

State Development and Regional Industries Committee

Report No. 53, 57th Parliament

Subordinate legislation tabled between 13 September and 10 October 2023

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 13 September 2023 and 10 October 2023.

It reports on any identified issues relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles¹, its compatibility with human rights² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA)⁴ and the human rights certificates with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
134	Local Government (Gold Coast City Council—Suspension of Councillor) Amendment Regulation 2023	10 October 2023	15 February 2024
135	Economic Development and Other Legislation Amendment Regulation 2023	10 October 2023	15 February 2024

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

3 Committee consideration of the subordinate legislation

No significant issues were identified within SL Nos. 134 and 135 of 2023 regarding the policy to be given effect, consistency with fundamental legislative principles, lawfulness, or compatibility with human rights.

In undertaking its examination, the committee considered potential breaches of fundamental legislative principles and limitations to human rights, the more significant of which are discussed within this report. In all cases, the committee was satisfied that the breach or limitation was sufficiently justified in the circumstances.

The committee was satisfied that the explanatory notes comply with part 4 of the LSA, and that the human rights certificates provide a sufficient level of information to facilitate understanding of the regulations’ compatibility with the HRA.

A brief overview of the subordinate legislation is provided below.

¹ Legislative Standards Act 1992 (LSA), s 4.

² Human Rights Act 2019 (HRA), s 8.

³ Parliament of Queensland Act 2001, s 93

⁴ LSA, pt 4 (s 24).

⁵ HRA, s 41.

4 Local Government (Gold Coast City Council—Suspension of Councillor) Amendment Regulation 2023 – SL No. 134

4.1 Policy overview

The policy objective of SL No. 134 is to give effect to the Deputy Premier’s recommendation that Councillor Bayldon-Lumsden be suspended with full pay until 30 April 2024, or the conclusion of the Gold Coast City Council’s (GCCC) 2024 quadrennial election, whichever is earlier.⁶

The regulation follows remedial action undertaken by the Deputy Premier in the public interest (as the Minister response for local government) under Chapter 5, part 1 of the *Local Government Act 2019* (Local Government Act) following the charging of Councillor Bayldon-Lumsden on 23 August 2023 for the murder of a 58-year-old man. The councillor appeared in the Southport Magistrates Court on 24 August 2023, pleading not guilty. On 31 August 2023, the councillor was released on bail following a hearing in the Queensland Supreme Court.⁷

4.2 Consistency with fundamental legislative principles

The regulation raises several fundamental legislative principle issues. As outlined in the explanatory notes, this includes: certain human rights; natural justice; proportion and relevance and reasonableness and fairness in the treatment of individuals; and privacy and confidentiality rights.⁸ The committee is satisfied with the analysis contained in the explanatory notes and discusses natural justice below for the information of the House.

4.2.1 Natural justice

To have sufficient regard to rights and liberties of individuals, legislation should be consistent with the principles of natural justice.⁹ Natural justice principles include providing a person with adequate opportunity to present their case to a decision-maker where a decision may deprive the person of some right or interest; having an unbiased decision-maker; and ensuring procedural fairness.¹⁰

The explanatory notes state that the Deputy Premier gave written notice on 4 September 2023 to the councillor of the proposal to recommend that he be suspended from office. The notice stated that any submission the councillor wished to make in relation to the proposed action was to be made by 8 September 2023.¹¹

Under the Local Government Act, the Deputy Premier must have regard to submissions made by the councillor. If no submission is received within that time, or the submission does not contain reasonable grounds to persuade the Deputy Premier not to exercise the power, the Deputy Premier may exercise the power without further notice to the councillor.¹²

The explanatory notes state that:

Any potential breach of the FLPs is considered justified because Councillor Bayldon-Lumsden was given notice of the proposal to exercise the power to recommend the councillor be suspended and an opportunity to provide submissions to the Deputy Premier in response, in accordance with section 120 of the LGA.¹³

⁶ SL No. 134, explanatory notes, p 4.

⁷ SL No. 134, explanatory notes, p 4.

⁸ SL No. 134, explanatory notes, pp 3-4.

⁹ LSA, s 4(3)(b). See also, Office of the Queensland Parliamentary Counsel, Fundamental legislative principles: the OQPC notebook, p 25.

¹⁰ LSA, s 4(3)(b). See also, Office of the Queensland Parliamentary Counsel, Fundamental legislative principles: the OQPC notebook, p 25.

¹¹ SL No. 134, explanatory notes, p 2.

¹² SL No. 134, explanatory notes, p 2.

¹³ SL No.134, explanatory notes, p 4.

Committee comment

The committee is satisfied that appropriate natural justice has been afforded in accordance with the relevant legislation and that any breach of fundamental legislative principle is justified in the circumstances.

4.3 Compatibility with human rights

The committee considered several limitations to human rights as outlined in the explanatory notes and human rights certificate. This included the right to take part in public life and the right to privacy and reputation. The committee was satisfied with the analysis provided in the human rights certificate and provides an overview of the potential limitations for the information of the House.

4.3.1 Right to take part in public life and right to privacy and reputation

The human rights certificate states that by suspending Councillor Bayldon-Lumsden, SL No. 134 limits his right to take part in public life because:

... for the period of his suspension, he will not have access to the public office to which he was elected and will not be able to carry out the role and responsibility of a councillor.

Suspending Councillor Bayldon-Lumsden also limits the rights of constituents in his division ... to be represented by the councillor during the period of his suspension.¹⁴

In considering this limitation, the human rights certificate states:

The decision to suspend Councillor Bayldon-Lumsden is consistent with the purpose of the LGA which includes to provide for a system of local government in Queensland that is accountable, effective, efficient and sustainable (section 3 of the LGA) and the local government principle of transparent and effective processes and decision-making in the public interest (section 4 of the LGA).¹⁵

The certificate also notes that the councillor 'is not being dismissed, and even as a suspended councillor, he has the opportunity to run for election as a suspended councillor in the 2024 local government quadrennial election.'¹⁶

The regulation also limits the councillor's right to privacy and reputation because 'his reputation could be negatively impacted by the disciplinary action being taken against him'.¹⁷ The following justification is provided:

... the authority to suspend a councillor by regulation is provided for in section 122 of the LGA and the suspension is reasonable, necessary and proportionate, noting the Deputy Premier considers it in the public interest to suspend Councillor Bayldon-Lumsden.¹⁸

Committee comment

The committee is satisfied that SL No. 134 of 2023 is compatible with the *Human Rights Act 2019* and that any limitations are reasonable and demonstrably justified in the circumstances.

5 Economic Development and Other Legislation Amendment Regulation 2023

5.1 Policy overview

The Economic Development and Other Legislation Amendment Regulation 2023 (SL No. 135):

- revokes the Woolloongabba Cross River Rail (CRR) Priority Development Area (PDA)
- declares a new, expanded Woolloongabba PDA

¹⁴ SL No. 134, human rights certificate, p 3.

¹⁵ SL No. 134, human rights certificate, p 3.

¹⁶ SL No. 134, human rights certificate, p 4.

¹⁷ SL No. 134, human rights certificate, p 3.

¹⁸ SL No. 134, human rights certificate, p 4.

- revokes the Queensland Children’s Hospital State Development Area (QCHSDA).¹⁹

Declaring an area as a PDA establishes a framework to facilitate economic development and development for community purposes. The framework includes streamlined planning processes. Development in a PDA is regulated under the Economic Development Act 2012 (Economic Development Act) and not the Planning Act 2016 (Planning Act).²⁰

According to the explanatory notes, the declaration of an expanded Woolloongabba PDA ‘will capitalise on the opportunities presented by Brisbane 2032, and the State’s investment in major infrastructure, including CRR, Brisbane Metro, the Gabba Stadium, and upgrades to key connections’. It will also ‘enable more diverse living options (including affordable, social and accessible housing) and employment opportunities.’²¹

The intention to accommodate a new, expanded PDA in Woolloongabba, was announced by the Queensland Government on 17 February 2023. That release stated that the original CCR PDA would be expanded to encompass more of the Woolloongabba and the Stanley Street precinct to South Bank.²²

The revocation of the QCHSDA is taking place as the declaration has fulfilled its original purpose. Approximately 3.75 hectares of the land within the revoked QCHSDA will be included in the new Woolloongabba PDA.²³

According to the explanatory notes, the Interim Land Use Plan (ILUP) - the temporary planning document which regulates development in the PDA until the scheme is finalised - was shared with Brisbane City Council (BCC) and relevant state agencies to capture stakeholder views. Updates were made to the draft ILUP to reflect feedback received during this process.²⁴

There is no requirement for public consultation prior to the PDA declaration. The development scheme for the PDA is subject to public notification. The explanatory notes advise that a community engagement strategy will be prepared to guide the preparation and public notification of the development scheme for the PDA.²⁵ It is anticipated that public consultation will commence in April 2024.²⁶

5.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

5.3 Compatibility with human rights

Several human rights are relevant to the regulation: Recognition and equality before the law; Right to life; Freedom of movement; Freedom of expression; Taking part in public life; Property rights; Privacy and reputation; Protection of families and children; Cultural rights; Cultural rights—Aboriginal peoples and Torres Strait Islander peoples; and the right to a fair hearing.²⁷

The committee is satisfied with the analysis contained with the human rights certificate and discusses the key limitations below for the information of the House.

¹⁹ SL No. 135, explanatory notes, p 1; SL No. 135, ss 3, 4, 6. SL No. 135, explanatory notes, p 2.

²⁰ SL No. 135, human rights certificate, p 2.

²¹ Explanatory notes, pp 3-4.

²² Joint media statement, dated 17 February 2023, titled ‘Gabba redevelopment to deliver affordable housing

²³ SL No. 135, explanatory notes, p 2.

²⁴ SL No. 135, explanatory notes, p 4.

²⁵ SL No. 135, explanatory notes, p 4.

²⁶ Queensland Government, Woolloongabba Priority Development Area, FAQs, <https://haveyoursay.dsdilgp.qld.gov.au/woolloongabba-priority-development-area/widgets/415779/faqs#question104889>

²⁷ SL No. 135, human rights certificate, pp 1-2.

5.3.1 Freedom of movement and property rights

The creation of a PDA and revocation of the QCHSDA could result in planning and land use implications that engage, and potentially limit, the ability of individuals to choose where to live²⁸ or may restrict a person's use and enjoyment of their property.²⁹

However, as noted in the human rights certificate, the limitations on the rights of individuals to freely choose where to live 'is small and very unlikely to be any greater than would apply under any other planning regime.'³⁰ The human rights certificate adds that the 'benefits that accrue to individuals through considered land use planning, such as the ability to identify where community services and infrastructure should be located, are considerable.'³¹

5.3.2 Freedom of expression, taking part in public life and right to a fair hearing

The creation of a PDA has the potential to limit the freedom of expression and the right to a fair hearing because a consequence of an area being declared as a PDA is that there are limited rights of review and appeal against decisions about development applications.³² It could also impact the right to take part in public life as the planning scheme of local government ceases to apply once a PDA is declared, and there is restricted opportunity to participate in the conduct of public affairs through freely chosen representatives (e.g. local councillors).³³

The human rights certificate provides the following justification:

The Minister for Economic Development Queensland (MEDQ) may require public consultation to take place in relation to PDA development applications and must consider any submission made during that process. Further, even though there is limited opportunity for merits review of MEDQ's decisions regarding PDA development applications, persons aggrieved by those decisions will, in most cases, have the ability to seek review under the *Judicial Review Act 1991*.³⁴

In relation to the right to take part in public life, the human rights certificate notes that 'PDAs serve broader economic and community considerations within the State which cannot be appropriately managed by local planning schemes'.³⁵ The human rights certificate considers any limitations on human rights are justified by the overall purpose of SL No. 135, being economic and community development:

Declaring an area as a PDA establishes a framework to facilitate economic development and development for community purposes. The framework includes streamlined planning and development processes, which create certainty for businesses and therefore encourage investment in development projects. Economic prosperity and planning for the provision of important community infrastructure such as health, transport and education facilities are purposes consistent with a free and democratic society based on human dignity equality and freedom.³⁶

²⁸ HRA, s 19.

²⁹ HRA, s 24.

³⁰ SL No. 135, human rights certificate, p 6.

³¹ SL No. 135, human rights certificate, p 6.

³² SL No. 135, human rights certificate, p 3. HRA, ss 21, 31.

³³ SL No. 135, human rights certificate, p 4. HRA, s 23.

³⁴ SL No. 135, human rights certificate, p 7.

³⁵ SL No. 135, human rights certificate, p 6.

³⁶ SL No. 135, human rights certificate, p 2.

Committee comment

The committee is satisfied that SL No. 135 of 2023 is compatible with the HRA and that the potential limitations to freedom of movement and property rights, freedom of expression, taking part in public life and the right to a fair hearing are reasonable and demonstrably justified in the circumstances.

6 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

December 2023

State Development and Regional Industries Committee

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