

Clean Economy Jobs, Resources and Transport Committee

Report No. 14, 57th Parliament

Subordinate legislation tabled between 13 June 2024 and 21 August 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 13 June 2024 and 21 August 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*.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. | Subordinate legislation | Date tabled | Disallowance date* |
|-----|---|----------------|--------------------|
| 73 | Transport Operations (Passenger Transport) Amendment Regulation 2024 | 20 August 2024 | To be advised |
| 87 | Transport Legislation (Fees) Amendment Regulation (No.2) 2024 | 20 August 2024 | To be advised |
| 104 | Proclamation made under the Energy (Renewable Transformation and Jobs) Act 2024 | 20 August 2024 | To be advised |
| 105 | Energy (Renewable Transformation and Jobs) Amendment Regulation 2024 | 20 August 2024 | To be advised |
| 106 | National Energy Retail Law (Queensland) Amendment Regulation 2024 | 20 August 2024 | To be advised |
| 109 | Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2024 | 20 August 2024 | To be advised |
| 129 | Surveyors Regulation 2024 | 20 August 2024 | To be advised |
| 130 | Transport Operations (Road Use Management–Vehicle Registration) (Fee Relief) Amendment Regulation 2024 | 20 August 2024 | To be advised |
| 132 | Proclamation made under the Mineral and Energy Resources and Other Legislation Amendment Act 2024 | 20 August 2024 | To be advised |

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

| No. | Subordinate legislation | Date tabled | Disallowance date* |
|-----|---|----------------|--------------------|
| 133 | Proclamation made under the Tow Truck Act 2023 | 20 August 2024 | To be advised |
| 134 | Tow Truck Regulation 2024 | 20 August 2024 | To be advised |
| 144 | Survey and Mapping Infrastructure Regulation 2024 | 20 August 2024 | To be advised |
| 145 | Transport Legislation Amendment Regulation 2024 | 20 August 2024 | To be advised |
| 154 | Valuers Registration Regulation 2024 | 20 August 2024 | To be advised |

* The disallowance date for subordinate legislation is 14 sitting days after the date it was tabled. See *Statutory Instruments Act 1992*, s 50. Please note that the disallowance date for all of the subordinate legislation contained in this report are after the dissolution date of the 57th Parliament on 30 September 2024. The disallowance dates for SL No. 73, 87, 104, 105, 106, 109, 129, 130, 132, 133, 134, 144, 145 and 154 of 2024 will be able to be calculated once sitting dates for the 58th Parliament are advised by the Leader of the House.

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified with the following 9 items of subordinate legislation that are considered in this report: SL 73, 87, 104, 106, 109, 130, 132, 133 and 145.

For SL 105, 134 and 144, potential issues of consistency with Fundamental Legislative Principles are noted and discussed in this report. The committee is satisfied that each of the potential issues identified is justified.

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

The committee considers that SL 73, 87, 104, 105, 106, 109, 130, 132, 133, 144 and 145 raise no human rights issues.

For SL 129, 134 and 154, potential issues of compatibility with human rights are noted and discussed in this report. The committee is satisfied that each of the potential issues identified is justified.

The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

4 Transport Operations (Passenger Transport) Amendment Regulation 2024

The Transport Operations (Passenger Transport) Amendment Regulation 2024 (SL No. 73) amends the Transport Operations (Passenger Transport) Regulation 2018.⁴

The amendments:

- include the following as persons who may be appointed as authorised persons under s 111 of the *Transport Operations (Passenger Transport) Act 1994*:
 - employees of an operator who is the holder of a service contract

³ *Human Rights Act 2019*, s 41.

⁴ SL No. 73, s 2.

- a contractor for an operator who is the holder of a service contract, or an employee of the contractor⁵
- clarify that authorised persons for service contracts can, where agreed, perform duties for multiple operators providing public passenger services under service contracts⁶
- extend the application of s 284 of the Transport Operations (Passenger Transport) Regulation 2018, which provides for the use of substitute taxis during peak patronage periods, from 30 September 2024 to 30 September 2026.⁷

5 Transport Legislation (Fees) Amendment Regulation (No. 2) 2024

The Transport Legislation (Fees) Amendment Regulation (No. 2) 2024 increases fees charged by industry for the tow truck scheme under the Tow Truck Regulation 2009 and the Approved Inspection Stations scheme under the Transport Operations (Road Use Management–Vehicle Standards and Safety) Regulation 2021.⁸

Generally, all prescribed fees and charges are subject to change based on the Government Indexation Rate (GIR). The GIR rate for 2024-25 is 0 per cent. The explanatory notes state that applying this to the fees under the Tow Truck Regulation 2009 and the Transport Operations (Road Use Management–Vehicle Standards and Safety) Regulation 2021 would have unintended impacts on industry as the fees are charged by industry to consumers with no revenue directed to the government.⁹

The administering department has received approval to apply an indexation rate of 3.4 per cent in 2024-25 for fees charged under these schemes.¹⁰

6 Proclamation made under the Energy (Renewable Transformation and Jobs) Act 2024

The proclamation (SL No. 104) made under the *Energy (Renewable Transformation and Jobs) Act 2024* (Act) fixes 1 July 2024 as the commencement date for all provisions of the Act that are not yet in force.¹¹

7 Energy (Renewable Transformation and Jobs) Amendment Regulation 2024

The Energy (Renewable Transformation and Jobs) Amendment Regulation 2024 (SL No. 105) is made under the Act and amends the Energy (Renewable Transformation and Jobs) Regulation 2024.¹²

SL No. 105 prescribes matters in relation to the Job Security Guarantee (JSG) and the JSG Fund, including the amount of work performed, prescribed facilities, categories of costs and payments from the JSG Fund, and requirements to report on expenditure.¹³

SL No. 105 also prescribes matters in relation to Priority Transmission Investments (PTIs) including, by way of example, documents that are assessment documents for the purpose of s 18 of the Act, the

⁵ SL No. 73, s 3 (Transport Operations (Passenger Transport) Regulation 2018, amends s 268A)). SL No. 73, explanatory notes, p 1.

⁶ SL No. 73, s 4 (Transport Operations (Passenger Transport) Regulation 2018, amends s 268B)).

⁷ SL No. 73, s 5. See also Transport Operations (Passenger Transport) Regulation 2018, s 284(1).

⁸ SL No. 87, ss 3 and 5. See SL No. 87, explanatory notes, p 1.

⁹ SL No. 87, explanatory notes, p 1.

¹⁰ SL No. 87, explanatory notes, p 1.

¹¹ See SL No. 104.

¹² SL No. 105, s 3.

¹³ SL No. 105, s 6 (Energy (Renewable Transformation and Jobs) Regulation 2024, new ss 3-7).

projects that are eligible PTIs for the purpose of s 20 of the Act and the provisions of the National Electricity Rules that apply to PTIs.¹⁴

7.1 Fundamental legislative principle issues

Rights and liberties of individuals - Penalties

SL No. 105 introduces a new offence in s 7 of the Energy (Renewable Transformation and Jobs) Regulation 2024 with a maximum penalty of 10 penalty units (\$1,613)¹⁵ where a recipient of an amount from the Job Security Guarantee (JSG) Fund fails to give the chief executive a report containing a summary of how the payment has been used during the financial year by 30 September after the end of the financial year.¹⁶

The Office of the Queensland Parliamentary Counsel state that, generally, penalties should be proportionate to the offences, and penalties within legislation should be consistent with each other.¹⁷ Further, in the context of subordinate legislation, where possible, the maximum penalties should be limited (generally, to 20 penalty units).¹⁸

The explanatory notes state that the penalty provision is appropriate and proportionate to the seriousness of the offence.¹⁹ A comparative example can be seen with the Agents Financial Administration Regulation 2014 - this is another subordinate legislation that contains penalties for failure to comply with reporting requirements. The Agents Financial Administration Regulation 2014 also contains a maximum penalty of 10 penalty units.²⁰

The explanatory notes further state that the reporting requirements aim to enhance transparency regarding the allocation of money from the JSG Fund and the penalty provision is necessary to ensure recipients accurately document their expenditure, promoting transparency.²¹

The example included with new s 7(1) of the Energy (Renewable Transformation and Jobs) Regulation 2024 refers to the reporting obligation being on a government-owned corporation (GOC) rather than the workers where the payment from the JSG Fund is paid to the GOC.²² However, new s 5(3) of the Energy (Renewable Transformation and Jobs) Regulation 2024 provides that payments may be made to an affected energy worker.

Committee comment

Incurring a fine for failing to comply with reporting obligations for the expenditure of public monies appears reasonable. The committee is satisfied that the penalty provision is appropriate and proportionate, and that SL No. 105 pays sufficient regard to the rights and liberties of individuals.

¹⁴ SL No. 105, s 6 (Energy (Renewable Transformation and Jobs) Regulation 2024, new ss 8-10).

¹⁵ From 1 July 2024, a penalty unit is \$161.30. Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

¹⁶ SL No. 105, s 6 (Energy (Renewable Transformation and Jobs) Regulation 2024, new s 7(2)). See also Act, s 90(5)(a) and Energy (Renewable Transformation and Jobs) Regulation 2024, s 5(3).

¹⁷ LSA, s 4(2)(a). Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook* (Notebook), January 2008, p 120.

¹⁸ OQPC, Notebook, p 150. See also OQPC, *Principles of Good Legislation: OQPC guide to FLPs: The institution of Parliament—subordinate legislation*, 27 June 2014, p 120.

¹⁹ SL No. 105, p 6.

²⁰ Agents Financial Administration Regulation 2014, ss 3-5, 8, 10-17, 19-23.

²¹ SL No. 105, explanatory notes, p 5.

²² SL No. 105, s 6 (Energy (Renewable Transformation and Jobs) Regulation 2024, new s 7(1)).

8 National Energy Retail Law (Queensland) Amendment Regulation 2024

The National Energy Retail Law (Queensland) Amendment Regulation 2024 (SL No. 106) amends the National Energy Retail Law (Queensland) Regulation 2014 to insert a new provision relating to particular requirements for bills issued to Queensland customers.²³

The policy objective of the amendments is to enable messaging relating to 2024-25 cost of living relief measures to appear on the front page of residential and small business customer electricity bills.²⁴

9 Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2024

The Rural and Regional Adjustment (Variation of Wheelchair Accessible Taxi Grants Scheme) Amendment Regulation 2024 (SL No. 109) amends the Rural and Regional Adjustment Regulation 2011 to make amendments to the Wheelchair Accessible Taxi Grants Scheme (scheme).

The objectives of the scheme are to modernise and reduce the average age of wheelchair accessible taxis being used to provide taxi services in Queensland and to provide the opportunity to replace taxis that are not wheelchair accessible vehicles with new wheelchair accessible taxis.²⁵

The amendments increase the amount of grants from \$45,000 to \$55,000 and extend the date for applications for assistance under the scheme to 30 June 2025.²⁶

10 Surveyors Regulation 2024

The Surveyors Regulation 2024 (SL No. 129) repeals and replaces the Surveyors Regulation 2014, which is due to expire on 1 September 2024 under s 54 of the *Statutory Instruments Act 1992*.²⁷ SL No. 129 does not make significant policy changes from the Surveyors Regulation 2014.²⁸ SL No. 129 makes provision for the following:

- membership of the Surveyors Board of Queensland (board)
- the prescribed criteria for registration as an emeritus surveyor
- the level of professional indemnity insurance cover required for registration endorsement as a consulting surveyor
- the approved form for application for competency assessment
- the particulars required for the register of surveyors
- the schedule of prescribed fees under the *Surveyors Act 2003*.²⁹

10.1 Human rights considerations

Section 68(1) of the *Surveyors Act 2003* states that the Surveyors Board of Queensland must keep a register for surveyors, surveying graduates, surveying associates and emeritus surveyors. The Surveyors Act authorises the Surveyors Regulation to detail the particulars required to be recorded in the register.

²³ SL No. 106, ss 3-4.

²⁴ SL No. 106, explanatory notes, p 1.

²⁵ SL No. 109, explanatory notes, p 1.

²⁶ SL No. 109, ss 8 and 10 (Rural and Regional Adjustment Regulation 2011, amends sch 15, ss 10, 13). SL No. 109, explanatory notes, p 2.

²⁷ SL No. 129, explanatory notes, p 2.

²⁸ SL No. 129, explanatory notes, p 2.

²⁹ SL No. 129, ss 3-7, 10. SL No. 129, explanatory notes, p 1.

These particulars for each registrant are prescribed in Section 7 of the Regulation and include the registrant's name and address. The register may be inspected at no cost, or a copy may be obtained for a fee set by the board.

The human rights certificate states that keeping this register of surveyors raises the human right to privacy and reputation.³⁰ However, to preserve the right to privacy of registrants, their addresses are only listed in the publicly available part of the register with the registrant's permission.³¹

Committee comment

The committee is satisfied that the Regulation is compatible with human rights as the register of surveyors is necessary to ensure statutory compliance. The Regulation, when considered alongside the Act, is necessary and proportionate to the legitimate aim of protecting the public who engage the services of surveyors, while balancing their individual rights.³²

11 Transport Operations (Road Use Management-Vehicle Registration) (Fee Relief) Amendment Regulation 2024

The Transport Operations (Road Use Management-Vehicle Registration) (Fee Relief) Amendment Regulation 2024 (SL No. 130) amends the Transport Operations (Road Use Management-Vehicle Registration) Regulation 2021.³³ The amendments reduce registration fee and traffic improvement fee components of motor vehicle registration of all light vehicles, including motorcycles and trailers, and a small number of heavy vehicles, including special interest vehicles and farm plate vehicles, by 20 per cent for 12 months from 16 September 2024.³⁴

12 Proclamation made under the Mineral and Energy Resources and Other Legislation Amendment Act 2024

The proclamation (SL No. 132) made under the *Mineral and Energy Resources and Other Legislation Amendment Act 2024* (MEROLA Act) fixes 1 August 2024 as the commencement date for s 169A of the MEROLA Act.³⁵

Section 169A of the MEROLA Act inserts a new s 851C into the *Petroleum and Gas (Production and Safety) Act 2004* enabling the Office of Groundwater Impact Assessment, established under the *Water Act 2000*, to provide information or advice, on request from government entities, related to subsurface impacts from relevant authorised activities for a petroleum tenure.³⁶

13 Proclamation made under the Tow Truck Act 2023

The proclamation (SL No. 133) made under the *Tow Truck Act 2023* (Tow Truck Act) fixes 26 August 2024 as the commencement date for the provisions of the Tow Truck Act that are not yet in force.³⁷ The Tow Truck Act repeals and replaces the *Tow Truck Act 1973* to deliver a more modern tow truck

³⁰ HRA, s 25.

³¹ SL No. 129, human rights certificate, p 2.

³² SL No. 129, human rights certificate, p 2.

³³ SL No. 130, s 2.

³⁴ SL No. 130, s 3, 7. See also SL No. 130, explanatory notes, p 1.

³⁵ See SL No. 132.

³⁶ See *Mineral and Energy Resources and Other Legislation Amendment Act 2024*, s 169A; SL No 132, explanatory notes, p 1.

³⁷ See SL No. 133.

scheme designed to improve road safety and improve outcomes for motorists, property owners and industry professionals.³⁸

14 Tow Truck Regulation 2024

The Tow Truck Regulation 2024 (SL No. 134) repeals the Tow Truck Regulation 2009 to introduce an improved and streamlined framework for operational and administrative matters in support of the Tow Truck Act.

SL No. 134 and the Tow Truck Act commenced on 26 August 2024.³⁹

SL No. 134 provides operational details for Queensland's tow truck scheme including:

- administration of accreditations for operators, drivers and assistants
- the form of, replacement of, and requirement to produce, accreditation documents
- obligations and standards of conduct for accreditation holders
- accreditation fees
- provisions about charges for towing, storing, viewing or accessing, release and on-site release of vehicles
- offences relating to documents
- information required to be held under the scheme.⁴⁰

Changes introduced in SL No. 134 include:

- modernising the existing legislation by introducing new terminology to improve consistency across accreditation schemes administered by the Department of Transport and Main Roads (TMR) and by removing outdated provisions
- removing the requirement to notify TMR of the name and address of a person acquiring a tow truck
- extending the procedural requirements that apply to the disposal of an authorised tow truck to include any situation where an operator ceases to use the vehicle, and clarifying timeframes for these procedures, including that an operator who disposes of their only authorised tow truck has 3 months to acquire a new truck before the accreditation ceases
- extending recordkeeping requirements to electronic records and extending record-keeping retention periods
- providing alternatives to the requirement for an operator to be the sole owner or lessee of the holding yard, where an operator has responsibility and control for security of property in the holding yard providing for security requirements for holding yards and offences for offering bribes or inducements in SL No. 134 instead of the Tow Truck Act, and expanding the offences to include offering consideration to the owner of the vehicle or for the purpose of obtaining work in a broader range of industries, such as vehicle insurance claims or car hire
- modernising tow truck vehicle specifications, updating terminology for consistency with Queensland and Commonwealth transport legislation, and making minor technical improvements to requirements for tow truck equipment

³⁸ SL No. 133, explanatory notes, p 1.

³⁹ SL No. 134, s 2; SL No. 133.

⁴⁰ SL No. 134, explanatory notes, p 2.

- amending and updating offence provisions and penalties, including the amount of infringement notice fines, to ensure they are clear, appropriate, and consistent with offences of a similar nature in transport legislation.⁴¹

14.1 Fundamental legislative principle issues

The explanatory notes raise potential issues relating to fundamental legislative principles as noted below.⁴²

Reversal of onus of proof

Legislation should not reverse the onus of proof in criminal proceedings without justification.⁴³ A reversal may be justified where the relevant fact is something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.⁴⁴

SL No. 134 includes numerous requirements for a person to produce certain documents or take particular action in relation to a document. For example, see:

- Sections 19 and 20 in relation to failing to return or destroy a smartcard accreditation
- Sections 24 and 25 in relation to an operator failing to keep certain records
- Section 26, which requires the holder of a driver accreditation or assistant accreditation to produce their smartcard accreditation to an authorised officer
- Section 42, which requires an accreditation holder to apply for a replacement accreditation document if the holder reasonably suspects the original accreditation document has been damaged, lost or stolen
- Sections 43 and 44 in relation to failing to notify of a change to name or address or failing to attach a change of address label to a smartcard
- Section 45 in relation to failing to notify the chief executive that a partner has left the partnership or has died
- Section 47, which requires the holder of a driver accreditation to produce their smartcard for inspection when offering to tow a damaged vehicle
- Section 55 in relation to producing a private property towing consent to an authorised officer.
- Section 62, which requires an accredited operator to provide a copy of a private property towing consent within two business days of being asked
- Section 66 in relation to keeping an inventory of found property
- Sections 80 and 81 in relation to keeping records about imposed charges
- Section 107, which requires the holder of an operator accreditation to comply with an audit notice.⁴⁵

Where a person fails to comply, SL No. 134 places an evidentiary burden on the person to establish on the balance of probabilities that they had a reasonable excuse for the failure.⁴⁶

⁴¹ SL No. 134, explanatory notes, p 3.

⁴² See SL No. 134, explanatory notes, pp 14-28.

⁴³ LSA, s 4(d).

⁴⁴ OQPC, Notebook, p 36.

⁴⁵ SL No. 134, explanatory notes, p 19.

⁴⁶ SL No. 134, explanatory notes, p 19.

Committee comment

The reversal of the onus of proof is appropriate as the defendant is best placed to produce evidence to demonstrate proof of their reasonable excuse for failing to comply with the requirements contained in SL No. 134, as it is particularly in within their knowledge.⁴⁷ The committee is satisfied that SL No. 134 pays sufficient regard to the rights and liberties of individuals in the context of the reversal of the onus of proof.

Proportionality of penalties

The OQPC Notebook states:

- a penalty should be proportionate to the offence
- legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence
- penalties within legislation should be consistent with each other.⁴⁸

Further, in the context of subordinate legislation, where possible maximum penalties should be limited (generally, to 20 penalty units).⁴⁹

The maximum penalties vary across the subordinate legislation:

- Maximum penalty - 20 penalty units (\$3,226):⁵⁰
 - requirement to destroy particular smartcard accreditations replaced under s 18 (s 19)
 - directions to return or destroy particular smartcard accreditations (s 20)
 - requirement to keep particular documents - holders of operator accreditations (s 24)
 - advertising on tow trucks (s 27)
 - removing markings from tow trucks (s 30)
 - obligation if accreditation documents damaged, lost or stolen (s 42)
- Maximum penalty – 30 penalty units (\$4,839):
 - requirement to give towing authority to authorised person for motor vehicle (s 49)
 - producing private property towing consents to authorised officers (s 55)
- Maximum penalty – 40 penalty units (\$6,452):
 - tow trucks causing obstruction or remaining on private property (s 60)
 - requirements relating to found property (s 66)
 - Possessing another person's accreditation document for driver accreditation or assistant accreditation (s 84)
 - giving and receiving consideration for the purpose of obtaining towing authorities (s 86)
- Maximum penalty – 50 penalty units (\$8,065):
 - intimidation and other behaviours (s 38)

⁴⁷ SL No. 134, explanatory notes, p 19.

⁴⁸ OQPC, Notebook, p 120.

⁴⁹ OQPC, Notebook, p 150. See also OQPC, *'Principles of Good Legislation: OQPC guide to FLPs: The institution of Parliament—subordinate legislation'*, 27 June 2014, p 120.

⁵⁰ From 1 July 2024, a penalty unit is \$161.30. Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

- obtaining towing authorities from persons unable to make informed decisions (s 40)
- on-site release of motor vehicles secured to tow truck—no on-site release charge imposed (s 59)
- restriction on charges that may be imposed (s 70).

The explanatory notes state:

After a review of all the penalties in the Regulation, a number of penalties have been changed to reflect the severity of the offence and to provide greater consistency between offences of similar seriousness. Some of these offences will have their maximum penalties increased to reflect that they are fundamental requirements of the tow truck scheme and are important consumer protection measures.⁵¹

Committee comment

The committee is satisfied that SL No. 134 pays sufficient regard to the rights and liberties of individuals, and that in this context, the penalties are consistent and reflect the seriousness of the conduct, even where the maximum penalty exceeds 20 penalty units. It may assist to have educational materials or guidelines developed by the Department to assist in clarifying who is responsible for fines, where the conduct may reflect an offence committed by the accredited operator who owns or leases the holding yard (the primary operator), whether the responsibility for the penalty is directed to the individual, or the operator.

Presumed liability for offences

Legislation should not ordinarily make a person responsible for actions or omissions over which the person may have no control.⁵² This constitutes an interference with the rights and liberties of individuals, which requires justification.

SL No. 134 makes provision for offences in circumstances where an authorised holding yard is shared between multiple accredited operators that impose sole responsibility on the accredited operator who owns or leases the holding yard (the primary operator) for acts or omissions that may be done by an accredited operator who does not own or lease the holding yard.⁵³ The offences include:

- failure to keep gates and doors securely closed and locked (s 64)
- failure to repair damage to a fence, barrier, gate or door (s 65).

The explanatory notes state:

Placing responsibility on the primary operator is practically necessary to ensure the obligations relating to authorised holding yards can be effectively enforced. If the Regulation did not clarify that the primary operator is liable for shared holding yards, it would be extremely difficult to determine responsibility for the act or omission, particularly if the operators disagreed on the facts. This undermines the ability of TMR to enforce compliance with the scheme. The requirements for authorised holding yards are an essential part of the consumer protections in the tow truck scheme and exist to ensure vehicles and personal property are kept securely and returned to their owner.⁵⁴

The explanatory notes highlight the safeguards in place which include that liability will only be imposed on a person who can influence conduct but fails to do so. Further, TMR will ensure that the primary operator has consented to a secondary operator using the premises with knowledge of the legal implications and their responsibility for ensuring compliance.⁵⁵

⁵¹ SL No. 134, explanatory notes, p 23.

⁵² OQPC, Notebook, p 117.

⁵³ SL No. 134, explanatory notes, p 25.

⁵⁴ SL No. 134, explanatory notes, p 26.

⁵⁵ SL No. 134, explanatory notes, p 26.

Committee comment

The committee is satisfied that the primary operator, as the owner or lessor of the holding yard, is best placed to ensure compliance with requirements relating to keeping gates and doors securely closed and locked as well as repairing any damage to fences, barriers, gates and doors. This is particularly the case where the primary operator must consent to use of the holding yard by another operator and is made aware of the implications of allowing another operator to use the holding yard.

Sub-delegation of legislative power

Whether subordinate legislation has sufficient regard for the institution of Parliament depends on whether the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act.⁵⁶

SL No. 134 includes definitions which refer to manufacturer specifications. For example, the definition of safe working load of a crane or hoist refers to the safe working load specified by the manufacturer and the load capacity of a low dolly trailer refers to the load capacity specified by the manufacturer.⁵⁷

The explanatory notes justify the subdelegation as these are ‘highly technical matters and the vehicle’s manufacturer is well-placed to know the equipment’s capacity and safe working conditions’.⁵⁸ The explanatory notes also state that subdelegations in SL No. 134 are authorised by s 22(1)(b) of the *Statutory Instruments Act 1992*.⁵⁹ This clause of the *Statutory Instruments Act 1992* states:

If an Act or statutory instrument (the authorising law) authorises or requires the making of a statutory instrument under the authorising law or an Act or statutory instrument (the other law), the power enables a statutory instrument to be made with respect to any matter that-

(a) is required or permitted to be prescribed by the authorising law or other law; or

(b) is necessary or convenient to be prescribed for carrying out or giving effect to the authorising law or other law.

Committee comment

The committee is satisfied that the sub-delegation of legislative power is appropriate in this case and is to appropriate persons, that is, the manufacturers who are well placed to specify technical details and is authorised by an Act. Manufacturers are well placed to specify relevant technical details of equipment listed in Schedule 1 of the Tow Truck Regulation 2024.

14.2 Human rights considerations

The human rights certificate states that SL No. 134 engages the right to freedom of expression by prohibiting certain advertising material being displayed on authorised tow trucks (s 27) and prohibiting relevant persons from promoting or advertising other businesses such as vehicle repair, vehicle insurance, vehicle hire and legal services (s 36).⁶⁰

The purpose of these limitations is to ensure towing is performed efficiently and that motorists are not taken advantage of while potentially vulnerable.⁶¹ The provisions are based on recommendations of the 2019 comprehensive review of Queensland’s tow truck scheme and aim to provide additional consumer protections to ensure motorists are only given clear, accurate and relevant information.⁶² The human rights certificate states that SL No. 134 strikes an appropriate balance between consumer

⁵⁶ LSA, s 4(5)(e).

⁵⁷ SL No. 134, sch 1, ss 3(6) and 5(3).

⁵⁸ SL No. 134, explanatory notes, p 26.

⁵⁹ SL No. 134, explanatory notes, p 26.

⁶⁰ SL No. 134, human rights certificate, p 3.

⁶¹ SL No. 134, human rights certificate, p 3.

⁶² SL No. 134, human rights certificate, pp 1 and 4.

protection and the right to freedom of expression, which is only limited to the extent necessary to protect motorists.⁶³

Committee comment

The committee is satisfied that SL No. 134 is compatible with human rights. SL No. 134 strikes an appropriate balance between consumer protection and the right to freedom of expression, which is only limited to the extent necessary, in these circumstances, to protect motorists.

15 Survey and Mapping Infrastructure Regulation 2024

The Survey and Mapping Infrastructure Regulation 2024 (SL No. 144) repeals and replaces the Survey and Mapping Infrastructure Regulation 2014.⁶⁴

SL No. 144 supports operation of the *Survey and Mapping Infrastructure Act 2003* (SMI Act) by:

- stating the principles to be applied in carrying out land boundary surveys
- providing for technical survey standard and guideline matters
- prescribing the geodetic reference framework (or datum) used in Queensland
- setting several key spatial definitions.⁶⁵

SL No. 144 also updates provisions to better reflect the SMI Act and to update or remove terms in the Dictionary, sch 2.⁶⁶

15.1 Fundamental legislative principle issues

The explanatory notes raise issues of fundamental legislative principle in relation to the inclusion of offences and penalties and a reference to a national standard.

Proportionality of penalties

SL No. 144 introduces offences relating to placing or reinstating a survey mark, reinstating existing boundaries, failing to notify an owner of a plan of survey with a reinstated boundary, obligations for cadastral surveyors, obligations to keep particular survey records and survey accuracy.⁶⁷

The maximum penalties range from 6 penalty units (\$967.80) to 20 penalty units (\$3226).⁶⁸

Generally, penalties should be proportionate to the offences, and penalties within legislation should be consistent with each other.⁶⁹ Further, in the context of subordinate legislation, where possible the maximum penalties should be limited (generally, to 20 penalty units).⁷⁰

The explanatory notes state that the penalties in SL No. 144 are appropriate.⁷¹

⁶³ SL No. 134, human rights certificate, pp 4-5.

⁶⁴ SL No. 144, s 34. SL No. 144, explanatory notes, p 1.

⁶⁵ SL No. 144, explanatory notes, p 1.

⁶⁶ SL No. 144, explanatory notes, p 2.

⁶⁷ SL No. 144, ss 16, 19-24.

⁶⁸ From 1 July 2024, a penalty unit is \$161.30. Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

⁶⁹ LSA, s 4(2)(a). OQPC, Notebook, p 120.

⁷⁰ OQPC, Notebook, p 150. See also OQPC, '*Principles of Good Legislation: OQPC guide to FLPs: The institution of Parliament—subordinate legislation*', 27 June 2014, p 120.

⁷¹ SL No. 144, p 4.

Committee comment

The committee is satisfied that the penalties are proportionate to the offences, consistent with other penalties in the legislation, and appropriately limited.

References to national standards

Section 6(4) of the SMI Act makes reference to a geodetic reference framework prescribed under a regulation for use for surveying and mapping in Queensland. Section 14 of SL No. 144 specifies 'GDA 2020', the Reference Frame under the *National Measurement (Recognized-Value Standard of Measurement of Position) Determination 2017* (Cwlth) as in force on 1 September 2024, and 'MGA 2020', the system of rectangular coordinates derived from a Universal Transverse Mercator projection of latitudes and longitudes that are based on GDA 2020, as the geodetic reference framework.

This raises the issue of whether SL No. 144 pays sufficient regard to the institution of Parliament, by referring to documents of outside bodies, which may be considered as a delegation of legislative power.⁷²

The explanatory notes state that SL No. 144 pays sufficient regard to the institution of Parliament as it adopts the GDA 2020 as it stood at commencement. Any changes to the GDA 2020 would not automatically affect Queensland legislation, but would require legislative amendment,⁷³ which would be subject to parliamentary scrutiny through the disallowance process.

Committee comment

The committee is satisfied that SL No. 144 pays sufficient regard to the institution of Parliament, on the basis that any changes to external documents would not automatically change the interpretation of this subordinate legislation.

16 Transport Legislation Amendment Regulation 2024

The Transport Legislation Amendment Regulation 2024 (SL No. 145) amends the Rail Safety National Law (Queensland) Regulation 2017, the Traffic Regulation 1962 and the Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021.⁷⁴

The policy objectives of SL No. 145 are to:

- prescribe a new type of collection unit for saliva samples used for drug testing of rail safety workers⁷⁵
- enable the chief executive to approve an entity for calibration testing of a photographic detection device following the transfer of particular Road Safety Camera Office functions from the Queensland Police Service to the Department of Transport and Main Roads⁷⁶
- remove the requirement for an applicant to pay via direct debit and receive all communications electronically if the applicant is registering a dealer vehicle for 3 months.⁷⁷

17 Valuers Registration Regulation 2024

The Valuers Registration Regulation 2024 (SL No. 154) repeals and replaces the Valuers Registration Regulation 2013, due to the latter's expiry.⁷⁸

⁷² OQPC, Notebook, pp 148-9.

⁷³ SL No. 144, explanatory notes, p 4.

⁷⁴ SL No. 145, ss 2, 4, 6.

⁷⁵ SL No. 145, s 3. SL No. 145, explanatory notes, p 1.

⁷⁶ SL No. 145, s 5. SL No. 145, explanatory notes, p 2.

⁷⁷ SL No. 145, s 7. SL No. 145, explanatory notes, pp 2-3.

⁷⁸ SL No. 154, s 7. SL No. 154, explanatory notes, p 1.

SL No. 154 provides for:

- a professional code of conduct that valuers must comply with that includes duties to clients, professional responsibilities and professional fees that may be charged by valuers
- annual Continuing Professional Development (CPD) requirements for valuers
- fees for registration.⁷⁹

17.1 Compatibility with the Human Rights Act – right to privacy and reputation

The code of conduct included in SL No. 154 requires valuers to disclose their qualifications and registration in valuation reports and any interest they may have in a property they are valuing.⁸⁰

The human rights certificate seeks to justify this requirement on the basis that this is not an arbitrary interference with privacy, as the purpose of requiring the disclosure of this information is to ensure community confidence in the independence and competence of valuers.⁸¹ Further, accurate and reliable valuations of real property are a vital component of Australia's economy.⁸²

17.2 Compatibility with the Human Rights Act – right to freedom of expression

The requirements in the code of conduct may limit a person's freedom of expression. The human rights certificate seeks to justify these requirements on the basis that the purpose of any limitation is to protect consumers of valuation services and valuers from reputational damage.⁸³ The limitation on freedom of expression is to reduce the instances in which valuation advertising misleads consumers, reducing public confidence in and harming the reputation of the profession.⁸⁴

Committee comment

The committee is satisfied that any purported limitations on human rights, in this case, the right to privacy and reputation; and the right to freedom of expression, are justifiably limited. The committee is satisfied that SL No. 154 is compatible with human rights.

18 Recommendation

The committee recommends that the House notes this report.



Kim Richards MP

Chair

September 2024

⁷⁹ SL No. 154, human rights certificate, pp 1-2.

⁸⁰ SL No. 154, s 5, sch 1 ss 3 and 7. SL No. 154, human rights certificate, p 3.

⁸¹ SL No. 154, human rights certificate, p 3.

⁸² SL No. 154, human rights certificate, p 3.

⁸³ SL No. 154, human rights certificate, p 4.

⁸⁴ SL No. 154, human rights certificate, p 4.

Clean Economy Jobs, Resources and Transport Committee

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| Deputy Chair | Mr Pat Weir MP, Member for Condamine |
| Members | Mr Bryson Head MP, Member for Callide |
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