk coastal activities undertaken by local government.

In December 2014, a further LGAQ circular was prepared which advised them and councils that amendments to the self-assessable code had been made.²⁶

Committee comment

The committee is satisfied with the department's advice.

²⁵ Department of Environment and Heritage Protection, Correspondence 3 November 2015

²⁶ Department of Environment and Heritage Protection, Correspondence 3 November 2015

3 Recommendations

Recommendation 1

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



Jennifer Howard MP
Chair
November 2015