Parliamentary Committees

Regional Planning Interests Regulation 2014

Report No. 53
State Development, Infrastructure and Industry Committee
October 2014

State Development, Infrastructure and Industry Committee

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Deputy Chair	Mr Tim Mulherin MP, Member for Mackay (until 27 August 2014)
	Mr Bill Byrne MP, Member for Rockhampton (from 27 August 2014)
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Acknowledgements

The committee thanks those who briefed the committee, provided submissions and participated in its inquiry. In particular, the committee acknowledges the assistance provided by the Department of State Development, Infrastructure and Planning.

Contents

Chair's foreword

This report presents a summary of the State Development, Infrastructure and Industry Committee's examination of the Regional Planning Interests Regulation 2014.

In its *Report No. 35 – Regional Planning Interests Bill 2013*, the committee noted the high level of interest in the (then proposed) Regulation and flagged that it may conduct an inquiry once the Regulation was made. After the Regulation was made, the committee determined that as the Regulation provides the detail for the framework legislation of the *Regional Planning Interests Act 2014*, it would be of value to conduct an inquiry.

The committee's task was to consider the policy outcomes to be achieved by the Regulation, as well as the application of fundamental legislative principles to it, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament, and its lawfulness.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the Regulation and others who informed the committee's deliberations.

I would also like to thank the officials from the Department of State Development, Infrastructure and Planning who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

David Gibson MP
Chair

October 2014

Abbreviations

ACFA	Australian Controlled Farming Association
the Act	*Regional Planning Interests Act 2014*
BSA	Basin Sustainability Alliance
the committee	State Development, Infrastructure and Industry Committee
CSG	coal seam gas
CTF	controlled traffic farming
the department or DSDIP	Department of State Development, Infrastructure and Planning
EDO Qld	Environmental Defenders Office Queensland
explanatory notes	Regional Planning Interests Regulation 2014 Explanatory Notes
FLP	fundamental legislative principle
GBR	Great Barrier Reef
GBRMPA	Great Barrier Reef Marine Park Authority
LSA	*Legislative Standards Act 1992*
MMG	MMG Century Limited
OCPC	Office of the Queensland Parliamentary Counsel
PAA	Priority Agricultural Area
PALU	Priority Agricultural Land Use
PLA	Priority Living Area
PRA	Property Rights Australia
QELA	Queensland Environmental Law Association
QFF	Queensland Farmers' Federation
QRC	Queensland Resources Council
the Regulation	Regional Planning Interests Regulation 2014
RIDA	regional interests development approval
RO	required outcome
RPI Act	*Regional Planning Interests Act 2014*
RTCA	Rio Tinto Coal Australia Pty Limited
SCA	Strategic Cropping Area

SCL	Strategic Cropping Land
SCL Act	*Strategic Cropping Land Act 2011*
SEA	Strategic Environmental Area
SPA	*Sustainable Planning Act 2009*
Yancoal	Yancoal Australia Ltd

Recommendations

Points for clarification

Point for clarification 1 **11**

The committee seeks clarification from the Department of State Development, Infrastructure and Planning in relation to:

(a) whether it considered prescribing the Great Barrier Reef catchment as a strategic environmental area, and
(b) whether it considered including 'geomorphology' as an environmental attribute for the Channel Country strategic environmental area.

Point for clarification 2 **22**

The committee seeks clarification from the Department of State Development, Infrastructure and Planning as to why it determined not to include a criterion requiring no change or interference with 'overland flow' natural paths and volumes.

Point for clarification 3 **23**

The committee seeks clarification from the Department of State Development, Infrastructure and Planning about:

(a) why the figure of 2% was selected,
(b) how a 2% loss of both the land on the property used for a priority agricultural land use and the productive capacity of any priority agricultural land use on the property is calculated,
(c) how a 2% permanent impact on strategic cropping land on a property will be calculated, and
(d) the rationale for not applying the 2% or more loss in priority agricultural areas to owner applicants.

Point for clarification 4 **23**

The committee seeks clarification from the Department of State Development, Infrastructure and Planning about how the quality of the water used to replenish the regionally significant water source will be monitored.

1 Introduction

1.1 Role of the committee

The State Development, Infrastructure and Industry Committee (the committee) was established by resolution of the Legislative Assembly on 18 May 2012 and consists of government and non-government members.

The committee's primary areas of portfolio responsibility are:[1]

- State Development, Infrastructure and Planning
- Energy and Water Supply, and
- Tourism, Major Events, Small Business and the Commonwealth Games.

1.2 The Regulation

The Regional Planning Interests Regulation 2014 (the Regulation) was made on 13 June 2014 and tabled in the Legislative Assembly on 5 August 2014. The Regulation has a disallowance date of 30 October 2014.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the Regulation,
- the application of the fundamental legislative principles to the Regulation, and
- the lawfulness of the Regulation.

1.3 Background

In its *Report No. 35 – Regional Planning Interests Bill 2013*, the committee noted the high level of interest in the (then proposed) Regulation and flagged that it may conduct an inquiry once the Regulation was made.[2] After the Regulation was made, the committee determined that, as the Regulation provides the detail for the framework legislation of the *Regional Planning Interests Act 2014*, it would be of value to conduct an inquiry into the Regulation.

1.4 The committee's inquiry process

On 26 June 2014, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of relevant stakeholders. The closing date for submissions was 14 August 2014. The committee received 18 submissions (see Appendix A for list of submitters).

On 3 July 2014, the committee held a public briefing with the Department of State Development, Infrastructure and Planning (the department). Based on the comprehensive nature of the written submissions, the committee determined not to hold a public hearing.

The submissions and the transcript of the public departmental briefing are available from the committee's webpage at www.parliament.qld.gov.au/sdiic.

[1] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 1 July 2014).

[2] *Report No. 35: Regional Planning Interests Bill 2013* is available at http://www.parliament.qld.gov.au/documents/committees/SDIIC/2013/14-RegPlanInterests/14-rpt-17Mar14.pdf.

1.5 Policy objectives of the Regulation

The policy objective of the Regulation is 'to give effect to the provisions in the *Regional Planning Interests Act 2014* by detailing the land use planning policy which supports the Act'.[3]

1.6 The government's consultation on the Regulation

The explanatory notes state:[4]

> *Preparation of the draft Regional Planning Interests Regulation 2014 was informed by the consultation on the Central Queensland, Darling Downs and Cape York regional plans that was carried out over 18 months prior to their commencement in October 2013. This included consultation with the agricultural sector, landholders, the resource sector, local government and community groups.*

The government consulted on the assessment criteria for Priority Agricultural Areas contained in Schedule 2 of the Regulation with the Queensland Resources Council, the Australian Petroleum Production and Exploration Association, the Association of Mining and Exploration Companies, Queensland Farmers' Federation, the Department of Environment and Heritage Protection, and the Department of Natural Resources and Mines.[5]

On 19 March 2014, the Deputy Premier, Hon Jeff Seeney MP tabled an exposure draft of the Regulation in the House during the Regional Planning Interests Bill 2013 second reading debate. The exposure draft was available for comment for 60 days.[6]

Some submitters were dissatisfied with certain aspects of the government's consultation process regarding the strategic environmental area (SEA) maps.[7] AgForce described the consultation on the Cape York and Channel Country SEA maps as 'limited'.[8] Queensland Resources Council (QRC), on the other hand, acknowledged the 'significant consultation undertaken by the Department' in respect of the Cape York and Channel Country SEAs' but noted that no consultation was undertaken in respect of some other areas, such as the Gulf Rivers SEA. QRC suggested 'potential issues with the new framework could have been identified in consultation' and addressed prior to the commencement of the Regulation.[9] AgForce commented that it 'is concerned about the transparency and effectiveness of the process and rationale by which the current SEAs, designated precincts within them and the environmental attributes to be protected have been defined and mapped.'[10]

3 Explanatory notes, p 1.
4 Explanatory notes, p 3.
5 Explanatory notes, p 3.
6 Explanatory notes, p 3.
7 See, for example, AgForce, Submission No. 6; MMG, Submission No. 5; Queensland Resources Council, Submission No. 11.
8 AgForce, Submission No. 6.
9 See also, MMG Century Limited, Submission No. 5.
10 AgForce, Submission No. 6.

2 Examination of the Regulation

2.1 Introduction

The *Regional Planning Interests Act 2014* (the Act or RPI Act) manages the impact of certain activities in areas of regional interest.[11] It is 'framework legislation', with the policy detail in regional plans or a regulation.[12]

The Regional Planning Interests Regulation (the Regulation) prescribes:

- a regionally significant water source,
- Strategic Environmental Areas (SEAs) and their environmental attributes,
- regulated activities,
- referable assessment applications,
- assessing agencies and their functions,
- notifiable assessment applications,
- assessment criteria,
- strategic cropping land mitigation requirements,
- application fees, and
- assessment timeframes.

In addition, the Regulation removes strategic cropping land provisions from the Sustainable Planning Regulation 2009.[13]

This report does not address specific issues raised by stakeholders regarding the Act, unless relevant to the committee's examination of the Regulation.[14]

2.2 Definitions

A number of submitters raised issues relating to the definitions of certain terms used in the Regulation.[15]

Impact

Some submitters recommended 'impact', 'adversely impact' and 'significant impact' be defined.[16] Queensland Farmers' Federation (QFF) considered that if the terms are not clearly defined there will

[11] There are four types of areas of regional interest: priority agricultural areas, priority living areas, strategic environmental areas and strategic cropping areas: *Regional Planning Interests Act 2014*, s 7.

[12] Department of State Development, Infrastructure and Planning, Correspondence dated 3 February 2014.

[13] Explanatory notes, p 2.

[14] For example, matters relating to the strategic cropping land trigger map or cumulative impacts as a result of voluntary agreements.

[15] See, for example, Rio Tinto Coal Australia Pty Limited, Submission No. 1; Ipswich City Council, Submission No. 2; MMG Century Limited, Submission No. 5; AgForce, Submission No. 6; Queensland Environmental Law Association, Submission No. 9; Queensland Law Society, Submission No. 12; Queensland Farmers' Federation, Submission No. 13; Basin Sustainability Alliance, Submission No. 18. Definitions are also discussed in Part 3 of this report.

[16] AgForce, Submission No. 6; Ipswich City Council, Submission No. 2; Queensland Farmers' Federation, Submission No. 13.

be uncertainty whether a resource activity conducted under a conduct and compensation agreement or a voluntary written agreement is an exempt activity.[17]

'Impact' is defined in section 27 of the Act but 'adversely impact' and 'significant impact' are not defined in either the Act or the Regulation, nor are other terms relating to impact, such as 'widespread' and 'irreversible'. *RPI Act Guideline 02/14: Carrying out resource activities in a priority agricultural area* discusses the term 'significant impact'.[18]

The department stated:[19]

> *Each of these terms is given meaning through the context in which they are used. There is no generic measurable threshold for each term. Each term needs to be considered in the context of the activities being considered and the location in which they are being proposed.*

The department further advised:[20]

> *A qualitative threshold is given to the nature and scale of the impact, which must be considered when assessing the application, through the use of the terms 'significant', 'material', adverse' and 'widespread or irreversible' in schedule 2 to the RPI regulation.*
>
> *The Department was of the view that a quantitative threshold was inappropriate due to the wide range of impacts that would need to be considered when assessing a resource or regulated activity in an area of regional interest. For example, the impacts as a result of the loss of 100 hectares of productive agricultural land from a 1000 hectare agribusiness is likely to be very different from impacts as a result of the loss of 100 hectares of productive agricultural land from a 10,000 hectare agribusiness.*
>
> *Detailed precision is impossible where the assessment criteria need to cater for a variety of complex factual scenarios. In a planning context, expressions of this type are normal for the purpose of establishing criteria for the assessment of an application for an approval.*
>
> *…*
>
> *The Department considers that the expressions which the SDIIC has queried are sufficiently unambiguous, clear and precise to enable the merits of an assessment application to be evaluated.*

Broadacre cropping

Broadacre cropping is defined in section 11(2) of the Regulation as the cultivation of extensive parcels of land under dryland or irrigated management for cropping. *RPI Act Guideline 05/14* provides that the activity 'includes for example, the production of the following crops at a scale that exceeds the domestic needs of the occupants of the land:[21]

- grains (e.g. wheat, barley, sorghum, maize),
- pulses (e.g. lupins, peas, chickpeas, broad beans, mung beans, soy beans),
- oil seeds (e.g. canola, safflower, sunflower), and
- sugar cane, hops, cotton, hay.'

[17] Queensland Farmers' Federation, Submission No. 13. Ipswich City Council considered that defining the terms would provide certainty: Ipswich City Council, Submission No. 2.

[18] See pages 3 – 4.

[19] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

[20] Department of State Development, Infrastructure and Planning, Correspondence dated 22 September 2014.

[21] *RPI Act Guideline 05/14: Carrying out resource activities and regulated activities in a strategic environmental area*, 21 July 2014.

The Queensland Law Society (QLS) submitted that the definition of broadacre cropping is too ambiguous. AgForce suggested the meaning of 'extensive' should be clarified on the basis activities that could be considered not extensive, such as small scale production of hay for stock horses on a property would be unacceptable in an SEA designated precinct.[22]

The department advised the committee that the Macquarie Dictionary is sufficient to provide the meaning for broadacre cropping.

Open cut mine and water storage (dam)

MMG Century Limited (MMG) recommended that 'open cut mining' and 'water storage (dam)' (two unacceptable uses for a designated precinct in a strategic environmental area[23]) should be defined.[24] QLS suggested the definition of 'water storage (dam)' should specify the minimum dam size so as to avoid unintentionally capturing very minor storages.[25]

'Water storage (dam)' is defined in section 11(3) as storing water using a dam, other than storing water on land to be used only for any or all of the following purposes:[26]

- to meet the domestic water needs of the occupants of the land,
- to water the stock that is usually grazed on the land, and
- to water stock that is travelling on a stock route on or near the land.

Further guidance about water storages (dam) is provided in the *RPI Act Guideline 05/14*: *Carrying out resource and regulated activities in a strategic environmental area*:[27]

> *A water storage dam includes any barrier that may impound water, plus the water storage area created by the barrier, plus any embankment or other structure that is associated with the barrier and controls the flow of water. It does not include water storages in a water tank or rainwater tank constructed of steel, concrete, fibreglass, plastic or similar material.*

The department advised:[28]

> *… the definition* [of water storage (dam)] *allows for low risk land use activities to not be regulated by the RPI Act, while at the same time protecting the integrity of strategic environmental areas (SEA). The application of generic minimum thresholds that do not consider the context in which they are used has potential risks of unintended consequences and degradation of the integrity of the SEAs. Consequently, the scale, intensity, and if applicable the cumulative impacts of multiple water storages (as defined) needs to be considered in the context of the location(s) in which they are being proposed.*
>
> *DSDIP has prepared a number of guidelines to support the implementation of the RPI Act, and these guidelines provide further explanation about how to apply these terms. DSDIP continues to work with stakeholders to review and improve these guidelines where appropriate.*

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22 Queensland Law Society, Submission No. 12; AgForce, Submission No. 6. See also RPI Act Guideline 05/14.

23 The other two unacceptable uses for a designated precinct in a strategic environmental area are broadacre cropping and, if the designated precinct is in the Cape York SEA, a mining resource activity: Schedule 2, s 15(2).

24 MMG Century Limited, Submission No. 5.

25 Queensland Law Society, Submission No. 12.

26 Section 11(3).

27 *RPI Act Guideline 05/14: Carrying out resource activities and regulated activities in a strategic environmental area*, 21 July 2014, p 3.

28 Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014, p 2.

The department advised the committee that the Macquarie Dictionary is sufficient to provide the meaning for open cut mine.[29]

Footprint

Clause 3(3)(c) of Schedule 2 refers to the 'footprint' of an activity on the part of a property used for a Priority Agricultural Land Use (PALU). The QFF and AgForce noted that footprint is not defined and QFF commented that this will lead to uncertainty. Given that mining infrastructure may limit agricultural activities in areas beyond the physical infrastructure,[30] QFF recommended that the term 'footprint' be defined in the Regulation 'to include physical, legal and other encumbrances that will impact on agricultural operations'.[31] AgForce made a similar suggestion.

Committee comment

The committee accepts the department's position with respect to definitions of 'open cut mine' and 'water storage (dam)'. However, the committee remains concerned that stakeholders, such as Queensland Farmers' Federation and AgForce whose members have to comply with the Regulation, are uncertain about the meaning of terms including 'broadacre cropping', 'footprint' and various terms relating to impacts. Accordingly, the committee recommends the Act's guidelines be amended to provide greater clarity to 'broadacre cropping' and 'footprint' and the various terms relating to impacts.

Recommendation 1

The committee recommends the *Regional Planning Interests Act 2014* guidelines be amended to provide greater clarity to 'broadacre cropping', 'footprint' and the various terms relating to impacts.

2.3 Mapping

Interactive maps on website

The interactive mapping facilities on the department's website enable a user to search using a street address or lot on plan number to find out certain planning information about their property at different scales. The mapping system can, amongst other things, show areas of regional interest.[32]

The department acknowledged the maps were difficult to find on the website and advised the committee that it had made changes to make the website more user friendly.[33] The committee is pleased with this outcome which will benefit all potential users.

The Queensland Environmental Law Association (QELA) was supportive of the interactive mapping available on the department's website but considered it could be made even better by incorporating point in time mapping to assist any litigation.[34]

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[29] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014, p 2.

[30] For example, a gas well may physically impact on an area of 100m^2 but the need for regular access for monitoring and maintenance may mean that at least 10,000m^2 is actually impacted: Queensland Farmers' Federation, Submission No. 13.

[31] Queensland Farmers' Federation, Submission No. 13; AgForce, Submission No. 6.

[32] The DA mapping system is available via http://www.dsdip.qld.gov.au/about-planning/da-mapping-system.html.

[33] Public briefing transcript, 3 July 2014, p 8.

[34] Queensland Environmental Law Association, Submission No. 9.

The department advised:[35]

> *All current and superseded versions of mapping data will be made publicly available through the Queensland government's open data program. Alternatively, requests can be made to DSDIP for superseded maps or data of a priority living area (PLA), priority agricultural area (PAA) and a SEA. Copies of superseded maps of the strategic cropping area (SCA) can be requested from the Department of Natural Resources and Mines.*

Process for amending strategic environmental area maps

Section 4 of the Regulation prescribes five areas in Queensland as strategic environmental areas (SEAs). The SEA map is the map identifying the area that is held by the department and published on its website.

Many submitters raised concerns with respect to mapping, particularly the lack of a process for amending SEA maps.[36]

There is no legislative process for amending SEA maps. This is in contrast to areas of regional interest that are mapped in regional plans.[37] The department's intention is that there would be consultation on SEA boundaries when the relevant regional plans are prepared and that SEAs would only be prescribed by regulation until such time.[38]

Stakeholders were generally in agreement that there should be a transparent process for amending SEA boundaries. It was variously suggested that the process could be based on:

- the process contained in the *Vegetation Management Act 1999* [39]
- the process that was included in the now repealed *Strategic Cropping Land Act 2011*,[40] or
- the process for the amendment of maps contained in a finalised regional plan.[41]

AgForce argued there should be reviews to ensure the accuracy of the identified areas.[42] According to AgForce, the current SEA maps, particularly those for Cape York and the Channel Country, include significant areas of land with potential for sustainable agricultural development.[43]

The department advised that any request to amend an SEA prescribed by regulation would be dealt with by considering the merits of the proposal by gathering evidence and consulting with the

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35 Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.

36 See, for example, MMG Century Limited, Submission No. 5; AgForce, Submission No. 6; Queensland Environmental Law Association, Submission No. 9; The Wilderness Society Qld Inc, Submission No. 10; Queensland Resources Council, Submission No. 11; Queensland Law Society, Submission No 12; Environmental Defenders Office Qld, Submission No. 14; Yancoal Australia Ltd, Submission No. 15; Property Rights Australia, Submission No. 17; Basin Sustainability Alliance, Submission No. 18; Environmental Defenders Office Qld, Correspondence dated 25 September 2014. The initial mapping of SEAs is discussed below. Priority Agricultural Areas can be prescribed under regulation (*Regional Planning Interests Act 2014*, s 8) but as yet none have been prescribed.

37 The requirements for making and amending regional plans are provided for by Chapter 2 of Part 6 of the *Sustainable Planning Act 2009*. The department advised the committee that the SEAs are prescribed in the Regulation because the relevant regional plans have not yet been prepared: Department of State Development, Infrastructure and Planning, Correspondence dated 11 July 2014.

38 Public briefing transcript, 3 July 2014, p 12.

39 Queensland Law Society, Submission No. 12.

40 Yancoal Australia Ltd, Submission No. 15.

41 Environmental Defenders Office Qld, Submission No. 14. See also, Environmental Defenders Office Qld, Correspondence dated 25 September 2014.

42 AgForce, Submission No. 6.

43 AgForce, Submission No. 6.

environment and natural resources agencies. The department would then present a recommendation to the Government and the Minister would make a decision.[44]

The department further advised that if the Government proposes to amend an area of regional interest prescribed by regulation:[45]

> *.. this will undergo the regulatory amendment process that includes tabling the amended Regulation in the Legislative Assembly.*
>
> *… it is intended that a process similar to that contained in SPA for amending a regional plan will be followed. This would include preparing the draft amendment, notifying the draft amendment, considering public submissions on the draft amendment, and then deciding whether to proceed with the draft amendment. If a Regional Planning Committee is established for the relevant region, the Committee would be consulted as appropriate.*
>
> *In regards to the Channel Country SEA, the Gulf Rivers SEA, the Fraser Island SEA and the Hinchinbrook Island SEAs, the government has committed to revise these areas only through a statutory regional planning process.*

Notification of changes to maps

QELA suggested that if changes are made to mapping, the public, especially landholders who were not previously affected by the Act, should be notified.[46] Further, it would be useful if reasons were published for including new areas.[47]

The department told the committee that e-alerts are currently sent to stakeholders to advise of changes to mapping but they do not contain reasons for the changes.[48] The Wilderness Society considered that an e-alert is 'a poor substitute' for the Minister reporting to Parliament on the change and the reasons for it.[49]

Committee comment

The committee is pleased the department has taken note of stakeholder feedback and made the interactive planning maps on its website more accessible.

The committee considered recommending a legislative amendment to provide for a process to amend SEA maps but decided against it on the basis that the prescription of SEAs in the Regulation is only an interim measure until the relevant regional plans are prepared. The committee was swayed by the department's assurance that the SEAs will be reviewed as part of the regional planning process and by the department's advice that if the Government plans to amend an SEA map, it will follow a process similar to that in the *Sustainable Planning Act 2009* and will table an amendment regulation in the Legislative Assembly.

The committee recommends the department include the reason for changes to maps in its e-alerts to stakeholders.

Recommendation 2
The committee recommends the Department of State Development, Infrastructure and Planning includes the reasons for changes to maps in its e-alerts to stakeholders.

[44] Public briefing transcript, 3 July 2014, p 10.
[45] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.
[46] See also, Queensland Resources Council, Submission No. 11.
[47] Queensland Environmental Law Association, Submission No. 9. See also, The Wilderness Society Qld Inc, Submission No. 10.
[48] Public briefing transcript, 3 July 2014, pp 6-7.
[49] The Wilderness Society Qld Inc., Submission No. 10.

2.4 Regionally significant water source

Section 3 of the Regulation prescribes the Condamine Alluvium as a regionally significant water source for section 8(3) of the *Regional Planning Interests Act 2014* (the Act).

Property Rights Australia (PRA) submitted that other water sources should also be prescribed so that they too can be provided with the protection offered by the Regulation.[50] PRA did not, however, nominate which water sources should be included.[51]

Yancoal Australia Ltd (Yancoal) contended that the regulation of impacts on the Condamine Alluvium under the Regulation 'duplicates existing State and Commonwealth Regulation of impacts to water sources' because proponents are conditioned under their environmental authority, water licence and/or federal environmental approval. Accordingly, Yancoal suggested the Condamine Alluvium should not be prescribed as a regionally significant water course.

The department considered that the prescription of the Condamine Alluvium as a regionally significant water source does not duplicate the regulation of the water source; rather, it addresses 'land use planning aspects that may be impacted by changes to the availability of the water source to agricultural land uses in the region.' The department is, however, willing to 'consider any alternative options proposed for managing regionally significant water sources, which do not duplicate other existing regulatory requirements.'[52]

Committee comment

The committee is satisfied the prescription of the Condamine Alluvium will assist with its protection.

2.5 Strategic Environmental Areas and their environmental attributes

An SEA is an area that:[53]

- contains one or more environmental attributes for the area, and
- is either:
    - shown on a map in a regional plan as an SEA, or
    - prescribed under regulation.

Section 4 of the Regulation prescribes the following as an SEA:

- the part of Cape York Peninsula identified on the SEA map for the area (the Cape York SEA)
- the part of the Channel Country identified on the SEA map for the area (the Channel Country SEA),
- the part of Fraser Island identified on the SEA map for the area (the Fraser Island SEA),
- the part of the Gulf Country identified on the SEA map for the area (the Gulf Rivers SEA), and
- the part of Hinchinbrook Island identified on the SEA map for the area (the Hinchinbrook Island SEA).

[50] Property Rights Australia, Submission No. 17.
[51] Property Rights Australia, Submission No. 17.
[52] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.
[53] *Regional Planning Interests Act 2014*, s 11.

An environmental attribute for an area means an attribute of the environment identified as an environmental attribute for the area under a regional plan or regulation.[54] The environmental attributes are prescribed in sections 6 – 10 of the Regulation. They were prepared by the department working in collaboration with the Department of Natural Resources and Mines.[55]

The SEAs generally reflect the former Wild Rivers Areas, except in the Channel Country. The Channel Country area was changed as a result of consultation undertaken by the Western Rivers Advisory Panel.[56] It now covers a much smaller area (the SEA is 6,455,300ha; the declared Wild River Area was 49,702,500ha) but is entirely identified as a 'designated precinct'.[57] The Cape York SEA reflects the four wild river areas that were in place at the time the *Regional Planning Interests Act 2014* commenced on 13 June 2014, the inclusion of certain parts of the Steve Irwin Wildlife Reserve and some other minor changes.[58]

AgForce submitted that the Act or Regulation should specify a process involving local stakeholders to map the SEAs, the designated precincts and specify the environmental attributes.[59]

The Great Barrier Reef Marine Park Authority (GBRMPA) was concerned that the Regulation does not prescribe the Great Barrier Reef (GBR) catchment as an SEA and therefore it will only be protected under the Act's framework if it is shown on a regional plan as an SEA. GBRMPA submitted that because the GBR catchment spans the six regional plan areas and the regional plans are not sufficiently integrated, this shows 'little regard to the importance of natural hydrological processes and their role in supporting ecological processes and health of the Great Barrier Reef World Heritage Area'.[60]

The Wilderness Society recommended including 'geomorphology' for the Channel Country SEA. It contended that geomorphology is relevant 'given the large flood events and potential for key waterholes to be filled [with] sediment, resulting in less refugia habitat during dry periods. The risk … is significantly higher than for Cape York and Fraser Island.'[61]

Committee comment

The committee considers that AgForce's concerns with respect to SEAs and their environmental attributes will be addressed through the preparation of regional plans. As noted above, the department's intention is that the SEAs and their environmental attributes will only be prescribed in regulation until the relevant regional plans have been prepared.

The committee seeks clarification from the department in relation to:

- whether it considered prescribing the GBR catchment as an SEA, and
- whether it considered including 'geomorphology' as an environmental attribute for the Channel Country SEA.

54 *Regional Planning Interests Act 2014*, s 11(2).
55 Public briefing transcript, 3 July 2014, p 11.
56 Public briefing transcript, 3 July 2014, pp 2 - 3.
57 Department of State Development, Infrastructure and Planning, Correspondence dated 11 July 2014.
58 Public briefing transcript, 3 July 2014, pp 2 – 3.
59 AgForce, Submission No. 6.
60 Australian Government, Great Barrier Reef Marine Park Authority, Submission No. 4.
61 The Wilderness Society Qld Inc, Submission No. 10.

Point for clarification 1

The committee seeks clarification from the Department of State Development, Infrastructure and Planning in relation to:

(a) whether it considered prescribing the Great Barrier Reef catchment as a strategic environmental area, and

(b) whether it considered including 'geomorphology' as an environmental attribute for the Channel Country strategic environmental area.

2.6 Regulated activities

A regulated activity, for an area of regional interest, is prescribed by regulation for the area and is an activity likely to have a widespread and irreversible impact on the area of regional interest. Section 11 of the Regulation prescribes 'broadacre cropping' and 'water storage (dam)' as regulated activities for an SEA.[62]

AgForce did not support the prescription of broadacre cropping and water storage (dam) as regulated activities. It considered there are sufficient regulatory tools to manage significant, widespread impacts and that it would be more appropriate for decisions regarding broadacre cropping and water storages (dam) to be made on a case by case basis.[63]

PRA submitted that '[s]mall parcels of land with a small water allocation used to irrigate for hay used locally should be excluded from the regulated activities.'[64]

Committee comment

The committee is satisfied with the prescription of broadacre cropping and water storage (dam) as regulated activities.

2.7 Referable assessment applications, assessing agencies and their functions

An applicant who intends to carry out a resource activity or a regulated activity in an area of regional interest may apply for a regional interests development approval (RIDA) for the activity to be carried out in the area (an assessment application).[65]

Section 12(1) of the Regulation provides, for the purposes of sections 26(1) and 40 of the Act, that Schedule 1 states the assessing agency or agencies for an assessment application for the area of regional interest, and their functions.

Section 12(2) provides, for the purposes of section 39(2) of the Act, that an assessment application is referable if the activity is proposed to be carried out in an area of regional interest mentioned in Schedule 1.

For example, the natural resources department is the assessing agency for a priority agricultural area that includes one or more regionally significant water sources. The department's function is to assess 'the expected impact of the activity on land used for a priority agricultural land use because of the activity's impact on a regionally significant water source in the priority agricultural area'.[66]

The Basin Sustainability Alliance (BSA) and PRA suggested that the agriculture department, rather than the natural resources department, should be the assessing agency for strategic cropping areas

[62] The definitions of 'broadacre cropping' and 'water storage (dam) are discussed above.
[63] AgForce, Submission No. 6.
[64] Property Rights Australia, Submission No. 17.
[65] *Regional Planning Interests Act 2014*, s 28(2).
[66] Schedule 1.

on the basis the agriculture department has more expertise to ensure consistency with the assessment of priority agricultural areas.[67]

Ipswich City Council submitted that the role of local government is unclear if it is not the assessing agency.[68]

Committee comment

The committee encourages the department to continue to work with local governments and their representative bodies to ensure local governments are aware of their role under the Act and Regulation.

2.8 Notifiable assessment applications

An assessment application is notifiable if a regulation prescribes it as notifiable and an exemption is not granted.

Section 13(1) of the Regulation provides:

- for section 34(2)(a) of the Act, an assessment application is notifiable if the area of regional interest in which the resource activity is proposed to be carried out is a priority living area,
- for section 35(1)(a) of the Act, the way in which an applicant must publish a notice about a notifiable assessment application is at least once in a newspaper circulating generally in the area of the land, and
- for section 35(4) of the Act, the notification period for a notifiable assessment application is 15 business days after the notice about the application is first published under section 13(2) of the Regulation.

An assessment application is also notifiable if the chief executive has given the applicant a requirement notice requiring the applicant to notify the application.[69]

If an assessment application is notifiable, the applicant must publish a notice about the assessment application in the way prescribed under a regulation and, if the applicant is not the owner of the land, give the owner a notice about the application.[70] The notice must comply with specified requirements.[71]

If an application is notifiable, submissions may be lodged with an assessor for the application.[72]

The Wilderness Society, Environmental Defenders Office (EDO Qld), PRA, Ipswich City Council and the BSA noted that assessment applications are only notifiable if the resource activity is proposed to be carried out in a priority living area.[73] Therefore, unless the chief executive requires notification of assessment applications in PAAs, SEAs and SCAs in accordance with section 34(4) of the Act, the

[67] Property Rights Australia, Submission No. 17; Basin Sustainability Alliance, Submission No. 18.
[68] Ipswich City Council, Submission No. 2.
[69] *Regional Planning Act 2014*, s 34.
[70] *Regional Planning Act 2014*, s 35(1).
[71] See *Regional Planning Act 2014*, s 35(2) – (4).
[72] *Regional Planning Act 2014*, s 35(3).
[73] The Wilderness Society Qld Inc., Submission No. 10; Environmental Defenders Office Queensland, Submission No. 14; Property Rights Australia, Submission No. 17; Basin Sustainability Alliance, Submission No. 18; Ipswich City Council, Submission No. 2.

community would not be provided with the opportunity to comment.[74] Accordingly, the submitters recommended that all applications for an RIDA be publicly notified.[75]

AgForce was concerned that a landholder's position with respect to resource or regulated activities in a PAA and SCA may not be taken into account by an assessor because there is no opportunity, other than through the applicant, for landholders to put forward their views. AgForce recommended that there be a requirement for an assessor to consult directly with affected landholders.[76]

The department advised the committee that in deciding whether to require an application in a PAA, SCA or SEA to be publicly notified, the chief executive considers factors including:[77]

- the likely impact of the proposed activity on the area of regional interest,
- whether the project has undergone public notification within the previous 12 months,
- whether the previous notification process included the land the subject of the application,
- whether the previous notification process detailed the surface level impacts of the activity that is the subject of the application,
- whether the previous notification process provided sufficient information about matters relating to the relevant area of regional interest, and
- the level of community concern about the proposed activity's impact on the area of regional interests as evidenced by submissions received through the previous notification process.

Committee comment

The committee is not convinced that notification is not required for applications relating to PAAs, SCAs and SEAs. The committee recommends the Regulation be amended to require notification for all RIDA applications unless an exemption is granted under section 34(3) of the *Regional Planning Interests Act 2014*.

Recommendation 3

The committee recommends the Regulation be amended to require notification for all regional interest development approval applications unless an exemption is granted under section 34(3) of the *Regional Planning Interests Act 2014*.

2.9 Assessment criteria

Section 14 of the Regulation prescribes certain criteria for an assessment or decision on an assessment application.[78]

The assessor must be satisfied the activity meets the applicable required outcome stated in Schedule 2 for the area of regional interest to which the application relates. The activity meets a

[74] See *Regional Planning Act 2014*, s 41(2)(c).

[75] Note, however, the Basin Sustainability Alliance and Property Rights Australia referred only to PLAs, PAAs and SCAs.

[76] AgForce, Submission No. 6.

[77] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014, p 3. See also, *RPI Act Guideline 06/14: Public notification of assessment applications*.

[78] See *Regional Planning Act 2014*, ss 41(2)(b) and 49(1)(b).

required outcome for the area of regional interest only if the application demonstrates the matters listed in a prescribed solution stated in Schedule 2 for the required outcome.[79]

MMG and the Queensland Resources Council (QRC) expressed concern that there is no scope for an assessor to consider alternative solutions.[80] MMG suggested inserting greater flexibility in the Regulation because the mandatory criteria in Schedule 2 'will substantially impact current and future development opportunities in the Gulf Rivers SEA'.[81] Further, MMG considered that proponents of new mining developments will 'face substantial difficulty and expense in demonstrating a prescribed solution can be met, particularly as it relates to environmental attributes such as natural hydrologic processes, natural geomorphic processes and natural water quality'.[82]

Yancoal recommended inserting an element of reasonableness into the assessment criteria. For example, section 3(3)(b) of Schedule 2 should be amended to read, 'the activity cannot reasonably be carried out on other land that is not used for a PALU'.[83]

In response to the resource companies' concerns, the department stated that the prescribed solutions 'are drafted in a performance-based way that provides an appropriate level of flexibility for proponents to demonstrate compliance'.[84]

Preliminary

Part 1 of Schedule 2 defines 'pre-activity condition', 'property (SCL)', 'used' and 'permanent impact' for the schedule.

AgForce is supportive of the 3 years in previous ten years' test in the definition of 'used'[85] but PRA is concerned that an applicant can purchase land 8 years prior to the application and not use it for a PALU then be permitted to use the land for a resource activity or a regulated activity. It recommended amendments to overcome this.[86] BSA expressed reservations about the definition on the basis that land may be productive but unused for a number of years.[87]

PRA raised questions about the definition of 'pre-activity condition', such as who would do the testing, and asserted the definition 'does not appear to allow for the history of land use on that property, local knowledge and the production on neighbouring properties'.[88]

Priority agricultural area

Part 2 of Schedule 2 sets out two required outcomes and prescribed solutions relating to PAAs:

- Required outcome 1 – managing impacts on use of property for priority agricultural land use in priority agricultural area, and
- Required outcome 2 – managing impacts on a region in relation to use of an area in the region for a priority agricultural land use.

79 Section 14(2) – (3).
80 Queensland Resources Council, Submission No. 11; MMG Century Limited, Submission No. 5.
81 MMG Century Limited, Submission No. 5.
82 MMG Century Limited, Submission No. 5.
83 Yancoal Australia Ltd, Submission No. 15.
84 Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014, p 4.
85 'Used' for land or property in relation to a priority agricultural land use, means the land or property has been used for a PALU for at least three years during the ten years immediately before an assessment application is made in relation to the land.
86 Property Rights Australia, Submission No. 17.
87 Basin Sustainability Alliance, Submission No. 18.
88 Property Rights Australia, Submission No. 17.

Required outcome 1

If the activity is to be carried out on a property in a PAA, required outcome 1 (RO 1) is that the activity will not result in a material impact on the use of the property for a priority agricultural land use (PALU).

There are two alternative prescribed solutions for RO 1:

- the activity will not be located on land that is used for a PALU, or
- the application demonstrates all of the following:
    - if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner, the application demonstrates all of the following:
        - the applicant has taken all reasonable steps to consult and negotiate with the owner, and
        - carrying out the activity on the property will not result in a loss of more than 2% of both:
            - the land on the property used for a PALU, and
            - the productive capacity of any PALU on the property
    - the activity cannot be carried out on other land that is not used for a PALU,
    - the construction and operation footprint of the activity is minimised to the greatest extent possible,
    - the activity will not constrain, restrict or prevent the ongoing conduct on the property of a PALU,
    - the activity is not likely to have a significant impact on the PAA, and
    - the activity is not likely to have an impact on land owned by a person other than the applicant or the owner of the land the subject of the application.

Required outcome 2

If the activity is to be carried out on two or more properties in a PAA in a region, required outcome 2 (RO 2) is that the activity will not result in a material impact on the region because of the activity's impact on the use of land in the PAA for one or more PALUs.

To meet the prescribed solution for RO 2, the application must demonstrate all of the following:

- if the activity is to be carried out in a PAA – the activity will contribute to the regional outcomes, and be consistent with the regional policies stated in the regional plan,
- the activity cannot be carried out on other land in the region that is not used for a PALU,
- the construction and operation footprint of the activity on the area in the region used for a PALU is minimised to the greatest extent possible,
- the activity will not result in widespread or irreversible impacts on the future use of an area in the region for one or more PALUs, and
- the activity will not constrain, restrict or prevent the ongoing use of an area in the region or one or more PALUs.

If the activity is to be carried out in a PAA that includes a regionally significant water source and it is likely to produce Coal Seam Gas (CSG) water or associated water, the application must demonstrate

the applicant has a strategy or plan for managing the water that provides for the net replenishment of the regionally significant water source.[89]

For each property on which the activity is to be carried out if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner, the application must demonstrate the matters listed in Schedule 2, section 3 for a prescribed solution for RO 1 for the property.

Stakeholder views

AgForce 'strongly supports':[90]

- the requirement for regional level and property level assessments to apply to proposed activities that are carried out on two or more properties, and
- the required outcome that a proposed activity not constrain, restrict or prevent the ongoing conduct on the property of PALU (Schedule 2, section 3(3)(d)).

It does not, however, support permanent impacts on PAA nor does it believe that economic implications for the resource proponent should be the deciding factor in determining whether an activity cannot be carried out on other land that is not used for a PALU.[91]

QFF and AgForce advocate specifying a separate criterion in the Regulation requiring no change or interference with 'overland flow' natural paths and volumes, as opposed to being mentioned in the guideline.[92]

QFF explained:[93]

> *The control of overland flow of surface water is a major concern to intensive, irrigated farming operations to avoid soil erosion, waterlogging and interference with irrigation activities.*

Yancoal contended that sections 5(5) and (6) of Schedule 2 should be amended so that proponents are not required to satisfy both 'regional level' and 'property level' criteria in respect of an RIDA application.[94]

Regionally significant water source

Friends of Felton were of the view that the prescribed solution for RO 2 is 'completely inadequate' as far as it provides for the net replenishment of a regionally significant water source. The group quoted research indicating that there are 'significant impediments' to reinjecting coal seam gas water, such

[89] 'CSG water' means underground water brought to the surface of the earth in connection with exploring for or producing coal seam gas under a petroleum tenure: *Petroleum and Gas (Production and Safety) Act 2004*, Schedule 2. 'Associated water' means underground water taken or interfered with, if the taking or interference happens during the course of, or results from, the carrying out of an activity authorised under a mineral development licence or mining lease: Schedule 2, s 5(7). 'Net replenishment' of a regionally significant water source is the replacement to the water source, whether directly or indirectly, of all water that is no longer available for a priority agricultural land use in a PAA because carrying out a resource activity in the area produces CSG water or associated water: Schedule 2, s 5(4).

[90] AgForce, Submission No. 6.

[91] See Schedule 2, s 3(3)(b).

[92] AgForce, Submission No. 6; Queensland Farmers' Federation, Submission No. 13. *RPI Act Guideline 02/14: Carrying out resource activities in a priority agricultural area*, p 4.

[93] Queensland Farmers' Federation, Submission No. 13.

[94] Yancoal Australia Ltd, Submission No. 15.

as clogging, low permeability of aquifer parent material and the inability to inject into the same aquifer as extraction occurs.[95]

BSA noted that there is no mention in the Regulation of having a strategy in place for by-product or waste from associated water. It recommended that the Regulation include requirements for the quality of the water used in the net replenishment of a regionally significant water source.[96]

Priority living area

The required outcome for a priority living area is that the location, nature and conduct of the activity is compatible with the planned future for the priority living area stated in a planning instrument under the *Sustainable Planning Act 2009*. The prescribed solution will be met if the application demonstrates each of the following:

- the activity is unlikely to adversely impact on development certainty:
    - for land in the immediate vicinity of the activity, and
    - in the priority living area generally, and
- carrying out the activity in the priority living area, and in the location stated in the application, is likely to result in community benefits and opportunities, including, for example, financial and social benefits and opportunities.

Friends of Felton questioned whether local governments 'have the expertise and capacity to conduct … full social impact assessment[s]' of proposed developments.[97]

Strategic cropping area

Part 4 of Schedule 2 sets out three required outcomes and prescribed solutions relating to SCAs:

- Required outcome 1 – no impact on strategic cropping land,
- Required outcome 2 – managing impacts on strategic cropping land on property (SCL) in the strategic cropping area,[98] and
- Required outcome 3 – managing impacts on strategic copping land for a region.

<u>Required outcome 1</u>

Required outcome 1 (RO 1) stipulates that the activity will not result in any impact on strategic cropping land in the strategic cropping area. The prescribed solution for RO 1 is that the application demonstrates the activity will not be carried out on strategic cropping land that meets the criteria stated in Schedule 3, Part 2.[99]

<u>Required outcome 2</u>

Required outcome 2 (RO 2) is that the activity will not result in a material impact on strategic cropping land on the property (SCL). It applies if the activity does not meet RO 1 and is being carried out on a property (SCL) in the strategic cropping area (SCA).

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95 Friends of Felton, Submission No. 8.

96 Basin Sustainability Alliance, Submission No. 18.

97 Friends of Felton, Submission No. 8.

98 'Property (SCL)', in the strategic cropping area, is defined in Schedule 2, section 1 as a single lot; or otherwise – all the lots that are owned by the same person or have 1 or more common owners and – are managed as a single agricultural enterprise, or form a single discrete area because one log is adjacent, in whole or in part, to another lot in that single discrete area (other than for any road or watercourse between any of the lots).

99 The criteria address matters such as slope, rockiness and salinity.

To satisfy the prescribed solution for RO 2, the application must demonstrate all of the following:

- if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner – the applicant has taken all reasonable steps to consult and negotiate with the owner of the land about the expected impact of carrying out the activity on strategic cropping land,
- the activity cannot be carried out on land that is not strategic cropping land,
- the construction and operation footprint of the activity on strategic cropping land on the property (SCL) is minimised to the greatest extent possible, and
- if the activity will have a permanent impact on strategic cropping land on a property (SCL) – no more than 2% of the strategic cropping land on the property (SCL) will be impacted.

Required outcome 3

Required outcome 3 (RO 3) requires that the activity will not result in a material impact on strategic cropping land in an area in the strategic cropping area. It will apply if the activity does not meet RO 1 or is being carried out on two or more properties (SCL) in the strategic cropping area.

To satisfy the prescribed solution for RO3, the application must demonstrate all of the following:

- the activity cannot be carried out on other land in the area that is not SCL,
- if there is a regional plan for the area – the activity will contribute to the regional outcomes, and be consistent with the regional policies stated in the regional plan,
- the construction and operation footprint of the activity on SCL is minimised to the greatest extent possible, and
- either:
    - the activity will not have a permanent impact on the SCL in the area, or
    - the mitigation measures proposed to be carried out if the chief executive decides to grant the approval and impose an SCL mitigation condition.

The application must demonstrate the matters listed in Schedule 2, section 11 for a prescribed solution for RO 2 for each property (SCL) on which the activity is to be carried out if the applicant is not the owner of the land and has not entered into a voluntary agreement with the owner.

Stakeholder views

Rio Tinto Coal Australia Pty Limited (RTCA) considered that sections 12 and 13 of Schedule 2 (RO 3) 'provide greater certainty to RTCA's interests'. RTCA advised, however, that RO3 will seldom be available to RTCA because it has historically purchased land on which the resource activities would take place. It noted that these areas will be treated as one 'property (SCL)' under the Regulation because of the operation of paragraph (b)(ii) of the definition of 'property (SCL)'.[100]

According to RTCA, in RO 2 and RO 3, the determination of whether there is a material impact on strategic cropping land should take into account the conditions that are to be imposed on the activity and the mitigation for the impact.[101]

RTCA submitted that the requirement in Schedule 2, section 13(1)(b) (i.e. if there is a regional plan for the area in which the activity is to be carried out – the activity will contribute to the regional outcomes, and be consistent with the regional policies, stated in the regional plan) should be

[100] Rio Tinto Coal Australia Pty Limited, Submission No. 1.
[101] Rio Tinto Coal Australia Pty Limited, Submission No. 1.

removed as regional plans contain imprecise outcomes, some of which are not relevant to 'areas of regional interest'. RTCA held the view that assessment against imprecise outcomes creates unnecessary uncertainty.[102]

QFF recommended amending subsections 13(2) and s 13(3) of Schedule 2 so that the limits of impact from activities on PALU and SCA apply to all applicants, regardless of whether they are the landowner or not.[103]

PRA supports a return to a simpler classification system – Good Quality Agricultural Land – but comments that the provisions in Part 4 of Schedule 2 are an improvement on the repealed SCL Act.[104]

Priority agricultural land use in a priority agricultural area in the strategic cropping area

When there is a PALU in a PAA that is in the SCA, the assessor only needs to be satisfied the activity meets the applicable required outcome for the PAA.[105] QFF considers this difference could have the effect of providing an incentive for a resource proponent to locate its temporary impact activities on an SCA that are not a PALU, thus increasing the impact on the SCA. It recommended a consistent approach across PALU and SCL by limiting any impacts from a resource activity on SCL or PALU to less than 2%.[106]

Ipswich City Council submitted that 'the triggers' in section 14 are particularly unclear with regard to the provisions that would be required to be addressed for strategic cropping land which is located in a PAA.[107]

Impact limits on PALU and SCL

QFF drew attention to the differences in drafting between the provisions relating to a PAA and those relating to a SCA, both in the use of the words 'permanent impact' (referring to SCL) compared with 'loss' of land and productive capacity (referring to PALU) and the way in which ownership of land impacts on the necessity to comply with the 2% restriction.[108]

RTCA considered that the 2% restriction in an SCA 'has the potential to significantly constrain future development of RTCA's managed exploration and mineral development tenements throughout Queensland.'[109] It proposed that the Regulation be amended to provide the 2% restriction applying to SCL should not apply where the applicant is the owner of the land or the applicant has obtained the owner's voluntary consent.[110] RTCA argued this on the basis that:[111]

- the prescribed solution is inconsistent with those for PAAs.
- resource companies should not be disadvantaged for past purchases of land.
- the repealed *Strategic Cropping Land Act 2011* did not restrict permanent impacts on SCL in 'management areas', and
- 'the distinction between one 'property (SCL)' and multiple 'properties (SCL)' appears to be arbitrary for the purpose of the 2% limit, given there is no minimum lot size for a 'property (SCL)'.

[102] Rio Tinto Coal Australia Pty Limited, Submission No. 1.
[103] Queensland Farmers' Federation, Submission No. 13.
[104] Property Rights Australia, Submission No. 17.
[105] Section 14(4).
[106] Queensland Farmers' Federation, Submission No. 13.
[107] Ipswich City Council, Submission No. 2.
[108] Queensland Farmers' Federation, Submission No. 13.
[109] Rio Tinto Coal Australia Pty Limited, Submission No. 1.
[110] Ibid.
[111] Ibid.

The department advised:[112]

> *… the two per cent limits on impacts to PALU and SCL are drafted differently to reflect the different roles the PAA and SCA play in protecting the agricultural sector and the extent that the government has determined to intercede in land use matters between resource and agricultural sectors.*

AgForce and the QFF are concerned that pursuant to Part 2 of Schedule 2, an applicant for an RIDA who is the owner of the land is not subject to the activity being limited to a loss of no more than 2% of:

- the land on the property used for a PALU, and
- the productive capacity of any PALU on the property.

The organisations are similarly concerned that section 13(2) of Schedule 2 means that the 2% limit does not apply if the applicant is the owner of two or more properties (SCL).[113] QFF and AgForce considered that the provisions 'could incentivise resource proponents to acquire valuable agricultural land in order to avoid the 2pc impact caps being applied and so result perversely in greater impacts on PALU and SCA, contrary to the intention of the RPI framework.'[114] QFF recommended the Regulation be amended so that the limits of impact from activities on PALU and SCA apply to all applicants, regardless of whether they are the land owner or not.

With respect to the 2% impact on PALU and SCL, the department advised:[115]

> *The PAA protects existing agricultural land uses. In order to do this, negotiation with land owners about the operation and management of the property is crucial. The government has committed not to impose more than a two per cent impact on a PALU without the agreement of the land owner. So the PAA assessment criteria (schedule 2, section 3(3)(ii)) has been drafted to ensure that the impact on a PALU is limited to two per cent, unless there is land owner agreement.*
>
> *The SCA protects Queensland's best cropping soils which are a limited natural resource. In doing so, SCA protects land that may not currently be used for cropping but may be used for cropping or other agricultural activities in the future. The two per cent limit to impacts on SCL is included in schedule 2, section 11(d). For applications over one property this limit applies whether the applicant owns the land or not. For applications over more than one property, this limit applies only where the applicant is not the owner of the land and does not have the agreement of the land owner. These provisions ensure that land owners get a say about the level of impact on their property.*

Friends of Felton questioned how the figure of 2% was determined and stated:[116]

> *The criss-crossing of gas and water pipelines, access roads, bore infrastructure and signs, may only result in a 2% footprint, but the fact that they could be spread over an entire property will have dramatic impacts of 'workability' of an operation.*

PRA considered that voluntary agreements should not be a part of the Act and Regulation. However if they were to remain, PRA was of the view that 'there should be minimum safe-guard for these agreements to ensure Landholders [will] be reimbursed for their reasonable professional costs e.g. agronomist, independent legal advice, accounting advice to ensure [l]andholders fully understand

[112] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.
[113] AgForce, Submission No. 6.
[114] AgForce, Submission No. 6. See also, Queensland Farmers' Federation, Submission No. 13.
[115] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.
[116] Friends of Felton, Submission No.8.

the implications of entering into a voluntary agreement and to ensure no coercion or misleading or deceptive conduct by resource companies.'[117]

Strategic environmental area

The required outcome for a strategic environmental area (SEA) is that the activity will not result in a widespread or irreversible impact on an environmental attribute of an SEA. To achieve the prescribed solution, the application must demonstrate either:

- the activity will not, and is not likely to, have a direct or indirect impact on an environmental attribute of the SEA, or
- all of the following:
    - if the activity is being carried out in a designated precinct in the SEA – the activity is not an unacceptable use for the precinct,[118]
    - the construction and operation footprint of the activity on the environmental attribute is minimised to the greatest extent possible,
    - the activity does not compromise the preservation of the environmental attribute within the SEA, and
    - if the activity is to be carried out in an SEA identified in a regional plan – the activity will contribute to the regional outcomes, and be consistent with the regional policies, stated in the regional plan.

Unacceptable uses for a designated precinct in an SEA are:

- if the designated precinct is in the Cape York SEA – a mining resource activity,
- open cut mining,
- broadacre cropping, and
- water storage (dam).

The submission lodged on behalf of Australia Zoo and the Steve Irwin Wildlife Reserve Steering Committee expressed support for section 15(2)(a) of Schedule 2 which prescribes mining resource activity as an unacceptable use in a designated precinct in the Cape York SEA.[119]

EDO Qld noted that most of the SEAs are not designated precincts and recommended that unacceptable uses should be prohibited in the whole of an SEA, not just the designated precincts.[120]

The Wilderness Society was concerned that unacceptable uses may be permitted in designated precincts. If a proponent is able to satisfy 15(1)(a) (i.e. show that the activity will not, and is not likely to, have a direct or indirect impact on an environmental attribute of the SEA), it is not necessary to comply with section 15(1)(b).[121]

Criteria for land

Schedule 3 sets out the criteria for land for the purposes of Schedule 2, section 9.

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[117] Property Rights Australia, Submission No. 17.

[118] 'Designated precinct', in an SEA, means for an SEA mention in section 4(1) – the area identified as a designated precinct on the SEA map for the SEA, or if an SEA is shown on a map in a regional plan – the area identified on the map as a designated precinct for the SEA.

[119] Ken Hicks Priority Projects Pty Ltd on behalf of Australia Zoo and the Steve Irwin Wildlife Reserve Steering Committee, Submission No. 3.

[120] Environmental Defenders Office Queensland, Submission No. 14.

[121] The Wilderness Society Qld Inc., Submission No. 10.

Some submitters were concerned that the Regulation lacks flexibility to accommodate new farming methods.[122] AgForce favours re-examining the criteria 'given the capacity of modern agricultural practices to overcome some of the soil limitations represented by those criteria. For example with controlled traffic, zero till and appropriate paddock layouts slope impacts can be well managed and so an increase in the allowable slope criteria would be justified.'[123]

PRA, BSA and Australian Controlled Farming Association (ACFA) raised issues with criterion 1 (slope) suggesting that the slope should be greater for land in the Western Cropping Zone and criterion 7 (soil) suggesting that it would be possible to have chloride levels greater than the threshold levels in the Regulation. ACFA questioned the relevance of subsoil colour to drainage and sought justification for a limit of 1000mm for effective rooting depth. It also contended that some criteria could be different for controlled traffic farms (CTF) - soil depth, for example, can be 450mm for CTF instead of 600mm or more as in the Regulation.[124]

The department advised:[125]

> *… the purpose of the criteria for land is to provide a benchmark to identify and protect the best agricultural land in the state. The criteria for land are based on the best available scientific knowledge, and were developed through a process involving extensive consultation and reflect a consensus among well recognised authorities in the field.*

The department further advised that information about how the threshold slope values were derived, the basis for the use of soil colours, and the reasons for selecting chloride in lieu of electrical conductivity in establishing the threshold salinity level in the Western Cropping Zone and the Eastern Darling Downs Zone is provided in *RPI Act Guideline 08/14: How to demonstrate that land in the strategic cropping area does not meet the criteria for strategic cropping land.*

Committee comment

The committee supports property level and regional level assessment as the combination of the two will assist in protecting agricultural and cropping land.

The committee seeks clarification from the department as to why it determined not to include a criterion requiring no change or interference with 'overland flow' natural paths and volumes.

Point for clarification 2

The committee seeks clarification from the Department of State Development, Infrastructure and Planning as to why it determined not to include a criterion requiring no change or interference with 'overland flow' natural paths and volumes.

The committee considers that the department has not fully addressed stakeholder concerns regarding properties owned by RIDA applicants with respect to the 2% impact limit on PALU and SCL. The committee seeks further information about the department's rationale for not applying the

[122] See, for example, Basin Sustainability Alliance, Submission No.18; AgForce, Submission No. 6.

[123] AgForce, Submission No. 6. See also Basin Sustainability Alliance, Submission No.18; Australian Controlled Traffic Farming Association, Submission No. 16; Property Rights Australia, Submission No. 17. Controlled traffic farming 'has five key practices – permanent wheel tracks, designed positive drainage layouts, zero tillage, GPS guidance and continuous improvement': Australian Controlled Farming Association, Submission No. 16.

[124] Australian Controlled Farming Association, Submission No. 16.

[125] Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014, p 7.

restrictions to certain owner applicants. Further, the committee has not been provided with any information regarding the basis for the selection of the figure of 2% and how the 2% loss/impact will be calculated.

Point for clarification 3

The committee seeks clarification from the Department of State Development, Infrastructure and Planning about:

(a) why the figure of 2% was selected,

(b) how a 2% loss of both the land on the property used for a priority agricultural land use and the productive capacity of any priority agricultural land use on the property is calculated,

(c) how a 2% permanent impact on strategic cropping land on a property will be calculated, and

(d) the rationale for not applying the 2% or more loss in priority agricultural areas to owner applicants.

The committee seeks clarification from the department about how the quality of the water used to replenish the regionally significant water source will be monitored.

Point for clarification 4

The committee seeks clarification from the Department of State Development, Infrastructure and Planning about how the quality of the water used to replenish the regionally significant water source will be monitored.

The drafting of Schedule 2, section 13(1)(d)(ii) appears unclear. RTCA submitted that it assumed this subsection requires the applicant to propose suitable mitigation measures to be carried out following the completion of the activity. It suggested an alternative wording: '(ii) mitigation measures sufficient to mitigate the impact of the activity will be carried out to the satisfaction of the chief executive'.[126] The committee recommends the provision be amended to clarify its intent.

Recommendation 4

The committee recommends Schedule 2, Part 4, section 13(1)(d)(ii) of the Regulation be amended to clarify its intent.

The committee acknowledges the submitters' proposed amendments regarding the criteria for land in Schedule 3 but is satisfied with the department's response.

2.10 Strategic cropping land mitigation requirements

Part 6 of the Regulation deals with mitigation for strategic cropping land and strategic cropping areas.

[126] Rio Tinto Coal Australia Pty Limited, Submission No. 1.

Section 16 prescribes the mitigation value of mitigated SCL land for the purposes of section 62(2) of the Act.[127] The value is the amount worked out by multiplying each hectare of the land's area by a certain amount. For example, in the Western Downs sub-zone in the Western Cropping zone - $6,000; in the Granite Belt - $14,000; and in the Mackay Whitsunday sub-zone in the Coastal Queensland zone - $11,250.[128]

A mitigation deed is a deed to which the chief executive and the holder of a regional interest development approval are parties:[129]

- is about the mitigation value of mitigated SCL land, and
- complies with the requirements prescribed under regulation.

Section 17 specifies the requirements of a mitigation deed, such as identifying the mitigated SCL land to which the approval relates, providing for mitigation measures, and requiring the holder to give the chief executive periodic reports about the progress of the mitigation measures and the amounts spent on them.

AgForce and PRA recommended that the amounts listed in section 16 should be indexed annually to account for inflation.[130]

Committee comment

The committee recommends Regulation be amended to require the amounts listed in section 16 be indexed annually to account for inflation.

Recommendation 5

The committee recommends the Regulation be amended to require the amounts listed in section 16 to be indexed annually to account for inflation.

2.11 Application fees

An assessment application must be accompanied by the fee prescribed in Schedule 4 of the Regulation.[131] If the assessment application is for a resource activity or a regulated activity to be carried out in two or more areas of regional interest, the prescribed fee for the application is the sum of the fees payable for each area of regional interest.

Section 9 of the Regulation provides that a notice under section 31(2)(b) of the Act to make a permitted amendment to an assessment application must be accompanied by the following fee:

- if the amendment is a minor amendment – a fee that is 5% of the application fee for the assessment application,[132] or
- otherwise – a fee that is 25% of the application fee for the assessment application.

[127] 'Mitigated SCL land' is the land to which the SCL mitigation condition applies: *Regional Planning Interests Act 2014*, s 61. An 'SCL mitigation condition' is a regional interests condition that requires the applicant to have mitigation in place before carrying out a resource activity or regulated activity: *Regional Planning Interests Act 2014*, s 50.

[128] Zones and sub-zones are shown on the map titled 'Sub-zones for strategic cropping land mitigation rates' held by the natural resources department and published on its website (www.dnrm.qld.gov.au): section 15.

[129] *Regional Planning Interests Act 2014*, s 64.

[130] AgForce, Submission 6; Property Rights Australia, Submission 17.

[131] *Regional Planning Interests Act 2014*, s 29; Regional Planning Interests Regulation 2014, s 18.

[132] 'Application fee', for an assessment application, means the fee payable for the application under s 18.

Committee comment

The committee is satisfied with the provisions relating to fees and notes stakeholders did not raise any concerns about application fees.

2.12 Assessment time frames

Schedule 5 sets out the prescribed time frames for the Act.[133] A correctly made application that is not required to undergo notification and is not subject to a requirement notice would take up to 45 business days from the day of lodgement to the day the applicant receives notice of the chief executive's decision.

If notification is required, or if a requirement notice is issued, the application will take longer. There is no limit on the number of times an assessor may issue a requirement notice to an applicant but the department stated that it would be keen to issue no more than one.[134]

Yancoal recommended providing a firm end date (such as that in section 168 of the *Environmental Protection Act 1994*) because there is no limit on the duration or number of extensions that the chief executive may grant.[135]

Committee comment

The committee is satisfied with the prescribed time frames and believes the department will use its best endeavours to ensure a timely decision is made.

2.13 Omission of strategic cropping land provisions from Sustainable Planning Regulation 2009

Part 9 of the Regulation amends the Sustainable Planning Regulation 2009 to remove references to strategic cropping land.

Committee comment

The committee is satisfied with the provisions and notes stakeholders did not raise any concerns about the provisions.

2.14 Other matters

Prescription of priority agricultural areas and priority agricultural land uses

Section 8(1)(b) of the Act provides that a PAA may be prescribed under a regulation and section 8(2)(b) of the Act provides that a PALU is highly productive agriculture of a type prescribed under a regulation for an area of regional interest.

AgForce advocated for including grazing livestock land uses within the Act's framework, with a specific set of ROs and prescribed solutions under Schedule 2.[136] If that is not to happen, AgForce suggested that leucaena and other forage crop plantations could be included as a PALU, on the basis that it requires a significant capital investment for a long (30 year) period of return and has limited opportunity to change in response to proposed resource developments. [137]

[133] Section 20.
[134] Public briefing transcript, 3 July 2014, p 14.
[135] Yancoal Australia Ltd, Submission No. 15.
[136] See also, Property Rights Australia, Submission No. 17.
[137] AgForce, Submission No.6.

Committee comment

The committee notes the Deputy Premier's comments regarding grazing land in his Second Reading Speech on the Regional Planning Interests Bill and encourages the department to continue to work with stakeholders to determine whether the planning regime in the Act should be extended to include certain grazing lands or other crops.[138]

Cumulative impacts

AgForce and QFF noted that cumulative impacts are not taken into account in the Regulation.[139]

Committee comment

The committee is pleased the department is willing to consider options for the consideration of cumulative impacts and encourages the department to work with stakeholders to progress an amendment to the Act or Regulation to address cumulative impacts.[140]

Prescribing CTF farms as Priority Agricultural Areas or Strategic Cropping Land

The Australian Controlled Traffic Farming Association is of the view that controlled traffic farms (CTFs) should be protected, perhaps as PAAs or SCL, because CTFs are generally incompatible with mining and CSG exploration and development.[141]

Committee comment

The committee is not satisfied that prescribing controlled traffic farms as PAAs or SCL is appropriate given that a farmer using CTF methods may alter or cease them at any time.

[138] Hon Jeff Seeney MP, Deputy Premier and Minister for State Development, Infrastructure and Planning, Second Reading Speech, Queensland Parliament, Record of Proceedings, 19 March 2014, p 738.
[139] AgForce, Submission No.6; Queensland Farmers' Federation, Submission No. 12.
[140] See Department of State Development, Infrastructure and Planning, Correspondence dated 28 August 2014.
[141] Australian Controlled Traffic Farming Association, Submission No. 16.

3 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLPs) 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.

The committee has examined the application of the fundamental legislative principles to the Regulation.

3.1 Rights and liberties of individuals

Unambiguous and clear legislation

Section 4(3)(k) of the LSA provides that legislation be unambiguous and be drafted in a sufficiently clear and precise way.

The OQPC Notebook also comments that plain English is recognised as the best approach to the use of language in legislation, with the objective to produce a law that is both easily understood and legally effective to achieve the desired policy objectives.[142]

There are several terms used in the Regulation which may be viewed as not being clearly defined. As discussed above, some of the submissions to the committee's inquiry in relation to this Regulation also queried the ambiguous nature of the terms used.

At Schedule 2, Part 1 the regulation defines 'permanent impact'. However, elsewhere in Schedule 2 several other terms are used such as 'material impact' (Part 2, 2(2)), 'adversely impact' (Part 3, 7 (a)), 'any impact' (Part 4, 8) and 'widespread or irreversible impact' (Part 2, 5(d)). Unlike 'permanent impact', these terms are not defined in the Regulation.

In its submission to the committee, the Queensland Law Society noted that at section 11 (2), 'broadacre cropping' is defined as 'the cultivation of extensive parcels of land under dryland or irrigated management for cropping'. It is unclear how 'extensive' cropping has to be to meet the definition.

Committee comment

The absence of a clear definition for the aforementioned terms may cause confusion for those stakeholders affected by the Regulation. As discussed above in Part 2, the committee notes the department's position but recommends that certain terms be defined.

Ordinary activities should not be unduly restricted

Section 4(2)(a) of the LSA provides that legislation has to have sufficient regard to the rights and liberties of individuals. As a result, ordinary activities should not be unduly restricted.

At schedule 2, Part 2, section 3, 3(a)(i) – *Prescribed solution for outcome 1* and at Schedule 2, Part 4, section 11(a) – *Prescribed solution for required outcome 2*, in relation to managing impacts on use of property for priority agricultural land use and strategic cropping land – both sections, in circumstances where a voluntary agreement does not exist or cannot be agreed to, require that 'reasonable steps to consult and negotiate with the owner' be undertaken where the applicant is not the owner of the land and wants to carry out an activity.

[142] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, pp 87-88.

AgForce asserted that it was important that landholders' views about the reasonableness of the steps taken by resource proponents to consult and negotiate (s 3(3)(a)(i)) can be provided directly to the government decision maker. Direct submission of views could be achieved by making PAA- and SCL-related applications notifiable. Alternatively, the Act or Regulation could require assessing or referral agency staff consult directly with affected landholders. [143]

The committee raised its concerns about what 'reasonable steps' comprise with the department and was advised that the following are considered to be reasonable steps in relation to Schedule 2, Part 4, section 11(a) and Part 2, section 3(3)(a)(i):

> *The applicant-*
>
> *1) writes to the landowner seeking a meeting to:-*
>
> *a. explain the nature and extent of the proposed activity and the likely impacts from the proposed activity*
>
> *b. discuss the nature of the activities conducted by the landowner on the land and the nature of the landowner's concerns*
>
> *2) considers the information provided by the landowner and provides the landowner with a written strategy for addressing the landowner's concerns*
>
> *3) provides sufficient time for the landowner to consider the strategy (i.e. a minimum of 20 business days)*
>
> *4) considers and responds in writing to any concerns raised by the landowner in relation to the strategy*
>
> *5 provides the landowner with sufficient time to consider the revised strategy (i.e. a minimum of 10 business days)*
>
> *6) provides written documentation of the following with the application:-*
>
> *a. the consultation and negotiation process*
>
> *b. the strategy proposed to the landowner by the applicant*
>
> *c. documentation of any concerns raised by the landowner about the strategy*
>
> *d. the revised strategy responding to the concerns raised by the landowner.*

The department further advised that the criteria can be included in a guideline made available on its website.

It also stated:

> *The chief executive's decision is subject to appeal and legal review by an owner of land in the Planning and Environment Court. The Department considers that the question whether 'reasonable steps' have been taken to consult and negotiate with an owner of land by an applicant is therefore subject to 'appropriate review'.*
>
> *Whether or not the assessment application is publicly notifiable, an owner of land will be able to appeal the chief executive's decision (section 72(b) of the RPI Act) or to seek a declaration as to the lawfulness of the chief executive's decision (section 78 of the RPI Act). An owner would be able to raise the issue as to whether reasonable steps had been taken by the applicant to consult and negotiate with the owner, as a matter of fact, in the context of a merits appeal process and as a matter of law in the context of declaration proceedings under the RPI Act.*

[143] AgForce, Submission No. 6.

Committee comment

The committee is satisfied with the department's response but considers that it would be beneficial to include the criteria regarding 'reasonable steps' in a guideline to be made available on the department's website.

Recommendation 6

The committee recommends the Department of State Development, Infrastructure and Planning prepares and publishes a guideline specifying the actions that must be undertaken to satisfy the 'reasonable steps' requirement in Schedule 2, Part 4, section 11(a) and Schedule 2, Part 2, section 3(3)(a).

3.2 Explanatory Notes

The explanatory notes tabled with the Regulation comply with part 4 of the LSA.

Appendices

Appendix A – List of submitters

Sub #	Name
1	Rio Tinto Coal Australia Pty Limited
2	City of Ipswich
3	Ken Hicks Priority Projects Pty Ltd
4	Great Barrier Reef Marine Park Authority
5	MMG Century Limited
6	AgForce Queensland Industrial Union of Employers
7	APPEA
8	Friends of Felton
9	Queensland Environmental Law Association Inc.
10	The Wilderness Society
11	Queensland Resources Council
12	Queensland Law Society
13	Queensland Farmers' Federation Ltd
14	Environmental Defenders Office – Qld
15	Yancoal Australia Ltd
16	Australian Controlled Traffic Farming Association
17	Property Rights Australia
18	Basin Sustainability Alliance