

Economics and Governance Committee

Report No. 39, 56th Parliament

Subordinate legislation tabled between 27 November 2019 and 4 February 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 27 November 2019 and 4 February 2020. It reports on the committee’s consideration of the policy to be given effect by the subordinate legislation, its consistency with fundamental legislative principles (FLPs), and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA) and, for subordinate legislation notified from 1 January 2020 onwards:

- the compatibility of the subordinate legislation with the *Human Rights Act 2019* (HRA), and
- the compliance of the human rights certificate with the requirements of s 41 of the HRA.¹

2 Subordinate legislation examined

No.	Subordinate legislation (SL)	Date tabled	Disallowance date*
259 of 2019	Local Government Legislation (Boundary Changes and Other Matters) Amendment Regulation 2019	4 February 2020	11 June 2020
6 of 2020	Local Government (Change of Representation for Cloncurry Shire Council) Amendment Regulation 2020	4 February 2020	11 June 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, or for SL No. 6 of 2020, regarding the compatibility of the subordinate legislation with the HRA.

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

The human rights certificate tabled with SL No. 6 of 2020 complies with the requirements of s 41 of the HRA.

3.1 SL No. 259 of 2019 – Local Government Legislation (Boundary Changes and Other Matters) Amendment Regulation 2019

The objectives of SL No. 259 of 2019 are to:

- implement local government change determinations made by the Local Government Change

¹ Section 41 of the *Human Rights Act 2019* (HRA) requires the responsible Minister to prepare a human rights certificate for subordinate legislation and to table the certificate in the Legislative Assembly with the subordinate legislation. The certificate 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.

Commission (Change Commission) for the purposes of the 2020 quadrennial local government elections, and

- make amendments to approve procedures for electronically assisted voting and for the electronic lodgement of returns for local government elections.²

In relation to local government change determinations, s 22 of the *City of Brisbane Act 2010* and s 20 of the *Local Government Act 2009* (LGA) provide for the Governor in Council to implement the recommendations of the Change Commission under a regulation.

On 17 August 2018, the Minister for Local Government, Minister for Racing, and Minister for Multicultural Affairs (Minister) referred to the Change Commission for its review, a submission for a boundary change proposal to transfer a 3.84 hectare lot from the South Burnett Regional Council to the Toowoomba Regional Council.³

On 11 September 2018, the Chief Executive Officer of the Brisbane City Council (BCC) wrote to the Minister and to the Electoral Commissioner, advising that two Brisbane wards were without a reasonable proportion of electors.⁴ The Electoral Commission of Queensland (ECQ) subsequently referred a review of the BCC's wards to the Change Commission.⁵

Further, in February, March, April and May 2019, the Minister also referred to the Change Commission for review, submissions from the South Burnett Regional Council and a further 15 councils,⁶ in relation to each of these local governments' divisional quotas and other local government changes.⁷

SL No. 259 of 2019 would implement the recommendations of the Change Commission with respect to each of these reviews, to take effect for the purposes of the 2020 quadrennial local government elections. The regulatory amendments specify the ward or divisional boundaries and the external boundaries in all 18 affected councils (the South Burnett Regional Council, the Toowoomba Regional Council, the BCC, and the other 15 councils for which submissions were referred for review in February-May 2019).⁸

² Local Government Legislation (Boundary Changes and Other Matters) Amendment Regulation 2019 (SL No. 259 of 2019), explanatory notes, p 1.

³ SL No. 259 of 2019, explanatory notes, p 2.

⁴ SL No. 259 of 2019, explanatory notes, p 2. Section 17 of the *City of Brisbane Act 2010* sets out what is a 'reasonable proportion of electors' for each ward of the Brisbane City Council (BCC).

⁵ Local Government Change Commission, *Review of Ward Boundaries: 2019 Final Determination – Brisbane City Council*, October 2019, p 3.

⁶ The submissions were received from the Cassowary Coast Regional Council, Fraser Coast Regional Council, Gold Coast City Council, Gympie Regional Council, Ipswich City Council, Isaac Regional Council, Logan City Council, Moreton Bay Regional Council, Redland City Council, Rockhampton Regional Council, Scenic Rim Regional Council, South Burnett Regional Council, Sunshine Coast Regional Council, Tablelands Regional Council, Townsville City Council and Whitsunday Regional Council. See: SL No. 259 of 2019, explanatory notes, p 2.

⁷ SL No. 259 of 2019, explanatory notes, p 2.

⁸ The Change Commission recommended that BCC be redivided into 26 wards; Cassowary Regional Council be redivided into six divisions; Fraser Coast Regional Council be redivided into 10 divisions; Gold Coast City Council be redivided into 14 divisions; Gympie Regional Council be redivided into eight divisions; Isaac Regional Council be redivided into eight divisions; Logan City Council be redivided into 12 divisions; Moreton Bay Regional Council be redivided into 12 divisions; Redland City Council be redivided into 10 divisions; Rockhampton Regional Council be redivided into seven divisions; Scenic Rim Regional Council be redivided into six divisions; South Burnett Regional Council be redivided into six divisions; Sunshine Coast Regional Council be redivided into 10 divisions; Tablelands Regional Council be redivided into six divisions; Townsville City Council be redivided into 10 divisions; Whitsunday Regional council be redivided into six divisions; Ipswich City Council be divided into four multi-member divisions with two councillors representing each division, plus a mayor (nine councillors in total); and that South Burnett Regional Council lot 155 on FY2699 be transferred to the Toowoomba Regional Council. The boundaries for each of the wards or divisions are set out in the maps contained in Appendix A of the Change Commission's full reports outlining its final determinations with respect to each of the reviews of ward or division boundaries, external boundaries, and other electoral arrangements for these local governments. See: SL No. 259 of 2019, explanatory notes, pp 3-6.

In relation to procedures for electronically assisted voting and for the electronic lodgement of returns for local government elections:

- section 75A of the *Local Government Electoral Act 2011* (LGEA) provides that the ECQ may make procedures about how an elector may cast an electronically assisted vote for an election, and
- section 132A of the LGEA, which commenced on 20 January 2020 (as part of amendments contained in the *Local Government (Implementing Stage 2 of Belcarra) and Other Legislation Amendment Act 2019*), provides for the ECQ to make procedures about how an electoral expenditure return must be lodged electronically to enable ‘real-time’ disclosure.

In both instances, the LGEA provides that relevant procedures:

- do not take effect until approved by a regulation
- must be tabled in the Legislative Assembly with the regulation that approves the procedures, and
- must be published on the ECQ website.⁹

SL No. 259 of 2019 would:

- amend s 4 of the Local Government Electoral Regulation 2012 (LGER) to approve procedures set out in the document called ‘Procedure for electronically assisted voting for local government elections’, version 2.0, made by the ECQ on 1 November 2019, and
- amend s 10 of the LGER to approve procedures set out in the document called ‘Procedure for electronic lodgement of returns’, version 2.0, made by the ECQ on 1 November 2019.¹⁰

The two approved procedures were tabled in the Legislative Assembly¹¹ and were published on the ECQ website as required.¹²

Committee comment

The committee identified no issues regarding the subordinate legislation’s consistency with FLPs or its lawfulness. The explanatory notes comply with the requirements of part 4 of the LSA.

3.2 SL No. 6 of 2020 – Local Government (Change of Representation for Cloncurry Shire Council) Amendment Regulation 2020

The objective of SL No. 6 of 2020 is to implement a recommendation of the Change Commission to increase representation in the Cloncurry Shire Council for the 2020 quadrennial local government election, from four councillors and a mayor (five councillors in total), to five councillors and a mayor (six councillors in total).¹³

The Cloncurry Shire Council had sought an increase to six councillors and a mayor (seven councillors in total), but the Change Commission ultimately determined to recommend that only a single councillor be added for the 2020 election. In issuing its determination, the Change Commission stated:

By adding one councillor for the 2020 quadrennial election, the Change Commission believes this offers the Council and the community an opportunity to review the organisational, community

⁹ *Local Government Electoral Act 2011*, s 75A(3); s 132A(2).

¹⁰ Local Government (Change of Representation for Cloncurry Shire Council) Amendment Regulation 2020 (SL No. 6 of 2020), explanatory notes, p 6.

¹¹ The Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs wrote to the committee to advise of the tabling of the two procedures in the Legislative Assembly on 19 March 2020. See: <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T448.pdf>; <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2020/5620T449.pdf>

¹² ECQ, *Procedure for Electronically Assisted Voting for Local Government Elections*, version 2.0, 1 November 2019, https://www.ecq.qld.gov.au/__data/assets/pdf_file/0011/7031/EAV-procedures-for-local-government-elections.pdf; ECQ, *Procedure for Electronic Lodgement of Returns*, version 2.0, 1 November 2019, https://www.ecq.qld.gov.au/__data/assets/pdf_file/0012/7032/Electronic-Lodgement-Procedure.pdf

¹³ SL No. 6 of 2020, explanatory notes, p 2.

*and financial outcomes of having an additional representative and then if required, apply for a further increase based on those outcomes.*¹⁴

Compatibility with the Human Rights Act 2019

SL No. 6 of 2020 (cls 4 and 5) engages the human right to take part in public life, which is recognised in s 23 of the HRA. The human rights certificate identifies that by increasing the number of councillors, the subordinate legislation enhances the capacity of electors and candidates alike to:

- vote at and be elected at local government elections, and
- have access to the public service and to public office.¹⁵

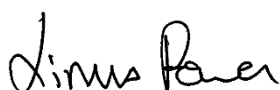
The human rights certificate states that SL No. 6 of 2020 is therefore compatible with the HRA, as it does not limit, but rather promotes, the scope of the human right to take part in public life.¹⁶

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, its lawfulness, or its compatibility with the HRA. The explanatory notes comply with the requirements of part 4 of the LSA, and the human rights certificate complies with the requirements of s 41 of the HRA.

4 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

March 2020

Economics and Governance Committee

Chair: Mr Linus Power MP, Member for Logan
Deputy Chair: Mr Ray Stevens MP, Member for Mermaid Beach
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¹⁴ SL No. 6 of 2020, human rights certificate, p 2.

¹⁵ SL No. 6 of 2020, human rights certificate, p 2. See also: *Human Rights Act 2019*, s 23(2).

¹⁶ SL No. 6 of 2020, human rights certificate, p 2.