

**Subordinate legislation tabled on  
14 February 2012**

**Report No. 3**  
**State Development, Infrastructure and Industry**  
**Committee**  
June 2012

**State Development, Infrastructure and Industry Committee**

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## 1 Introduction

### *Role of the Committee*

The State Development, Infrastructure and Industry Committee (the committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 17 May 2012.<sup>1</sup> It consists of government and non-government members. The committee's primary areas of responsibility are: State Development, Infrastructure and Planning, Energy and Water Supply, Tourism, Major Events, Small Business, and the Commonwealth Games.

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.

### *Aim of this report*

This report advises of subordinate legislation examined and, where applicable, presents any concerns the committee has identified in respect of subordinate legislation tabled on 14 February 2012 that are within its portfolio responsibilities. Unless expressly noted below, no issues were identified.

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
SL252	Sustainable Planning Amendment Regulation (No.6) 2011	14/2/12	11/7/12
SL254	Electricity Amendment Regulation (No.3) 2011	14/2/12	11/7/12
SL255	Electricity Amendment Regulation (No.4) 2011	14/2/12	11/7/12
SL266	Sustainable Planning Amendment Regulation (No.7) 2011	14/2/12	11/7/12
SL298	Urban Land Development Authority Amendment Regulation (No.7) 2011	14/2/12	11/7/12
SL8	Sustainable Planning Amendment Regulation (No.1) 2012	14/2/12	11/7/12
SL42	Sustainable Planning Amendment Regulation (No.2) 2012	14/2/12	11/7/12

## 2 Issues identified

### *2.1 Sustainable Planning Amendment Regulation (No.6) 2011*

The objective of the regulation is to extend the expiry dates for State Planning Policies (SPPs) 1/02 (Development in the vicinity of certain airports and aviation facilities) and 2/02 (Planning and managing development involving acid sulphate soils) to 3 August 2013 and 18 November 2014 respectively.

In the case of SPP 1/02, the extension as stated in the Explanatory Notes, is to enable the Department of Transport and Main Roads (DTMR) to complete its review under the 2011-12 State Planning Interests Program, which cannot occur until the final Federal aviation standards and noise impact framework is complete. This was due in April 2012.

<sup>1</sup> *Parliament of Queensland Act 2001*, s.88 and Standing Order 194.

In the case of SPP 2/02, the extension is required, as stated in the Explanatory Notes, in order for the former Department of Environment and Resource Management, now the Department of Environment and Heritage Protection, to effectively manage resources currently involved in State planning instrument development.

A further amendment is made to Schedule 7 that enables DTMR, through Maritime Safety Queensland, to effectively manage marine pollution impacts of tidal works.

### ***Fundamental legislative principles issues***

There is potentially a question as to whether the subordinate legislation has sufficient regard for the rights and liberties of individuals under s.4(2)(a) of the *Legislative Standards Act 1992*. The Schedule 7 amendment, which provides Maritime Safety Queensland with jurisdiction for marine pollution matters, may result in applicants for marina developments being required to install waste reception facilities. This would be an additional cost for the proponent. The Explanatory Notes state that there is no inconsistency with fundamental legislative principles and the committee considers that the regulatory regime is necessary to support the identified policy objectives of protecting the environment and public health.

The maximum period under the *Sustainable Planning Act 2009* s.45 for extending a SPP is two years beyond the initial 10 years. SPP 1/02 was due to expire on 3 August 2012 so the requested extension until 3 August 2013 is lawful. SPP 2/02 is due to expire on 18 November 2012 so the requested extension until 18 November 2014 is also lawful.

The committee sought clarification regarding the status of the final Federal aviation standards and noise impact framework, which was due in April 2012. The Department of Transport and Main Roads provided the following response on the matter:<sup>2</sup>

The Standing Council on Transport and Infrastructure (SCOTI) agreed to implement the National Airports safeguarding Framework at their meeting on 18 May 2012.

The Communique from SCOTI describes the framework as 'a national land use planning regime to protect airports and communities from inappropriate off-airport development ... to ensure that an appropriate balance is maintained between the social, economic and environmental needs of the community and the effective use of airport sites.'

Following the decision by SCOTI, the Commonwealth Department of Infrastructure and Transport has revised its website to reflect the agreed version of the framework.

### ***Lawfulness***

The committee did not identify any significant issues regarding the lawfulness of the subordinate legislation.

### ***Committee comments***

In accordance with the above discussion, the committee concludes that the Schedule 7 amendment in this regulation has sufficient regard to the rights and liberties of individuals.

## ***2.2 Electricity Amendment Regulation (No.4) 2011***

The objective of the regulation is to make amendments to the Electricity Regulation 2006 to align with the Australian Electricity Regulator's (AER) determination, which permits the operation of specified service providers and the recovery of costs from the customer, for the design and construction of large connection assets.

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<sup>2</sup> Menadue, T. Manager (Planning Policy), Planning Management, Integrated Transport Planning, Department of Transport and Main Roads. Email correspondence of 5 June 2012.

### ***Fundamental legislative principles issues***

The committee examined Clause 4 of the regulation to determine whether the subordinate legislation had sufficient regard for the rights and liberties of individuals under s.4(2)(a) of the *Legislative Standards Act 1992*. The matter pertains to customers' liability for the reasonable costs of the initial installation of a service line where the line is not a 'standard control device.' The concern relates to the lack of clarity regarding the definition of such a device, as it is not clearly defined in the regulation itself.

While the definition can be found in the National Electricity Rules, the lack of definition within the regulation potentially offends against s.4(3)(k) of the *Legislative Standards Act 1992* because the provision does not comply with the requirement to be unambiguous and drafted in a sufficiently clear and precise manner.

The committee understands that this regulation is part of the national uniform framework.

The committee sought advice from the Department of Energy and Water Supply. The department provided the following response:<sup>3</sup>

The amendment was due to the need to align this part with the national uniform framework. In May 2010, the Australian Energy Regulator (AER) handed down its final decision for the Queensland distribution determination (i.e. the Final Determination for Energex and Ergon) for the 2010-11 to 2014-15 regulatory period. The comprehensive consultation details and outcomes are located on the AER's website at <http://www.aer.gov.au/content/index.phtml/itemId/727400>. A decision was made not to table all the AER's documentation in relation to the consultation and decision, due to the large volume of documents (that are readily available on its website).

The standard control service definition is readily available in the National Electricity Rules Chapter 10 Glossary. The use of this definition from the National Electricity Rules allows for the definition to consistently align with NER as it evolves, rather than resulting in conflict between the *Electricity Regulation 2006* and the NER as the NER changes.

This issue was raised by the distribution entities and the amendment allows the electricity distributors Energex and Ergon to adjust their practices to serve customers in a more timely manner. The time lag for this change to occur would have affected not only Energex and Ergon but also those customers that were awaiting the change to occur.

The regulation change was developed and approved by the Office of the Queensland Parliamentary Counsel, in consultation with the Energy Group and followed the Regulatory Assessment Statement system.

The use of this definition in the *Electricity Regulation 2006* is consistent with the wording of other definitions in Schedule 9 (i.e. the Dictionary) that use the phrase 'has the meaning given in the National Electricity Rules'.

### ***Lawfulness***

The committee did not identify any significant issues regarding the lawfulness of the subordinate legislation.

<sup>3</sup> Coleman, C. Director of Legislation, Department of Energy and Water Supply. Email correspondence of 28 May 2012.

***Committee comments***

The committee has considered the concern relating to the definition of 'standard control device' and the response provided by the Department of Energy and Water Supply. Having regard to this response, the committee is now satisfied that the regulation is lawful and within the scope of its power.