

**Subordinate legislation tabled  
between 3 June 2015 and  
14 July 2015**

**Report No. 6, 55<sup>th</sup> Parliament  
Utilities, Science and Innovation Committee**

**October 2015**

# Utilities, Science and Innovation Committee

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## 1. Introduction

### *Role of the Committee*

The Utilities, Science and Innovation Committee is a portfolio committee established by the Legislative Assembly of Queensland on 26 March 2015. The Committee's primary areas of responsibility are main roads, road safety, ports, energy and water supply, housing, public works, science and innovation.<sup>1</sup>

Pursuant to section 93(1) of the *Parliament of Queensland Act 2001*, the Committee is responsible for examining each item of subordinate legislation within its portfolio areas and considering:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs)
- the lawfulness of the subordinate legislation
- the content of the explanatory notes to ensure they comply with part 4, section 24 of the *Legislative Standards Act 1992* (LSA).

Section 93(2)(b) of the *Parliament of Queensland Act 2001* confers responsibility on portfolio committees to monitor the operation of part 8 of the *Statutory Instruments Act 1992*. The Committee monitors all forms approved or made under an Act or subordinate legislation relevant to the Committee, and reports to the Legislative Assembly on the operation of Part 8.

### *Aim of this report*

This report advises on subordinate legislation examined and, where applicable, presents any concerns that the Committee has identified in respect of subordinate legislation tabled between 3 June 2015 and 14 July 2015.

## 2. Subordinate Legislation

The Committee examined the following subordinate legislation tabled on 14 July 2015:

- Proclamation made under the *Electricity Competition and Protection Legislation Amendment Act 2014*
- Electricity Competition and Protection Legislation Amendment (Postponement) Regulation 2015
- National Energy Retail Law (Queensland) (Transitional) Regulation 2015
- Energy Legislation Amendment Regulation (No.1) 2015
- Energy and Water Ombudsman Amendment Regulation (No.1) 2015
- National Energy Retail Law (Queensland) and Another Regulation Amendment Regulation (No.1) 2015
- Housing Amendment Regulation (No.1) 2015
- Housing and Public Works Legislation (Fees) Amendment Regulation (No.1) 2015
- Public Records Amendment Regulation (No.1) 2015

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<sup>1</sup> Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 27 March 2015.

**Examination of subordinate legislation**

SL No. 32	Tabling Date: 14 July 2015	Disallowance Date: 11 November 2015
<b>Title and Objective</b>	<p><b>Proclamation made under the <i>Electricity Competition and Protection Legislation Amendment Act 2014</i></b></p> <p>The objective is to amend the current proclamation for the <i>Electricity Competition and Protection Legislation Amendment Act 2014</i> to enable the provisions of the Act not already in force, to commence on 1 July 2015, except for:</p> <ul style="list-style-type: none"> <li>• sections 29A(2), 44, 45 and 50</li> <li>• section 50A(2) to the extent it inserts the new definition of ‘prescribed retailer’</li> <li>• section 50A(3)</li> <li>• section 97(1) to the extent it omits the definition of ‘prescribed retail entity’ and</li> <li>• section 97(2) to the extent it inserts the definitions of ‘designated retail market area’ and ‘prescribed retailer’.</li> </ul>	
<b>Committee comment</b>	The Committee notes the proclamation date for the <i>Electricity Competition and Protection Legislation Amendment Act 2014</i> and is satisfied that the Explanatory Notes comply with part 4 of the LSA.	

SL No. 33	Tabling Date: 14 July 2015	Disallowance Date: 11 November 2015
<b>Title and Objective</b>	<p><b>Electricity Competition and Protection Legislation Amendment (Postponement) Regulation 2015</b></p> <p>The objective of the Amendment Regulation is to extend the pre-commencement period for the <i>Electricity Competition and Protection Legislation Amendment Act 2014</i> to the end of 30 June 2016. This will allow any deferred provisions of the Act to commence on 1 July 2016 in accordance with section 15DA(3) of the <i>Acts Interpretation Act 1954</i>.</p>	
<b>Committee comment</b>	The Committee notes the extension of the pre-commencement period for the <i>Electricity Competition and Protection Legislation Amendment Act 2014</i> to 30 June 2016 and is satisfied that the Explanatory Notes comply with part 4 of the LSA.	

SL No. 34	Tabling Date: 14 July 2015	Disallowance Date: 11 November 2015
<b>Title and Objective</b>	<p><b>National Energy Retail Law (Queensland) (Transitional) Regulation 2015</b></p> <p>The objective of the Transitional Regulation is to preserve the current legislative approach to the payment of the regulated solar feed-in tariff and ensure consistency with the <i>National Energy Retail Law (Queensland) Act 2014</i>, which commences on 1 Jul 2015.</p>	
<b>Committee consideration</b>	<p>The Committee considered the following potential breaches of FLPs.</p> <p>Sections 4 and 5 of the Transitional Regulation provide for amendment of the <i>Electricity Act 1994</i> in relation to ‘prescribed retailer’ and ‘prescribed retail entities’ in order to preserve the current legislative approach to the payment of regulated solar feed-in tariff and to ensure consistency with the <i>National Energy Retail Law (Queensland) Act 2014</i> (the Act), which commenced on 1 July 2015.</p>	

	<p>There is a potential FLP issue (Sufficient regard to the institution of Parliament) as subordinate legislation should amend statutory instruments only.<sup>2</sup></p> <p>The former Scrutiny of Legislation Committee (SLC) had consistently expressed the view that a subordinate instrument that amended an Act, was inconsistent with the fundamental legislative principle requiring subordinate legislation to have sufficient regard to the institution of Parliament. The SLC was of the view that the most effective means to ensure that regulations do not amend something other than a statutory instrument is to ensure that provisions which provide authority for them to do so are not included in legislation.</p> <p>While section 29(4) of the Act does provide for a 3 year ‘transitional’ period for transitional regulations, clause 6 of the Transitional Regulation sets an expiry date of 30 June 2016 (which is 12 months from commencement). Whilst the shorter timeframe for application of a Transitional Regulation goes towards providing sufficient justification, it contributes to a potential further FLP breach as the Transitional Regulation in clause 6 seeks to override section 29(4) of the Act (the Act states that a Transitional Regulation ‘will expire 3 years after the day the regulation commences’ not ‘within 3 years’).</p> <p>The Committee therefore considered the two questions remaining in respect of this Transitional Regulation:</p> <p><i>Is the Transitional Regulation within power of the Act?</i></p> <p>Section 29 of the Act provides that a Transitional Regulation may be made if it is to facilitate the change from the operation of the <i>Electricity Act</i> or <i>Gas Supply Act</i>, has retrospective operation to a day not earlier than the commencement, and it is declared a transitional regulation. In this case, the Transitional Regulation satisfies these requirements.</p> <p><i>Is the potential FLP breach sufficiently justified in the circumstances?</i></p> <p>The Explanatory Notes assert that the potential FLP breach is justified:</p> <p style="padding-left: 40px;"><i>The Transitional Regulation is considered to have sufficient regard to the institution of Parliament as the proposed clauses are limited to the facilitation of a transitional arrangement to preserve the current legislative approach to the payment of the regulated FiT [feed in tariff] under sections 92 and 55DBA of the Electricity Act. The Transitional Regulation will expire in one year.<sup>3</sup></i></p>
<b>Committee comment</b>	<p>The Committee notes that the Transitional Regulation is ‘within power’ and ‘adequately justified’ in the Explanatory Notes, and is therefore of the view that there is sufficient regard to the institution of Parliament given the circumstances. In relation to the Explanatory Notes, the Committee is satisfied that they generally comply with part 4 of the LSA, but notes that they do not contain a statement of the reason that there was no consultation with the community or industry stakeholders in relation to the Transitional Regulation, as required by section 24(2)(b) of the LSA.</p>

<sup>2</sup> *Legislative Standards Act 1992*, section 4(5)(d). The principle of Parliamentary law-making that an Act should only be amended by another Act of Parliament has been long recognised. This principle is supported in Queensland by the *Legislative Standards Act 1992*, section 4(4)(c) for Bills, and the *Legislative Standards Act 1992*, section (5)(d) for subordinate legislation.

<sup>3</sup> National Energy Retail Law (Queensland) (Transitional) Regulation 2015, Explanatory Notes:5

<b>SL No. 59</b>	<b>Tabling Date: 14 July 2015</b>	<b>Disallowance Date: 11 November 2015</b>
<b>Title and Objective</b>	<b>Energy Legislation Amendment Regulation (No.1) 2015</b> The objective is to increase the prescribed regulatory fees and charges by the current Government endorsed indexation factor of 3.5% for the new financial year - 1 July 2015 to 30 June 2016.	
<b>Committee comment</b>	The Committee notes that the increase in fees and charges is consistent with the Government endorsed indexation factor and is satisfied that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.	
<b>SL No. 60</b>	<b>Tabling Date: 14 July 2015</b>	<b>Disallowance Date: 11 November 2015</b>
<b>Title and Objective</b>	<b>Energy and Water Ombudsman Amendment Regulation (No.1) 2015</b> The objective is to amend subsections 4(2) and 4(3) of the Energy and Water Ombudsman Regulation 2007 to correct references to provisions in the <i>Energy and Water Ombudsman Act 2006</i> .	
<b>Committee comment</b>	The Committee notes the correction to references in the Act and is satisfied that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.	
<b>SL No. 61</b>	<b>Tabling Date: 14 July 2015</b>	<b>Disallowance Date: 11 November 2015</b>
<b>Title and Objective</b>	<b>National Energy Retail Law (Queensland) and Another Regulation Amendment Regulation (No.1) 2015</b> The objective is to amend certain provisions of the National Energy Retail Law (Queensland) Regulation 2014 and the National Gas (Queensland) Regulation 2014 to facilitate the commencement of the <i>National Energy Retail Law</i> in Queensland.	
<b>Committee comment</b>	The Committee notes the Amendment Regulation and is satisfied that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.	
<b>SL No. 63</b>	<b>Tabling Date: 14 July 2015</b>	<b>Disallowance Date: 11 November 2015</b>
<b>Title and Objective</b>	<b>Housing Amendment Regulation (No.1) 2015</b> The objective of the Amendment Regulation is to prescribe a date for the end of the transitional period for providers under the National Regulatory System for Community Housing (NRSCH) to allow more time for providers to obtain registration or manage exits from the current funding arrangements with the Department of Housing and Public Works. The dates prescribed by the Amendment Regulation for the end of the transitional period are: <ul style="list-style-type: none"> <li>• 30 June 2017 for non-government providers and non-Indigenous local governments (extension of two years)</li> <li>• 30 June 2019 for Indigenous local governments and prescribed Indigenous Community Housing Organisations (extension of four years).</li> </ul>	
<b>Committee comment</b>	The Committee notes the Amendment Regulation and is satisfied that the Explanatory Notes tabled with the Regulation comply with part 4 of the LSA.	

<b>SL No. 64</b>	<b>Tabling Date: 14 July 2015</b>	<b>Disallowance Date: 11 November 2015</b>
<b>Title and Objective</b>	<b>Housing and Public Works Legislation (Fees) Amendment Regulation (No.1) 2015</b> The objective is to index fees by 3.5% in accordance with the Government indexation policy.	
<b>Committee comment</b>	The Committee notes that, in the main, the fees and charges prescribed by this Regulation show an increase of 3.5% in keeping with the Queensland Government's policy and is satisfied that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.	

<b>SL No. 71</b>	<b>Tabling Date: 14 July 2015</b>	<b>Disallowance Date: 11 Nov 2015</b>
<b>Title and Objective</b>	<b>Public Records Amendment Regulation (No.1) 2015</b> The objective is to amend the Public Records Regulation 2014 to prescribe the department in which the <i>Racing Act 2002</i> is administered (Department of National Parks, Sport and Racing) as the relevant public authority under section 8(3)(b) and the responsible public authority under section 15(d) of the <i>Public Records Act 2002</i> in relation to public records of the Queensland Greyhound Racing Industry Commission of Inquiry.	
<b>Committee comment</b>	The Committee notes the Amendment Regulation and is satisfied that the Explanatory Notes tabled with the Regulation comply with part 4 of the LSA.	

### 3. Recommendation

#### Recommendation

The Utilities, Science and Innovation Committee recommends that the Legislative Assembly note:

- the subordinate legislation tabled between 3 June 2015 and 14 July 2015
- that the Committee is satisfied with the justification provided for one potential breach of fundamental legislative principles and did not identify any significant issues in relation to policy or regarding the lawfulness of the subordinate legislation.



Mr Shane King MP  
Chair