

**Subordinate legislation tabled between
7 May 2014 and 4 August 2014**

Report No. 72

Legal Affairs and Community Safety Committee

September 2014

Legal Affairs and Community Safety Committee

Chair	Mr Ian Berry MP, Member for Ipswich
Deputy Chair	Mr Peter Wellington MP, Member for Nicklin
Members	Miss Verity Barton MP, Member for Broadwater Mr Sean Choat MP, Member for Ipswich West Mrs Yvette D’Ath MP, Member for Redcliffe Mr Aaron Dillaway MP, Member for Bulimba Mr Trevor Watts MP, Member for Toowoomba North
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1. Introduction

1.1 1.1 Role of the Committee

The Legal Affairs and Community Safety Committee (Committee) is a portfolio committee of the Legislative Assembly which commenced on 18 May 2012 under the *Parliament of Queensland Act 2001* and the Standing Rules and Order of the Legislative Assembly.¹

The Committee's primary areas of responsibility include:

- Justice and Attorney-General;
- Police Service; and
- Fire and Emergency Services.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each Bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles to the legislation; and
- for subordinate legislation – its lawfulness.

1.2 1.2 Subordinate Legislation examined

The Committee has examined the subordinate legislation tabled between 7 May 2014 and 4 August 2014 within its portfolio areas. A list of the subordinate legislation examined for this report is set out in the table below. The report also discusses issues the Committee identified in the course of its inquiries. Unless expressly noted, no issues were identified.

Subordinate legislation tabled in the 54th Parliament

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
55	Security Providers and Another Regulation Amendment Regulation (No. 1) 2014	20/05/2014	10/09/2014
56	Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014	20/05/2014	10/09/2014
59	Proclamation made under the <i>Work Health and Safety and Other Legislation Amendment Act 2014</i>	20/05/2014	10/09/2014
60	Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014	20/05/2014	10/09/2014
67	Proclamation made under the <i>Criminal Code and Another Act (Stock) Amendment Act 2014</i>	03/06/2014	15/10/2014
68	Industrial Relations Amendment Regulation (No. 4) 2014	03/06/2014	15/10/2014
71	Professional Standards (Law Society of Western Australia Scheme) Notice 2014	03/06/2014	15/10/2014
76	Weapons Amendment Regulation (No. 1) 2014	03/06/2014	15/10/2014

¹ *Parliament of Queensland Act 2001*, section 88, and Standing Order 194.

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
77	Fire and Rescue Service and Another Regulation Amendment Regulation (No. 1) 2014	03/06/2014	15/10/2014
80	Work Health and Safety (Codes of Practice) Amendment Notice (No. 2) 2014	03/06/2014	15/10/2014

2. Issues identified in particular subordinate legislation

2.1 SL 56 – Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014

The Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014 amends the Criminal Code (Criminal Organisations) Regulation 2013 to amend four addresses of prescribed places as a result of new police intelligence.

In considering SL 56, the Committee noted section 3 of the Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014 was previously amended by SL No. 290 of 2013. As this is the second amendment to the regulation, the Committee sought information from the Department of Justice and Attorney-General (Department) regarding the nature of the police intelligence referred to in the Explanatory Notes.²

In response the Department provided:

The amendments to section 3 of the Criminal Code (Criminal Organisations) Regulation 2013 (the regulation) contained in the Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014 were made at the request of the Honourable Jack Dempsey MP, Minister for Police, Fire and Emergency Services.

I was informed by Minister Dempsey that new intelligence and a review by the Queensland Police Service identified that the relevant four addresses required amendment. I understand that the Queensland Police Service review their intelligence in relation to the regulation in an ongoing manner.

I take this opportunity to note that the Criminal Code (Criminal Organisations) Amendment Regulation (No. 2) 2014 commenced on 8 August 2014 and was tabled on 26 August 2014. This amendment regulation further amended section 3 of the regulation to remove three addresses that had been vacated by criminal organisations and add one newly identified address.

As you may appreciate, the nature of section 3 of the regulation is necessarily 'organic'. Addresses will be removed and included based on police intelligence as to the movements of criminal organisations.³

Committee Comment

The Committee notes the 'organic' nature of section 3 of the regulation and appreciates the ongoing nature of this matter.

2.2 SL 60 - Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014

The Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014 amends the Electrical Safety Regulation 2013 and Work Health and Safety Regulation 2011.

² Explanatory Notes, Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014, page 1.

³ Correspondence from the Department of Justice and Attorney-General, received 8 September 2014, page 1.

The Work Health and Safety Regulation 2011 is amended to:

- specify what information is to be provided when giving notice of entry for a person assisting a health and safety representative;
- remove mandatory audiometric testing requirements and provide guidance on this issue in the noise code of practice to be consistent with previous arrangements in Queensland;
- adopt the Safe Work Australia proposal to remove the mandatory requirement to fit protective structures to earthmoving machinery;
- amend requirements for Class B asbestos removal licences by removing the requirement for additional certification in training for the supervisor;
- provide greater flexibility in relation to who can carry out a clearance inspection following Class B asbestos removal work;
- provide for an inspector to take action to direct the clean up of a site in circumstances where a clearance certificate has been issued when the site was not free of visible asbestos contamination;
- amend the date nominated to trigger asbestos register requirements for workplace buildings so it aligns with the date under Queensland's former WHS laws;
- clarify that asbestos register requirements do not apply to domestic premises;
- replace the words 'written notice' with 'notify' when licence holders must inform the regulator of a change of address or when a licence document is lost, stolen or destroyed; and
- enable the regulator to publish an online register of high risk work licence holders and accredited assessors.

The Electrical Safety Regulation 2013 is amended to:

- increase specific maximum penalties in relation to incident notification, preservation of incident sites, live electrical work and working near power lines, to align with penalties for equivalent offences in nationally agreed WHS laws.

Issue identified – Part 4 of the *Legislative Standards Act 1992* – rights and liberties of individuals

The issue of whether the subordinate legislation has sufficient regard to the rights and liberties of individuals under sections 4(2)(a) and 4(3) of the *Legislative Standards Act 1992* arose due to there being a number of maximum penalty unit (PU) increases prescribed in this regulation. The increases are mostly from 40PU to 60PU, with one from 40PU to 100PU.

In the Committee's view, the PU increases appear proportionate to the particular offences they are addressing, and are within power of the parent Acts which allow for penalties of up to 300PU in a regulation. With regard to consistency, the Committee notes there are many existing penalties in these regulations that are within this range.

However, the Committee refers to *Alert Digest* No. 4 of 1996 and notes the then Scrutiny of Legislation Committee adopted the following formal policy (Policy No. 2 of 1996) on the question of delegation of legislative power to create offences and prescribe penalties:

1.31 The Committee accepts that legislative power to create offences and prescribe penalties may be delegated in limited circumstances provided the following safeguards are observed:

- *rights and liberties of individuals should not be affected, and the obligations imposed on persons by such delegated legislation should be limited;*
- *the maximum penalties should be limited, generally to **20 penalty units**.*

The Committee observes the increases in this regulation result in penalty units which far exceed the number of 20PU stated in the policy adopted by the then Scrutiny of Legislation Committee.

Committee Comment

Whilst acknowledging the increases in this regulation result in penalty units which far exceed the number of 20PU stated in the policy adopted by the then Scrutiny of Legislation Committee, the Committee is satisfied the penalty unit increases are proportionate to the particular offences they are addressing, and are within power of the parent Acts.

In considering this issue, the Committee noted the advice in the Explanatory Notes that the amendments to the Electrical Safety Regulation 2013 provide for consistency in penalties for offences which give effect to national model workplace health and safety provisions for electrical safety.⁴

Further, the Committee has considered statements in the Explanatory Notes asserting the amendments included in this regulation are consistent with the policy objectives of the authorising laws.⁵

Issue identified – asbestos protections

The Committee also noted the Work Health and Safety Regulation Amendment Regulation (No. 1) 2014 is amended to: remove licence requirements for Class B asbestos removal work; increase flexibility as to who can carry out a clearance inspection following Class B asbestos removal work; provide for an inspector to take action to direct the clean-up of a site in circumstances where a clearance certificate has been issued when the site was not free of visible asbestos contamination; amend the date nominated to trigger asbestos register requirements; and clarify that asbestos register requirements do not apply to domestic premises.

The Explanatory Notes state “[t]hese amendments reduce the regulatory burden for licensed asbestos removalists...”.⁶ Accordingly, the Committee sought an explanation from the Department that adequate asbestos removal protections remain, and comment regarding the amendments’ consistency with the National framework.

In response to these issues, the Department provided:

During the Queensland Government’s review of the Work Health and Safety (WHS) laws, industry representatives raised concerns about some aspects of the national model asbestos regulations which had significant differences from Queensland’s former asbestos regulations. Concerns were generally about achieving a balance so that the regulatory requirements are proportionate to the risk to be managed. The government has given careful consideration to the issues raised by business, union and community representatives. The amendments to the asbestos regulations are aimed at providing sensible requirements which ensure there are well-trained, competent workers doing asbestos removal work and these services are widely accessible to Queensland businesses and homeowners so that people are not tempted to carry out asbestos removal work illegally and without proper safety precautions.

All jurisdictions signed the intergovernmental agreement for regulatory reform in work health and safety, and the model WHS laws were agreed to in 2011. The model laws commenced in all jurisdictions in 2012 or 2013, with the exception of Victoria and Western Australia.

Even though the legislation is still relatively new, and some jurisdictions are still transitioning from their previous legislation, a number of issues have been identified based on Queensland’s experience as the first jurisdiction having implemented these laws.

⁴ Explanatory Notes, Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014, page 1.

⁵ Explanatory Notes, Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014, pages 2-3.

⁶ Explanatory Notes, Work Health and Safety Regulation Amendment Regulation (No. 1) 2014, page 8.

The Council of Australian Governments (COAG) is undertaking a review and has requested that jurisdictions investigate how the model WHS laws could be improved to reduce the regulatory burden and make it easier for businesses and workers to comply with the responsibilities. Amendments Queensland has made to its WHS laws, including the asbestos regulations, are being considered nationally. COAG is expected to consider recommendations on improving the model WHS laws by the end of 2014.⁷

Committee Comment

The Committee notes the Government's acknowledgement that the asbestos regulations are aimed at providing a balance to protect well trained asbestos removal workers, and ensure accessibility to their services so Queenslanders are not tempted to carry out asbestos removal without proper safety precautions. Further, the Committee notes these regulatory reforms sit with the model WHS laws agreed to in 2011, and that COAG is expected to consider recommendations on improving the model WHS laws by the end of 2014.

2.3 SL No. 77 – Fire and Rescue Service and Another Regulation Amendment Regulation (No. 1) 2014

The objective of SL No. 77 is to increase fees for 2014-2015 under the Fire and Rescue Service Regulation 2011 and the Building Fire Safety Regulation 2008 from 1 July 2014 by 3.5%.

Issues identified – Part 4 of the *Legislative Standards Act 1992* – rights and liberties of individuals

The issue of whether the subordinate legislation has sufficient regard to the rights and liberties of individuals under sections 4(2)(a) and 4(3) of the *Legislative Standards Act 1992* arose because section 10 of SL No. 77 inserts a new schedule 2 (Annual contributions of owners of prescribed properties) containing 16 levy groups, where the fee increases appear to exceed the 3.5%; for example, levy groups 2, 4 and 8.

The Committee also noted the Explanatory Notes state:

Where the number of levied properties increases, there will be a resultant increase in the administration fee.⁸

On 27 August 2014, the Committee sought advice from the Minister for Police, Fire and Emergency Services regarding the annual fee increase and the administration fee.

On 3 September 2014, the Minister advised that SL No. 77 sought a 3.5% indexation increase in levy rates, and that this rate increase is in line with the Government's Policy on fees and charges which is 3.5% per annum. The Minister also provided:

SL No. 110 of the Community Safety Legislation Amendment Regulation (No. 1) of 2013 introduced a levy increase, which occurred within the 2013/2014 fiscal year. This was introduced on 1 January 2014 and increased the levy amounts by 6.5% from previous limits. This increase was applied to fund the broadening role of emergency and disaster management functions to ensure an ongoing sustainable funding base for emergency management. It acknowledged that disaster management incorporates responses to not only fires but also flood, cyclones and other disasters requiring a broader emergency response. It should be noted that while the 6.5% increase was implemented across levy groups, for E Class properties it was capped at the amount set for levy group 6.

Therefore, while the rate of the levy increase brought about by SL No. 77 was 3.5%, the levy did increase at a higher rate from 1 January 2014 to 30 June 2014 due to the 6.5% increase applied on 1 January 2014.

⁷ Correspondence from the Department of Justice and Attorney-General, received 8 September 2014, page 2.

⁸ *Explanatory Notes, Fire and Rescue Service and Another Regulation Amendment Regulation (No. 1) 2014, page 2.*

I can confirm that officers from the Levy Management Command, Public Safety Business Agency have clarified that all increases to the levy under SL No. 77 are in accordance with the 3.5% indexation.⁹

The Committee also sought clarification about the administration fee. In response the Minister provided that this is not an additional fee payable by property owners, but rather, is a fee paid to local governments as a retention out of the annual levy that they collect on behalf of the State Government. The Minister stated:

The payment of this administration fee is provided for by section 117 of the Fire and Emergency Services Act 1990 for performing functions under the Act.

The amount of administration fee retained by local governments is calculated according to a formula in section 6 of the Regulation. No increase to this rate has been granted since 2008/2009. This increase serves to acknowledge the work of councils and support their ongoing commitment to provide this service.¹⁰

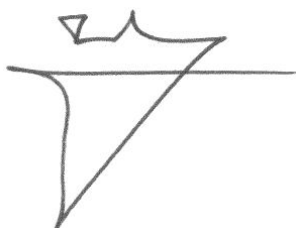
In further considering the issue, the Committee noted advice in the Explanatory Notes that implementation of the proposed amendments will ensure a sustainable funding base for emergency management for the longer term.¹¹ Additionally, the Committee observed the contention that the amendments are consistent with the objects of the *Building Act 1975* and the *Fire and Emergency Services Act 1990*, by providing a source of ongoing funding to support the provision of emergency management services across Queensland.¹²

Committee Comment

The Committee notes the Minister's advice and the information provided in the Explanatory Notes, and is satisfied that these amendments are lawful, and within the scope of the objectives of the instrument.

Recommendation 1

The Committee recommends the House note the contents of this report.



Mr Ian Berry MP

Chair

September 2014

⁹ Correspondence from the Minister for Police, Fire and Emergency Services, 03 September 2014, page 1.

¹⁰ Correspondence from the Minister for Police, Fire and Emergency Services, 03 September 2014, page 2.

¹¹ *Explanatory Notes, Fire and Rescue Service and Another Regulation Amendment Regulation (No. 1) 2014, pages 1 and 2.*

¹² *Explanatory Notes, Fire and Rescue Service and Another Regulation Amendment Regulation (No. 1) 2014, pages 1 and 2.*

Appendix A



Minister for Police, Fire and Emergency Services

File No: CSD/01652

Ref No: 06608-2014

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3 SEP 2014

Mr Ian Berry MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Berry

Thank you for your letter of 27 August 2014 regarding Subordinate Legislation No. 77. I note the Legal Affairs and Community Safety Committee is seeking clarification regarding the rate of increase of the Emergency Management Levy and of the administration fee collected by local governments.

In response to the Committee's inquiries, I can advise that SL No.77 sought a 3.5% indexation increase in levy rates. This rate of increase is in line with Government's Policy on fees and charges which is 3.5% per annum.

However, you may recall that SL No. 110 of the Community Safety Legislation Amendment Regulation (No 1) of 2013 introduced a levy increase, which occurred within the 2013/2014 fiscal year. This was introduced on 1 January 2014 and increased the levy amounts by 6.5% from previous limits. This increase was applied to fund the broadening role of emergency and disaster management functions to ensure an ongoing sustainable funding base for emergency management. It acknowledged that disaster management incorporates responses to not only fires but also flood, cyclones and other disasters requiring a broader emergency response. It should be noted that while the 6.5% increase was implemented across levy groups, for E Class properties it was capped at the amount set for levy group 6.

Therefore, while the rate of levy increase brought about by SL No. 77 was 3.5%, the levy did increase at a higher rate from 1 January 2014 to 30 June 2014 due to the 6.5% increase applied on 1 January 2014.

I can confirm that officers from the Levy Management Command, Public Safety Business Agency have clarified that all increases to the levy under SL No.77 are in accordance with the 3.5% indexation.

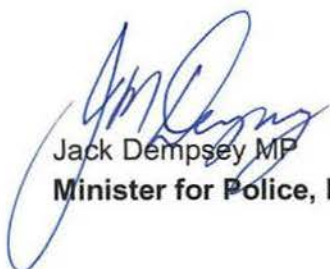
In response to your queries regarding the increase in the administration fee brought about by SL No. 109, I can advise that this is not an additional fee payable by property owners but is rather a fee paid to local governments as a retention out of the annual levy that they collect on behalf of the State Government. The payment of this administration fee is provided for by section 117 of the *Fire and Emergency Services Act 1990* for performing functions under the Act.

The amount of administration fee retained by local governments is calculated according to a formula in section 6 of the Regulation. No increase to this rate has been granted since 2008/2009. The increase serves to acknowledge the work of councils and support their ongoing commitment to providing this service.

Should you require any further information, Mr Mark Hrycek, Chief of Staff is available on telephone (07) 3035 8300.

I trust this information is of assistance.

Yours sincerely



Jack Dempsey MP

Minister for Police, Fire and Emergency Services



The Hon Jarrod Bleijie MP
Attorney-General and Minister for Justice

In reply please quote: 562560/1, 2642300



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Mr Peter Rogers
Acting Research Director
Legal Affairs and Community Safety Committee
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BRISBANE QLD 4000

Dear Mr Rogers 

Thank you for your letter dated 28 August 2014 regarding subordinate legislation tabled on 20 May 2014.

Please see comments below in relation to both the Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014 and Work Health and Safety and Another Regulation Amendment Regulation (No. 1) 2014.

SL No. 56 – Criminal Code (Criminal Organisations) Amendment Regulation (No. 1) 2014

The amendments to section 3 of the Criminal Code (Criminal Organisations) Regulation 2013 (the regulation) contained in the Criminal Code (Criminal Organisations) Amendment Regulation (No.1) 2014 were made at the request of the Honourable Jack Dempsey MP, Minister for Police, Fire and Emergency Services.

I was informed by Minister Dempsey that new intelligence and a review by the Queensland Police Service identified that the relevant four addresses required amendment. I understand that the Queensland Police Service review their intelligence in relation to the regulation in an ongoing manner.

I take this opportunity to note that the Criminal Code (Criminal Organisations) Amendment Regulation (No.2) 2014 commenced on 8 August 2014 and was tabled on 26 August 2014. This amendment regulation further amended section 3 of the regulation to remove three addresses that had been vacated by criminal organisations and add one newly identified address.

As you may appreciate, the nature of section 3 of the regulation is necessarily 'organic'. Addresses will be removed and included based on police intelligence as to the movements of criminal organisations.

(2)

**SL No. 60 – Work Health and Safety and Another Regulation Amendment
Regulation (No. 1) 2014**

During the Queensland Government's review of the Work Health and Safety (WHS) laws, industry representatives raised concerns about some aspects of the national model asbestos regulations which had significant differences from Queensland's former asbestos regulations. Concerns were generally about achieving a balance so that the regulatory requirements are proportionate to the risk to be managed. The Government has given careful consideration to the issues raised by business, union and community representatives. The amendments to the asbestos regulations are aimed at providing sensible requirements which ensure there are well-trained, competent workers doing asbestos removal work and these services are widely accessible to Queensland businesses and homeowners so that people are not tempted to carry out asbestos removal work illegally and without proper safety precautions.

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I trust this information is of assistance.

Yours sincerely



JARROD BLEIJIE MP
Attorney-General and Minister for Justice