

**Subordinate legislation tabled
between 13 February 2019 and
26 March 2019**

Report No. 21, 56th Parliament
Transport and Public Works Committee
May 2019

Transport and Public Works Committee

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¹ Mr Joe Kelly MP, Member for Greenslopes, is 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 13 February 2019 and 26 March 2019.

1.3 Subordinate legislation examined

SL No	Subordinate Legislation	Tabled Date	Disallowance Date*
18	Plumbing and Drainage (Occupational Licence Fee) Amendment Regulation 2019	26 March 2019	13 June 2019
21	Architects (Registration Fees) Amendment Regulation 2019	26 March 2019	13 June 2019
28	Proclamation made under the <i>Transport and Other Legislation Amendment Act 2017</i>	26 March 2019	13 June 2019
29	Photo Identification Card Regulation 2019	26 March 2019	13 June 2019
30	Queensland Building and Construction Commission (Minimum Financial Requirements) and Other Legislation Amendment Regulation 2019	26 March 2019	13 June 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 Plumbing and Drainage (Occupational Licence Fee) Amendment Regulation 2019 (SL 18)

The objective of the amendment regulation is to waive fees for an occupational licence that is associated with an equivalent contractor licence.

From July 2017, the Queensland Building and Construction Commission (QBCC) has required contractor licensees to apply (and pay) for both an occupation licence and a contractor's licence before they are able to contract for plumbing and drainage work.³

Section 173A of the *Plumbing and Drainage Act 2018*, which commenced on 19 October 2018, deems that a person who held a contractor's licence also held the relevant occupational licence. This was a retrospective amendment that dealt with the period from November 2014 through to commencement of the provision.⁴

Achievement of policy objectives

The explanatory notes advise:

The Plumbing and Drainage (Occupational Licence Fee) Amendment Regulation 2019 (Amendment Regulation) amends the PDR 2003 [Plumbing and Drainage Regulation 2003] to permit the QBCC Commissioner to allow nil cost application or renewal for an occupational licence issued under the PDA 2002 [Plumbing and Drainage Act 2002], if the QBCC Commissioner is reasonably satisfied the application is made for the purposes of (or in association with) obtaining an equivalent contractor's licence. This will include a number of restricted licences that permit the installation of gas hot water heaters, irrigation, fire hydrants, hose reels and sprinkler systems, and on-site sewage facilities.

The proposed amendment is similar to existing provisions which permit the QBCC to waive application and licence fees under certain circumstances.⁵

Consultation

The following industry stakeholders were consulted regarding the proposals in the amendment regulation: Master Plumbers' Association of Queensland, the Plumbers Union Queensland, and the Service Trades Union. The explanatory notes advise that '[a]ll industry stakeholders support the proposal to waive fees for an occupational licence with an equivalent contractor licence'.⁶

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*.

However, the committee wrote to the Department of Housing and Public Works seeking advice on whether the QBCC will have to refund any fees paid between November 2014 and 19 October 2018, when the provision commenced, and, if so, what the financial impact will be. The department advised:

I can confirm that the Regulation does not require the QBCC to provide a refund to any licensees who complied with the legal requirement to pay for an occupational licence. As a result, there will not be any financial impact on the QBCC.⁷

³ Explanatory notes, p 2.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 2.

⁶ Explanatory notes, p 3.

⁷ Department of Housing and Public Works, correspondence dated 9 May 2019, p 1.

The committee also sought information regarding why the department did not address the issue sooner to avoid a situation whereby contractors were paying two fees. The department advised:

...this commitment was to address a legacy issue and involved implementing zero-cost application fees for an application for, or to renew, an occupational licence under the Plumbing and Drainage Act 2002. The commitment related to licensees who held an equivalent contractor's licence under the Queensland Building and Construction Act 1991. The amendments contained in the Plumbing Regulation were the final step in implementing a 2017 election commitment.

In 2018, the Queensland Government took the first step to implement this commitment when it legislated to retrospectively validate unlicensed plumbing and drainage work that had unknowingly been performed by contractor licensees since 2014. This was achieved through the introduction of section 173A of the Plumbing and Drainage Act 2018, which came into effect on 19 October 2018. The section is a validating provision with retrospective effect that deems a person to have held an occupational plumbing licence if they held the equivalent contractor's licence.

It is important to note that implementing the election commitment was not a simple matter. Given the need to introduce amendments to both the current and proposed Acts of Parliament, and related subordinate legislation, all of which required appropriate consultation with affected stakeholders, I am satisfied that the Department of Housing and Public Works (DHPW) has progressed this commitment in a timely and satisfactory manner.⁸

The committee is satisfied with the department's response on both matters.

2.2 Architects (Registration Fees) Amendment Regulation 2019 (SL 21)

The objective of the amendment regulation is to increase the fees for registration as an architect in order for the Board of Architects Queensland (BOAQ) to effectively undertake its legislative functions. The annual registration fees for practising architects increased by \$90.90, from \$198.10 to \$289.00.

Consultation

The Australian Institute of Architects and the Association of Consulting Architects were consulted and 'support the proposed amendment'. Further, '[a] survey of all registered architects in Queensland supported the proposed new fee of \$289.00'.⁹

Potential FLP issue

Under the amendment regulation, the annual registration fees for practising architects increased by \$90.90—from \$198.10 to \$289.00. The fee increase of 45 per cent is well above the government indexation rate of 3.5 per cent.

The explanatory notes advise that the BOAQ operates primarily on revenue from registration, but the current fee structure is insufficient to sustainably fund the BOAQ's regulatory functions.¹⁰

The explanatory notes further provide that the fees have not been reviewed since 2003 and since then have only increased in accordance with the government indexation rate. BOAQ's costs, however, have increased up to 134 per cent per year on average, due to an increase in volume and complexity of complaints received. The increases in costs have not been met by the fees. The explanatory notes state that '[a] fee increase is needed for the BOAQ to continue to effectively undertake its legislative functions'.¹¹

⁸ Department of Housing and Public Works, correspondence dated 9 May 2019, pp 1-2.

⁹ Explanatory notes, p 2.

¹⁰ Explanatory notes, p 1.

¹¹ Explanatory notes, p 1.

The explanatory notes further provide:

Increasing the fees payable to the BOAQ will allow it to more effectively discharge its legislative functions in a financially sustainable way. As the fee reflects cost recovery, it is in accordance with Queensland Treasury's Principles for Fees and Charges.¹²

The committee wrote to the Department of Housing and Public Works seeking information on why a review of BOAQ's fee structure had not occurred since 2003 and what the process going forward will be regarding annual review of the registration fees for members of BOAQ to ensure it has adequate funding to perform its functions and avoid a significant annual increase in the future.

The department advised:

In relation to the Architects (Registration Fees) Amendment Regulation 2019, I note the registration fees Board of Architects of Queensland (BOAQ) have increased annually by the Queensland Government indexation policy (currently 3.5 per cent) since 2003. In addition, DHPW officers have worked with the BOAQ to implement process improvement measures to ensure the BOAQ continued to perform its prescribed functions.

Recent issues in the building and construction industry such as combustible cladding, have necessitated the BOAQ undertaking a stronger monitoring and oversight role of the architecture profession. The fee increase will facilitate this stronger regulatory focus.

I note DHPW has established officer-level meetings and information-sharing occurs between DHPW officers and the BOAQ. It is anticipated that any issues relating to the sufficiency of fee levels will be addressed as part of these processes.¹³

The committee is satisfied with the department's response and, on balance, considers that the fee increase, although in excess of the government indexation rate, is justified as:

- it represents fee recovery for the BOAQ.
- the proposed fee was supported in a survey of registered architects. The Australian Institute of Architects and the Association of Consulting Architects were consulted and also gave support to the increase in fees.
- the new annual fee is not excessive, when compared to some other professions.

Comment

The committee is satisfied that the fee increase is justified given the reasons outlined above. No other FLP issues were detected. The explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

2.3 Proclamation made under the *Transport and Other Legislation Amendment Act 2017 (SL 28)*

The objective of the proclamation is to fix a commencement date of 1 April 2019 for certain provisions of the *Transport and Other Legislation Amendment Act 2017*. The explanatory notes detail the provisions as follows:

These provisions change the name of the adult proof of age card to the photo identification card and rename the Adult Proof of Age Card Act 2008 to the Photo Identification Card Act 2008. They also make consequential changes to other legislation that mentions the card or the legislation that governs it. In addition, the minimum age at which someone can obtain a photo identification card is lowered from 18 to 15 years.¹⁴

¹² Explanatory notes, p 2.

¹³ Department of Housing and Public Works, correspondence dated 9 May 2019, p 2.

¹⁴ Explanatory notes, p 1.

Comment

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

2.4 Photo Identification Card Regulation 2019 (SL 29)

The objective of the regulation is to remake the Photo Identification Card Regulation 2010, which in accordance with Part 7 of the *Statutory Instruments Act 1992*, would automatically expire on 1 September 2020.

The regulation will include provisions that:

- specify the procedures for notifying a change of personal particulars by the holder of a photo identification card
- set the application fees for a photo identification card and replacement photo identification card
- allow for the waiver of photo identification card fees for individuals affected by certain events, including natural disasters.¹⁵

The explanatory notes state that the 2019 Regulation also:

allows the fee for a class C learner licence to be reduced by \$40 when the person holds a photo identification card but has never held an Australian driver licence.

...

*will remove the time limit for a person to apply for a special hardship order if their open or provisional driver licence has been suspended for particular reasons.*¹⁶

Achievement of policy objectives

The 2010 Regulation will be remade as the 2019 Regulation and will achieve the policy objectives listed above by—

- *continuing to regulate most matters currently addressed in the 2010 Regulation;*
- *removing an entry in the State Penalties and Enforcement Regulation 2014 for a redundant offence provision;*
- *amending the Transport Operations (Passenger Transport) Regulation 2018, Transport Operations (Road Use Management—Dangerous Goods) Regulation 2018 and Transport Planning and Coordination Regulation 2017 to reflect the change of name of the adult proof of age card and the legislation governing it; and*
- *inserting a new fee in the Transport Operations (Road Use Management—Driver Licensing) Regulation 2010 of \$131.90 for the grant of a class C learner licence where the applicant has never held an Australian driver licence but holds a photo identification card issued after the commencement of the Photo Identification Card Regulation 2019.*¹⁷

Consultation

The explanatory notes advise that no specific community or industry consultation was undertaken 'due to the limited scope and machinery nature of the regulation'.¹⁸

Comment

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

¹⁵ Explanatory notes, p 1.

¹⁶ Explanatory notes, p 2.

¹⁷ Explanatory notes, p 2.

¹⁸ Explanatory notes, p 5.

2.5 Queensland Building and Construction Commission (Minimum Financial Requirements) and Other Legislation Amendment Regulation 2019 (SL 30)

The objective of the amendment regulation is to implement phase 2 of the Minimum Financial Requirements (MFR) reforms, which commenced on 2 April 2019. The explanatory notes advise the following in regard to the MFR reforms:

The new MFR framework aims to strengthen reporting requirements, clarify what can and cannot be included when calculating a licensee's assets and revenue, and improve data quality and availability for the State's building regulator, the Queensland Building and Construction Commission (QBCC). This will enable the QBCC to more effectively monitor the financial sustainability of licensees and act to mitigate the impact on the building and construction industry at an earlier stage.¹⁹

The regulation will:

- require higher-risk licensees to provide more detailed financial information
- require self-certifying licensees, who are considered lower risk, to self-report their 'current ratio' of assets to liabilities
- provide the QBCC with the power to engage the services of an appropriately qualified accountant to audit financial information or MFR reports they reasonably believe to contain false or misleading information
- prescribe new offences and penalties for failing to meet the requirements, including failure to notify the QBCC of changes in a covenantor's financial position and failing to keep internal management records.²⁰

Consultation

The explanatory notes advise the following in regard to consultation on the amendment regulation:

The MFR reforms are based on the results of public consultation on a discussion paper titled 'The proposed improvements to the Minimum Financial Requirements for licensing in the building and construction industry', which was held from 12 September to 9 October 2018. The proposals that have been implemented are those that received support during consultation. Some proposals that did not receive a high level of support, for example due to their financial burden or inconsistency with Australian Accounting Standards, were not included in the Amendment Regulation.

Members of the Ministerial Construction Council (which includes representatives from the National Association of Women in Construction, the Master Plumbers' Association of Queensland, Master Electricians Australia, the National Fire Industry Association, Master Builders Queensland, and the Housing Industry Association) were consulted on the proposed MFR reforms and draft Amendment Regulation. Members were generally supportive of the reforms included in the Amendment Regulation

The Queensland Law Society's Construction and Infrastructure Law Committee was consulted and was supportive of the proposed reforms.

Accountancy bodies CPA Australia and the Chartered Accountants of Australia and New Zealand were consulted on the proposed reforms and draft Amendment Regulation. These bodies provided advice about technical drafting matters which was incorporated as far as possible.

The Queensland Productivity Commission was consulted and determined that further regulatory impact analysis was not required as there were not expected to be significant adverse impacts.²¹

¹⁹ Explanatory notes, p 1.

²⁰ Explanatory notes, pp 2, 3.

²¹ Explanatory notes, pp 3-4.

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.

A handwritten signature in black ink, appearing to read 'Joe Kelly', is positioned above the typed name and title.

Mr Joe Kelly MP
Acting Chair