



# QUEENSLAND PARLIAMENT COMMITTEES

## Housing, Big Build and Manufacturing Committee

### Report No. 10, 57th Parliament

#### Subordinate legislation tabled between 14 February and 5 March 2024

#### 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 14 February 2024 and 5 March 2024. 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> and 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. 2024	Subordinate legislation	Date tabled	Disallowance date*
5	Planning and Environment Court Amendment Rule 2024	5 March 2024	23 May 2024
6	Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation 2024	5 March 2024	23 May 2024
7	Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024	5 March 2024	23 May 2024
8	State Development and Public Works Organisation (State Development Areas) (Mackay) Amendment Regulation 2024	5 March 2024	23 May 2024

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

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

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

### 3 Committee consideration of the subordinate legislation

The committee did not identify any significant issues regarding the policy, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or non-compliance with the HRA.

The committee considers that the explanatory notes tabled with the subordinate legislation in this report comply with the requirements of section 24 of the LSA. However, the committee has made one recommendation, that an erratum be provided to address incorrect part numbers in the explanatory notes for SL 5 2024.

The 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 Planning and Environment Court Amendment Rule 2024

The Planning and Environment Court Amendment Rule 2024 (SL No. 5) makes amendments to the Planning and Environment Court Rules 2018 to:

- specify the rules in chapter 22, part 1 of the *Uniform Civil Procedure Rules 1999* relating to inspection and copying of filed documents do not apply
- allow a person to ask for a copy of a document filed in a Planning and Environment Court proceeding
- allow a person to search for and inspect a document filed in a Planning and Environment Court proceeding.<sup>3</sup>

The explanatory notes state that the amendments are minor in nature and ensure the continued operation of the current Planning and Environment Court system to allow non-party access to documents filed during proceedings.<sup>4</sup>

The explanatory notes state that no consultation was undertaken outside of government agencies as the amendments do not impact policy outcomes. Consultation was undertaken with:

- the Department of Justice and Attorney-General in relation to amendments they are undertaking to the *Uniform Civil Procedure Rules 1999*
- Chief Judge Brian Deveraux, Supreme Court of Queensland and a Planning and Environment Court Judge, who concurred with the proposed amendments.<sup>5</sup>

An Impact Analysis Statement was also prepared for consideration and approval by the Planning Minister and Director-General.<sup>6</sup>

#### 4.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

#### 4.2 Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992 (LSA)*.

However, it must be noted that the explanatory notes do not appear to refer to the correct part number and rule numbers. The explanatory notes refer to Part 5B and rules 46B, 46C and 46D whereas SL No. 5 refers to Part 6A and rules 47A, 47B and 47C.<sup>7</sup>

<sup>3</sup> SL No. 5, s 4.

<sup>4</sup> SL No. 5, explanatory notes, pp 1-2.

<sup>5</sup> SL No. 5, explanatory notes, pp 2-3.

<sup>6</sup> SL No. 5, explanatory notes, pp 1-2.

<sup>7</sup> SL No. 5, s 4.

**Recommendation 1**

That the Minister for Housing, Local Government, Planning and Public Works table an erratum to address inconsistent references to rule and part numbers in SL No. 5 and the explanatory notes.

**4.3 Compatibility with human rights**

The committee is satisfied that the subordinate legislation is compatible with human rights.<sup>8</sup>

The human rights certificate states the rights to recognition and equality before the law, freedom of expression and fair hearing may be relevant to SL No. 5 but are not limited by SL No. 5.<sup>9</sup> The certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

**5 Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation 2024**

The Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation 2024 (SL No. 6) amends the Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018 (MFR Regulation).

The explanatory notes provide background information in relation to the SL No. 6 amendments. The MFR framework established by the MFR Regulation applies to contractor-type licensees and seeks to reduce the risk and impact of financial failure in the building and construction industry. Under the framework, licensees are required to comply with certain financial reporting requirements. These requirements apply to contractor licences across 9 financial categories: self-certifying categories 1 and 2 (SC1 and SC2), and categories 1-7.

Previously, under the Australian Accountancy Standards (AAS), category SC1, SC2, 1, 2, and 3 licensees used a Special Purpose Financial Statement (SPFS) to prepare financial statements, while categories 4, 5, 6, and 7 were required to prepare a more detailed General Purpose Financial Statement (GPFS). Changes to the AAS in 2021 removed the ability of some for-profit entities to report using an SPFS. These changes impacted the ability of SC1, SC2, 1, 2, and 3 licensees to use an SPFS to prepare financial statements to satisfy the legislative requirements for MFR reports.

SL No. 6 amends the MFR Regulation to:

- insert a new s 11D with requirements for MFR reports for a category SC1, SC2, 1, 2 or 3 licensee<sup>10</sup>
- insert a new part 5, division 3 with transitional provisions to allow a licensee to provide a MFR report for the most recent quarter reporting period immediately prior to the commencement of SL No. 6 to prepare the MFR report in accordance with new s 11D<sup>11</sup>
- make minor amendments including a reference to new s 11D and to correct an incorrect cross-reference in the definition of related entity in schedule 3 (Dictionary).<sup>12</sup>

According to the explanatory notes, the purpose of SL No. 6 is to clarify the requirements for SC1, SC2, 1, 2 and 3 licensees to prepare signed financial statements for MFR reports in a format that is

<sup>8</sup> Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

<sup>9</sup> SL No. 5, human rights certificate, pp 1-2.

<sup>10</sup> SL No. 6, s 4.

<sup>11</sup> SL No. 6, s 5.

<sup>12</sup> SL No. 6, ss 3, 6.

commensurate with the former SPFS requirements, and within their licence category. SL No. 6 will also provide greater equity, clarity, and certainty to licensees, particularly in relation to the requirements for MFR reports.<sup>13</sup>

The Department of Premier and Cabinet, Queensland Treasury, the Queensland Building and Construction Commission and industry stakeholders were consulted in the development of SL No. 6.<sup>14</sup>

### **5.1 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

### **5.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

### **5.3 Compatibility with human rights**

The human rights certificate tabled with SL No. 6 states that no human rights are affected or engaged by SL No. 6.<sup>15</sup>

## **6 Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024**

The Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024 (SL No. 7) amends the Nature Conservation (Protected Areas) Regulation 1994 to remove Lawn Hill (Creek) Resources Reserve from schedule 3A (Resources reserves).<sup>16</sup>

According to the explanatory notes, the amendments are necessary to ensure the land has the correct tenure to allow its transfer to the Waanyi people as Aboriginal freehold land under the *Aboriginal Land Act 1991*.<sup>17</sup>

The explanatory notes state that extensive consultation occurred with the Waanyi Native Title Aboriginal Corporation Registered Native Title Bodies Corporate (RNTBC) (Waanyi PBC) the Native Title Holders of this land, as well as the company providing their independent legal advice. The Waanyi PBC supported the progress of SL No. 7. The explanatory notes also advise that a public notice was published on the Department of Environment, Science and Innovation's website on 14 November 2023 regarding consultation on the proposed amendment. One out of scope response was received. All parties consulted supported the amendment.<sup>18</sup>

### **6.1 Consistency with fundamental legislative principles**

No issues of fundamental legislative principle were identified.

### **6.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

### **6.3 Compatibility with human rights**

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

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>13</sup> SL No. 6, explanatory notes, pp 1-2.

<sup>14</sup> SL No. 6, explanatory notes, p 3.

<sup>15</sup> SL No. 6, human rights certificate, p 2.

<sup>16</sup> SL No. 7, ss 2, 3.

<sup>17</sup> SL No. 7, explanatory notes, p 2.

<sup>18</sup> SL No. 7, explanatory notes, p 4.

## 7 State Development and Public Works Organisation (State Development Areas) (Mackay) Amendment Regulation 2024

The State Development and Public Works Organisation (State Development Areas) (Mackay) Amendment Regulation 2024 (SL No. 8) amends the State Development and Public Works Organisation (State Development Areas) Regulation 2024 (Regulation) to insert the Mackay State Development Area (SDA) as an SDA in Schedule 1.<sup>19</sup>

According to the human rights certificate for SL No. 8, the purpose of the declaration of the Mackay SDA is to allow the Coordinator-General to regulate the establishment of emerging industries including biomanufacturing and bioenergy.<sup>20</sup> Two non-contiguous areas around Racecourse Mill and Rosella were identified as suitable, due to their strategic location close to feedstocks, access opportunities, limited constraints and consolidated land ownership providing master planning opportunities.<sup>21</sup>

The explanatory notes detail consultation activities undertaken on the proposed Mackay SDA. Industry proponents, affected landholders, Mackay Regional Council, elected officials, business organisations, relevant government departments and government owned corporations were consulted. Submissions were invited from the community and stakeholders, and a dedicated phone number for further information was provided. Three community information sessions were undertaken, as well as several key stakeholder briefings. The submissions received through the consultation process informed the revised Mackay SDA boundary.<sup>22</sup>

According to the explanatory notes, a development scheme will be prepared subject to the declaration of the Mackay SDA. Further planning will be undertaken as part of this process, with feedback sought from the general public and stakeholders to guide the development scheme provisions. The Office of Best Practice Regulation in the Queensland Productivity Commission was notified of the regulatory proposal, and an Impact Analysis Statement has been prepared and will be published on the Department of State Development and Infrastructure's website.<sup>23</sup>

### 7.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

### 7.2 Explanatory notes

The explanatory notes comply with part 4 of the *LSA*.

### 7.3 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights. Property rights and the right to a fair hearing are discussed below.

#### **Property Rights**

The declaration of an SDA enlivens compulsory acquisition powers under the *State Development and Public Works Organisation Act 1971* (SDPWO Act) which may limit a person's right to property.<sup>24</sup> The compulsory acquisition process is governed by the *Acquisition of Land Act 1967*.<sup>25</sup>

It must be noted that that an SDA is declared where required by the public interest or general welfare of persons resident in any part of the State. The human rights certificate concludes that a 'fair balance is struck between limiting a person's property rights and supporting economic growth for the region.'<sup>26</sup>

<sup>19</sup> SL No. 8, s 3.

<sup>20</sup> SL No. 8, human rights certificate, p 1.

<sup>21</sup> SL No. 8, Explanatory notes, p 1.

<sup>22</sup> SL No. 8, Explanatory notes, pp 3-4.

<sup>23</sup> SL No. 8, Explanatory notes, p 4.

<sup>24</sup> SL No. 8, human rights certificate, p 4; HRA, s 24.

<sup>25</sup> SL No. 8, human rights certificate, p 4.

<sup>26</sup> SL No. 8, human rights certificate, p 5.

### ***Right to a fair hearing***

The SDPWO Act does not provide for a merits appeal review in relation to SDA development applications, which may limit a person's right to a fair trial. However, there is an avenue for judicial review under the *Judicial Review Act 1991*.<sup>27</sup>

Additional feedback will also be sought from stakeholders and the general public as part of the establishment of a development scheme following the declaration of the Mackay SDA. The contents of a development scheme are considered by the Coordinator-General when making a decision about a development application in an SDA.<sup>28</sup>

The human rights certificate notes that any limit on a person's right to a fair hearing is reasonably and demonstrably justifiable.<sup>29</sup>

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.

## **8 Recommendation**

The committee recommends that the House notes this report.



Chris Whiting MP

**Chair**

**May 2024**

### **Housing, Big Build and Manufacturing Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Chris Whiting MP, Member for Bancroft

Mr Jim McDonald MP, Member for Lockyer

Mr Don Brown MP, Member for Capalaba

Mr Michael Hart MP, Member for Burleigh

Mr Robbie Katter MP, Member for Traeger

Mr Tom Smith MP, Member for Bundaberg

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<sup>27</sup> SL No. 8, human rights certificate, p 5; HRA, s 31(1).

<sup>28</sup> SL No. 8, human rights certificate, p 6.

<sup>29</sup> SL No. 8, human rights certificate, p 5.