

Planning Amendment Regulation 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Planning Amendment Regulation 2022* (Amendment Regulation) made under the *Planning Act 2016* (Planning Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Background

Queensland Rural Workers' Accommodation Initiative

Analysis undertaken by the Department of Agriculture and Fisheries (DAF) indicates a continuing tight labour market for rural industries across 2022, with production limited by labour availability and the increased costs associated with attracting and retaining labour.

Traditionally, many seasonal and agricultural workers relied on the otherwise underutilised accommodation options including backpacker hostels and short-term rentals in nearby rural towns.

However, due to the increased demand for housing and a severe shortage across the state, this has left many seasonal workers unable to find accommodation near to their place of work. This is impacting on the ability of farmers to employ workers for their properties.

The impact of this housing shortage is being felt across the State. Many rural towns are currently facing a significant shortage of housing stock.

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) recognises the importance of accommodation for rural workers in facilitating all aspects of the agricultural supply chain and to support the many regional and local economies that rely on rural industries.

To assist with supporting accommodation for rural workers and relieving pressure on the existing housing stock, the Queensland Government has developed the Queensland Rural Workers' Accommodation Initiative (the Initiative).

The Initiative supports the economic recovery of Queensland's important agricultural industry - an industry that has been hit hard by the effects of COVID-19, a shortage of migrant workers,

drought and natural hazard events, and other social issues, such as shortage of social housing and the rising cost of living.

Battery Storage Facility

The Queensland Government announced the Queensland Energy and Jobs Plan (the Plan) in September 2022. The Plan contains key benefits of a renewable energy supply, and how renewable targets will be met with elements in the electricity system, including poles, wires, solar, wind and storage to provide Queenslanders with clean, reliable, and affordable power.

Battery storage facilities will play a key role in Queensland's transition to a low-carbon energy system and help achieve the Plan's 70 per cent renewable energy target by 2032. Battery storage facilities store excess electricity generated from renewable energy or the electricity grid and distribute it back into the network during peak periods. They can improve the efficiency of the energy system and keep prices low by better integrating variable renewables.

Batteries also provide customers with access to new opportunities to capture the value from their investment in rooftop solar. Battery storage facilities are necessary to support energy security and reliability.

Batteries are assessable development under the Planning Act. In some cases, a battery storage facility is ancillary to another use such as a solar farm, industrial use, or residential use, and in others they are considered a separate use. However, battery storage facilities are not defined as a use in the *Planning Regulation 2017* (Planning Regulation), so they are regulated as an 'undefined use'.

The planning framework must ensure that it can respond to new technologies and challenges, and promote an efficient, transparent, and accountable system. Local planning instruments must be able to support development assessment processes that result in outcomes that are certain, responsive, and transparent. Local governments are encouraged to ensure their planning instruments adopt the lowest category of development and assessment appropriate to address any impacts of a proposed development efficiently and effectively. Without a specific use term for battery storage facilities, local planning instruments do not regulate these uses in a transparent or effective way as they are an undefined use and therefore impact assessable.

Small battery storage facilities are being installed into the electricity network to provide solar storage, voltage management and stability for services to benefit local communities and businesses. These include small pad mounted batteries or pole mounted batteries. It is important that these facilities can be developed efficiently, and in locations where they are needed on the network.

Relocatable Classrooms

The Department of Education (DoE) must ensure state schools can respond to enrolment needs and provide classrooms and associated infrastructure when a state school has experienced growth over and above current classroom capacity. Finalised enrolment numbers are not always available before the school year starts and the timeframe to establish new classrooms is often very condensed. The planning processes required to establish relocatable classrooms including obtaining a development approval or infrastructure designation can be lengthy. This means there is risk the infrastructure is not in place to meet enrolment needs.

Purpose

Queensland Rural Workers' Accommodation Initiative

The purpose of the Amendment Regulation is to give statutory effect to the Initiative, to provide an interim policy response to the shortages of appropriate accommodation for rural workers across Queensland, while longer-term accommodation planning solutions are being worked through with local government for accommodation both on-farm and within local towns.

The Initiative comprises two key elements:

- Part A – facilitating the repurpose of existing underutilised facilities as an interim solution for rural workers' accommodation, where nominated by the Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister assisting the Premier on Olympic and Paralympic Games Infrastructure (the Planning Minister) under the Initiative, and
- Part B – allowing for small scale rural workers' accommodation to proceed without a material change of use development approval, when meeting certain criteria.

The Initiative has been made for the Planning Minister and will be in effect until 9 December 2025, unless earlier revoked or otherwise extended by the Planning Minister. The related provisions in the Amendment Regulation will be in effect for 3 years from the commencement of the Amendment Regulation.

The Amendment Regulation also seeks to remove the current provisions pertaining to the public health accommodation facility, as the public health emergency for public quarantine and isolation ended on 31 October 2022 and there is now no identified need for a public health accommodation facility.

Repurposing existing underutilised facilities

Noting current material supply chain shortages, cost escalations and a lack of readily available construction skills, the Amendment Regulation seeks to give effect to the Initiative, to assist in the temporary repurposing of underutilised existing facilities for accommodation to meet unprecedented demand for accommodation in the rural sector and take pressure off existing housing stock.

This will be achieved through the Amendment Regulation providing that particular development for accommodating employees of rural uses for Part A of the Initiative is accepted development (for the Planning Regulation and local instruments), where:

1. For building works and operational works:
 - the development is carried out on premises nominated by the Planning Minister under Part A of the Initiative
 - the development is for accommodating rural workers for the purpose of the Initiative
 - any building work complies with the standard building provisions under the *Building Act 1975* and stated in the Nomination Notice given by the Planning Minister, and
 - any building work does not involve the construction of a new building for sleeping accommodation.
2. For carrying out a material change of use:

- the premises have been nominated by the Planning Minister, and the use must be for accommodating employees of a rural use for Part A of the Initiative; and
- any building works stated in the Nomination Notice issued by Planning Minister have been carried out.

In nominating premises for the Initiative, the Planning Minister will have assessed the suitability of the premises against the criteria listed in the Initiative to determine their appropriateness to support the accommodation of rural workers across Queensland.

Each time a new premises is nominated by the Planning Minister under the Initiative, the Planning Regulation will be updated to reflect the date of the new version of the Initiative.

Support for new, small scale rural workers' accommodation

The Amendment Regulation seeks to facilitate the development of rural workers' accommodation so that agricultural workers may live affordably and in proximity to their work and allow farmers to accommodate seasonal workers for their employment needs and relieve local demand on housing stock.

This part of the Amendment Regulation only applies for “*rural workers' accommodation*”, which is accommodation for employees of a rural use, if the premises and the premises where the rural use are carried out are owned by the same person. In this way the Amendment Regulation is applicable to ‘on-farm’ accommodation, or accommodation for a particular rural enterprise.

The Amendment Regulation prescribes that a material change of use for rural workers' accommodation is not able to be made assessable development by a local planning scheme where:

- the premises are in a rural zone (defined by the planning scheme), and
- the premises are not less than 25ha, and
- the development does not result in accommodation with a total capacity to accommodate more than 20 employees of the rural use across the premises on which the accommodation use is carried out, premises on which the rural use is carried out, and adjoining premises owned by the same person, and
- the development does not involve new or changed vehicular access between premises and a road, and
- no part of the premises is in a flood hazard area, bushfire prone area or a landslide hazard area (identified in a State or local planning instrument).

Any works for the development, (e.g., building and operational works) will still require the appropriate approvals.

Removal of the public health accommodation provisions

The temporary legislative framework that has underpinned Queensland's response to the COVID-19 pandemic expired on 31 October 2022 and is being replaced by a limited set of temporary and targeted measures to manage COVID-19.

The Regulation currently contains an exemption from development approval for a public health accommodation facility on Lot 4 on SP296105 (being the Queensland Regional Accommodation Centre, leased by the State and owned by Wagner Group), however this exemption only applied while the public health emergency for COVID-19 was in effect. As the emergency declaration has ceased, the exemption is no longer effective and should be removed from the Planning Regulation.

The proposed Amendment Regulation therefore seeks to remove the current provisions pertaining to the public health accommodation facility located on Lot 4 on SP296105.

Battery storage facility

The Amendment Regulation will amend the Planning Regulation to:

- include a new use term for *battery storage facility* in the Planning Regulation
- ensure that certain small-scale batteries are not able to be made assessable by a local planning instrument, comprising:
 - small pad mounted batteries of up to 15m² in footprint
 - pole mounted batteries of up to 2m³ in volume.

Relocatable classrooms

The Amendment Regulation will amend the Planning Regulation to provide for timely development of relocatable classrooms and associated infrastructure at established state schools to meet enrolment requirements without development approval, subject to meeting certain requirements.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion the human rights under the Human Rights Act that are relevant to the Amendment Regulation are:

- section 15 – recognition and equality before the law
- section 16 – right to life
- section 19 – freedom of movement
- section 21 – freedom of expression
- section 24 – property rights
- section 25 – privacy and reputation
- section 26 – protection of families and children
- section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples
- section 29 – right to liberty and security of person
- section 31 – fair hearing
- section 36 - right to education

Human rights limited by decision

The decision will potentially limit (or interfere with) the identified human rights:

- section 21 – freedom of expression
- section 31 – fair hearing.

It is considered that there are no human rights relevant to the removal of the current provisions pertaining to the public health accommodation facility in the Planning Regulation.

Freedom of expression (section 21)

(a) the nature of the right

Section 21 of the Human Rights Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

It might be argued that the right to freedom of expression may be restricted by the decision as a consequence of the effect on third party consultation and appeal rights. The Amendment Regulation provides that certain types of accommodation for rural workers will be exempt from assessment against the local planning scheme (Part B) and also against the Planning Regulation (Part A).

This may remove some opportunities for public consultation and associated third party appeal rights, where the use would have been subject to impact assessment. It is noted that not all local governments make rural workers accommodation impact assessable and some do not require a material change of use approval for certain accommodation uses.

The Amendment Regulation limits the human right in freedom of expression by limiting who may make a public submission about proposed development as follows:

- the new use term for battery storage facilities will enable local government to determine the appropriate category of development and assessment, potentially removing public notification requirements
- removal of the requirement to obtain local government planning approval for certain small scale battery storage facilities and relocatable classrooms which may have been previously subject to public notification requirements.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The removal of the requirement to obtain planning approval for certain development for accommodating rural workers ensures that the necessary accommodation can be established quickly to support the current needs of rural workers across Queensland and take pressure off the existing housing stock.

The Amendment Regulation limits this human right but only to the extent that is reasonable for the development of battery storage facilities and establishment of relocatable classrooms.

A new use term for battery storage facilities will enable local governments to incorporate the new use term in their local planning schemes and establish appropriate categories of development and assessment benchmarks, in a way that responds to the local circumstances. This will provide a transparent assessment pathway for this essential infrastructure.

Once the new use term is implemented by local governments, it will enable applications for the development of battery storage facilities to be assessed in a consistent way.

The Amendment Regulation also provides for a small sub-set of battery storage facilities, namely pad-mounted batteries of up to 15m² in footprint, and pole-mounted batteries of up to 2m³ in volume, to be prescribed as development that a local categorising instrument cannot make assessable development. This includes a local planning scheme. The impact of these facilities is expected to be minor.

The Amendment Regulation does not prevent all other battery storage facilities from being regulated by a local planning scheme and/or the Planning Regulation where relevant. The amendment therefore only limits the human right to the extent that is reasonable to enable the provision of necessary infrastructure.

The removal of the requirement to obtain a development approval or follow the infrastructure designation pathway for relocatable classrooms ensures that DoE can establish classrooms and associated infrastructure to ensure that state schools can meet enrolment needs in a timely manner. The Amendment Regulation provides that the development must meet prescribed requirements such as maximum number of classrooms, maximum building height, setbacks and risk avoidance measures for matters such as bushfire and flood.

Given that classrooms and associated infrastructure are necessary to support enrolment needs and the associated impacts are managed through the prescribed requirements, the purpose of the limitation is consistent with a democratic society based on human dignity.

The Amendment Regulation removes regulatory burden in accordance with this human right.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The Amendment Regulation affects but does not limit this human right.

The possible limitation on freedom of expression by the making of the Amendment Regulation through not providing for public consultation and associated third party appeal rights, in certain circumstances, ensures the facilitation of the necessary accommodation so that rural workers will have greater access to appropriate accommodation and take pressure off the existing housing stock. It is considered the need to provide urgent rural workers' accommodation is in line with community expectations and broader government objectives regarding housing affordability and supply.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Amendment Regulation affects but does not limit this human right.

The provision for rural workers' accommodation to be delivered by the Amendment Regulation, without requiring certain development approvals does not provide for consultation with the community. Many local governments already provide for rural workers' accommodation as accepted development, not requiring development approval or community consultation. When balancing the right to freedom of expression with the urgent need to provide for rural workers; the Amendment Regulation is in line with community expectations.

Providing for the development of relocatable classrooms and associated infrastructure at established state schools without requiring a development approval does not provide the opportunity for statutory consultation with the community.

However, the Amendment Regulation seeks to address potential community concerns by requiring that the development must meet prescribed requirements such as maximum number of classrooms, maximum building height, setbacks from boundaries and risk avoidance measures for matters such as bushfire and flood. When balancing the right to freedom of expression with the need to provide for state school enrolment needs to provide for education, it is considered to be in line with community expectations.

Fair hearing (section 31)

(a) The nature of right

Section 31 of the Human Rights Act provides that a person has the right to have criminal charges or civil proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

It might be argued that the right to a fair hearing may be impacted by the Amendment Regulation, in that removing the requirement for certain types of accommodation for rural workers to require assessment against the local planning scheme and Planning Regulation, may remove some opportunities for public consultation and remove associated third party appeal rights, where the use would have otherwise been subject to impact assessment.

It is important to note that many rural workers' accommodation facilities are considered accepted development (subject to requirements) and therefore not assessable by the local government authority. This human right may be limited but only to the extent of the Amendment Regulation. Once the Amendment Regulation ceases the decision-making powers revert back to the local government authority. This may include the ability for community to comment on a development application and appeal a decision to approve an application.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom.

The Amendment Regulation affects but does not limit this human right.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The Amendment Regulation affects the human right but does not limit the human right.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Amendment Regulation affects but does not limit this human right.

Human rights not limited by decision

The decision is relevant to but **will not** potentially limit (or interfere with) the identified human rights in following sections as outlined below:

- section 15 – recognition and equality before the law
- section 16 – right to life
- section 19 – freedom of movement
- section 24 – property rights
- section 25 – privacy and reputation
- section 26 – protection of families and children
- section 27 – cultural rights – generally
- section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples
- section 29 – right to liberty and security of person.
- section 36 - right to education

Section 15 – recognition and equality before the law

Section 15 provides for a number of human rights relating to non-discrimination and equality before the law.

These rights may be relevant because the Amendment Regulation provides an alternative pathway which would enable some persons with rights to premises to gain development entitlements without a planning approval if certain criteria are met. Further, the proposed exemption for new, small scale rural worker's accommodation described above will only apply to some land being land in a rural zone and where not a bushfire hazard area, landslide hazard area or flood hazard area.

The right to equality before the law in s 15(3) requires consistent application of the law and will generally only be limited if a decision is devoid of objective justification. The Amendment Regulation proposes criteria to be met for each of the exemptions to apply, having regard to detailed planning considerations (including appropriate land use zonings and designations) and in this respect is not devoid of objective justification. Accordingly, the rights in section 15 are not limited.

Section 16 – right to life

Section 16 recognises that every person has the right to life and has the right not to be arbitrarily deprived of life.

These rights may be relevant because the Amendment Regulation provides for the health and safety of people residing in rural workers accommodation. Specifically, s33 of the of the Amendment Regulation will only apply where the Planning Minister has made a determination as to the suitability of premises for rural workers’ accommodation and one of the mandatory criteria is the provision of appropriate services. The right is also relevant from an environmental and climate change perspective, particularly having regard to the consideration of environmental hazards and environmental impacts, for example bushfire, landslide and flooding hazards. Accordingly, the rights in section 16 are not limited.

Section 19 – freedom of movement

Section 19 of the Human Rights Act provides that every person has the right to move freely within Queensland and the freedom to choose where to live.

The Amendment Regulation does not mandate where a rural worker must reside but does provide additional opportunities for rural workers to reside within close proximity to their work or employment. In these ways, the Amendment Regulation promotes the freedom to choose where to live.

Section 24 - property rights

Section 24 of the Human Rights Act provides that every person has the right to own property alone or in association with others. It protects the right of all people from being arbitrarily deprived of their property.

The Amendment Regulation improves a person’s entitlements to develop their property, as the proposed amendments to the planning framework provide “as of right” exemptions for development for certain accommodation for rural workers, on a temporary basis and certain battery storage facilities. Accordingly, the rights in section 24 are not limited.

Section 25 – privacy and reputation

Section 25 of the Human Rights Act provides that a person has the right not to have the person’s privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have the persons reputation unlawfully attacked.

The right is also relevant from an environmental and climate change perspective, particularly having regard to the consideration of environmental hazards and environmental impacts, for

example bushfire, landslide and flooding hazards. The Amendment Regulation enables rural workers to reside in close proximity to where they work but limits development occurring on land subject to environmental hazards as described above.

The Amendment Regulation does not limit the rights under section 25 of the Human Rights Act.

Section 26 – protection of families and children

Section 26 of the Human Rights Act provides that every child has the right, without discrimination, to the protection needed by the child and is in the child’s best interest, and that every child born in Queensland has the right to a name and to be registered as soon as possible after being born.

The Amendment Regulation does not provide for families and children. Accommodation is intended to be for rural workers only and not families and children. Accordingly, the rights in section 26 are not limited.

Section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples

Section 28 protects the cultural rights of Aboriginal and Torres Strait Islander people in particular to ensure they are able to enjoy, maintain, control, protect and develop their cultural heritage, traditional practices and distinctive relationship to the land.

This right has been identified as relevant to the decision because the decision provides for the “as of right” development of land for the accommodation of rural workers in certain circumstances. However, the decision does not interfere with the existing legal and regulatory framework governing Aboriginal and Torres Strait Islander peoples’ rights to land, including to access places of spiritual significance or undertake traditional practices on land.

Accordingly, the rights in section 28 are not limited.

Section 29 – right to liberty and security of the person

Right to liberty and security of the person (section 29), which may include a stand-alone right to security of the person protecting against bodily or mental injury.

The Amendment Regulation provides accommodation options and opportunities for rural workers seeking to reside near their place of employment. The Amendment Regulation does not force or detain a person to living in rural workers’ accommodation. Accordingly, the rights in section 29 are not limited.

Section 36 - Right to education

Section 36 of the Human Rights Act provides that every child has the right to have access to primary and secondary education appropriate to the child’s needs; and every person has the right to have access, based on the person’s abilities, to further vocational education and training that is equally accessible to all.

The Amendment Regulation affects the human right but does not limit the human right. The Amendment Regulation removes regulatory burden to improve this human right to ensure

sufficient classrooms can be provided at state schools to meet enrolment needs. Accordingly, the rights in section 36 are not limited.

Conclusion

There are a number of human rights that are relevant.

It is recognised that the Amendment Regulation will be to the benefit of some and to the detriment of others. The possible limitation on the rights to freedom of expression and a fair hearing by not providing for third parties to view, comment or appeal a development application for certain accommodation for rural workers is balanced against the need for the facilitation of accommodation for rural workers, to respond to the shortage of accommodation for rural workers across Queensland as well as assisting more generally to ‘free up’ other housing stock that can be used by the general population in the current housing crisis. Development that meets the criteria in the Amendment Regulation are considered low risk development and appropriate to proceed without development approval. Furthermore, the provisions in the Amendment Regulation relating to accommodation for rural workers are a temporary measure only, in effect only for 3 years from commencement of the Amendment Regulation.

It is considered that there are no human rights relevant to the removal of the current provisions pertaining to the public health accommodation facility in the Planning Regulation.

Accordingly, even if there are limits on human rights, those limits are justified or proportionate and therefore the proposed decision is compatible with human rights.

I consider that the *Planning Amendment Regulation 2022* is compatible with the *Human Rights Act 2019*.

STEVEN MILES MP
Deputy Premier, Minister for State Development,
Infrastructure, Local Government and Planning
and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure

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