

**Subordinate legislation tabled between
15 October 2014 and 5 May 2015**

Report No. 2, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
May 2015

Infrastructure, Planning and Natural Resources Committee

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1. Introduction

1.1 Role of the Committee

The Infrastructure, Planning and Natural Resources 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 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.

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:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles to the legislation
- for subordinate legislation – its lawfulness.

This report contains the committee's findings with respect to subordinate legislation tabled between 15 October 2014 and 5 May 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
235	Aboriginal Land Amendment Regulation (No. 6) 2014	28 October 2014	20 May 2015
236	Sustainable Planning Amendment Regulation (No. 6) 2014	28 October 2014	20 May 2015
237	Proclamation made under the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i>	28 October 2014	20 May 2015
253	Petroleum and Gas (Production and Safety) Amendment Regulation (No. 2) 2014	25 November 2014	3 June 2015
259	State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 3) 2014	25 November 2014	3 June 2015
269	Proclamation made under the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i>	25 November 2014	3 June 2015
270	Proclamation made under the <i>Aboriginal and Torres Strait Island (Providing Freehold) and Other Legislation Amendment Act 2014</i>	25 November 2014	3 June 2015
271	Land Amendment Regulation (No. 1) 2014	25 November 2014	3 June 2015
274	Economic Development Amendment Regulation (No. 5) 2014	26 March 2015	17 July 2015
275	Royal National Agricultural and Industrial Association of Queensland Amendment Regulation (No. 2) 2014	26 March 2015	17 July 2015

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

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
287	Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2014	26 March 2015	17 July 2015
288	Aboriginal Land Amendment Regulation (No. 8) 2014	26 March 2015	17 July 2015
289	Proclamation made under the <i>Local Government Legislation Amendment Act 2014</i>	26 March 2015	17 July 2015
290	Local Government Legislation Amendment Regulation (No. 1) 2014	26 March 2015	17 July 2015
301	Economic Development Amendment Regulation (No. 6) 2014	26 March 2015	17 July 2015
306	Proclamation made under the <i>Mineral and Energy Resources (Common Provisions) Act 2014</i>	26 March 2015	17 July 2015
307	Land Amendment Regulation (No. 2) 2014	26 March 2015	17 July 2015
331	Water Resource Plans Amendment Plan (No. 2) 2014	26 March 2015	17 July 2015
332	Petroleum and Gas (Production and Safety) Amendment Regulation (No. 3) 2014	26 March 2015	17 July 2015
333	Proclamation made under the <i>Water Reform and Other Legislation Amendment Act 2014</i>	26 March 2015	17 July 2015
334	Water and Other Legislation Amendment Regulation (No. 1) 2014	26 March 2015	17 July 2015
Subordinate legislation made in 2015			
2	Proclamation made under the <i>Water Reform and Other Legislation Amendment Act 2014</i>	26 March 2015	17 July 2015
3	Water and Other Legislation Amendment Regulation (No. 1) 2015	26 March 2015	17 July 2015
14	Sustainable Planning Amendment Regulation (No. 1) 2015	5 May 2015	16 September 2015

1.4 Summary of findings 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*, except the explanatory notes tabled with subordinate legislation no. 259.

Recommendation

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

2. Subordinate legislation examined

2.1 Aboriginal Land Amendment Regulation (No. 6) 2014 (SL No. 235)

The objective of the Aboriginal Land Amendment Regulation (No. 6) 2014 is to amend the Aboriginal Land Regulation 2011 to declare areas of available State land as transferable land. This allows for the eventual grant of inalienable freehold title to Aboriginal people under the *Aboriginal Land Act 1991* (the Act).²

The explanatory notes state:

On 6 April 2006, the Department of Natural Resources and Mines (the department) received an Indigenous expression of interest in having particular land in Raglan made transferable land under the Act. ...

The land, now described as Lots 2 and 3 on SP247483, is located approximately 50 kilometres south-east of Rockhampton and has a total area of 9.988 hectares.

The department carried out an evaluation of the land under section 16 of the *Land Act 1994* (Land Act) to determine the land's most appropriate use and tenure. The evaluation recommended that the land's most appropriate use is rural or commercial and tenure is freehold, and that the lots are considered available for declaration as transferable under the Act. However, in respect to Lot 2 on SP247483 it was identified that there may be a requirement for part of the lot to be opened as road.

The department gave consideration of the recommendations on the most appropriate use and tenure, as it relates to the expression of interest, and approval was given that the land, other than part of Lot 2 on SP247483 required for road, be made transferable land.³

The explanatory notes also indicate that consultation was carried out during the evaluation of the most appropriate use and tenure for the land with state government agencies, adjoining property owners and service providers. The submissions did not object to dealing with the land under the Act.⁴

Committee comment

The committee is satisfied the Aboriginal Land Amendment Regulation (No.6) 2014 (SL No. 235) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.2 Sustainable Planning Amendment Regulation (No. 6) 2014 (SL No. 236)

The objective of the Sustainable Planning Amendment Regulation (No. 6) 2014 (Amendment Regulation) is to simplify and streamline the planning and development system to ensure that the State Assessment and Referral agency (SARA) can operate efficiently and effectively.

The Sustainable Planning Amendment Regulation (No. 6) 2014 made changes to the Sustainable Planning Regulation 2009 including:⁵

- referring to the revised versions of the statutory guidelines for reviewing local government infrastructure plans and for making and amending local planning instruments
- giving effect to the revised publication date of the state development assessment provisions
- replacing the definition of 'State Planning Policy 2013' to take account of amendments to the State Planning Policy on 1 July 2014

² Section 10(1)(e) of the Aboriginal Land Act 1991 provides for available state land to be declared by regulation to be transferable land.

³ Aboriginal Land Amendment Regulation (No. 6) 2014, Explanatory notes, pp 1-2.

⁴ Ibid, p 2.

⁵ Sustainable Planning Amendment Regulation (No. 6) 2014, Explanatory notes, pp 1-4.

- making amendments to retain consistency with the Queensland Development Code
- removing duplication between the SARA and the Gold Coast Waterways Authority for low-risk operational work (tidal works) on the Gold Coast
- omitting the SARA referral trigger for mixed use developments impacting on state transport infrastructure
- increasing the gross floor area for office developments that impact on State transport infrastructure
- including a new referral trigger for hardware and trade supplies so that they will be referred to the state for assessment of impacts on state transport infrastructure
- ensuring the state is not required to obtain further approvals from local government for identified state transport infrastructure, such as the Gold Coast Rapid Transit and Moreton Bay Rail Link, approved under State legislation
- removing redundant provisions
- clarifying provisions and rectifying errors, including an incorrect amount for a fee.

Explanatory notes

Section 24 of the *Legislative Standards Act 1992* sets out the requirements for the contents of explanatory notes. Section 24(3) provides for significant subordinate legislation, the explanatory note must be accompanied by the regulatory impact statement (RIS) prepared for the subordinate legislation.

The committee sought clarification from the Department of Infrastructure, Local Government and Planning in relation to the requirement for the RIS to be accompanied by the explanatory notes. The department advised the explanatory notes refer to the RIS prepared for the review of development assessment fees introduced by the Sustainable Planning Amendment Regulation (No. 4) 2014 (SL No. 149). In addition:

Advice from the Office of Best Practice Regulation to the then Department of State Development, Infrastructure and Planning ... [stated] that the amendments in Sustainable Planning Amendment Regulation (No. 6) 2014 are excluded from the RIS system as they are to correct drafting errors and/or are consequential in nature.

Committee comment

The committee is satisfied the Sustainable Planning Amendment Regulation (No. 6) 2014 (SL No. 236) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

While the RIS was not required to accompany the explanatory notes for the amendment regulation, the committee notes it did not accompany the explanatory notes to the earlier regulation (SL No. 149). Although the committee considers this a minor technical matter, the committee would have appreciated greater clarity in the explanatory notes about the RIS process for this amendment regulation.

The committee brings section 24(3) of the LSA to the general attention of departments when preparing explanatory notes.

2.3 Proclamation made under the Mineral and Energy Resources (Common Provisions) Act 2014 (SL No. 237)

Section 2 of the *Mineral and Energy Resources (Common Provisions) Act 2014* provides that the Act commences on a date fixed by proclamation.

The Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* fixed the date for the commencement of Chapter 9, Part 12 of the *Mineral and Energy Resources (Common Provisions) Act 2014* at 24 October 2014.

Chapter 9, Part 12 amended the *State Development and Public Works Organisation Act 1971* to ensure that objections about conditions imposed on an environmental authority by the Coordinator-General cannot be lodged in the Land Court.

The Department of Natural Resources and Mines intended to 'progress commencement arrangements for the remaining provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* separately at a later date.'⁶

Committee comment

The committee is satisfied the Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* (SL No. 237) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.4 Petroleum and Gas (Production and Safety) Amendment Regulation (No. 2) 2014 (SL No. 253)

The objective of the Petroleum and Gas (Production and Safety) Amendment Regulation (No. 2) 2014 is to amend some elements of petroleum and gas safety 'to reflect revised industry standards and to support streamlining of the regulation provisions for gas work licences and gas work authorisations applications.'⁷

Committee comment

The committee is satisfied the Petroleum and Gas (Production and Safety) Amendment Regulation (No. 2) 2014 (SL No. 353) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.5 State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 3) 2014 (SL No. 259)

The objective of the State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 3) 2014 is to reference a regulation map which enacts a variation to the Abbot Point State Development Area (APSDA).

The APSDA includes the Port of Abbot Point and was declared in June 2008 to facilitate large-scale industrial development. It is located approximately 20 kilometres west of Bowen, in North Queensland. The port is currently the subject of a number of proposals for expansion to support future resource exports from the Galilee Basin.⁸

The explanatory notes advise the variation results in the inclusion of approximately 654 hectares of land regulated by North Queensland Bulk Ports and the Whitsunday Regional Council.⁹ This land was included in order to provide a more consistent regulatory environment for proponents of large infrastructure projects.¹⁰

⁶ Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014*, Explanatory notes, p 2. Some further provisions were commenced by a later Proclamation (SL No. 269) (discussed below).

⁷ Petroleum and Gas (Production and Safety) Amendment Regulation (No. 2) 2014, Explanatory notes, p 1.

⁸ Office of the Coordinator-General, Correspondence dated 12 May 2015 (see Appendix).

⁹ State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 3) 2014, Explanatory notes, p 2.

¹⁰ Office of the Coordinator-General, Correspondence dated 12 May 2015 (see Appendix).

Planning and development in the APSDA is controlled by a development scheme, a regulatory document that controls planning and development in an SDA. The development scheme is prepared and implemented by the Coordinator-General.¹¹

Consultation was undertaken with stakeholders, including Whitsunday Regional Council, North Queensland Bulk Ports, relevant State agencies, Native Title representatives, project proponents and all landowners within the APSDA.¹²

The Coordinator-General advised that the majority of submissions focussed on the proposed variation to the development scheme for the APSDA (for which consultation occurred at the same time) rather than on the boundary variation.¹³

The amendments to the development scheme included:¹⁴

- changes to the development precincts to facilitate industry and infrastructure development and the Abbot Point Port and Wetland Strategy,¹⁵ including:
 - creating two new precincts, the Port Facilities and Port Expansion precincts, providing for the continued operation and future expansions of the Port of Abbot Point
 - expanding the Infrastructure and Corridors precinct
- regulation of reconfiguration of lot and certain operational works
- inclusion of assessment criteria to clarify the standards which SDA applications will be assessed against
- changes to definitions to align with State planning instruments
- various template and formatting changes.

The Coordinator-General advised that, as a result of the feedback, the boundary of the APSDA was increased to include all land at the Port of Abbot Point and was supported by key stakeholders.

Committee comment

The committee is satisfied the boundary amendment of the APSDA does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

The explanatory notes do not comply with all of the requirements of Part 4 of the *Legislative Standards Act 1992*. The explanatory notes do not contain a brief assessment of the consistency with fundamental legislative principles, or an outline of results of the consultation and a brief explanation of any changes made to the legislation as a result.¹⁶ The explanatory notes did not state the reason for non-inclusion.

The Coordinator-General advised that the explanatory notes were intended to satisfy the requirements set out under section 24 of the *Legislative Standards Act 1992*.¹⁷ Specific comments regarding compliance with fundamental legislative principles and details of consultation required by the LSA can be found in the Coordinator-General's correspondence in the Appendix to this report.

¹¹ [Abbot Point State Development Area Development Scheme: November 2014](#), accessed 12 May 2015.

¹² State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 3) 2014, p 2.

¹³ Office of the Coordinator-General, Correspondence dated 12 May 2015 (see Appendix).

¹⁴ Department of State Development, '[Amendments to Abbot Point SDA](#)', accessed 12 May 2015.

¹⁵ The new proposal involves the dredged material from the expansion being placed on unallocated industrial land, next to the existing operational coal terminal: Department of State Development, '[Expanding the port of Abbot Point](#)', accessed 12 May 2015.

¹⁶ Legislative Standards Act 1992, s 24(1)(i); s 24(2)(a)(ii)&(iii).

¹⁷ Office of the Coordinator-General, Correspondence dated 12 May 2015 (see Appendix).

2.6 Proclamation made under the Mineral and Energy Resources (Common Provisions) Act 2014 (SL No. 269)

Section 2 of the *Mineral and Energy Resources (Common Provisions) Act 2014* provides that the Act commences on a date fixed by proclamation. The Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* fixed the date for the commencement of certain provisions of the Act at 21 November 2014. Amongst other things, the provisions 'restore the State's ability to contract third parties to conduct geological investigations'¹⁸ and amend the *Mount Isa Mines Limited Agreement Act 1994* to 'remove regulatory duplication and operational uncertainty'.¹⁹

Committee comment

The committee is satisfied the Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* (SL No. 269) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.7 Proclamation made under the Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014 (SL No. 270)

The objective of the regulation is to fix commencement dates of 21 November 2014 and 1 January 2015 for certain provisions of the *Aboriginal and Torres Strait Islander Amendment Act 2014*.

Committee comment

The committee is satisfied the Proclamation made under the *Aboriginal and Torres Strait Islander Amendment Act 2014* (SL No. 270) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.8 Land Amendment Regulation (No. 1) 2014 (SL No. 271)

The Land Amendment Regulation (No. 1) 2014 relocated the appeal provisions relating to the purchase price for leases being converted to freehold to the Land Regulation 2009. The explanatory notes state that the amendment did not change a lessee's right to appeal against the purchase price.²⁰

The Regulation also authorised the partial revocation of the Southport Cemetery so that the land being revoked can be set aside as road for the Gold Coast Light Rail. According to the explanatory notes, '[a] thorough investigation was undertaken on the land to be revoked from the Southport Cemetery which included the exhumation of the remains of three deceased bodies.'²¹ The remains were reinterred within the Cemetery.²²

Committee comment

The committee is satisfied the Land Amendment Regulation (No. 1) 2014 (SL No. 271) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

¹⁸ Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014*, Explanatory notes, p 2.

¹⁹ Ibid.

²⁰ Land Amendment Regulation (No. 1) 2014, Explanatory notes, p 2.

²¹ Land Amendment Regulation (No. 1) 2014, Explanatory notes, p 2.

²² Ibid.

2.9 Economic Development Amendment Regulation (No. 5) 2014 (SL No. 274)

The objective of the regulation is to declare land at Queen's Wharf Brisbane as a Priority Development Area (PDA) and to introduce the Interim Land Use Plan for Queen's Wharf Brisbane PDA. The explanatory notes advise:²³

The Interim Land Use Plan is a temporary document, intended to protect the future intent of the PDA from inappropriate development and enable appropriate development to occur in advance of the development scheme being adopted.

Committee comment

The committee notes that the consultation process, which included consultation with Brisbane City Council and other state agencies 'to inform the proposed boundary and preparation of the Interim Land Use Plan' and a future-planned community engagement strategy 'to assist in the preparation and public notification of the development scheme for this PDA' should address any community concerns.²⁴

The committee is satisfied the Economic Development Amendment Regulation (No.5) 2014 (SL No. 270) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.10 Royal National Agricultural and Industrial Association of Queensland Amendment Regulation (No. 2) 2014 (SL No. 275)

The objective of the regulation is to declare certain land owned by the Royal National and Agricultural Association of Queensland (RNA) as 'prescribed land' consequent upon the subdivision of an existing parcel of prescribed land. If land owned by the RNA is designated 'prescribed land', it is subject to restrictions: 'it cannot be mortgaged, charged or made the subject of a lien to any person other than the Queensland Treasury Corporation.'²⁵

The prescribed land is described as:

- Lot 707 on SP238200 situated in the County Stanley containing an area of 9 metres squared.
- Lot 708 on SP238200 situated in the County Stanley containing an area of 1.208ha.
- Lot 709 on SP238200 situated in the County Stanley containing an area of 0.6273ha.

Committee comment

The committee is satisfied the Royal National Agricultural and Industrial Association of Queensland Amendment Regulation (No. 2) 2014 (SL No. 275) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.11 Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2014 (SL No. 287)

The Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2014 commenced on 1 January 2015. It removed the power of the chief executive to impose market entry restrictions on routes serving Cloncurry, Horn Island and Weipa and clarified that the air service route of Toowoomba direct to, or from, Roma is not, and cannot be, subject to market entry restrictions.

A 2013 review conducted by the Department of Transport and Main Roads – *Review of long distance passenger services* – determined that 'the continued regulation of the air service routes of Cairns to Horn Island, Cairns to Weipa and Townsville to Mount Isa via Cloncurry' was not in the public interest

²³ Economic Development Amendment Regulation (No.5) 2014, Explanatory notes, pp 2-3.

²⁴ Economic Development Amendment Regulation (No.5) 2014, Explanatory notes, p 4.

²⁵ Explanatory notes, Royal National Agricultural and Industrial Association of Queensland Amendment Regulation (No.2) 2014, p 1.

and recommended that the routes be deregulated on expiry of the existing service contracts.²⁶ The intention of the amendments introduced by the Regulation is to give 'prospective operators greater confidence to invest in additional services for the relevant places.'²⁷ The explanatory notes state that, 'Despite some of the concerns raised about deregulation, it was determined that deregulation of the routes serving [Cloncurry, Horn Island and Weipa] was in the public interest.'²⁸

Committee comment

The committee is satisfied the Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2014 (SL No. 287) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.12 Aboriginal Land Amendment Regulation (No. 8) 2014 (SL No. 288)

The Aboriginal Land Amendment Regulation (No. 8) 2014 amends the *Aboriginal Land Act 1991* to declare areas of available state land as transferable land, which will allow for the grant of inalienable freehold title to Aboriginal people under the *Aboriginal Land Act 1991*.

The parcels of land described in the Regulation are unallocated state land located in Murray Upper, approximately 160 kilometres south of Cairns.

In 2009, the state entered into an Indigenous Land Use Agreement (ILUA) with Abraham Muriata on his own behalf and on behalf of the Girramay people, the Girramay People Aboriginal Corporation Registered Native Title Body Corporate and the Cassowary Coast Regional Council. During the ILUA negotiations, the state undertook an evaluation under the *Land Act 1994* to determine the most appropriate use and tenure of the land. The report recommended that the land was suitable for transfer under the *Aboriginal Land Act 1991*.

The ILUA provides, amongst other things, for the transfer of certain land under the *Aboriginal Land Act 1991* to the traditional owners, the Girramay people. An easement providing access to the adjoining state forest will be executed by the Girramay Land Holding Aboriginal Corporation upon freehold title being granted.²⁹

Committee comment

The committee is satisfied the Aboriginal Land Amendment Regulation (No. 8) 2014 (SL No. 288) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.13 Proclamation made under the Local Government Legislation Amendment Act 2014 (SL No. 289)

The Proclamation made under the *Local Government Legislation Amendment Act 2014* fixed 1 January 2015 as the commencement date for certain provisions of the *Local Government Legislation Amendment Act 2014* relating to local government electoral changes, including enabling proof of identity documents to be prescribed by Regulation (see Local Government Legislation Amendment Regulation (No. 1) 2014 (SL No. 290), discussed below). The commencement of provisions relating to electronically assisted voting for local government elections will be deferred until electronically assisted voting is implemented at the state level.

Committee comment

The committee is satisfied the Proclamation made under the *Local Government Legislation Amendment Act 2014* (SL No. 289) does not raise any significant issues relating to policy,

²⁶ Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2014, Explanatory notes, p 1.

²⁷ Ibid.

²⁸ Transport Operations (Passenger Transport) Amendment Regulation (No. 1) 2014, Explanatory notes, p 3.

²⁹ Aboriginal Land Amendment Regulation (No. 8) 2014, Explanatory notes, pp 1-2.

fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.14 Local Government Legislation Amendment Regulation (No. 1) 2014 (SL No. 290)

The Local Government Legislation Amendment Regulation (No. 1) 2014 commenced on 1 January 2015. It amended:

- the Local Government Electoral Regulation 2012 to:
 - prescribe proof of identity documents for local government elections which mirror those in the Electoral Regulation 2013 for state elections
 - change the 2016 quadrennial election date from 26 March 2016 to 19 March 2016, due to Easter Saturday on 26 March 2016
- the Local Government Regulation 2012 and the City of Brisbane Regulation 2012 to:
 - increase National Competition Policy business activity thresholds by the consumer price index for the 2015-2016 financial year
 - in instances in which a rates cap applies to a lot and part of the lot is acquired, require rates to be reduced on the remainder lot (on a pro rata basis) until the council resolves otherwise at the next budget meeting
 - clarify that local governments may offer for lease a valuable non-current asset without repeating the call for tenders
 - validate rate/charge resolutions if rates/charges are incorrectly levied
- the Local Government Regulation 2012 to prescribe for a minimum of one and a maximum of two councillors to be appointed to a local government audit committee
- the Local Government (De-amalgamation Implementation) Regulation 2013 to extend the time prescribed for the new local governments of Douglas, Livingstone, Noosa and Mareeba to discharge the Queensland Treasury Corporation working capital facilities.

Committee comment

The committee is satisfied the Local Government Legislation Amendment Regulation (No. 1) 2014 (SL No. 290) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

In relation to proof of identify requirements, the committee notes, the *Electoral and Other Legislation Amendment Act 2015* removed the voter proof of identity requirements for local government elections.³⁰ The *Electoral and Other Legislation Amendment Act 2015* omitted section 3 (Proof of identity document) from the Local Government Electoral Regulation 2012.³¹

2.15 Economic Development Amendment Regulation (No. 6) 2014 (SL No. 301)

The Economic Development Amendment Regulation (No. 6) 2014 declared land at Toowoomba Railway Parklands as a Priority Development Area (PDA) and introduced the Interim Land Use Plan for the Toowoomba Railway Parklands PDA.

³⁰ *Electoral and Other Legislation Amendment Act 2015*, s 41. The Electoral and Other Legislation Amendment Bill 2015 was considered and passed by the Parliament on 7 May 2015. The Act was assented to on 14 May 2015. The [Local Government Electoral Regulation 2012](#) was amended accordingly.

³¹ *Electoral and Other Legislation Amendment Act 2015*, s 44.

Committee comment

The committee is satisfied the Economic Development Amendment Regulation (No. 6) 2014 (SL No. 301) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.16 Proclamation made under the Mineral and Energy Resources (Common Provisions) Act 2014 (SL No. 306)

The Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* commenced provisions of the *Mineral and Energy Resources (Common Provisions) Act 2014* authorising the remediation of legacy boreholes and correcting a drafting error on 12 December 2014.

Committee comment

The committee is satisfied the Proclamation made under the *Mineral and Energy Resources (Common Provisions) Act 2014* (SL No. 306) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.17 Land Amendment Regulation (No. 2) 2014 (SL No. 307)

The objective of the Land Amendment Regulation (No. 2) 2014 is to declare an area of seashore to be a declared beach area and apply conditions of use on that area.³²

The amendment regulation declares an area at Rules Beach, 50 kilometres north of Bundaberg, as a declared beach area. This area is a road under the *Transport Operations (Road Use Management) Act 1995*. The explanatory notes state:

Ex-tropical cyclone Oswald caused severe beach erosion in 2013 which resulted in the eastern boundary of three privately owned freehold parcels of land being located in the ocean. The beach area seaward of these properties previously allowed for public access to this beach area and also direct beach access to the Broadwater Regional Park.

Normally beach areas are separated from private owned lands by esplanades or community purpose reserve or the privately owned land is sufficiently above high water mark to not affect the use of the public of the adjoining beach area. However in some instances especially after severe erosion is caused by natural disasters the sea can move within the boundaries of private freehold or leasehold land. In such cases these affected landholders at present can lawfully prevent the public access across the beach area. Alternately if they do not prevent public access they can expose themselves to a significant public liability risk.³³

Rights and liberties of individuals

Section 4 of the *Legislative standards Act 1992* states that legislation should have regard for the rights and liberties of individuals.

Whilst this circumstance is not the same as compulsory acquisition of property, which should be compensated, the declaration of the beach area interferes with a person's right to use their private land by imposing compulsory use of the land. This is similar to an easement over land which may grant someone else the right to use the land for a specific purpose.

In order to determine whether the amendment regulation had sufficient regard to the rights and liberties of individuals, the committee asked the department for additional information relating to where the land is, and what it is used for.

³² The regulation provides a person cannot camp on the area; must not light, keep or use a fire on the area; must not litter on the area; and must restrain a dog (other than a prescribed dog) by lead on the area.

³³ Land Amendment Regulation (No. 2) 2014, Explanatory notes, p 1.

The department advised:

The declared beach area ... is over an area of seashore within the boundaries of three freehold properties. Two of these properties ... are being used for orchard purposes. The declared beach area within these properties does not impact on these orchards or the overall use of the property.

The other freehold property ... is a large parcel of unused bush land.

Consultation

Consultation was undertaken with the owners of the lots, the Gladstone Regional Council, the Rules Beach Access Group, the Department of National Parks, Recreation, Sport and Racing and the Department of Environment and Heritage Protection.

With respect to consultation with the land owners, the department advised:

Prior to the areas of land being declared as beach area, Notices of Intention to Declare were provided to the affected land owners allowing for formal consultation as provided for under the relevant provisions of the *Land Act 1994*. The notices included draft conditions that would apply to the declared beach area. Both landholders provided feedback to the Department of Natural Resources and Mines and the conditions of use over the declared beach area reflect this feedback. The conditions of use for this beach area prohibit overnight camping, lighting of fires, littering and dogs that are not on a leash.

Committee comment

The committee is satisfied the Land Amendment Regulation (No. 2) 2014 (SL No. 307) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes generally comply with the *Legislative Standards Act 1992*.

2.18 Water Resource Plans Amendment Plan 2014 (No. 2) (SL No. 331)

The objective of the Water Resource Plans Amendment Plan (No. 2) is to amend the Water Resource (Border Rivers) Plan 2003, the Water Resource (Condamine and Balonne) Plan 2004 and the Water Resource (Moonie) Plan 2003 to provide a framework for the allocation and sustainable management of subartesian groundwater not connected to artesian water.

Committee comment

The committee is satisfied the Water Resource Plans Amendment Plan (No. 2) 2014 (SL No. 331) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.19 Petroleum and Gas (Production and Safety) Amendment Regulation (No. 3) 2014 (SL No. 332)

The Petroleum and Gas (Production and Safety) Amendment Regulation (No. 3) 2014 amended the Petroleum and Gas (Production and Safety) Amendment Regulation (No. 3) 2014 to:

- provide that a 'distilled petroleum substance', such as diesel, may be transported by a pipeline authorised to be constructed or operated under a licence under the *Petroleum and Gas (Production and Safety) Act 2004*
- provide that where operators are carrying out well-servicing activities, workers are required to meet well-servicing competencies except when a worker is undergoing training for the competencies and is appropriately supervised
- introduce a fee of \$1,141 for special amendments to an Authority to Prospect.

Committee comment

The committee is satisfied the Petroleum and Gas (Production and Safety) Amendment Regulation (No. 3) 2014 (SL No. 332) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.20 Proclamation made under the Water Reform and Other Legislation Amendment Act 2014 (SL No. 333)

The Proclamation made under the *Water Reform and Other Legislation Amendment Act 2014* commenced certain amendments on 19 December 2014:

- amendments to the *River Improvement Trust Act 1940* reducing reporting requirements for river improvement trusts, introducing an alternative means for establishing a river improvement trust, and allowing river improvement trusts to invest in a broader range of activities necessary for environmental purposes
- amendments to the *Coal Mining Safety and Health Act 1999*, the *Mining and Quarrying Safety and Health Act 1999*, and the *Petroleum and Gas (Production and Safety) Act 2004* in relation to mining safety
- amendments to the Water Resource (Burnett Basin) Plan 2014 that will limit the taking of water for stock and domestic purposes within a water supply scheme that is currently authorised under the Plan.

The Proclamation set the commencement date for certain amendments at 18 February 2015 but the Water and Other Legislation Amendment Regulation (No. 1) 2015 (SL No. 2) (discussed below) postponed the commencement. These amendments included:

- transitioning water rights under special agreement legislation to the *Water Act 2000*
- amendments to the *Petroleum and Gas (Production and Safety) Act 2004* to establish a more consistent framework for managing access to the state's underground water resources
- amendments to the *Vegetation Management Act 1999* to change the name of the vegetation management watercourse map to remove any potential for confusion with the watercourse identification map under the *Water Act 2000*
- amendments to the *Water Act 2000* to reform the state's water resource management framework including:
 - inserting a new overarching purpose for the *Water Act 2000*
 - enabling the chief executive to prepare a watercourse identification map as a way of more easily communicating the extent of watercourses and other drainage features defined under the *Water Act 2000*
 - providing a new framework for the management and allocation of water:
 - replacing the current water resource plan and resources operations plan with a framework of water plans and operational processes
 - providing for a new statutory instrument called a water entitlement notice
 - establishing a streamlined assessment and approval framework to facilitate the responsible development of large-scale projects which have a major water infrastructure component
 - providing statutory authorisations for the take or interference with water where the risk to the resource is low

- allowing simple dealings with a water licence to be registered on the Department of Natural Resources and Mines' systems rather than following a lengthier process
- enabling a water allocation to be surrendered
- providing more flexibility for Category 2 water authorities to operate and transition to alternative institutional structures
- removing the reversal of the onus of proof regarding the taking of unauthorised water
- amendments to the Water Resource (Great Artesian Basin) Plan 2006 allowing for the release of unallocated water to support new development opportunities in the Cape York area and to enable an underground water licence to be granted
- minor and consequential amendments.

Committee comment

The committee is satisfied the Land Amendment Regulation (No. 2) 2014 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes generally comply with the *Legislative Standards Act 1992*.

2.21 Water and Other Legislation Amendment Regulation (No. 1) 2014 (SL No. 334)

The Water and Other Legislation Amendment Regulation (No. 1) 2014 amended the Water Regulation 2002, the State Penalties Enforcement Regulation 2014 and the Sustainable Planning Regulation 2009.

The Regulation amended the Water Regulation 2002 to:

- provide additional prescribed activities for general authorisation to take water
- simplify processes for reserving and releasing unallocated water
- relocate the effects of land dealings on water licences from the *Water Act 2000*
- establish generic criteria for converting existing water authorisations to water allocations
- relocate the application process for seasonal water assignments from the *Water Act 2000*
- relocate dealings with water allocations from the *Water Act 2000*
- streamline category 2 water authority provisions
- amalgamate North Burdekin and South Burdekin Water Boards and authority areas
- remove declared upstream and downstream limits of watercourses
- remove redundant drainage and embankment area provisions
- provide detail of what is to be provided in a notice of works
- consolidate water plan works requirements
- clarify the requirements regarding meter reading, prescribe an infringement notice offence, and amend the penalty unit for non-compliance
- relocate the minister's reports on water plans from the *Water Act 2000*
- amend the fees to reflect changed water licence processes
- amend the Bluewater subartesian area.

The Regulation also made a number of minor amendments including:

- listing prescribed entities for the purposes of making an application for a water licence
- omitting additional information as part of a licence application
- updating references to changed section numbers
- changing references to the Border Rivers Resource Operation Plan to the Border Rivers water management protocol
- changing water planning instrument terminology
- amending references to subartesian water and splitting the Greater Western underground water area into two areas
- removing historical transitional provisions
- renaming the 'Border Rivers groundwater management area' the 'Border Rivers Alluvium groundwater management area'
- prescribing infringement notice offences and fines, and updating section numbers, in the State Penalties Enforcement Regulation 2014
- making consequential amendments to the Sustainable Planning Regulation 2009.

Section 2 of the Regulation provided that the Regulation, other than section 41(3) and (4), commences on 18 February 2015. However, the Water and Other Legislation Amendment Regulation (No. 1) 2015 (SL No. 3) (discussed below), which was made on 17 February 2015 postponed the commencement to dates linked to the commencement of provisions of the *Water Reform and other Legislation Amendment Act 2014*.

Rights and liberties of individuals

Pursuant to new section 5B in Division 1C (Processes for releasing unallocated water) of the Water Regulation 2002, a release of unallocated water may only proceed if the chief executive has first decided that it is appropriate having regard to any existing water development options that relate to unallocated water.

The explanatory notes acknowledge that the power afforded to the chief executive may be a potential breach of fundamental legislative principles in regards to whether or not there is appropriate review of administrative decisions. The Regulation does not provide a review mechanism for the holder of a water development option in relation to the chief executive's decision as to whether a release would be appropriate. It is arguable that the lack of review afforded to an individual has insufficient regard to the their rights and liberties pursuant to section 4(2) of the *Legislative Standards Act 1992*.

The explanatory notes provide the following justification for the clause:³⁴

This provision is considered justified as it is intended that the chief executive would not make a decision that it was appropriate to release unallocated water that was reserved by or subject to a water development option. Water reserved by or subject to a water development option would not be considered available for release through an unallocated water release process.

Administrative power

New section 5D provides that the chief executive may decide the terms of certain sales of water or the terms of granting water for particular purposes.

The provision may be considered to be a breach of fundamental legislative principles in regard to the delegation of administrative power which pursuant to section 4(3)(c) of the *Legislative Standards Act 1992* should only occur in appropriate cases and to appropriately qualified officers or employees.

³⁴ Water and Other Legislation Amendment Regulation (No.1) 2014, Explanatory notes, p 19.

The explanatory notes provide the following justification for the clause:

... the chief executive is considered justified as the appropriate person as it is consistent with new section 40 of the *Water Act 2000*, which allows the chief executive to set a price for the sale of unallocated water. It is argued that because the chief executive may set the price, the chief executive is also the appropriate person to set the other terms of the sale or grant.

Compulsory acquisition of property

New section 5E provides for the failure to complete a purchase of unallocated water. Under this provision, if a person enters into an agreement under this division to purchase water and the person does not complete the purchase in accordance with the terms of the sale, then any deposit paid by the person is forfeited to the state and the state may otherwise deal with the water.

This could be considered a potential fundamental legislative principles breach pursuant to section 4(3)(i) of the *Legislative Standards Act 1992* in relation to whether the legislation provides for the compulsory acquisition of property only with fair compensation.

The explanatory notes provide the following justification for the clause:

This provision is considered justified and appropriate as forfeiture of deposits is common commercial practice. Also, the purchaser has prior knowledge that if the purchase is not completed then the deposit is liable to be forfeited.

Committee comment

The committee is satisfied the Water and Other Legislation Amendment Regulation (No.1) 2014 (SL No. 334) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

With respect to the matters relating to fundamental legislative principles raised above, the committee is of the view that:

- in light of the justification provided in the explanatory notes regarding new section 5B, the provision is, on balance, appropriate in the circumstances
- given that the decision in new section 5D will be made by the chief executive, the most senior departmental person other than the minister, the administrative power is appropriate in the circumstances
- with respect to new section 5E, given that the purchaser will be aware that, should a purchase not be completed a deposit will be forfeited, the provision is appropriate in the circumstances.

2.22 Proclamation made under the Water Reform and Other Legislation Amendment Act 2014 (SL No. 2)

The Proclamation made under the *Water Reform and Other Legislation Amendment Act 2014* (SL No. 2) amends the Proclamation made under the *Water Reform and Other Legislation Amendment Act 2014* (SL No. 333) by replacing item 2 of the schedule.

The Proclamation postpones the commencement of provisions of the *Water Reform and Other Legislation Amendment Act 2014* relating to water allocation and management which were to commence on 18 February 2015, and fixes the commencement of the water authority related reforms at 18 February 2015.

The explanatory notes state that postponing the commencement of particular provisions ‘will ensure that those parts of the *Water Reform and Other Legislation Amendment Act 2014* that may be inconsistent with Government policy do not commence.’³⁵

The delay is justified in the explanatory notes on the basis that ‘[c]ommencing new legislation that is inconsistent with Government policy could cause potential disruption to the operation of the public service and unnecessary burden on stakeholders if the new legislation is to be amended or repealed in the short term.’³⁶

Committee comment

The committee is satisfied the Proclamation made under the *Water Reform and Other Legislation Amendment Act 2014* (SL No. 2) does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.23 Water and Other Legislation Amendment Regulation (No. 1) 2015 (SL No. 3)

The Water and Other Legislation Amendment Regulation (No. 1) 2015 postponed the commencement of the Water and Other Legislation Amendment Regulation (No. 1) 2014 (SL No. 334) to ‘ensure that water allocation and management provisions of the Water and Other Legislation Amendment Regulation (No. 1) 2014 do not commence prior to the associated provisions of the Water Reform and Other Legislation Amendment Act 2014.’³⁷

The Regulation replaced section 2 of the Water and Other Legislation Amendment Regulation (No. 1) 2014. New section 2 linked the commencement date of the Water and Other Legislation Amendment Regulation (No. 1) 2014 with the commencement of the relevant provisions of the *Water Reform and Other Legislation Amendment Act 2014*.³⁸

The Regulation also omitted a reference to 18 February 2015 in the Dictionary in the Sustainable Planning Regulation because it was no longer accurate.

Committee comment

The committee is satisfied the Water and Other Legislation Amendment Regulation 2014 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

2.24 Sustainable Planning Amendment Regulation (No. 1) 2015 (SL No. 14)

The objectives of the Sustainable Planning Amendment Regulation (No. 1) 2015 were to:

- include the Toowoomba Second Range Crossing in Schedule 4, Table 5 to ensure that duplication of the assessment process already undertaken by the state with the affected local governments does not occur
- update the project title and map location for the Gold Coast Rapid Transit project
- with respect to Schedule 7, Table 2, Item 4: clarify that an application should only be referred where it includes an existing individual lot of 5ha or larger
- amend Schedule 4 to address recommendation 7.18 of the Queensland Floods Commission of Inquiry

³⁵ Proclamation made under the *Water Reform and Other Legislation Amendment Act 2014*, Explanatory notes, p 1.

³⁶ Ibid, p 3.

³⁷ Water and Other Legislation Amendment Regulation (No. 1) 2015, Explanatory notes, p 2.

³⁸ Ibid.

- remove the trigger for government supported transport infrastructure from Schedule 7, Table 2, Item 15
- provide fee concessions for non-profit organisations with eligible developments
- rectify a drafting error in Schedule 3, Table 5, Item 7.

Committee comment

The committee is satisfied the Sustainable Planning Amendment Regulation (No. 1) 2015 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness, and that the explanatory notes comply with the *Legislative Standards Act 1992*.

A handwritten signature in black ink, appearing to read 'Jim Pearce'.

Jim Pearce MP
Chair

Appendix - Coordinator-General's correspondence



Office of the
Coordinator-General

Our ref: DGC15/486

12 MAY 2015

Mr Jim Pearce MP
Chair
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Pearce

Thank you for your letter of 6 May 2015 to Mr David Edwards seeking further information regarding the *State Development and Public Works Organisation (State Development Areas) Amendment Regulation (No. 3) 2014* (the regulation). As the declaration of State Development Areas is a responsibility of the Coordinator-General, Mr Edwards has asked that I respond to the issues raised in your letter. My response is provided below.

Policy effect

The Abbot Point State Development Area (SDA) was declared in June 2008 to facilitate large-scale industrial development of regional, state and national significance. The Port of Abbot Point, within the Abbot Point SDA, has been operating since 1984 and is now the subject of a number of proposals for expansion to support future resource exports from the Galilee Basin. The expansion proposals have the ability to significantly expand the coal export capacity at the Port of Abbot Point from the current 50 million tonnes per annum. The expansion proposals generally consist of rail, coal stockpiling and extensive port expansion works.

In October 2014, the Abbot Point SDA was expanded by the addition of 654 hectares of land previously regulated by the North Queensland Bulk Ports and Whitsunday Regional Council.

This land was added into the Abbot Point SDA to provide a more consistent regulatory environment for proponents of large infrastructure projects. Prior to the regulation, some development proposals at the Port of Abbot Point would have involved multiple assessment managers operating under different assessment processes. The regulation has the effect that the Coordinator-General now coordinates and assesses all major development proposals on land at the Port of Abbot Point.

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Explanatory notes

The explanatory notes associated with the regulation were intended to satisfy the requirements set out under section 24 of the *Legislative Standards Act 1992*. Information relating to the impact of the regulation on fundamental legislative principles and the results of consultation is outlined below.

Fundamental legislative principles

The amendment to the Abbot Point SDA, given effect through the regulation, is consistent with fundamental legislative principles, as they relate to the rights and liberties of individuals and the institution of Parliament.

Results of consultation

As noted in the explanatory notes associated with the regulation, the Coordinator-General consulted landowners, native title representatives, government agencies and project proponents in proposing the amendments to the Abbot Point SDA.

A range of formal and informal feedback was received from stakeholders during the consultation period. Ten written submissions were received including a submission from Whitsunday Regional Council, six submissions from State agencies (including from landowners in the Abbot Point SDA, Economic Development Queensland and North Queensland Bulk Ports) and three submissions from industry proponents. The majority of submissions focussed on the proposed variation to the development scheme for the Abbot Point SDA (for which consultation occurred at the same time) rather than on the boundary variation.

As a result of this feedback, the boundary of the Abbot Point SDA was increased to include all land at the Port of Abbot Point. This change was supported by key stakeholders and is intended to increase development certainty, by avoiding the likelihood of multiple assessment managers having jurisdiction over the one area.

Regulation title

The regulation is the second amendment to the *State Development and Public Works Organisation (State Development Areas) Regulation* made during 2014, however it is the third amendment that was drafted. The numbering given for a particular regulation is allocated at the time the legislation is certified by the Office of the Queensland Parliamentary Counsel, regardless of whether the legislation is actually passed. The inconsistency in numbering does not have any impact on the validity of the regulation.

If you require any further information, please don't hesitate to contact David Stolz, Assistant Coordinator-General, State Development Areas, Office of the Coordinator-General, on 3452 7586 or via email at david.stolz@coordinatorgeneral.qld.gov.au.

Yours sincerely



Barry Broe
Coordinator-General