

**Subordinate Legislation tabled
between 13 June 2018 and
4 September 2018**

Report No. 16, 56th Parliament
State Development, Natural Resources and
Agricultural Industry Development Committee
October 2018

State Development, Natural Resources and Agricultural Industry Development Committee

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Chair's foreword

This report presents a summary of the State Development, Natural Resources and Agricultural Industry Development Committee's examination of subordinate legislation tabled between 13 June 2018 and 4 September 2018.

The committee's task was to consider the application of fundamental legislative principles – that is, to consider whether the subordinate legislation has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

I commend this report to the House.



Chris Whiting MP

Chair

Recommendation

Recommendation

2

The committee recommends that the Legislative Assembly notes this report.

1. Introduction

1.1 Role of the committee

The State Development, Natural Resources and Agricultural Industry Development Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- State Development, Manufacturing, Infrastructure and Planning
- Natural Resources, Mines and Energy, and
- Agricultural Industry Development and Fisheries.

Section 93(1) of the *Parliament of Queensland Act 2001* provided that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

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

1.2 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 13 June 2018 and 4 September 2018. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

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

Subordinate Legislation examined

| SL No | Subordinate Legislation | Tabled Date | Disallowance Date |
|-------|--|------------------|-------------------|
| 67 | Planning and Environment Court Rules 2018 | 21 August 2018 | 1 November 2018 |
| 77 | Biosecurity and Other Legislation Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 91 | Planning Legislation (Fees and Other Matters) Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 98 | Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 102 | Coal Mining Safety and Health (Coal Workers' Pneumoconiosis) Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 108 | Land (Deferred Rent) Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 115 | Economic Development (Oxley and Yeronga PDAs) Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 118 | Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018 | 21 August 2018 | 1 November 2018 |
| 120 | Water Plan (Mitchell) (Postponement of Expiry) Notice 2018 | 4 September 2018 | 15 November 2018 |
| 121 | Water Plan (Gulf) (Postponement of Expiry) Notice 2018 | 4 September 2018 | 15 November 2018 |
| 130 | Rural and Regional Adjustment (Rural Economic Development Grants Scheme) Amendment Regulation 2018 | 4 September 2018 | 15 November 2018 |
| 131 | Rural and Regional Adjustment (Vessel Tracking Rebate Scheme) Amendment Regulation 2018 | 4 September 2018 | 15 November 2018 |
| 134 | Proclamation made under the Land Access Ombudsman Act 2017 | 4 September 2018 | 15 November 2018 |
| 135 | Petroleum and Gas (Safety) Regulation 2018 | 4 September 2018 | 15 November 2018 |

1.4 Recommendation

Although the committee did not identify any significant issues relating to the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles or the lawfulness of the subordinate legislation examined, there is certain subordinate legislation that the committee has considered and decided is justified in its potential breach of fundamental legislative principles. The committee has identified these potential breaches and commented on them throughout this report.

The committee notes that the explanatory notes tabled with the subordinate legislation listed in the above table comply with Part 4 of the *Legislative Standards Act 1992*. However the committee made a specific comment about the explanatory notes for SL 2018 No. 115.

Recommendation

The committee recommends that the Legislatively Assembly notes this report.

2. Committee consideration of the subordinate legislation

2.1 Planning and Environment Court Rules 2018 (SL No. 67)

The explanatory notes outline that the objective of subordinate legislation No. 67 is to replace the Planning and Environment Court Rules 2010 (the 2010 rules) with the Planning and Environment Court Rules 2018.²

Section 79 of the *Planning and Environment Court Act 2016* (the new Act, which commenced on 3 July 2017) enabled the 2010 rules (made under the previous Act) to continue for one year, to allow sufficient time for new rules to be drafted. The 2010 rules expired on 3 July 2018 and the 2018 rules commenced on 4 July 2018.

The 2010 rules were not consistent with the new Act, as they were aligned with provisions in the now repealed *Sustainable Planning Act 2009*.

Achievement of policy objectives

The explanatory notes state that: 'A replacement of the outdated 2010 Rules is the most efficient and effective way of ensuring the Court proceedings align with the primary legislation'.³

Committee comment

The committee is satisfied that the Planning and Environment Court Rules 2018 do not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.2 Biosecurity and Other Legislation Amendment Regulation 2018 (SL No. 77)

The policy objectives of subordinate legislation no. 77 are to:

- repeal the electric ant biosecurity zones and establish a new biosecurity zone which enables restrictions to be changed more quickly when the ant is found in new locations or eradicated from certain locations within the zone
- create a new 'noxious fish recreational use permit' under section 212(d) of the *Biosecurity Act 2014* to allow for the possession of certain fish that are classified as restricted matter under the Act and were previously permitted under the repealed legislation
- update white-spot restrictions to allow certain fishing within previously restricted zones as it is now more proportionate to the current risk, and
- amend the Veterinary Surgeons Regulation 2016 to omit certain references which are no longer relevant and to update the name of the relevant accrediting body.

Biosecurity zone maps for ants

The explanatory notes state that changes in relation to the biosecurity zone maps for ants have identified to the Department of Agriculture and Fisheries that the current provisions of Chapter 5 of the Biosecurity Regulation 2016 do not refer to a particular version of the relevant maps:

This has caused confusion about the process for amending the maps and ensuring this is subject to appropriate oversight. Consideration is being given to Act amendments that might provide for an alternative process for amendment of the maps. In the meantime, it is intended to clearly

² Explanatory notes for SL 2018 No. 67, p 1.

³ Explanatory notes for SL 2018 No. 67, p 1.

*identify the version of all maps in regulation to reflect that any changes to the maps require an amendment of the relevant regulatory provision. The proposed electric ant biosecurity zone map will be clearly identifiable by name and date of publication. The references to the biosecurity zone maps for banana pest, cattle tick, grape phylloxera, papaya ringspot and sugar cane will also be amended to identify the current biosecurity zone maps by name and the date of publication.*⁴

Noxious fish

When Queensland's biosecurity legislation was reformed with the *Biosecurity Act 2014*, a number of specific permits, registers and licenses issued under the repealed legislation were continued for a transition period:

*Relevantly, there are four General Fisheries Permits (GFPs) issued under the Fisheries Act 1994 which are continued under... the Biosecurity Act 2014. These permits provide for the possession, until 1 August 2018, of particular noxious fish which are restricted matter under the Biosecurity Act 2014.*⁵

According to the explanatory notes, expiry of the GFPs will necessitate euthanising the fish unless an alternative authorisation for the keeping of these fish is found:

*Amendments to the legislation will provide for a type of a permit, in the Biosecurity Regulation 2016, to allow these to continue for the life of the fish in question. No further permits for other fish would be issued unless a similar situation arose in future where some specimens of a species were already held for recreational use in Queensland before the species was listed as restricted matter.*⁶

Committee comment

The committee is satisfied that the Biosecurity and Other Legislation Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

Additionally, the committee notes that section 120 of the Biosecurity Regulation 2016 prescribes conditions for the holder of a restricted matter permit, requiring a permit holder to maintain adequate public liability insurance to cover damage resulting from the keeping, escape or release of the restricted matter.

The committee understands that:

- noxious fish are captured by these public liability requirements,
- investigations into the cost and availability of public liability insurance revealed that such insurance would not be feasible for permit holders, and
- given that the biosecurity risk associated with noxious fish is considered negligible, the Department of Agriculture and Fisheries has determined that related public liability insurance should be valued at zero.

⁴ Explanatory notes for SL 2018 No. 77, p 2.

⁵ Explanatory notes for SL 2018 No. 77, p 2.

⁶ Explanatory notes for SL 2018 No. 77, p 2.

2.3 Planning Legislation (Fees and Other Matters) Amendment Regulation 2018 (SL No. 91)

The explanatory notes state that the policy objectives of subordinate legislation no. 91 are to:

- make amendments to the Planning Regulation 2017 (Planning Regulation) to provide for the Annual Indexation of Fees, clarify provisions, correct drafting errors and improve planning processes, and
- make amendments to the Regional Planning Interests Regulation 2014 to provide for the annual increase of Strategic Cropping Land mitigation values and application fees.⁷

Amendments to the Planning Regulation

The objectives of the amendments to the Planning Regulation are to:

- update fees in line with annual indexation and the Queensland Roads and Bridge construction index
- remove the requirement for local government to include a statement of compliance in their local planning scheme
- clarify the assessment manager for development applications for works that are tidal works but not prescribed tidal works within a local government area
- ensure the fee charged by the State Assessment and Referral Agency (SARA) for particular development applications lodged over land designated for infrastructure reflects the work undertaken
- clarify the application of fees for particular development applications relating to state transport corridors and operational work that is assessable development in tidal waters correct various drafting omissions and errors discovered following commencement of the Planning Regulation on 3 July 2017
- ensure there is consistency between examples listed in the definition of residential zone and the groupings of zones in schedule 2 of the Planning Regulation, and
- update the definition of the State Development Assessment Provisions (SDAP) to refer to the updated version approved by the Minister for Planning.⁸

Amendments to Schedule 16 update the maximum amount for adopted charges for providing trunk infrastructure in line with annual increases. Adopted charges are indexed against the producer price index for construction, index number 3101 - Road and Bridge construction index for Queensland, published by the Australian Bureau of Statistics, to account for increases in the cost of infrastructure over time. The *Planning Act 2016* (section 112) automatically indexes adopted charges by the three-year moving average of the PPI.⁹

⁷ Explanatory notes for SL 2018, No. 91, p 1.

⁸ Explanatory notes for SL 2018, No. 91, p 1.

⁹ Explanatory notes for SL 2018, No. 91, p 4.

Amendments to the Regional Planning Interests Regulation

The explanatory notes state that the amendments provide for:

...the Annual Indexation of mitigation values under section 16 and application fees under schedule 4 of the Regional Planning Interests Regulation. The amendments apply the Queensland Treasury approved annual indexation rate of 3.5% to these values and fees for 2018-2019.¹⁰

Potential FLP issue

All the fee increases are within the 3.5% amount or the producer price index, apart from an amount in clause 16 (item 3 in the table) which involves a 7% fee increase in relation to extension applications with respect to development approvals.

Committee comment

The committee is satisfied the Planning Legislation (Fees and Other Matters) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.4 Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2018 (SL No. 98)

The explanatory notes provide that the main policy objective of subordinate legislation no. 98 is to increase various regulatory fees and charges within the Agriculture and Fisheries portfolio by the indexation rate of 3.5 %.¹¹

The fees and charges are prescribed in the following regulations:

- Agricultural Chemicals Distribution Control Regulation 1998
- Animal Care and Protection Regulation 2012
- Animal Management (Cats and Dogs) Regulation 2009
- Biosecurity Regulation 2016
- Brands Regulation 2012
- Chemical Usage (Agricultural and Veterinary) Control Regulation 2017
- Drugs Misuse Regulation 1987
- Fisheries Regulation 2008
- Food Production (Safety) Regulation 2011
- Veterinary Surgeons Regulation 2016.¹²

Most of the fee increases are in accordance with the indexation rate of 3.5% set out in government policy. However, fees under the *Veterinary Surgeons Act 1936* will increase on average 45%, which is said to be to 'achieve both full cost recovery and better service delivery by the Veterinary Surgeons Board'.¹³

¹⁰ Explanatory notes for SL 2018, No. 91, p 2.

¹¹ Explanatory notes for SL 2018, No. 98, p 2.

¹² Explanatory notes for SL 2018, No. 98, pp 2-3.

¹³ Explanatory notes for SL 2018, No. 98, p 2.

Potential FLP issue

The fees in schedule 3 of the Veterinary Surgeons Regulation 2016 have increased in varying proportions (including 54%, 45%, 103%, 122% and 138%). In some cases they have decreased. Additionally, an exemption for public servants from paying registration fees under section 28(2) of the Veterinary Surgeons Regulation 2016 will be repealed, and a new, discounted fee for graduates will be created.

The explanatory notes give this background:

The Board is funded from the registration and renewal fees of veterinarians in Queensland. A range of factors are driving costs up, most particularly increased legal fees which are a product of disciplinary action to uphold the standing of the profession, and since 2013-14 the Board's revenue has not kept pace with expenditure. A 45 % increase in the most commonly occurring fees will allow for the Board to receive critical funds necessary for effectively continuing their work.¹⁴

In terms of consultation regarding the new fees, the explanatory notes state that a Regulatory Impact Statement (RIS) was released in August 2016 to address the adequacy of fee levels, with a view to recovering the full cost of services: 'Based on feedback following the RIS it was decided that increasing the most commonly occurring fees by 45 per cent would be the most effective way to recover full cost of services for the Board'.¹⁵ The Queensland Productivity Commission has been consulted on the RIS process.¹⁶

Committee comment

Whilst certain fee increases in schedule 3 of the Veterinary Surgeons Regulation 2016 are to be significantly greater than the standard indexation figure, the committee notes the explanations provided in the explanatory notes, including feedback received as a result of the RIS process.

On balance, the committee considers that sufficient justification exists for these fee increases. The committee is satisfied the Agriculture and Fisheries Legislation (Fees) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.5 Coal Mining Safety and Health (Coal Workers' Pneumoconiosis) Amendment Regulation 2018 (SL No. 102)

The objectives of subordinate legislation no. 102 is to sustain and enhance the improvements made in implementing the Monash review recommendations and to effect further improvements to the Coal Mine Workers' Health Scheme to enable a best practice respiratory screening program focussed on the early detection of coal workers' pneumoconiosis and coal mine dust lung diseases (CMDLD).¹⁷

The explanatory notes state that, to achieve the objectives, the subordinate legislation (Amendment Regulation) will:

- introduce health surveillance as a purpose of the Coal Mine Workers' Health Scheme
- incorporate a right to a respiratory health assessment for retired and former workers

¹⁴ Explanatory notes for SL 2018, No. 98, p 3.

¹⁵ Explanatory notes for SL 2018, No. 98, p 4.

¹⁶ Explanatory notes for SL 2018, No. 98, p 4.

¹⁷ Explanatory notes for SL 2018, No. 102, pp 1-2.

- enable health surveillance and quality assurance
- increase the frequency of chest X-ray and spirometry examinations to every five years for aboveground workers
- establish a mandatory ‘approved provider’ framework, and
- incorporate consequential amendments including the replacement of the term ‘nominated medical adviser’ with ‘appointed medical adviser’.¹⁸

Background

The Coal Mine Workers’ Health Scheme is established under the Coal Mining Safety and Health Regulation (CMSHR). To achieve the objectives it is necessary to amend that regulation.

In 2015, the government engaged the Monash University Centre for Occupational and Environmental Health to review the respiratory component of the Coal Mine Workers’ Health Scheme, in collaboration with the University of Illinois in Chicago (the Monash review).

The final report of the Monash Review in July 2016 cited structural failings in the design and operation of the Coal Mine Workers’ Health Scheme. The report contained 18 recommendations comprising reforms across a range of issues including chest X-rays, lung function testing, medical practitioners, surveillance and digital records management.

The government supported the implementation of all Monash review recommendations.

In May 2017, the Parliament’s Coal Workers’ Pneumoconiosis Select Committee released its report no. 2 which made 68 recommendations, including recommendations 39(a) – (q) relating to adopting and implementing the Monash review recommendations into the Coal Mine Workers’ Health Scheme.¹⁹

Potential FLP issues

Legislative Standards Act 1992 Section 4(2)(a) - whether the legislation has sufficient regard to the rights and liberties of individuals – right to carry out normal activity or profession.

Legislative Standards Act 1992 Section 4(3)(a) - whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 21 of the Amendment Regulation inserts a new subdivision 3B of chapter 2 part 6 of the CMSHR. It establishes a mandatory framework for the approval by the department of health providers as ‘appointed medical advisers’ to perform health assessments of coal mine workers under the Coal Mine Workers’ Health Scheme. The rationale is:

Although the department has introduced a voluntary registration framework to identify appropriately qualified providers, a mandatory framework is required to ensure satisfactory qualification and compliance, and therefore, implementation of the Monash recommendations. These recommendations relate to the further regulation of medical providers participating in the Scheme, in order to ensure quality of assessments and examinations.²⁰

¹⁸ Explanatory notes for SL 2018, No. 102, p 2.

¹⁹ Explanatory notes for SL 2018, No. 102, pp 1-2.

²⁰ Explanatory notes for SL 2018, No. 102, p 6.

The explanatory notes suggest that this framework:

*... potentially infringes upon the rights and liberties of medical providers to undertake assessments and examinations.*²¹

The introduction of the mandatory framework is in response to recommendations of the Monash review which found problems with the current scheme, including that:

- there should be a much smaller pool of doctors with increased expertise performing health assessments for coal mine workers under the scheme
- there was inadequate initial and ongoing training for nominated medical advisers, and
- there were issues with spirometry testing and with the taking and reading of chest X-rays.

Under the new approval framework:

- the use of registered providers is mandatory so that health assessments are only undertaken by a smaller cohort of providers in possession of increased skills and experience, who are approved by the department as appropriately qualified,
- providers must meet defined standards, observe prescribed guidelines, meet specific performance requirements and be subject to audit, and
- Doctors undertake a training program to enhance and maintain skills and knowledge in the area of coal mine workers' respiratory health.²²

Sufficiency of review rights

There is also another possible issue of fundamental legislative principle, in that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.²³

In this case, disappointed applicants will have review rights. Applicants who are refused approval or have an approval suspended or cancelled may apply for an internal review and, if need be, then to the Queensland Civil and Administrative Tribunal for an external review of the decision. (See proposed sections 49S to 49V.)

Committee comment

Given the problems identified by the Monash review, the priority of ensuring the health of coal mine workers, and the presence of both internal and external review mechanisms, the committee is satisfied that any interference with the rights and liberties of the individual is justified.

Potential FLP issues

Legislative Standards Act 1992 Section 4(2)(a) whether the legislation have sufficient regard to the rights and liberties of individuals – right to privacy

Legislative Standards Act 1992 Section 4(3)(g) - whether the legislation have sufficient regard to the rights and liberties of individuals – retrospectivity

Clause 23 includes a proposed amendment to section 52, allowing the department to release *identified* information to appropriately qualified persons for the purposes of research.

²¹ Explanatory notes for SL 2018, No. 102, p 6.

²² Explanatory notes for SL 2018, No. 102, p 4.

²³ *Legislative Standards Act 1992*, section 4(3)(a).

Right to privacy

This proposed amendment raises issues of fundamental legislative principle regarding the individual's right to privacy and confidentiality of personal information.

The explanatory notes note the purpose of the amendment:

*This allows the department or other researches to link coal mine worker health data with other data sources such as cancer registries. Such activities would enhance the breadth and overall value of the surveillance program, and hence its contribution to improved safety and health at coal mines.*²⁴

According to the explanatory notes:

*Privacy issues are addressed by requiring approval by a specified ethics committee before identified data is released for research purposes, and employing other administrative controls, such as the inclusion of confidentiality provisions in agreements with research bodies.*²⁵

Retrospectivity

There is also a minor element of retrospectivity involved here, which also raises a possible issue of fundamental legislative principle, in that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.²⁶ The explanatory notes give this justification:

*Although this provision will apply retrospectively, that is, to records previously provided to the department, these amendments are justified as they enable better monitoring of trends in the diagnosis of CMDLD and a better understanding of CMDLD prevention strategies.*²⁷

Committee comment

Given the nature of the private information to be released, the purpose of the release and the recipient of the information, and given that privacy issues have been addressed through various safeguards, including by requiring approval by a specified ethics committee and employing other administrative controls, such as the inclusion of confidentiality provisions in agreements with research bodies, the committee considers that, on balance, the breaches of fundamental legislative principle relating to the infringement on privacy are justified.

With respect to retrospectivity issues, given the minor nature of the potential breach of the fundamental legislative principles and the anticipated positive impact of the relevant amendments, the committee is satisfied that the any breach of the principles is justified.

2.6 Land (Deferred Rent) Amendment Regulation 2018 (SL No. 108)

The explanatory notes outline that the objectives of subordinate legislation No. 108 are to:

- further implement the government's commitment to provide support to landholders in drought/hardship declared areas, and
- assist landholders recovering from long term drought conditions.²⁸

²⁴ Explanatory notes for SL 2018, No. 102, p 6.

²⁵ Explanatory notes for SL 2018, No. 102, p 7.

²⁶ *Legislative Standards Act 1992*, section 4(3)(g).

²⁷ Explanatory notes for SL 2018, No. 102, p 7.

²⁸ Explanatory notes for SL 2018, No. 108, p 1.

This regulation will make provision for a lessee that has been removed from a drought declared area, to pay off any accumulated rent debt while the lease was drought declared: 'The lessee will have five years to pay off the debt with no penalty interest to accrue'.²⁹

The amendment regulation:

*...will provide financial relief to lessees recently removed from drought, and provide an incentive to pay off outstanding rental debts, without imposing further financial hardship to lessees who are still recovering from drought.*³⁰

Committee comment

The committee is satisfied that the Land (Deferred Rent) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.7 Economic Development (Oxley and Yeronga PDAs) Amendment Regulation 2018 (SL No. 115)

The explanatory notes outline that the objectives of subordinate legislation No. 115 are to:

- amend the Economic Development Regulation 2013 to declare the Oxley and Yeronga Priority Development areas (PDAs)
- to make an Interim Land Use Plan (ILUP) for each of the PDAs to regulate development in the areas.³¹

The main purpose of the *Economic Development Act 2012* (EDA) is to facilitate economic development, and development for community purposes, in the State. Section 37 of the EDA provides that a regulation may declare a part of the State to be a PDA and that in doing so, regard must be had to:

- the main purpose of the EDA
- any proposed development for land in the area, and
- the economic and community benefit to the State that may be gained by the proposed development.

The explanatory notes state:

*In order to regulate development from the time the PDA is declared until a detailed development scheme is finalised, section 38(1) of the EDA, provides that a regulation must make an ILUP regulating development in the PDA.*³²

Achievement of policy objectives

The proposed Oxley and Yeronga sites have been identified as key urban renewal opportunities under the Queensland Government's *Advancing our cities and regions* strategy.

²⁹ Explanatory notes for SL 2018, No. 108, p 1.

³⁰ Explanatory notes for SL 2018, No. 108, p 2.

³¹ Explanatory notes for SL 2018, No. 115, p 1.

³² Explanatory notes for SL 2018, No. 115, p 2.

The Oxley site is the former Oxley Secondary College, which closed in 2000. The plan is to deliver a predominantly residential community, with areas for passive and active open space being retained and endangered remnant vegetation being protected.³³

The Yeronga site is the former Yeronga TAFE, which closed in 2010. A new residential community and community hub is proposed to be delivered.³⁴

Committee comment

The committee is satisfied that the Economic Development (Oxley and Yeronga PDAs) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

Committee comment – explanatory notes

The explanatory notes state: ‘Consultation has been undertaken with Brisbane City. The community has also been consulted in regard to concept plans and design principles for the sites.’³⁵

The explanatory notes do not include an outline of the results of this consultation in accordance with section 24(2)(ii) of the *Legislative Standards Act 1992*. However, the committee notes that the explanatory notes state that there is no requirement under the EDA to undertake public consultation prior to declaration of a PDA, and that consultation will follow.³⁶

The explanatory notes otherwise comply with part 4 of the *Legislative Standards Act 1992*.

2.8 Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018 (SL No. 118)

The explanatory notes outline that the objectives of subordinate legislation No. 118 are to: ‘...amend the Aboriginal Land Regulation 2011 to declare areas of available State land as transferable land and to change the boundaries of a city for the purposes of the *Aboriginal Land Act 1991*’.³⁷

About 1719.05 hectares of land on North Stradbroke Island, in various parcels, is proposed to be made transferable land for the purposes of the *Aboriginal Land Act*. All but one of these parcels, are also proposed to be declared as Prescribed Protected Areas/Indigenous Joint Management Areas in the North Stradbroke Island Region, under the *Nature Conservation Act 1992*.

The explanatory notes state:

*The parcels proposed for regulation are outcomes of an Indigenous Land Use Agreement registered with the National Native Title Tribunal on 8 December 2011, to which the State is a party; and Government decisions.*³⁸

These parcels come within the definition of a city under section 28 of the *Aboriginal Land Act*. Where land is within a city, it is not available state land and cannot be made transferable. However, section

³³ Explanatory notes for SL 2018, No. 115, p 2.

³⁴ Explanatory notes for SL 2018, No. 115, p 2.

³⁵ Explanatory notes for SL 2018, No. 115, p 4.

³⁶ Explanatory notes for SL 2018, No. 115, p 4.

³⁷ Explanatory notes for SL 2018, No. 118, p 1.

³⁸ Explanatory notes for SL 2018, No. 118, p 1.

28 provides for the making of a regulation to change the boundaries of a city, enabling the land to be classed as available state land (which can then be made transferable land).³⁹

Significant consultation was undertaken and taken into account in determining the most appropriate use and tenure. Stakeholder interest in parcels of land will be protected by easements and the continuing of an existing mining lease.⁴⁰

Committee comment

The committee is satisfied that the Aboriginal Land (North Stradbroke Island USL) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.9 Water Plan (Mitchell) (Postponement of Expiry) Notice 2018 (SL No.120)

The explanatory notes state that the primary objective of subordinate legislation No. 120 is to ‘...postpone the expiry of the *Water Plan (Mitchell) 2007* until 1 November 2027’.⁴¹

The explanatory notes state:

- the Mitchell Water Plan continues to be appropriate for the plan area and the water plan outcomes are being achieved
- a notice under section 54 of the *Water Act 2000* outlining the proposed postponement and the reasons, was published on the Department of Natural Resources, Mines and Energy website and advertised in regional newspapers, and
- public submissions received were considered in making a final decision to postpone the expiry of the Mitchell Water Plan.

The committee notes:

- under section 54 of the *Water Act 2000*, the minister may postpone the expiry more than once, but any postponement cannot have the effect of continuing the plan in force for more than 20 years
- the minister must publish a notice of intention to postpone the expiry which sets out certain requirements, and
- postponing the expiry of the water plan until 1 November 2027 is not expected to impact adversely on water users or the environment.

Committee comment

The committee is satisfied that the Water Plan (Mitchell) (Postponement of Expiry) Notice 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

³⁹ Explanatory notes for SL 2018, No. 118, p 2.

⁴⁰ Explanatory notes for SL 2018, No. 118, p 4.

⁴¹ Explanatory notes for SL 2018, No. 120, p 1.

2.10 Water Plan (Gulf) (Postponement of Expiry) Notice 2018 (SL No. 121)

The explanatory notes state that the primary objective of subordinate legislation No. 121 is to ‘...postpone the expiry of the *Water Plan (Gulf) 2007* (from 1 September 2018) until 1 November 2027’.⁴²

The explanatory notes state:

- the Gulf Water Plan continues to be appropriate for the plan area and the water plan outcomes are being achieved,
- a notice under section 54 of the *Water Act 2000* outlining the proposed postponement and the reasons was published on the Department of Natural Resources, Mines and Energy website and advertised in regional newspapers, and
- public submissions received were considered in making a final decision to postpone the expiry of the Gulf Water Plan.

The committee notes:

- under section 54 of the *Water Act 2000*, the minister may postpone the expiry more than once, but any postponement cannot have the effect of continuing the plan in force for more than 20 years
- the minister must publish a notice of intention to postpone the expiry which sets out certain requirements, and
- postponing the expiry of the water plan until 1 November 2027 is not expected to impact adversely on water users or the environment.

Committee comment

The committee is satisfied that the Water Plan (Gulf) (Postponement of Expiry) Notice 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.11 Rural and Regional Adjustment (Rural Economic Development Grants Scheme) Amendment Regulation 2018 (SL No. 130)

The explanatory notes state that the objectives of subordinate legislation No. 130 are to ‘...establish a grants program to fund projects from eligible applicants that will create jobs in rural and regional areas of Queensland as well as sustain economic development in regional Queensland’.⁴³

Achievement of policy objectives

The regulation will create a scheme that will ‘...provide a grant of up to \$250,000 with a matched co-contribution of at least the same amount of the grant from the applicant for activities that will directly create employment in rural areas’.⁴⁴

Eligible applicants include medium-sized businesses (having less than 200 employees), primary producers, higher education institutions, local governments, associations incorporated under the *Associations Incorporation Act 1981*, corporations registered under the *Corporations (Aboriginal and*

⁴² Explanatory notes for SL 2018, No. 121, p 1.

⁴³ Explanatory notes for SL 2018, No. 130, p 1.

⁴⁴ Explanatory notes for SL 2018, No. 130, p 1.

Torres Strait Islander) Act 2006 (C'th), cooperatives registered under the *Cooperatives Act 1997*, and entities established to represent primary producers and primary production enterprises.⁴⁵

In assessing applications, the Queensland Rural and Industry Development Authority (QRIDA) will approve applications for assistance assessed as providing the greatest economic benefit in priority over those assessed as providing the least benefit:

*As well as demonstrating that the applicant can provide a matching co-contribution to the amount sought (up to \$250,000), the applicant will need to demonstrate it has adequate experience or other qualifications to give the applicant a reasonable prospect of success in carrying out the activity. They must also demonstrate sound prospects for commercial viability and also that the activity for which the funding is sought will provide a significant economic benefit. Applicants are eligible for assistance if they have previously received assistance under the scheme or another government program for the activity.*⁴⁶

Committee comment

The committee is satisfied that the Rural and Regional Adjustment (Rural Economic Development Grants Scheme) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.12 Rural and Regional Adjustment (Vessel Tracking Rebate Scheme) Amendment Regulation 2018 (SL No. 131)

The explanatory notes outline that the purpose of subordinate legislation No. 131 is to:

*...enable the Queensland Rural and Industry Development Authority (QRIDA) to provide financial assistance under a scheme aimed at assisting holders of prescribed commercial fishing boat and charter fishing licences with the costs incurred buying and installing vessel tracking units.*⁴⁷

The Queensland Sustainable Fisheries Strategy 2017-2027 requires the installation of vessel tracking units on all commercial fishing boats by the end of 2020, with a priority to install units on boats operating in Queensland's net, line and crab commercial fisheries by the end of 2018.⁴⁸

According to the explanatory notes: 'Consultation for the Strategy identified concerns within industry regarding the purchase and installation costs of vessel tracking units'.⁴⁹

Achievement of policy objectives

The Vessel Tracking Rebate Scheme (VTRS) will assist applicants who are prescribed licence holders, holders of a Charter Fishing Licence, eligible Commercial Harvest Fishery Licence or eligible Commercial Fishing Boat Licence to offset the costs incurred in buying and installing approved vessel tracking units.⁵⁰

⁴⁵ Explanatory notes for SL 2018, No. 130, p 2.

⁴⁶ Explanatory notes for SL 2018, No. 130, p 2.

⁴⁷ Explanatory notes for SL 2018, No. 131, p 1.

⁴⁸ Explanatory notes for SL 2018, No. 131, p 1.

⁴⁹ Explanatory notes for SL 2018, No. 131, p 1.

⁵⁰ Explanatory notes for SL 2018, No. 131, p 2.

The explanatory notes advise that there are two types of assistance available to applicants under the VTRS:

1. the 'purchase rebate' to offset the applicant's costs incurred buying new vessel tracking units from authorised suppliers - the type of vessel tracking unit purchased determines the purchase rebate payable and is payable to an applicant once for each vessel tracking unit bought by the applicant, up to the prescribed limit⁵¹, and
2. the 'installation rebate' is payable for having a vessel tracking unit professionally installed in an eligible boat authorised for use under an applicant's licence - the amount of assistance payable is the amount the applicant paid to have the unit installed, up to a maximum of \$220.⁵²

Potential FLP issue

The subordinate legislation relies upon the content of the Vessel Tracking Installation and Maintenance Standard throughout the scheme. The document is published on the Department of Agriculture and Fisheries website. The use of this document might be seen to not have sufficient regard to the institution of Parliament, as it involves a sub-delegation of power delegated by the Act to the executive.

Section 4(5)(e) of the LSA provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act. This principle is infringed where subordinate legislation authorises another person to decide the content of the subordinate legislation.

In deciding whether it is appropriate for matters to be dealt with by an instrument that is not subject to Parliamentary scrutiny, committees take into account the importance of the subject matter and the practicalities in dealing with that subject matter entirely in subordinate legislation.⁵³

The explanatory notes provide this justification:

*The potential inconsistency is justified, as the department requires the flexibility to adapt this document to account for new vessel tracking units and updated maintenance and installation methods. Prescribing the contents of standard within the subordinate legislation or in the other legislation would not be feasible, because it would not allow the department to be sufficiently responsive to new vessel tracking technology.*⁵⁴

Committee comment

In the circumstances, the committee accepts the justification provided in the explanatory notes in relation to the potential breach of fundamental legislative principles. On balance, the committee is satisfied that sufficient regard has been given to the institution of Parliament.

⁵¹ For the purchase of a Category A vessel tracking unit, the amount of assistance available to an applicant is the amount the applicant paid for the unit, up to a maximum of \$300. For the purchase of a Category B vessel tracking unit, the amount of assistance available to an applicant is the amount the applicant paid for the unit, up to a maximum of \$750.

⁵² Explanatory notes for SL 2018, No. 131, p 2.

⁵³ Office of the Queensland Parliamentary Counsel, *Principles of good legislation Subordinate legislation*, pp 18-19.

⁵⁴ Explanatory notes for SL 2018, No. 131, p 3.

Potential FLP issue

The subordinate legislation requires that applicants for assistance must give the Queensland Rural and Industry Development Authority (QRIDA) any further documents or information it reasonably requires to decide the application.

Section 4(2)(a) of the LSA provides that subordinate legislation should have sufficient regard to individual rights and liberties. When considering whether legislation has sufficient regard to individual rights and liberties, regard should be given to the right to privacy and the disclosure of private or confidential information.

In relation to the collection of information, the explanatory notes state:

*The potential inconsistency is justified, however, as this power can only be exercised in circumstances where it is reasonably necessary to obtain further information to decide the application. The exercise of this power will therefore be limited to circumstances where there are evidentiary deficiencies present in the information provided by the applicant that prevents QRIDA from properly assessing the application.*⁵⁵

Committee comment

In the circumstances, the committee accepts the justification provided in the explanatory notes in relation to the potential breach of fundamental legislative principles. On balance, the committee is satisfied that sufficient regard has been given to an individual's rights and liberties.

2.13 Proclamation made under the *Land Access Ombudsman Act 2017* (SL No. 134)

The explanatory notes state that the objective of subordinate legislation No. 134 is to fix a commencement date of 31 August 2018 for the following sections in the *Land Access Ombudsman Act 2017*:

- sections 3 to 31
- part 6, other than section 63
- part 8, divisions 3 and 7, and
- schedule 1.⁵⁶

The *Land Access Ombudsman Act 2017* is an Act to establish:

*...an independent Land Access Ombudsman, with the jurisdiction to provide an independent service that applies to disputes relating to an alleged breach of a conduct and compensation agreement or a make good agreement.*⁵⁷

The sections to commence relate to the appointment and powers of the Land Access Ombudsman and the establishment of the Office of the Land Access Ombudsman.

Committee comment

The committee is satisfied the Proclamation does not raise any issues relating to policy, fundamental legislative principles or lawfulness.

⁵⁵ Explanatory notes for SL 2018, No. 131, p 4.

⁵⁶ Explanatory notes for SL 2018 No. 134, p 1.

⁵⁷ Explanatory notes for SL 2018 No. 134, p 1.

2.14 Petroleum and Gas (Safety) Regulation 2018 (SL No. 135)

The explanatory notes outline that the primary policy objective of subordinate legislation No. 135 is to:

*...support the Petroleum and Gas (Production and Safety) Act 2004 to achieve its purpose to facilitate and regulate the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry.*⁵⁸

Under section 54 of the *Statutory Instruments Act 1992*, the Petroleum and Gas (Production and Safety) Regulation 2004 (2004 Regulation) expired on 31 August 2018.⁵⁹ Accordingly, there was a statutory review of the 2004 Regulation and the petroleum and gas safety provisions have been remade into this subordinate legislation (Regulation).⁶⁰

Potential FLP issue

The Regulation refers to external documents such as various standards, codes and guides. Particular reference is made in clauses 13-16 and a list is provided for in schedule 2 of the Regulation.

Section 4(5)(e) of the LSA provides that whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the sub-delegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act.

One rationale for this approach is to ensure sufficient parliamentary scrutiny of a delegated legislative power.⁶¹

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 in Part 6 of the *Statutory Instruments Act 1992*.

Where there is incorporated into the legislative framework of the state an extrinsic document (such as the standards, codes and guides) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

Currently, not all of the documents referred to are contained in the subordinate legislation in their entirety, and as such their content do not come to the attention of the House.

Authorised by an Act

Here, the various standards, codes and guides are clearly authorised by legislation under the following legislative provisions: s 74Z *Petroleum Act 1923*, s 557 *Petroleum and Gas (Production and Safety) Act 2004*, s 71 *Coal Mining Safety and Health Act 1999*, s 331 *Greenhouse Gas Storage Act 2009*, and s 148 *Transport Operations (Road Use Management) Act 1995*.

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, committees consider the

⁵⁸ Explanatory notes for SL 2018 No. 135, p 1.

⁵⁹ Explanatory notes for SL 2018 No. 135, p 2.

⁶⁰ Explanatory notes for SL 2018 No. 135, p 2.

⁶¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p170.

importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.⁶²

Each of these documents are highly technical in nature and relatively lengthy. It is also accepted in this case that it is appropriate for practical purposes for such matters to be set out in documents other than subordinate legislation.

Availability of document and parliamentary scrutiny

In most cases the Acts referred to above set out the relevant documents or refer to them in a general sense and accordingly are brought to the attention of the parliament. Additionally, the regulation sets out the specific name of each document in schedule 2.

Committee comment

In the circumstances, the committee is satisfied that the Petroleum and Gas (Safety) Regulation 2018 has sufficient regard to the institution of Parliament and, on balance, does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

⁶² See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

