

## Transport and Resources Committee

### Report No. 37, 57th Parliament

#### Subordinate legislation tabled between 10 May 2023 and 14 July 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 10 May 2023 and 14 July 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.<sup>1</sup>

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

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
24	Transport and Other Legislation Amendment Regulation 2023	18 April 2023	23 Aug 2023
39	Transport Legislation Amendment Regulation (No.2) 2023	23 May 2023	11 Oct 2023
46	Building (Private Certification Endorsement) Amendment Regulation 2023	11 July 2023	25 Oct 2023
49	Mineral and Energy Resources (Common Provisions) Amendment Regulation 2023	11 July 2023	25 Oct 2023

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

#### 3 Committee consideration of the subordinate legislation

No issues regarding policy, consistency with fundamental legislative principles (FLPs) or the lawfulness of the subordinate legislation were identified with three of the items of subordinate legislation that are considered in this report, they being SL 39, SL 46 and SL 49.

In relation to SL 24, we considered potential FLP issues regarding 'Rights and liberties of individuals' and 'Institution of Parliament'. We are satisfied that the penalties contained in the regulation are proportionate and relevant, and that the reference to a document that is not reproduced in full in the subordinate legislation is justified.

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

The committee considers explanatory notes tabled with each of these subordinate legislation comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

The committee also considers that each of the four items of subordinate legislation raise no human rights issues. The human rights certificates 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.<sup>3</sup>

#### 4 Transport and Other Legislation Amendment Regulation 2023

An objective of the Transport and Other Legislation Amendment Regulation 2023 (SL No. 24) is to amend the Traffic Regulation 1962 to prescribe a new camera system as an approved photographic detection device for speed detection.<sup>4</sup> For evidentiary purposes, SL No. 24 also enables the insertion of data blocks on images generated by the new camera system.<sup>5</sup> Data blocks show information such as the date and location of the image, and the model of the system used to make the image.<sup>6</sup>

The committee sought clarification from the Department of Transport and Main Roads about the example of the 'data block' information provided on pages 7-8 of the subordinate legislation. In particular, we asked whether the speed figure of 51km/h shown on page 8 of the example would be correct, given the other distance and time figures given in the example.<sup>7</sup> The department responded:

The purpose of the example provided in the regulation on page eight is to explain the meaning of the individual fields in an easy to understand way and is not taken from an actual speeding offence. The committee is correct in their calculations and a corrected example will be included in the next available amendment regulation that the Department is progressing.

All data blocks on issued infringement notices are based on accurate calculations and have multiple checks in place to ensure the information supplied to motorists is correct.<sup>8</sup>

The committee also asked the department if the vehicle speed figure can be recorded and displayed in the data block with decimal places included. The department responded:

... the ability to display decimal points in the data block ... is possible but not recommended. When undertaking the speed calculation of a vehicle the alleged speed of the vehicle is always rounded down. For example, if a vehicle is travelling at 104.946kmh, the driver will receive an infringement for 104kmh. This ensures infringements are not unintentionally rounded up into a higher penalty bracket.<sup>9</sup>

A further objective of SL No. 24 is to amend the State Penalties Enforcement Regulation 2014, the Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018 (DG Rail Regulation) and the Transport Operations (Road Use Management – Dangerous Goods) Regulation 2018 (DG Road Regulation) to adopt the latest round of national agreed changes to the Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail.<sup>10</sup>

The amendments:

- update definitions to ensure consistency with the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code), including to ensure that all the items classified as 'packaging' under the ADG Code are included in the definition, to clarify the definition of

---

<sup>3</sup> *Human Rights Act 2019*, s 41.

<sup>4</sup> SL No 24, explanatory notes, p 2.

<sup>5</sup> SL No 24, explanatory notes, p 2.

<sup>6</sup> SL No. 24, s 7 (Traffic Regulation 1962, amended sch 13).

<sup>7</sup> The speed of the vehicle in the example of the 'data block' information shown on page 8 of SL 24 would actually have been 104.956km/h.

<sup>8</sup> Department of Transport and Main Roads, correspondence, 22 June 2023, p 1.

<sup>9</sup> Department of Transport and Main Roads, correspondence, 22 June 2023, p 1.

<sup>10</sup> SL No 24, explanatory notes, p 2.

‘portable tank’ when used in the context of the transport of UN class 2 gases and to make various minor clarifications<sup>11</sup>

- amend existing chapter numbers due to amendments to the ADG Code<sup>12</sup>
- provide that compliance plates attached to a portable tank that has a shell of fibre reinforced plastic must indicate that the shell is made of this material rather than metal<sup>13</sup>
- allow a twelve-month transitional period for the new amendments to take effect.<sup>14</sup>

Additionally, SL No. 24 reflects existing administrative processes in relation to a dangerous goods vehicle licence, including by providing for a twelve-month period for a dangerous goods vehicle licence and for when a reduced licence fee applies (and how it is calculated).<sup>15</sup>

#### **4.1 Fundamental legislative principle issues**

##### **4.1.1 Rights and liberties of individuals**

SL No. 24 raises potential issues relevant to the rights and liberties of individuals.

###### **4.1.1.1 Penalties**

SL No. 24 replaces existing offence provisions in order to provide that:

- a person who manufactures a portable tank for use in the transport of dangerous goods must attach a compliance plate to the tank, in accordance with the specifications in the ADG Code (which distinguishes between whether the tank is or is not made of fibre reinforced plastic)<sup>16</sup>
- a person who manufactures a multiple-element gas container (MEGC) for use in the transport of dangerous goods must attach a compliance plate to the MEGC, in accordance with the specifications in the ADG Code.<sup>17</sup>

These offences each attract a maximum penalty of 40 penalty units (\$5,750).<sup>18</sup>

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate.

The explanatory notes state:

The offence provisions inserted by sections 14 and 23 of the Amendment Regulation are simply a renumbering and recasting of existing provisions. They do not introduce any new offences. In any event, the offence provisions and corresponding penalties have been reviewed to ensure that the penalties continue to be proportionate to the seriousness of the offences.<sup>19</sup>

SL No. 24 retains the same maximum penalties for substantially the same offences. There are a range of existing penalties in the DG Rail Regulation and DG Road Regulation that also attract a maximum of 40 penalty units.

---

<sup>11</sup> SL No 24, explanatory notes, p 3.

<sup>12</sup> SL No 24, explanatory notes, p 3.

<sup>13</sup> SL No 24, explanatory notes, p 4.

<sup>14</sup> SL No 24, explanatory notes, p 4.

<sup>15</sup> By amending the DG Road Regulation; SL No. 24, explanatory notes, p 4.

<sup>16</sup> SL No. 24, s 14 amended DG Rail Regulation by deleting existing s 59(1) and replacing it; and SL No. 24, s 23 amended DG Road Regulation by deleting existing s 64(1) and replacing it.

<sup>17</sup> SL No. 24, s 14 amended DG Rail Regulation by inserting new s 59(1A) and renumbering it as s 59(2); and SL No. 24, s 23 amended DG Road Regulation by inserting new s 64(1A) and renumbering it as s 64(2).

<sup>18</sup> The current value of a penalty unit \$143.75: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

<sup>19</sup> SL No. 24, explanatory notes, p 5.

Committee comment

We are satisfied that the penalties contained in the regulation are proportionate and relevant to the actions to which the consequences relate.

**4.1.2 Institution of Parliament**

SL No. 24 also raises issues relevant to the institution of Parliament.

If subordinate legislation refers to a document that is not reproduced in full in the subordinate legislation, and changes can be made to that document without it being brought to the attention of the Legislative Assembly, the relevant subordinate legislation may be considered to have insufficient regard to the institution of Parliament.<sup>20</sup>

SL No. 24 includes provisions which incorporate references to the Australian Code for the Transport of Dangerous Goods by Road and Rail (the ADG Code).<sup>21</sup>

The explanatory notes state that the ADG Code is:

... a lengthy document containing the detailed and technical requirements for classifying and transporting dangerous goods by road and rail and which, where possible, gives effect to international requirements for transporting dangerous goods.<sup>22</sup>

There are a variety of factors to consider when determining if the inclusion of, or reference to, an external document in legislation is justified, such as whether the document is lengthy, detailed and technical in nature, whether it is readily accessible to the public, and whether other jurisdictions incorporate the document in their legislation.<sup>23</sup>

According to the explanatory notes, the technical detail contained in the ADG Code would be inappropriate to incorporate into the DG Rail Regulation and DG Road Regulation, and it would 'expand the size of these regulations considerably'.<sup>24</sup>

The explanatory notes continue:

Stakeholders support the use of the ADG Code as they have a high level of understanding and familiarity with it. The ADG Code has also been adopted in each jurisdiction in Australia and is developed and maintained by the National Transport Commission (NTC) in consultation with each jurisdiction and industry.

The latest edition of the ADG Code, and any proposed amendments to the ADG Code, are also readily accessible by the public on the NTC's website.<sup>25</sup>

---

<sup>20</sup> See *Legislative Standards Act 1992* (LSA), ss 4(2)(b), 4(5)(e).

<sup>21</sup> SL No. 24, ss 11, 13, 14, 17, 20, 22, 23, 35. For example, the following refer to ADG Code – s 17 definition of 'outer packaging' and definition of 'ADG Code' and s 20 – replacement s 18 and s 23, amend s 64 and s 35 'inner packaging', 'intermediate packaging', 'outer packaging', 'portable tank'.

<sup>22</sup> SL No. 24, explanatory notes, p 5.

<sup>23</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 149.

<sup>24</sup> SL No. 24, explanatory notes, p 5.

<sup>25</sup> SL No. 24, explanatory notes, p 5.

Committee comment

The ADG Code is a lengthy document which is technical in nature, freely accessible by the public on the NTC website<sup>26</sup>, and is incorporated into the legislation of other Australian jurisdictions. We are therefore satisfied that the incorporation of references to the ADG Code in SL No. 24 is justified.

#### **4.2 Explanatory notes**

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

#### **4.3 Human rights considerations**

While the committee is satisfied that the subordinate legislation is compatible with human rights, we sought additional information from the Department of Transport and Main Roads about privacy issues related to speed cameras. The department responded:

Speed cameras have been used in Queensland for many years and all agencies ensure compliance with the *Information Privacy Act 2009*. Unlike mobile phone and seatbelt cameras who focus the camera inside the vehicle, speed cameras look at the outside of the vehicle, and any images of people are usually incidental.

For the Acusensus Harmony cameras used for seatbelt and mobile phone enforcement, the vendor operating the cameras is contractually required to develop a privacy management plan that ensures they comply with all privacy requirements.

Under Section 4.4 of the Public Service Code of Conduct, all departmental employees are required to ensure appropriate use and disclosure of official information, including compliance with information privacy legislation. Departmental employees are subject to disciplinary processes under the *Public Sector Act 2022*, as well as any possible criminal acts (for example *Criminal Code Act 1899* Section 92A - Misconduct in relation to public office) if they were to leak any image captured by a speed camera.

Access to images and any data around speeding offences is restricted and closely monitored with only authorised personnel able to view. The program has been operating since the 1990s and there are no known cases of departmental staff from any of the agencies using images in an inappropriate or coercive manner.<sup>27</sup>

#### **4.4 Human rights certificate**

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

---

<sup>26</sup> National Transport Commission, <https://www.ntc.gov.au/codes-and-guidelines/australian-dangerous-goods-code>

<sup>27</sup> Department of Transport and Main Roads, correspondence, 22 June 2023, p 2.

## 5 Transport Legislation Amendment Regulation (No.2) 2023

The Transport Legislation Amendment Regulation (No. 2) 2023 (SL No. 39) provides for Category 2 vehicle<sup>28</sup> registration fees and national heavy vehicle number plate fees. Both these fees are determined by a nationally agreed process and are exempt from Queensland Treasury's fee unit model.<sup>29</sup>

The explanatory notes explain how the registration and number plate fees in SL No. 39 were calculated:

Heavy vehicle registration fees (which consist of a roads and regulatory component) are adjusted annually in accordance with updated schedules in the Heavy Vehicle Charges Model Law as agreed by the Infrastructure and Transport Ministers Meeting (ITMM). ITMM has agreed to an increase of 6 per cent to the roads component of registration fees for each of the financial years 2023–24, 2024–25 and 2025–26, and to apply a re-calculated regulatory component of registration charges for 2023–24.

The heavy vehicle number plate fee is adjusted by a nationally agreed indexation method. This year that adjustment is based on a 7.8 per cent increase in the year to the December 2022 quarter for the National All Groups Consumer Price Index published by the Australian Bureau of Statistics.<sup>30</sup>

SL No. 39 extends the period for a reduced fee for the renewal of a learner driver licence.<sup>31</sup> It applies to the renewal of a learner licence for a term that starts on or after 1 July 2023, if the fee is paid before that date.<sup>32</sup>

### 5.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

### 5.2 Explanatory notes

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

### 5.3 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

### 5.4 Human rights certificate

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

---

<sup>28</sup> A Category 2 vehicle is a vehicle with a GVM (gross vehicle mass), GCM (gross combination mass) or ATM (aggregate trailer mass) of more than 4.5t: Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021, sch 8. Category 2 vehicles are commonly known as heavy vehicles: SL No. 39, explanatory notes, p 1.

<sup>29</sup> SL No. 39, explanatory notes, p 1. See section 48B of the *Acts Interpretation Act 1954* and the *Acts Interpretation (Fee Unit) Regulation 2022* regarding the fee unit model.

<sup>30</sup> SL No. 39, explanatory notes, pp 1–2.

<sup>31</sup> The reduced fee is \$75 (73.18 fee units multiplied by \$1.025): SL No. 39, s 4.

<sup>32</sup> SL No. 39, s 4.

## 6 Building (Private Certification Endorsement) Amendment Regulation 2023

The Building (Private Certification Endorsement) Amendment Regulation 2023 (SL No. 46):

- extends the current period in which a building certifier will be eligible to apply for a private certification endorsement even if they hold professional indemnity insurance (PII) with cladding-related exclusions to 30 June 2025<sup>33</sup>
- provides that if the PII exemption applies for a private certifier, and their licence is in force on 30 June 2025, the exemption continues to apply until one year after their licence was granted or last renewed<sup>34</sup>
- replaces the reference to the course prescribed for section 163(2) of the *Building Act 1975* because that course is no longer offered<sup>35</sup>
- allows a building certifier (including a private certifier) who has satisfactorily completed the former course to be eligible for development approval endorsement.<sup>36</sup>

### 6.1 Fundamental legislative principle issues

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

### 6.2 Explanatory notes

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

### 6.3 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

### 6.4 Human rights certificate

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

## 7 Mineral and Energy Resources (Common Provisions) Amendment Regulation 2023

The Mineral and Energy Resources (Common Provisions) Amendment Regulation 2023 (SL No. 49) amends the Mineral and Energy Resources (Common Provisions) Regulation 2016 to provide a reference to the updated Land Access Code (Code).<sup>37</sup>

The explanatory notes advise that 'values-based coexistence principles' have been included in the Code, as have some 'minor editorial amendments'.<sup>38</sup>

---

<sup>33</sup> SL No. 46, s 3(2), (3); SL No. 46, explanatory notes, p 3. The explanatory notes advise (page 2) that a report prepared for the Department of Energy and Public Works by PriceWaterhouseCoopers indicates that 'exclusion-free policies are unlikely to be readily attainable and affordable after the current extended exemption period expires on 30 June 2023'. See also SL No. 46, human rights certificate, p 2.

<sup>34</sup> Unless the licence is earlier cancelled, suspended, amended or surrendered: SL No. 46, explanatory notes, pp 3-4; SL No. 46, s 4.

<sup>35</sup> The new course on issuing building development approvals was selected following a tender process: SL No. 46, pp 3, 4; SL No. 46, s 3(1).

<sup>36</sup> SL No. 46, s 5; SL No. 46, explanatory notes, p 4.

<sup>37</sup> The Code is available online. See Queensland Government, 'Land Access Code', <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/accessing-private-land/land-access-code>.

<sup>38</sup> SL No. 49, explanatory notes, p 2.

### **7.1 Fundamental legislative principle issues**

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

### **7.2 Explanatory notes**

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

### **7.3 Human rights considerations**

The committee considers that the subordinate legislation raises no human rights issues.

### **7.4 Human rights certificate**

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

## **8 Recommendation**

The committee recommends that the House notes this report.



Shane King MP

**Chair**

**July 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