



INFRASTRUCTURE, PLANNING AND NATURAL RESOURCES COMMITTEE

Members present:

Mr J Pearce MP (Chair)
Mr CD Crawford MP
Ms AM Leahy MP

Staff present:

Dr J Dewar (Committee Secretary)
Ms M Telford (Assistant Committee Secretary)

PUBLIC BRIEFING—EXAMINATION OF THE PLANNING (CONSEQUENTIAL) AND LEGISLATION AMENDMENT REGULATION 2017

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 11 OCTOBER 2017

Brisbane

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Subcommittee met at 12.48 pm

ASTON, Mr Christopher, Acting Executive Director, Policy and Statutory Planning, Department of Infrastructure, Local Government and Planning

CHADWICK, Mr Jesse, Technical Adviser in Planning, Department of Infrastructure, Local Government and Planning

CHAIR: Good afternoon. I declare open the public briefing for the Planning (Consequential) and Legislation Amendment Regulation 2017. I thank you for your attendance here today. I am Jim Pearce, the member for Mirani and chair of the committee. Other committee members present today are Ms Ann Leahy, the deputy chair and member for Warrego, and Mr Craig Crawford, the member for Barron River. This is a subcommittee of the committee. Those present today should note that these proceedings are being broadcast to the web and transcribed by Hansard and that media may be present. The committee seeks further examination of subordinate legislation No. 103, Planning (Consequential) and Legislation Amendment Regulation. We would like to ask you some questions on the drafting of this legislation. As a reminder, the committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Departmental representatives should be guided by schedules 3 and 8 of the standing orders and note that their responsibility is to provide factual and technical background to government legislation and administration. I welcome representatives from the Department of Infrastructure, Local Government and Planning. You would not have had any time to have an opening statement at all?

Mr Chadwick: No, Mr Chairman.

CHAIR: Ann, I might hand over to you because you seem to have some concerns, which we all agree with.

Ms LEAHY: Thank you very much for coming down, gentlemen, at short notice. As we worked our way through this, there are about 30 regulations here that are being amended. Can you perhaps tell us the background as to why there are so many. Where was the consultation? This is the Planning (Consequential) and Other Legislation Regulation, so I would ask you to explain what the meaning of that is. I will hand over to you.

Mr Chadwick: Thank you. Yes, I think possibly the best way of describing the context might be to provide a little bit of history. As the committee would be aware, there was a raft of planning legislation introduced in the past in May 2016. There was the Planning Act, the Planning and Environment Court Act and the Planning (Consequential) and Other Legislation Amendment Act. The Planning (Consequential) and Other Legislation Amendment Act contains a range of amendments to other principal legislation for consistency with the new planning legislation. It is quite extensive and so, too, is this regulation. In terms of the background to both of those and the size of the legislation, I find it hard to recall any Queensland legislation that is more extensively referred to in other legislation than the planning legislation. That has always been the case. I am sure from the committee's previous deliberations you would be aware that a whole variety of environmental, natural resource legislation and other legislation refers in some way or another to the planning legislation. That has a lot to do, for example, with integrated planning. It also has a lot to do with integrated development assessment. For example, other bits of principal legislation and regulations include codes and assessment triggers that talk to the planning legislation.

The Planning Act replaced the Sustainable Planning Act and some of its key features are that it includes quite a lot of different terminology. Often that terminology is equivalent to terminology that appeared in the Sustainable Planning Act and sometimes it is new. The Planning Act also contained some changes to things like assessment categories that were intended to simplify and minimise the number of categories we had. Whereas under the Sustainable Planning Act and all of the legislation that spoke to it there were, for example, four different categories of development, there are now three. Just to summarise, it is a piece of legislation which is talked to by a whole range of other legislation and the planning legislation made several key changes to development categorisation and terminology.

With regard to the Planning (Consequential) and Other Legislation Amendment Act, it too was very large—I forget the exact number of pages it ran to—but it was seeking to make amendments to all of that range of legislation that talked to the Sustainable Planning Act to ensure that it continued to talk to the Planning Act. Broadly, the intent of that act was not to change any legislation—not to change the substance of the legislation—but simply to line up matters like terminology and the change assessment categories and that sort of thing. That package of legislation was passed by parliament, as I recall, in May 2016. The commencement was set for 3 July this year. It has now commenced and is in operation.

Prior to the commencement, just as the planning consequential act was needed to line up principal legislation, we needed an amendment regulation to line up matters like terminology and assessment categories in other regulations under that principal legislation. Again, like the Planning (Consequential) and Other Legislation Amendment Act, there are many regulations—in the 20s, I think 27 different regulations that this amends—that contain terminology or assessment triggers that are relevant to the planning legislation. The intent of this regulation, which needed to be passed before commencement of the principal act, was to do the same as the consequential act which was to improve legibility to allow a whole range of other legislation to be read properly in the context as the new planning legislation. We sought very clearly and in a great deal of detail not to change the effect of any of the regulations.

Very often you will see in this regulation references simply to changed terminology like 'Sustainable Planning Act' to the 'planning regulation'. At other times the amendments are more extensive, and that may, for example, occur because there is a passage in another regulation that contains several different references to the planning legislation. Parliamentary Counsel's practice in that circumstance is often to take out the whole passage and just replace it if they have four or five or more references to the planning legislation in that passage. Sometimes the changes are more than a simple matter of just changing a word here or there but, again, as I said, the intent is that the substance of the regulations does not change. They still have exactly the same effect as they did before.

CHAIR: So it is about a word or a group of words being consistent across all these pieces of legislation?

Mr Chadwick: Yes, Mr Chairman. Words are a key feature. For example, there is the name of the legislation itself. These regulations would have previously all referred to the 'Sustainable Planning Act'. They now need to refer to the 'Planning Act'. Sometimes, as I said, it is structurally a little more complex than that. It may not just be changing a word to its equivalent but it may be changing a set of structures or assessment categories to achieve an equivalent. I think as I might have mentioned before, there were four assessment categories under—and this is by way of example—the Sustainable Planning Act. We had exempt development that you did not need an approval for and there was self-assessable development. You also did not need an approval for it, but you had to comply with various codes. There was assessable development for which you need a development approval and there was prohibited development.

Under the Planning Act, those four categories have been replaced by three categories. The exempt and self-assessable categories have effectively been collapsed together because essentially for neither of them you need a development approval; it is just that for one of them the characteristics of the development are set out in a bit more detail. We felt we could replace those two categories with one. That obviously has implications for references to self-assessable development in all of these other regulations. In that case, for example, we would replace a reference to self-assessable development with a reference to accepted development that meets certain characteristics. Sometimes the structure of the actual provisions has to change to accommodate for fewer development categories, but as always the intent is to keep the rights and obligations exactly the same.

Ms LEAHY: I note that there are changes in relation to the Local Government Act. There are changes to the Liquor Act regulation and a number of changes to the Water Act. Where is the check and balance for industry to look at this to say, 'It is right; it is just a technical change in the wording'? Where is the check and balance?

Mr Chadwick: I think the check and balance comes from two areas. Firstly, it is the departments that administer this legislation. While this regulation itself was not broadly publicly consulted on, there was extensive consultation with the agencies involved with a view to keeping the legislative framework exactly the same as it would have otherwise been. The other clear check and balance on us, as always, is Parliamentary Counsel. If they felt under a consequential regulation that there were substantive changes made they certainly would have pointed it out to us.

Ms LEAHY: I am looking at the explanatory notes and they state—

In accordance with the Queensland Government Guide to Better Regulation, the Office of Best Practice Regulation was not consulted ...

Is there a reason for that?

Mr Chadwick: The Office of Best Practice Regulation was not consulted about this. I am sorry, I do not have the guidelines in front of me, but they have a guideline that categorises different types of regulation as to whether they need to be involved. One of the types of regulations that they do not require direct involvement in is legislation of a purely consequential nature. Fairly recently—I am not exactly sure when; it would have been within the last couple of years—they introduced a self-assessment arrangement for that so we are required to assess the legislation for its impact and keep a record of that.

Ms LEAHY: I want to turn to some of the amendments in the water plans. I will particularly point out some of those that are in the Murray-Darling catchment. When those water plans are revised and they are a regulation, there has to be approval from the federal government under the legislation that is in place. Do you have to get approval for the changes to the regulations given that the actual regulation is approved?

Mr Chadwick: Mr Chairman, I will have to take that on notice, do some research and get back to the committee on that.

Ms LEAHY: That would be appreciated. I know it is out there on the Murray-Darling Basin's website that those regulations have to be approved. I am wondering how they are consequential when we do not get the federal government tick off.

Mr Chadwick: As I say, I am not particularly familiar with the rules for approval of the basin legislation, so I will have to take that on notice and possibly even consult NRM about it.

Ms LEAHY: That would be fine, because you will find that there is a number that are in the Murray-Darling Basin.

CHAIR: Craig, do you have anything?

Mr CRAWFORD: No, as long as Ann is happy.

Ms LEAHY: As long as we are sure they are consequential.

Mr Chadwick: I am as confident as I can be, Mr Chairman, that they have no substantive effect. They have been in effect for four months now. I am unaware of any problems arising.

CHAIR: Can you have that back to us by close of business on the 13th?

Mr Chadwick: Absolutely, Mr Chairman.

CHAIR: Thanks very much for coming down at such short notice. I understand where Ann is coming from. In my time in this place I often cop abuse from people because something has been changed in a regulation and I am asked why I did not know about it and how this was allowed to get through. When you see a list that long, you wonder whether there is anything in there that could cause problems.

Mr Chadwick: We understand, Mr Chairman.

CHAIR: We are not trying to be smartie pants; it is a genuine issue—

Mr Chadwick: The length of it is certainly unusual in relation to what has been done, and that is simply a factor of the range of legislation that relates to the planning legislation.

CHAIR: Again, thank you for coming down at such short notice. I appreciate your involvement and your input. I declare this briefing closed.

Subcommittee adjourned at 1.04 pm