

**Portfolio subordinate legislation
tabled between 29 August 2014 and
26 March 2015**

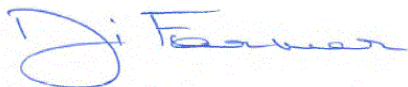
Report No. 1, 55th Parliament
Finance and Administration Committee
May 2015

FINANCE AND ADMINISTRATION COMMITTEE

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Chair's Foreword

This report presents the Committee's findings from its consideration of items of subordinate legislation tabled between 29 August 2014 and 26 March 2015 that fall within its portfolio responsibilities. The Committee did not identify any issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.



Di Farmer MP
Chair
May 2015

1. Introduction

The Finance and Administration 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 May 2015.¹ The Committee's primary areas of responsibility are:

- Premier, Cabinet and the Arts , and
- Treasury, Employment, Industrial Relations, Aboriginal and Torres Strait Islander Partnerships

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.

2. Findings and recommendations

The Committee recommends that the Legislative Assembly note the subordinate legislation tabled between 29 August 2014 and 26 March 2015 considered by the Committee. The Committee did not identify any issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.

It should be noted that the disallowance date for three pieces of the subordinate legislation was 26 March 2015 which was prior to the appointment of the Committee. This subordinate legislation fell within the responsibilities of other former committees. These committees were unable to finalise consideration of the subordinate legislation prior to the dissolution of the Parliament for the 2015 election. The subordinate legislation now falls within the responsibilities of the FAC.

3. Subordinate legislation considered

The following table lists the subordinate legislation considered by the Committee and the deadline in each case for Members to give notice in the House of a disallowance motion in accordance with Standing Order 59.²

SL No 2014	Subordinate Legislation	Tabled Date	Disallowance Date ³
189	<i>Workers' Compensation and Rehabilitation Regulation 2014</i>	9 September 2014	26 March 2015
190	<i>Industrial Relations and Another Regulation Amendment Regulation (No.1) 2014</i>	9 September 2014	26 March 2015
193	<i>Trading (Allowable Hours) Regulation 2014</i>	9 September 2014	26 March 2015
205	<i>Aboriginal Land Amendment Regulation (No.5) 2014</i>	14 October 2014	6 May 2015
206	<i>Superannuation (State Public Sector) Amendment Notice (No.1) 2014</i>	14 October 2014	6 May 2015

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

² Section 50 of the *Statutory Instruments Act 1992* provides that the Legislative Assembly may pass a resolution disallowing subordinate legislation if notice of a disallowance motion is given by a Member within 14 sitting days after the legislation is tabled in the Legislative Assembly.

³ Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

SL No 2014	Subordinate Legislation	Tabled Date	Disallowance Date ⁴
212	<i>Industrial Relations Amendment Regulation (No.1) 2014</i>	14 October 2014	6 May 2015
227	<i>Revenue Legislation Amendment Regulation (No.2) 2014</i>	14 October 2014	6 May 2015
234	<i>Statutory Bodies Financial Arrangements Amendment Regulation (No.1) 2014</i>	14 October 2014	6 May 2015
238	<i>Work Health and Safety Amendment Regulation (No.1) 2014</i>	28 October 2014	20 May 2015
241	<i>Aboriginal Land Amendment Regulation (No.7) 2014</i>	28 October 2014	20 May 2015
285	<i>Proclamation commencing remaining provisions – Family Responsibilities Commission Amendment Act 2014</i>	26 March 2015	17 July 2015
286	<i>Family Responsibilities Commission Regulation 2014</i>	26 March 2015	17 July 2015
298	<i>Proclamation commencing remaining provisions – Appropriation Act (No.2) 2014</i>	26 March 2015	17 July 2015
316	<i>Industrial Relations Amendment Regulation (No.6) 2014</i>	26 March 2015	17 July 2015
345	<i>Parliamentary Service Amendment Rule (No.1) 2014</i>	26 March 2015	17 July 2015

4. Issues for consideration

The Committee identified potential fundamental legislative principle (FLP) and/or other issues with the following subordinate legislation highlighted in the table:

- *Industrial Relations and Another Regulation Amendment Regulation (No.1) 2014*
- *Proclamation commencing remaining provisions – Family Responsibilities Commission Amendment Act 2014*
- *Family Responsibilities Commission Regulation 2014*

4.1 ***SL No 190 of 2014 – Industrial Relations and Another Regulation Amendment Regulation (No.1) 2014***

The objective of the Regulation is to amend the:

1. *Industrial Relations Regulation 2011* to:
 - (a) prescribe a wage increase in certain continuing agreements,
 - (b) extend the nominal expiry date in certain continuing agreements, and
 - (c) exclude the Queensland Training Assets Management Authority (QTAMA) from the national workplace relations system; and
2. *Fire and Rescue Service Regulation 2011* (FRS Regulation) to include notes to assist the calculation of property size when determining levy groups for payment of annual contributions to the Emergency Management Levy.

⁴ Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

The explanatory notes state that the Act provides for an award modernisation process and for transitional arrangements for continuing certificate agreements that reach their nominal expiry date prior to the modernisation of the awards that underpin the certified agreement. Continuing agreements are extended by one year unless an earlier date is stated in a regulation. A wage increase in a continuing agreement can also be provided for under a regulation.

The explanatory notes also state that amendment to the FRS Regulation relates to the Emergency Management Queensland Levy (the levy). The levy is paid by Queensland property owners and collected by local government areas on behalf of the State Government. The amendments will re-insert the 'Notes to schedule' at the end of Schedule 2 which were inadvertently removed during a recent amendment process. It will also apply a retrospective amendment clarifying that the re-inserted notes apply from 1 July 2014.

4.1.1 Fundamental legislative principles issues

The Committee identified the amendments to the FRS Regulation commence retrospectively on 1 July 2014. This is to reinstate existing provisions which were inadvertently removed. The explanatory notes state that no impact is expected from their retrospective reinstatement. However, the explanatory notes state that failure to reinstate these provisions, may impact negatively on the collection of the levy, having negative financial ramifications for Emergency Management Services.

No other issues of fundamental legislative principle detected. Explanatory notes comply with part 4 of the Legislative Standards Act.

4.1.2 Committee Comments

The Committee is satisfied that the issues raised with regard to the FLPs are acceptable as they are correcting an error and no impact is expected from the retrospectivity.

4.2 SL No 285 of 2014 – Proclamation commencing remaining provisions – Family Responsibilities Commission Amendment Act 2014

The objective of the Proclamation is to commence provisions of the *Family Responsibilities Commission Amendment Act 2014* that are not in force on 28 November 2014.

4.2.1 Fundamental legislative principles issues

The Committee identified that this proclamation commences all remaining provisions, including clause 11, which omits section 156 of the Amending Act. In the former Health and Community Services Committee (HCSC) report on the *Family Responsibilities Commission Amendment Bill 2014*, it was noted that section 156 had provided that family responsibilities orders that were on foot on 1 January 2015 would expire on that day.

Removing section 156 from the Act means that, rather than expiring on 1 January 2015, those family responsibilities agreements and orders, and part 10 income management orders, will continue to be applicable to the persons named in them.

This has the potential to impact on the rights and personal liberties of the affected persons who will therefore continue to be required to adhere to any conduct standards/conditions attaching to those orders and agreements, when, pre-amendment, they would have had a reasonable expectation that their obligations under those orders and agreements would cease on 1 January 2015.

No other issues of fundamental legislative principle detected. Explanatory notes comply with part 4 of the Legislative Standards Act.

4.2.2 Committee Comments

The Committee is satisfied that the issues raised with regard to the FLPs have been examined and considered by the Parliament when it considered the *Family Responsibilities Commission Amendment Bill 2014*.

4.3 SL No 286 of 2014 – Family Responsibilities Commission Regulation 2014

The objective of the Regulation is to include description of all ‘welfare reform community areas’ to which the operations of the Family Responsibilities Commission (FRC) will be applied.

4.3.1 Fundamental legislative principles issues

In the former HCSC report on the *Family Responsibilities Commission Amendment Bill 2014*, it was highlighted that there was a potential FLP issue in relation to the institution of Parliament. This related to the description of welfare community areas in a regulation rather than an Act of Parliament.

The HCSC report states:

The committee considered whether this proposed delegation of a legislative power (prescribing a welfare reform community area by regulation) is sufficiently subject to the scrutiny of the Legislative Assembly.

When matters that are key to legislation are prescribed by executive action (regulation) rather than specified in primary legislation, issue arises as to whether there is sufficient regard to the institution of Parliament. This is because the regulation is notified and commences operation at the will of the Executive, without further regard to the will of the Parliament (save for Parliament’s ability to recommend a regulation’s disallowance).

It could be argued that, by naming Aurukun, Coen, Hope Vale and Mossman Gorge as welfare reform community areas in the FRC Act in 2008, the Parliament at that time considered the act of naming these areas was important enough to be specified in primary legislation, and the subject of Parliamentary scrutiny and debate. It could, therefore, be argued that any amendment that allows future welfare reform community areas to be prescribed by regulation fails to have sufficient regard to the institution of Parliament because it does not subject the inclusion of these areas to the same level of Parliamentary scrutiny as that accorded to the original four communities.

The committee notes, however, that the original definition of welfare reform community area enacted in the FRC Act in 2008 included “another area prescribed under a regulation”, and therefore anticipated and provided for further areas to be prescribed by regulation, by the Executive, as the need arose. Further, in passing the FRC Act, the Parliament of 2008 endorsed the notion that additional areas could be added by way of regulation.

The committee also notes that the Minister is required to have regard to the main objectives of the FRC Act before recommending that an area be prescribed as a welfare reform community area.

Accordingly, the committee considers that, on balance, clauses 4, 7 and 12 have sufficient regard to the institution of Parliament.

No other issues of fundamental legislative principle detected. Explanatory notes comply with part 4 of the Legislative Standards Act.

4.2.2 Committee Comments

The Committee is satisfied that the issues raised with regard to the FLPs have been examined and considered by the Parliament when it considered the *Family Responsibilities Commission Amendment Bill 2014*.