

**Subordinate legislation tabled
between 14 June 2017 and
8 August 2017**

Report No. 51, 55th Parliament
Public Works and Utilities Committee
October 2017

Public Works and Utilities Committee

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1. Introduction

Role of the committee

The Public Works and Utilities Committee is a portfolio committee established by the Legislative Assembly of Queensland on 27 March 2015. The committee's primary areas of responsibility are Main Roads, Road Safety, Ports, Energy and Water Supply; and Housing, Public Works and Sport.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) to the legislation, and
- the lawfulness of the subordinate legislation.

Section 93(2)(a) of the *Parliament of Queensland Act 2001* confers responsibility on the committee to monitor the content of explanatory notes in its portfolio areas to ensure they comply with part 4 of the *Legislative Standards Act 1992*.

Aim of this report

This report advises on subordinate legislation examined and, where applicable, presents any concerns the committee has identified, in respect of subordinate legislation tabled between 14 June 2017 and 8 August 2017.

2. Subordinate legislation

Summary of subordinate legislation examined

SL No. 102	Tabling Date: 8 August 2017	Disallowance Date: 26 October 2017
Title	Proclamation - <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2016</i>	
SL No. 113	Tabling Date: 8 August 2017	Disallowance Date: 26 October 2017
Title	Heavy Vehicle National Amendment Regulation 2017	
Objective	<p>The Heavy Vehicle National Amendment Regulation 2017 amends the Heavy Vehicle (General) National Regulation, the Heavy Vehicle (Mass, Dimension and Loading) National Regulation and the Heavy Vehicle (Vehicle Standards) National Regulation.</p> <p>The amendments to the Heavy Vehicle (General) National Regulation include:</p> <ul style="list-style-type: none"> • removing duplication of new requirements about display and legibility of National Heavy Vehicle Accreditation Scheme labels inserted by the Heavy Vehicle National Law Amendment Act 2016, and • inserting the method for increasing fee amounts under the HVNL for purposes of new section 740A of the <i>Heavy Vehicle National Law Amendment Act 2016</i> that allows fees set by the NHVR in the National Regulations to commence automatically on 1 July each year. 	

¹ Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 14 Feb 2017.

	<p>The amendments to the Heavy Vehicle (Mass, Dimension and Loading) National Regulation include:</p> <ul style="list-style-type: none"> • removing duplication of new requirements about display and legibility of National Heavy Vehicle Accreditation Scheme labels inserted by the <i>Heavy Vehicle National Law and Other Legislation Amendment Act 2016</i>, and • removing the mandatory requirements for the NHVR to publish various notices about Higher Mass Limits declarations in national newspapers and provide discretion for the NHVR to publish elsewhere if the NHVR considers it appropriate. <p>The amendments to the Heavy Vehicle (Vehicle Standards) National Regulation include:</p> <ul style="list-style-type: none"> • clarifying how the width of a heavy vehicle is measured for consistency with how the width of a light vehicle is measured • aligning the requirements about window tinting with those prescribed by the Australian Design Rules • allowing for an increase in the number of headlights that may be fitted to a heavy vehicle provided certain conditions are met, and • clarifying that brake lights used as direction indicator lights are deemed to be brake lights if fitted to a heavy vehicle built before 1 January 1973. 	
Committee comment	<p>The committee was satisfied that there were no issues of FLP detected and that the explanatory notes tabled comply with part 4 of the LSA and comprehensively address issues of fundamental legislative principle as referenced above.</p>	
SL No. 118	Tabling Date: 8 August 2017	Disallowance Date: 26 October 2017
Title	Housing and Public Works Legislation (Fees) Amendment Regulation 2017	
Objective	<p>The objective is to index fees prescribed in the following regulations by 3.5% from 1 July 2017 in accordance with the current government indexation policy:</p> <ul style="list-style-type: none"> • Architects Regulation 2003 • Building Regulation 2006 • Building and Construction Industry Payments Regulation 2004 • Housing Regulation • Plumbing and Drainage Regulation 2003 • Professional Engineers Regulation 2003 • Queensland Building and Construction Commission Regulation 2003 • Residential Services (Accreditation) Regulation 2002, and • Retirement Villages Regulation 2010. 	

Committee comment	<p>The committee noted that there were 13 increases due to rounding, ranging from:</p> <ul style="list-style-type: none"> • 3.6% (for example, related to the Housing Regulation, an increase from \$29.55 to \$30.60 for an additional fee for each document lodged by post/in person) to • 4.2% (for example, related to the Architects Regulation, an increase from \$2.40 to \$2.50 for printing each page of approved code of practice). <p>The committee was satisfied that the explanatory notes tabled with the regulation comply with part 4 of the LSA.</p>	
SL No. 124	Tabling Date: 8 August 2017	Disallowance Date: 26 October 2017
Title	Transport Operations (Road Use Management – Driver Licensing) (Road Rules Test) Amendment Regulation 2017	
Objective	<p>The achieve its policy objectives, the Transport Operations (Road Use Management - Driver Licensing) (Road Rules Test) Amendment Regulation 2017 aims to make the following amendments:</p> <ul style="list-style-type: none"> • allow a person to enrol in an online learning and assessment program at 15 years and 11 months – this provides a month to complete the program and assessment for those who want their learner licence issued when they turn 16 • a person caught cheating on the written or online road rules test will be suspended from completing any form of road rules test for 6 months, and if enrolled, will have their enrolment cancelled • a person caught completing the written or online road rules test on behalf of another person may be fined up to 40 penalty units (equal to \$5,046) • a person can apply for a review of a decision to cancel their enrolment or suspend them from taking a road rules test for cheating • the definition of ‘road rules test’ will be amended to include the online program, and • the reference to 12 months in the definition of ‘valid medical certificate’ will be changed to 13 months. <p>The explanatory notes advised that consultation was undertaken with the Queensland Education for New Drivers Advisory Group² and that its members were in support of the online learning and assessment program and have actively contributed to its development.³</p> <p>The explanatory notes also advised that the amendment to extend the currency of medical certificates to 13 months was in response to feedback from customers and medical practitioners.⁴</p>	

² Membership includes RACQ, Queensland Police Service, University of Sunshine Coast, Centre for Accident Research and Road Safety - Queensland, University of New South Wales and the Australian Driver Trainers Association Queensland.

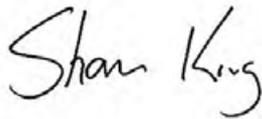
³ Explanatory notes, Transport Operations (Road Use Management—Driver Licensing) (Road Rules Test) Amendment Regulation 2017, p 3.

⁴ Explanatory notes, Transport Operations (Road Use Management—Driver Licensing) (Road Rules Test) Amendment Regulation 2017, p 3.

Committee consideration	<p><i>Rights and liberties – penalties, section 4(2)(a) Legislative Standards Act 1992</i></p> <p>Section 85 of the <i>Transport Operations (Road Use Management) Act 1995</i> (TORUMA) allows for a regulation to prescribe up to an <u>80 penalty unit</u> penalty for an offence.</p> <p>In Alert Digest No. 4 of 1996, the former Scrutiny of Legislation Committee (SLC) adopted a formal policy (Policy No. 2 of 1996) on the question of delegation of legislative power to create offences and prescribe penalties. The SLC accepted that legislative power to create offences and prescribe penalties may be delegated in limited circumstances provided certain safeguards were observed. This included that maximum penalties in regulations should be limited, generally, to <u>20 penalty units</u>. The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states: ‘The principal means of creating offences should always be through Acts of Parliament rather than delegated legislation’.⁵</p> <p>Although this regulation provides for a fine of up to 40 penalty units (equal to \$5,046) for a person caught completing a road rules test on behalf of another person, a maximum penalty that is double that which was considered reasonable for a regulation by the former SLC, the regulation is within power pursuant to section 85 of TORUMA.</p>
Committee comment	<p>The committee noted that the departure from recommended penalty limits for regulations may be justified in the circumstances.</p> <p>The committee was satisfied the explanatory notes tabled with the regulation comply with part 4 of the LSA.</p>

3. Recommendation

<p>Recommendation</p> <p>The Public Works and Utilities Committee recommends that the Legislative Assembly note:</p> <ul style="list-style-type: none">• the subordinate legislation tabled between 14 June 2017 and 8 August 2017, and• that the committee did not identify any significant issues regarding the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles to it, or its lawfulness.



Mr Shane King MP
Chair

⁵ OQPC, FLP: *The OQPC Notebook*, pp 150-151.