

Impact Analysis Statement template

A Summary Impact Analysis Statement (IAS) must be completed for all regulatory proposals. A Full IAS (see Box 1) must also be completed and attached for proposals that have significant impacts. Once completed, the IAS must be published.

Summary IAS

Details

Lead department	Department of State Development, Local Government, Infrastructure and Planning
Name of the proposal	Housing Availability and Affordability (Planning and Other Legislation) Amendment Bill 2023 The Bill includes the following parts: <ul style="list-style-type: none"> - Administrative amendments - Development Control Plans - Growth Areas, and - Urban Encroachment
Submission type	Summary IAS
Title of related legislative or regulatory instrument	<i>Planning Act 2016, Planning Regulation 2017, Planning and Environment Court Act 2016, Integrated Resort Development Act 1987, Sanctuary Cove Resort Act 1985, Economic Development Act 2012, Acquisition of Land Act 1967 and Sanctuary Cove Resort Act 1985</i>
Date	7 September 2023

For proposals noted in table below

Complete and delete rows where applicable. No further analysis is required.

Proposal type	Details
Regulatory proposals where no RIA is required	Administrative amendments; Development Control Plans and Growth Areas <i>These proposals relate to regulatory proposals that are deregulatory (remove regulation), and do not increase costs or regulatory burden on business or the community. No regulatory impact analysis is required under the Better Regulation Policy.</i>

*Refer to *The Queensland Government Better Regulation Policy* for regulatory proposals not requiring regulatory impact analysis (for example, public sector management, changes to existing criminal laws, taxation).

For all other proposals - Urban Encroachment

What is the nature, size and scope of the problem? What are the objectives of government action?

Development Approvals (DA) and Environmental Authorities (EA) regulate the impact of commercial activities on local communities and environment including from emissions (aerosols, fumes, light, noise, odour, particles or smoke). DAs and EAs are administered in accordance with the relevant provisions of the *Planning Act 2016* (the Act) and the *Environmental Protection Act 1994*. These arrangements provide for approving, changing and extending DAs and EAs, public consultation for significant impacts, complaint and enforcement mechanisms.

The Act seeks to balance these protections to the local community by protecting existing commercial activities from emissions related 'nuisance' legal actions from nearby residents and businesses. This includes civil or criminal proceedings that are intended to disrupt a business' activities thereby placing at risk its on-going viability at that location – as distinct from legal actions if a business is not operating within its emission limits.

The Department of State Development, Infrastructure, Local Government and Planning (the department) notes that the threat of such nuisance actions are greatest when the area surrounding the business' premises ('affected area') is being developed in ways that increase residential density or increase non-industrial uses such as food and beverage retailing ('urban encroachment').

The Act states that an affected person cannot take civil or criminal proceeding against a registered premises for emissions, if the premises is complying with the conditions and emission limits in a relevant DA and EA. This protection is intended for activities that are significant to the State or local economy, heritage or infrastructure.

The Act and the Regulation provide for making, renewing, amending or cancelling registrations. An application for making or renewing a registration must include a map of the affected area as well as details of any intensified development within the mapped area, the significance of the proposed activity, public consultation and the emissions – including a technical report on emission levels, and details of any written complaints and mitigation measures. The Minister's decision must take into account matters included in the application including whether the emissions comply with a relevant DA or EA.

The department also notes that:

- if a DA or EA is amended to provide for increased emissions, the protection from nuisance actions only applies to the increased emissions if the business notifies the relevant Minister and residents in the affected area
- the Act does not specify a minimum consultation period for urban encroachment applications, while 15 business days is specified for other activities under the Act.

An urban encroachment registration may have effect for 10 to 25 years. The department notes the XXXX Milton Brewery is the only such registered premises in Queensland and that its registration expires in 2034.

The department reports that industry considers the urban encroachment arrangements are unnecessarily burdensome. If a registered premises is seeking to expand or change its activities it must obtain a new or an amended DA or EA which, in turn, triggers a new registration application. This provides insufficient long-term certainty for future business investment and growth.

What options were considered?

A range of options to provide additional protection for industrial and hard to locate uses from the impacts of encroachment of non-industrial and sensitive receiving uses were considered as part of the Authority to Prepare process. Options included amendments to the urban encroachment provisions, use of Temporary Local Planning Instruments, Ministerial Direction powers, Ministerial Call In's and no action.

The preferred option is amendments to the urban encroachment provisions in the Planning Act and Planning Regulation, including:

- a new process to allow an owner of a registered premises to apply for a change to an existing registration to reflect a modified or expanded affected area, whereby public consultation is only required with the persons within the expanded affected area

- a simplified renewal process whereby public consultation is not required if there is no change to the affected area
- removal of the re-registration requirements where a premises obtains a new or changed approved EA and/or development approval, where the affected area is not expanded and where the owner gives notice to the affected area
- addition of a minimum consultation period of 15 days for new or changed urban encroachment applications.

What are the impacts?

The proposal reduces people's ability to comment on and influence certain urban encroachment registration decisions. Also, a person's participation in the consultation processes in setting emission limits is not a perfect substitute for participating in the urban encroachment consultation as the matters under consideration, and assessment criteria, differ.

It is considered that these adverse impacts are unlikely to be significant given the limited number of existing and likely future registrations and that people retain recourse to the complaints and enforcement processes within planning and environmental laws. Any adverse impact of the proposal would only be manifest in circumstances where a registration prevents a person from pursuing emission related legal action against a business that is operating within the limits specified in an approved DA or EA.

Who was consulted?

The department publicly consulted on the proposed amendments during April and May 2023. The department prepared a detailed consultation paper and:

- undertook targeted consultation with key stakeholders from local government, business, and industry and community associations
- contacted the residents and property owners in the Milton Brewery affected area through letters and social media.

Industry, peak body stakeholders (for example the Local Government Association of Queensland) and community members provided in principle support for the proposal. Australian Country Choice and Ingham's Group argued that the proposal should be amended to provide businesses with additional protections from nuisance actions. Other stakeholders, for example Property Council of Australia and Queensland Law Society, were concerned about reducing consultation in circumstances where a new or amended EA or DA is granted, particularly where these may not have required public consultation under their respective regulatory frameworks.

The department made minor amendments to the proposal based on consultation submissions, but notes that consultation under the urban encroachment provisions relate only to the registration and that consultation on setting emission limits is a matter for the planning and environment frameworks.

What is the recommended option and why?

The department proposes to amend the Act so an existing registered premises:

- no longer needs to publicly consult if it is renewing an existing registration, but will be required to demonstrate certain matters in the renewal application (for example evidence of significance of the activity, compliance with DA or EA limits, complaints)
- no longer needs to publicly consult, or to re-register, if it is issued with a new or an amended DA or EA with an increased impact, subject to notifying the Minister and persons in the affected area about the approved increased emissions
- can change its registration where impacts modify or expand the affected area, but only needs to consult people in the newly affected area and not persons in the original affected area.

The department proposes to amend the Regulation to include a consultation period of at least 15 business days for an initial registration or changing a registration. Consequential amendments will give effect to the new arrangements including stipulating that notices be provided to occupants and owners in the affected area and the information to be provided during public consultation and in applications.

The department states the appropriate paths for assessing use and emission impacts are the planning and environmental frameworks. The department is not proposing to amend those arrangements. Rather, the proposal will reduce the regulatory burden on industry by removing urban encroachment assessments.

The amendment will remove public consultation for a registration renewal (where the affected area is unchanged) and re-registration where a DA or EA is amended with increased limits – in the latter case,

persons will lose appeal rights over the Minister's registration decision. The department indicates that the significance of these impacts are mitigated as increases in limits are a matter for a DA or EA process, which may include public comment opportunities and appeal rights. Also, persons in affected areas will continue to have access to complaint and enforcement mechanisms in the planning and environment frameworks.

Impact assessment

All proposals – complete:

	First full year	First 10 years**
Direct costs – Compliance costs*	There are no compliance costs to business, communities or government as a result of the proposed amendments.	As stated, there are no compliance costs.
Direct costs – Government costs	NA	NA

* The *direct costs calculator tool* should be used to calculate direct costs of regulatory burden. If the proposal has no costs, report as zero.

**Agency to note where a longer or different timeframe may be more appropriate.

Signed



Natalie Wilde
Acting Director-General
Department of State Development, Infrastructure,
Local Government and Planning
Date: 05 / 10 / 2023



STEVEN MILES MP
DEPUTY PREMIER
Minister for State Development, Infrastructure, Local
Government and Planning
Minister Assisting the Premier on Olympic and Paralympic
Games Infrastructure
Date: 06 / 10 / 2023