

Transport and Resources Committee

Report No. 34, 57th Parliament

Subordinate legislation tabled between 21 February 2023 and 27 March 2023

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 21 February 2023 and 27 March 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLP) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.¹

The report identifies any issues identified by the committee in its consideration of the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

No. of 2022	Subordinate legislation	Date tabled	Disallowance date*
171	Plumbing and Drainage and Other Legislation Amendment Regulation 2022	21 February 2023	11 May 2023
191	Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2022	21 February 2023	11 May 2023

No. of 2023	Subordinate legislation	Date tabled	Disallowance date*
4	Transport Legislation Amendment Regulation 2023	21 February 2023	11 May 2023

3 Committee consideration of the subordinate legislation

No issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified with the Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2022. In regards to the Plumbing and Drainage and Other Legislation Amendment Regulation 2022 and the Transport Legislation Amendment Regulation 2023, the committee notes the potential FLP issues contained in this report but is satisfied by the justifications provided.

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

4 Plumbing and Drainage and Other Legislation Amendment Regulation 2022

The Plumbing and Drainage and Other Legislation Amendment Regulation 2022 (SL No. 171 of 2022) amends the Plumbing and Drainage Regulation (PD Regulation) to:

- prescribe a new use of greywater in air conditioning cooling towers
- prescribe a new standard of greywater permitted for use in air conditioning cooling towers
- prescribe requirements for a greywater management plan (GWMP) that must be included with an application for a cooling tower treatment plant
- enable local government to condition a permit (for a stated period) for the installation of a holding tank for a temporary period
- enable local government to stipulate when the holding tank must be removed.³

SL No. 171 relies on the existing head of power under the *Plumbing and Drainage Act 2018* (PD Act) to prescribe large-scale cooling tower treatment plants⁴ as an additional use of recycled greywater.⁵ The amendment regulation authorises local governments to issue such a permit, subject to a compliant GWMP and water standard, as detailed in the amendment regulation.

According to the explanatory notes, the holding tank provisions in SL No. 171 are consistent with the intent of the *Building and Other Legislation Amendment Act 2022*, as it will ‘allow local government to approve permits for temporary purposes (e.g., for temporary toilets on a construction site before the premises have been connected to the sewage system)’.⁶

Further, SL No. 171 amends the PD Regulation to correct a minor typographical error and make minor amendments to ensure the use of correct terminology.⁷

SL No. 171 also amends the State Penalties Enforcement Regulation 2014 (SPE Regulation) to prescribe section 147(1) of the PD Act⁸ as an infringement notice offence, with a penalty infringement notice (PIN) fine of 20 penalty units (currently, \$2,875)⁹ for an individual and 80 penalty units (currently, \$11,500) for a corporation.¹⁰

The explanatory notes explain that a PIN is a ticket or notice imposing a fine for a contravention of an offence and that the PIN system provides ‘a swift and inexpensive means of addressing particular offences that would otherwise be required to be dealt with by means of costly and time-consuming prosecutions’.¹¹

According to the explanatory notes, prescribing section 147(1) of the PD Act as an infringement notice offence will:

... ensure that if a local government issues an enforcement notice to an individual or corporation for defective plumbing or drainage work, and the homeowner, plumber or corporation fails to comply with the enforcement notice, the local government can issue a PIN for the failure.

³ SL No. 171, explanatory notes, p 3.

⁴ Other than kitchen greywater.

⁵ SL No. 171, explanatory notes, p 2.

⁶ SL No. 171, explanatory notes, p 2.

⁷ SL No. 171, explanatory notes, p 2.

⁸ PD Act, s 147(1) provides that a person must not contravene an enforcement notice, with a maximum penalty of 250 penalty units (currently, \$35,937.50).

⁹ The value of a penalty unit is currently \$143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

¹⁰ SL No. 171, explanatory notes, p 1.

¹¹ SL No. 171, explanatory notes, pp 2-3.

This amendment reinstates a PIN offence for failure to comply with an enforcement notice, which was an unintended omission when the PD Act was updated in 2018.¹²

4.1 Fundamental legislative principle issues

Rights and liberties of individuals - penalties

Penalties impact on the rights and liberties of individuals. A penalty in legislation should be proportionate to the offence.¹³

SL No. 171 has the effect that contravention of section 147(1) of the PD Act (itself an offence under that Act) will attract a PIN fine of 20 penalty units for an individual (\$2,875). The PIN offence relates to a person's contravention of a local government enforcement notice under the PD Act.

The Queensland Government's *Queensland legislation handbook* provides that, as a general guide, infringement notice fines prescribed in the SPE Regulation should not be more than one-tenth of the penalty prescribed in the relevant Act.¹⁴ The infringement notice fine for an individual in SL No. 171 is considerably less than one-tenth of the maximum penalty in the PD Act.

While the explanatory notes do not consider the new penalty in the context of fundamental legislative principles, they provide the above quoted justification for the inclusion of the new infringement notice offence and penalty in the SPE Regulation.

Conclusion

As the value of the penalty falls within the range of the existing infringement notice fines in the SPE Regulation for the PD Act (being 1-20 penalty units), and the amount is not more than one-tenth of the relevant maximum penalty in the PD Act, the committee is therefore satisfied that the legislation has sufficient regard to the rights and liberties of individuals.

No other issues of fundamental legislative principle were identified.

4.2 Explanatory Notes

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

4.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.¹⁵

4.4 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

¹² SL No. 171, explanatory notes, p 3.

¹³ *Legislative Standards Act 1992*, s 4(2)(a); Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120.

¹⁴ Queensland Government, *Queensland legislation handbook*, 6.10 Infringement notice offences, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/subord-legislation/infringement.aspx>

¹⁵ Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

5 Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2022

The Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2022 (SL No. 191 of 2022):

- implements action 40 of the Queensland Resources Industry Development Plan (QRIDP) by amending the Petroleum and Gas (Safety) Regulation 2018 (PGS Regulation)¹⁶ to restrict the existing prohibition on steel casing in horizontal wells so that the restriction applies only where an operating plant (in relation to petroleum and gas) is in the area of a coal or shale mining lease or tenement or a coal resource authority¹⁷
- amends the Coal Mining Safety and Health Regulation 2017 and the PGS Regulation to replace the definition of 'horizontal well' with 'relevant horizontal well'¹⁸
- corrects section references in the Petroleum and Gas (General Provisions) Regulation 2017.¹⁹

According to the explanatory notes, the use of steel casing in horizontal petroleum wells enables effective hydraulic fracturing to develop coal seam gas resources, however, it can present a potential safety risk to underground coal mining:

The Petroleum and Gas (Safety) Regulation 2018 currently prohibits the use of steel casing in horizontal wells, and petroleum tenure holders must apply for an exemption.

...

Action 40 of QRIDP commits the Queensland Government to removing the prohibition on the use of steel casing in horizontal wells where there is no overlapping coal tenure. This approach seeks to provide beneficial outcomes for both the petroleum and coal industries, reducing industry burden and providing for greater flexibility to optimise future resources where there is no immediate safety risk.²⁰

5.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

5.2 Explanatory Notes

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

5.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

5.4 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

¹⁶ SL No. 191 replaces section 44 of the Petroleum and Gas (Safety) Regulation 2018 with new section 52A.

¹⁷ SL No. 191, explanatory notes, p 2.

¹⁸ A 'relevant horizontal well' being a petroleum well, any part of which travels in a generally horizontal direction within or adjacent to a coal seam: SL No. 191, explanatory notes, p 2.

¹⁹ To clarify that the confidentiality periods which apply to required information for petroleum and gas tenures do not apply to an overlapping coal or oil shale tenement holder: SL No. 191, explanatory notes, p 2.

²⁰ SL No. 191, explanatory notes, pp 1-2.

6 Transport Legislation Amendment Regulation 2023

The objective of the Transport Legislation Amendment Regulation 2023 (SL No. 4 of 2023) is to amend:

- the Transport Operations (Road Use Management - Driver Licensing) Regulation 2021 (Driver Licensing Regulation)²¹ to -
 - reduce the fee for the grant or renewal of a learner licence from \$186.55 (182 fee units) to \$75.00 (73.18 fee units)²²
 - remove the discounted fee for applicants that already hold a Photo Identification card, reflecting that the new fee amount of \$75.00 is significantly below the discounted fee²³
- the Transport Operations (Road Use Management - Road Rules) Regulation 2009 (the Queensland Road Rules) to amend the definition of 'mobile phone' to clarify that it includes a mobile phone whose telephone function is not capable of being used and a mobile phone that is being used for a function other than the telephone function²⁴
- the Transport Operations (Road Use Management - Vehicle Registration) Regulation 2021 (the Registration Regulation) to remove the requirement that personalised number plates can only be sold at auction 'in exchange for the payment of the published fee'²⁵
- the Transport Planning and Coordination Regulation 2017 (the TPC Regulation) to -
 - provide for information kept in a 'marine transport information database' to be disclosed to an authorised person of a prescribed agency
 - introduce a new offence with a maximum penalty of \$2875.00 (20 penalty units) for an authorised person who uses the information for an unauthorised purpose or in contravention of a condition imposed by the chief executive.²⁶

Reduced Learner Licence fee

The amendments will apply to any learner licence which commences on or after 1 March 2023.²⁷

Mobile phone rules for drivers

The explanatory notes state that, in 2021, Mobile Phone and Seatbelt Technology cameras were rolled out throughout Queensland, accompanied by legislative amendments to the Queensland Road Rules,²⁸ including to ensure that the road rules were 'compatible with camera-detected enforcement

²¹ SL No. 4, s 3 - 8 amended the Driver Licensing Regulation, s 390, s 398 and Sch 7.

²² Under the *Acts Interpretation Act 1954* (AI Act), s 48C, the amount of a fee is the number of dollars obtained by multiplying the value of a fee unit by the number of fee units. The AI Act, s 48B, provides that the value of a fee unit is \$1 unless another amount is prescribed. The Acts Interpretation (Fee Unit) Regulation 2022, s 2, provides that, from 1 July 2022, the value of a fee unit will be \$1.025 except under specified legislation.

²³ The discounted fee being \$143.15 (139.65 fee units): SL No. 4, explanatory notes, pp 2-3.

²⁴ SL No. 4, explanatory notes, p 3.

²⁵ SL No. 4, explanatory notes, p 4.

²⁶ The prescribed agencies are those which work in partnership with Maritime Safety Queensland (MSQ) on maritime and other functions, including the Australian Maritime Safety Authority, the Department of Environment and Science, the Department of Agriculture and Fisheries, the Gold Coast Waterways Authority, the Great Barrier Reef Marine Park Authority, Transport for New South Wales (NSW), the NSW Police Force and the Queensland Police Service: SL No. 4, explanatory notes, p 4.

²⁷ SL No. 4, explanatory notes, p 3.

²⁸ Queensland Road Rules, s 300.

and to capture other high-risk driving behaviours such as having a mobile phone resting on a driver's lap'.²⁹

Personalised number plate auctions

Under the Registration Regulation, the chief executive can issue personalised number plates to those who apply and pay the relevant fee.³⁰ In practice, the sale and marketing of personalised plates is done through the Personalised Plates Queensland business (PPQ).³¹

Whilst the registration Regulation already provides that PPQ may also offer certain personalised plates for sale through an online auction facility, the explanatory notes state that SL No. 4 clarifies the relevant provisions to ensure the plates can be sold for the highest genuine bid received at auction, not a pre-determined published amount.³²

Disclosure of maritime information

The explanatory notes state that Maritime Safety Queensland (MSQ) collects and holds a range of information,³³ essential to regulating marine safety and other maritime operations within Queensland, which is also of use to other Queensland partner agencies and agencies from other jurisdictions involved in maritime and other regulation.³⁴

According to the explanatory notes, SL No. 4 enables the information³⁵ to be disclosed to an authorised person of a prescribed agency:

... but only for purposes for which the agency is authorised to use the information under a law of the Commonwealth or a State or purposes consistent with the agency's functions under a Commonwealth or State law. So, for example, prescribed agencies may have access to the information database for enforcement or other administrative purposes such as planning.³⁶

6.1 Fundamental legislative principle issues

Rights and liberties of individuals - Ordinary activities should not be unduly restricted

Whether legislation has sufficient regard to the rights and liberties of individuals, depends on whether, for example legislation unduly restricts ordinary activities.³⁷ The most general concept of liberty logically requires that an activity should be lawful unless for a sufficient reason it is declared unlawful by an appropriate authority.³⁸

By amending section 300 of the Queensland Road Rules to clarify that mobile phone use remains illegal irrespective of the functionality of the phone at the relevant time, SL No. 4 may limit a driver's rights and liberties.

According to explanatory notes, the amendment is required to put beyond doubt that mobile phone use remains illegal irrespective of the functionality of the phone at the relevant time, but it does not

²⁹ SL No. 4, explanatory notes, p 2.

³⁰ SL No. 4, explanatory notes, p 2.

³¹ SL No. 4, explanatory notes, p 2.

³² SL No. 4, explanatory notes, p 2 and 4.

³³ Under the *Transport Operations (Marine Safety) Act 1994* and the *Transport Infrastructure Act 1994*.

³⁴ SL No. 4, explanatory notes, p 3.

³⁵ Which may include personal information, such as the name and address of a particular marine licence holder: SL No. 4, explanatory notes, p 5.

³⁶ SL No. 4, explanatory notes, p 3.

³⁷ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 118; *Legislative Standards Act 1992*, s 4(2)(a).

³⁸ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

expand the range of devices that are captured by section 300 of the Queensland Road Rules beyond the original intention. The explanatory notes add:

The amendment will assist in addressing driver distraction caused by the misuse of mobile phones. It aligns with community expectations of mobile phone technology and appropriate restrictions on use while driving and preserves the initial policy intention of the mobile phone offence.³⁹

The explanatory notes provide justification for the limitation, stating that the use of a mobile phone at any time by the driver of a vehicle, and the level of distraction from the driving task that it entails, presents a high safety risk to the driver and to other road users:

Driver distraction contributes to almost 20 percent of serious injuries and 14 percent of fatalities from crashes on a road. As such, the benefit of minimizing that distraction outweighs any limitation on the driver's rights and liberties in relation to the use of a mobile phone while driving.⁴⁰

Conclusion

Noting the provided justifications and explanations, the committee is satisfied that the amendments have sufficient regard to the rights and liberties of individuals.

Rights and liberties of individuals - Privacy

The right to privacy and the disclosure of confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of individuals. These matters are discussed below under the heading of 'Compatibility with human rights'.

General rights and liberties of individuals - Penalties

The creation of new offences and penalties can affect the rights and liberties of individuals. A penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁴¹

SL No. 4 amends the TPC Regulation to introduce a new offence for an authorised person who uses information from a marine transport information database for a purpose other than an approved purpose or in contravention of a condition imposed by the chief executive on the disclosure of the information.⁴²

In addressing fundamental legislative principles, the explanatory notes state that, as authorised persons will have access to personal information, 'it is essential that the information is handled appropriately and confidentially and in accordance with any requirements set by the chief executive'.⁴³

In relation to the penalty for the new offence, the explanatory notes advise:

The maximum penalty of 20 penalty units is appropriate and is consistent with the existing penalty for an equivalent offence in section 10B of the TPC Regulation and for similar offences in the information release provisions within Part 10 of the Registration Regulation.⁴⁴

Conclusion

Noting the objective of the new offence is to protect the confidentiality of personal information, whilst providing for the useful sharing of information between agencies and jurisdictions, and noting that the penalties appear proportionate and in line with those for similar offences, the committee is

³⁹ SL No. 4, explanatory notes, pp 2-3.

⁴⁰ SL No. 4, explanatory notes, p 5.

⁴¹ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 120.

⁴² SL No. 4, s 18 inserted TPC Regulation, s 10F.

⁴³ SL No. 4, explanatory notes, p 6.

⁴⁴ SL No. 4, explanatory notes, p 6.

satisfied that the new offence and penalty has sufficient regard to the rights and liberties of individuals.

6.2 Explanatory Notes

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

6.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

6.4 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Recommendation

The committee recommends that the House notes this report.



Shane King MP

Chair

April 2023

Transport and Resources Committee

Chair

Deputy Chair

Members

Mr Shane King MP, Member for Kurwongbah

Mr Lachlan Millar MP, Member for Gregory

Mr Bryson Head MP, Member for Callide

Mr James Martin MP, Member for Stretton

Mr Les Walker MP, Member for Mundingburra

Mr Trevor Watts MP, Member for Toowoomba North