

State Development and Regional Industries Committee

Report No. 22, 57th Parliament

Subordinate legislation tabled between 23 February and 29 March 2022

1 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
10	Local Government Amendment Regulation 2022	15 March 2022	23 June 2022
15	Rural and Regional Adjustment (Drought-related Assistance Schemes) Amendment Regulation 2022	15 March 2022	23 June 2022
18	Planning and Environment Court (Expert Evidence) Amendment Rule 2022	29 March 2022	17 August 2022
28	Queensland Reconstruction Authority Regulation 2022	29 March 2022	17 August 2022

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

2 Summary of committee considerations

The committee examined subordinate legislation within its portfolio areas tabled between 23 February and 29 March 2022. The committee did not identify any issues regarding the policy to be given effect lawfulness of the subordinate legislation.

The committee considered the compliance of the explanatory notes with Part 4 of the *Legislative Standards Act 1992* (LSA). In all but one case, the subordinate legislation fully complied with the requirements of the LSA. The Rural and Regional Adjustment (Drought-related Assistance Schemes) Amendment Regulation 2022, while acknowledging that consultation took place, did not include an outline of consultation results as required by section 24(2)(a)(ii) of the LSA.

The committee notes that a similar issue was raised in relation to the 2021 Amendment Regulation of the same name. The committee has relied on previous advice provided by the Department of Agriculture and Fisheries in March 2022 to satisfy itself of general consultation results.

The committee considered human rights relevant to the subordinate legislation. The committee was satisfied that any potential limitations to human rights were reasonable and demonstrably justified and that the certificates provided a sufficient level of information to compatibility with human rights.

A summary of the committee’s examination of each item of subordinate legislation is provided below.

3 Local Government Amendment Regulation 2022 – SL No. 10

3.1 Overview

The objective of the Local Government Amendment Regulation 2022 (SL No. 10) is to implement an external boundary change recommendation of the Local Government Change Commission (Commission).

SL No. 10 corrects minor boundary anomalies by placing two lots of land, each dissected by a common local government area boundary, wholly into one local government area.¹ It does this by amending the *Local Government Regulation 2012* (LGR) to:

- update the area map titles for Toowoomba Regional Council and Western Downs Regional Council
- detail the local government change to implement the boundary changes and to make available to the Toowoomba Regional Council and the Western Downs Regional Council the implementation matters ancillary to boundary changes.²

According to the explanatory notes, the Commission consulted with affected landholders; ‘however, numerous attempts to consult the landholder on Lot 75 on AG613 were unsuccessful’.³

The explanatory notes state that the Commission noted the preference of the landholder of Lot 3 RP24469 in its final determination report.⁴ Public notice of the results of the Commission’s external boundary review assessment were published in the Queensland Government Gazette and on the Electoral Commission of Queensland’s website.⁵

3.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified by the committee.

3.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

3.4 Human rights considerations

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

3.4.1 Human rights certificate

The human rights certificate tabled with the regulation provides a sufficient level of information to facilitate understanding of the compatibility with human rights.

4 Rural and Regional Adjustment (Drought-related Assistance Schemes) Amendment Regulation 2022 – SL No. 15

4.1 Overview

The objective of the Rural and Regional Adjustment (Drought-related Assistance Schemes) Amendment Regulation 2022 (SL No. 15) is to allow the Queensland Rural and Industry Development Authority (QRIDA) to administer three new schemes of financial assistance for primary producers to improve drought preparedness and drought response.⁶

SL No. 15 does this by introducing the following financial assistance schemes:

- Drought Ready and Recovery Finance Loan Scheme
- Emergency Drought Assistance Loan Scheme
- Drought Carry-on Finance Loan Scheme.⁷

¹ SL No. 10, explanatory notes, p 1.

² Explanatory notes, p 2; Local Government Amendment Regulation 2022, ss 3-4.

³ Explanatory notes, p 3.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 3.

⁶ Explanatory notes, p 1.

⁷ Explanatory notes, pp 1-3.

According to the explanatory notes, these schemes of ‘will encourage the adoption of measures and practices that will improve drought preparedness and the ability to manage during drought better than the current Drought Relief Assistance Scheme (DRAS) program’.⁸

The amendment regulation also makes a minor change to the Drought Preparedness Grant Scheme. The explanatory notes state that scheme previously provided that an applicant could not receive a Drought Preparedness Grant if they had received a payment under the DRAS in the same financial year. SL No. 15 changes this criterion to exclude an applicant from receiving a Drought Preparedness Grant if they have received a payment under the DRAS on an invoice within the 6 months from the date of the invoice.⁹

The explanatory notes state that industry and producers were consulted as part of the independent Drought Program Review and that the new financial assistance schemes were developed after ‘extensive industry consultation’ and ‘with input from the Drought Reform Working Group, which comprises major agricultural industry organisations such as Queensland Farmers’ Federation, AgForce, Queensland Dairyfarmers’ Organisation and Canegrowers’.¹⁰ The explanatory notes did not contain any further information on the results of that consultation.

4.2 Explanatory notes

As noted above, the explanatory notes do not include an outline of results of consultation in accordance with section 24(2)(a)(ii) of the LSA. The explanatory notes otherwise comply with part 4 of the LSA.

The committee notes that a similar issue was raised in relation to the 2021 Amendment Regulation of the same name. The committee has relied on previous advice provided by the Department of Agriculture and Fisheries in March 2022 to satisfy itself of general consultation results.¹¹

4.3 Compatibility with human rights

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

4.3.1 Human rights certificate

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

5 Planning and Environment Court (Expert Evidence) Amendment Rule 2022

5.1 Overview

The Planning and Environment Court (Expert Evidence) Amendment Rule 2022 (SL No. 18) aims to ensure that the operation and procedures of the Planning and Environment Court (P&E Court) are not disrupted or compromised by broader amendments that have been made through a separate process to the Uniform Civil Procedures Rules 1999 (UCPR).¹²

The objectives of the SL No. 18 are to:

- set out requirements for the preparation of expert reports, including provision for the preparation of a supplementary report and actions relating to the supplementary report where there is a change of opinion by the expert

⁸ Explanatory notes, p 3.

⁹ Explanatory notes, p 2.

¹⁰ Explanatory notes, p 4.

¹¹ Letter, dated 30 March 2022, Director General, Department of Agriculture and Fisheries to Chair, State Development and Regional Industries Committee, regarding Drought Relief Assistance Scheme.

¹² Explanatory notes, p 2.

- clarify that particular rules about costs in the UCPR do not apply P&E Court as the UCPR provisions are contrary to the intent of the costs rules that apply in the P&E Court
- provide for specific rules about evidence, including that expert evidence must be given in person before the P&E Court unless required to be given by audio visual link or audio link in particular circumstances, to negate the effect of section 39PB of the *Evidence Act 1977* as that provision is not followed in the P&E Court
- include an expert witness code of conduct consistent with the new schedule in the UCPR.¹³

Under s 13 of the *Planning and Environment Court Act 2016*, Planning and Environment Court Rules can be changed only with the concurrence of the Chief Judge and a P&E Court Judge. The explanatory notes advise that that concurrence has been provided.¹⁴

5.2 Consistency with fundamental legislative principles

The committee identified no issues of fundamental legislative principle.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Compatibility with human rights

The committee is satisfied that the Amendment Rule is compatible with human rights.

5.4.1 Human rights certificate

The human rights certificate tabled with the Amendment Rule provides a sufficient level of information to facilitate understanding of compatibility with human rights.

6 Queensland Reconstruction Authority Regulation 2022 – SL No. 28

6.1 Overview

The Queensland Reconstruction Authority Regulation 2022 (SL No. 28) authorises the Queensland Reconstruction Authority (QRA) to undertake initial stabilisation and removal of the Drift Restaurant pontoon structure from the Bicentennial Bikeway and other works considered necessary for public safety (the works).¹⁵

As the Department of Transport and Main Roads is not empowered to remove the structure, the regulation authorises the QRA to remediate the site and remove the present risk of immediate and sudden collapse noted in the structural engineering report of 10 March 2022.¹⁶

SL No. 28 achieves its objectives by authorising the QRA to exercise its powers under the *Queensland Reconstruction Authority Act 2011* (QRA Act) to undertake reconstruction or development works in order to rebuild disaster-affected areas of the state.¹⁷

The explanatory notes state that the lessee was provided with the engineering report regarding the structural assessment of the floating restaurant, and letters requesting details of any steps and/or solutions the lessee had taken (or would immediately take) to address the concerns and recommendations set out in the report.¹⁸

¹³ Explanatory notes, p 1.

¹⁴ Explanatory notes, p 3.

¹⁵ Explanatory notes, p 1.

¹⁶ Explanatory notes, p 2.

¹⁷ QRA Act, part 7.

¹⁸ Explanatory notes, p 3.

The lessee was advised that, if a satisfactory response were not received to the letters, the state may take emergency action to address the risks outlined in the report.¹⁹ The QRA did not receive any written submission from the lessee or his representative.²⁰

6.2 Consistency with fundamental legislative principles

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.²¹

The works will interfere with the rights of the lessee in relation to the use of the leased area and the structure.

As noted earlier, the explanatory notes state that the lessee was provided with the engineering report regarding the structural assessment of the floating restaurant, and letters requesting details of any steps and/or solutions the lessee had taken (or would immediately take) to address the concerns and recommendations set out in the report. The lessee was advised that the state may take emergency action to address the risks outlined in the report.²²

In asserting that the regulation has sufficient regard to the rights and liberties of individuals, the explanatory notes state that the regulation is consistent with the principles of natural justice ‘...as the Lessee has been given an appropriate opportunity to remediate the issue prior to the consideration of emergency action by the State...’²³

Committee comment

The committee is satisfied that any potential breach of fundamental legislative principle is justified by the need to remediate the site, remove the present risk of collapse, and expedite the reopening of the blocked bikeway and walkway.

6.3 Explanatory notes

The explanatory notes do not include an outline of results of consultation in accordance with section 24(2)(a)(ii) of the LSA; however, this information is contained in the human rights certificate. The explanatory notes otherwise comply with part 4 of the LSA.

6.4 Consideration of human rights compatibility

In the human rights certificate accompanying the subordinate legislation, the Minister states the opinion that the regulation ‘is compatible with the HRA because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Right[s] Act 2019*.’²⁴

The committee considered one potential human right issue.

6.4.1 Property rights

Section 24 of the *Human Rights Act 2019* provides that a person must not be arbitrarily deprived of the person’s property. The human rights certificate notes that SL No. 28 ‘may potentially impact on the use of an existing lease area’.²⁵ However, the human rights certificate contends that the regulation is necessary to enable the urgent identified stabilisation works, because ‘the lessee appears to be

¹⁹ Explanatory notes, p 3.

²⁰ Human rights certificate, p 3.

²¹ LSA, s 4(2)(a).

²² Explanatory notes, p 3.

²³ Explanatory notes, p 3.

²⁴ Human rights certificate, p 4.

²⁵ Human rights certificate, p 2.

unwilling to take any measures to mitigate any of the risks that are currently posed by the damaged and dislocated Drift Restaurant Pontoon'.²⁶

Committee comment

The committee is satisfied that the potential limitation of human rights is reasonable and demonstrably justifiable.

6.5 Human rights certificate

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

7 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

June 2022

State Development and Regional Industries Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
Members	Mr Michael Hart MP, Member for Burleigh
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	Mr Jim Madden MP, Member for Ipswich West
	Mr Tom Smith MP, Member for Bundaberg

²⁶ Human rights certificate, p 2.