

Local Government (Boundary Changes) Amendment Regulation 2023

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* (HR Act), I, 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 provide this human rights certificate with respect to the *Local Government (Boundary Changes) Amendment Regulation 2023* (Amendment Regulation) made under the *Local Government Act 2009* (the Act).

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

Overview of the Subordinate Legislation

The purpose of the Amendment Regulation is to amend the *Local Government Regulation 2012* (the Regulation) to implement the recommendations of the Local Government Change Commission (the Commission) to alter the divisional boundaries within Bundaberg Regional Council, Fraser Coast Regional Council and Isaac Regional Council for the purpose of the 2024 local government quadrennial election; and to alter the external boundaries affecting South Burnett Regional Council and Gympie Regional Council; and Lockyer Valley Regional Council, Toowoomba Regional Council and Ipswich City Council.

Under the Act, the Commission has jurisdiction to assess and make recommendations in relation to applications for local government changes. Local government changes are changes to a local government's boundaries, divisions (other than the City of Brisbane), number of councillors, name or classification.

Chapter 2, part 3 of the Act governs the process for making a local government change. Section 18 of the Act provides that only the Minister for Local Government may propose a local government change to the Commission. Section 19 of the Act provides that the Commission is responsible for assessing whether a local government change is in the public interest. In doing so, the Commission must consider matters prescribed under a regulation.

Section 9 of the Regulation provides that the external boundaries of a local government area should be drawn in a way that has regard to communities of interest, including that the local government area should generally have external boundaries that:

- do not divide local neighbourhoods or adjacent rural and urban areas with common interests or interdependencies, including, for example, economic, cultural and ethnic interests or interdependencies (section 9(1)(d)(i)); and
- do not dissect properties (section 9(1)(d)(iii)).

Section 15 of the Act provides that each division of a local government area must have a 'reasonable proportion of electors' for each councillor elected or to be elected for the division. A 'reasonable proportion of electors' means the total number of electors in the local government area divided by the total number of councillors (other than the mayor) currently elected, or to be elected, plus or minus 10 per cent for local governments with more than 10,000 electors, or plus or minus 20 per cent for all other local governments.

Under section 16 of the LGA, no later than 1 March in the year before a quadrennial election, local governments are required to review whether each of their divisions has a reasonable proportion of electors and give written notice of the results of the review to the Minister and the electoral commissioner.

The local government quadrennial elections will be held on 16 March 2024.

Divisional boundary reviews – Bundaberg Regional Council, Fraser Coast Regional Council and Isaac Regional Council

In March and April 2023, submissions from Bundaberg Regional Council, Fraser Coast Regional Council and Isaac Regional Council proposing divisional boundary changes were referred to the Commission for assessment. The submissions identified divisions out of quota according to the definition of 'reasonable proportion of electors' in section 15 of the LGA.

On 23 October 2023, the Commission provided its final determination reports:

- 'Review of Divisional Boundaries - 2023 Final Report - Bundaberg Regional Council'
- 'Review of Divisional Boundaries - 2023 Final Report - Fraser Coast Regional Council'
- 'Review of Divisional Boundaries - 2023 Final Report - Isaac Regional Council'.

The Commission recommended that, for the purpose of the 2024 local government quadrennial elections:

- Bundaberg Regional Council be redivided into 10 divisions (with changes to Divisions 1 to 8 and 10) as shown in the maps at Appendix 1 to its report;
- Fraser Coast Regional Council be redivided into 10 divisions (with changes to Divisions 1, 3, 4, 6, 7, 9 and 10) as shown in the maps at Appendix 1 to its report; and
- Isaac Regional Council be redivided into eight divisions (with changes to Divisions 1, 2, 7 and 8) as shown in the maps at Appendix 1 to its report.

The recommended changes will re-establish the quota of electors within each division in accordance with section 15 of the Act.

External boundary review – South Burnett Regional Council and Gympie Regional Council

On 13 October 2022, a submission regarding an external boundary change proposal to transfer Lot 66 on RP825862 from the South Burnett Regional Council local government area to the Gympie Regional Council local government area was referred to the Commission for assessment.

On 31 May 2023, the Commission provided its final determination report ‘External Boundary Review—May 2023—South Burnett Regional Council – Gympie Regional Council’. The Commission recommended the proposed external boundary change to transfer Lot 66 on RP825862 from the South Burnett Regional Council to Gympie Regional Council proceed.

The Commission found the proposed change to be in the public interest and stated the transfer would ensure the external boundaries of the two local government areas no longer divide economic interests, which is consistent with section 9(1)(d)(i) of the Regulation. The Commission also noted both councils and the landholder agreed on the proposed change.

External boundary review –Lockyer Valley Regional Council and Toowoomba Regional Council

In April 2023, submissions from Lockyer Valley Regional Council and Toowoomba Regional Council proposing external boundaries changes were referred to the Commission for assessment.

On 10 and 14 November 2023, the Commission provided its final determination report, and an amended version, ‘External Boundary Review – November 2023 – Lockyer Valley Regional Council and Toowoomba Regional Council’.

The Commission recommended that Lots 5 and 6 on SP264451 and Lot 7 on SP288601, including the road reserve area of Mount Neale Road, be united in the Toowoomba Regional Council, transferring those portions currently located in the Lockyer Valley Regional Council.

Given there was unanimous support from both councils and the three landholders, and noting that the external boundary of both councils would no longer dissect these properties or divide adjacent areas with common interests, the Commission found the proposed change to be in the public interest.

External boundary review – Lockyer Valley Regional Council, Toowoomba Regional Council and Ipswich Regional Council

In July 2023, submissions from Lockyer Valley Regional Council, Toowoomba Regional Council and Ipswich City Council proposing external boundaries changes were referred to the Commission for assessment.

On 10 November 2023, the Commission provided its final determination report ‘External Boundary Review – November 2023 – Lockyer Valley Regional Council – Ipswich City Council – Toowoomba Regional Council’. The Commission recommended:

- the portion of Lot 84 on CP CC389 currently located in the Lockyer Valley Regional Council be transferred so the entire lot is in the Ipswich City Council;
- the portions of Lot 14 and Lot 16 on SP 200498 currently located within the Ipswich City Council and the area of Coynes Road adjoining Lot 14 on SP 200498, be transferred so they are entirely within the Lockyer Valley Regional Council; and
- the portion of Lot 355 on CP CH312304 currently located in the Toowoomba Regional Council be transferred so the entire lot is within the Lockyer Valley Regional Council.

Given there was unanimous support from the three councils and the landholders and noting that the external boundary of the three councils would no longer dissect these properties or divide adjacent areas with common interests, the Commission found the proposed change to be in the public interest.

Section 20 of the LGA provides that the Governor in Council may implement the Commission’s recommendation under a regulation and that the regulation may provide for anything that is necessary or convenient to facilitate the implementation of the local government change.

Section 6(1) of the LGR provides that the boundaries of each local government area, and any divisions of the area, are shown on its area map mentioned in schedule 1, column 3.

Section 13B of the Regulation provides for implementing local government changes relating to changes of the boundaries of local government areas. It provides that Schedule 3, part 1 implements the local government changes mentioned in it, and Schedule 3, part 2 makes provision for facilitating the implementation of each local government change mentioned in Schedule 3, part 1.

The Amendment Regulation achieves the policy objectives by amending the Regulation to implement the recommendations of the Commission. The amendments take effect on notification for the purpose of the 2024 quadrennial local government election. Transitional provisions provide that for all purposes other than the 2024 quadrennial election, current Schedule 1 continues to state the prescribed information for local governments. The amendments take effect for all purposes on 16 March 2024, with a temporary continuation of Schedule 1 as in force immediately before 16 March 2024 until the conclusion of the election for the local government. The ‘conclusion’ of the election is defined in section 7 of the *Local Government Electoral Act 2011*.

The Amendment Regulation amends Schedule 1, column 3 of the Regulation to update the area map titles for all affected councils. The Amendment Regulation also amends Schedule 3, part 1 of the Regulation to implement the external boundary changes and makes available to the councils affected by the external boundary changes the implementation matters listed in Schedule 3, part 2 of the Regulation.

Human Rights Issues

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

Section 23 of the HR Act provides that every eligible person has the right, and is to have the opportunity, without discrimination, to vote and be elected at State and local government elections that guarantee the free expression of the will of the electors, and to have access, on general terms of equality, to public office.

The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

The proposed amendments do not limit this right. Rather, the amendments related to the divisional boundary changes promote the right to take part in public life for electors in the affected local governments. The divisional boundary changes ensure each division in the affected local governments has a reasonable proportion of electors so that each elector's vote carries the same weight, maintaining the democratic principle of one vote, one value.

Section 24 of the HR Act provides that every person has the right to own property alone or in association with others and that a person must not be arbitrarily deprived of their property. Property includes real and personal property, including contractual rights and leases. Property may include statutory rights and non-traditional or informal rights (e.g., the right to enjoy uninterrupted possession of land) recognised under general law and may include some statutory rights.

The proposed amendments do not limit this right as the property rights of the landholders whose lands are impacted by the external boundary changes in question are not negatively affected. However, the right to property is potentially promoted by the amendments which ensure the external boundaries of local government areas no longer divide economic interests and will help reduce the administrative burden on these landholders who currently hold property interests across two local government areas.

Conclusion

I consider that the *Local Government (Boundary Changes) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

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