

State Development and Regional Industries Committee

Report No. 16, 57th Parliament

Subordinate legislation tabled between 1 September 2021 and 12 October 2021

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 01 September 2021 and 12 October 2021. 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 compliance of the explanatory notes with the *Legislative Standards Act 1992*¹(LSA) and discusses issues identified by the committee in its consideration of the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

| No. | Subordinate legislation | Date tabled | Disallowance date |
|-----|--|-------------------|-------------------|
| 138 | Planning Amendment Regulation (No. 1) 2021 | 14 September 2021 | 2 December 2021 |
| 139 | Planning (Public Health Accommodation Facility) Amendment Regulation 2021 | 14 September 2021 | 2 December 2021 |
| 146 | Rural and Regional Adjustment (Further Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021 | 12 October 2021 | 24 February 2021 |
| 149 | Rural and Regional Adjustment (Variation of Rural Economic Development Grants Scheme) Amendment Regulation 2021 | 12 October 2021 | 24 February 2022 |
| 152 | Rural and Regional Adjustment (Further Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation (No. 2) 2021 | 12 October 2021 | 24 February 2022 |
| 153 | Rural and Regional Adjustment (Tourism and Hospitality Sector Hardship Grants Scheme) Amendment Regulation 2021 | 12 October 2021 | 24 February 2022 |

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

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

3 Committee consideration of the subordinate legislation

The committee identified no significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.

The committee considered a number of fundamental legislative principle issues as part of its examination. In all cases, the committee was satisfied that any potential breaches of fundamental legislative principle were appropriate and sufficiently justified.

In all but one case, the committee was satisfied that the explanatory notes tabled with the subordinate legislation complied with the requirements of section 24 of the LSA. In the case of SL 138 the Planning Amendment Regulation (No. 1) 2021, the committee made one recommendation:

Recommendation 1 - The committee recommends that the Department of State Development, Infrastructure, Local Government and Planning, provide the committee with information on the results of the consultation undertaken in relation to SL 138, so that it can be published as an addendum to this committee report, as soon as practicably possible.

The committee considered a number of potential human rights limitations resulting from the subordinate legislation. In all cases, the committee was satisfied that the limitations were reasonable and demonstrably justified.

All human rights certificates provided with the subordinate legislation provided a sufficient level of information to facilitate understanding of the subordinate legislation's compatibility with human rights.

4 Planning Amendment Regulation (No. 1) 2021 – SL No. 138

The objectives of the Planning Amendment Regulation (No. 1) 2021 (SL No. 138) are to:

- extend the expiry date of economic support instrument (ESI) provisions under the Planning Regulation 2017 (Planning Regulation) by 12 months to 17 September 2022; and
- make minor amendments to increase the efficiency of the Planning Regulation.³

SL No. 138 extends an existing policy that aims to assist Queensland's economic recovery from COVID-19 by temporarily reducing certain planning assessment requirements.⁴

According to the explanatory notes, the aim of the ESI provisions is to reduce barriers to new businesses opening, or existing businesses relocating and/or adapting to operational challenges.⁵ Specifically, the ESI provisions:

- make particular changes of use for business 'accepted development'⁶ if certain conditions are met
- reduce the level of assessment from impact assessment to code assessment for particular businesses in certain areas, provided certain benchmarks are met
- make certain building work accepted development

³ SL No. 138, explanatory notes, p 1.

⁴ SL No. 138, explanatory notes, p 2.

⁵ SL No. 138, explanatory notes, p 1.

⁶ Accepted development projects are defined as projects that do not need a development application, but must comply with a council's planning rules, including applicable codes.

- allow home-based business in township and residential zones as accepted development provided certain conditions are met.⁷

A local government may, by resolution opt in to one or more of the economic support provisions under the Planning Regulation during this period. Conversely, a local government may also opt out of one or all provisions it had previously 'opted in' to, at any time.⁸

The explanatory notes state:

By removing the need for planning approval only in certain low risk circumstances, the associated development application fees and administrative burden on community members establishing a new business or moving premises is also removed.⁹

SL No. 138 also makes a number of minor amendments to the Planning Regulation. These are intended to clarify provisions relating to the content of planning and development certificates and referral agency requirements for end of trip facilities.¹⁰

According to the explanatory notes:

Targeted consultation occurred with local governments that had opted-in to the ESI provisions seeking their views on the expiry timeframe in the Planning Regulation. The Local Government Association Queensland (LGAQ) was also consulted about the expiry of these provisions. ... Due to the very low-risk nature of the minor amendments, consultation with other stakeholders was not carried out.¹¹

4.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

Clause 24 of the LSA sets out requirements relating to the content of explanatory notes for subordinate legislation. Requirements include an outline of the results of the consultation; and a brief explanation of any changes made to the legislation because of the consultation.

The explanatory notes did not contain any information on the results of the consultation, or any changes made to the legislation as a result of the consultation.

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

Recommendation 1

The committee recommends that the Department of State Development, Infrastructure, Local Government and Planning, provide the committee with information on the results of the consultation undertaken in relation to SL 138, so that it can be published as an addendum to this committee report, as soon as practicably possible.

4.3 Compatibility with human rights

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 Section 13 of that Act.

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

⁷ SL No. 138, explanatory notes, pp 1-2.

⁸ SL No. 138, explanatory notes, p 2.

⁹ SL No. 138, explanatory notes, p 4.

¹⁰ SL No. 138, explanatory notes, p 2.

¹¹ SL No. 138, explanatory notes, p 4.

freedom. Section 13 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

The certificate discusses a number of human rights including recognition and equality before the law (section 15) and right to freedom of expression (section 21). The committee brings the latter right to the attention of the Legislative Assembly below.

The responsible Minister concludes that the subordinate legislation is compatible with the human rights protected by the HRA.

4.3.1 Freedom of expression

The HRA provides that every person has the right to freedom of expression.¹² The human rights certificate states that the reduced level of development assessment afforded by the ESI provisions means that public consultation may no longer be required.¹³

Public notification of a development enables interested parties to make submissions on a matter, and in some instances, to appeal against a decision. SL No. 138 may limit the right to freedom of expression. The human rights certificate justifies the limitation on the basis that reducing the level of development assessment will stimulate the economy, which is for the overall benefit of the public:

The principal objective of the Amendment Regulation is to support the ongoing state-wide economic recovery initiative by extending the timeframe of the currency period which streamlines the statutory planning processes for local government, business and the development industry, whilst still maintaining the integrity of the planning framework. Reducing the level of development assessment for certain economic value-adding uses to operate in envisaged zones, reduces unnecessary barriers to new businesses opening up, supports employment and stimulates the Queensland economy, which is in the overall benefit of the public interest.¹⁴

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights and it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

4.4 Human rights certificate

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.

5 Planning (Public Health Accommodation Facility) Amendment Regulation 2021 – SL No. 139

On 26 August 2021, the Queensland Government announced a proposed 1,000 bed dedicated quarantine facility at Wellcamp to alleviate pressure on the hotel quarantine system in Queensland.¹⁵

The objective of the Planning (Public Health Accommodation Facility) Amendment Regulation 2021 (SL No. 139) is to support the urgent delivery of a public health accommodation facility at Wellcamp Business Park and alleviate pressure on the hotel quarantine system. It does this by amending the Planning Regulation 2017 to provide that a public health accommodation facility owned by, or

¹² HRA, s 21.

¹³ SL No. 138, human rights certificate, p 4.

¹⁴ SL No. 138, human rights certificate, p 4.

¹⁵ SL No. 139, explanatory notes, p 2.

operated by or on behalf of, the State or a public sector entity on identified land at Wellcamp does not require certain planning approvals.¹⁶

The human rights certificate provides the following rationale in support of the policy objective:

For the COVID-19 declared public health emergency, Queensland's Chief Health Officer (CHO) has powers to implement extensive public health measures, including isolating or quarantining people suspected or known to have been exposed to COVID-19. In particular, the public health directions mandating quarantine in government managed or nominated facilities has become a critical component of Queensland's COVID-19 public health response.

The present situation across Australia, with the COVID-19 Delta strain being more easily transmitted, places further demand on Queensland's hotel quarantine network, noting on 22 July 2021 hotel quarantine spaces in Queensland were exhausted. To effectively address the demand and limit COVID-19 transmissions, there is a real need to expedite, as a priority, a purpose-built Queensland quarantine facility.¹⁷

The explanatory notes advise that planning and infrastructure implications of the regulation have been discussed with the Toowoomba Regional Council, including the Mayor. The notes state that:

Discussions with the Council confirmed concerns about the Public health accommodation facility's potential impact on health and local infrastructure networks, and significantly, Toowoomba being recognised as a safe place to live and visit. The Department of State Development, Infrastructure, Local Government and Planning has noted infrastructure matters may be addressed through operational and contractual arrangements with Wagner Corporation, and will ensure key messaging regarding the operation of the facility will reinforce Toowoomba as a safe place.¹⁸

The explanatory notes also state that public consultation has not been undertaken on SL No. 139.¹⁹

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 discusses a number of human rights including: recognition and equality before the law (section 15), right to freedom of movement (section 19); right to freedom of expression (section 21); property rights (section 24); and right to health services (section 37). The committee brings discussion on the right to freedom of expression to the attention of the Legislative Assembly below.

The responsible Minister concludes that the subordinate legislation is compatible with the human rights protected by the HRA.

5.3.1 Freedom of expression

Every person has the right to freedom of expression.²⁰ Under SL No. 139, the proposed establishment of the quarantine facility at Wellcamp would not require the lodgement of a development application under the *Planning Act 2016* where one would otherwise be required. The human rights certificate states, 'This means that any opportunity for the public to view,

¹⁶ SL No. 139, explanatory notes, p 2.

¹⁷ SL No. 139, human rights certificate, p 1.

¹⁸ SL No. 139, explanatory notes, p 3.

¹⁹ SL No. 139, explanatory notes, p 3.

²⁰ HRA, s 21.

comment, or in certain circumstances, appeal a development application for a purpose-built public health accommodation facility does not apply'.²¹

Overall, the human rights certificate justifies the limitation on the right to freedom of expression on the grounds that a purpose-built public health facility, built in a timely fashion, is necessary to respond to the COVID-19 public health emergency and protect the public.²²

Specifically, with respect to the balance between the human right and the limitation, the human rights certificate states:

The limitation to freedom of expression by not providing for third parties to view, comment or appeal a development application for a purpose-built public health accommodation facility is justifiable to respond to the COVID-19 public health emergency to meet community need and expectations. To allow broader freedom of expression in the Amendment Regulation would be contrary to the intent to provide certainty and timely delivery of an urgent public health accommodation facility.²³

The human rights certificate adds that the limitation is lessened because: the development will only apply to the defined public health accommodation facility; and is considered low risk development because it is located in an industrial precinct away from other 'sensitive uses and receptors'. The explanatory notes also state that engagement with Toowoomba City Council is occurring to ensure development standards consistent with the requirements of the Council are included in the associated contractual arrangements to support the use of the site and facility by the State of Queensland.²⁴

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights and limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

5.4 Human rights certificate

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.

6 Rural and Regional Adjustment (Further Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation 2021 – SL No. 146

The COVID-19 Business Support Grants Scheme (August 2021) was established to enable the Queensland Rural and Industry Development Authority (QRIDA) to provide relief and support to eligible Queensland businesses affected by COVID-19-related public health directions that restricted the reasons for which people could leave their homes.²⁵

Under the Scheme, eligible businesses and organisations can access:

- \$10,000 grant for small business with payroll of less than \$1.3 million
- a \$15,000 grant for medium sized business with payroll between \$1.3 million and \$10 million

²¹ SL No. 139, human rights certificate, p 7.

²² SL No. 139, human rights certificate, p 7.

²³ SL No. 139, human rights certificate, p 7.

²⁴ SL No. 139, human rights certificate, pp 7-8.

²⁵ SL No. 146, explanatory notes, p 1. See Rural and Regional Adjustment Regulation 2011, sch 37.

- a \$30,000 grant for large sized tourism and hospitality focused businesses with payroll of greater than \$10 million.²⁶

The objective of SL No. 146 is to extend eligibility under the Scheme to include businesses and non-profit organisations that:

- were trading in the border area in Queensland on 31 July 2021, and
- have been affected by a 'border closure event' (i.e. the imposition of restrictions under a COVID-19 border restrictions direction²⁷).

The explanatory notes state that 'the Office of Best Practice Regulation assessed that the amendment is excluded from further analysis on the basis of category (k) – that is, regulatory proposals are designed to reduce the burden of regulation, or that clearly do not add to the burden, and it is reasonably clear there are no significant adverse impacts'.²⁸

6.1 Fundamental legislative principle issues

Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. Under the LSA, legislation must have: sufficient regard to the rights and liberties of individuals; and the institution of Parliament.

6.1.1 Institution of Parliament – Subdelegation of a power

If subordinate legislation refers to a document that is not reproduced in full in the subordinate legislation, and changes can be made to that document without it being brought to the attention of the Legislative Assembly, the relevant subordinate legislation may be considered to have insufficient regard to the institution of Parliament.²⁹

In determining whether it is appropriate for matters to be dealt with by an instrument that is not subordinate legislation, committees have taken into account the importance of the subject dealt with and the practicality or otherwise of including those matters in subordinate legislation.³⁰

SL No. 146 defines 'border area' by a reference to a map held by a Queensland Government department.³¹ The map is not included within the subordinate legislation, but, according to the note to section 3 of schedule 37, is available on the QRIDA website.³²

The explanatory notes provide the following justification:

It is desirable to refer to a map that describes the 'border area' because the Queensland-New South Wales border is so large and the included area is not a uniform distance within Queensland from the Queensland-New South Wales border, which would make it difficult to describe other than in a map. For this reason, and because a specific, static version of the map is referred to, any potential breaches of the FLP are mitigated and justified.³³

²⁶ SL No. 146, explanatory notes, p 1. See Rural and Regional Adjustment Regulation 2011, sch 37 (s 7).

²⁷ Rural and Regional Adjustment Regulation 2011, sch 37 (s 3).

²⁸ SL No. 146, explanatory notes, p 3.

²⁹ See *Legislative Standards Act 1992* (LSA), ss 4(2)(b), 4(5)(e).

³⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 170.

³¹ SL No. 146, s 5 (Rural and Regional Adjustment Regulation 2011, sch 37 (amended s 3))

³² See SL No. 146, s 5.

³³ SL No. 146, explanatory notes, p 3.

Committee comment

The committee is satisfied that the incorporation of an external document (i.e. the map defining border area) by the subordinate legislation is justified due to the complexity of defining the border in written form, and the fact that the map is readily available online.

6.1.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.1.3 Compatibility with human rights

The responsible Minister concludes that the subordinate legislation is compatible with the human rights protected by the HRA because it does not limit human rights.³⁴

Committee comment

The committee is satisfied that the subordinate legislation is compatible with the HRA, and that no human rights are engaged by its implementation.

6.1.4 Human rights certificate

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.

7 Rural and Regional Adjustment (Variation of Rural Economic Development Grants Scheme) Amendment Regulation 2021 – SL 149

The Rural Economic Development Grants Scheme (RED Grants Scheme) aims to support rural economic development and create employment in rural and regional Queensland. Under the scheme, grants are provided to business applicants to allow them to invest in new projects related to primary production.³⁵ Investments funded to date include for example, ‘new parking facilities, storage and handling facilities, fish nurseries, and propagation and production sheds’.³⁶

The Rural and Regional Adjustment (Variation of Rural Economic Development Grants Scheme) Amendment Regulation 2021 (SL No. 149) amends the scheme to:

- allow QIRDA to continue to administer the scheme beyond the scheme’s closing date of 30 June 2021 in further rounds
- reduce the maximum level of grant available from \$250,000 to \$200,000
- increase the areas potentially eligible to apply for a RED grant, to include all government areas with the exception of Brisbane, Ipswich, Logan and Redlands.³⁷

SL 149 follows a 2021-22 State Budget commitment (\$6.6m) for two additional rounds of the scheme. The explanatory notes state that this aligns with the Queensland COVID-19 economic recovery plan.³⁸

The explanatory notes state that the ‘regulatory amendments make minor changes to an already existing scheme of financial assistance and, therefore, consultation with industry did not occur’. The

³⁴ SL No. 146, explanatory notes, p 3.

³⁵ SL No. 149, human rights certificate, p 1.

³⁶ SL No. 149, explanatory notes, p 2.

³⁷ SL No. 149, explanatory notes, p 1.

³⁸ SL No. 149, explanatory notes, p 2.

Office of Best Practice Regulation in Queensland Treasury advised that the amendment is excluded from further analysis as the regulatory proposals are unlikely to result in significant adverse impacts.³⁹

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 responsible Minister concluded that the Rural and Regional Adjustment (Variation of Rural Economic Development Grants Scheme) Amendment Regulation 2021 is compatible with the HRA because it does not limit any of the human rights protected by the Act.

Committee comment

The committee is satisfied that the subordinate legislation is compatible with the HRA, and that no human rights are engaged by its implementation.

7.4 Human rights certificate

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 Rural and Regional Adjustment (Further Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation (No. 2) 2021 – SL 152

The objective of the Rural and Regional Adjustment (Further Variation of COVID-19 Business Support Grants Scheme (August 2021)) Amendment Regulation (No. 2) 2021 (SL No. 152) is to further amend the Scheme to provide for a one-off \$5,000 ongoing hardship grant to businesses and non-profit organisations that:

- were trading in the ‘border area’ on 31 July 2021 and on 14 October 2021
- have received, or are eligible to receive, an initial COVID-19 business support grant, and
- have been continuously affected by ‘border closure events’ for the period 14 August 2021 to 14 October 2021.⁴⁰

Applicants to the Scheme are only entitled to receive one business support grant, and one ongoing hardship grant.⁴¹

The explanatory notes advise that the policy objective of SL No. 152 could have been achieved with the establishment of a separate approved assistance scheme under the *Rural and Regional Adjustment Act 1994*, or to have another a different entity provide the assistance, but that expanding the Scheme was ‘more efficient and minimises administrative burden on both QRIDA and Government’.⁴²

The cost of the expanded Scheme will be met through existing funds:

³⁹ SL No 149, explanatory notes, pp 2-3.

⁴⁰ SL No. 152, explanatory notes, p 2.

⁴¹ SL No. 152, explanatory notes, p 2; SL No. 152, s 9 (Rural and Regional Adjustment Regulation 2011, sch 37, ss 8(4), 8A(2)).

⁴² SL No. 152, explanatory notes, p 3.

The total cost to the Queensland Government will depend upon the level of uptake of the Scheme. After the Scheme's commencement in August, the Commonwealth and Queensland Governments agreed to jointly fund (50/50) the Scheme. The total value of assistance that is jointly funded by the Commonwealth and Queensland Governments is estimated at \$600 million, but this includes a related assistance package which is being delivered separately and is not part of the Scheme. The Scheme, as expanded under this Amendment Regulation, will be accommodated within the existing jointly funded \$600 million package, \$25 million of which was initially allocated for hardship initiatives. Of this initial allocation, up to \$6.5 million will be utilised for the ongoing hardship grants.⁴³

8.1 Consistency with fundamental legislative principles

8.2 Rights and liberties of individuals – Administrative power

SL No. 152 provides that for an applicant (such as a business owner) to be eligible to receive an ongoing hardship grant, the applicant must meet certain conditions, including that the entity has been affected by the border closure events throughout the ongoing hardship eligibility period.⁴⁴ The legislation does not, however, provide criteria for QRIDA to make the decision whether an eligible entity has been affected by the border closure events.

This provision could constitute an infringement on fundamental legislative principles as it makes rights dependent on administrative power but without sufficiently defining the power.⁴⁵

With regard to defining administrative power, the Office of Queensland Parliamentary Counsel (OQPC) states:

Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision. The criteria should generally be express and relevant in the ordinary sense of the word.⁴⁶

The explanatory notes do not address this issue.

Committee comment

The committee notes that detailed eligibility criteria is not provided in the legislation. The committee also notes that the nature of the grant is limited to a one off payment of \$5,000 for those businesses affected by border closures during a defined time frame of less than three months, and that the business must be eligible to apply for an initial COVID-19 business support grant. Further detail on the nature of the grants is also provided on the QRIDA website. On balance, the committee is satisfied that criteria contained in legislation is sufficient and that the rights and liberties of individuals have been adequately addressed.

8.2.1 Institution of Parliament – Subdelegation of a power

SL No. 152 (like SL No. 146 discussed above) may breach the fundamental legislative principle concerning the subdelegation of legislative power, in that the subordinate legislation refers to an external document – a map – to define the 'border area'. The explanatory notes provide the same justification as that for SL No. 146 (See above).⁴⁷

⁴³ SL No. 152, explanatory notes, p 3.

⁴⁴ SL No. 152, s 9 (sch 37, s 8A).

⁴⁵ LSA, s 4(3)(a).

⁴⁶ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 15.

⁴⁷ See above and SL No. 152, explanatory notes, p 3.

Committee comment

The committee is satisfied that the incorporation of an external document (i.e. the map defining the border area) by the subordinate legislation is justified due to the complexity of defining the border in written form, and the fact that the map is readily available online.

8.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.4 Compatibility with human rights

The responsible Minister concludes that the subordinate legislation is compatible with the HRA because it does not limit human rights.

Committee comment

The committee is satisfied that the subordinate legislation is compatible with the HRA, and that no human rights are engaged by its implementation.

8.5 Human rights certificate

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.

9 Rural and Regional Adjustment (Tourism and Hospitality Sector Hardship Grants Scheme) Amendment Regulation 2021 – SL 153

The objective of the Rural and Regional Adjustment (Tourism and Hospitality Sector Hardship Grants Scheme) Amendment Regulation 2021 (SL No. 153) is to enable QRIDA to provide relief and support to eligible tourism and hospitality businesses and non-profit organisations that have been affected by travel restrictions imposed in response to the COVID-19 outbreak.⁴⁸

SL No. 153 establishes the Tourism and Hospitality Sector Hardship Grants Scheme. Under the Scheme, tourism and hospitality businesses and non-profit organisations may be eligible assistance if they fulfil a range of criteria.

Two types of grants are available: ‘tourism and hospitality sector hardship grants’ for eligible Category A businesses and non-profit organisations and ‘major tourism experiences hardship grants’ for eligible Category B businesses and non-profit organisations. Eligible businesses and non-profit organisations are only entitled to receive one type of grant.⁴⁹

The Scheme is to be jointly funded by the Commonwealth and Queensland governments as part of the \$600 million package to support Queensland’s businesses impacted by COVID-19 lockdowns and restrictions, including Queensland’s tourism and hospitality businesses.

The explanatory notes state that the government has consulted with the tourism and hospitality industries, including through Ministerial-level meetings with key industry stakeholders which includes major tourism operators and industry associations. Key representative groups, including the Queensland Tourism Industry Council, Association of Marine Park Tourism Operators and the Regional

⁴⁸ SL No. 153, explanatory notes, p 2; SL No. 153, s 5 (Rural and Regional Adjustment Regulation 2011, sch 38, ss 1, 2).

⁴⁹ SL No. 153, explanatory notes, p 2. ‘Category A business’ and ‘category B business’ are defined in sections 6 and 12, respectively, of SL No. 153.

Tourism Organisation Network have made representations to the Queensland Government about the need for business support.⁵⁰

9.1 Consistency with fundamental legislative principles

9.1.1 Institution of Parliament - Subdelegation of a power

As noted above, if subordinate legislation refers to a document that is not reproduced in full in the subordinate legislation, and changes can be made to that document without it being brought to the attention of the Legislative Assembly, the relevant subordinate legislation may be considered to have insufficient regard to the institution of Parliament.⁵¹

In determining whether it is appropriate for matters to be dealt with by an instrument that is not subordinate legislation, committees have taken into account the importance of the subject matter, the practicality or otherwise of including those matters in subordinate legislation, and other matters.⁵²

Some of the provisions in SL No. 153 refer to the Australian and New Zealand Standard Industrial Classification (ANZSIC). The explanatory notes justify the use of the ANZIC:

It is desirable to refer to this document because applicants already identify their activities by reference to the ANZSIC codes in their dealings with government about various matters. The classifications are well understood and their use will assist businesses and organisations to more readily determine if they are eligible.⁵³

ANZSIC is published by the Australian Bureau of Statistics (ABS) and is freely available on the ABS website.

Committee comment

The committee is satisfied that the references to ANZSIC are appropriate in the circumstances, in particular having regard to business familiarity with the document and the fact that the document is readily available on the ABS website.

9.1.2 Rights and liberties of individuals - Administrative power

SL No. 153 states that an applicant will be eligible for a hardship grant if they can demonstrate to QRIDA that they have 'been significantly affected by COVID-19 travel restrictions'.⁵⁴ This criterion is in addition to requirement that a business demonstrate a reduction in revenue during the relevant period.⁵⁵ The legislation does not, however, provide criteria for QRIDA to make the decision whether the applicant has been significantly affected by COVID-19 travel restrictions.

This provision could constitute an infringement on fundamental legislative principles as it makes rights dependent on administrative power but without sufficiently defining the power.⁵⁶

As noted above with regard to defining administrative power, the OQPC states:

Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in

⁵⁰ SL No. 153, explanatory notes, p 5.

⁵¹ See LSA, ss 4(2)(b), 4(5)(e).

⁵² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 170.

⁵³ SL No. 153, explanatory notes, p 4.

⁵⁴ SL No. 153, s 5 (Rural and Regional Adjustment Regulation 2011, sch 38, s 9(1)(b)(ii)).

⁵⁵ SL No. 153, s 5 (Rural and Regional Adjustment Regulation 2011, sch 38, s 9(1)(b)(i)).

⁵⁶ LSA, s 4(3)(a).

legislation without providing criteria for making the decision. The criteria should generally be express and relevant in the ordinary sense of the word.⁵⁷

The explanatory notes do not address this issue.

Committee comment

The committee notes that detailed eligibility criteria as to what constitutes ‘significantly affected by COVID-19 travel restrictions’ is not provided for in the legislation. The committee also notes that supplementary criteria requires businesses to demonstrate significant reductions in turnover (Category A – 70 per cent, Category B business – 50 per cent) in Queensland operations for at least seven days during a defined period and that further detail on the grants is also provided on the QRIDA website. On balance, the committee is satisfied that criteria contained in legislation is sufficient and that the rights and liberties of individuals have been adequately addressed.

9.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.3 Compatibility with human rights

The responsible Minister concludes that the subordinate legislation is compatible with the HRA because it does not limit human rights.

Committee comment

The committee is satisfied that the subordinate legislation is compatible with the HRA, and that no human rights are engaged by its implementation.

9.4 Human rights certificate

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.

⁵⁷ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 15.

10 Recommendation

Recommendation 1

The committee recommends that the Department of State Development, Infrastructure, Local Government and Planning, provide the committee with information on the results of the consultation undertaken in relation to SL 138, so that it can be published as an addendum to the committee's report, as soon as practicably possible.

Recommendation 2

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

November 2021

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 |
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