



QUEENSLAND PARLIAMENT COMMITTEES

Housing, Big Build and Manufacturing Committee

Report No. 13, 57th Parliament

Subordinate legislation tabled between 16 March 2024 and 16 April 2024

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 16 March 2024 and 16 April 2024. 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* (LSA).¹

The report also notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.²

2. Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
15	Work Health and Safety (Quad Bikes) Amendment Regulation 2024	16 April 2024	21 August 2024
35	Work Health and Safety (Codes of Practice) (Solar Farms) and Other Legislation Amendment Notice 2024	16 April 2024	21 August 2024

* 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

The committee did not identify any significant issues regarding the policies to be given effect, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or compliance with the Human Rights Act.

The committee is satisfied that the explanatory notes tabled with the subordinate legislation noted in this report comply with the requirements of section 24 of the Legislative Standards Act (LSA).

The committee is satisfied that 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 the HRA.

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

4. Work Health and Safety (Quad Bikes) Amendment Regulation 2024 (SL No. 15)

4.1 Overview

The Work Health and Safety (Quad Bikes) Amendment Regulation 2024 (SL No. 15) intends to:

- reduce the frequency of fatalities and the frequency and severity of head injuries in quad bike accidents at workplaces by mandating the use of a helmet
- contribute to better safety outcomes for young workers and other children who are operating a quad bike, by limiting the operator age to 16 years old or older (or the minimum age as recommended by the manufacturer)
- prevent passenger-related injuries, by prohibiting the carriage of passengers on single-seat quad bikes and by limiting the passenger age to 16 years old and older, or the minimum age as recommended by manufacturers.³

The legislation follows a Queensland coronial inquest in 2015 which examined nine deaths caused by quad bike accidents between 2012 and 2014. The inquest recommended a number of legislative reforms including mandating the wearing of helmets, prohibiting children from operating adult-sized quad bikes and prohibiting single-seat quad bikes from carrying passengers.

Existing legislation administered by the Department of Transport and Main Roads (DTMR) and the Department of Environment, Science and Innovation (DESI) prescribes the use of ‘approved motorbike helmets’ (as defined under the Transport Operations (Road Use Management – Road Rules) Regulation 2009) for quad bikes operated in particular areas. These particular areas are roads or road-related areas; state forests or timber reserves; protected areas (other than nature refuges or special wildlife reserves) and recreation areas.⁴ SL No. 15 is complementary to the existing regulations and upholds the requirement for a quad bike helmet to be an ‘approved motorbike helmet’ when quad bikes are operated in those particular areas.⁵

Specifically, SL No. 15:

- mandates that a person with management or control of a quad bike at a workplace takes all reasonable steps to ensure:
 - operators and passengers of quad bikes wear helmets
 - operators of quad bikes are at least 16 years old or older (or the minimum age recommended by the quad bike manufacturer)
 - a quad bike is not used for carriage of passengers, unless it is designed to carry passengers, and the minimum age of passengers is at least 16 years old, or the minimum age recommended by the quad bike manufacturer
- imposes a duty on workers who are operating or being passengers of quad bikes, that, if a helmet was provided by the person with management or control at a workplace, to wear a helmet
- imposes a duty on a person with management or control of a quad bike at a workplace to take all reasonable steps to ensure that the helmet provided is an ‘approved motorbike helmet,’ as defined in the Transport Operations (Road Use Management—Road Rules) Regulation 2009, schedule 5, if a quad bike is operated on or in:
 - a road or road-related area
 - a state forest or timber reserve

³ Explanatory notes, pp 1-2.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 2.

- a protected area, other than a nature refuge or special wildlife reserve
- a recreation area.⁶

SL No. 15 introduces the following maximum penalties in relation to the following provisions:

- s 226A Quad bikes—duty of person with management or control of quad bike at workplace: 60 penalty units (\$9,288)
- s 226B Quad bikes—duty of worker: 36 penalty units (\$5,572.80).⁷

SL No. 15 includes minor, consequential and technical amendments to remove notes from the Work Health Safety Regulation 2011, consistent with current drafting practices.⁸

4.2 Consultation

The explanatory notes explain that that as part of the Queensland Coroner’s inquiry into minimising quad bike fatalities, the coroner consulted widely with industry, farming organisations, workplace health and safety regulators and road safety experts. The coroner found that most stakeholders agreed that quad bike helmet use should be mandatory and passenger age restrictions were not contentious.⁹

The explanatory notes also outline that between May and August 2022, the Office of Industrial Relations (OIR) undertook public consultation on quad bike safety measures through the publication of the *Quad bikes and side-by-side vehicles – Proposed work health and safety regulations consultation paper*. Feedback was received from farming organisations, peak industry bodies, primary, government agencies and other interested parties. The general feedback was that helmets are viewed as a safety enhancement and that there is no place for children and passengers on quad bikes that are not specifically designed to have passengers.¹⁰

During July and August 2023, OIR undertook further consultation with a number of peak Queensland agricultural industry bodies and Safe Work Australia. OIR also shared the regulatory proposal with rural health research experts.¹¹

The proposed amendments were broadly supported. One peak body raised concerns that mandatory helmet use may contribute to higher levels of heatstroke in hot climates and at low speeds. To allay these concerns, OIR investigated helmet use in hot climate and found:

- all Australian Work Health and Safety regulators already recommend the use of helmets on quad bikes regardless of heat and speed. This is consistent with manufacturers’ instructions
- rollover head injuries can still happen when operating quad bikes at low speeds and helmets should therefore be worn at all times
- helmets do not pose any significant heat stroke risk, particularly if breathable and lightweight alternatives (which are available in the market) are used in hot climates
- A 2010 study by Meat and Livestock Australia Limited focusing on cattle mustering in high temperature areas of the Northern Territory found that, in very hot conditions, comparative to a felt hat, lightweight helmets do not adversely affect any of the operators’ physiological, psychophysical or cognitive functions.¹²

⁶ SL No. 15, s 3 (WHS Regulation, ss 226A-226C); SL No. 15, explanatory notes, p 2.

⁷ The value of a penalty unit is \$154.80: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

⁸ SL No. 15, s 2 and sch 1; SL No. 15, explanatory notes, p 2.

⁹ SL No. 15, explanatory notes, p 3.

¹⁰ SL No. 15, explanatory notes, p 3.

¹¹ SL No. 15, explanatory notes, p 3.

¹² SL No. 15, explanatory notes, pp 3-4.

4.3 Consistency with fundamental legislative principles

Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. These principles include requiring that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament as contained in the LSA, s 4.

4.3.1 Rights and liberties of individuals

As noted above, SL No. 15 introduces several penalties. Penalties impact on the rights and liberties of individuals. A penalty in legislation should be proportionate to the offence.

The Office of the Queensland Parliamentary Counsel (OQPC) Notebook (OQPC Notebook) states in relation to a power to create offences and impose penalties under subordinate legislation, the more serious the consequences, the more likely it is that an offence or penalty should be imposed only by an Act of Parliament. Generally, the maximum penalty in subordinate legislation should be limited to 20 penalty units.¹³

The Work Health Safety Regulation includes numerous penalties, which range from 10 to 100 penalty units.¹⁴ There are examples of maximum penalties of both 36 penalty units and 60 penalty units in the WHS Regulation.

Committee comment

The committee is satisfied that SL No. 15 has sufficient regard to the rights and liberties of individuals and that the new penalties introduced are appropriate.

4.4 Compatibility with human rights

The following human rights are relevant to SL No. 15:

- freedom of thought, conscience, religion or belief
- cultural rights – generally.

A person's right to freedom of thought, conscience, religion or belief and cultural rights may be limited by the requirement to wear a helmet if riding or being a passenger on a quad bike at workplace.¹⁵ The human rights certificate concludes that SL No. 15 strikes a fair balance between the safety benefits of wearing helmets and any limitations on a person's thought, conscience, religion or belief and cultural rights.¹⁶

Committee comment

The committee is satisfied that SL No. 15 is compatible with human rights.

5. Work Health and Safety (Codes of Practice) (Solar Farms) and Other Legislation Amendment Notice 2024 (SL No. 35)

5.1 Overview

The Work Health and Safety (Codes of Practice) (Solar Farms) and Other Legislation Amendment Notice 2024 (SL No. 35) fulfils a requirement under section 44(2) of the *Electrical Safety Act 2002* for the Minister to give public notice of the making, amending or repealing of a code of practice.¹⁷

SL No. 35 similarly fulfils a requirement under section 274(4) of the *Work Health and Safety Act 2011* for the Minister to give public notice of the approval, variation or revocation of a code of practice.

¹³ OQPC, Notebook, p 150.

¹⁴ WHS Regulation, ss 708, 711, 712, 751.

¹⁵ SL No. 15, human rights certificate, p 4.

¹⁶ SL No. 15, human rights certificate, p 4.

¹⁷ SL No. 35, explanatory notes, p 1.

SL No. 35 serves as a public record of decisions the Minister is authorised to make in relation to codes of practice.¹⁸

SL No. 35 amends the Electrical Safety (Codes of Practice) Notice 2013 as follows:

- repeals the Construction and Operation of Solar Farms Code of Practice 2019 (Solar Farm Code 2019)
- makes the Construction and Operation of Solar Farms Code of Practice 2024 (Solar Farm Code 2024).¹⁹

SL No. 35 amends the Work Health and Safety (Codes of Practice) Notice 2022 as follows:

- revokes the Solar Farm Code 2019
- approves the Solar Farm Code 2024.²⁰

The Solar Farm Code 2019 provides practical guidance to industry on their health and safety duties and how to comply with existing safety requirements. It also provides guidance on what is, and is not, electrical work that must be performed by licensed electricians. This provides clarity and certainty to industry and avoids unlicensed workers inadvertently performing electrical work.²¹

The Solar Farm Code 2019 covers the life cycle of a solar farm from design, construction and commissioning to operation, maintenance and end of life management. Under section 274(4C) of the WHS Act, the Solar Farm Code 2019 expired on 7 April 2024, five years after it was approved.²²

The Solar Farm Code 2024, which commenced on 5 April 2024, will maintain the current health and safety standards and ensure the solar farm industry continue to have clear, enforceable guidance on how to meet their duties relating under both the electrical safety, and work health and safety frameworks.²³

5.2 Consultation

In accordance with The Queensland Government Better Regulation Policy (the Policy), the Office of Best Practice Regulation (OBPR) has been notified of the regulatory proposal and a summary impact analysis statement will be published on the department's website. Under the Policy, no further regulatory impact analysis was required given that the Solar Farm Code 2024 contains only minor amendments and technical clarifications compared to the Solar Farm Code 2019.

5.3 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

5.4 Compatibility with human rights

SL No. 35 does not limit, but positively affects human rights by providing for improved health and safety and electrical safety standards for workers, upholding the right to life and the right not to be arbitrarily deprived of life (Human Rights Act, s 16).²⁴

¹⁸ SL No. 35, explanatory notes, p 1.

¹⁹ SL No. 35, ss 4-5.

²⁰ SL No. 35, ss 8-9.

²¹ SL No. 35, explanatory notes, p 2.

²² SL No. 35, explanatory notes, p 2.

²³ SL No. 35, explanatory notes, p 2.

²⁴ SL No. 35, human rights certificate, pp 1-2.

Committee comment

The committee is satisfied that SL No. 35 is compatible with human rights.

6. Recommendation

The committee recommends that the House notes this report.



Chris Whiting MP

Chair

June 2024

Housing, Big Build and Manufacturing Committee

Chair	Mr Chris Whiting MP, Member for Bancroft
Deputy Chair	Mr Jim McDonald MP, Member for Lockyer
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