

**Subordinate legislation tabled
between 5 June 2013 and
6 August 2013**

Report No. 34

**Transport, Housing and Local Government
Committee**

October 2013

Transport, Housing and Local Government Committee

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Deputy Chair	Mrs Desley Scott MP, Member for Woodridge
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Acknowledgements

The Committee wishes to acknowledge the assistance provided by the Department of Transport and Main Roads and the Technical Scrutiny of Legislation secretariat during the course of the Committee's inquiry.

Introduction

Role of the Committee

The Transport, Housing and Local Government Committee (the Committee) is a portfolio committee established by the Legislative Assembly of Queensland (the Legislative Assembly) on 18 May 2012. The Committee's primary areas of responsibility are transport, main roads, housing, public works, local government and community recovery and resilience.¹

Pursuant to section 93(1) of the *Parliament of Queensland Act 2001*, the Committee is responsible for examining each item of subordinate legislation within its portfolio areas and considering:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- the lawfulness of the subordinate legislation
- the content of the explanatory notes to ensure they comply with part 4, section 24 of the *Legislative Standards Act 1992*.

Section 93(2)(b) of the *Parliament of Queensland Act 2001* confers responsibility on portfolio committees to monitor the operation of part 8 of the *Statutory Instruments Act 1992*. The Committee monitors all forms approved or made under an Act or subordinate legislation relevant to the Committee, and reports to the Legislative Assembly on the operation of Part 8.

Aim of this report

This report advises on subordinate legislation examined and, where applicable, presents any concerns that the Committee has identified in respect of subordinate legislation tabled between 5 June 2013 and 6 August 2013 that are within its portfolio responsibilities. Unless expressly noted below, no issues were identified.

Subordinate Legislation

The Committee examined the subordinate legislation, all tabled on 6 August 2013, which are listed below:

1. Housing and Public Works Legislation (Fees) Amendment Regulation (No.1) 2013 (SL No.128)
2. Standard Plumbing and Drainage Amendment Regulation (No.1) 2013 (SL No. 138)
3. Local Government Legislation Amendment Regulation (No. 3) 2013 (SL No. 148)
4. Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No. 150)
5. Transport Operations (Road Use Management – Vehicle Registration) Amendment Regulation (No.1) 2013 (SL No. 153).

Upon its initial review of this subordinate legislation, the Committee noted a number of potential issues concerning fundamental legislative principles in relation to the Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No. 150). In particular, the Committee noted, potential issues relating to:

- unfair competitive advantage
- lack of consultation.

The Committee wrote to the Hon Scott Emerson MP, the Minister for Transport and Main Roads, on 17 September 2013, to highlight its initial concerns regarding potential breaches of fundamental legislative principles. The Committee requested that the Minister report back with further information in relation to these potential issues.

A copy of the Committee's letter to the Minister is attached as **Appendix A**.

¹ Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 14 February 2013.

The Minister responded to the Committee on these points in a letter dated 9 October 2013, a copy of which is attached as **Appendix B**.

Upon review of the Minister's letter, the Committee is satisfied that in relation to the subordinate legislation examined in this report, there are no significant issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.

Disallowance Motion

The Committee notes that a Disallowance Motion was moved by Ms Jacklyn Trad, the Member for South Brisbane, on 21 August 2013 in relation to the Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No. 150). The main issue of contention concerned the proposed legalisation of Segways under this subordinate legislation. After a debate in the Legislative Assembly, the Disallowance Motion was agreed in the negative.²

Summary of subordinate legislation examined

SL No. 128	Tabling Date: 6 August 2013	Disallowance Date: 31 October 2013
Title and Objective	<p><i>Housing and Public Works Legislation (Fees) Amendment Regulation (No.1) 2013</i> The <i>Housing and Public Works Legislation (Fees) Amendment Regulation (No.1) 2013</i> (the Amendment Regulation) amends on 1 July 2013:</p> <ul style="list-style-type: none"> ▪ schedule 1 to the Architects Regulation 2003 ▪ schedule 3 to the Building Regulation 2006 ▪ schedule 2 to the Building and Construction Industry Payments Regulation 2004 ▪ section 6 of the Domestic Building Contracts Regulation 2010 ▪ schedule 3 to the Housing Regulation 2003 ▪ schedule 4 to the Plumbing and Drainage Regulation 2003 ▪ schedule 1 to the Professional Engineers Regulation 2003 ▪ schedule 1 to the Queensland Building Services Authority Regulation 2003 ▪ the schedule to the Residential Services (Accreditation) Regulation 2002 ▪ the schedule to the Retirement Villages Regulation 2010 <p>to increase various regulatory fees prescribed in the above regulations.</p>	
SL No. 138	Tabling Date: 6 August 2013	Disallowance Date: 31 October 2013
Title and Objective	<p><i>Standard Plumbing and Drainage Amendment Regulation (No.1) 2013</i> The <i>Plumbing and Drainage Act 2002</i>, as amended by the <i>Housing and Other Legislation Amendment Act 2013</i>, introduced a new 'notifiable work scheme' to cut red tape associated with routine plumbing work by expanding the category of plumbing and drainage work that does not require a compliance permit and mandatory local government inspections.</p> <p>The <i>Standard Plumbing and Drainage Amendment Regulation (No.1) 2013</i> (the Amendment Regulation) amends the <i>Standard Plumbing and Drainage Regulation 2003</i> (the Regulation) to:</p> <ul style="list-style-type: none"> ▪ align the Regulation with the provisions of the <i>Plumbing and Drainage Act 2002</i>, as 	

² Hansard Record of Proceedings, Queensland Parliament, Wednesday, 21 August 2013: 2737-2749.

	<p>amended by the <i>Housing and Other Legislation Amendment Act 2013</i></p> <ul style="list-style-type: none"> ▪ clarify when compliance assessable work (i.e. work requiring local government approval) is taken to be completed, to ensure plumbers are not allowed to delay an inspection by refusing to complete an insignificant aspect of the work. Sections 13 and 24 of the Amendment Regulation provide that compliance assessable work is taken to be completed when the work becomes operational ▪ make minor amendments necessary to consolidate definitions in the Regulation. 	
SL No. 148	Tabling Date: 6 August 2013	Disallowance Date: 31 October 2013
Title and Objective	<p><i>Local Government Legislation Amendment Regulation (No. 3) 2013</i> The <i>Local Government Legislation Amendment Regulation (No. 3) 2013</i> (the Amendment Regulation) amends the <i>City of Brisbane Regulation 2013</i> and <i>Local Government Regulation 2012</i> to:</p> <ul style="list-style-type: none"> ▪ update the Financial Management (Sustainability) Guidelines for local government following a review of the previous guidelines that were issued in 2011. The new guidelines are aligned with the latest local government legislative reform, correct obsolete references and are more succinct ▪ clarify inconsistencies in the definition of ‘senior executive employee’. <p>The Amendment Regulation also amends the <i>Local Government Regulation 2012</i> to correct a minor anomaly regarding the nature of the revenue from a business activity that a local government is to disclose in an activity statement.</p>	
SL No. 150	Tabling Date: 6 August 2013	Disallowance Date: 31 October 2013
Title and Objective	<p><i>Transport and Other Legislation Amendment Regulation (No. 1) 2013</i> The <i>Transport and Other Legislation Amendment Regulation (No. 1) 2013</i> (the Amendment Regulation):</p> <ul style="list-style-type: none"> ▪ permits, from 1 August 2013, the use of Segways (‘personal mobility devices’) on footpaths and bikeways and sets rules for their use (including offences and penalties) by amending the <i>Transport Operations (Road Use Management – Road Rules) Regulation 2009</i>, <i>Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010</i> and <i>Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010</i> ▪ provides an exemption on religious grounds from laws requiring helmets to be worn when riding a bicycle, motorized scooter or personal mobility device by amending the <i>Transport Operations (Road Use Management – Road Rules) Regulation 2009</i> ▪ provides that, from 1 January 2014, medical certificates issued to drivers aged 75 years and over are only valid for one year by amending the <i>Transport Operations (Road Use Management – Driver Licensing) Regulation 2010</i>. Medical certificates issued prior to 1 January 2014 will continue to be valid ▪ prohibits a person drinking liquor while supervising a learner driver by amending the <i>Transport Operations (Road Use Management – Road Rules) Regulation 2009</i> ▪ excludes the Toyota Landcruiser from the high-powered vehicle restrictions in the <i>Transport Operations (Road Use Management – Driver Licensing) Regulation 2010</i>. 	

SL No. 153	Tabling Date: 6 August 2013	Disallowance Date: 31 October 2013
Title and Objective	<p><i>Transport Operations (Road Use Management – Vehicle Registration) Amendment Regulation (No.1) 2013</i></p> <p>The <i>Transport Operations (Road Use Management – Vehicle Registration) Amendment Regulation (No.1) 2013</i> (the Amendment Regulation) amends the <i>Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010</i> to allow the Chief Executive of the Department of Transport and Main Roads to issue special edition number plates for vehicles.</p> <p>Special edition plates will be available at certain periods to celebrate or acknowledge a significant event, occasion or achievement. The explanatory notes give the example of number plates to celebrate the 8th consecutive series win for Queensland in the State of Origin.</p>	

Typographical error in the Standard Plumbing and Drainage Amendment Regulation (No. 1) 2013 (SL No. 138)

The Committee notes that there appears to be a typographical error on page 7 of the Explanatory Notes. The reference to “section 14(2)(a)” in the second sentence of the section entitled ‘Amendment of s 14D (Additional requirements for plans for on-site sewerage facilities)’ appears to be incorrect and should be a reference to “section 14A(2)(a)”.

The Committee notes the above typographical error for the Minister’s attention.

Recommendation

Recommendation 1

The Committee recommends that the Legislative Assembly note:

- the subordinate legislation tabled between 5 June 2013 and 6 August 2013
- that the Committee did not identify any significant issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.



Mr Howard Hobbs MP
Chair

Appendix A: Letter to Minister



Transport, Housing and Local Government Committee

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Our Ref: 130917_1_SL

17 September 2013

Hon Scott Emerson MP
Minister for Transport and Main Roads
GPO Box 2644
BRISBANE QLD 4001
Email: TMR@ministerial.qld.gov.au

Dear Minister

Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No.150)

The Transport, Housing and Local Government Committee requests your advice on the Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No. 150) which was tabled in Parliament on 6 August 2013.

Pursuant to section 93(1) of the *Parliament of Queensland Act 2001*, the Committee is responsible for examining each item of subordinate legislation within its portfolio areas and considering the policy to be given effect by the legislation; the application of fundamental legislative principles; the lawfulness of the subordinate legislation; and the content of the explanatory notes to ensure they comply with part 4, section 24 of the *Legislative Standards Act 1992*.

I have attached a document detailing the specific queries concerning the subordinate legislation for your attention. The Committee would be grateful for your advice by Tuesday, 1 October 2013.

Please contact the Committee's Research Director, Ms Kate McGuckin, on 3406 7486 or Kate.McGuckin@parliament.qld.gov.au with any further questions you may have.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Howard Hobbs'.

Mr Howard Hobbs MP
Chair

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cc Mr Neil Scales, Director-General, Department of Transport and Main Roads

Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No.150)

- **Part 3, item 7 – Toyota Landcruiser exemption**

The Committee notes that the Transport and Other Legislation Amendment Regulation (No. 1) 2013 (SL No. 150) (“Amendment Regulation”), among other things, excludes the Toyota Landcruiser from the high-powered vehicle restrictions in the Transport Operation (Road use Management – Driver Licensing) Regulation 2010.

In relation to this part of the Amendment Regulation, the Committee seeks clarification on the following.

The Road Use Management – Driver Licensing Regulation provides that certain drivers (generally provisional licence holders under 25 years of age) are prohibited from driving high-powered vehicles (vehicles with 8 or more cylinders and vehicles with an engine with a power output of more than 210kW).

Section 7 of the Amendment Regulation amends section 70 of the Road Use Management – Driver Licensing Regulation to provide that Toyota Landcruisers are exempt from the high-powered vehicle restrictions, unless the vehicle has been modified.

The Committee notes that it is not without precedent for a specific make and model of vehicle to be exempted from the high-powered vehicle restrictions. Schedule 6 to the Road Use Management – Driver Licensing Regulation currently lists the Daihatsu Copen L880 2D Convertible Turbo and the Smart Fortwo Coupe 2D Turbo, amongst other vehicles, as being exempt. The Toyota Landcruiser is, however, the first 4x4 vehicle to receive an exemption.

The Explanatory Notes (p.5) state that the current restriction “... *is causing difficulties for employment of young people in businesses which use these types of vehicles [Toyota Landcruisers] (for example, agricultural businesses) and is restricting the use of these vehicles more generally*”. The Explanatory Notes state (p.5) that “... *it has been decided that Toyota Landcruisers can be excluded from the current high-powered vehicle restrictions because they have a low power-to-weight ratio*”.

The Committee is concerned that it is possible that Toyota may be able to gain a competitive advantage over other manufacturers in the 4x4 and agricultural vehicle market due to the Landcruiser’s exemption from the high-powered vehicle restrictions.

The Committee therefore requests whether any other makes and models of vehicle, which fall within the category of low power-to-weight ratio, were considered for an exemption and, if so, what was the result of that consideration?

The Committee also wishes to know if any alternative approaches were considered to achieve the policy objective.

- **Consultation**

The Committee notes that the Explanatory Notes tabled with the Amendment Regulation generally comply with part 4 of the *Legislative Standards Act 1992* (Qld).

The ‘Consultation’ section of the Explanatory Notes lists the Government departments and agencies that were consulted about the Amendment Regulation. The Explanatory Notes also provide detailed information about consultation with stakeholders on the changes to medical certificates for drivers who are 75 years and older.

The Explanatory Notes do not, however, provide information about any consultation, outside of Government, on other provisions in the Amendment Regulation. For example, consultation, perhaps with the motor vehicle industry, about the high-powered vehicle exemptions, or consultation with the public and stakeholders on the introduction of personal mobility devices (PMDs).

The Committee would be grateful for any information about any consultation with the above groups, or an explanation of why no such consultation was considered necessary.

Appendix B: Letter from Minister



The Honourable Scott Emerson MP
Minister for Transport and Main Roads



Our ref: MC72003

Your ref: 130917_1_SL

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Mr Howard Hobbs MP
Member for Warrego
Chair
Transport Housing and Local Government Committee
Parliament House
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Dear Mr Hobbs

Thank you for your letter about the *Transport and Other Legislation Amendment Regulation (No. 1) 2013* and the Committee's consideration of this legislation.

Part 3, item 7 – Toyota Landcruiser exemption

High powered vehicle (HPV) restrictions have been in place since 2007. The Department of Transport and Main Roads (TMR) has received numerous representations from the Federal Chamber of Automotive Industries (FCAI), car manufacturers and the general public about certain vehicles captured under the HPV definition, particularly the Toyota Landcruiser for industries based in regional and rural areas.

The Queensland Government proposes to introduce a new nationally agreed definition for HPVs from 1 January 2014. The criterion for the definition was agreed to by the Standing Council on Transport and Infrastructure at its May 2013 meeting. The proposed criterion will rely solely on a vehicle's power to weight ratio, with those having a ratio of more than 130kW/t categorised as HPVs. While the new definition will only apply to vehicles manufactured from 1 January 2010, a range of 4WDs will be eligible for use by young drivers.

I have, however, decided to move earlier with regard to the Toyota Landcruiser vehicles being manufactured prior to 1 January 2010. I have been informed that in some cases pastoral companies may turn over 30 to 40 staff per year, most of whom would be provisional drivers under 25 years of age. For each new staff member required to use a Toyota Landcruiser as their main work vehicle, a separate exemption application from the HPV restrictions would need to be made, resulting in significant red tape. I understand that there are very few 4WD vehicles currently available for sale in Australia that are used regularly in the agricultural sector and classified as high powered vehicles. It should be noted that the Toyota Landcruiser is one of only a few vehicles that has both a diesel and petrol V8 engine. Many of these vehicles are pre-2010 models.

It is for the reasons outlined above that the Toyota Landcruiser was removed from the definition of an HPV. The FCAI was advised of these proposed changes and did not raise any issues with the proposal. It should also be noted that processes to apply for an exemption remain in place for any other vehicle that fits the definition of a HPV.

Consultation on the introduction of personal mobility devices (PMDs)

The Queensland Government believes personal mobility devices offer an innovative and environmentally friendly way to travel, while also generating new tourism and business opportunities throughout the state.

This initiative was implemented in a timely way to support the government's economic policy aim of developing tourism as one of the four pillars of the Queensland economy as well as reducing red tape.

Safety was a key consideration, and the legislation includes operating conditions regarding how and where the devices can be used. These include a 12km/h speed restriction, mandatory helmet requirements, the requirement for working warning devices such as bells or horns, as well as age based restrictions on people who can operate the devices. Along with these safeguards, riders are required to keep to the left of paths and give way to other path users.

Councils can prohibit the use of the devices in specific areas through the use of local laws and by installing a sign. A letter was sent to all Councils in Queensland providing details of the legislation and the sign.

The initiative follows representations from the tourism industry to the Honourable Campbell Newman MP, Premier of Queensland.

Consultation on the exemption from mandatory bicycle helmet wearing laws on religious grounds

On 26 March 2013, Mr Jasdeep Atwal, a Queensland resident and practicing Sikh, faced court in regard to an infringement notice he received for not wearing a helmet while riding his bicycle. Magistrate Shearer found Mr Atwal was guilty based on the legislation, however he was absolutely discharged (no fine, penalty or conviction was recorded). The Magistrate referred to the impracticalities of the law as bicycle helmets could not physically fit when a turban is worn.

On 23 April 2013, I announced the introduction of helmet exemptions for cyclists on the basis of religious beliefs. This is a commonsense approach for those who want to cycle but, for religious reasons, may not be able to wear a helmet. The amendment was implemented in a timely way to reduce the discrimination under the law to anyone who is a member of a religious group and is required to wear a headdress.

Consultation on alcohol restrictions for driver supervisors

No external consultation was conducted for the provision prohibiting the supervisor of a learner driver from drinking liquor while supervising as the amendment was considered machinery in nature. The amendment in no way alters the fundamental intent of the legislation, but merely extends the requirement on drivers to supervisors of learner drivers for consistency.

Conclusion

I trust this information is of assistance to the Committee.

Yours sincerely


Scott Emerson MP
Minister for Transport and Main Roads

