

**Subordinate legislation tabled  
between 6 May 2015 and  
2 June 2015**

**Report No. 4, 55<sup>th</sup> Parliament  
Utilities, Science and Innovation Committee**

**September 2015**

# Utilities, Science and Innovation Committee

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| <b>Deputy Chair</b>                                  | Mr Robert Molhoek MP, Member for Southport   |
| <b>Members</b>                                       | Mr Don Brown MP, Member for Capalaba<br>Mr Jason Costigan MP, Member for Whitsunday<br>Mr Dale Last MP, Member for Burdekin<br>Mr Chris Whiting MP, Member for Murrumba        |
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## 1. Introduction

### *Role of the Committee*

The Utilities, Science and Innovation Committee is a portfolio committee established by the Legislative Assembly of Queensland on 26 March 2015. The Committee's primary areas of responsibility are main roads, road safety, ports, energy and water supply, housing, public works, science and innovation.<sup>1</sup>

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* (LSA).

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 6 May 2015 and 2 June 2015.

## 2. Subordinate Legislation

The Committee examined the following subordinate legislation tabled on 19 May 2015:

- Transport Legislation (Fees) Amendment Regulation (No.1) 2015.

The Committee examined the following subordinate legislation tabled on 2 June 2015:

- Proclamation made under the *Queensland Building and Construction Commission and Other Legislation Amendment Act 2015*
- Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No.1) 2015
- Building and Other Legislation Amendment Regulation (No.1) 2015.

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<sup>1</sup> Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 27 March 2015.

**Examination of subordinate legislation**

| SL No. 25                      | Tabling Date: 19 May 2015   | Disallowance Date: 14 October 2015 |
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| <b>Title and Objective</b>     | <p><b>Transport Legislation (Fees) Amendment Regulation (No.1) 2015</b></p> <p>The objective of the Transport Legislation (Fees) Amendment Regulation (No.1) 2015 is to amend various fees and charges for the 2015-16 financial year.</p> <p>The new fees and charges will be introduced by amendments to the following:</p> <ul style="list-style-type: none"> <li>▪ Adult Proof of Age Card Regulation 2010</li> <li>▪ Gold Coast Waterways Authority Regulation 2012</li> <li>▪ Tow Truck Regulation 2009</li> <li>▪ Traffic Regulation 1962</li> <li>▪ Transport Infrastructure (Dangerous Goods by Rail) Regulation 2008</li> <li>▪ Transport Infrastructure (Public Marine Facilities) Regulation 2011</li> <li>▪ Transport Infrastructure (Waterways Management) Regulation 2012</li> <li>▪ Transport Operations (Marine Pollution) Regulation 2008</li> <li>▪ Transport Operations (Marine Safety) Regulation 2004</li> <li>▪ Transport Operations (Passenger Transport) Regulation 2005</li> <li>▪ Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2005</li> <li>▪ Transport Operations (Road Use Management—Dangerous Goods) Regulation 2008</li> <li>▪ Transport Operations (Road Use Management—Driver Licensing) Regulation 2010</li> <li>▪ Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010</li> <li>▪ Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010</li> <li>▪ Transport (Rail Safety) Regulation 2010.</li> </ul> <p>Changes are being made to surcharges for registration periods of less than one year through another amendment regulation.</p> |                                    |
| <b>Committee consideration</b> | <p>The Explanatory Notes advise that the Department of Transport and Main Roads undertakes an annual review of fees and charges. The review adjusts general fees and charges based on Queensland Government policy, which states that fees and charges are to be increased annually by the current Government indexation policy.</p> <p>The current Government indexation policy was confirmed on 22 April 2015 to be 3.5 per cent. Registration fees for motor vehicles with a gross vehicle mass of more than 4.5 tonnes are not subject to the Queensland Government’s approved indexation factor. They are increased in accordance with recommendations made by the National Transport Commission (NTC), based on a long-standing national process. The NTC recommended increase for 2015-16 is 0.6 per cent.</p>   |                                    |

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| <b>Committee comment</b> | <p>The Committee notes that, in the main, the fees and charges prescribed by this Regulation show an increase of 3.5% in keeping with the Queensland Government's policy and the 0.6% increase for motor vehicles with a gross vehicle mass of more than 4.5 tonnes is in keeping with the increase recommended by the National Transport Commission for 2015-16.</p> <p>While a small number of fees exceed the 3.5% limit (3.6%, 3.7% and one increase of 4.3%) the Committee notes this is due to the rounding up of decimal places and is not significant in monetary terms.</p> <p>The Committee also notes that a motion of disallowance in relation to the 3.5% increase in registration fees was resolved in the negative when considered by the Legislative Assembly on 3 June 2015.</p> <p>The Committee is therefore satisfied that the Amendment Regulation (SL No. 25) does not raise any significant issues relating to policy, fundamental legislative principles (FLPs) or lawfulness, and that the Explanatory Notes comply with part 4 of the <i>Legislative Standards Act 1992</i> (LSA).</p> |
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| <b>SL No. 28</b>           | <b>Tabling Date: 2 June 2015</b>   | <b>Disallowance Date: 28 October 2015</b> |
| <b>Title and Objective</b> | <p><b>Proclamation made under the <i>Queensland Building and Construction Commission and Other Legislation Amendment Act 2014</i></b></p> <p>The objective is to fix a commencement date of 1 July 2015 for certain provisions of the <i>Queensland Building and Construction Commission and Other Legislation Amendment Act 2014</i> (QBCCOLA Act).</p> |   |
| <b>Committee comment</b>   | <p>The Committee notes the proclamation date for the <i>Queensland Building and Construction Commission and Other Legislation Amendment Act 2014</i> and is satisfied that the Explanatory Notes comply with part 4 of the LSA.</p>  |   |

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| <b>SL No. 29</b>           | <b>Tabling Date: 2 June 2015</b>  | <b>Disallowance Date: 28 October 2015</b> |
| <b>Title and Objective</b> | <p><b>Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No.1) 2015</b></p> <p>The objectives of the Amendment Regulation are to:</p> <ul style="list-style-type: none"> <li>▪ improve the effectiveness of the demerit system to reduce the frequency of offending by licensees who engage in continuing breaches of the legislation</li> <li>▪ reduce the regulatory requirements governing domestic building contracts and clarify contractual terms and requirements</li> <li>▪ prescribe mandatory training requirements for adjudicators</li> <li>▪ prescribe two policies to improve the adjudication process under the <i>Building and Construction Industry Payments Act 2004</i> (BCIPA).</li> </ul> |   |

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| <p><b>Committee consideration</b></p> | <p>The Committee considered the following potential breaches of FLPs.</p> <p>The Queensland Building and Construction Commission and Other Legislation Amendment Bill 2014 (QBCCOLA Bill) amended the <i>Queensland Building and Construction Commission Act 1991</i> (QBCC Act) to enable demerit offences to be prescribed by regulation rather than in the Act. The QBCC Act does not place a limit on the number of points that may be allocated to a demerit offence in a Regulation. Part 3 of the Amendment Regulation provides for these demerit offences and also prescribes the number of points that may be allocated for each offence.</p> <p>There is a potential FLP issue (Rights and liberties of individuals – section 4(2)(a) LSA) as an accumulation of 30 demit points over a three year period will trigger provisions in the QBCC Act which will result in a person’s licence being cancelled and disqualification from holding a licence for three years. However, the individual may make submissions in relation to the matter, and in the event of an adverse finding, there is a right of review to a tribunal.</p> <p>There is a further potential FLP issue about whether the matters included in the Amendment Regulation are appropriate to subordinate legislation and whether there will be sufficient parliamentary scrutiny (Section 4(5)(c) LSA).<sup>2</sup></p> <p>The Explanatory Notes provide the following justification for transferring the demerit point system from the QBCC Act:</p> <p style="padding-left: 40px;"><i>The QBCCOLA Act increases the flexibility of the demerit point system by removing the demerit offences from the Act and allowing them to be placed in the regulation. It also removes the limit on the number of points that may be allocated for a demerit offence. This addresses feedback that the old regime was ineffective because of the small number of offences that attracted demerit points and the limited points that could be allocated.</i><sup>3</sup></p> <p>The Committee notes that the previous Transport, Housing and Local Government Committee considered this issue when it reported on the QBBC Bill 2014 and that Committee noted there was precedent for offences and breaches which attract demerit points to be prescribed by regulation and stated that the Committee was satisfied with the justification for allowing these to be prescribed by regulation.<sup>4</sup></p> <p><u>Correspondence from Ms Helen Durham</u></p> <p>The Committee also considered a number of issues raised by Ms Helen Durham relating to sections 3-6 of the Amending Regulation (amendments to the Building and Construction Industry Payments Regulation 2004 (BCIPR)).</p> <p>The concerns raised by Ms Durham were in relation to:</p> <ul style="list-style-type: none"> <li>▪ the lawfulness of the approval by regulation of the Adjudicators Responsibilities Policy 2015</li> </ul> |
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<sup>2</sup> The former Scrutiny of Legislation Committee had a policy on the delegation of legislative power to create offences and prescribe penalties, being that - the greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament. The fact that a subject matter more appropriately dealt with in an Act of Parliament is dealt with in regulations that can be disallowed under the *Statutory Instruments Act 1992*, does not cure the Scrutiny Committee’s objection (AD 1996/4:4)

<sup>3</sup> Explanatory Notes, QBCCOLA Regulation (No.1) 2015:2

<sup>4</sup> Transport, Housing and Local Government Committee, Report No. 54:45

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|                                 | <ul style="list-style-type: none"> <li>▪ the approval of the Adjudicator Grading and Referral Policy 2015</li> <li>▪ the lawfulness of section 5 of the Amending Regulation which prescribes mandatory transition training for adjudicators</li> <li>▪ new section 3B(2) of the Regulation is unclear and ambiguous</li> <li>▪ the Explanatory Notes which Ms Durham submits are significantly deficient and fail to comply with the requirements of section 24 of the LSA.<sup>5</sup></li> </ul> <p>The Committee sought advice from the Minister for Housing and Public Works and Minister for Science and Innovation on the issues raised by Ms Durham and the Minister's response is summarized below:</p> <ul style="list-style-type: none"> <li>▪ the Department has commenced a review of security of payment laws for subcontractors, including examining the effectiveness of the recent amendments to BCIPA in 2014</li> <li>▪ a response was provided to Ms Durham on 31 July 2013 addressing her concerns regarding the Adjudicator Responsibilities Policy 2015</li> <li>▪ the Adjudicator Grading and Referral Policy 2015 updates an existing policy, the Adjudicator Grading and Selection Criteria for Nomination of Adjudicators Policy 2014. The new policy provides guidance on what might be considered a reasonable adjudication fee, streamlines the policy and removes outdated terminology. It also benefits adjudicators by allowing the referral of multiple matters to one adjudicator</li> <li>▪ Ms Durham's concerns regarding the alleged practice of refusing to refer matters to adjudicators in certain circumstances has been referred by the Department to the QBCC for investigation</li> <li>▪ Ms Durham has applied to the Queensland Civil and Administrative Tribunal (QCAT) for review of the mandatory training requirements under BCIPA and as the review process was not finalized at the date of the Minister's response (4 Sep 2015) it was not appropriate for the Minister to comment</li> <li>▪ The Minister considers the Explanatory Notes to meet the requirements of the section 4 of the LSA section.<sup>6</sup></li> </ul> |
| <p><b>Committee comment</b></p> | <p>The Committee has noted the concerns raised by Ms Durham in relation to the amendments to the Building and Construction Industry Payments Regulation 2004 and has also noted the Minister's response. The Committee is satisfied that where appropriate, action is being taken to review the policy and administrative issues raised by Ms Durham.</p> <p>The Committee is satisfied that the inclusion of demerit offences in the Queensland Building and Construction Commission and Other Legislation Amendment Regulation (No.1) 2015 (SL No. 29) is justified in the circumstances and that the Regulation does not raise any significant issues relating to policy or lawfulness.</p> <p>The Committee notes that while the Explanatory Notes generally comply with part 4 of the LSA, they do not address the potential FLP issues discussed above and they do not outline the results of consultation as required by section 24(2)(ii) of the LSA.</p>  |

<sup>5</sup> [Letter from Ms Helen Durham dated 13 July 2015](#)

<sup>6</sup> [Letter from the Minister for Housing and Public Works and Minister for Science and Information dated 4 Sep 2015](#)

| SL No. 30                             | Tabling Date: 2 June 2015  | Disallowance Date: 28 Oct 2015 |
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| <p><b>Title and Objective</b></p>     | <p><b>Building and Other Legislation Amendment Regulation (No.1) 2015</b></p> <p>The objective of the Building and Other Legislation Amendment Regulation (No.1) 2015 is to amend the Building Regulation 2006 to introduce a new mandatory part to the Queensland Development Code (QDC) for farm buildings (MP 3.7). This will enable specific provisions of the National Construction Code (NCC), which are considered inappropriate or impractical for some farm buildings, to be varied in Queensland.</p> <p>MP 3.7 provides concessions to some NCC requirements relating to access and egress, artificial lighting, exit signs, emergency lighting and fire-fighting equipment.</p>  |                                |
| <p><b>Committee consideration</b></p> | <p>The Committee considered a potential breach of FLPs in relation to whether the matters included in the Amendment Regulation are appropriate to subordinate legislation and whether there will be sufficient parliamentary scrutiny (Section 4(5)(c) LSA).</p> <p>Under the <i>Building Act 1975</i>, a part of the QDC is introduced only when a regulation approves its introduction. Section 4(5)(e) of the LSA provides that whether subordinate legislation has sufficient regard to the institution of parliament depends on whether the subordinate legislation allows the subdelegation of a power delegated by an Act only if authorised by an Act and in appropriate cases and to appropriate persons.</p> <p>The significance of dealing with such matters other than by subordinate legislation is that since the relevant document is not “subordinate legislation”, it is not subject to the tabling and disallowance provisions of Part 6 of the <i>Statutory Instruments Act 1992</i>.</p> <p><u>Authorised by an Act</u></p> <p>Section 13 of the <i>Building Act 1975</i> provides that the chief executive may amend the QDC. However, the amendment does not take effect until the chief executive publishes the amendment on the Department’s website and a regulation approves the amendment. The Committee notes that it would therefore appear the sub delegation is authorised.</p> <p><u>Appropriate cases and to appropriate persons</u></p> <p>In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, the former Scrutiny Committee considered the importance of the subject dealt with and matters such as the practicality or otherwise of including those matters entirely in subordinate legislation.<sup>7</sup></p> <p>The Committee notes that it is arguable for reasons of practicality, the detailed matters covered in the QDC are suitable for a document other than subordinate legislation.</p> <p><u>Availability of document and parliamentary scrutiny</u></p> <p>The former Scrutiny Committee’s concerns about subdelegation were reduced where the document in question could only be incorporated under subordinate</p> |                                |

<sup>7</sup> Alert Digest 1999/04, p. 10, paras 1.65-167.



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|                                 | <p>legislation (which could be disallowed) and was attached to the subordinate legislation, or required to be tabled with the subordinate legislation and made available for inspection.</p> <p>The Committee notes that the QDC is incorporated by the Amendment Regulation and that while the document is available on the Department's website it does not appear that it is intended to be tabled in Parliament.</p> <p>The Committee also notes the QDC cannot be changed or replaced unless the Regulation is amended to prescribe a new or amended version of the QDC by reference to a new date of publication.</p> <p>The Amendment Regulation does not contain specific information about the change that has been made. Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the QDC) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.</p> |
| <p><b>Committee comment</b></p> | <p>The Committee notes that it is the normal practice for amendments to the QDC to be made by regulation. The Committee also notes that extensive consultation has been undertaken in the development of MP 3.7 through an industry working group with representatives from the agriculture and building sectors, building certifiers, local government, the Department of Agriculture and Fisheries and the Queensland Fire and Emergency Services and the proposal was also reviewed by the Building Industry Consultative Group at various stages throughout 2014 and 2015 (details of the membership of this group can be found in the Explanatory Notes).</p> <p>The Committee is therefore satisfied that the introduction of MP 3.7 through the Building and Other Legislation Amendment Regulation (No.1) 2015 (SL No. 30) is justified in the circumstances and that the Amendment regulation does not raise any significant issues relating to policy or lawfulness.</p> <p>The Explanatory Notes comply generally with part 4 of the LSA however they do not address the potential FLP issues set out above.</p>   |

### 3. Recommendation

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| <p><b>Recommendation</b></p> <p>The Utilities, Science and Innovation Committee recommends that the Legislative Assembly note:</p> <ul style="list-style-type: none"> <li>▪ the subordinate legislation tabled between 6 May 2015 and 2 June 2015</li> <li>▪ that the Committee is satisfied with the justification provided for a number of potential breaches of fundamental legislative principles and did not identify any significant issues in relation to policy or regarding the lawfulness of the subordinate legislation.</li> </ul> |
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*Shane King*

Mr Shane King MP  
Chair