

**Subordinate legislation tabled
between 15 May 2019 and
11 June 2019**

**Report No. 26, 56th Parliament
Transport and Public Works Committee
September 2019**

Transport and Public Works Committee

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¹ Mr Joe Kelly MP, Member for Greenslopes, was the substitute Member and Chair replacing Mr Shane King MP, Member for Kurwongbah, for the period 10 May 2019 to 17 May 2019.

1. Introduction

1.1 Role of the committee

The Transport and Public Works Committee is a portfolio committee established by the Legislative Assembly of Queensland on 15 February 2018. The committee's primary areas of responsibility are Transport and Main Roads, Housing, Public Works, Digital Technology and Sport.²

Pursuant to section 93(1) of the *Parliament of Queensland Act 2001*, the committee is responsible for examining each item of subordinate legislation within its portfolio areas and considering:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles (FLPs) to the legislation, and
- the lawfulness of the subordinate legislation.

Section 93(2)(a) of the *Parliament of Queensland Act 2001* confers responsibility on the committee to monitor the content of explanatory notes in its portfolio areas to ensure they comply with part 4 of the *Legislative Standards Act 1992*.

1.2 Aim of this report

This report advises on subordinate legislation examined and, where applicable, presents any concerns the committee has identified in respect of subordinate legislation tabled between 27 March 2019 and 14 May 2019.

1.3 Subordinate legislation examined

SL No	Subordinate Legislation	Tabled Date	Disallowance Date*
74	Transport Legislation (Fees) Amendment Regulation 2019	11 June 2019	16 October 2019
81	Proclamation made under the <i>Housing Legislation (Building Better Futures) Amendment Act 2017</i>	11 June 2019	16 October 2019
82	Manufactured Homes (Residential Parks) Amendment Regulation 2019	11 June 2019	16 October 2019
83	Building (Cladding) Amendment Regulation 2019	11 June 2019	16 October 2019
87	Rail Safety National Law (Queensland) (Transitional) Amendment Regulation 2019	11 June 2019	16 October 2019

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

² Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 15 Feb 2018.

2. Subordinate legislation examined

2.1 Transport Legislation (Fees) Amendment Regulation 2019 (SL 74)

The objective of the amendment regulation is to amend a variety of departmental fees and charges for the 2019-20 financial year by amendment to the:

- Gold Coast Waterways Authority Regulation 2012
- Photo Identification Card Regulation 2019
- Tow Truck Regulation 2009
- Traffic Regulation 1962
- Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008
- Transport Infrastructure (Public Marine Facilities) Regulation 2011
- Transport Infrastructure (Waterways Management) Regulation 2012
- Transport Operations (Marine Safety) Regulation 2016
- Transport Operations (Passenger Transport) Regulation 2005
- Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2015
- Transport Operations (Road Use Management – Dangerous Goods) Regulation 2018
- Transport Operations (Road Use Management – Driver Licensing) Regulation 2010
- Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010.

Comment

The committee notes that the indexation of the fees is consistent with the government-endorsed indexation factor of 2.25%. Most fee increases in the amendment regulation come within the 2.25% increase. A number of fee increases sit at 2.3% or 2.4% due to rounding.

No fundamental legislative principles (FLP) issues were detected and the explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

2.2 Proclamation made under the Housing Legislation (Building Better Futures) Amendment Act 2017 (SL 81)

The objective of the proclamation is to fix a commencement date of 1 September 2019 for certain provisions of the *Housing Legislation (Building Better Futures) Amendment Act 2017*.

The explanatory notes state:

The Amendment Act is being commenced in stages to ensure important consumer protections are delivered as quickly as possible while allowing for broad stakeholder consultation and co-design in the development of processes, approved forms, notices and regulations arising out of the Amendment Act.

The policy objective of this Proclamation is to commence certain provisions of the Amendment Act relating to the MHRP Act which are not yet in force, including sections related to precontractual disclosure, cooling-off periods, emergency plans and other miscellaneous provisions.³

Consultation

In regard to consultation, the explanatory notes advise:

Stakeholders were consulted on the Housing Legislation (Building Better Futures) Amendment Bill 2017 in 2017. The Ministerial Housing Council (MHC) was consulted on the implementation timeline for the Amendment Act. The MHC members supported staged implementation.

In March 2019, the Department of Housing and Public Works sought feedback from peak bodies and community advocates on proposed forms to be made available to stakeholders to support the Amendment Act amendments. These stakeholders included:

- *Resident/consumer groups including: Associated Residential Parks Queensland, Caxton Legal Centre (Queensland Retirement Villages and Parks Advice Service), Manufactured Home Owners Association, Tenants Queensland, Association of Residents in Queensland Retirement Villages.*
- *Peak and community groups including: COTA, National Seniors Australia, Queensland Law Society.*
- *Industry representatives including: Caravanning Queensland, Leading Age Services Australia, Property Council of Australia and Urban Development Institute of Australia.*

Stakeholder feedback has been used to improve the forms to make them more readable, clear and consistent. Prior to commencement, stakeholders will be provided with advice about the 1 September 2019 commencement date.⁴

Comment

No FLP issues were detected and the explanatory notes tabled with the proclamation comply with part 4 of the *Legislative Standards Act 1992*.

2.3 Manufactured Homes (Residential Parks) Amendment Regulation 2019 (SL 82)

The objective of the amendment regulation is to enhance the protections relating to emergency plans in the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act) by:

- requiring that emergency plans include information about where home owners and other residents must evacuate to if there is an emergency
- ensuring records of emergency procedure tests are kept
- requiring that the emergency plan is displayed on the park notice board, and
- ensuring that the proposed basis of, and frequency for, site rent increases are included in pre-contractual documents provided to prospective home owners.⁵

³ Explanatory notes, pp 1-2.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 2.

Achievement of policy objectives

The amendment regulation will achieve the policy objectives of the MHRP Act by providing further information for:

- emergency plans by requiring a specified place that home owners and other residents must evacuate to if there is an emergency; that the park owner ensures a written record of each emergency procedure test is kept at the park; and that the emergency plan is displayed on the park noticeboard; and
- the Initial Disclosure Document, by requiring that the basis for site rent increases for the site and how often the site rent is to be increased be included in addition to requirements under the MHRP Act.⁶

In regard to the commencement of the provisions, the explanatory notes advise:

These amendments will commence on 1 September 2019 to align with the commencement of new requirements under the MHRP Act on residential park owners to ensure that there is an emergency plan for the park and commencement of new pre-contractual disclosure requirements.⁷

Comment

No FLP issues were detected and the explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

2.4 Building (Cladding) Amendment Regulation 2019 (SL 83)

The objective of the regulation is to extend the compliance period for:

- Part 2 of the three-part combustible cladding checklist to 31 July 2019 (previously 29 May). This part relates to engaging a building industry professional to answer technical questions and to confirm if the material used on the outside is potentially combustible.
- Part 3A of the checklist to 31 October 2019 (previously 27 August), which relates to engaging a fire engineer and completing a building fire safety risk assessment.

The explanatory notes advised that '[e]xtending the compliance period will support building owners to meet their obligations under Part 4A of the Building Regulation 2006'.

In October 2018, the Building Regulation 2006 was amended to introduce Part 4A, which sets out the three-part combustible cladding checklist applicable to specific building owners. A significant number of requests for extensions to the Part 2 compliance period beyond 29 May 2019 were received, as well as submissions 'outlining the difficulties building owners in a strata scheme have in meeting the Part 2 completion date due to other legislative requirements which apply to bodies corporate'.⁸ The explanatory notes also state:

Submissions also noted that risk averse building industry professionals may opt to recommend a building be assessed under Part 3 to minimise risk if there is any ambiguity about the cladding product used.⁹

⁶ Explanatory notes, p 2.

⁷ Explanatory notes, p 2.

⁸ Explanatory notes, pp 1, 2.

⁹ Explanatory notes, p 2.

Comment

No FLP issues were detected with the amendment regulation. However, in regard to the explanatory notes, the committee noted that under the heading *Consistency with fundamental legislative principles*, the explanatory notes state:

*The Amendment Regulation has been drafted in accordance with fundamental legislative principles as defined in section 4 of the Legislative Standards Act 1992.*¹⁰

This statement does not comply with the requirements for explanatory notes set out in Part 4 of the *Legislative Standards Act 1992* which require explanatory notes to include:

*brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.*¹¹

As the explanatory notes did not address the issue of consistency (and reasons for any inconsistency), the committee wrote to the Department of Housing and Public Works seeking further information on this matter. The explanatory notes otherwise comply with the requirements of Part 4 of the *Legislative Standards Act 1992*.

The department advised:

The amendments were made to Part 2 and the first stage of Part 3 of the combustible cladding checklist. The process was introduced in October 2018 and was designed to provide building owners with a better idea of the potentially combustible cladding on their buildings. This involves a three-part process, with Part 1 a self-assessment by building owners, to be completed by 29 March 2019. Completion of Part 2 and the first stage of Part 3 required the engagement of a building industry professional and fire engineer, respectively, and had original compliance period dates of 29 May 2019 and 27 August 2019.

The compliance period timeframes to Part 2 and the first stage of Part 3 were extended in this amendment. These amendments were considered consistent with the fundamental legislative principles as they provided additional time for registered private building owners to meet their regulatory requirements. It was considered this supported the rights and liberties of individuals in complying with the legislative requirements.

To explain further, leading up to the original compliance period date for Part 2 of the combustible cladding checklist process, the Queensland Building and Construction Commission (QBCC) had received a significant number of requests from registered private building owners to extend the Part 2 compliance period date. A number of these extension requests were made by representatives of bodies corporate who are governed by separate decision-making processes which made it difficult to meet the Part 2 compliance period date.

The decision-making processes for bodies corporate are more complex for Part 2 of the combustible cladding checklist as it requires the engagement of a building industry professional. The decision process often required a specific meeting of the body corporate to engage this professional.

*An extension to the first Part 3 compliance period was also necessary to align with the extended compliance period for Part 2.*¹²

The committee is satisfied with the response and encourages the department to continue to comply with Part 4 of the *Legislative Standards Act 1992* in regard to its assessment of fundamental legislative principles in the explanatory notes associated with future subordinate legislation.

¹⁰ Explanatory notes, p 2.

¹¹ *Legislative Standards Act 1992*, section 24(1)(i).

¹² Department of Housing and Public Works, correspondence dated 4 September 2019, pp 1-2.

2.5 Rail Safety National Law (Queensland) (Transitional) Amendment Regulation 2019 (SL 87)

The objective of the amendment regulation is to ensure the references to ‘level crossing’ and ‘railway crossing’ in the Rail Safety National Law as it applies in Queensland retain their existing meaning after changes were made to the Rail Safety National Law on 1 July 2019.

Achievement of policy objectives

The explanatory notes state:

Commencing on 1 July 2019, the Rail Safety National Law (South Australia) (Miscellaneous No 4) Amendment Act 2019 (SA Act) will make amendments to the Rail Safety National Law. The amendments are intended to align the definition of level crossing in the Rail Safety National Law with the Australian Road Rules, consistent with Queensland’s policy relating to the management of safety at level crossings. To achieve this, the SA Act amends the definition of level crossing in the Rail Safety National Law and removes the definition of railway crossing.

The outcome that will be achieved by the SA Act is already reflected in the law as it applies in Queensland. This is because specific modifications were included in Queensland’s application law at the time the Rail Safety National Law commenced in Queensland in 2017. However, the amendments in the SA Act will impact upon the legislative mechanism applying in Queensland.

To achieve the policy objective referred to above and ensure doubt is not cast on the meaning of the concepts of railway crossing and level crossing in the Rail Safety National Law as it applies in Queensland, the transitional amendment regulation will retain the existing meanings of level crossing and railway crossing. This will ensure that current safety requirements relating to rail or road crossings, such as interface coordination and the ability to close or regulate crossings due to threats to safety, continue unchanged.

Section 132 of the Rail Safety National Law (Queensland) Act 2017 provides a power to make a regulation of a saving or transitional nature which is necessary to facilitate the change from the operation of the Transport (Rail Safety) Act 2010 to the operation of the Rail Safety National Law (Queensland) Act 2017. In accordance with section 132, the transitional amendment regulation will apply until the end of 30 June 2020. If subsequent Act amendments are required, they will be progressed within that period.¹³

Comment

No FLP issues were detected and the explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

3. Recommendation

Recommendation 1

The Transport and Public Works Committee recommends that the Legislative Assembly notes the contents of this report.



Mr Shane King MP
Chair

¹³ Explanatory notes, pp 1-2.