Parliamentary Committees

Subordinate legislation tabled between 16 September 2015 and 27 October 2015

Report No. 14, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
December 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 Marion O'Connor, Acting 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

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1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources 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.
- 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

(c) for subordinate legislation – its lawfulness.

This report contains a summary of the committee's examination of subordinate legislation tabled between 16 September 2015 and 27 October 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
140	Local Government Legislation Amendment Regulation (No.1) 2015	27 October 2015	25 February 2016
142	Economic Development Amendment Regulation (No. 1) 2015	27 October 2015	25 February 2016
143	Local Government Electoral Amendment Regulation (No. 1) 2015	27 October 2015	25 February 2016
144	State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015	27 October 2015	25 February 2016
145	Land Title Regulation 2015	27 October 2015	25 February 2016
146	Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015	27 October 2015	25 February 2016

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*.

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).

Recommendation

Recommendation 1

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

2 Subordinate legislation examined

2.1 Local Government Legislation Amendment Regulation (No. 1) 2015 (SL No. 140)

The objectives of the *Local Government Legislation Amendment Regulation (No. 1) 2015* (SL No. 140) (the Regulation) were to:

- remove section 69 from the *Local Government Regulation 2012* (LGR) because it is redundant
- require local governments to keep written records of alleged and proven losses arising from fraud, to keep written records of material losses, and to report material loss as a result of fraud.

2.1.1 Removal of redundant appropriation provision

Section 66 of the LGR imposes a levy on each Kuranda rail operator at the rate of $1 per passenger journey on the Kuranda rail line. Section 69 provided that the amounts received by the State for payment of the tourist infrastructure levy must be paid to the relevant local government. The Regulation omitted this provision because it was redundant. This is because the State is authorised under the general Appropriation Acts to pay the relevant council the amounts received for payment of the tourist infrastructure levy.[3]

2.1.2 Fraud management

In June 2015, the Queensland Audit Office (QAO) tabled a report into fraud management in local government: *Report 19: 2014-15 – Fraud management in local government*. The QAO found that many local governments were unaware of the extent of fraud being perpetrated against them and had poor record keeping practices.[4] The Regulation implemented recommendation 1 of the QAO's report. Specifically:

> The Department of Infrastructure, Local Government and Planning pursue amendment of the *Local Government Regulation 2012* and the *City of Brisbane Regulation 2012* to require:
>
> - loss as a result of fraud to be a reportable loss to the Auditor-General and to the Minister responsible for local government
> - councils to keep written records of alleged and proven losses arising from fraud.

The Regulation requires local governments to keep written records of both alleged and proven losses arising from fraud.[5] The reporting threshold for material losses for assets other than money is $1,000 for all local governments except Brisbane City Council (BCC) which has a threshold of $5,000 (the same as departments and statutory bodies).[6] A loss of more than $500 in money must be reported by all local governments.[7]

The Regulation also:

- aims to provide consistency with the State's reporting requirements under the Financial and Performance Management Standard 2000 (FPMS)

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3 Local Government Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 1.

4 Queensland Audit Office, *Report 19: 2014-15 – Fraud management in local government*, 2015, p 1.

5 The Regulation differs from the FPMS in that only proven losses are required to be recorded by the State: Local Government Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.

6 Financial and Performance Management Standard 2000, Schedule, definition of 'material loss'. The threshold for Brisbane City Council was made higher than that for the other local governments because of its size: Local Government Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.

7 This is the same as for departments and statutory bodies: Financial and Performance Management Standard 2000, Schedule, definition of 'material loss'.

- requires local governments to keep written records of material losses (other than a loss from an offence or corrupt conduct) to further align the *City of Brisbane Regulation 2012* and LGR with section 22 of the FPMS.[8]

The QAO, the Local Government Association of Queensland, the Local Government Managers Australia (Queensland) and the BCC were consulted and expressed support for the fraud management amendments.[9]

Committee comment

The committee is satisfied that *Local Government Legislation Amendment Regulation (No. 1) 2015* (SL No. 140) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes tabled with the regulation comply with Part 4 of the *Legislative Standards Act 1992*.

2.2 Economic Development Amendment Regulation (No. 1) 2015 (SL No. 142)

The objective of the *Economic Development Amendment Regulation (No. 1) 2015* (SL No. 142) was to give effect to the Townsville City Waterfront Priority Development Area (PDA) development scheme.

The PDA was declared at the request of Townsville City Council on 5 September 2014. The PDA includes approximately 97.2 hectares of land located on both sides of Ross Creek directly adjacent to Townsville's Central Business District.[10]

The Townsville City Waterfront PDA replaced the Interim Land Use Plan (ILUP) that expired on 29 October 2015. The explanatory notes state:

> Approval of a development scheme is required to allow Economic Development Queensland, Department of Infrastructure, Local Government and Planning to facilitate economic development and development for community purposes.
>
> …
>
> Development of the Townsville City Waterfront PDA will facilitate economic development and development for community purposes by revitalising the Ross Creek waterfront, reinvigorating Townville City Council's Central Business District and streamlining the development process. The development scheme provides for a diversity of uses including a variety of non-residential and residential uses.[11]

2.2.1 Consultation

The explanatory notes state that 'extensive consultation was undertaken with the Townsville City Council, Port of Townsville, State agencies, adjoining landowners, the local community and stakeholders in the preparation of the development scheme.'[12]

The proposed PDA was publicly notified during 7 July and 18 August 2015. During that time, 273 submissions were received in response to proposed PDA. The majority of submissions were received from individuals and were supportive or neutral.[13]

A number of other submissions raised the following issues:

- concern about the ability for the PDA to be serviced by public transport.

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8 Local Government Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.
9 Local Government Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 3.
10 Department of Infrastructure, Local Government and Planning, 'Townsville City Waterfront', accessed 20 November 2015.
11 Economic Development Amendment Regulation (No. 1) 2015, explanatory notes, p 1.
12 Economic Development Amendment Regulation (No. 1) 2015, explanatory notes, p 2.
13 Department of Infrastructure, Local Government and Planning, 'Public Notification Submissions Review Report', accessed 20 November 2015, p 6.

- concerns that the development scheme does not address/resolve issues relating to tenure, lease arrangements and infrastructure.
- the need for appropriate provision of car parks (private and public) within the PDA.
- concern over the potential loss of mooring opportunities due to the proposed pedestrian bridge linking Plume Street with Flinders Plaza.
- the need for the retention of the existing mangroves and concern about the varying height of the water within Ross Creek and resultant lack of scenic amenity.[14]

The explanatory notes state:

> The development scheme has been amended, where appropriate, and adequately addresses the issues identified in the submissions in accordance with the requirements of the *Economic Development Act 2012*.[15]

Committee comment

The committee is satisfied the *Economic Development Amendment Regulation (No. 1) 2015* (SL No. 142) 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*.

The committee was of the view that it would have been helpful for the committee's examination if the explanatory notes identified how the development scheme had been amended to address the issues raised in submissions.

2.3 Local Government Electoral Amendment Regulation (No. 1) 2015 (SL No. 143)

The *Local Government Electoral Amendment Regulation (No. 1) 2015* (SL No. 143) inserted new sections 3 and 4 into the Local Government Electoral Regulation 2012 to:

- prescribe 'special postal voters' (as defined in section 68(5A) of the *Local Government Electoral Act 2011* (LGEA)) as a class of electors who may cast an electronically assisted vote at a local government election, pursuant to section 68(5B) of the LGEA
- prescribe 'distance voters' as a class of electors who may cast an electronically assisted vote at a local government election, pursuant to section 68(5B)(c) of the LGEA
- insert a definition for 'distance voter' to mean *an elector whose address, as shown on the voters roll, is more than 20km by the nearest practicable route from a polling booth*
- approve, as required under section 75A(3) of the LGEA, the electronically assisted voting procedures for local government elections made by the Electoral Commission Queensland (ECQ) on 8 September 2015 under section 75A(1) of the LGEA.[16]

The explanatory notes state:

> The regulation will improve access to voting, through the use of electronically assisted voting, for electors who have historically faced difficulty in casting a ballot because they live outside an urban area. Electronically assisted voting will also be an option for a wider number of electors if registered as a 'special postal voter', including defence members or defence civilians and Australian Federal Police officers or staff members serving outside Australia.[17]

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[14] Department of Infrastructure, Local Government and Planning, 'Public Notification Submissions Review Report', accessed 20 November 2015, p 10.

[15] Economic Development Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

[16] Local Government Electoral Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

[17] Local Government Electoral Amendment Regulation (No. 1) 2015, explanatory notes, pp 2-3.

2.3.1 Issues relating to fundamental legislative principles

The Amendment Regulation approves, as required under section 75A(3) of the LGEA, the electronically assisted voting procedures for local government elections made by the ECQ on 8 September 2015 under section 75A(1) of the LGEA.

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*.

Authorised by an Act

Section 75A of the LGEA provides that:

> (1) The electoral commission may make procedures about how an elector may cast an electronically assisted vote for an election.
>
> …
>
> (3) The procedures-
>
> (a) do not take effect until approved by a regulation; and
>
> (b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and
>
> (c) must be published on the electoral commission's website.

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.

Accordingly, it appears that the sub-delegation is authorised.

Appropriate cases and to appropriate persons

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 Parliamentary scrutiny, the committee considered the importance of the subject dealt with and the practicality or otherwise of including those matters entirely in subordinate legislation.

The committee considers the ECQ 'Electronically assisted voting procedures' for Local Government Elections (the ECQ Procedures), drafted by the ECQ, are more appropriately placed in a document other than subordinate legislation.

Availability of document and Parliamentary scrutiny

Concerns about sub-delegation can be reduced where the document could only be incorporated under subordinate legislation (which could be disallowed) and attached to the subordinate legislation, or where the document was required to be tabled with the subordinate legislation and made available for inspection.

The committee notes the ECQ Procedures are incorporated by the Amendment Regulation. The document is also available on the ECQ website and they have been tabled in full in Parliament along

with the Amending Regulation. The tabling of the document is in accordance with section 75A(3)(b) of the LGEA.

On balance, the committee considers the Amending Regulation and its incorporation of the ECQ procedures has sufficient regard to the institution of Parliament.

Committee comment

The committee is satisfied the Local Government Electoral Amendment Regulation (No. 1) 2015 (SL No. 143) 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 State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015 (SL No. 144)

The objective of the *State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015* (SL No. 144) was to amend the *State Development and Public Works Organisation (State Development Areas) Regulation 2009* by varying the Gladstone SDA by referring to a new regulation map.[18]

The Gladstone SDA comprises approximately 29,000 hectares of land north-west of Gladstone. The variation to the Gladstone SDA both removed land from, and added land to, the Gladstone SDA.[19]

A total of 3326.6 hectares was removed from the SDA:

- part of the Curtis Island Environmental Management Precinct (EMP), to reflect transfer of that land to National Park and Conservation Park
- the current Kangaroo Island EMP, allowing it to be regulated by the Gladstone Regional Council (GRC)
- Strategic Port Land areas at Hamilton Point on Curtis Island and in Clinton, allowing these areas to be regulated by the Gladstone Ports Corporation.[20]

A total of 1,6622.7 hectares of land that was previously regulated by the GRC and zoned Rural, Forestry and Major Industry was added to the Gladstone SDA to:

- provide a more consistent regulatory environment for proponents (land on either side is currently regulated by the State)
- identify the future intent of the area for industrial development and linear infrastructure corridors to connect through to the Port of Gladstone.[21]

2.4.1 Issues relating to fundamental legislative principles

The amendment has the effect of removing 3326.6 hectares from the Gladstone SDA, removing unnecessary duplication and will result in the addition of 1662.7 hectares of land currently regulated by the GRC. Section 3 provides further detail about this amendment by referring to an external document (map) via a reference number. It may be argued that reference to the external document

[18] State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015, explanatory notes, p 1.

[19] State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015, explanatory notes, pp 1-2.

[20] State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015, explanatory notes, p 2.

[21] State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015, explanatory notes, pp 2-3.

(map) potentially breaches fundamental legislative principles as it prevents the map itself coming before the Assembly, in full, in the Regulation.

The committee is satisfied that given the size and level of detail required in the map that it is better placed in an external document. The explanatory notes provide detail about the changes made to the map which enables the Parliament to be cognisant of the extent of the changes. The committee also notes that the document is available for public viewing at the office of the Coordinator-General and on the Department of State Development's website.

Accordingly, the committee considers the potential breach of fundamental legislative principles may be considered justified in the circumstances.

Committee comment

The committee is satisfied the *State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 2) 2015* (SL No. 144) 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*.

2.5 Land Title Regulation 2015 (SL No. 145)

The *Land Title Regulation 2015* (SL No. 145) (the Regulation) remakes the Land Title Regulation 2005.[22]

The *Land Title Regulation 2005* was subject to automatic expiry under Part 7 of the *Statutory Instruments Act 1992* but it 'was exempted from expiry for 12 months to allow time for completion of a streamlining review prior to the *Land Title Regulation 2005* being remade.'[23]

The review recommended that the *Land Title Regulation 2005* be remade as it is necessary for the continued effective operation of the *Land Title Act 1994*. The content of the original subordinate legislation was largely retained but the following amendments were made to implement recommendations of the review:

- providing the Registrar of Titles with discretion to accept an amended form that has not been initialled by each party to the form and each witness if it is not reasonable to require them to do so because they are, for example, overseas or interstate.[24]
- removing the half-fee for re-lodgement of a rejected 'paper' instrument because providing a discount for re-lodgement is inconsistent with the e-conveyancing process, which does not allow for the re-lodgement of a rejected dealing.[25]
- streamlining the current fees. 'The change will achieve approximate revenue-neutrality in fee adjustment impacts overall and reduce the time taken by customers to prepare fees for lodgement, particularly where there are a number of fees payable. The new multi-level fee structure will enable easier annual indexation by government.'[26]
- rounding fees to the nearest full dollar amount to make calculation of fees easier. Search fees will continue to be in dollars and cents.
- decreasing the fees for simple dealings resulting from life events, such as death of a joint tenant or a natural person's name change.
- removing the disparity between fees for the cancellation, discharge or satisfaction of a writ of execution and other similar transactions.

[22] The Land Title Regulation 2015 commences on 1 December 2015: Land Title Regulation 2015, s 2.
[23] Land Title Regulation 2015, explanatory notes, p 1.
[24] Land Title Regulation 2015, s 5(4), (5); Land Title Regulation 2015, explanatory notes, p 2.
[25] Land Tile Regulation 2005, s 4(2)(b); Land Title Regulation 2015, explanatory notes, p 2.
[26] Land Title Regulation 2015, explanatory notes, p 2.

- removing the postal lodgement fee so that lodgement by post costs the same as over the counter transactions.
- aligning the fees for investigative searches of the register more closely with the cost of delivering the searches.
- clarifying the exemption from fees for transfers to the State and other State dealings to ensure that the State or another party is not paying for dealings that will benefit the State.[27]

Committee comment

The committee is satisfied the *Land Title Regulation 2015* (SL No. 145) 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 Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015 (SL No. 146)

The objective of the *Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015* (SL No. 146) is to implement certain recommendations made following a review of the Land Title Regulation 2005.[28]

As part of the review of the *Land Title Regulation 2005* (discussed above in Part 2.5), provisions relating to the Titles Registry in other regulations were reviewed. The relevant recommendations are being implemented by the Amendment Regulation.[29]

The Amendment Regulation aligns 'the other regulations that prescribe fees for registration and titling matters, with the fees and price points established in the *Land Title Regulation 2015*.'[30] It amends the *Building Units and Group Tiles Regulation 2008*, the *Foreign Ownership of Land Register Regulation 2013, the Land Regulation 2009* and the *Water Regulation 2002*.[31]

2.6.1 Issues relating to fundamental legislative principles

Part 5, clause 16 of the Amendment Regulation amended fees in Schedule 16 of the *Water Regulation 2002*. Currently, item 20 of Schedule 16 provides the following fees for investigative search, by the registrar, of the register (not including providing copies of documents):

(a) if no additional computer programming time is required- for each hour or part of an hour – $65.50

(b) if additional computer programming time is required- for each hour or part of an hour – $161.70

The Amendment Regulation increased the fee for item 20(a) by 67.9% (from $65.50 to $110.00) and the fee for item 20(b) by 89.9% (from $161.70 to $307.00).

The Department of Natural Resources and Mines advised the committee of the rationale for increasing the fees:

> The fee increases, which take effect from 1 December 2015, were approved by the Cabinet Budget Review Committee as part of the 2015-16 State Budget deliberations.
>
> These two fees, made under the Water Regulation 2002, are charged at the prescribed hourly rate by the Department of Natural Resources and Mines for investigative searches of the Water Allocations Register, and are identical to the fees for investigative searches of the Freehold Land

[27] Land Title Regulation 2015, explanatory notes, p 2.

[28] The Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015 commences on 1 December 2015: Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015, s 2.

[29] Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

[30] Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

[31] Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015, explanatory notes, p 2.

Register under the Land Title Regulation 2005. The Water Allocations Register and the Freehold Land Register are two of the titles registers managed by the Registrar of Titles within the Department of Natural Resources and Mines' Automated Titles System.

These two fees cover two distinct types of investigative searches of the titles registers, namely, complex historical research undertaken for customers by departmental staff and complex searches or research requiring specialized computer programming, respectively.

The fees for investigative searches of the titles registers have remained largely unchanged since the 1990s apart from minor adjustments annually in line with government policy on fees and charges – for example, to reflect movements in the Consumer Price Index. These annual Consumer Price Index adjustments have not kept pace with the actual cost to the department of investigative search work – for example, staff wages and overheads, ICT system contractor costs, and the complexity of source material and data. The revised fees, to take effect from 1 December 2015, reflect the cost to the department of providing these investigative search services to customers.

Revenue from investigative search fees returns very low levels of (controlled) revenue, on average accounting for around 0.05 per cent of Titles Registry search fee revenue overall. The increase in these fees is not expected to have any substantial impact on controlled revenue overall, nor have a significant impact on any particular sector of the community.

Committee comment

The committee is satisfied the *Natural Resources and Mines Legislation Amendment Regulation (No. 1) 2015* (SL No. 146) 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

December 2015