

State Development and Regional Industries Committee

Report No. 41, 57th Parliament

Subordinate legislation tabled between 30 November 2022 and 14 March
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 30 November 2022 and 14 March 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).¹

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.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
174	Fisheries (Commercial Fisheries) Amendment Regulation 2022	21 February 2023	11 May 2023
175	Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2022	21 February 2023	11 May 2023
176	Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2022	21 February 2023	11 May 2023
177	Water Amendment Regulation 2022	21 February 2023	11 May 2023
182	Planning (Rooming Accommodation) Amendment Regulation 2022	21 February 2023	11 May 2023
190	Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2022	21 February 2023	11 May 2023
193	Water Plan (Barron) (Postponement of Expiry) Notice 2022	21 February 2023	11 May 2023
194	Fisheries Legislation Amendment Declaration 2022	21 February 2023	11 May 2023

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

195	Planning Amendment Regulation 2022	21 February 2023	11 May 2023
3	Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023	21 February 2023	11 May 2023
12	Economic Development (Variation of Caloundra South UDA) Amendment Regulation 2023	14 March 2023	25 May 2023
13	Planning (Caboolture West Interim Structure Plan) Amendment Regulation 2023	14 March 2023	25 May 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

Unless noted below, 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 noted in this report comply with the requirements of section 24 of the LSA and that 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 Summary of committee comments

The Fisheries (Commercial Fisheries) Amendment Regulation 2022 (Regulation) alters allowable nets for commercial fishers in the East Coast Net Fishery (ECN Fishery) to maintain the sustainable management of the ECN Fishery.

In examining issues of fundamental legislative principles, the committee considered a potential breach to the right to conduct business without interference. The committee was satisfied that the breach is justified on the basis that the Regulation is necessary to protect the sustainable management of the ECI Fishery and protected and threatened species within it.

The Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2022 (Regulation) amends the Wheelchair Accessible Taxi Grants Scheme (the Scheme) to lengthen the schemes duration, broaden its eligibility requirements, and introduce measures to prevent financial abuse.

In examining issues of fundamental legislative principles, the committee considered a potential breach to the right to conduct business without interference. The committee was satisfied that the breach is justified on the basis of the objectives of the scheme and the need to prevent potential financial abuse.

The Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2022 (Regulation) amends the Resilient Homes Assistance Scheme to increase the uptake of the scheme and prevent potential financial abuse.

The Water Amendment Regulation 2022 (Regulation) improves the clarity and administrative efficiency of the Water Regulation 2016. It also introduces new metering requirements in the Cape York and Burdekin Basin water plan areas.

In examining issues of fundamental legislative principles, the committee considered a potential breach of natural justice (right to be heard) because there is no right to review non-discretionary decisions made by a water plan Chief Executive regarding seasonal water allocation. The committee was satisfied that the breach is justified on the basis that the water plans are open to public consultation.

The committee considered a potential human rights limitation (right to property) for those in Cape York and Burdekin Basin who must install water meters and are subject to ongoing regulation. The committee was satisfied that the limitation is reasonable and demonstrably justified given the need to protect the water resources of the affected areas.

The Planning (Rooming Accommodation) Amendment Regulation 2022 (Regulation) makes the conversion of residential homes into rooming accommodation accepted development, removes certain planning overlays, and introduces new zone purpose statements.

The committee considered a potential human rights limitation to the right to free expression by removing the requirement for the conversion of homes to rooming accommodation to be assessed against the local planning schemes. The committee was satisfied that the limitation is reasonable and demonstrably justified given the overarching objectives of the Regulation.

The Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2022 (Regulation) amends the Special Disaster Assistance Recovery Grants Scheme to prevent potential financial abuse of the scheme.

The Water Plan (Barron) (Postponement of Expiry) Notice 2022 postpones the expiry of the Water Plan (Barron) 2002 until 30 June 2023.

The Fisheries Legislation Amendment Declaration 2022 (Declaration) amends catch limits for the commercial fishing of the black jewfish, king threadfin, and prescribed whiting in the East Coast Inland Fishery (ECI Fishery). The Declaration is in response to updated stock levels. Limits are relaxed in all cases except for king threadfin in region 5 of the ECI Fishery. It also permits recreational fishermen to catch king threadfin year round.

The committee considered a potential human rights limitation to the right of Aboriginal and Torres Strait Islander people to maintain their distinctive spiritual, material, and economic relationship with coastal seas through the increase in commercial fishing. The committee was satisfied that the limitation is reasonable and demonstrably justified in order to sustainably manage Queensland's fisheries resources and develop the state's commercial fishing industry. The committee also considered a potential human rights limitation to the property rights of commercial fishing licence-holders via the reduction in quotas for king threadfin in ECI Fishery region 5. The committee was satisfied that the limitation is reasonable and demonstrably justified in order to sustainably manage Queensland's fisheries resources

The Planning Amendment Regulation 2022 (Regulation) is concerned with 4 policy areas: accommodation for rural workers, electric battery storage sites, relocatable classrooms, and provisions related to a public health facility. It makes development of underutilised sites for rural worker accommodation accepted development as part of the Queensland Government's Rural Workers' Initiative and exempts small scale accommodation for rural workers in certain circumstances from requiring a material change of use approval. It introduces a new 'use term' for battery storage facilities and exempts certain small battery storage sites from being made accessible development. It removes the requirement for development approvals when installing relocatable classrooms in state schools. It removes provisions relating to a public health facility.

The committee considered potential human rights limitation to the right to free expression and a fair hearing through the removal of some opportunities for public consultation by making some developments (certain rural worker-accommodation, small battery storage sites, and relocatable classrooms) no longer subject to development applications. The committee is satisfied that the limitations are reasonable and demonstrably justified given the shortage of rural worker-accommodation, the need to update the state's electricity distribution network and provide school principals with tools to manage unexpected increases in student enrolment.

The Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023 (Regulation) makes permanent a temporary movement control that was introduced following the discovery of varroa mite in New South Wales. The Regulation also removes bio-security measures relating to the bee louse.

In examining issues of fundamental legislative principle, the committee considered a potential breach to the right to conduct business without interference by preventing honey bee owners from transporting varroa mite carriers (such as hives) into Queensland. The committee was satisfied that the breach is justified on the basis of the threat the varroa mite poses to the state's honey bee industry and those who rely on honey bee pollination.

The Economic Development (Variation of Caloundra South UDA) Amendment Regulation 2023 (Regulation) amends the Economic Development Regulation 2013 to update the Caloundra South regulatory map (Map No. UDA 14) to reflect the inclusion of additional land (13.5 hectares) in the Priority Development Area (PDA).³ Specifically, it realigns the boundary of the Caloundra South PDA with the Bells Creek Road corridor.

The committee considered a potential human rights limitation (right to a fair hearing) because the inclusion of the land does not afford a third-party submitter the right to appeal a decision to amend a PDA development. The committee was satisfied that the limitation is reasonable and demonstrably justified given the need to promote efficient development within the PDA.

The Planning (Caboolture West Interim Structure Plan) Amendment Regulation 2023 (Regulation) prohibits certain development in West Caboolture in order for detailed land use and infrastructure planning to be undertaken and to ensure that there will be a sufficient number of state schools in an area that has been identified as a site for major expansion.

The committee considered a potential human rights limitation (right to a fair hearing) because the prohibitions on development and the changes to assessment categories limit appeal rights. The committee was satisfied that the limitation is reasonable and demonstrably justified on the basis of the need to ensure Caboolture West is a well-planned and liveable community.

Further information on each item of subordinate legislation is provided below.

5 Fisheries (Commercial Fisheries) Amendment Regulation 2022 – SL No. 174

The objective of the Fisheries (Commercial Fisheries) Amendment Regulation 2022 (SL No. 174) is to sustainably manage the east coast net fishery (ECN Fishery) – the state's largest commercial fishery – by balancing the needs of commercial fishers with the threat their nets pose to endangered or protected species, such as turtles. It does so by reversing a previous regulation regarding the mesh and ply sizes of fishing nets.

The ECN Fishery is divided into 6 trawl regions.⁴ As part of the state government's *Queensland Sustainable Fisheries Strategy 2017-2027*, changes to allowed net mesh and ply sizes were introduced for the east coast no. 1 and no. 2 fisheries in September 2021.⁵ It was expected that this would cut the number of breeding barramundi inadvertently captured and reduce the risk of entanglement for threatened species. However, as the explanatory notes explain, there is evidence that the changes did not reduce entanglement rates and may, in fact, have had the opposite effect.⁶ Additionally, the industry reported that the new style nets were neither widely available nor efficacious.⁷

SL No. 174 thus seeks to:

- increase the maximum allowed net mesh size in the nearshore waters of the east coast no. 1 and no. 2 net fisheries to the pre-September 2021 mesh size
- increase the ply diameter of nets for the nearshore waters of the east coast no. 2 net fishery to pre-September 2021 ply diameter.⁸

³ SL No. 12, explanatory notes, p 1.

⁴ SL No. 12, explanatory notes, p 1.

⁵ SL No. 174, explanatory notes, p 1.

⁶ SL No. 174, explanatory notes, pp 1-2.

⁷ SL No. 174, explanatory notes, pp 1-2.

⁸ SL No. 174, explanatory notes, p 2.

5.1 Consistency with fundamental legislative principles

The reasonableness and fairness of treatment of individuals is relevant in considering whether legislation has sufficient regard to the rights and liberties of individuals.⁹ Legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business without interference.¹⁰

The explanatory notes acknowledge that SL No. 174 potentially breaches fundamental legislative principles by restricting how commercial fishing can take place. The explanatory notes state that the restrictions are justified because they relax current arrangements and are in response to ongoing consultation with industry stakeholders.¹¹ It concludes that SL No. 174 does not impose excessive restrictions and strikes an appropriate balance between effective fishery management and allowing industry to conduct business without interference.

Committee comment

The committee is satisfied that the potential breach to the right to conduct business without interference is sufficiently justified on the basis that the measures to be implemented are necessary to protect the sustainability and economic viability of the ECN Fishery, as well as preserving threatened and endangered species.

6 Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2022 – SL No. 175

The objective of the Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2022 (SL No. 175) is to extend the duration and broaden the eligibility requirements of the Wheelchair Accessible Taxi Grants Scheme (the Scheme) and prevent any potential financial abuses.

Queensland has an ageing fleet of wheelchair accessible taxis. In the long term this threatens the ability of disabled residents to travel, especially in rural and regional areas. In response the Queensland Government introduced the Scheme to provide grants to taxi operators to update their taxis or replace a conventional vehicle with an accessible version. The Scheme was introduced in late 2019 but due to the COVID-19 pandemic there was limited uptake. The original scheme also unintentionally limited the number of operators eligible to take part and was drafted in a way that could lead to financial abuse (applicants could purchase a vehicle funded by the scheme, immediately sell it, and then use the scheme to purchase a replacement).

SL No. 175 seeks to remedy these defects in the following ways:

- extending the scheme for a further year (to 30 June 2024)
- allowing operators to take part even if they do not have a vehicle attached to their taxi service licence
- allowing operators to transfer a funded vehicle to another taxi service licence
- ensuring a vehicle funded through the Scheme cannot be replaced with another Scheme funded vehicle for 3 years.

6.1 Consistency with fundamental legislative principles

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.¹² In this regard, legislation should not, without sufficient justification, unduly restrict ordinary activity including the right to conduct business

⁹ *Legislative Standards Act 1992*, s 4(2)(a).

¹⁰ Department of Premier and Cabinet, *The Queensland Legislation Handbook - Governing Queensland*, 2014, p 35.

¹¹ SL No. 174, explanatory notes, pp 1-2.

¹² LSA, s 4(2)(a).

without interference.¹³ SL No. 175 potentially breaches this fundamental legislative principle by providing conditions of agreement to participation in the Scheme, which require applicants replacing a conventional taxi with a wheelchair accessible taxi to retain the funded vehicle as the stated vehicle on the licence used during application. Given the intention of the Scheme was to provide continuity of accessible taxi services, the potential restriction in ordinary activities – represented by the condition that the funded vehicle be retained for 3 years – is appropriate and has sufficient regard to the rights and liberties of individuals.

Committee comment

The committee is satisfied that the potential breach to the right to conduct business without interference is sufficiently justified on the basis that participation in the Scheme is voluntary and it is appropriate given the objective of the Scheme to maintain the continuity of accessible taxi services.

7 Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2022 – SL No. 176

The objective of the Rural and Regional Adjustment (Variation of Resilient Homes Assistance Scheme) Amendment Regulation 2022 (SL No. 176) is to address the unintended impediments to the uptake of the Resilient Homes Assistance Scheme (the Scheme) that have been identified.¹⁴ SL No. 176 remedies these by:

- making assistance inclusive of General Sales Tax (GST)
- providing financial aid where the preferred resilience measure is to either demolish and rebuild the home or relocate it
- reducing the number of authorities applicants need to inform.

The alternative resilience measures are not expected to increase costs. The inclusion of GST will however increase costs on a per capita basis, as well as the overall number of applications.

8 Water Amendment Regulation 2022 – SL No. 177

The objective of the Water Amendment Regulation is to improve the clarity and administrative efficiency of the Water Regulation 2016 (SL No. 177) in regards to seasonal water assignment. To do so, SL No. 177:

- removes the requirement for an information notice to be provided to an applicant for some routine approvals
- confirms the timings for when a decision notice or an information notice should be provided
- clarifies that the commencement date of a seasonal water assignment for a water allocation is the date stated in the notice
- alters terminology regarding bore driller's licences.

Other minor changes include renaming of certain terms and correcting a map reference.

The most significant change is the introduction of new metered entitlements in the Cape York and Burdekin Basin water plan areas. While this will increase costs for those affected, metering is widespread across Australia. The explanatory notes state this decision was made after consultation with the relevant stakeholder bodies.¹⁵

¹³ Department of Premier and Cabinet, *The Queensland Legislation Handbook - Governing Queensland*, 2014, p 35.

¹⁴ SL No. 176, explanatory notes, p 1.

¹⁵ SL No. 176, explanatory notes, p 1.

8.1 Consistency with fundamental legislative principles

SL No. 177 may breach the fundamental legislative principle of natural justice (right to be heard) because there is no right to review non-discretionary decisions made regarding seasonal water allocation. The explanatory notes consider this breach is justified as water plans are themselves released for public consultation. In addition where a water plan Chief Executive has exercised discretion in making the decision, SL No. 177 continues to require that ‘the applicant must be given an Information Notice, affording a merit-based review (internal review) of the decision in the first instance, and subsequent right of appeal to a court’.¹⁶

Committee comment

The committee is satisfied that the potential breach to the principle of natural justice (right to be heard) through the absence of a right to review non-discretionary decisions is sufficiently justified on the basis that water plans are released for public consultation prior to any non-discretionary decision being made.

8.2 Compatibility with human rights

All persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property.¹⁷

The human rights certificate notes that, by including a new metered entitlement area, SL No. 177 will engage property rights, as the holders of water authorisations that are prescribed as metered entitlements by SL No. 177 will have additional regulatory requirements.¹⁸ These requirements may limit property rights and are subject to compliance provisions.¹⁹

According to the Minister for Regional Development and Manufacturing and Minister for Water, SL No. 177 strikes an appropriate balance between providing for sustainable management of water resources and limiting property rights through metering obligations as:

While prescribing metered entitlements does introduce additional obligations on water users, the limitation is not a substantial restriction on a person’s ability to use or enjoy their property. The purpose of the limitation (metering obligations) is to support the sustainable management of water resources by ensuring the objectives of the Water Plan (Cape York) 2019 and the Water Plan (Burdekin Basin) 2007 are being met.²⁰

Committee comment

The committee is satisfied that the potential limitation of property rights is reasonable and demonstrably justified to maintain the sustainable management of the water resources in Cape York and Burdekin Basin, noting the objectives of the water plans.

9 Planning (Rooming Accommodation) Amendment Regulation 2022 – SL No. 182

In line with the Queensland Government’s *Housing and Homelessness Action Plan 2021-2025*, the objective of the Planning (Rooming Accommodation) Amendment Regulation 2022 (SL No. 182) is to increase the supply of affordable housing in Queensland.²¹ It does so by introducing 3 new planning provisions:

¹⁶ SL No. 177, explanatory notes, p 4.

¹⁷ *Human Rights Act 2019*, s 24.

¹⁸ SL No. 177, human rights certificate, p 1.

¹⁹ SL No. 177, human rights certificate, p 1.

²⁰ SL No. 177, human rights certificate, p 3.

²¹ Department of Communities, Housing and Digital Economy, *Queensland Housing and Homelessness Action Plan 2021-2025*, 2021.

- converting existing homes into rooming accommodation²² will no longer require material change of use approval in low and low-medium density residential zones (this provision includes a 3-year sunset clause)
- so that the dwelling houses and rooming accommodation are not unreasonably made accessible, planning ‘overlays’ (finer levels of assessment used in the planning processes) will be removed except in areas related to safety, protection of the environment, local heritage and buildings
- zone purpose statements will be updated so that a wider range of dwellings are encouraged in the low-density and medium density residential zones. SL No. 182 does not state what new type of housing forms are envisaged.

The explanatory notes state that the cost of implementing the new regulations will be met from within existing budgets.²³

9.1 Compatibility with human rights

SL No. 182 may restrict an individual’s right to seek, receive, and impart information and ideas (freedom of expression) by removing the requirement for the conversion of homes to rooming accommodation to be assessed against the local planning schemes. The explanatory notes, however, state that some local governments already do not require material change of use approvals for this type of conversion.

Committee comment

The committee is satisfied that the potential limitation of the right to free expression from removing the material change of use assessment when converting to rooming accommodation is sufficiently justified in light of the housing shortage and the absence of similar requirements by some local governments.

10 Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2022 – SL No. 190

The objective of the Rural and Regional Adjustment (Variation of Special Disaster Assistance Recovery Grants Scheme) Amendment Regulation 2022 is to prevent financial abuse of the Special Disaster Assistance Recovery Grant Scheme (the Scheme). The Scheme was intended to aid primary producers to purchase consumable clean-up products (e.g. mops and buckets) following disasters. However, applicants have included those with only tangential connections to primary production, as well as applications for large capital items, such as tractors.²⁴ To prevent the perversion of the aims of the scheme, SL No. 190:

- requires applicants to demonstrate that they spend the majority of their labour and derive the majority of their income from primary production or will do so within a ‘reasonable time’
- requires applicants to demonstrate that the materials they are seeking to purchase are not ordinarily available for hire or lease.

²² Rooming accommodation is a residential use where a person rents a room but generally shares some facilities, furniture or equipment outside of the resident’s room with other residents. Examples include a boarding house, hostel, and off-site student accommodation.

²³ SL No. 182, explanatory notes, p 3.

²⁴ SL No. 190, explanatory notes, p 2.

11 Water Plan (Barron) (Postponement of Expiry) Notice 2022 – SL No. 193

The objective of the Water Plan (Barron) (Postponement of Expiry) Notice 2022 (SL No. 193) is to postpone the expiry of the Water Plan (Barron) 2002, which was due to expire on 19 December 2022, until 30 June 2023.²⁵

The *Water Act 2000* allows the Minister for Regional Development and Manufacturing and Minister for Water to postpone the expiry of a plan while preparing a new plan, but not for a period greater than 3 years.²⁶

12 Fisheries Legislation Amendment Declaration 2022 – SL No. 194

The objective of the Fisheries Legislation Amendment Declaration 2022 (SL No. 194) is to maintain a sustainable fishing industry in the East Coast Inland Fishery (ECI Fishery) in line with the objectives of the *Queensland State Fisheries Strategy: 2017 – 2027*. In 2021 limits were placed on the total weight of fish that can be caught by commercial, indigenous, and recreational fishermen within the ECI Fishery. Changes to stock levels have prompted the Department of Agriculture and Fisheries to relax the restrictions on a number of species. SL No. 194:

- increases the proscribed commercial catch for the black jewfish and permits recreational fishermen to catch black jewfish year round
- increases the quota entitlement for king threadfin in the ECI Fishery zone as a whole while reducing entitlements in region 5 where the biomass of fish remains highly variable²⁷
- increases the quota entitlements for prescribed whiting (including stout whiting).

12.1 Consistency with fundamental legislative principles

In maintaining total quota entitlement for black jewfish, king threadfin, and prescribed whiting, SL No. 194 potentially infringes the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals, including the right to conduct business without interference. The explanatory notes observe that such an infringement is justified to maintain the long-term viability of the commercial fishing industry and that the total entitlements for the aforementioned species are being increased.²⁸

Committee comment

The committee is satisfied that the potential breach to the right to conduct business without interference is justified to maintain the long-term viability of the commercial fishing industry.

12.2 Compatibility with human rights

Cultural rights – Aboriginal and Torres Strait Islander Peoples

By increasing the amount of king threadfin, black jewfish and prescribed whiting that can be taken by commercial fishermen, SL No. 194 may limit the right of Aboriginal and Torres Strait Islander peoples to maintain their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom.²⁹ The human rights certificate notes however that this, ‘is necessary to maximise economic yield to promote the development of Queensland’s commercial fishing industry and sustainably manage Queensland’s fisheries resources.’³⁰

²⁵ SL No. 193, human rights certificate, p 1; SL No. 193, explanatory notes, p 1.

²⁶ *Water Act 2000*, s 55(2); explanatory notes, p 1.

²⁷ SL No. 194, explanatory notes, p 2.

²⁸ SL No. 194, explanatory notes, p 6.

²⁹ SL No. 194, human rights certificate, p 4.

³⁰ SL No. 194, human rights certificate, p 7.

Property rights

By reducing commercial fishermen's quota entitlements to king threadfin in region 5 of the ECI Fisheries, SL No. 194 limits the property rights of licence-holders. The Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities concludes this restriction is necessary to ensure that king threadfin is managed sustainably throughout the ECI Fishery, including to help ensure Queensland's commercial fishing industry continues sustainably into the future.³¹

Committee comment

The committee is satisfied that the potential breach to the right of Aboriginal and Torres Strait Islander peoples to maintain their distinctive spiritual, material and economic relationship with the coastal seas as well as the breach to property rights are justified to maintain the long-term viability of the commercial fishing industry and Queensland's fisheries resources.

13 Planning Amendment Regulations 2022 – SL No. 195

SL No. 195 has 4 objectives:

- increasing the supply of accommodation for rural workers by a) repurposing existing underutilised facilities and b) allowing small scale rural workers accommodation to proceed without a material change of use development approval
- updating planning regulations regarding electric battery storage sites
- providing relocatable classrooms for state schools to meet enrolment requirements
- removing provisions relating to a public health facility.

Repurposing existing underutilised facilities

SL No. 195 engages with part A of the government's Queensland Rural Workers' Accommodation Initiative (the Initiative). It follows recommendations made at the Housing Summit (October 2022) that the government undertake an audit of state-owned land and buildings to identify properties that can be re-purposed for residential use.³² The use of existing properties is explained as necessary while longer terms plans are being developed.³³

SL No. 195 will make developments for accommodating rural workers accepted development (i.e. not requiring local government approval) on sites that have been nominated by the Planning Minister as part of the initiative.

The Initiative requires that sites must meet the following criteria:

- include an existing building that can be used as sleeping quarters for more than 20 workers
- be in a local government area where there is a demonstrated need for rural works
- contain or be able to contain appropriate facilities for housing rural workers, including a kitchen, a laundry and spaces for indoor and outdoor recreation.³⁴

The explanatory notes highlight that the planning exemptions are short-term measures. The accepted development exemption will last until 9 December 2025 and no existing lawful use rights will accrue for premises beyond the end of the initiative.³⁵

³¹ SL No. 194, human rights certificate, p 5.

³² Queensland Government, *Queensland Housing Summit Outcomes Report*, November 2022, p 12.

³³ SL No. 195, explanatory notes, p 4.

³⁴ Queensland Government, *Queensland Rural Workers' Accommodation initiative*, 2 December 2022.

³⁵ SL No. 195, explanatory notes, p 5.

Small scale rural workers accommodation

Altering the planning framework to assist the delivery of small-scale rural workers accommodation forms part B of the Initiative. SL No. 195 seeks to achieve this by making a material change of use for rural workers accommodation exempt from requiring local government approval where:

- premises are in a rural zone
- premises are not less than 25 hectares
- development will not result in accommodation for more than 20 employees.

A sunset clause is also included in the regulations (3 years from commencement). The explanatory notes state this is to ensure that the provisions are having the intended effect.³⁶

The explanatory notes indicate that Growcom has undertaken their own consultation into rural worker accommodation and have identified a need to aid smaller producers (which is the intention of this Regulation). The Local Government Association of Queensland (LGAQ) has also been consulted, and its concerns about the need to maintain local authority planning control in the long term are described as having prompted the introduction of a sunset clause.

Battery storage facility

SL No. 195 introduces a new 'use term' for a battery storage facility which local authorities will be able to incorporate into their planning schemes. According to the explanatory notes, the aim is to ensure that there is a 'transparent assessment pathway for this essential infrastructure'.³⁷

The Regulation also provides that a small battery storage facility will be unable to be made assessable development by local authorities when batteries are either:

- pad-mounted and have a footprint no greater than 15 metre²
- pole mounted and be no greater than 2 metre³ in size.

The aim of SL No. 195 is to limit the regulatory burden of installing new infrastructure as part of the upgrade of the state's electricity distribution network.

Consultation was undertaken with the Department of Premier and Cabinet, Queensland Treasury, Department of Energy and Works, Queensland Fire and Emergency Services, Department of Environment and Sciences, Office of Industrial Relations, Energy Queensland, Powerlink, and LGAQ.

Relocatable classrooms

SL No. 195 removes the requirement for a development approval for the installation of relocatable classrooms at state schools. The explanatory notes state this is needed so principals can respond quickly to increases in student enrolments. Existing planning procedures are described as 'lengthy and uncertain'.³⁸

The Regulation includes requirements relating to the location of these classrooms within school premises and, where they require building work, their size. A clause limits the number of relocatable classrooms to 4 within 2 years of the commencement of the regulation. There is no clause limiting how long relocatable classrooms can be used.

Consultation was undertaken with the Department of Premier and Cabinet, Queensland Treasury, Department of Education, Department of Transport and Main Roads, Queensland Fire and Emergency Services, and Department of Energy and Public Works.

³⁶ SL No. 195, explanatory notes, p 5.

³⁷ SL No. 195, explanatory notes, p 6.

³⁸ SL No. 195, explanatory notes, p 8.

Removing provisions related to a public health facility

SL No. 195 removes the current provisions pertaining to the public health accommodation facility located on Lot 4 of SP 296105, the Queensland Regional Accommodation Centre (colloquially known as the Wellcamp Quarantine Facility). These were introduced in the Planning (Public Health Accommodation Facility) Amendment Regulation 2021. This removed the requirement for planning approval by local government for the land on Lot 4 where development was intended for accommodating persons to whom a direction under the *Public Health Act (2005)* had been made.³⁹

No information was provided regarding consultation or whether the facility will form part of the Queensland Rural Workers' Accommodation Initiative.

13.1 Compatibility with human rights

SL No. 195 potentially limits the right to freedom of expression and a fair hearing because it removes some opportunities for public consultation by making some developments (rural worker accommodation, battery storage sites, and relocatable classrooms) no longer subject to development applications. However, the regulations only apply to small battery storage facilities; many local governments already make rural worker accommodation accepted development; and the regulations for relocatable classrooms contain safeguards as to their number, size, and location.

Committee comment

The committee is satisfied that the potential breaches to the right to free expression are justified for the following reasons:

- the removal of public consultation in the case of rural worker accommodation is justified in light of the shortage of affordable rural housing and because many local authorities do not provide for rural worker accommodation to be assessable development
- the removal of public consultation in the case of small battery storage is justified due to the need to speed the development of the state's electricity distribution network and because large battery storage sites will remain assessable development
- the removal of public consultation in the case of relocatable classrooms is justified as principals require tools to swiftly respond to changes in enrolment and because the regulation includes limits to their number, size, and use.

14 Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023 – SL No. 3

The objectives of the Biosecurity (Varroa Mite and Other Matters) Amendment Regulation 2023 (SL No. 3) are to:

- minimise the risk of varroa mite⁴⁰ from becoming established in Queensland and potentially causing the collapse of the state's European honey bee colonies. The Regulation seeks to achieve this by making permanent the temporary movement control order introduced in June 2022 following the discovery of varroa mite in New South Wales. This temporary movement control order expired on 7 February 2023.
- Remove bio-security regulations for the bee louse. A small wingless fly that lives in honey bee colonies, the bee louse can impact honeycomb quality and cause the malnourishment of the queen. However, the explanatory notes advise that the Australian Honey Bee Industry Council (AHBIC) and the Chief Plant Health Managers for NSW, Queensland, Victoria, and South Australia hold the view that bee louse should no longer be regulated. The Queensland Beekeepers Association also supports deregulation.

³⁹ Planning (Public Health Accommodation Facility) Amendment Regulation 2021, s 3.

⁴⁰ A tiny red brown parasite.

14.1 Compatibility with fundamental legislative principles

Legislation should not, without sufficient justification, unduly restrict ordinary activities, including the conduct of business.⁴¹

The regulation of varroa mites in SL No. 3 impacts on the conduct of business because it:

- prohibits individuals from moving varroa mite carriers⁴² into Queensland (in most instances)⁴³
- imposes requirements for persons to notify relevant authorities if varroa mites are present or suspected to be present.⁴⁴

The explanatory note justifies these restrictions on the basis of the threat the varroa mite poses to the Queensland honey bee industry (and industries reliant on honey bee pollination) and the limited control options for eradicating varroa mite once it enters Queensland.⁴⁵

Committee comment

The committee is satisfied that the potential breach to the right to conduct business without interference is justified on the basis of the threat posed to Queensland's honey bee industry, as well as industries reliant on bee pollination.

15 Economic Development (Variation of Caloundra South UDA) Amendment Regulation 2023 – SL No. 12

The objective of the Economic Development (Variation of Caloundra South UDA) Amendment Regulation 2023 (SL No. 12) is to amend the Economic Development Regulation 2013 to update the Caloundra South regulatory map (Map No. UDA 14) to reflect the inclusion of additional land (13.5 hectares) in the PDA.⁴⁶

SL No. 12 realigns the boundary of the Caloundra South PDA with the Bells Creek Road corridor, resulting in a minor and logical expansion of the PDA.⁴⁷

The explanatory notes indicate that the inclusion of the additional land in the Caloundra South PDA:

- was made in accordance with the requirements of the *Economic Development Act 2012* (ED Act)⁴⁸
- promotes the proper and orderly planning, development, and management of the additional land
- does not take the PDA in a new direction from that intended at the time of declaration
- reflects that the configuration and location of the land is no longer conducive for rural uses
- enables the Minister for Economic Development Queensland to apply the provisions of the Caloundra South PDA Development Scheme to the additional land.⁴⁹

⁴¹ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 118.

⁴² 'Varroa mite carrier' means: an apiary; or an apiary appliance; or an apiary product; or a bee; or processed beeswax; or processed honey; or a shelter in which a bee may form a nest outside of a hive; or a swarm of bees: SL No. 3, s 8 (Biosecurity Regulation, new s 94EA).

⁴³ SL No. 3, s 8 (Biosecurity Regulation, new s 94ED).

⁴⁴ SL No. 3, s 8 (Biosecurity Regulation, new s 94EE).

⁴⁵ SL No. 3, explanatory notes, p 4.

⁴⁶ SL No. 12, explanatory notes, p 1.

⁴⁷ SL No. 12, explanatory notes, p 1.

⁴⁸ *Economic Development Act 2012*, s 40F(2).

⁴⁹ SL No. 12, explanatory notes, p 2.

Consultation was undertaken with both the owner of the land (Stockland, the master developer of the PDA) who supported the boundary change. However, Sunshine Coast Regional Council, the relevant local government, did not support the boundary change 'due to its long-held position that the land should be included in the Northern Inter Urban Break under the South East Queensland Regional Plan'.⁵⁰ The Northern Inter Urban Break is the 63,000 hectare area that overlaps the Sunshine Coast Council and Moreton Bay Regional Council Areas.

15.1 Compatibility with human rights

A party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.⁵¹ SL No. 12 may potentially limit the right to a fair hearing because the ED Act 'does not afford a third-party submitter the right to appeal a decision to amend a PDA development scheme or made in response to a PDA development application'.⁵² According to the human rights certificate, the limitation is reasonable and demonstrably justified to promote efficient development in the PDA and because of the minor nature of the change. Decisions also remain subject to right to information and judicial review proceedings.

Committee comment

The committee is satisfied that the potential limit to the right to a fair hearing is sufficiently justified on the basis of the minor nature of the change and the need to promote efficient development in the PDA.

16 Planning (Caboolture West Interim Structure Plan) Amendment Regulation 2023 – SL No. 13

The objective of the Planning (Caboolture West Interim Structure Plan) Amendment Regulation 2023 (SL No. 13) is to ensure that Caboolture West – consistently identified as a major expansion area in South East Queensland – is developed in a way that delivers a well-planned, serviceable and liveable community.⁵³ SL No. 13 does this by:

- prohibiting most development in the Caboolture West investigation area (other than that compatible with its semi-rural character) before detailed land use and infrastructure planning is undertaken
- prohibiting most development on state school sites in the Caboolture West growth area.

The Department of State Development, Infrastructure, Local Government and Planning undertook consultation with state agencies, local utility providers and members of the public between 27 July 2022 and 26 August 2022.⁵⁴

16.1 Compatibility human rights

A party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.⁵⁵ SL No. 13 may potentially limit the right to a fair hearing because the prohibitions prevent development applications being made and associated appeal rights for the applicant. Amendments to the category of assessment from impact to code assessment also removes third party appeal rights. This means a person cannot appeal the decision to the Planning and Environment Court.⁵⁶

The explanatory notes state that the limitations are justified on the basis that prohibited development in the investigation area is necessary to prevent inconsistent development prior to detailed planning

⁵⁰ SL No. 12, explanatory notes, p 3.

⁵¹ HRA, s 31(1).

⁵² SL No. 12, human rights certificate, p 3.

⁵³ SL No. 13, explanatory notes, p 5.

⁵⁴ SL No. 13, explanatory notes, p 6.

⁵⁵ HRA, s 31(1).

⁵⁶ SL No. 13, human rights certificate, p 9.

work being undertaken.⁵⁷ Prohibiting development on school sites in the growth area is also necessary to ensure that the requisite number of state schools are delivered on well-located sites.⁵⁸

The human rights certificate concludes that SL No. 13 strikes a fair balance between the benefits gained by the public by the prescribed planning requirements and the potential limitation on the right to a fair hearing.⁵⁹

Committee comment

The committee is satisfied that the limit to the right to a fair hearing is sufficiently justified on the basis of the need to ensure that Caboolture West is a well-planned and liveable community with sufficient space for future state schools.

17 Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

April 2023

State Development and Regional Industries Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
Members	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

⁵⁷ SL No. 13, explanatory notes, p 3.

⁵⁸ SL No. 13, explanatory notes, p 4.

⁵⁹ SL No. 13, human rights certificate, p 10.