

State Development and Regional Industries Committee

Report No. 36, 57th Parliament

Subordinate legislation tabled between 12 and 25 October 2022

**Subordinate legislation examined**

No.	Subordinate legislation	Date tabled	Disallowance date
133	Planning (Secondary Dwellings) Amendment Regulation 2022	12 October 2022	21 February 2023
144	Water Plan (Pioneer Valley) (Postponement of Expiry) Notice 2022	25 October 2022	14 March 2023
147	Planning (Emergency Housing) Amendment Regulation 2022	25 October 2022	14 March 2023

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

**Summary of committee considerations**

The committee examined the above subordinate legislation within its portfolio areas.

The committee did not identify any issues regarding the policy to be given effect, fundamental legislative principles or its lawfulness. All explanatory notes complied with the *Legislative Standards Act 1992*.

The committee did not identify any issues regarding the compatibility of the subordinate legislation with human rights and was satisfied that the certificates tabled provided a sufficient level of information.

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

**1 Planning (Secondary Dwellings) Amendment Regulation – SL No. 133**

**1.1 Policy Overview**

The Planning (Secondary Dwellings) Amendment Regulation 2022 (SL No. 133) amends the definitions of ‘household’, ‘dual occupancy’, ‘multiple dwelling’ and ‘secondary dwelling’ in the Planning Regulation 2017 (Planning Regulation) to ensure that the planning framework does not regulate living arrangements and to provide state-wide consistency in how secondary dwellings may be occupied.<sup>1</sup>

The explanatory notes state that this will facilitate greater housing choice and allow owners more flexibility in the occupants for their secondary dwellings.<sup>2</sup>

<sup>1</sup> Public briefing transcript, Brisbane, 7 November 2022, p 1.

<sup>2</sup> Explanatory notes, p 2.

Previously, the Planning Regulation included an administrative definition of ‘household’ as one or more individuals who (a) live in a dwelling with the intent of living together on a long-term basis; and (b) make common provision for food and other essentials for living. This definition of ‘household’ underpinned the use of definitions of ‘dwelling house’, ‘dual occupancy’ and ‘multiple dwelling’.<sup>3</sup>

The definition of ‘household’ was such that it prevented secondary dwellings from being rented or occupied by people who were living independently, making their own provision for food or other essentials for living or not on a long-term basis compared to the occupants of the primary dwelling.

SL No. 133 changes the definition of ‘household’ to, simply, one or more individuals who live together in a dwelling, removing those requirements. The amendment regulation did not change any requirements for obtaining approvals for a secondary dwelling nor did it remove any requirement to obtain other approvals such as approval for building work.<sup>4</sup>

The amendment does not change the requirements for siting, design or density of secondary dwellings, which are still controlled by local government planning schemes.<sup>5</sup>

If there is any discrepancy between a local government’s use of the definition and the Planning Regulation, the Planning Regulation prevails to the extent of any inconsistency. However, there are planning schemes where they have embedded the definitions from the Planning Regulation more deeply into their codes.<sup>6</sup>

When the amendment regulation was introduced, a letter was sent to local governments encouraging them to review their planning schemes and to put forward minor amendments to make those schemes consistent if there was an inconsistency.<sup>7</sup>

## **1.2 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

## **1.3 Explanatory notes**

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

## **1.4 Compatibility with human rights**

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

## **1.5 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.

# **2 Water Plan (Pioneer Valley) (Postponement of Expiry) Notice 2022 – SL No. 144**

## **2.1 Policy Overview**

The objective of the Water Plan (Pioneer Valley) (Postponement of Expiry) Notice 2022 (SL No. 144) is to postpone the expiry of the Water Plan (Pioneer Valley) 2002 (Water Plan) under section 55 of the *Water Act 2000* (Water Act).

Section 55 of the Water Act states that a Minister preparing a new plan to replace an existing water plan may postpone the expiry of the existing water plan for up to 3 years. The explanatory notes states

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<sup>3</sup> Ms Rebecca Kenny, Director, Department of State Development, Infrastructure, Local Government and Planning, Public briefing transcript, Brisbane, 7 November 2022, p 1.

<sup>4</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>5</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>6</sup> Public briefing transcript, Brisbane, 7 November 2022, p 3.

<sup>7</sup> Public briefing transcript, Brisbane, 7 November 2022, p 3.

that SL No. 144 will postpone the expiry of the Water Plan until 30 September 2025 while a replacement Water Plan is developed.<sup>8</sup>

The postponement will ensure that the effect of the Water Plan continues the existing water management framework, which in turn protects the existing water entitlements and the needs of the environment until a replacement plan comes into effect.

Consultation is not required for a Postponement of Expiry Notice published under section 55(2) of the *Water Act 2000*. However, the development of a replacement Water Plan will be subject to the consultation provisions of the *Water Act 2000*.<sup>9</sup>

## **2.2 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

## **2.3 Explanatory notes**

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

## **2.4 Compatibility with human rights**

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

## **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 Planning (Emergency Housing) Amendment Regulation 2022 – SL No. 147**

## **3.1 Policy overview**

The Planning (Emergency Housing) Amendment Regulation 2022 (SL No. 147) amends the planning framework to:

- provide for emergency housing in response to an event without the need for planning approval, and
- provide an alternative assessment pathway for social and affordable housing.<sup>10</sup>

SL No. 147 provides for emergency housing to be delivered on a temporary basis where an event has occurred by preventing a local planning scheme from regulating emergency housing as a material change of use.<sup>11</sup>

‘Event’ is defined under the *Disaster Management Act 2003* and includes cyclones, floods and fires. The provisions do not have effect where any part of the premises is in a flood, bushfire or landslide hazard area to prevent relocated people from being vulnerable to further hazards while in temporary accommodation.<sup>12</sup>

Further, the emergency housing may only be provided by or on behalf of the state or a local government. The provisions do not specify whether the emergency housing is provided in new buildings or through the reuse of existing buildings. The provisions do not negate the requirement to obtain all other relevant approvals, including approval for building work.<sup>13</sup>

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<sup>8</sup> Explanatory notes, p 1.

<sup>9</sup> Explanatory notes, p 3.

<sup>10</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>11</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>12</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>13</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

The types of lands that could be used for emergency accommodation include parks and disused showgrounds. The explanatory notes state that these amendments allow state or local government to quickly respond to existing and unexpected housing shortages caused by unforeseen events.<sup>14</sup>

SL No. 147 also amends the Planning Regulation to prescribe social or affordable housing delivered by a community housing provider or under a state funded program as 'infrastructure'. This provides for social and affordable housing development to use the infrastructure designation process (which facilitates the delivery of certain community supporting infrastructure).<sup>15</sup>

SL No. 147 does not remove the ability to apply for a development approval through the regular development assessment process and this is the choice of the applicant to make.<sup>16</sup>

Departmental officials explained that under the infrastructure designation process, either the minister or a local government designates premises for infrastructure and that the infrastructure designation process 'offers the opportunity for social and affordable housing to be delivered in a quicker, less expensive way'.<sup>17</sup> Officials also explained that SL No. 147 provides greater certainty of outcomes as there are no third party appeal rights afforded for submitters.<sup>18</sup>

Although there are no third party appeal rights, consultation is required for projects under the designated infrastructure process. This includes engaging with surrounding properties, local businesses and other key stakeholders and the consideration of submissions as part of the decision-making process.<sup>19</sup>

Under the *Planning Act 2016* the designator must consider matters including the relevant planning instruments such as the local government planning scheme and state planning policy and all properly made submissions received during the consultation period. The assessment would consider the proposed land use and its associated impacts including traffic, car parking, stormwater, noise, ecology, amenity and built form.<sup>20</sup>

A designation may be subject to requirements that act in a similar way to conditions on a development approval to address matters such as amenity, noise, traffic and operating hours. Approval for building work remains a key requirement for any development authorised under an infrastructure designation process.<sup>21</sup>

### **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.

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<sup>14</sup> Public briefing transcript, Brisbane, 7 November 2022, p 5; explanatory notes, p 3.

<sup>15</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>16</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>17</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>18</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>19</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>20</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

<sup>21</sup> Public briefing transcript, Brisbane, 7 November 2022, p 2.

#### **4 Recommendation**

The committee recommends that the House notes this report.



Chris Whiting MP

**Chair**

**February 2023**

#### **State Development and Regional Industries Committee**

<b>Chair</b>	Mr Chris Whiting MP, Member for Bancroft
<b>Deputy Chair</b>	Mr Jim McDonald MP, Member for Lockyer
<b>Members</b>	Mr Michael Hart MP, Member for Burleigh
	Mr Robbie Katter MP, Member for Traeger
	Mr Jim Madden MP, Member for Ipswich West
	Mr Tom Smith MP, Member for Bundaberg