

State Development and Regional Industries Committee

Report No. 31, 57th Parliament

Subordinate legislation tabled between 31 August and 12 October 2022

Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
119	Water Plan (Fitzroy Basin) Amendment Plan 2022	12 October 2022	TBC – First sitting week of 2023
121	Planning (Economic Support Instruments) Amendment Regulation 2022	12 October 2022	TBC – First sitting week of 2023
137	Rural and Regional Adjustment and Other Legislation (Brisbane River Tourism Berthing Assistance Scheme and Other Matters) Amendment Regulation 2022	12 October 2022	TBC – First sitting week of 2023
138	Rural and Regional Adjustment (Natural Disaster-related Assistance Schemes) Amendment Regulation 2022	12 October 2022	TBC – First sitting week of 2023

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. Disallowance dates can be calculated by counting 14 sitting days from the date the subordinate legislation was tabled (not including the day of tabling).

Summary of committee considerations

The committee examined the above subordinate legislation. It did not identify any issues regarding the policy to be given effect, its lawfulness or consistency with fundamental legislative principles.

The committee makes two recommendations following consideration of the explanatory notes and their compliance with section 24 of the *Legislative Standards Act 1992* (Legislative Standards Act):

Recommendation 1

In relation to the Water Plan (Fitzroy Basin) Amendment Plan 2022, that the Department of Regional Development, Manufacturing and Water clarify the discrepancy between the three clauses provided in the subordinate legislation and the four clauses described in the notes to provisions section in the explanatory notes. This should be provided to the committee as soon as practicable and at least three weeks prior to the disallowance date.

Recommendation 2

In relation to the Planning (Economic Support Instruments) Amendment Regulation 2022, that the Department of State Development, Infrastructure, Local Government and Planning provide the committee with a brief response on the *results* of the stakeholder consultation undertaken, as required by section 24(2)(ii) of the Legislative Standards Act and section 24(2)(iii) if relevant.

The committee will publish departmental responses on its website prior to the disallowance date.

The committee also considered the compatibility of the subordinate legislation with human rights. A potential limitation to the right to freedom of expression was identified in the Planning (Economic

Support Instruments) Amendment Regulation 2022, arising from the streamlining of certain development assessment processes. Given that the purpose of the regulation is to support state-wide economic recovery following the COVID-19 pandemic through streamlined planning processes, the committee is satisfied that the potential limitation was reasonable and demonstrably justified.

The committee is also satisfied that the human rights certificates tabled with the subordinate legislation provide a sufficient level of information to aid understanding of any issues.

A summary of the committee's examination of each item of subordinate legislation is provided in the remainder of this report.

1 Water Plan (Fitzroy Basin) Amendment Plan 2022 – SL No. 119

1.1 Policy Overview

The objective of the Water Plan (Fitzroy Basin) Amendment Plan 2022 (SL No. 119) is to amend the definitions for the high and medium priority groups for the Rookwood Weir Water Supply Scheme to better reflect the security of supply for water allocation holders in different parts of the Scheme.¹

It does this by amending Schedule 7 of the Rookwood Weir Water Supply Scheme by:

- replacing 'a high priority group upstream of Rookwood Weir' with 'the high priority group', as a water allocation may be in a high priority group anywhere within the Rookwood Weir Water Supply Scheme
- replacing a reference to 'a medium priority group upstream or downstream of Rookwood Weir' with 'the medium priority group' for consistency with the description of medium priority groups for the Lower Fitzroy and Fitzroy Barrage water Supply Schemes.²

The explanatory notes state that the Department of Regional Development, Manufacturing and Water has consulted with Sunwater, as requester of the amendment, and the Rockhampton Regional Council. Rockhampton Regional Council raised no concerns with the amendment.³

Public consultation on this amendment is not required.⁴

1.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

1.3 Explanatory notes

The committee makes one recommendation on the explanatory notes and their compliance with section 24 of the Legislative Standards Act.

There is a discrepancy between SL No. 119 and the accompanying explanatory notes in that three clauses are outlined in the plan, but four clauses are described in the explanatory notes.

It appears that clause 3 as referenced in the explanatory notes (and which relates to a commencement clause) was omitted from the amendment plan during the drafting process but not omitted from the

¹ SL No. 119, explanatory notes, p 1.

² SL No. 119, explanatory notes, p 3

³ SL No. 119, explanatory notes, pp 2-3.

⁴ Section 51(2)(a) of the Water Act enables an amendment of a type stated in a water plan as not requiring public consultation and submissions on a draft of the plan if the Minister reasonably believes the amendment will not adversely affect the rights of the water entitlement holders or natural ecosystems. Section 151 of the Fitzroy water plan states the types of amendments which can be made to the water plan under section 51(2)(a) of the Water Act and provides for the amendments being made to the Water Plan under this amendment plan without consultation

explanatory notes. A commencement clause is not needed in this case as sections 32 and 47 of the *Statutory Instruments Act 1992* will apply.

Accordingly, the committee has recommended that the discrepancy be clarified. An erratum may be required.

Recommendation 1

In relation to the Water Plan (Fitzroy Basin) Amendment Plan 2022, that the Department of Regional Development Water and Manufacturing provide a written response to the committee clarifying the discrepancy between the subordinate legislation and notes on provisions in the explanatory notes, as soon as practicable and at least three weeks prior to the disallowance date.

1.4 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights.⁵

1.4.1 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

2 Planning (Economic Support Instruments) Amendment Regulation 2022 – SL No. 121

2.1 Policy overview

The objective of the Planning (Economic Support Instruments) Amendment Regulation 2022 (SL No. 121) is to extend the expiry date of economic support instruments (ESI) until 31 December 2023.⁶

Economic support instruments were adopted by certain local governments during the COVID-19 pandemic to support economic recovery and reduce barriers to new businesses opening, or existing businesses relocating and/or adapting to operational challenges'.⁷

A local government may, by resolution, adopt an ESI that:

- removes the need for planning approval for a change in tenancy within an existing building, if the business is expected in that zone and only minor building work will occur
- sets a maximum level of assessment for certain businesses seeking to establish where the use is expected in that zone
- allows businesses to make minor expansions without planning approval
- allows home-based business in the township zone and residential zones that can support local economies as accepted development.⁸

A local government may, by resolution, also opt out of one or all provisions it had previously 'opted in' to, at any time.

The explanatory notes state that targeted consultation occurred with local governments that had opted-in to the ESI provisions seeking their views on the expiry timeframe in the Planning Regulation 2017. The Local Government Association Queensland (LGAQ) was also consulted about the expiry of the provisions. The explanatory notes did not provide any detail on the results of the consultation.

⁵ Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

⁶ SL No. 121, explanatory notes, page 1.

⁷ SL No. 121, explanatory notes, page 1.

⁸ SL No. 121, explanatory notes, p 1.

2.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

2.3 Explanatory notes

The committee notes that the explanatory notes did not contain any information on the results of the consultation as required by section 24 of the Legislation Standards Act which sets out the content required for explanatory notes. Accordingly, the committee has recommended that the department provide this information so that it may be published alongside the committee's report.

The committee is satisfied that the explanatory notes otherwise comply with Part 4 of the Legislative Standards Act.

Recommendation 2

That the Department of State Development, Infrastructure, Local Government and Planning provide a written response to the committee on the *results* of the consultation undertaken for the Planning (Economic Support Instruments) Amendment Regulation 2022, as required by section 24(2)(ii) of the Legislative Standards Act and section 24(2)(iii) if required.

2.4 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits human rights only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the Human Rights Act.

The right to freedom of expression is discussed below.

2.4.1 Freedom of expression

Every person has the right to freedom of expression.⁹

The human rights certificate states that the reduced level of development assessment afforded by the ESI provisions means that public consultation may no longer be required.¹⁰

Public notification of a development enables interested parties to make submissions on a matter, and in some instances, to appeal against a decision.¹¹

Whilst acknowledging SL No. 138 may limit the right to freedom of expression, the human rights certificate justifies the limitation on the basis that reducing the level of development assessment will stimulate the economy, which is for the benefit of the public:

The principal objective of the Amendment Regulation is to support the ongoing state-wide economic recovery initiative by extending the timeframe of the currency period which streamlines the statutory planning processes for local government, business and the development industry, whilst still maintaining the integrity of the planning framework. Reducing the level of development assessment for certain economic value-adding uses to operate in envisaged zones, reduces unnecessary barriers to new businesses opening up, supports employment and stimulates the Queensland economy, which is in the overall benefit of the public interest.¹²

⁹ HRA, s 21.

¹⁰ SL No. 138, human rights certificate, p 4.

¹¹ See for example, Environmental Defenders Office, 'Code or impact assessable developments in Queensland', last updated 14 November 2019, <https://www.edo.org.au/publication/code-or-impact-assessable-developments-in-queensland/>.

¹² SL No. 138, human rights certificate, p 4.

Committee comment

The committee is satisfied that the potential limitation on the right to freedom of expression is reasonable and sufficiently justified.

2.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

3 Rural and Regional Adjustment and Other Legislation (Brisbane River Tourism Berthing Assistance Scheme and Other Matters) Amendment Regulation 2022 – SL No. 137

3.1 Policy Overview

The objectives of the Rural and Regional Adjustment and Other Legislation (Brisbane River Tourism Berthing Assistance Scheme and Other Matters) Amendment Regulation 2022 (SL No. 137) are to:

- establish the Brisbane River Tourism Berthing Assistance Scheme (scheme) as an approved assistance scheme under the *Rural and Regional Adjustment Act 1994*. This will enable the Queensland Rural and Industry Authority (QRIDA) to administer the scheme.¹³

The scheme will support eligible displaced riverine tourism businesses through a rebate to assist with the cost of berthing their vessels at different berths in a privately-operated marina in the eligible area. The scheme will also support minor infrastructure works that would expand or improve an existing commercial wharf structure to accommodate a displaced riverine tourism business. This will be done as co-contribution payment.¹⁴

The amount of assistance available under the Scheme will be for an amount of up to half the total eligible berthing expenses, to a maximum amount of:

- \$37,500 per financial year (excluding GST) for each eligible boat up to 25 metres in length; or
- \$70,000 per financial year (excluding GST) for each eligible boat over 25 metres in length.

The second stream of assistance under the Scheme will be a capital co-contribution payment of up to \$50,000 (excluding GST) per applicant. However, for the infrastructure stream of assistance, it will also include any GST payable by QRIDA in respect of the assistance per applicant.

According to the explanatory notes, the Department of Tourism, Innovation and Sport ‘consulted heavily across Government and non-government agencies, marina operators and commercial river tourism operators in developing a temporary support package for operators while plans for a more permanent commercial marina are progressed’.¹⁵

The temporary assistance package is supported by the Brisbane River tourism operators.

The subordinate legislation also makes an unrelated amendment to the Biosecurity Regulation 2016 to update terminology relating to the ‘Major and Organised Crime Squad’ which is now known as the ‘Rural and Stock Crime Squad’.

This amendment is necessary as under section 251 of the *Biosecurity Act 2014* (Biosecurity Act), a regulation under the Act may provide that each police officer of a class described in the regulation is an inspector under this Act.

¹³ SL No. 137, explanatory notes, p 1-2

¹⁴ SL No. 137, explanatory notes, p 1.

¹⁵ SL No. 137, explanatory notes

3.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

3.3 Explanatory notes

The explanatory notes comply with Part 4 of the Legislative Standards Act.

3.4 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights.

3.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

4 Rural and Regional Adjustment (Natural Disaster-related Assistance Schemes) Amendment Regulation 2022 SL No. 138

4.1 Policy Overview

The objectives of the Rural and Regional Adjustment (Natural Disaster-related Assistance Schemes) Amendment Regulation 2022 (SL No. 138) are to allow the Queensland Rural and Industry Development Authority (QRIDA) to administer two new schemes of financial assistance for disaster recovery, and make minor amendments to two existing drought preparedness schemes.¹⁶

The Queensland and the Australian Government agreed to the Medium to Large Business Recovery Loans Scheme, and the Rural Landholders Recovery Grants Scheme, under Category D of the joint Commonwealth State Disaster Recovery Funding Arrangements to respond to the severe natural disasters that affected Queensland in late 2021 and early 2022.¹⁷

4.1.1 Medium to Large Business Recovery Loans Scheme

This scheme provides concessional loan funding of up to \$5,000,000 (exclusive of GST) over a maximum 10-year term to assist medium to large businesses to reinstate/re-establish their businesses as a result of direct damage following the eligible flooding events of late 2021-early 2022.

This assistance will be available for businesses suffering direct damage from the following disaster events:

- Central, Southern and Western Queensland Rainfall and Flooding—10 November to 3 December 2021
- Ex Tropical Cyclone Seth—29 December 2021 to 10 January 2022
- South East Queensland Rainfall and Flooding—22 February to 5 April 2022
- Southern Queensland flooding—6 to 20 May 2022.¹⁸

The scheme is also available for future disasters should the assistance measure be activated under any future Category D package.¹⁹

The scheme is targeted at those larger scale businesses in the agriculture supply chain (including primary producers) for which a standard concessional loan as a small business or primary producer (currently set at \$250,000) is insufficient to support recovery.²⁰

¹⁶ SL No. 138, explanatory notes, p 1.

¹⁷ SL No. 138, explanatory notes, p 1–2.

¹⁸ SL No. 138, explanatory notes, p 2.

¹⁹ SL No. 138, explanatory notes, p 2.

²⁰ SL No. 138, explanatory notes, p 2.

According to the explanatory notes, the government consults 'extensively' with primary producers and the agriculture supply chain more broadly both during and after a disaster to identify disaster impacts and issues related to recovery. This includes direct engagement between staff of the Department of Agriculture and Fisheries (DAF) and impacted primary producers and engagement with agricultural industry organisations Queensland Farmers' Federation, AgForce, Queensland Dairyfarmers' Organisation and Canegrowers during disaster management meetings.²¹

The explanatory notes state that these meetings identified the benefit of providing assistance to medium to large businesses currently ineligible to receive disaster assistance.

4.1.2 Rural Landholders Recovery Grants Scheme

This scheme is to help rural landholders recover from direct damage sustained in the disaster events listed above. The regulation also includes the potential to activate this assistance measure for future natural disasters where this assistance is activated.

A rural landholder is an entity that is the owner or long-term lessee of relevant land of at least 10 hectares that carries out a primary production enterprise on that land.

The scheme provides disaster recovery assistance to rural landholders who:

- in the financial year before the disaster earned a minimum gross amount of \$20,000 per annum from the primary production enterprise, and a maximum gross amount of \$250,000 from other activities
- has not received assistance for the primary production enterprise as a result of the eligible disaster under the Disaster Assistance (Primary Producers) Loans Scheme or the Special Disaster Assistance Recovery Grants Scheme
- has received and paid a tax invoice in relation to carrying out an eligible recovery activity
- is primarily responsible for meeting the costs of an eligible recovery activity claimed in the application.²²

Eligible rural landholders can receive a maximum of \$10,000 as a rebate for eligible clean up, repair and restoration activities.²³

4.1.3 Amendments to drought preparedness schemes

SL No. 138 will make the Drought Preparedness Grant Scheme, and the Drought Ready and Recovery Finance Loan Scheme slightly more accessible to potential applicants by clarifying that a deposit is not considered to have commenced a project for the purposes of section 4 of the respective schemes.²⁴

The schemes originally provided that an applicant would not be approved for an activity if the project had commenced. The payment of a deposit on an invoice related to the project was interpreted as commencing the project. This meant that QRIDA was declining applications, even though the work had not commenced due to delays and supply chains difficulties in the building and construction industry.²⁵

The explanatory notes states that DAF and QRIDA conducted regional forums across Queensland to promote the new drought policy. The issue that this regulatory amendment is seeking to address was raised at some of these meetings.²⁶

²¹ SL No. 138, explanatory notes, p 5.

²² SL No. 138, explanatory notes, p 3.

²³ SL No. 138, explanatory notes, p 3.

²⁴ SL No. 138, explanatory notes, p 3.

²⁵ SL No. 138, explanatory notes, p 3.

²⁶ SL No. 138, explanatory notes, p 5.

4.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

4.3 Explanatory notes

The explanatory notes comply with Part 4 of the Legislative Standards Act.

4.4 Compatibility with human rights

The committee could be satisfied that the subordinate legislation is compatible with human rights.

4.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Further subordinate legislation

The following items of subordinate legislation were also tabled on 12 October 2022:

No.	Subordinate legislation	Date tabled	Disallowance date
133	Planning (Secondary Dwellings) Amendment Regulation 2022	12 October 2022	TBC – First sitting week of 2023
140	Fisheries (Spanish Mackerel) Amendment Declaration 2022	12 October 2022	TBC – First sitting week of 2023

Examination of this subordinate legislation is ongoing. The committee will prepare a separate report on this legislation in advance of the disallowance date.

Recommendation 3

The committee recommends that the House notes the content of this report.



Chris Whiting MP

Chair

November 2022

State Development and Regional Industries Committee

Chair

Deputy Chair

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