

Submission No. 9
11.1.24
14 August 2014



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The Research Director
State Development, Infrastructure and Industry Committee
Parliament House
George Street
BRISBANE QLD 4000

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Dear Director

Submission about the *Regional Planning Interests Regulation 2014 (Qld)*

Thank you for inviting the Queensland Environmental Law Association (**QELA**) to make a submission about the *Regional Planning Interests Regulation 2014 (Qld)* (**RPI Regulation**) to the State Development, Infrastructure and Industry Committee.

QELA is a non-profit, multi disciplinary organisation. Its members include lawyers, town planners and a broad range of consultants who represent and advise a miscellany of participants in the development industry.

QELA would also like to thank you for considering our submission on the *Regional Planning Interests Bill 2013 (Qld)*. It is noted that some changes that were suggested have been adopted in the *Regional Planning Interests Act 2014 (Qld)* and the RPI Regulation, including the prescription of time frames for the development application process and the publication of the chief executive's decision on the department's website.

Criteria for assessment or decision

1. Section 14 of the RPI Regulation prescribes the criteria for an assessor's assessment or decision on an assessment application made pursuant to the *Regional Planning Interests Act 2014*. The criteria are defined by reference to Schedule 2 of the RPI Regulation having regard to the area of regional interest to which the application relates.
2. QELA has identified that Schedule 2, Part 2 of the RPI Regulation uses a variety of expressions to precede the word "impact" but does so without definition or explanation of what constitutes such an impact. For example:
 - (a) in a Priority Agricultural Area, reference is made to when "the activity will not result in a *material impact* on the use of the property";
 - (b) in a Priority Living Area, reference is made to when "the activity is unlikely to *adversely impact* on development certainty";

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- (c) in a Strategic Cropping Area, reference is made to when “the activity will not result in *any impact* on strategic cropping land”;
- (d) in a Strategic Environment Area, reference is made to when “the activity will not result in a *widespread or irreversible impact* on an environment attribute”.

[our emphasis]

- 3. The RPI Regulation defines “permanent impact”, however no further guidance is provided in the RPI Regulation on the meaning of and difference between the other types “impact” related outcomes and what appropriate assessments should be made in each instance.
- 4. It is noted that the Commonwealth has developed a series of “Significant Impact Guidelines” to provide guidance on determining whether an action is likely to have a significant impact on a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- 5. QELA suggests that the State Government give consideration to preparing guidelines with respect to interpreting the various “impact” thresholds identified in Schedule 2 of the RPI.

Required outcomes and prescribed solutions

- 6. QELA is supportive of the concept of required outcomes and prescribed solutions but queries whether compliance with the prescribed solutions is intended to be mandatory or merely one way of achieving the prescribed solutions.
- 7. Under section 14 of the RPI Regulation, both the required outcomes and prescribed solutions are mandatory requirements, and it is therefore difficult to understand the need for separate terminology and provisions in Schedule 2. It is also unclear whether, where there is more than one prescribed solution for a required outcome, all of the prescribed solutions must be satisfied.

Mapping

- 5. QELA is supportive of the interactive map system available through DSDIP’s website which allows the public to identify whether land is an area of regional interest.
- 6. QELA suggests DSDIP consider adding an additional feature to the interactive mapping system which lets the user obtain point-in-time mapping.
- 7. The land to which the *Regional Planning Interests Act 2014* (Qld) relates is likely to change over time. These changes sometimes cause confusion to landowners and Government departments, especially when the land is the subject of litigation. It would

be helpful if the mapping system allowed the user to access the mapping as it was at any particular point-in-time. This will allow the public to easily identify the mapping as it applied, say, at the date of a development application.

8. If any changes are made to the mapping, QELA suggests that the public be notified. This is particularly important given that the change could result in a landowner, who was previously not affected by the Act, now being affected and subject to a separate development application process.
9. Such public notification and consultation would also be beneficial as it will likely shed light on whether an area of land is, in reality, a strategic environmental area, a priority agricultural area or a strategic cropping area.
10. QELA also raises some concern about the process being adopted for choosing an area of regional interest. It is not clear why any particular area has been selected as there is no explanation as to what criteria was used when the decision was made, particularly for strategic cropping areas which are not the subject of regional planning process or regulation.
11. It would be useful if reasons were published which explain why the relevant areas have been placed on the map.

Other matters

12. It is noted that a definition is included in Schedule 6 for the 'agriculture department' and the 'environment department', although, a definition for the 'natural resources department' has not been included. It is suggested that, for consistency, this omission be rectified.
13. It is understood that the RPI Regulation is made pursuant to section 95 of the *Regional Planning Interests Act 2014*. QELA notes that in addition to section 95, the Act also allows, in section 108, a savings or transitional regulation to be made to allow or facilitate:
 - (a) the commencement of the operation of the Act, or
 - (b) the change from the operation of the repealed *Strategic Cropping Land Act 2011* to the operation of the Act.
14. QELA notes that a transitional regulation made under section 108 may have retrospective effect from the day of commencement. Although any transitional regulation must expire 1 year after the commencement, the retrospective operation of such a regulation may present a potential breach of the fundamental legislative principles. QELA notes that this section of the *Regional Planning Interests Act* was justified as follows:

*"The inclusion of this new clause is necessary to provide a transitional regulation making power for any circumstance where a transitional provision is required to protect rights acquired under existing legislation and is not appropriately reflected in the Act. The activities dealt with under the Act are complex and the extent of existing rights cannot be fully appreciated until the legislation commences. The clause provides that this power will expire one year after commencement and therefore the potential breach of the fundamental legislative principle is short term."*¹

15. QELA suggests any proposed transitional provisions proposed to be made by regulation under this section be subject to appropriate review prior to commencement to ensure any such provisions do not adversely affect rights and liberties, or impose obligations, retrospectively.

We thank you for the opportunity to make a submission about this Regulation. Representatives of QELA would welcome the opportunity to discuss this submission in further detail as required.

Yours faithfully



Troy Webb
President
Queensland Environmental Law Association

¹ Page 2, Regional Planning Interests Bill 2013, Explanatory Notes for amendments to be moved during Consideration in Detail