

**Subordinate legislation tabled between
12 February 2014 and 1 April 2014**

Report No. 51

Health and Community Services Committee

June 2014

Health and Community Services Committee

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1 Introduction

1.1 Role of the committee

The Health and Community Services Committee is responsible for examining subordinate legislation within its portfolio areas and considering the policy effect, the application of fundamental legislative principles, and the lawfulness of the subordinate legislation (section 93(1) of the *Parliament of Queensland Act 2001*). The committee's responsibilities include monitoring the operation of the *Statutory Instruments Act 1992* as it relates to subordinate legislation. The committee reports to the Legislative Assembly on all subordinate legislation it has considered.

1.2 Aim of this report

This report summarises the committee's examination of subordinate legislation tabled between 12 February 2014 and 1 April 2014. It reports on fundamental legislative principle issues identified by the committee.

2 Subordinate legislation examined

SL No.	Name of subordinate legislation	Date for disallowance
SL 28	Health Practitioner Registration and Other Legislation Amendment (Postponement) Regulation 2014	6/8/2014
SL 29	Health Legislation Amendment Regulation (No.1) 2014	6/8/2014
SL 34	Proclamation made under the Nature Conservation and Other Legislation Amendment Act (No.2) 2013	6/8/2014
SL 35	Nature Conservation and Other Legislation Amendment Regulation (No.1) 2014	6/8/2014

3 Health portfolio

3.1 Health Practitioner Registration and Other Legislation Amendment (Postponement) Regulation 2014 – SL 28

The Health Practitioner Registration and Other Legislation Amendment (Postponement) Regulation 2014 postpones the automatic commencement – under section 15DA of the *Acts Interpretation Act 1954* – of the remaining provisions of the *Health Practitioner Registration and Other Legislation Amendment Act 2013* (the Act) from 28 March 2014 to 1 July 2014.

The provisions of the Act that are yet to be commenced amend the *Health Practitioners (Disciplinary Proceedings) Act 1999*. The automatic commencement of the provisions of the Act is being postponed to coincide with the commencement of the provisions of the *Health Ombudsman Act 2013* – on 1 July 2014 – that repeal the *Health Practitioners (Disciplinary Proceedings) Act 1999*.

The committee did not identify any fundamental legislative principles issues.

3.2 Health Legislation Amendment Regulation (No.1) 2014 – SL 29

The Health Legislation Amendment Regulation (No.1) 2014 (the Amendment Regulation) amends:

- the Hospital and Health Boards Regulation 2012 to provide for the disclosure of confidential information from Hospital and Health Services to:
 - entities engaged by Queensland Health to undertake health service planning activities; and
 - Queensland and Commonwealth Government entities for the implementation and management of the National Disability Insurance Scheme (NDIS) in Queensland;

and

- the Private Health Facilities Regulation 2000 to provide for the disclosure of confidential information from private health facilities to entities engaged to review patterns of health service delivery and projecting future demand for, and supply of, health services.

3.2.1 *Rights and liberties of individuals*

The committee considered whether the Amendment Regulation has sufficient regard to the rights and liberties of individuals (section 4(3) of the *Legislative Standards Act 1992*) to ensure that safeguards are in place to protect individuals' confidential information once it has been transferred to entities prescribed in the Hospital and Health Boards Regulation 2012 and the Private Health Facilities Regulation 2000. The committee notes that appropriate safeguards are provided under section 151(2) of the *Hospital and Health Boards Act 2011* and section 147 of the *Private Health Facilities Act 1999*.

3.2.2 *Explanatory Notes*

The Explanatory Notes tabled with the Amendment Regulation comply with the majority of the requirements at part 4 of the *Legislative Standards Act 1992*. Under section 24(1)(b) of that Act, Explanatory Notes should clearly and precisely state the authorising law under which a Regulation is made. In this instance, the Explanatory Notes refer to a general regulation-making power at section 282 of the *Hospital and Health Boards Act 2011*.

The committee notes that it may have been more appropriate if the Explanatory Notes referred to sections 150(b) of the *Hospital and Health Boards Act 2011* and 147(4)(h)(ii) of the *Private Health Facilities Act 1999*, which provide for entities (to which confidential information may be provided) to be prescribed by legislation.

4 National Parks, Recreation, Sport and Racing portfolio

4.1 Proclamation made under the Nature Conservation and Other Legislation Amendment Act (No.2) 2013 – SL 34

The Proclamation made under the Nature Conservation and Other Legislation Amendment Act (No.2) 2013 (the Proclamation) commenced Part 3 and Schedule 1, Part 2 of the *Nature Conservation and other Legislation Amendment Act (No.2) 2013* on 28 March 2014.

The committee did not identify any fundamental legislative principles issues.

4.1.1 *Explanatory Notes*

The Explanatory Notes tabled with the Proclamation comply with most of the requirements at part 4 of the *Legislative Standards Act 1992*.

Section 24(2) of the *Legislative Standards Act 1992* states that Explanatory Notes for subordinate legislation must provide information about the way the consultation took place on the subordinate legislation or, if there was no consultation, a statement of the reason. It states:

(2) *The explanatory note must also include—*

(a) *if consultation took place about the subordinate legislation—*

(i) *a brief statement of the way the consultation was carried out; and*

(ii) *an outline of the results of the consultation; and*

(iii) *a brief explanation of any changes made to the legislation because of the consultation; or*

(b) *if consultation did not take place—a statement of the reason for no consultation.*¹

¹ Section 24(2), *Legislative Standards Act 1992*

The committee notes that the consultation section of the Explanatory Notes did not state whether the Department of National Parks, Recreation, Sport and Racing (the department) undertook consultation on the Proclamation. The Explanatory Notes outline government consultation on the Nature Conservation and Other Legislation Amendment Bill (No.2) 2013 (the Nature Conservation Bill). In addition, the Explanatory Notes outline consultation undertaken by the Health and Community Services Committee on the Nature Conservation Bill.

The committee considers that the Explanatory Notes are inconsistent with the requirements of section (24)(2)(b) of the *Legislative Standards Act 1992*. The Explanatory Notes did not include information about any consultation that took place on the subordinate legislation. Alternatively, if no consultation occurred, the Explanatory Notes did not provide a statement of the reason.

The committee considers that any description of consultation in the Explanatory Notes should be about the subordinate legislation – in this case the Proclamation. The committee considers that information about consultation on the authorising law should not be included in the Explanatory Notes, as it is not consultation about the subordinate legislation.

Further, the committee considers that examination of a Bill by a parliamentary committee, including stakeholder consultation, is not a substitute for government consultation on subordinate legislation. In the committee's view, it is not appropriate to report on parliamentary committee consultation in the Explanatory Notes prepared by a department about subordinate legislation.

4.2 Nature Conservation and Other Legislation Amendment Regulation (No.1) 2014 – SL 35

The Nature Conservation and Other Legislation Amendment Regulation (No.1) 2014 (the Amendment Regulation) amends various regulations related to nature conservation, fisheries, marine parks, forestry and environmental protection, with the stated intention to:

- make consequential amendments to reflect the abolition of three classes of protected areas and changes to other protected area classes
- provide for commercial activity permits for existing uses to be granted for a national park when a special management area (controlled action) has been declared (e.g. beekeeping and stock grazing)
- make minor amendments to remove redundant provisions and correct errors
- remove daily fees for education groups travelling with commercial tour operators; and
- amend the definition of commercial activity to extend the existing exemption to the requirement to obtain a permit for commercial filming and photography activities from “2 or less people” to “10 or less people” (where no structure is involved).

The committee did not identify any fundamental legislative principles issues.

4.2.1 Explanatory Notes

The Explanatory Notes tabled with the Amendment Regulation comply with the majority of the requirements at part 4 of the *Legislative Standards Act 1992*.

The Amendment Regulation is long, and amends ten Regulations. While it is not a statutory requirement to explain each section of a Regulation, the committee notes that more detailed explanation would have been useful. Given the nature of the changes the Amendment Regulation makes, a simple explanation of the purpose and intended operation of each section would have assisted those with an interest in nature conservation tenures and related matters.

The committee notes that the consultation section of the Explanatory Notes outlined consultation that occurred on some aspects of Amendment Regulation.

However, the Explanatory Notes also outline government consultation undertaken on the Nature Conservation Bill. The Explanatory Notes also describe consultation undertaken by the Health and Community Services Committee on the Nature Conservation Bill, as did the Proclamation discussed above.

As noted in section 4.1 above in relation to the Proclamation of provisions of the Nature Conservation Bill, the committee considers that, to comply with section 24(2) of the *Legislative Standards Act 1992*, Explanatory Notes should outline consultation undertaken on the subordinate legislation, rather than the authorising law.

Further, the committee considers that consultation undertaken by a parliamentary committee when it examines a Bill is not a substitute for government consultation on subordinate legislation.

4.2.2 Drafting error

The committee notes a potential drafting error in section 50 of the Nature Conservation and Other Legislation Amendment Regulation (No.1) 2014. This section amends section 88(2) of the Nature Conservation (Protected Areas Management) Regulation 2006 to replace the reference to “national park (recovery)” with a reference to “special management area (scientific)”. The committee notes that the reference should be to “special management area (controlled action)”, which reflects the changes to tenure classes made under the *Nature Conservation and Other Legislation Amendment Act (No.2) 2013*.

5 Recommendation

The committee has examined the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles, and lawfulness, and has not identified any significant fundamental legislative principle or lawfulness issues.

The committee has identified some deficiencies in the Explanatory Notes in the National Parks, Recreation, Sport and Racing portfolio, specifically in the description of consultation in Explanatory Notes.

The committee expects departments to comply with section 24(2) of the *Legislative Standards Act 1992*, which states that Explanatory Notes for subordinate legislation must provide information about consultation on subordinate legislation or, if no consultation took place, a statement of the reason.

If consultation took place on the subordinate legislation, the committee considers that any description of consultation in the Explanatory Notes should be about that subordinate legislation. The committee does not consider it appropriate to include government consultation on a Bill as part of the Explanatory Notes on subordinate legislation.

In particular, the committee believes that departments should not outline a parliamentary committee’s consultation on a Bill in the Explanatory Notes for subordinate legislation. A parliamentary committee’s consultation is not a substitute for government consultation on subordinate legislation.

Recommendation 1

The committee recommends that the Legislative Assembly note the content of this report and the committee’s conclusion that the subordinate legislation does not raise any significant issues regarding the application of fundamental legislative principles, and is lawful and within power.

Recommendation 2

The committee recommends that the Legislative Assembly note that the committee expects departments to comply with section 24(2) of the *Legislative Standards Act 1992* when preparing Explanatory Notes for subordinate legislation.

Recommendation 3

The committee recommends that the Minister for National Parks, Recreation, Sport and Racing ensure that the Department of National Parks, Recreation, Sport and Racing prepares Explanatory Notes that comply with section 24(2) of the *Legislative Standards Act 1992*. Explanatory Notes for subordinate legislation should:

- if consultation on the subordinate legislation occurred, include a brief statement about the way consultation was carried out, the results of consultation and any changes made to the subordinate legislation because of the consultation, and
- not include consultation undertaken by a parliamentary committee on a Bill, or
- if no consultation occurred on the subordinate legislation, include a statement of the reason.



Trevor Ruthenberg MP

Chair