

**Subordinate legislation tabled
between 7 March 2018 and 1 May
2018**

Report No. 8, 56th Parliament
Transport and Public Works Committee
July 2018

Transport and Public Works Committee

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Ted Sorensen MP, Member for Hervey Bay
Members	Mr Colin Boyce MP, Member for Callide
	Mr Robbie Katter MP, Member for Traeger
	Mr Bart Mellish MP, Member for Aspley
	Mrs Jo-Ann Miller MP, Member for Bundamba

Contact details Transport and Public Works Committee
Parliament House
George Street
Brisbane Qld 4000

Telephone +61 7 3553 6621
Email TPWC@parliament.qld.gov.au
Web <http://www.parliament.qld.gov.au/TPWC>

1. Introduction

1.1 Role of the committee

The Transport and Public Works Committee is a portfolio committee established by the Legislative Assembly of Queensland on 15 February 2018. The committee's primary areas of responsibility are Transport and Main Roads, Housing, Public Works, Digital Technology 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*.

1.2 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 7 March 2018 and 1 May 2018.

1.3 Subordinate legislation examined

SL No	Subordinate Legislation	Tabled Date	Disallowance Date
022	Transport Operations (Passenger Transport) and Other Legislation (Personalised Transport Reform) Amendment Regulation 2018	20 March 2018	22 August 2018
030	Proclamation made under the <i>Tow Truck and Other Legislation Amendment Act 2018</i>	1 May 2018	5 September 2018
046	Transport Operations (Road Use Management-Vehicle Registration) (Special Interest Vehicles) Amendment Regulation 2018	1 May 2018	5 September 2018

¹ Schedule 6 – Portfolio Committees, *Standing Rules and Orders of the Legislative Assembly* as amended on 15 Feb 2018.

2. Subordinate legislation examined

2.1 Transport Operations (Passenger Transport) and Other Legislation (Personalised Transport Reform) Amendment Regulation 2018 (SL 022)

The objectives of the regulation are to:

- enable the Department of Transport and Main Roads (the department) to monitor service performance, demand and changes in the personalised transport industry and provide important inputs into the broader planning processes for public passenger services
- enable the department to monitor work hours of drivers of motor vehicles used to provide taxi services and booked hire services to improve safety outcomes relating to fatigue management
- ensure the reimbursement of subsidy payments to service providers under the Taxi Subsidy Scheme to safeguard the provision of services to people with disabilities
- ensure booked hire service identification signs comply with the requirements for the signs before they are displayed on booked hire vehicles
- clarify recent amendments relating to the personalised transport reforms.

Potential FLP issue – penalties

Rights and liberties of individuals – section 4(2)(a) *Legislative Standards Act 1992*

The amending regulation includes amendments to the Transport Operations (Passenger Transport) Regulation 2005. Some of these amendments create offences and prescribe various maximum penalties, four of which are 40 penalty units and three of which are 80 penalty units. The amending regulation prescribes 40 penalty units for the following:

- failing to give the chief executive written notice about a change to an increased fleet within 14 days after the change happens (section 117DRA)
- the operator failing to keep a record of specific taxi services information (section 71G)
- the operator failing to report taxi services information to the chief executive within 28 days after the end of each financial year (section 71H)
- the operator failing to comply with a written notice from the chief executive to provide information (section 71H).

The amending regulation prescribes 80 penalty units for the following:

- the authorised booking entity and operator failing to record specific information about each driver (section 71C)
- the authorised booking entity operator failing to comply with a written notice from the chief executive to provide specific information (section 71D)
- a person must not give information to the authorised booking entity or operator for section 71C if the person knows the information is false, misleading or incomplete in a material particular (section 71E).

Section 155 of the *Transport Operations (Passenger Transport) Act 1994* (which is the authorising Act) provides that a regulation may prescribe offences for a contravention of a regulation and fix a maximum penalty of not more than 80 penalty units for the contravention. The maximum penalties in the amending regulation are therefore within this limit.

In *Alert Digest* No. 4 of 1996, the former Scrutiny of Legislation Committee adopted a formal policy (Policy No. 2 of 1996) which accepted that legislative power to create offences and prescribe

penalties may be delegated (to regulation) in limited circumstances provided certain safeguards were observed. These included requirements that:

- rights and liberties of individuals should not be affected by the delegation of the power
- the obligations imposed on a person under the delegated power be limited
- the maximum penalties generally ought not to exceed 20 penalty units.²

As noted above, seven penalties are higher than the 20 penalty unit cap recommended by the former committee. Given the policy intent of the Act and that it authorises the use of these penalty units, the committee considers it is appropriate that offences with maximum penalties of 40 or 80 penalty units be contained in the regulation.

Explanatory notes

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992* other than in the two respects set out below.

Benefits and costs

Section 24(1)(h) of the *Legislative Standards Act 1992* requires that an explanatory note for subordinate legislation include:

(h) a brief assessment of the benefits and costs of implementing the legislation that—

(i) if practicable and appropriate, quantifies the benefits and costs; and

(ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives...

The amending regulation's explanatory notes state that:

The reforms contained in this regulation facilitate implementation of the Queensland Government's personalised transport reforms. The benefits and costs of implementation were outlined in the explanatory notes accompanying the Transport and Other Legislation (Personalised Transport Reform) Amendment Bill 2017.³

This does not satisfy the requirement in the *Legislative Standards Act 1992* in that the benefits and cost of the regulation have not been included in the explanatory note for the regulation.

The committee is of the view that accessibility to, and understanding of, legislation are enhanced when the requirements of the *Legislative Standards Act 1992* are adhered to. As such, the committee wrote to the Department of Transport and Main Roads seeking further advice in regard to the benefits and costs of implementing the regulation. The department advised:

The Regulation is part of the Queensland Government's package of legislative changes to comprehensively reform the personalised transport industry. The reforms aim to strengthen safety standards for the whole industry, provide customers with greater choice and flexibility, drive innovation and improved customer service standards through reduced red tape, ensure accountability and clearly define obligations across the industry.

The requirements in the Regulation principally deal with information keeping and reporting requirements for booking entity authorisation (BEA) holders and operators of taxi services, and are consistent with the explanatory notes for Transport and Other Legislation (Personalised Transport Reform) Amendment Act 2017 (the Amendment Act), which was considered by the former Public Works and Utilities Committee in 2017.

² See Alert Digest 4 of 1996, 6-7. See also Office of the Queensland Parliamentary Counsel, *Principles of good legislation*, Subordinate legislation, version 1, 27 June 2014, pp 14-15, and Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 150-151.

³ Explanatory notes, p 2.

The Regulation also includes other changes to improve the workability of the new industry framework and addresses issues that have been identified during early implementation of the framework. These involved:

- *ensuring that subsidy payments made under the Taxi Subsidy Scheme are passed on to the person who provided the service*
- *allowing the Department of Transport and Main Roads (TMR) to prevent booked hire service identification signs from being used that do not meet legislative requirements, and*
- *requiring BEA holders to notify TMR when their fleet size increases significantly.*

The information keeping and reporting requirements ensure that TMR is able to undertake objective, evidence-based analysis of passenger safety and demand, industry sustainability and performance.

...

The personalised transport industry has always been subject to record keeping and reporting requirements, and it is important to note that the Regulation replaces several previously existing requirements.

The Regulation supplements and complements a range of information keeping requirements that exist under the new personalised transport framework. For example, for each BEA, holders are required to keep and provide to their drivers, a booking record that contains key information about the trip. In practice, BEA holders also keep records relating to their drivers and vehicles to comply with their safety duties under the Amendment Act.

To enable the industry to comply with the reporting requirements as easily as possible, TMR has developed and provided to BEA holders, simple Microsoft Excel reporting templates. A copy of the Excel reporting template is available on the personalised transport reform website at <https://personalisedtransport.tmr.qld.gov.au/>.⁴

The committee is satisfied that the department's response provides the information required about the benefits and costs of implementing the legislation.

Consultation

The explanatory notes do provide details about consultation, but do not include an outline of the results of consultation, as required by section 24(2)(ii) of the *Legislative Standards Act 1992*. The committee wrote to the Department of Transport and Main Roads seeking further advice. The department advised:

The requirements [information keeping and reporting requirements of booking entity authorisation holders] were developed in consultation with the personalised transport industry throughout the reforms. In particular, TMR consulted with members of the Personalised Transport Industry Reference Group in September and October 2017, about the proposed information keeping and reporting requirements. TMR adapted industry feedback into the final regulatory provisions. This included reductions in reporting requirements and frequency, and thereby reducing the burden on industry.⁵

The committee is satisfied with the department's response in regard to the outcome of the consultation process on the regulation.

Committee comment

The committee is satisfied the Transport Operations (Passenger Transport) and Other Legislation (Personalised Transport Reform) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

⁴ Department of Transport and Main Roads, correspondence dated 6 July 2018.

⁵ Department of Transport and Main Roads, correspondence dated 6 July 2018.

2.2 Proclamation made under the *Tow Truck and Other Legislation Amendment Act 2018* (SL 030)

The objective of the Proclamation is to fix a commencement date of 16 April 2018 for certain provisions of the *Tow Truck and Other Legislation Amendment Act 2018*.

Committee comment

The committee notes that the explanatory notes do not contain information about whether consultation took place and so do not strictly comply with section 24(4) of the *Legislative Standards Act 1992*. However, given the technical nature of the proclamation, the committee considers that consultation was arguably (and reasonably) deemed to be unwarranted. The explanatory notes otherwise comply with part 4 of the *Legislative Standards Act 1992*.

The committee is satisfied the Proclamation made under the *Tow Truck and Other Legislation Amendment Act 2018* does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness.

2.3 Transport Operations (Road Use Management-Vehicle Registration) (Special Interest Vehicles) Amendment Regulation 2018 (SL 046)

The objectives of the regulation are to:

- allow a police officer to issue a permit to move an unregistered vehicle when issuing a notice for a person to appear in court
- reduce the registration fee for a motorbike registered as a special interest vehicle
- lower the age that a bus is eligible for registration as a special interest vehicle from 30 to 25 years, and
- strengthen provisions dealing with obscene or indecent number plates, including reinserting a relevant maximum penalty (of 20 penalty units) which was inadvertently removed due to an oversight in an earlier amendment regulation.

Committee comment

The committee is satisfied the Transport Operations (Road Use Management-Vehicle Registration) (Special Interest Vehicles) Amendment Regulation 2018 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness. The committee notes that the explanatory notes tabled with the amending regulation comply with part 4 of the *Legislative Standards Act 1992*.

3. Summary of examination and recommendation

The committee did not identify any significant issues relating to the policy to be given effect by the legislation, the application of fundamental legislative principles or the lawfulness of the subordinate legislation examined.

Most explanatory notes tabled with the subordinate legislation comply with Part 4 of the *Legislative Standards Act 1992*—where they did not comply, the committee wrote to the relevant department and sought advice, which is included in this report. The committee, however, brings to the attention of the Legislative Assembly that it has written to departments within its portfolio areas of responsibility in regard to several instances (noted in this report and the committee's report no. 6) where explanatory notes have not complied with part 4 of the *Legislative Standards Act 1992*.

The committee would like to reiterate its stance that accessibility and understanding of legislation are enhanced when the requirements of the *Legislative Standards Act 1992* are adhered to and encourages departments to ensure that explanatory notes comply in this regard.

Recommendation

The Transport and Public Works Committee recommends that the Legislative Assembly notes the contents of this report.

A handwritten signature in black ink that reads "Shane King". The signature is written in a cursive, slightly slanted style.

Mr Shane King MP

Chair