

## State Development and Regional Industries Committee

Report No. 52, 57th Parliament

Subordinate legislation tabled between 23 August 2023 and  
12 September 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 23 August 2023 and 12 September 2023. 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* (LSA).<sup>1</sup> The report also notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
107	Economic Development Regulation 2023	12 September 2023	30 November 2023
108	Economic Development (Vegetation Management) By-law 2023	12 September 2023	30 November 2023
109	Planning (Queensland Rural Workers' Accommodation Initiative) Amendment Regulation 2023	12 September 2023	30 November 2023
117	Animal Care and Protection Regulation 2023	12 September 2023	30 November 2023
118	Biosecurity (Polyphagous Shot-hole Borer) Amendment Regulation 2023	12 September 2023	30 November 2023
119	Rural and Regional Adjustment (Climate Smart Energy Saver Scheme) Amendment Regulation 2023	12 September 2023	30 November 2023
132	Local Government (Fraser Coast Regional Council-Suspension of Councillor) Amendment Regulation 2023	12 September 2023	30 November 2023

\*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

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

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

The committee was satisfied that the subordinate legislation was compatible with the *Human Rights Act 2019*.

In undertaking its examination, the committee considered a number of potential breaches with fundamental legislative principles and limitations to human rights which are outlined within this report. In all cases, the committee was satisfied that they were sufficiently justified.

The explanatory notes tabled with the subordinate legislation addressed in this report comply with the requirements of section 24 of the LSA and human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

#### 4 Economic Development Regulation 2023 – SL No. 107

The Economic Development Regulation 2023 (SL No. 107) repeals and replaces the Economic Development Regulation 2013 that would have otherwise expired on 1 September 2023. SL No. 107:

- continues the existence of the specified priority development areas (PDAs)
- sets out the requirements for placing a notice about a PDA development application
- prescribes the process for approving a plan of subdivision
- prescribes the matters that must be included in an application for a temporary use licence.<sup>3</sup>

As part of the sunset review of the 2013 Regulation an assessment of alternative ways of achieving policy objectives was undertaken. The review found that the 2013 Regulation should continue in order to avoid:

- creating uncertainty for industry and government regarding the status of current PDAs (potentially undermining development entitlements for land within the PDAs);
- increasing the regulatory burden as declaration of new PDAs would require the making of a new regulation; and
- creating ambiguity in the process for placing a notice on land, assessing plans of subdivision and in lodging applications for Temporary use licences.<sup>4</sup>

#### Committee comment

The committee considered the impact of SL No. 107 on several human rights (including the right to recognition and equality before the law, the right to freedom of movement, the right to freedom of expression, the right to take part in public life, property rights and cultural rights generally and those relating to Aboriginal peoples and Torres Strait Islander peoples, and the right to a fair hearing) as they potentially relate to the continuation of existing PDAs and approving plans of subdivision.

In each instance the committee was satisfied that the limitations were reasonable and demonstrably justified.

#### 5 Economic Development (Vegetation Management) By-law 2023 – SL No. 108

The Economic Development (Vegetation Management) By-law 2023 (SL No. 108) continues the effect of the Economic Development (Vegetation Management) By-law 2013 (2013 By-law) which it repeals.<sup>5</sup> SL No. 108 ‘provides a process under which decisions to declare vegetation to be controlled vegetation, to grant, suspend and cancel controlled vegetation permits and to give management notices, can be made and reviewed’.<sup>6</sup>

<sup>3</sup> SL No. 107, s 7.

<sup>4</sup> SL No. 107, explanatory notes, p 2.

<sup>5</sup> SL No. 108, s 47; SL No. 108, explanatory notes, p 1.

<sup>6</sup> SL No. 108, human rights certificate, p 5.

The By-law applies to vegetation within a PDA in the Brisbane local government area.<sup>7</sup> It replaces the Brisbane City Council's (BCC's) 'Natural Assets Local Law 2003' in the relevant PDAs.<sup>8</sup> The explanatory notes state that if the Natural Assets Local Law 2003, not SL No. 108, applied:

[It] would result in a fragmented system where vegetation clearing would be managed by the Minister of Economic Development Queensland and interference with vegetation would be dealt with by the council causing confusion for industry. This would increase the regulatory burden, could create delays in the delivery of development of the PDAs and adversely impact on the development industry in terms of costs.<sup>9</sup>

SL No. 108 provides for a number of offences with a maximum penalty of 20 penalty units (\$3,096<sup>10</sup>),<sup>11</sup> and an infringement notice fine of 2 penalty units (\$309.60).<sup>12</sup> The offences are for matters such as unlawfully interfering with controlled vegetation, failing to comply with conditions of a controlled vegetation permit, and failing to produce a controlled vegetation permit upon demand by an authorised person.

The explanatory notes advise there are no changes to the infringements specified or the number of penalty units between the 2013 By-law and SL No. 108.<sup>13</sup>

### **Committee comment**

The committee considered whether SL No. 108 had sufficient regard to rights and liberties of individuals, specifically whether penalties were relevant and proportionate to offences. Noting that there are no changes to the infringements specified or the number of penalty units between the 2013 By-law and SL No. 108, the committee is satisfied that SL No. 108 has sufficient regard to rights and liberties of individuals in this instance.

The committee also considered whether the subordinate legislation had sufficient regard to the institution of Parliament in referencing an external document, AS 4873—2007, in SL No. 108 given that this could be considered subdelegating legislative power.

Noting that AS 4873—2007: is publicly available; is limited in scope to the pruning of amenity trees; has been included in previous by-laws, such as the 2013 By-law; is recognised as a standard approach in the planning and development industry; and is similarly referenced in BCC's equivalent local law, ensuring uniformity within and outside PDAs in BCC's local government area; the committee is satisfied that it is appropriate to incorporate the reference and the amendment has sufficient regard to fundamental legislative principles.

## **5.1 Compatibility with human rights**

The committee considered whether the subordinate legislation is compatible with human rights. The right to take part in public life, property rights, and the right to privacy are discussed below.

### ***Right to take part in public life***

SL No. 108 limits the rights of individuals who own property in a PDA in BCC's local government area to take part in public life through their chosen representatives because it replaces BCC's relevant local law.<sup>14</sup> The human rights certificate contends that the limitation is necessary to ensure consistency in

<sup>7</sup> SL No. 108, s 3.

<sup>8</sup> SL No. 108, s 4; ED Act, s 54(3).

<sup>9</sup> SL No. 108, explanatory notes, p 2.

<sup>10</sup> The value of a penalty unit is \$154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

<sup>11</sup> SL No. 108, ss 8, 23, 24, 26, 28, 30, 33.

<sup>12</sup> SL No. 108, s 59.

<sup>13</sup> SL No. 108, explanatory notes, p 1.

<sup>14</sup> SL No. 108, human rights certificate, p 2.

decision-making about the management of vegetation and other planning and land use decisions relating to the PDAs.<sup>15</sup>

### **Property rights**

SL No. 108 potentially limits property rights because it gives the Minister for Economic Development Queensland power to control the management of vegetation on land within the relevant PDAs and authorised persons power to require landowners to take action in relation to hazardous vegetation or pest vegetation.

According to the human rights certificate, the purpose of this limitation is ‘to maintain biodiversity in the relevant priority development areas and to preserve character, amenity, natural landforms and to protect historical and cultural heritage’. The human rights certificate contends that any deprivation of property is not arbitrary because SL No. 108 provides for permits to lawfully interfere with controlled vegetation and a mechanism for review of decisions by the Minister and authorised persons.<sup>16</sup>

### **Privacy and reputation**

SL No. 108 also potentially limits the right of a person not to have their home unlawfully or arbitrarily interfered with. This is because it restricts the ability of homeowners within the relevant PDAs to manage vegetation in and around their homes. It also gives authorised officers the power to make directions to such homeowners to deal with hazardous vegetation and pest vegetation.<sup>17</sup>

The human rights certificate asserts that the interference is neither unlawful nor arbitrary because it is made under the *Economic Development Act 2012* and restricts landowners’ privacy only to the extent necessary to achieve the objectives of the by-law, or to ‘prevent hazards to the health, safety and property of other landowners or persons in the relevant priority development area’.<sup>18</sup>

### **Committee comment**

The committee is satisfied that the potential limits to the right to take part in public life, property rights, and the right to privacy are reasonable and demonstrably justified.

## **6 Planning (Queensland Rural Workers' Accommodation Initiative) Amendment Regulation 2023 – SL No. 109**

On 2 December 2022, the Queensland Rural Workers’ Accommodation Initiative (the Initiative document) was given effect by an amendment to the Planning Regulation 2017 (Planning Regulation).<sup>19</sup> The Initiative document provides that the Planning Minister may assess and nominate suitable premises for accommodating rural workers.<sup>20</sup> The following premises were approved to be included as nominated premises in the Initiative document:

- 1511 Toowoomba Cecil Plain Road, Wellcamp (former Queensland Regional Accommodation Centre), approved on 31 July 2023
- 204–210 Queen Street, Ayr (the Burdekin Hotel), approved on 3 August 2023.<sup>21</sup>

In accordance with the Initiative document, the Planning Minister notified the affected landowners, occupiers and local governments of the nominated places.<sup>22</sup>

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<sup>15</sup> SL No. 108, human rights certificate, pp 2-3.

<sup>16</sup> SL No. 108, human rights certificate, p 3.

<sup>17</sup> SL No. 108, human rights certificate, p 4.

<sup>18</sup> SL No. 108, human rights certificate, p 4.

<sup>19</sup> SL No. 109, explanatory notes, p 1.

<sup>20</sup> Queensland Government, *Queensland rural workers’ accommodation initiative*, version 2, 3 August 2023, p 2, [https://planning.statedevelopment.qld.gov.au/data/assets/pdf\\_file/0029/78185/queensland-rural-workers-accommodation-initiative.pdf](https://planning.statedevelopment.qld.gov.au/data/assets/pdf_file/0029/78185/queensland-rural-workers-accommodation-initiative.pdf).

<sup>21</sup> SL No. 109, explanatory notes, p 2.

<sup>22</sup> SL No. 109, explanatory notes, p 2.

The Planning (Queensland Rural Workers' Accommodation Initiative) Amendment Regulation 2023 (SL No. 109) gives effect to the changes made to the Initiative document by reflecting the new version date in the Planning Regulation.<sup>23</sup>

## 7 Animal Care and Protection Regulation 2023 – SL No. 117

The Animal Care and Protection Regulation 2023 (SL No. 117) remakes the Animal Care and Protection Regulation 2012 (2012 Regulation) prior to its automatic expiry, to give effect to various compulsory and voluntary codes of practice that provide for the welfare of animals, and to provide minor administrative amendments.<sup>24</sup>

According to the explanatory notes, SL No. 117 satisfies the objectives of the *Animal Care and Protection Act 2001* (ACP Act), as it will:

... continue to ensure that animals in Queensland are afforded standards of animal welfare through these existing codes of practice which meet community expectations, market requirements, incorporate scientific soundness and provide for animal welfare outcomes which are consistent with other Australian jurisdictions.<sup>25</sup>

SL No. 117:

- makes the specified codes as codes of practice for section 13(1) of the ACP Act and sets them out in schedules<sup>26</sup>
- makes the documents specified in schedule 9<sup>27</sup> as codes of practice for section 13(1) of the ACP Act
- prescribes the requirements for CCTV equipment for livestock slaughter facilities (horses only)
- contains miscellaneous provisions, including those which prescribe information for an annual report and which provide that schedule 10 states fees payable.

DAF consulted with the Animal Care and Protection Act Review Reference Group (the Reference Group) on the approaches to the sunset review and other policy issues associated with the Amendment Regulation in March 2022. The Reference Group includes members from the Australian Veterinary Association, the Queensland Farmers' Federation, AgForce, Horse Biosecurity Market Access Liaison Group, RSPCA (Qld), Queensland Racing Integrity Commission, Animals Australia, and the Animal Welfare Advisory Board. The explanatory notes state that a majority of the Reference Group supported a sunset review of the 2012 Regulation, recommending a remake of the 2012 Regulation with minimal amendment.<sup>28</sup>

### **Committee comment**

The committee considered the impact of SL No. 117 on the rights and liberties of individuals and its consistency with the fundamental legislative principle that ordinary business activities should not be unduly restricted. The compulsory codes of practice set out minimum animal welfare requirements across different industries and sectors and have the potential to restrict the right to conduct business without interference. However, given the ACP Act provides for regulations to require compliance with codes of practice for animal welfare and a duty of care on persons in charge of animals, and that the

<sup>23</sup> SL No. 109, explanatory notes, p 1.

<sup>24</sup> SL No. 117, explanatory notes, p 1.

<sup>25</sup> SL No. 117, explanatory notes, p 5.

<sup>26</sup> Being the Code of practice about domestic fowl; Code of practice about pigs; Code of practice about sheep; Code of practice about cattle; Code of practice for transport of livestock; Code of practice for livestock at depots and saleyards; Code of practice for breeding of dogs; and Code of practice about rodeos. In this regard, SL No. 117 adopts the standards from the nationally agreed Animal Welfare National Standards and Guidelines as compulsory codes of practice in Queensland: SL No. 117, human rights certificate, p 13.

<sup>27</sup> Which consist of a range of Model codes of practice.

<sup>28</sup> SL no. 117, explanatory notes, p 5.

Codes of Practice address significant animal welfare concerns associated with the regulated industries, the committee is satisfied that the breach is reasonable and sufficiently justified.

## **7.1 Compatibility with human rights**

The committee considered whether the subordinate legislation is compatible with human rights including property rights, and the right to privacy.

### **7.1.1 CCTV equipment for livestock slaughter facilities**

#### ***Property rights***

SL No. 117 limits a livestock slaughter facility<sup>29</sup> owner's property rights, because their use and control of the CCTV equipment, and livestock processing facility more broadly, is restricted by SL No. 117 prescribing the minimum requirements for the installation, maintenance, and operation of CCTV equipment in livestock slaughter facilities.<sup>30</sup>

According to the human rights certificate, the limitation on property rights is necessary to ensure that animal welfare risks can be detected and that livestock slaughter facilities are compliant with Queensland's animal welfare laws.<sup>31</sup>

The human rights certificate states that SL No. 117 strikes a fair balance between the person's property rights and the public interest that significant animal welfare risks are being addressed:

The intervention in a person's right to conduct business in the way they want is considered appropriate because a livestock slaughter facility is a high-risk environment for the welfare of animals. The success of livestock industries is dependent upon community confidence in the regulation of animal welfare. Domestic and international retailers have increasingly focused on animal welfare as an important consideration of product quality. The use of CCTV will provide reassurance that animal welfare risks are being appropriately regulated and managed.<sup>32</sup>

#### ***Privacy and reputation***

SL No. 117 potentially limits the right to privacy and reputation of a person who attends a livestock (horse) slaughter facility by requiring the operation of CCTV equipment throughout the facility, and therefore recording that person's activities.<sup>33</sup>

The human rights certificate provides similar justifications for the potential limitation on privacy and reputation as it did for the limitation on property rights, contending that the provisions strike a fair balance between a person's right to privacy and reputation, the employer's interest in complying with the law, and the public interest that significant animal welfare risks are being addressed.<sup>34</sup>

The human rights certificates identifies a range of safeguards to protect the privacy of individuals, including that the ACP Act:

- provides that the owner must not allow the CCTV equipment to be operated by any person other than themselves or a person they have approved to do so<sup>35</sup>
- provides that the owner must also display signage at the facility in a way that is likely to make any person at the facility aware that CCTV is installed at the facility<sup>36</sup>
- prohibits the use and disclosure of confidential information that may be gained by a person in administering or performing a function under the ACP Act, unless expressly authorised<sup>37</sup>

<sup>29</sup> Being a facility which processes horses (of which there are currently 2 in Queensland).

<sup>30</sup> Provided for under ACP Act, Ch 4B, Pt 2, s 93U; SL No. 117, human rights certificate, p 4.

<sup>31</sup> SL No. 117, human rights certificate, p 6.

<sup>32</sup> SL No. 117, human rights certificate, p 6.

<sup>33</sup> SL No. 117, human rights certificate, p 7.

<sup>34</sup> SL No. 117, human rights certificate, p 8.

<sup>35</sup> ACP Act, s 93X. A maximum penalty of 300 penalty units applies (\$46,440).

<sup>36</sup> ACP Act, s 93V. A maximum penalty of 30 penalty units applies (\$4,644).

<sup>37</sup> ACP Act, s 214B.

- provides that a recording may only be used by an inspector for the purposes of investigating or prosecuting an animal welfare offence<sup>38</sup>
- provides that information must be retained in accordance with the Department of Agriculture and Fisheries' (department) record-keeping security obligations.<sup>39</sup>

### 7.1.2 Information for annual report

#### *Privacy and reputation*

SL No. 117 potentially limits the right to privacy and reputation by prescribing the information required to be provided by registered users of animals for scientific purposes to the chief executive for the purposes of the annual report.<sup>40</sup>

The human rights certificate states that the purpose of the limitation is to support collection of statistical information about animals used for scientific purposes as a way of addressing public concern about animals used for scientific purposes.<sup>41</sup>

The restriction only relates to the aspects of the information that are private or affect the person's reputation to the extent the person could be identified.<sup>42</sup>

According to the human rights certificate, the limitation on the right to privacy and reputation aligns with community expectations, and is necessary to ensure collection of statistical information, and to support the department's monitoring of registration holders for compliance with the ACP Act.<sup>43</sup>

The human rights certificate states that as any release under the right to information regime is subject to the *Information Privacy Act 2009* and personal information would remain protected in most cases, the department considers that the impact of completing and submitting the annual report on the right to privacy and reputation is minimal.<sup>44</sup>

### 7.1.3 Compulsory Codes of Practice

#### *Property rights*

SL No. 117 limits property rights because it seeks to achieve a purpose of the ACP Act by providing for regulations about codes of practice for animal welfare and allowing regulations to require compliance with codes of practice.<sup>45</sup>

According to the human rights certificate, the codes of practice are important because they provide an agreed animal welfare standard, help people meet a legal duty of care to the animals in their charge, are a tool for inspectors,<sup>46</sup> help industry show its commitment to agreed animal welfare standards, and provide certainty for animal industries that they can carry out specific husbandry practices under conditions that achieve the 'reasonable balance' objective of the ACP Act.<sup>47</sup>

The human rights certificate concludes that SL No. 117 strikes a fair balance between the person's property rights, their interest in complying with the law, and the public interest that animal welfare risks are being addressed:

<sup>38</sup> ACP Act, s 93Y.

<sup>39</sup> SL No. 117, human rights certificate, p 8.

<sup>40</sup> SL No. 117, human rights certificate, p 11.

<sup>41</sup> SL No. 117, human rights certificate, p 10.

<sup>42</sup> SL No. 117, human rights certificate, p 11.

<sup>43</sup> SL No. 117, human rights certificate, p 11.

<sup>44</sup> SL No. 117, human rights certificate, pp 11, 12.

<sup>45</sup> SL No. 117, human rights certificate, p 13.

<sup>46</sup> To provide guidance (and if necessary, formal directions) to a person to provide suitable living conditions, handling, and husbandry of animals to ease animal suffering, or address situations that might otherwise lead to suffering.

<sup>47</sup> SL No. 117, human rights certificate, p 14.



The limitation of the right is balanced against the benefits from the requirements implemented through the Regulation to appropriately and consistently manage animal welfare and the need to have a robust animal welfare framework in Queensland.<sup>48</sup>

#### **Committee comment**

The committee considered the impact on the human right to privacy and reputation, and property rights in relation to requirements for CCTV equipment for livestock slaughter facilities and implementation of the Codes of Practice. The committee noted that limitations on property rights is necessary to provide for animal welfare outcomes through codes of practice, to ensure that animal welfare risks can be detected and livestock slaughter facilities are compliant with Queensland's animal welfare laws. A range of safeguards to protect the privacy of individuals recorded by the equipment were identified. On balance the committee is satisfied, that the limitations are reasonable and demonstrably justified.

### **8      Biosecurity (Polyphagous Shot-hole Borer) Amendment Regulation 2023 – SL No. 118**

The Biosecurity (Polyphagous Shot-hole Borer) Amendment Regulation 2023 (SL No. 118) amends the Biosecurity Regulation 2016 (Biosecurity Regulation) to establish a biosecurity zone to deal with risks posed by polyphagous shot-hole borer (*Euwallacea fornicatus* or PSHB).<sup>49</sup> SL No. 118 preserves the existing risk prevention and management procedures in the current movement control order (MCO).<sup>50</sup>

According to the explanatory notes, the biosecurity zone regulatory provisions in SL No. 118 establish the whole of Queensland as a biosecurity zone requiring persons to:

- notify an inspector about the presence of PSHB, and
- not move PSHB carriers into the biosecurity zone other than in particular circumstances.<sup>51</sup>

SL No. 118 provides restrictions on moving PSHB carriers and requires specified individuals to notify an inspector of the presence of PSHB in or on a PSHB carrier as soon as practicable. SL No. 118 defines a carrier plant to mean a plant that is capable of being infested with PSHB, but includes a note referencing 'the biosecurity manual for a list of plants that are capable of being infested with polyphagous shot-hole borer'.<sup>52</sup> In that regard, some elements of SL No. 118 will be set out in the biosecurity manual, which is to be published on the department's website, rather than in the Biosecurity Regulation.<sup>53</sup>

The explanatory notes consider alternatives to subdelegation of legislative power to an external document but note that they present significant issues, and that the 'volume, technical content, and rapid evolution of the list make it impractical to manage through the Biosecurity Regulation'.<sup>54</sup> The explanatory notes conclude that the approach:

... is appropriately justified as the least restrictive, and most reasonable and justifiable approach to identifying a list of carrier plants. Possible conflict with the fundamental legislative principles requiring

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<sup>48</sup> SL No. 117, human rights certificate, p 16.

<sup>49</sup> PSHB, which is a high-risk quarantine pest that has a high potential for establishment and spread and a demonstrated ability to cause serious economic and ecological damage, is currently restricted to Western Australia; with 2 previous suspect detections in Queensland in 2010 and 2017. SL No. 118, explanatory notes, p 1.

<sup>50</sup> In response to the detection of PSHB in WA, the chief executive made an MCO on 1 November 2022, which applies to the whole of Queensland and prescribes certain requirements to minimise the risk of PSHB from entering the state. The MCO was remade on 1 March 2023, and again on 1 June 2023, and was due to expire on 1 September 2023. SL No. 118, explanatory notes, pp 1, 2.

<sup>51</sup> SL No. 118, explanatory notes, p 2.

<sup>52</sup> SL No. 118, s 3 (new s 94EF Biosecurity Regulation)

<sup>53</sup> Biosecurity Regulation, Sch 11.

<sup>54</sup> SL No. 118, explanatory notes, p 4.



reasonable parliamentary scrutiny is limited as the Biosecurity Manual is already heavily relied upon to support the Biosecurity Regulation and does not conflict with existing legislation.<sup>55</sup>

Given that the biosecurity manual is incorporated into regulation by reference only, any amendments to the manual (including those related to SL No. 118) will not be required to be tabled in the Legislative Assembly and will not be able to be scrutinised by Parliament or be able to be subject to disallowance.<sup>56</sup> Similarly, any future amendment will not be subject to Parliamentary scrutiny and will not be subject to potential disallowance. However, the biosecurity manual (and any future amended version) may be accessed on the department's website and a member of the Parliament may ask the Minister questions in the Parliament about them.

#### **Committee comment**

The committee considered whether the legislation has sufficient regard to the institution of Parliament, by allowing only appropriate and authorised subdelegation of a power delegated by an Act, given some elements of SL No. 118 will be set out in the biosecurity manual which is to be published on the department's website, rather than in the Biosecurity Regulation. The committee is satisfied, in the circumstances, the subdelegation of legislative power to the external document has sufficient regard to the institution of Parliament, and is not inconsistent with fundamental legislative principles.

#### **8.1.1 Compatibility with human rights**

The committee considered whether the subordinate legislation is compatible with human rights including whether potential limits to the right to privacy and reputation of a person who is obliged to report (and therefore potentially identify themselves and provide information about themselves) to an inspector, if they suspect the presence of PSHB or that a carrier plant is showing signs of a PSHB infestation.<sup>57</sup>

The human rights certificate states that the purpose of the limitation is to 'minimise the significant biosecurity risks presented to the gardening and plant nursery industry from an incursion of PSHB'.<sup>58</sup>

#### **Committee comment**

The committee is satisfied the limitation on the right to privacy and reputation is justified when balanced against the various public and private benefits to be achieved from minimising the significant biosecurity risks posed by the presence of PSHB.

## **9 Rural and Regional Adjustment (Climate Smart Energy Saver Scheme) Amendment Regulation 2023 – SL No. 119**

The Climate Smart Energy Saver Scheme (Scheme), which is part of the household energy savings program, is intended to assist Queensland households to manage their electricity use and bills by offering a rebate to eligible applicants to offset the costs of the purchase and installation of energy-efficient appliances.<sup>59</sup>

The Rural and Regional Adjustment (Climate Smart Energy Saver Scheme) Amendment Regulation 2023 (SL No. 119) amends the Rural and Regional Adjustment Regulation 2011 (RRA Regulation) to establish the Scheme as an approved scheme under the *Rural and Regional Adjustment Act 1994* (RRA Act), which will enable the Queensland Rural and Industry Development Authority to administer the Scheme.

SL No. 119 prescribes a new schedule, which sets out the Scheme in detail and provides for a limited prescribed rebate to eligible applicants for the purchase and installation of an 'eligible appliance' or

<sup>55</sup> SL No. 118, explanatory notes, p 4.

<sup>56</sup> See *Statutory Instruments Act 1992*, ss 49, 50.

<sup>57</sup> SL No. 118, human rights certificate, p 2.

<sup>58</sup> SL No. 118, human rights certificate, p 2.

<sup>59</sup> SL No. 119, explanatory notes, p 1.

hot water system: 'A low-income rebate will be available for applicants experiencing financial vulnerability, where they have a taxable income of \$66 667 or less'.<sup>60</sup>

SL No. 119 defines the meaning of 'eligible appliances' for the purposes of the Scheme. The definition specifies the requirements for an air conditioner to be eligible, including that it comply with 'the requirements of AS/NZS 4755.1:2017 relating to air conditioners'.<sup>61</sup> In that regard, some elements of SL No. 119 will incorporate the requirements of Australian and New Zealand Standards, rather than being set out in regulation.<sup>62</sup>

In addressing SL No. 119's consistency with fundamental legislative principles in regard to the subdelegation of legislative power to the external document, the explanatory notes state:<sup>63</sup>

- the use of Australian Standards (AS) / New Zealand Standards (NZS) as relevant standards have been used in previous energy assistance schemes
- the requirement for air conditioners to comply with AS/NZS 4755.1:2017 is to ensure that Queensland Government rebates are 'not funding air conditioners that have no option but to add to load on the electricity network during peak times, and that fail to meet standards that may be formalised in the near future'.

Given that AS/NZS 4755.1:2017 is incorporated into regulation by reference only, any future amendments to the standard (and the other standards referenced by AS/NZS 4755.1:2017 itself) will not be required to be tabled in the Legislative Assembly and will not be able to be scrutinised by Parliament or be able to be subject to disallowance.<sup>64</sup> However, being an Australian Standard, a copy of AS/NZS 4755.1:2017 (and any future amended version) can be obtained by an interested person and a member of the Parliament may ask the Minister questions in the Parliament about such standards.

#### **Committee comment**

The committee is satisfied that, in the circumstances, the subdelegation of legislative power to the external document has sufficient regard to the institution of Parliament, such that it is not inconsistent with fundamental legislative principles.

### **10 Local Government (Fraser Coast Regional Council-Suspension of Councillor) Amendment Regulation 2023 – SL No. 132**

The Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023 (SL No. 132) amends the Local Government Regulation 2012 to give effect to the Minister's recommendation that Councillor James Victor Hansen be suspended,<sup>65</sup> with pay, for one month, from 8 September 2023.<sup>66</sup>

The explanatory notes state that:<sup>67</sup>

- on 28 July 2023, the CCT handed down its decision finding that Councillor Hansen had engaged in misconduct in relation to three allegations,<sup>68</sup> ordered that he be reprimanded, and

<sup>60</sup> SL No. 119, explanatory notes, p 2.

<sup>61</sup> SL No. 119, s 4 (inserts Rural and Regional Adjustment Regulation 2011, sch 53, s 3(a)(iv)(B)).

<sup>62</sup> According to the explanatory notes (p 3), AS/NZS 4755.1:2017 is an Australian Standard that specifies a demand response framework, which consists of a Demand Response Enabling Device complying with AS/NZS4755.1 and one or more electrical products complying with the relevant parts of AS/NZS 4755.3.

<sup>63</sup> SL No. 119, explanatory notes, p 3.

<sup>64</sup> See *Statutory Instruments Act 1992*, ss 49, 50.

<sup>65</sup> From office as a councillor of Fraser Coast Regional Council.

<sup>66</sup> SL No. 132, explanatory notes, p 2.

<sup>67</sup> SL No. 132, explanatory notes, pp 1, 2.

<sup>68</sup> The CCT found Councillor Hansen engaged in misconduct concerning 3 allegations that the councillor had made posts, comments or 'likes' on Facebook which were inappropriate statements relating to the COVID-

recommended that the Minister suspend him from office ‘for not less than one (1) calendar month’

- the Minister recommended that the Governor in Council suspend Councillor Hansen for a period of one month, with pay, taking effect on 8 September 2023.

### **Committee comment**

The committee considered whether the legislation has sufficient regard to rights and liberties of individuals and specifically, whether it is consistent with principles of natural justice.<sup>69</sup> Noting that the Councillor was given natural justice through both the investigation process undertaken by the Office of the Independent Assessor and the hearing before the Councillor Conduct Tribunal,<sup>70</sup> the committee is satisfied that appropriate natural justice has been afforded in accordance with the relevant legislation and any breach of fundamental legislative principle is justified in the circumstances.

### **10.1 Compatibility with human rights**

The committee considered whether the subordinate legislation is compatible with human rights including: freedom of thought, conscience, religion and belief; freedom of expression; the right to take part in public life; and the right to privacy and reputation which are discussed below.

#### ***Freedom of thought, conscience, religion and belief; freedom of expression***

According to the human rights certificate, given the allegations against Councillor Hansen relate to thoughts and opinions held and expressed by him, his suspension due to his misconduct in making those statements limits his right to freedom of thought, conscience, religion and belief and his right to freedom of expression.<sup>71</sup> The human rights certificate states this is because ‘the suspension could deter Councillor Hansen, while he holds a position as Councillor, from making certain kinds of statements in the future, including the expression and publication of his personal views and beliefs’.<sup>72</sup>

In the same way, the suspension limits these same rights of other councillors.<sup>73</sup>

#### ***Right to take part in public life***

The human rights certificate states that, by suspending Councillor Hansen, SL No. 132 limits his right to take part in public life because:

... for the one month 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 Hansen also limits the rights of constituents in his division to be represented by Councillor Hansen during the period of his suspension.<sup>74</sup>

#### ***Right to privacy and reputation***

According to the human rights certificate, SL No. 132 also limits Councillor Hansen’s right to privacy and reputation because ‘his reputation could be negatively impacted by the disciplinary action being taken against him’.<sup>75</sup> In considering these limitations on human rights, the human rights certificate states:

Disciplinary action reinforces the appropriate standards for the behaviour of councillors as provided for in the LGA [Local Government Act 2009] and the Code of Conduct for Councillors (Chapter 5A of the LGA), with the purpose of achieving a local government that is accountable, effective, efficient and sustainable

19 pandemic (allegation 1), or were offensive, racist and discriminatory towards Indigenous persons (allegation 2) and transgender persons (allegation 3). SL No. 132, human rights certificate, p 2.

<sup>69</sup> LSA, s 4(3)(b); OQPC, *Notebook*, p 25.

<sup>70</sup> SL No. 132, explanatory notes, p 3.

<sup>71</sup> SL No. 132, human rights certificate, p 3.

<sup>72</sup> SL No. 132, human rights certificate, p 3.

<sup>73</sup> SL No. 132, human rights certificate, p 3.

<sup>74</sup> SL No. 132, human rights certificate, p 3.

<sup>75</sup> SL No. 132, human rights certificate, p 3.

(section 3 of the LGA) ... The disciplinary action is in accordance with, and upholds, the local government principles of democratic representation, social inclusion and meaningful community engagement and ethical and legal behaviour of councillors, local government employees and councillor advisors.<sup>76</sup>

Additionally, the human rights certificate notes:

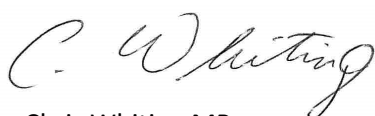
There is no compelling reason to not follow the CCT's recommendation, noting the CCT has conducted a hearing, Councillor Hansen was given natural justice through both an investigation process undertaken by the Office of the Independent Assessor and the hearing before the CCT, and that, following this process, the CCT has determined that suspending the Councillor is an appropriate sanction for the Councillor's conduct.<sup>77</sup>

#### **Committee comment**

The committee is satisfied that any potential limitations to human rights are reasonable and demonstrably justified.

### **11 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Chris Whiting MP

**Chair**

**November 2023**

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

**Chair**

**Deputy Chair**

**Members**

Mr Chris Whiting MP, Member for Bancroft

Mr Jim McDonald MP, Member for Lockyer

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

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<sup>76</sup> SL No. 132, human rights certificate, p 4.

<sup>77</sup> SL No. 132, human rights certificate, p 4.