

**Subordinate legislation tabled  
between 12 June 2019 and  
20 August 2019**

**Report No. 29, 56<sup>th</sup> Parliament**  
**Transport and Public Works Committee**  
October 2019

# Transport and Public Works Committee

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## 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.<sup>1</sup>

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 12 June 2019 and 20 August 2019.

### 1.3 Subordinate legislation examined

SL No	Subordinate Legislation	Tabled Date	Disallowance Date*
100	Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation (No. 2) 2019	20 August 2019	24 October 2019
101	Major Sports Facilities (Prescribed Events—Cricket Australia) Amendment Regulation 2019	20 August 2019	24 October 2019
121	Transport and Other Legislation Amendment Regulation (No. 2) 2019	20 August 2019	24 October 2019
123	Housing and Public Works Legislation (Fees) Amendment Regulation 2019	20 August 2019	24 October 2019
131	Architects Regulation 2019	20 August 2019	24 October 2019
132	Professional Engineers Regulation 2019	20 August 2019	24 October 2019
152	Building and Other Legislation Amendment Regulation 2019	20 August 2019	24 October 2019

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

<sup>1</sup> Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 15 Feb 2018.

## 2. Subordinate legislation examined

### 2.1 Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation (No. 2) 2019 (SL 100)

The objective of the amendment regulation is to make the following amendments to the Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018:

- reference to specific accounting standards for intangible assets
- clarifying that intangible assets and disallowed assets must be excluded when calculating a deficiency in trusts
- clarifying that the methodology for calculating assets for the purposes of working out a licensee's current ratio is to be the same as that used to calculate net tangible assets.

#### Comment

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*.

#### 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 Major Sports Facilities (Prescribed Events—Cricket Australia) Amendment Regulation 2019 (SL 101)

The objective is to include Carrara Stadium as a prescribed major sports facility for Cricket Australia in Schedule 3 of the Major Sports Facilities Regulation 2014.

This will ensure that all matches held by Cricket Australia at Carrara Stadium, where entry tickets are sold, can be protected from unauthorised advertising.

#### 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*.

### 2.3 Transport and Other Legislation Amendment Regulation (No. 2) 2019 (SL 121)

The objective of the amendment regulation is to enhance the operation of transport legislation by:

- removing the requirement to pay interest on unpaid pilotage fees<sup>2</sup> and unpaid conservancy dues<sup>3</sup> outstanding after 30 days

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<sup>2</sup> Explanatory notes, p 2: Pilotage fees are charged for the services of a marine pilot. Pilotage is a compulsory service for ships which are 50 metres or more in length entering Queensland's ports. Any ship under 50 metres in length can request the services of a marine pilot.

<sup>3</sup> Explanatory notes, p 2: Conservancy dues are charges used to maintain waterways and provide safety and navigational aids to ships in compulsory pilotage areas.

- providing that if a licence holder incurs demerit points under a special hardship order (SHO), their driver licence will be suspended<sup>4</sup>
- reinforcing that power-assisted bicycles do not include vehicles with a motor or motors that provide primary propulsion
- making it a camera detected offence to drive a vehicle that is displaying number plates when the vehicle's registration has been cancelled, and putting beyond doubt that the offence can be prosecuted together with an unregistered vehicle offence.

### **Potential FLP issues**

#### *Demerit point accumulation under special hardship orders*

A licence holder that is currently under a SHO will have their licence suspended if they incur demerit points. This could be seen to be a breach of the fundamental legislative principle that sufficient regard be given to an individual's rights and liberties. The suspension of a person's licence would be a significant impost on a person's ability to maintain their work and personal commitments.

The explanatory notes explain the reasoning behind the amendment:

*While subject to a SHO, a licence holder is currently permitted to incur a further three demerit points before a driver licence suspension is imposed. This creates a licensing sanction scheme where demerit point limits increase from the GDB period to the SHO period, rather than decrease in a tiered manner to encourage improved driving behaviour. This potentially undermines the demerit point scheme by reducing the incentive for recidivist drivers to modify their driving behaviour.*

*The amendment provides that if a licence holder incurs any demerit points under a SHO, the person's driver licence will be immediately suspended. This will create a progressive decrease in available demerit points as a driver moves from a GDB period to a SHO.*

*The amendment seeks to enhance community safety, while sending a clear message to recidivist offenders that unsafe driver behaviours are not tolerated. The changes seek to strike a balance between road safety objectives, and the maintenance of access criteria for drivers seeking a SHO.<sup>5</sup>*

The explanatory notes provide the following justification for the potential breach of FLP:

*The amendment has sufficient regard to the rights and liberties of individuals in that the access criteria for those seeking a SHO will not change. That is, drivers complying with the conditions of their order will not be affected by these amendments. It will only affect those who commit further offences. The amendments will only apply to those who are granted a SHO after the commencement of the amendments.<sup>6</sup>*

#### Committee comment

Given the amendments won't apply to those who were granted a SHO prior to the commencement of the amendments, and given the objective is to enhance community safety while sending a clear message to drivers who repeatedly offend in this area, the committee is satisfied that sufficient regard has been given to an individual's rights and liberties.

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<sup>4</sup> Explanatory notes p 3: Open and provisional licence holders who are suspended during a good driving behaviour period may be eligible to apply to the Magistrates Court for a SHO. The intention of the SHO scheme is to allow individuals to keep driving under strict court-imposed restrictions in situations where they would experience severe hardship if their licence was suspended. For example, a SHO can permit a person to drive only for work purposes, during specified times and/or days. A SHO can be seen as providing a 'third chance' to continue to drive, subject to conditions imposed by the Magistrate.

<sup>5</sup> Explanatory notes, p 3.

<sup>6</sup> Explanatory notes, p 6.

### *Power-assisted bicycles*

The amendment clarifies the operation of the law as it currently stands by describing characteristics of vehicles with motors that provide the primary source of power to contrast directly with vehicles that are considered legal power-assisted bicycles under the Queensland Road Rules.<sup>7</sup>

The explanatory notes further state:

*Under current legislation, a 'bicycle' means a vehicle with two or more wheels that is built to be propelled by human power through a belt, chain or gears, whether or not it has one or more auxiliary motors. 'Bicycle' is taken to include, among other things, a power-assisted bicycle.*

*The Queensland Road Rules section 353B defines what a power-assisted bicycle is. If a vehicle falls within section 353B, it can be used anywhere that bicycles can be used. For example, this includes on roads and on a road-related area such as a path. Section 353B defines power-assisted bicycles by reference to aspects such as maximum power output, maximum speed and the allowable use of the motor.*

*One type of power-assisted bicycle that can currently be used on roads and paths is a Pedalec. A Pedalec may only have an auxiliary electric motor(s) that provides up to 250 watts of power. Its motor must cut out at 25km/h, irrespective of whether the pedals are being used, and the motor must only provide initial assistance without pedalling up to a maximum speed of 6km/h. That is, once the vehicle has reached 6km/h, the motor must not operate unless the bicycle is being pedalled. These types of power-assisted bicycles are considered safe for use on roads and paths in Queensland, including in interactions with pedestrians where bicycles are ridden on paths.*

*Other vehicles that have features exceeding the parameters set by the definition of power-assisted bicycle are considered to be non-compliant motorcycles. An example is an electric moped-like device that, despite being fitted with pedals, can travel at speeds up to 40km/h completely under motorised power, that is, without any pedalling.*

*Vehicles such as these are considered unsafe for use on roads and road-related areas. While these vehicles are considered illegal for use on paths, the current statutory definition of power-assisted bicycle does not readily support roadside enforcement. An amendment to the definition of power-assisted bicycle in the Queensland Road Rules will support roadside enforcement and thus deter the use of illegal moped-like devices.*

*The amendment clarifies that devices with a motor(s) that provide primary propulsion (that is, they are not auxiliary) are not considered power-assisted bicycles. The following capabilities indicate that the motor is the primary means of propulsion of a device:*

- *when propelled only by the motor or motors, the device is capable of going faster than 6km/hr;*
- *the motor or motors are capable of operating when the device is going faster than 25km/hr.*

*The amendment therefore provides that a device with either or both of those capabilities is not a power-assisted bicycle.<sup>8</sup>*

This could be seen to be a breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.<sup>9</sup> Individuals may have already purchased vehicles with motors that do not come within the definition of a power-assisted bicycle.

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<sup>7</sup> Explanatory notes, p 6.

<sup>8</sup> Explanatory notes, pp 3-4.

<sup>9</sup> Subsection 4(3) *Legislative Standards Act 1992*.

The explanatory notes provide the following justification:

*The existing legislative requirement is that electric devices that are substantially capable of travelling under motorised propulsion without human power are not a legal power-assisted bicycle. The amendments will ensure this intent can be achieved without broadening the scope of existing requirements or changing what is currently a legal power-assisted bicycle.*<sup>10</sup>

#### Committee comment

Given that the aim is to improve safety and support roadside enforcement, the committee considers that sufficient regard has been given to an individual's rights and liberties.

#### *Display of number plates on vehicles with cancelled registration*

It is an offence to display a number plate on a vehicle when the registration for the vehicle is recorded in the vehicle register as cancelled. It is also an offence to drive an unregistered vehicle on the road. The amendment will clarify that these two offences can be prosecuted at the same time.<sup>11</sup>

An issue of fundamental legislative principle may be raised in relation to the legislation not having sufficient regard to an individual's rights and liberties.<sup>12</sup>

The explanatory notes provide the following by way of justification:

*The purpose of the number plate offence provision is to deter people from using vehicles with cancelled registration on roads while displaying number plates, as the display of number plates incorrectly conveys that the vehicle is registered. For this reason, it is considered appropriate that a person who displays number plates in this situation should be liable for the offence of driving an unregistered vehicle on a road and the offence of driving a vehicle displaying number plates when the registration has been cancelled.*<sup>13</sup>

#### Committee comment

Given the justification above, the committee considers that sufficient regard has been given to an individual's rights and liberties.

#### **Comment**

The explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

## **2.4 Housing and Public Works Legislation (Fees) Amendment Regulation 2019 (SL 123)**

The objective of the amendment regulation is to increase fees prescribed in the following regulations by 2.25% in accordance with the current government indexation policy:

- Architects Regulation 2003
- Building Industry Fairness (Security of Payment) Regulation 2018
- Building Regulation 2006
- Housing Regulation 2015
- Plumbing and Drainage Regulation 2019

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<sup>10</sup> Explanatory notes, p 6.

<sup>11</sup> Explanatory notes, p 4.

<sup>12</sup> Subsection 4(3) *Legislative Standards Act 1992*.

<sup>13</sup> Explanatory notes, p 7.

- Professional Engineers Regulation 2003
- Queensland Building and Construction Commission Regulation 2018
- Residential Services (Accreditation) Regulation 2002
- Residential Tenancies and Rooming Accommodation Regulation 2019
- Retirement Villages Regulation 2010

#### **Potential FLP issue**

The fee increases come within the 2.25% indexation policy, other than when the amount is greater due to rounding. (There are some instances of increases of 2.3% and 2.4% and one instance of a 3.1% increase where the fee rose from \$1.60 to \$1.65).

#### **Comment**

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

### **2.5 Architects Regulation 2019 (SL 131)**

The objective of the amendment regulation is to remake the Architects Regulation 2003 which expired on 31 August 2019. The Architects Regulation prescribes a number of things, including:

- procedures for an architect to be elected under the *Architects Act 2002* as a member of the Board of Architects of Queensland
- fees
- a code of practice for Queensland architects
- prescribed schools of architecture.

#### **Potential FLP issue**

Section 4(5)(e) *Legislative Standards Act 1992* – Sufficient regard to the institution of Parliament

The regulation inserts into the Architects Regulation 2019 a code of practice – Board of Architects of Queensland Code of Practice.

Whether subordinate legislation has sufficient regard to the institution of parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.<sup>14</sup>

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.<sup>15</sup>

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not ‘subordinate legislation’, it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the code) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the Institution of Parliament.

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<sup>14</sup> Section 4(5)(e) of the *Legislative Standards Act 1992*.

<sup>15</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 170.



The Code of Practice is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House. Similarly, while a future amending notice will alert the House that there has been an amendment to the document (e.g. if a future notice states that it is replacing the Code of Practice), it will not contain information about the changes that have been made.

*Authorised by an Act*

Section 108 of the *Architects Act 2002* provides that the Board must make a code of practice and the code of practice has no effect until it is approved under a regulation.

The sub-delegation is authorised.

*Appropriate cases and to appropriate persons*

In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered the importance of the subject dealt with, the commercial or technical nature of the subject matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.<sup>16</sup>

The Code of Practice includes detailed information and is 15 pages long. It can be argued that it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation.

*Availability of document and parliamentary scrutiny*

Concerns about sub-delegation are reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and was attached to the subordinate legislation, or required to be tabled with the subordinate legislation and made available for inspection. Section 109 of the Act requires the Minister to table a copy of the code, or amendment or amended code, within 14 sitting days after the regulation is gazetted. At the time of this brief, the code has not been tabled.

Section 110 requires the board to make available for inspection a copy of the code at the board's office, by members of the public. It also is required to make the code available for inspection on its website.

**Comment**

Given the matters raised above, the committee wrote to the Department of Housing and Public Works seeking a further explanation of the department's reasons for not including the Code of Practice in its entirety in the subordinate legislation and the appropriateness of this in regard to compliance with section 4(5)(e) of the *Legislative Standards Act 1992*.

The department provided the following response in relation to both the Architects Regulation 2019 and the Professional Engineers Regulation 2019 (considered in section 2.6 of this report):

*The Department of Housing and Public Works (DHPW) considers that it is not necessary that the codes be included in the regulation, as this is not a requirement of the Architects Act 2002 (Architects Act) and the Professional Engineers Act 2002 (Engineers Act). DHPW notes that the legislative intention was that the codes be approved by regulation as opposed to being prescribed in the regulation.*

*The Architects and Engineers Acts achieve transparency through requiring a new code or a change of the code to be approved by regulation and tabled in the Legislative Assembly and the requirements to make the codes of practice publicly available.*

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<sup>16</sup> See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

Although the content of the Code of Practice is not contained in the subordinate legislation in its entirety, the committee considers that—given a) the Code’s length; b) that the Board must make a code of practice and that it has no effect until is approved under a regulation; c) an amending notice will alert the House when there is an amendment to the document; d) the Minister table a copy of the code, or amendment or amended code; e) a copy of the code must be made available at the board’s office and on its website; and f) the department’s response —the subordinate legislation has sufficient regard to the institution of parliament.

In regard to the explanatory notes tabled with the amendment regulation, under the heading *Consistency with fundamental legislative principles*, the explanatory notes state:

*The Architects Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament and has been drafted in accordance with fundamental legislative principles as defined in section 4 of the Legislative Standards Act 1992.*<sup>17</sup>

Part 4 of the *Legislative Standards Act 1992* requires explanatory notes to include:

*a 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.*<sup>18</sup>

The statement in the explanatory notes only indirectly addresses the issue of consistency. For this reason, the committee wrote to the Department of Housing and Public Works seeking a response addressing the subordinate legislation’s consistency with fundamental legislative principles. The department advised:

*I am advised that DHPW officers have confirmed with the Office of the Queensland Parliamentary Counsel that the code of practice does not need to be replicated in the regulation. In addition, to give the code effect it is only necessary to correctly identify the document, and this achieved by stating the document’s title, and in most cases, the date of publication.*

*I also note that the Committee expressed the view that the explanatory notes to the regulations do not address inconsistency with the FLPs. As DHPW does not consider that the regulations are in breach of the FLPs, it was not considered necessary to address any inconsistency in the explanatory notes.*

The committee is satisfied with the department’s response and notes that the explanatory notes otherwise comply with the requirements with part 4 of the *Legislative Standards Act 1992*.

## **2.6 Professional Engineers Regulation 2019 (SL 132)**

The objective is to remake the Professional Engineers Regulation which expire on 31 August 2019.

The Professional Engineers Regulation prescribes a number of things, including:

- procedures for a professional engineer to be elected under the *Professional Engineers Act 2002* as a member of the Board of Professional Engineers Queensland
- prescribed qualifications and competencies for particular areas of engineering
- fees
- schools of engineering

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<sup>17</sup> Explanatory notes, p 3.

<sup>18</sup> *Legislative Standards Act 1992*, section 24(1)(i).

### Potential FLP issue

Section 4(5)(e) Legislative Standards Act 1992 – *Sufficient regard to the institution of Parliament*

The regulation inserts into the Professional Engineers Regulation 2019 a code of practice, Code of Practice for Registered Professional Engineers.

Whether subordinate legislation has sufficient regard to the institution of parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.<sup>19</sup>

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.<sup>20</sup>

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the code) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the Institution of Parliament.

The Code of Practice is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House. Similarly, while a future amending notice will alert the House that there has been an amendment to the document (e.g. if a future notice states that it is replacing the Code of Practice), it will not contain information about the changes that have been made.

#### *Authorised by an Act*

Section 108 of the *Professional Engineers Act 2002* provides that the Board must make a code of practice and the code of practice has no effect until it is approved under a regulation.

The sub-delegation is authorised.

#### *Appropriate cases and to appropriate persons*

In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered the importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.<sup>21</sup>

The Code of Practice includes detailed information and is 6 pages long. It can be argued that it is appropriate for the detail to be set out in a document other than subordinate legislation.

#### *Availability of document and parliamentary scrutiny*

Concerns about sub-delegation are reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and was attached to the subordinate legislation, or required to be tabled with the subordinate legislation and made available for inspection. Section 109 of the Act requires the Minister to table a copy of the code, or amendment or amended code, within 14 sitting days after the regulation is notified.

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<sup>19</sup> Section 4(5)(e) of the *Legislative Standards Act 1992*

<sup>20</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p170.

<sup>21</sup> See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

Section 110 requires the board to make available for inspection a copy of the code at the board's office, by members of the public. It also is required to make the code available for inspection on its website.

### Comment

Given the matters raised above, the committee wrote to the Department of Housing and Public Works seeking a further explanation of the department's reasons for not including the Code of Practice in its entirety in the subordinate legislation and the appropriateness of this in regard to compliance with section 4(5)(e) of the *Legislative Standards Act 1992*.

The department provided a response in relation to both the Architects Regulation 2019 (considered in section 2.5 of this report) and the Professional Engineers Regulation 2019 (considered in section 2.6 of this report). The department's response is included in the section 2.5 above.

Although the content of the Code of Practice is not contained in the subordinate legislation in its entirety, the committee considers that—given a) the Code's length; b) that the Board must make a code of practice and that it has no effect until is approved under a regulation; c) an amending notice will alert the House that there has been an amendment to the document; d) the Minister must table a copy of the code, amendment or amended code; e) a copy of the code must be made available at the board's office and on its website; and f) the department's response advising —the subordinate legislation has sufficient regard to the institution of parliament.

In regard to the explanatory notes tabled with the amendment regulation, under the heading *Consistency with fundamental legislative principles*, the explanatory notes state:

*The PE Regulation 2019 has sufficient regard to the rights and liberties of individuals and the institution of Parliament and has been drafted in accordance with fundamental legislative principles as defined in section 4 of the Legislative Standards Act 1992.*<sup>22</sup>

Part 4 of the *Legislative Standards Act 1992* requires explanatory notes to include:

*a 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.*<sup>23</sup>

The statement in the explanatory notes arguably only indirectly addresses the issue of consistency. For this reason, the committee wrote to the Department of Housing and Public Works seeking a response addressing the subordinate legislation's consistency with fundamental legislative principles. The department's response is included in section 2.5 above.

The committee is satisfied with the department's response and notes that the explanatory notes otherwise comply with the requirements with part 4 of the *Legislative Standards Act 1992*.

## 2.7 Building and Other Legislation Amendment Regulation 2019 (SL 152)

The objective of the amendment regulation is to:

- permit a private building certifier to continue to perform their function, with professional indemnity insurance that has an exclusion relating to certain cladding, for a time limited period
- improve administrative and regulatory functions of the Queensland Building and Construction Commission in administering the combustible cladding checklist process which will also assist registered owners to fulfil their legislative obligations

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<sup>22</sup> Explanatory notes, p 3.

<sup>23</sup> *Legislative Standards Act 1992*, section 24(1)(i).

- impose penalties against registered owners for not taking required actions
- require that fire engineers notify building owners and the QBCC when they reasonably believe a private building will require risk mitigation measures.

### Comment

No fundamental legislative principles (FLP) issues were detected.

In regard to the explanatory notes tabled with the amendment regulation, 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.*

Part 4 of the *Legislative Standards Act 1992* requires explanatory notes to include:

*... a 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.*

Arguably, the statement in the explanatory notes only indirectly addresses the issue of consistency. The committee notes that the explanatory notes otherwise comply with part 4 of the *Legislative Standards Act 1992*.

The committee previously wrote to the Department of Housing and Public Works regarding a similar issue in subordinate legislation 83. In its response, the department noted the similarity between how it addressed consistency with fundamental legislative principles in SL 83 and this piece of subordinate legislation and proactively wrote to the committee about SL 152, advising:

*In responding to the fundamental legislative principles of the explanatory notes, a similar response was given to that in subordinate legislation No. 83 of 2019. In this context, the Department provides the Committee the following advice in anticipation that a similar request may be made by the Committee.*

*The amendments adopted in subordinate legislation No. 152 of 2019 will facilitate a number of administrative and operational benefits. The temporary exclusion for private certifiers from holding professional indemnity insurance where undertaking work relating to noncompliant external cladding will ensure that private certifiers can continue providing their services within context of the current fluid insurance market.*

*Other changes, such as the ability to re-submit a combustible cladding checklist part and to lodge documents to the Queensland Building and Construction Commission (QBCC) via avenues outside the online portal will significantly benefit private building owners in meeting their regulatory requirements. The requirement for fire engineers to notify the QBCC and/or private building owners when they decide a private building requires fire safety mitigation measures will ensure that the safety of buildings remains at the forefront of responsibilities for fire engineers and assist in better understanding how to respond to potentially combustible cladding.*

*It is considered that the amendments are consistent with fundamental legislative principles. As noted above, the amendments will assist building owners to comply with the requirements of the combustible cladding checklist and support the right and liberties of individuals in complying with the legislative requirements. Finally, in drafting the amendments, the Office of the Queensland Parliamentary Counsel did not raise any concerns regarding the amendments triggering potential breaches of the fundamental legislative principles.<sup>24</sup>*

The committee consider the department's response satisfactory in regard to its assessment of fundamental legislative principles in the amendment regulation.

### **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**

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<sup>24</sup> Department of Housing and Public Works, correspondence dated 4 September 2019, pp 2-3.