

Economics and Governance Committee

Report No. 43, 56th Parliament

Subordinate legislation tabled between 20 May 2020 and 16 June 2020

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 20 May 2020 and 16 June 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),³ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁴

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
087	Sanctuary Cove Resort Regulation 2020	16 June 2020	3 December 2020

*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 by the committee regarding the policy, consistency with FLPs, or lawfulness of the subordinate legislation.

The committee considered a number of potential human rights issues raised by SL No. 87 of 2020, as outlined below. However, in each instance, the committee was satisfied that the identified limitation on those human rights is reasonable and demonstrably justifiable.

The explanatory notes and human rights certificate accompanying the subordinate legislation comply with the requirements of the LSA and the HRA respectively.

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ LSA, part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁴ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

4 SL No. 87 of 2020 – Sanctuary Cove Resort Regulation 2020

The objective of SL No. 87 of 2020 is to remake the Sanctuary Cove Resort Regulation 2009 (2009 regulation), which is due to expire automatically on 1 September 2020.⁵ The remaking of the regulation will ‘ensure consistency and the continued operation of the Sanctuary Cove Resort area’.⁶

The *Sanctuary Cove Resort Act 1985* (SCR Act) and the 2009 regulation together provide for the management and operation of the Sanctuary Cove Resort area (resort area), including setting out separate land use planning and development control requirements to those contained in the *Planning Act 2016*, and separate body corporate arrangements to those under the *Body Corporate and Community Management Act 1997*.⁷

Under this separate system of land use planning and development control, the SCR Act and regulation together directly determine all approved uses for the zones of the resort area.⁸ There is no provision for development applications within the resort area. Rather:

- any of the approved uses for a zone may begin on any properties within the zone without the need for a development application, and
- any uses that are not approved within a zone are prohibited and may not begin or be applied for.⁹

SL No. 87 of 2020 will remake the 2009 regulation from 2 September 2020 ‘with minor amendments’, to support the ongoing operation of the resort area subject to the established system of approved uses for different zones.¹⁰

The explanatory notes advise that the Gold Coast City Council and Sanctuary Cove Resort Primary Thoroughfare Body Corporate were consulted on SL No. 87 of 2020, and that:

*Gold Coast City Council did not object to the regulation being remade. The Sanctuary Cove Resort Primary Thoroughfare Body Corporate supported the regulation being remade.*¹¹

The explanatory notes also state that the Office of Best Practice Regulation was consulted, and that it advised:

*... that the former Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP) has satisfactorily met the objectives for sunset reviews. DSDMIP has evaluated that the regulation continues to satisfy its objectives and demonstrated a need for the regulation to continue in its current form. On this basis the remaking of the regulation is excluded from further regulatory impact assessment.*¹²

4.1 Compatibility with the *Legislative Standards Act 2002*

As noted above, the committee identified no issues regarding the subordinate legislation’s consistency with FLPs or its lawfulness.

⁵ Under s 54(1) of the *Statutory Instruments Act 1992*, subordinate legislation automatically expires on 1 September first occurring after the 10th anniversary of its making, unless exempted from expiry. The existing Sanctuary Cove Regulation 2020 is due to expire at midnight on 1 September 2020.

⁶ Explanatory notes, p 2; the explanatory notes state the regulation will be remade with minor amendments. Examples of such minor amendments include referring to ‘catering facility’ instead of ‘catering facilities’ and minor wording changes to the description of the table setting out the approved uses for various zones of the area.

⁷ Sanctuary Cove Resort Regulation 2020 (SL No. 87 of 2020), human rights certificate, p 1.

⁸ SL No. 87 of 2020, human rights certificate, p 1.

⁹ SL No. 87 of 2020, human rights certificate, p 1.

¹⁰ SL No. 87 of 2020, human rights certificate, p 1.

¹¹ SL No. 87 of 2020, explanatory notes, p 2.

¹² SL No. 87 of 2020, explanatory notes, p 2.

The explanatory notes state in this respect that as the subordinate legislation effectively ‘continues the existing uses, there is no impact on the rights of any residents of the area’, and therefore no inconsistency with FLPs.¹³

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

4.2 Compatibility with the *Human Rights Act 2019*

In the human rights certificate tabled with the subordinate legislation, the Minister states his opinion that SL No. 87 of 2020 is compatible with the HRA because it raises human rights issues, but does not limit human rights.¹⁴

In examining the human rights certificate, the committee considered the identified issues, and the explanations provided by the Minister, as set out below.

4.2.1 Freedom of thought, conscience, religion and belief

Section 20 of the HRA provides that every person has the right to freedom of thought, conscience, religion and belief.

SL No. 87 of 2020 will regulate where places of worship may be located. Within the resort area, a place of worship is an approved use within the ‘village zone’ only and prohibited elsewhere.¹⁵

The Minister provides the following justification for this limitation:

*The SCR Act is able to permit or prohibit land uses within certain zones to ensure the amenity of the Sanctuary Cove Resort is maintained. The limitation is also rational and necessary given the amenity impacts that a place of worship may have on a locality (in particular, traffic impacts occurring on days of worship). Given... a ‘Place of Worship’ is also able to occur within the Village Zone, the limitation is also considered balanced as the regulation does not prohibit this use from occurring within the Sanctuary Cove Resort area.*¹⁶

4.2.2 Property rights

Section 24 of the HRA provides that a person must not be arbitrarily deprived of their property.

SL No. 87 of 2020 potentially infringes on s 24 in that it will continue to restrict and empower what land uses are possible for properties within the resort area.

In acknowledging this, however, the Minister emphasised that any such limitations are in keeping with the majority wishes of property owners as to the use of their properties and the surrounding resort area:

*Given this ... remake is supported by the Primary Thoroughfare Body Corporate which represents the residents of the Sanctuary Cove Resort, it is considered that the amending regulation will have no additional impact on any individuals’ existing property rights.*¹⁷

4.2.3 Right to education

Section 36 of the HRA provides that every child has the right to have access to primary and secondary education appropriate to the child’s needs.

Under SL No. 87 of 2020, there are no defined uses for primary and secondary education facilities, such that no education services can be provided within the resort area.¹⁸

¹³ SL No. 87 of 2020, explanatory notes, p 1.

¹⁴ SL No. 87 of 2020, human rights certificate, p 3.

¹⁵ SL No. 87 of 2020, Schedule 1 (see ‘Village Zone’).

¹⁶ SL No. 87 of 2020, human rights certificate, p 1.

¹⁷ SL No. 87 of 2020, human rights certificate, p 2.

¹⁸ SL No. 87 of 2020, Schedule 1.

The Minister justifies this limitation as follows:

Given the amenity impacts that an education facility may have on a locality, the restriction is considered justified. The SCR Act is permitted to permit or prohibit land uses within certain zones to ensure the amenity of the Sanctuary Cove Resort is maintained. The limitation is also rational and necessary given the amenity impacts that an education service (such as a school) may have on a locality...

Several schools and other education services exist in the broader locality within a reasonable distance of the Sanctuary Cove Resort. The imposition of reasonable restrictions on the use of land for educational facilities under the Sanctuary Cove regulatory framework does not limit a person's ability to access education and is therefore considered to be in accordance with the Human Rights Act 2019.¹⁹

4.2.4 Right to health services

Section 37 of the HRA provides that every person has the right to access health services without discrimination.

Within the resort area, SL No. 87 of 2020 approves the use of a 'health care institution' for the village zone only,²⁰ for which the Minister provides the following justification:

Given the amenity impacts that a health care institution may have on a locality, the restriction is considered justified. ... The limitation is also rational and necessary given the amenity impacts that a health care service such as doctor's surgery may have on a locality (in particular, traffic impacts). Given that a health care institution can occur within the Village Zone, the limitation is considered balanced as the amending regulation does not outright prohibit a health care facility from occurring within the Sanctuary Cove Resort area.²¹

Committee comment

The committee is satisfied that the subordinate legislation's limitations on freedom of thought, conscience, religion and belief, and on property rights, the right to education, and the right to health services, are reasonably and demonstrably justified, noting the explanations provided by the Minister.

As previously noted, the committee considers the human rights certificate tabled with SL No. 87 of 2020 contains a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

July 2020

Economics and Governance Committee

Chair

Mr Linus Power MP, Member for Logan, Chair

Deputy Chair

Mr Ray Stevens MP, Member for Mermaid Beach, Deputy Chair

Members

Mr Lance McCallum MP, Member for Bundamba

Mr Sam O'Connor MP, Member for Bonney

Ms Kim Richards MP, Member for Redlands

Mr Trevor Watts MP, Member for Toowoomba North

¹⁹ SL No. 87 of 2020, human rights certificate, p 2.

²⁰ SL No. 87 of 2020, Schedule 1 (see 'Village Zone').

²¹ SL No. 87 of 2020, human rights certificate, p 2.