

## Economics and Governance Committee

### Report No. 28, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 27 March 2019 and 30 April 2019

#### 1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 27 March 2019 and 30 April 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, its consistency with fundamental legislative principles (FLPs), and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
34 of 2019	Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2019	2 April 2019	21 August 2019
39 of 2019	Local Government Legislation Amendment Regulation 2019	2 April 2019	21 August 2019
58 of 2019	Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019	30 April 2019	4 September 2019

#### 3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the consistency with FLPs or the lawfulness of the subordinate legislation. While a potential FLP concern was acknowledged in respect of SL No. 58, the committee was satisfied that the relevant provisions are appropriate and do not impose on individual rights and liberties. The explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA.

##### 3.1 SL No. 34 of 2019 – Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2019

Pursuant to the *Motor Accident Insurance Act 1994* and the *National Injury Insurance Scheme (Queensland) Act 2016* respectively, for each new financial year, the levies and the administration fee that apply to Compulsory Third Party (CTP) insurance premiums, and the levy for Queensland’s National Injury Insurance Scheme (NIISQ), are to be fixed by regulation to be made before 1 April.<sup>1</sup>

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<sup>1</sup> Section 14A of the *Motor Accident Insurance Act 1994* specifies that a regulation fixing the levies and the administration fee for a particular financial year must be made at least three months before the beginning of the financial year. Section 99 of the *National Injury Insurance Scheme (Queensland) Act 2016* similarly provides that a regulation fixing the scheme levy for a particular financial year must be made at least three months before the beginning of the financial year.

The objectives of SL No. 34 are to:

- fix the levies and administration fee for the CTP insurance scheme for the 2019-20 financial year (that is, the Hospital and Emergency Services Levy, the Statutory Insurance Scheme Levy, the Nominal Defendant Levy and the administration fee), to apply from 1 July 2019
- fix the levy for the NISSQ for 2019-20, to apply from 1 July 2019, and
- remove additional amounts on insurance premiums payable on motor registration terms of less than one year.<sup>2</sup>

The Regulation provides for no change to the Statutory Insurance Scheme Levy amounts set for 2018-19, minor increases for the Hospital and Emergency Services Levy and Nominal Defendant Levy, and a slight increase to the administration fee for the CTP scheme, from \$7.50 to \$8.40 for 2019-20. The applicable levy amounts for the NISSQ also increase on the 2018-19 levy amounts, generally by around 2.6 per cent.

The explanatory notes for the Regulation advise that consultation was undertaken with relevant agencies in determining each of the levy and administration fee amounts for 2019-20. The explanatory notes also state that the Department of Transport and Main Roads and the four licensed insurers were consulted regarding the removal of additional amounts on insurance premiums payable on vehicle registration terms of less than one year.<sup>3</sup>

#### *Committee comment*

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the requirements of part 4 of the LSA.

### **3.2 SL No. 39 of 2019 – Local Government Legislation Amendment Regulation 2019**

The objectives of SL No. 39 are to:

- amend National Competition Policy (NCP) business activity thresholds, and
- adjust the maximum interest rates payable for overdue rates and charges.

The *City of Brisbane Act 2010* and *Local Government Act 2009* provide for the application of NCP Agreements in relation to the significant business activities of councils.<sup>4</sup> This includes the application of the competitive neutrality principle, which provides that an entity that is conducting a business activity in competition with the private sector should not enjoy a net advantage over competitors only because the entity is in the public sector. The application of the principle is subject to a public benefit assessment – that is, an assessment of whether the benefit to the public (in terms of service quality and cost) of applying the competitive neutrality principle in relation to a significant business activity outweighs the costs of applying the principle.<sup>5</sup>

The expenditure thresholds that a business activity must meet to be a significant business activity for the purposes of applying the competitive neutrality principle are set out in section 16 of the *City of Brisbane Regulation 2012* and section 19 of the *Local Government Regulation 2012*. SL No. 39 amends these sections to increase the expenditure threshold amounts in line with the Consumer Price Index (CPI), as of 1 July 2019. The explanatory notes advise that the threshold amounts have been indexed regularly according to the CPI since the introduction of the NCP requirements in the 1990s, with the last increase having occurred in December 2016.

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<sup>2</sup> Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2019, explanatory notes, p 2.

<sup>3</sup> Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2019, explanatory notes, p 2.

<sup>4</sup> *City of Brisbane Act 2010*, Chapter 3, Part 3, Division 2; *Local Government Act 2009*, Chapter 3, Part 2, Division 2.

<sup>5</sup> *City of Brisbane Act 2010*, Chapter 3, Part 3, Division 2; *Local Government Act 2009*, Chapter 3, Part 2, Division 2.

There is one exception to the application of the CPI increase, being the expenditure threshold for combined water and sewerage services. According to the explanatory notes, this threshold, which has also been regularly indexed, currently sits at \$13.96 million.<sup>6</sup> SL No. 39 replaces this monetary threshold with an activity-based threshold, by specifying that a business activity that is a combined water and sewerage service is a significant business activity for a financial year if 10,000 or more premises are connected to a water service as at 30 June of the previous financial year. The explanatory notes state that this threshold 'is more easily defined and measured and more appropriately reflects growth in the business activity'.<sup>7</sup>

In relation to the amendment to the maximum rate of interest payable on overdue rates and charges, the explanatory notes advise that the current maximum rate of 'not more than 11%' as determined by the local government, was set in 1994 and has not been changed since.<sup>8</sup> By instead providing for the maximum interest rate to be determined by the bank bill yield rate published by the Reserve Bank in March of the previous financial year, plus eight percentage points, the explanatory notes argue that the amendments provide a mechanism for variation 'in accordance with market rates', and 'for the maximum interest rate to be set in a fair and equitable manner without the need for periodic review or ongoing legislative changes'.<sup>9</sup> The explanatory notes also advise that this method is similar to the method used to calculate interest on unpaid state taxes under the *Taxation Administration Act 2001*.<sup>10</sup>

#### *Committee comment*

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the part 4 requirements of the LSA.

### **3.3 SL No. 58 of 2019 – Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019**

The objective of SL No. 58 is to provide for the progressive transfer of the ownership of the assets, liabilities, instruments and employees of Stanwell and CS Energy to CleanCo (or its subsidiaries).

The majority of assets will be transferred from Stanwell and CS Energy to CleanCo when CleanCo commences trading in the National Electricity Market. However, the Regulation allows for the scheduled transfer of items to CleanCo both before and after this time, with the details of these transfers to be defined in commercial-in-confidence schedules (transfer schedules) to be prepared by relevant departments. Specifically:

- shortly after the notification of the Regulation, there is provision for transferring to CleanCo particular assets that may assist it in managing key business and regulatory risks in anticipation of being transferred certain assets, and
- after the notification of the Regulation, the shareholding ministers of Stanwell and CS Energy may, by joint gazette notice with the shareholding ministers of CleanCo, fix the date(s) when scheduled assets, liabilities, instruments and employees are to be transferred to CleanCo. This can occur up until 1 July 2021.

The explanatory notes state that the provision for these sequential transfer schedules, including allowance for certain transfers before and after the notification of the Regulation, will provide for 'an ordered and efficient electricity generator GOC [Government Owned Corporations] restructure that ensures the State's generation assets continue to be operated safely and reliably as CleanCo progressively builds the capacity to fully operate these assets'.<sup>11</sup>

<sup>6</sup> Local Government Legislation Amendment Regulation 2019, explanatory notes, p 2.

<sup>7</sup> Local Government Legislation Amendment Regulation 2019, explanatory notes, p 2.

<sup>8</sup> Local Government Legislation Amendment Regulation 2019, explanatory notes, p 2.

<sup>9</sup> Local Government Legislation Amendment Regulation 2019, explanatory notes, p 4.

<sup>10</sup> Local Government Legislation Amendment Regulation 2019, explanatory notes, p 2.

<sup>11</sup> Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019, explanatory notes, p 2.

*Committee comment*

Section 4(2)(a) of LSA states that FLPs include a requirement that legislation has sufficient regard to the rights and liberties of individuals. Whilst the entities involved in this instance are all corporate entities, the committee identified that the transfer of employees of Stanwell and CS Energy to CleanCo might have impacts on the rights and liberties of individual employees.

However, the explanatory notes state in this respect:

*In executing the restructure, there will be no loss or reduction of employee entitlements, no forced retrenchments and no forced employee relocations.*<sup>12</sup>

...

*To the extent that employees are the subject of transfers under the Regulation, both Stanwell and CS Energy will have consultation obligations with which to comply. These will include providing details to employees of the effect of the change on them, in writing, and outlining measures being taken to avert or mitigate any adverse effect of the change. As part of the consultation process, employees and their representatives will have the opportunity to ask questions about the impact of the transfers.*<sup>13</sup>

The explanatory notes also state that consultation occurred with a range of stakeholders, including union organisations:

*The consulted parties do not oppose the making of the Regulation. Protection of the rights of employees was a matter of concern for stakeholder unions. Provisions have been included in the Regulation to ensure the rights of transferred employees are protected.*<sup>14</sup>

In addition:

*The use of schedules for the specification of assets, liabilities, instruments and employees for the purposes of treatment under a regulation is a long-standing method of ensuring certainty of the subject matter of the Regulation, whilst maintaining the confidentiality of arrangements which are commercially sensitive.*<sup>15</sup>

Noting the explanations provided, the committee is satisfied that there is no adverse impact on the rights of individual employees in this instance, and that the provisions are appropriate in the circumstances.

The committee identified no other issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the part 4 requirements of the LSA.

## **4 Recommendation**

The committee recommends that the House notes this report.



Linus Power MP

**Chair  
July 2019**

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<sup>12</sup> Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019, explanatory notes, p 3.

<sup>13</sup> Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019, explanatory notes, p 4.

<sup>14</sup> Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019, explanatory notes, p 5.

<sup>15</sup> Government Owned Corporations (Generator Restructure—CleanCo) Regulation 2019, explanatory notes, p 4.

### **Economics and Governance Committee**

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