

**Subordinate legislation tabled
between 15 July 2015
and 13 October 2015**

Report No. 10, 55th Parliament
Utilities, Science and Innovation Committee
December 2015

Utilities, Science and Innovation Committee

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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.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 (FLPs)
- 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 15 July 2015 and 13 October 2015.

2. Subordinate Legislation

The Committee examined the following subordinate legislation, tabled on 15 September 2015 with a disallowance date of 3 December 2015:

- Building Amendment Regulation (No.2) 2015
- Transport Operations (Road Use Management-Accreditation and Other Provisions) Regulation 2015
- Transport and Other Legislation Amendment Regulation (No.1) 2015
- Proclamation made under the *Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015*
- Housing Regulation 2015.

The Committee examined the following subordinate legislation, tabled on 13 October 2015 with a disallowance date of 17 February 2016:

- Queensland Building and Construction Commission Amendment Regulation (No.1) 2015
- Queensland Building and Construction Commission and Other Legislation Amendment (Postponement) Regulation 2015.

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

Summary of subordinate legislation examined

SL No. 84	Tabling Date: 15 September 2015	Disallowance Date: 3 December 2015
Title and Objective	<p>Building Amendment Regulation (No.2) 2015</p> <p>The objective of the Building Amendment Regulation (No.2) 2015 (the Amendment Regulation) is to introduce an updated version of the Queensland Development Code (QDC) which will reduce construction costs and time delays associated with complying with noise mitigation requirements for existing dwellings located in designated transport noise corridors at time of renovation, extension or re-location. QDC Part 4.4 (Buildings) provides a consistent, state-wide building standard for properties located in designated transport noise corridors.</p>	
Committee consideration	<p>The Committee considered the potential FLP issue in relation to whether the matters included in the Amendment Regulation are appropriate to subordinate legislation and whether there will be sufficient parliamentary scrutiny under section 4(5)(e) of the 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 sub delegation 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 SLA.</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 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 other than subordinate legislation, the former Scrutiny of Legislation Committee (SLC) considered the importance of the subject dealt with and matters such as the practicality or otherwise of including those matters entirely in subordinate legislation.²</p> <p>The Committee notes that it is arguable, for reasons of practicality, that the detailed criteria in relation to buildings in a transport noise corridor contained 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 SLC’s concerns about sub-delegation were reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and attached to the subordinate legislation, or required to be tabled with the subordinate legislation and made available for inspection.</p>	

² Alert Digest 1999/04, p. 10, paras 1.65-167

	<p>The QDC is incorporated by the Amendment Regulation and is available on the Department’s website, however it does not appear that it will be tabled in Parliament. 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 issue.</p> <p>Where there is, incorporated into the legislative framework, 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>With respect to this particular change to the QDC, the Committee notes that the accompanying Explanatory Notes provide some information about the content of the changes (including the reasons for, and the nature of, the changes) to better inform the House, and this has somewhat ameliorated whether there is sufficient regard to the institution of Parliament.</p>
<p>Committee comment</p>	<p>The Committee notes that it is the normal practice for amendments to the QDC to be made by regulation. It also notes that the following industry stakeholders were consulted in the development of QDC Part 4.4 and they support the proposal:</p> <ul style="list-style-type: none"> • Housing Industry Association • Queensland Master Builders Association • Queensland Building and Construction Commission • Urban Development Institute of Australia • Association of Australian Acoustical Consultants • Australian Acoustical Society • Australian Institute of Building Surveyors. <p>The Committee is satisfied there is sufficient regard to the institution of Parliament and is satisfied that the introduction of QDC Part 4.4 through the Building Amendment Regulation (No.2) 2015 (SL No. 84) is justified in the circumstances and does not raise any significant issues relating to policy or lawfulness.</p> <p>The Committee also notes that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA, but do not address the potential FLP issue discussed above.</p>

SL No. 87	Tabling Date: 15 September 2015	Disallowance Date: 3 December 2015
<p>Title and Objective</p>	<p>Transport Operations (Road Use Management-Accreditation and Other Provisions) Regulation 2015</p> <p>The primary objective of this Regulation (2015 Regulation) is to contribute to the safe and efficient use of the Queensland road network by:</p> <ul style="list-style-type: none"> • providing a framework for industry accreditation schemes that support an integrated and efficient transport system with appropriate levels of safety • providing for a range of approvals for entities to undertake certain road safety related functions 	

	<ul style="list-style-type: none"> • allowing permits to be issued for road access in specific circumstances • providing for various matters under the Transport Operations (Road Use Management) Act 1995. <p>These matters are currently regulated by the Transport Operations (Road Use Management-Accreditation and Other Provisions) Regulation 2005 (the 2005 Regulation). In accordance with Part 7 of the <i>Statutory Instruments Act 1992</i>, the 2005 Regulation fell due for automatic expiry on 1 September 2015. The 2015 Regulation repeals and replaces the 2005 Regulation and continues to regulate the matters outlined above.</p> <p>The 2015 Regulation makes continued provision for the accreditations, approvals, miscellaneous matters and penalties contained in the 2005 Regulation.</p> <p>While the 2015 Regulation is generally consistent with the 2005 Regulation it has been updated to consolidate common provisions and to reflect current drafting practices. The 2015 Regulation also contains amendments to improve consistency between various schemes and to enhance operations.</p>
<p>Committee consideration</p>	<p>The Committee considered the following potential breaches of FLPs.</p> <p>Section 107 inserts an express legislative power for the chief executive to make <i>Business Rules for an Approved Person (Vehicle Modifications), Traffic Controller Accreditation Scheme Approved Procedure and Business Rules for Approved Inspection Stations</i> (the Rules). These documents provide:</p> <ul style="list-style-type: none"> • operational and technical requirements in relation to the functions of approved persons and traffic controllers • operational requirements in relation to issuing inspection certificates at an approved inspection station • conduct and technical matters in relation to directing traffic for the function of traffic controller. <p>The amendments provide a legislative requirement for an approved person to comply with the <i>Business Rules for an Approved Person (Vehicle Modifications)</i> and for an approved inspection station approval holder to comply with the <i>Business Rules for Approved Inspection Stations</i>.</p> <p>This section is a potential breach of FLPs (Institution of Parliament) as the Rules do not come before the Legislative Assembly for scrutiny and they are not subject to disallowance as subordinate legislation.</p> <p>The Explanatory Notes provide the following explanation:</p> <p><i>There is an existing legislative requirement for traffic controllers to comply with the Traffic Controller Accreditation Scheme Approved Procedure. It is understood that the chief executive currently has an implied power to make this document.</i></p> <p><i>The chief executive has existing express powers to make the Code of Conduct for driver and rider trainers and to make the Registered Service Provider Standards. These documents provide:</i></p> <ul style="list-style-type: none"> • <i>conduct matters in relation to the function of driver and rider trainer; and</i> • <i>standards that the registered service providers Q-Ride training program must cover.</i> <p><i>There are also existing legislative requirements for driver and rider trainers to comply with the Code of Conduct and for registered service providers to comply with the Registered Service Provider Standards.</i></p> <p><i>Non-compliance with these documents is a ground for the chief executive to commence a show cause procedure under the Act. Approved persons, traffic controllers, driver and rider trainers, approved inspection station approval holders and registered service providers are given the opportunity to explain the reason why they failed to comply with the respective documents. The</i></p>

	<p><i>explanation is taken into account when the chief executive makes a decision either to take no action, amend, suspend or cancel the accreditation or approval.</i></p> <p><i>Non-compliance with the Registered Service Provider Standards is also an offence that attracts a maximum penalty of 40 penalty units. The chief executive would only pursue this course of action for non-compliance of a serious nature.</i></p> <p><i>The information contained in the above documents is technical and/or detailed in nature and is therefore considered to be impractical to include in subordinate legislation.</i></p>
Committee comment	<p>The information contained in the <i>Business Rules for an Approved Person (Vehicle Modifications), Traffic Controller Accreditation Scheme Approved Procedure and Business Rules for Approved Inspection Stations</i> (the Rules) documents is technical and/or detailed in nature and the Committee notes it is arguable for reasons of practicality, the detailed matters covered in these documents could be considered to be impractical to include in subordinate legislation.</p> <p>The Committee also notes that the relevant industry stakeholders were consulted in the development of these Rules and that they support the proposal.</p> <p>The Committee is of the view there is sufficient regard to the institution of Parliament and is satisfied that the introduction of these Rules through the Regulation is justified in the circumstances and does not raise any significant issues relating to policy or lawfulness.</p> <p>The Committee also notes that while the Explanatory Notes tabled with the Regulation generally comply with part 4 of the LSA, several references to section numbers do not match those in the subordinate legislation.</p>

SL No. 89	Tabling Date: 15 September 2015	Disallowance Date: 3 December 2015
Title and Objective	<p>Transport and Other Legislation Amendment Regulation (No.1) 2015</p> <p><u>Repeat mobile phone offences</u></p> <p>The objective of this Amendment Regulation is to enhance road safety by discouraging repeat mobile phone use by drivers. Driver distraction has been identified as one of the major causes of road crashes. Using a mobile phone while driving is distracting and has been shown to increase crash risk by four times. Text messaging by drivers is especially dangerous, with potentially four times as much time spent looking away from the road than when not texting. The Amendment Regulation introduces <u>double demerit points for repeat mobile phone offences</u> committed by a driver within a one year period.</p> <p>The amendments to apply double demerit points for mobile phone offences arose out of the ‘Safer Roads, Safer Queensland’ forum held on 10 April 2015 and attended by key stakeholders, including the Royal Automobile Club of Queensland, the Centre for Accident Research and Road Safety – Queensland, Bicycle Queensland, the Motorcycle Riders’ Association Queensland and the Queensland Trucking Association.</p> <p><u>Adult proof of age card</u></p> <p>The Amendment Regulation also allows an adult proof of age card to be issued free of charge to a person who surrenders their driver licence or whose licence is cancelled on medical grounds. This is intended to provide an alternative identity document free of charge to ensure that the cost of the card is not a disincentive to a person surrendering their licence where it may no longer be safe for them to drive.</p>	

	<p><u>Minor amendments</u></p> <p>The Amendment Regulation also makes a number of minor amendments to enhance transport regulations.</p>
<p>Committee consideration</p>	<p>The Committee considered the following potential breaches of FLPs.</p> <p><u>Repeat mobile phone offences</u></p> <p>The amendments (clause 12) applying double demerit points to the traffic history of drivers who commit multiple mobile phone offences within a one year period raises the potential FLP issue of rights and liberties of individuals as there is the potential, through the accumulation of demerit points, for a person’s driver licence to be suspended for a period and this may result in a restriction on that person’s mobility.</p> <p>The Explanatory Notes provide the following justification:</p> <p><i>It is important to note... that the demerit point changes in the amendment regulation will only impact on those drivers who commit multiple mobile phone offences within a one year period. The amendments will not impact on those drivers who comply with the laws governing mobile phone use while driving or on those who commit a single mobile phone offence within a one year period. In this way, the impact of these amendments is entirely avoidable.</i></p> <p><i>Driver distraction, including distraction caused by mobile phone use, has been identified as a contributing factor in a significant number of road crashes. The Queensland Police Service now lists driver distraction and inattention as one of its Fatal Five contributing factors. In 2014, more than 25,000 penalty infringement notices were issued for mobile phone offences committed by drivers. The application of double demerit points to a second or subsequent offence committed within one year reflects the serious road safety risk presented by repeated contraventions of the laws governing mobile phone use while driving.</i></p> <p><i>To ensure drivers are fully aware of the demerit point changes in this amendment regulation, when a mobile phone offence is recorded on a person’s traffic history, a courtesy notice will be issued to them advising them that if they commit a second or subsequent mobile phone offence within the following one year period, double demerit points will be applied in relation to that offence.</i></p> <p><u>Clause 28 (Amendment of s 14 – Guidelines and permits for light vehicles)</u> provides for the chief executive to allow guidelines for the safe movement of vehicles to be published on the Department’s website, rather than published in the Government Gazette to take effect on the day of publication or on a later date if specified.</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 SLC considered the importance of the subject dealt with and matters such as the practicality or otherwise of including those matters entirely in subordinate legislation.³ The guidelines relate to light vehicles and the Committee notes there is only limited information provided about this in the Explanatory Notes.</p> <p><u>Availability of document and parliamentary scrutiny</u></p> <p>The former SLC’s concerns about sub-delegation were reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and 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 guidelines do not appear to be incorporated by the Amendment Regulation. The document is available on the Department’s website,</p>

³ Alert Digest 1999/04, p. 10, paras 1.65-167

	<p>however it does not appear that it is intended that they will be tabled in Parliament.</p> <p>The Committee notes that while, given the level of detail and flexibility required, it may be preferable for the guidelines to be published on the Department's website, rather than subordinate legislation, there is no information provided on this in the Explanatory Notes.</p>
Committee comment	<p>The Committee considers the potential FLP issue in relation to the introduction of double demerit points for repeat mobile phone offences is justified as:</p> <ul style="list-style-type: none"> • the demerit points will only impact on those drivers who commit multiple mobile phone offences within a one year period • the Queensland Police Service now lists driver distraction and inattention as one of its Fatal Five contributing factors • a person issued with a mobile phone offence will be advised of the consequences should they commit a second or subsequent mobile phone offence within the following one year period. <p>The potential FLP issue in relation to allowing the chief executive to publish guidelines for the safe movement of vehicles on the department's website, rather than to publish in the Government Gazette, is also considered justified as it is considered normal, modern practice. However, the Committee considers it would be preferable, in future, for the subordinate legislation to include some information about the content and scope of a document to better inform the House.</p> <p>Overall, the Committee is of the view there is sufficient regard to the rights and liberties of individuals as well as the institution of Parliament, and is satisfied that the introduction of the amendments is justified in the circumstances and does not raise any significant issues relating to policy or lawfulness.</p> <p>The Committee notes that while the Explanatory Notes tabled with the amending Regulation generally comply with part 4 of the LSA, an outline of the results of consultation should have been provided in accordance with s.24(2)(a)(ii) of the LSA.</p>

SL No. 100	Tabling Date: 15 September 2015	Disallowance Date: 3 December 2015
Title and Objective	<p>Proclamation made under the <i>Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015</i></p> <p>The objective was to fix a commencement date of 21 August 2015 for certain provisions of the <i>Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015</i>.</p>	
Committee comment	<p>The Committee notes the proclamation date for the <i>Payroll Tax Rebate, Revenue and Other Legislation Amendment Act 2015</i> and is satisfied that the Explanatory Notes comply with part 4 of the LSA.</p>	

SL No. 101	Tabling Date: 15 September 2015	Disallowance Date: 3 December 2015
Title and Objective	<p>Housing Regulation 2015</p> <p>The objective of the Housing Regulation 2015 (the Regulation) is to remake the Housing Regulation 2003 (2003 Regulation). The objective of the Regulation is to help give effect to provisions of the Act that allow for the development and undertaking of housing-related activities, programs such as social housing and ancillary services and products such as housing loans.</p> <p>The Regulation supports a system for the provision of funded services and loan products that helps to achieve the main objects of the Act and prescribes the requirements relating to the provision of housing services for which a provider receives funding such as how a funded provider conducts its operations, how those funded services are delivered to clients, and how the outcomes of funded service delivery are reported to the chief executive.</p> <p>The Regulation requires a provider to only use funding or receipts that the provider receives for a housing service in a way that complies with the funding agreement for the service. The Regulation requires the return of unspent receipts and where there are accumulated unspent receipts the Regulation enables the chief executive to require the provider to return the funds. These measures help ensure transparency, accountability and effective ongoing use of funds for housing services.</p> <p>The Regulation also helps to give effect to the chief executive's power to make loans and investments including giving financial or other assistance to individuals to obtain housing. This may involve helping an individual to buy or lease a residence, or obtain housing in another way, or to modify or maintain a residence.</p>	
Committee comment	The Committee is satisfied that there are no issues of fundamental legislative principle and that the Explanatory Notes tabled with the Regulation comply with part 4 of the LSA.	

SL No. 138	Tabling Date: 13 October 2015	Disallowance Date: 17 February 2016
Title and Objective	<p>Queensland Building and Construction Commission Amendment Regulation (No.1) 2015</p> <p>The objective of this Regulation is to amend the Queensland Building and Construction Commission Regulation 2003 to approve the new 'Minimum Financial Requirements' (MFR) policy of the Queensland Building and Construction Board and to stipulate transitional arrangements for the application of the new MFR policy.</p>	
Committee comment	The Committee is satisfied that there are no issues of fundamental legislative principle and that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.	

SL No. 139	Tabling Date: 13 October 2015	Disallowance Date: 17 February 2016
Title and Objective	<p>Queensland Building and Construction Commission and Other Legislation Amendment (Postponement) Regulation 2015</p> <p>The <i>Queensland Building and Construction Commission and Other Legislation Amendment Act 2014</i> (QBCCOLA Act) received Royal Assent on 27 October 2014. All provisions of the Act have commenced, other than those relating to the Queensland Home Warranty Scheme.</p> <p>The objective of this Regulation is to postpone the automatic commencement of all uncommenced provisions in the QBCCOLA Act until 27 October 2016. Postponement of the uncommenced QBCCOLA Act provisions is necessary to ensure that the provisions do not commence before necessary changes to the <i>Queensland Building and Construction Commission Regulation 2003</i> are made.</p> <p>Section 15DA(2) of the <i>Acts Interpretation Act 1954</i> states that where provisions of an Act have not commenced within one year of the assent day, they will automatically commence on the next day. Section 15DA(3) enables a regulation to be made to extend the period before commencement to not more than two years of the assent day.</p> <p>The Regulation extends the automatic commencement date of the QBCCOLA Act to 27 October 2016. This will allow any deferred provisions to commence alongside the associated regulation changes.</p>	
Committee comment	<p>The Committee is satisfied that there are no issues of fundamental legislative principle and that the Explanatory Notes tabled with the amending Regulation comply with part 4 of the LSA.</p>	

3. Recommendation

Recommendation

The Utilities, Science and Innovation Committee recommends that the Legislative Assembly note:

- the subordinate legislation tabled between 15 July 2015 and 13 October 2015
- that the Committee did not identify any significant issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation.



Mr Shane King MP
Chair