



## State Development, Natural Resources and Agricultural Industry Development Committee

Subordinate legislation tabled between 5 September 2018 and 18 September 2018  
Report No. 19, 56th Parliament

### 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 5 September and 18 September 2018. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

### 2 Subordinate legislation examined:

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
145	Rural and Regional Adjustment (Energy Savings Schemes) Amendment Regulation 2018	18 September 2018	6 December 2018
146	Planning (Container Refund Scheme) Amendment Regulation 2018	18 September 2018	6 December 2018

#### 2.1 Rural and Regional Adjustment (Energy Savings Schemes) Amendment Regulation 2018 (SL No. 145)

The explanatory notes outline that the purpose of subordinate legislation No. 145 is to:

*...enable the Queensland Rural and Industry Development Authority (the authority) to provide financial assistance under two schemes contained in the Rural and Regional Adjustment Regulation 2011. The schemes will implement components of the Affordable Energy Plan and Regional Business Customer Support Package, which specifically focus on helping large electricity businesses and agricultural businesses to fund eligible energy efficiency projects. The two schemes are:*

- 1. the Large Electricity Customer Adjustment Payment Scheme (LECAPS), and*
- 2. the Energy Savers Plus Extension Payment Scheme (ESPEPS).*

*The subordinate regulation will allow the authority to administer payments to electricity customers who are eligible for a grant for co-contribution payment through the LECAPS and ESPEPS. The authority will deliver services to customers on behalf of the Department of Natural*

*Resources, Mines and Energy (DNRME), as the agency responsible for administering the Electricity Act 1994.*<sup>1</sup>

*To be eligible for assistance under the LECAPS, an applicant must:*

- *be a large electricity customer (i.e. using more than 100 megawatt hours of electricity per annum) on a transitional or obsolete tariff at the time they make the application; and*
- *have had an eligible audit carried out and had a report for the audit prepared; and*
- *be making an application relating to an eligible project located in Queensland; and*
- *have had its proposal to implement an eligible project approved by the chief executive of the department administering the Electricity Act 1994, or his or her delegate.*

*To be eligible for assistance under the ESPEPS, the applicant must:*

- *be an electricity customer operating a business primarily in an agricultural industry; and*
- *have had an eligible audit carried and had a report for the audit prepared; and*
- *be making an application relating to an eligible project located in Queensland; and*
- *have an agreement to implement an eligible project approved by the authority.*<sup>2</sup>

### **Committee comment**

No issues of fundamental legislative principle were identified.

The committee notes that under the heading *Consistency with fundamental legislative principles*, the explanatory notes state:

*The subordinate legislation has been drafted with regard to the fundamental legislative principles as defined in section 4 of the Legislative Standards Act 1992.*<sup>3</sup>

This statement does not comply with the requirements for explanatory notes set out in Part 4 of the *Legislative Standards Act 1992* which, inter alia, require explanatory notes to include:

*a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.*<sup>4</sup>

In this instance, the statement in the explanatory notes does not address the issue of consistency and reasons for any inconsistency.

The explanatory notes otherwise comply with the requirements set out in part 4.

## **2.2 Planning (Container Refund Scheme) Amendment Regulation 2018 (SL No. 146)**

The explanatory notes state that:

*The objective of the Planning (Container Refund Scheme) Amendment Regulation 2018 (Amendment Regulation) is to clarify that certain uses for the purpose of the Container Refund Scheme (CRS) are a minor change of use and do not require a development application.*

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<sup>1</sup> Rural and Regional Adjustment (Energy Savings Schemes) Amendment Regulation 2018, Explanatory notes, p 1.

<sup>2</sup> Rural and Regional Adjustment (Energy Savings Schemes) Amendment Regulation 2018, Explanatory notes, p 2.

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

<sup>4</sup> *Legislative Standards Act 1992*, section 24(1)(i).

*... Under the CRS, there will be a refund provided for eligible empty drink containers that are returned to a participating collection or refund point.*

*The CRS involves establishing participating container refund points across the State prior to the intended commencement on 1 November 2018. In some circumstances, this may involve a 'material change of use' development application under the Planning Regulation 2017 (the Planning Regulation).<sup>5</sup>*

The amendment regulation provides a set of criteria which, if met by a container refund point, mean that the activity is a minor change of use and a material change of use development application is not required.

#### Minor change of use for shops participating in CRS

Where a retail use or a building that has been used for a commercial use is to be used for the purpose of the CRS and is within certain zones (defined centre zone or prescribed zone), this will be a minor change of use. Where the premises is within a prescribed zone, they must be located at least 150 metres from a residential zone.

The minor change must meet any existing development approval and/or planning scheme requirements for matters such as noise, operating hours and car parking.

#### Minor change of use for low or medium impact industries for the CRS

Where a premises is used for a low impact industry or medium impact industry, or was previously used for a commercial use or an industry activity, and located in an industry zone and also used for the purposes of the CRS, this is a minor change of use.

The use must be within any relevant planning scheme thresholds for low impact industry or medium impact industry and meets any existing development approval and/or planning scheme requirements for matters such as operating hours and car parking.

#### Change of use for prescribed premises

Where a container refund point is a prescribed premises for the CRS, the use is a minor change of use, subject to certain requirements.

The requirements are that the use occurs within the operating hours for the premises and meets any existing development approval and/or planning scheme requirements for matters such as noise, operating hours and car parking.

#### **Committee comment**

No issues of fundamental legislative principle were identified.

The committee notes that the explanatory notes do not include an outline of results of consultation as required by section 24(2)(ii) of the Legislative Standards Act 1992.

The explanatory notes otherwise comply with part 4 of the Legislative Standards Act 1992.

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<sup>5</sup> Planning (Container Refund Scheme) Amendment Regulation 2018, Explanatory notes, p 1.

### 3 Recommendation

The committee notes that the explanatory notes for both SL No.145 - Rural and Regional Adjustment (Energy Savings Schemes) Amendment Regulation 2018 and SL No.146 - Planning (Container Refund Scheme) Amendment Regulation 2018 do not comply with the *Legislative Standards Act 1992*. The committee draws this to the attention of the Legislatively Assembly.

The committee recommends that the Legislatively Assembly notes this report.



Chris Whiting MP

**Chair**

**November 2018**

#### **State Development, Natural Resources and Agricultural Industry Development Committee**

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Pat Weir MP, Member for Condamine
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