

## Transport and Resources Committee

### Report No. 4, 57<sup>th</sup> Parliament

#### Subordinate legislation tabled between 6 October 2020 and 26 November 2020

#### 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 6 October 2020 and 26 November 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992*.<sup>1</sup>

The report identifies any issues identified by the committee in its consideration of the human rights certificate[s] tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No. of 2020	Subordinate legislation	Date tabled	Disallowance date*
193	Proclamation No. 1— <i>Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020</i> (commencing certain provisions)	26 November 2020	20 April 2021
194	Transport Operations (Passenger Transport) Amendment Regulation (No. 2) 2020	26 November 2020	20 April 2021
203	Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020	26 November 2020	20 April 2021
204	Water Plan (Burdekin Basin) (Applications for Water Licences) Amendment Plan 2020	26 November 2020	20 April 2021
205	Proclamation—Land, Explosives and Other Legislation Amendment Act 2019 (commencing remaining provisions)	26 November 2020	20 April 2021
206	Petroleum and Gas (Safety) Amendment Regulation (No. 2) 2020	26 November 2020	20 April 2021

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

No. of 2020	Subordinate legislation	Date tabled	Disallowance date*
207	Mineral Resources (Reporting Requirements) Amendment Regulation 2020	26 November 2020	20 April 2021
208	Petroleum and Gas (General Provisions) (Reporting Requirements) Amendment Regulation 2020	26 November 2020	20 April 2021
209	Building (Professional Indemnity Insurance) Amendment Regulation 2020	26 November 2020	20 April 2021
220	Transport and Other Legislation Amendment Regulation 2020	26 November 2020	20 April 2021
221	Coal Mining Safety and Health (Explosion Barriers) Amendment Regulation 2020	26 November 2020	20 April 2021
223	Queensland Building and Construction Commission and Other Legislation (Fire Protection Licensing) Amendment Regulation 2020	26 November 2020	20 April 2021
241	Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020	26 November 2020	20 April 2021
242	Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020	26 November 2020	20 April 2021
253	Mineral Resources and Other Legislation (Extension of Waiver Provisions—COVID-19) Amendment Regulation 2020	26 November 2020	20 April 2021

\* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

### 3 Committee consideration of the subordinate legislation

Of the 15 items of subordinate legislation considered in this report, the committee identified no significant issues regarding the policy, consistency with FLPs or the lawfulness of the subordinate legislation for 11 of these. The committee did, however, identify minor FLP issues in relation to SL 170, SL207, SL 208 and SL 220 as outlined below. The committee considers explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

The committee considers that the following six items of subordinate legislation raise potential human rights issues: SL 194; SL 203; SL 206; SL 209; SL 220; and SL 241. Each of these are discussed below. The human rights certificates tabled with the subordinate legislation, in accordance with section 41 of the HRA, provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.<sup>3</sup>

<sup>3</sup> *Human Rights Act 2019*, s 41.

#### **4 SL No 193 of 2020 – Proclamation No. 1—Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020 (commencing certain provisions)**

The proclamation fixes 11 September 2020 as the commencement date for part 10, division 3 of the *Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020*.

##### **4.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

##### **4.2 Explanatory notes**

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992 (LSA)*.

##### **4.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

##### **4.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

#### **5 SL No 194 of 2020 – Transport Operations (Passenger Transport) Amendment Regulation (No. 2) 2020**

The objectives are to:

- enable the Department of Transport and Main Roads (the department) to ask for additional information to decide an application for a substitute vehicle authority
- allow the department to issue certain evidentiary certificates in a proceeding for an offence against a fare evasion provision
- clarify that a driver hire service is excluded from the application of the *Transport Operations (Passenger Transport) Act 1994*
- ensure the department can give the holder of a relevant authority or service contract, who has consented to receiving correspondence by email, important information about the authority or service contract
- allow substitute taxis to continue to be used to provide taxi services and booked hire services during peak patronage periods until new taxi service licences are implemented, and
- ensure consistency with other legislation, in light of the *Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Act 2020* and the *Road Vehicles Standards Act 2018*.

##### **5.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

##### **5.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

### 5.3 Human rights considerations

In the human rights certificate accompanying the amendment regulation, the Minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>4</sup> and
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>5</sup>

The committee considered the following potential human rights issues:

#### 5.3.1 *Human Rights Act 2019, section 25 – right to privacy and reputation*

Under section 25 of the HRA, a person has the right to not have their privacy unlawfully or arbitrarily interfered with.

Clause 4 inserts new section 173A into the Transport Operations (Passenger Transport) Regulation 2018, to require an applicant for a substitute vehicle authority to give the chief executive further information or a document that the chief executive reasonably requires to decide the application.

Clause 8 amends section 277 of the Transport Operations (Passenger Transport) Regulation 2018, to require the holder of an authority or service contract who has consented to receive correspondence by email, to notify the chief executive of any change of email address.

These requirements to provide personal information may be seen as involving limitations on a person's right to privacy.

The Minister states that he does not consider the right to privacy to be limited.<sup>6</sup> The human rights certificate includes the following:

The objective of ensuring the department has sufficient information to decide an application for a substitute vehicle authority is achieved by allowing the chief executive to require further information or a document the chief executive reasonably requires to decide the application for a substitute vehicle authority. This provides a balance to ensure the vehicle meets its requirements, while providing an opportunity for the applicant to provide further information to assist the chief executive in making the decision.<sup>7</sup>

In relation to the requirement to notify any change of email address, the Minister states:

The objective of requiring a person to notify the department of a change of their current email address is balanced with ensuring that the department can give the holder of an authority or service contract, who has consented to receiving correspondence by email, important information about the authority or service contract.<sup>8</sup>

#### Committee comment

The committee is satisfied that the limitations on a person's right to privacy are minimal and in any case, are reasonable and demonstrably justified.

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<sup>4</sup> Human rights certificate, p 1.

<sup>5</sup> Human rights certificate, p 6.

<sup>6</sup> Human rights certificate, p 2.

<sup>7</sup> Human rights certificate, p 4.

<sup>8</sup> Human rights certificate, p 4.

### **5.3.2 Human Rights Act 2019, section 31 – right to a fair hearing and Human Rights Act 2019, and section 32 – rights in criminal proceedings**

Under section 31 of the HRA, a person must not be deprived of the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Under section 32 of the HRA, a person charged with a criminal offence has the right to certain minimum guarantees. Section 32(1) provides that a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

Clause 6 provides for amendments relating to revenue protection devices which will allow the department to issue certain evidentiary certificates in a proceeding for an offence against a fare evasion provision. This may limit a person's human rights as it may reverse the onus of proof.

At the outset, the Minister states he does not consider that human rights are limited.<sup>9</sup> In addressing the factors under section 13 of the HRA, the certificate observes:

The limitation is connected to the purpose of the amendment, which is to support a more efficient and cost-effective court process for all parties. Allowing for certificate evidence removes the time and costs associated with calling witnesses about uncontested issues during court proceedings. Section 6 of the amendment regulation supports the use of certain evidentiary certificates for fare evasion. If the revenue protection devices are not prescribed, the department may have to rely on witnesses to provide evidence on whether a person was trained and authorised in the use of a revenue protection device and a record of an electronic read or scan of a token.<sup>10</sup>

The Minister concludes:

Having regard to the nature and extent of the potential limitation on the right to a fair hearing and rights in criminal proceedings, I consider that the importance of meeting the objective of supporting the use of certain evidentiary certificates for fare evasion outweighs the potential limit on these rights.<sup>11</sup>

As the Minister notes, while the evidentiary provisions reduce the need for the prosecution to call witnesses about the matters contained in the certificates, a person can still contest the information.

#### Committee comment

The committee is satisfied that any limitation on a person's human rights is reasonable and justified.

### **5.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA.

The human rights certificate includes this statement regarding the right to privacy:

I consider that the human right is not limited because the provisions are authorised by law and do not interfere with a person's privacy arbitrarily.<sup>12</sup>

In relation to the impact of the evidentiary provisions upon rights to a fair hearing and in criminal proceedings (sections 31 and 32 of the HRA), the certificate states:

While the evidentiary provisions reduce the need for the prosecution to call witnesses about the matters contained in the certificates, the provisions do not limit a person's ability to contest the information. This may result in the witnesses being called and, for this reason, I do not consider that the provision limits the person's right in criminal proceedings.<sup>13</sup>

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<sup>9</sup> Human rights certificate, p 2.

<sup>10</sup> Human rights certificate, p 5.

<sup>11</sup> Human rights certificate, p 6.

<sup>12</sup> Human rights certificate, p 2.

<sup>13</sup> Human rights certificate, p 2.

It can be seen in each instance that there is a statement at the outset that there is no limitation on human rights.

These statements are inconsistent with the content that follows in the certificate. The certificate proceeds to consider whether limitations on these human rights are reasonable and demonstrably justified. An analysis of the provisions against the various factors in section 13 is undertaken.<sup>14</sup>

As there are limits in these human rights, such analysis is appropriate. It is the two initial statements (that there are no limitations on the human rights) that are in error.

The certificate otherwise provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

The committee wrote to the Department of Transport and Main Roads seeking clarification on the inconsistency about whether the regulation limited human rights contained in the human rights certificate.

The department advised:

TMR confirms that the Transport Operations (Passenger Transport) Amendment Regulation (No. 2) 2020 (Amendment Regulation) is compatible with the Human Rights Act 2019 (HRA) because, while it does limit, restrict or interfere with a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The apparent contradiction in the Human Rights Certificate that was identified by the Transport and Resources Committee (the Committee) is due to the summaries provided at the first stage of the HRA assessment of the Amendment Regulation. TMR acknowledges that the summaries could have been clearer and provides further clarification for the Committee below.

#### **Privacy and reputation**

TMR notes that there are two differing legal interpretations of the right to privacy (section 25(a) of the HRA).

One view is the right to privacy is limited only if a person's privacy, family, home or correspondence is interfered with in an unlawful or 'arbitrary' way.

In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective. If a provision of legislation does not interfere with a person's privacy, family, home or correspondence in an unlawful or arbitrary way, the provision does not limit the right to privacy and no further justification is required under section 13 of the HRA.

The alternative view is that a justification under section 13 of the HRA is necessary to determine whether a provision of legislation that relates to the right to privacy is compatible with the right. Advice from Crown Law confirms that both views are open.

TMR considers that sections 4 and 8 of the Amendment Regulation are compatible with the HRA because they do not limit human rights. However, if there is an alternative view that sections 4 and 8 limit a person's right to privacy, any limitation is reasonable and demonstrably justified under section 13 of the HRA.

#### **Fair hearing and rights in criminal proceedings**

TMR notes that the Human Rights Certificate could more clearly summarise that it is not considered that section 6 limits the person's right in criminal proceedings. TMR confirms that while section 6 of the Amendment Regulation may limit a person's right to a fair hearing and rights in criminal proceedings, section 6 is compatible with the HRA because any limitation would be reasonable and demonstrably justified under section 13 of the HRA.<sup>15</sup>

#### Committee comment

The committee is satisfied with the department's additional advice.

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<sup>14</sup> Human rights certificate, pp 2-6.

<sup>15</sup> Department of Transport and Main Roads, correspondence dated 12 March 2021, pp 1-2.

## 6 SL 203 of 2020 – Transport Infrastructure (State-controlled Roads) and Other Legislation Amendment Regulation 2020

The objectives are to:

- ensure heavy vehicle truck drivers can meet their fatigue management obligations
- clarify that rest facilities on the state controlled roads network are for fatigue management purposes, and
- clarify the conditions under which camping is permitted on the network.<sup>16</sup>

The regulation limits the use of heavy vehicle rest areas, permitting only commercial truck drivers and fatigue-regulated heavy vehicle drivers (as defined by the *Heavy Vehicle National Law (Queensland)*), along with their escort and pilot vehicles, to use them.

The regulation:

- clarifies that in rest areas, heavy vehicle drivers are those who drive a commercial truck or those who must take legislated fatigue management breaks
- specifies time limits in rest areas for general road users
- classifies rest areas as part of the road, enabling improved signage under the Transport Operations (Road Use Management—Road Rules) Regulation 2009, and
- prohibits camping on the state controlled roads network, except for fatigue management and under certain conditions.

The regulation also introduces offence provisions, whereby penalty infringement notices may be issued where a person has breached requirements regarding use of rest areas. (The regulation also amends the State Penalties Enforcement Regulation 2014, to allow for penalty infringement notices for rest area and camping offences.)

### 6.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

### 6.2 Explanatory notes

The explanatory notes comply with part 4 of the *LSA*.

### 6.3 Human rights considerations

In the human rights certificate accompanying the amendment regulation, the Minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>17</sup> and
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>18</sup>

The committee's consideration of potential human rights issues follows.

#### 6.3.1 *Human Rights Act 2019*, section 15 – recognition and equality before the law

Under section 15(3) of the HRA, every person is equal before the law.

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<sup>16</sup> Explanatory notes, p 3.

<sup>17</sup> Human rights certificate, p 1.

<sup>18</sup> Human rights certificate, p 12.

The regulation clarifies that heavy vehicle rest areas are for the sole use of drivers of heavy vehicles and not for recreational or other vehicles.<sup>19</sup>

This could be seen to impact a person's right to recognition and equality before the law, as it prevents recreational drivers from using heavy vehicle rest areas.

The Minister sees the limitation as reasonable and demonstrably justified:

... to ensure drivers can manage their fatigue to realise adequate levels of safety along the SCR [state-controlled road] network. The clarification of rest area use will benefit all drivers through increased access mitigating any lost access. Moreover, as individuals, recognition and equality before the law is still protected.<sup>20</sup>

#### Committee comment

The committee is satisfied that the impact on a person's equality before the law is reasonable and demonstrably justified, given the objectives of the regulation.

### **6.3.2 Human Rights Act 2019, section 19 – freedom of movement**

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, according to section 19 of the HRA.

The regulation clarifies rules around certain rest areas, preventing general road users from using the rest areas under certain conditions. This impacts a person's right to enter and use such a rest area and would affect their right to freedom of movement.

The Minister advises:

The potential limitation on accessing rest areas based on vehicle usage does not completely prohibit the use of rest areas by the general road user. What it does is clarify the rules surrounding rest area use to ensure that equitable access and use of rest areas can be achieved, by limiting rest areas designed for heavy vehicles to commercial trucks and fatigue-regulated heavy vehicles, and likewise general rest areas for general vehicles.<sup>21</sup>

#### Committee comment

The committee is satisfied that the impact on a person's freedom of movement is reasonable and justified, given the objectives of the regulation.

### **6.3.3 Human Rights Act 2019, section 24 – property rights**

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

The amendment regulation provides restrictions on the use of a person's property, such as using a generator, in a rest area for general road users or while camping along a SCR. The regulation also prescribes penalty infringement notices (PIN) for associated offences. The failure to pay a PIN fine may result in enforcement action taken by the registrar of the State Penalty Enforcement Registry against the person. This action can include the seizure of property.

The Minister provides this justification:

The SCR network is not a source of unlimited accommodation. As such, the limitation on using one's property does not arbitrarily deprive a person of property while in a rest area or camping; rather it is reflective of the need to operate an efficient, safe and accessible transport network, which should contribute to the improvement of the quality of life of Queenslanders (section 2(b) of the Transport Planning and Coordination Act 1994, with which TIA's [Transport Infrastructure Act 1994] objectives are consistent.<sup>22</sup>

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<sup>19</sup> Human rights certificate, p 3.

<sup>20</sup> Human rights certificate, p 4.

<sup>21</sup> Human rights certificate, p 5.

<sup>22</sup> Human rights certificate, p 7.



Committee comment

The committee is satisfied that the impact on a person's property rights is reasonable and justified, given the objective of the regulation.

**6.3.4 Human Rights Act 2019, section 25 – right to privacy and reputation**

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Authorised officers may ask for a person's information when undertaking monitoring and enforcement activities when a person is in contravention of the legislation. This creates limitations on a person's right to privacy.

The Minister advises:

These limitations will allow authorised officers to ask for a person's information when undertaking enforcement activities for when a person is overstaying or misusing a rest area or an area outside a rest area along a SCR. The information provided to the authorised officer will not be publicly disclosed and is for the sole use of effectively managing rest areas and camping. This will achieve the purpose of enforcement as a last resort and protect the public from road safety concerns.<sup>23</sup>

Committee comment

The committee is satisfied that the impact on a person's right to privacy is reasonable and demonstrably justified, given the objectives of the regulation.

**6.3.5 Human Rights Act 2019, section 29 – right to liberty and security of person**

Under section 29 of the HRA, a person must not be subjected to arbitrary arrest or detention.

Enforcement action under the *State Penalties Enforcement Act 1994* could result in arrest and imprisonment where a person fails to pay an amount specified in an enforcement order.

The Minister advised:

The existing camping offences are already prescribed as penalty infringement notice offences. A person has several options in relation to a penalty infringement notice fine. For example, a person may pay the fine in full, elect for the matter to be heard by a court or apply for approval to pay the fine in instalments. If the person does not action a fine, the registrar of SPER may take further enforcement action relating to the unpaid amount under the SPE Act. This may, as a last resort, result in the registrar of SPER issuing an arrest and imprisonment warrant under the SPE Act. However, under the SPER charter, it is made clear that the use of other enforcement actions for unpaid fines is preferred over arrest and imprisonment. Other enforcement actions may include seizure and sale of property and vehicle immobilisation.<sup>24</sup>

Committee comment

The committee is satisfied that the impact on a person's right to liberty and security of person is reasonable and demonstrably justified, given the objectives of the regulation.

**6.3.6 Human Rights Act 2019, section 31 – right to a fair hearing, and Human Rights Act 2019, section 32 – rights in criminal proceedings**

Under section 31 of the HRA, a person charged with a criminal offence has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Under section 32(1) of the HRA, a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

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<sup>23</sup> Human rights certificate, p 8.

<sup>24</sup> Human rights certificate, p 10.

The regulation, in prescribing penalty infringement notices and fines, could be seen as limiting the right to a fair hearing and other rights in criminal proceedings.

The Minister stated:

The right to a fair hearing and the rights in criminal proceedings are not limited insofar as a person can elect to go to court to challenge any enforcement action taken against them. However, the issuing of penalty infringement notice fines of ten per cent of the maximum penalty that may be imposed by a court provides for the efficient enforcement of restrictions regarding the use of rest areas and camping on the SCR network. They may also act as a deterrent to other offending behaviour to ensure compliance with measures designed to ensure efficiency, safety and access to the SCR network. On balance, the potential circumstantial limitation is reasonable and justifiable.<sup>25</sup>

#### Committee comment

The committee is satisfied that the impact on a person's right to a fair hearing is reasonable and demonstrably justified, given the objectives of the regulation.

#### **6.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **7 SL 204 of 2020 – Water Plan (Burdekin Basin) (Applications for Water Licences) Amendment Plan 2020**

The objective is to amend the Water Plan (Burdekin Basin) 2007 plan to include provisions taken to have effect for the water plan at the time the *Water Reform and Other Legislation Amendment Act 2014* commenced. These provisions include:

- enabling particular water licence applications to be accepted by the chief executive
- correction of minor errors in numbering.

#### **7.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **7.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

#### **7.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

#### **7.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **8 SL 205 of 2020 – Proclamation—*Land, Explosives and Other Legislation Amendment Act 2019* (commencing remaining provisions)**

The proclamation fixes a commencement date of 18 September 2020 for the remaining provisions of the *Land, Explosives and Other Legislation Amendment Act 2019* (dealing with gas device approval authorities).

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<sup>25</sup> Human rights certificate, p 12.

### **8.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

### **8.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

### **8.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

### **8.4 Human rights certificate**

A human rights certificate was not tabled with the subordinate legislation. Under section 41(4A) of the HRA, where a proclamation fixes a date for commencement of all the provisions of an Act that are not in force, a human rights certificate is not required to be prepared.

## **9 SL 206 of 2020 – Petroleum and Gas (Safety) Amendment Regulation (No. 2) 2020**

The objectives are to:

- operationalise the gas device approval authority (GDAA) framework established by amendments in the Land, Explosives and Other Legislation Amendment Act 2019 (LEOLA Act), and
- correct technical errors in the Petroleum and Gas (Safety) Regulation 2018.

The explanatory notes give this background:

In Queensland, the PG Act [Petroleum and Gas (Production and Safety) Act 2004] requires gas devices to be approved by the chief inspector or a GDAA holder before [being] supplied, installed or used. Approval or certification of gas devices helps achieve the safety outcome to control risks associated with flammable, explosive and toxic gas during the operation of devices so they do not cause harm to workers or consumers.<sup>26</sup>

The explanatory notes state:

Gas safety regulators commonly appoint appropriately skilled and qualified persons (including corporations) to assess and approve gas devices before their supply, installation or use. Prior to the LEOLA Act amendments, the PG Act provided for the chief inspector to approve an authority but did not include any statutory provisions to support the appointment or operation of authority holders. Reliance on administrative arrangements has resulted in unclear expectations and uncertainty. A transparent and accountable process to appoint and condition approving authorities achieves the safety outcome in the most efficient way as it provides clarity and certainty for gas industry businesses including certification bodies, approval authorities, manufacturers, suppliers and users of gas devices and regulators.<sup>27</sup>

### **9.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

### **9.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

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<sup>26</sup> Explanatory notes, p 1.

<sup>27</sup> Explanatory notes, p 2.

### 9.3 Human rights considerations

In the human rights certificate accompanying the amendment regulation, the Minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>28</sup> and
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>29</sup>

The committee's consideration of potential human rights issues follows.

#### 9.3.1 *Human Rights Act 2019, section 15 – recognition and equality before the law*

Under section 15 of the HRA, every person is equal before the law and is entitled to the equal protection of the law without discrimination.

In order to be granted a gas device approval authority (GDAA), a person will be required to hold relevant qualifications and meet an experience threshold. This may limit the human rights of a person who does not meet these qualifications or experience criteria and would therefore be prevented from holding a GDAA.

The Minister states:

The authorisation and approvals regime supported by the Amendment Regulation is aimed at ensuring only those people who are assessed as suitable persons and meet all relevant qualification and experience requirements are granted a GDAA. To achieve this intent, the regime imposes obligations on authority holders to ensure certain persons hold the relevant skills, experience and qualifications. Holders must also comply with any obligations placed on them as GDAA holders. A failure to comply with GDAA conditions is an offence and is grounds for suspension or cancellation of the holder's authority. Considerations under section 731AD of the PG Act [Petroleum and Gas (Production and Safety) Act 2004] limit this right only for the purpose of ensuring that GDAA holders meet the established requirements for the protection of the holder, industry and the broader community.<sup>30</sup>

The Minister further states:

The right to equality and to privacy are essential human rights however, the preservation of ensuring community safety has to be balanced with these rights. To ensure that the community is protected, it is essential that only those people who meet the relevant criteria and characteristics are considered for approval. The regulatory framework governing GDAA's has sought to balance these considerations and minimise the potential impacts upon the rights and liberties of individuals with the benefits and safety of the community.<sup>31</sup>

#### Committee comment

The committee is satisfied, given the objectives of the regulation, that the impact on a person's right to recognition and equality before the law is reasonable and justified.

#### 9.3.2 *Human Rights Act 2019, section 25 – right to privacy and reputation*

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

An applicant for a GDAA is required to provide evidence of their experience and qualifications. This may impact a person's privacy by requiring the disclosure of personal information.

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<sup>28</sup> Human rights certificate, p 1.

<sup>29</sup> Human rights certificate, p 6.

<sup>30</sup> Human rights certificate, p 4.

<sup>31</sup> Human rights certificate, p 5.

The Minister advised:

Personal information is only collected and maintained for the purpose of publishing information about persons granted a GDA and the scope of work authorised by that authority. Failure to do this would place a significant risk on the regulator, industry and community as there would be no way of knowing who an approved holder was and determining compliance of obligations. On balance this is a required function for the scheme to operate effectively and safely. Similarly, contact details of GDA holders being published online provides the public with a repository of who is an approved holder. This is required to mitigate risks of unapproved individuals performing gas device related activities and is an appropriate balance of protection of privacy and reputation with risk to industry, community and approved GDA holders.<sup>32</sup>

The Minister further states:

The Amendment Regulation limits a person's right to privacy and reputation, however, only where necessary. On balance, it is considered that the importance of ensuring only those individuals who meet the criteria and are assessed as appropriate for ensuring a gas safety outcome are authorised, outweighs the negative impact on the right to privacy and reputation (to the extent that it is limited).<sup>33</sup>

#### Committee comment

The committee is satisfied that the impact on a person's privacy is reasonable and demonstrably justified.

#### **9.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **10 SL 207 of 2020 – Mineral Resources (Reporting Requirements) Amendment Regulation 2020**

The stated objectives are to:

- provide a confidentiality and publication framework that provides an appropriate amount of time for information to remain confidential prior to it being published
- establish a more modern and responsive reporting framework, and
- clarify the information requirements for certain documents and reports under the regulation that resource entities must lodge with the Department of Natural Resources, Mines and Energy (DNRME).<sup>34</sup>

#### **10.1 Fundamental legislative principle issues**

##### **10.1.1 Legislative Standards Act 1992, Section 4(3)(g) – retrospectivity**

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, it does not adversely affect rights and liberties retrospectively.<sup>35</sup>

The introduction of confidentiality periods means that information submitted to DNRME under the previous reporting regime can now be released publicly at the end of the prescribed confidentiality period. This can have an adverse retrospective effect on the way a person's information is handled and disclosed, in relation to the right of an individual to maintain information as commercial-in-confidence.

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<sup>32</sup> Human rights certificate, p 4.

<sup>33</sup> Human rights certificate, p 5.

<sup>34</sup> Explanatory notes, p 1.

<sup>35</sup> LSA, s 4(3)(g).

The explanatory notes state:

... this publication may engage with the right of some individuals to maintain commercial information in-confidence.

However, the potential of this engagement is limited because the amendment regulation establishes transitional provisions that allow tenure holders ... affected by these provisions to re-submit certain reports in a way that meets the standard required but protects commercial-in-confidence information.<sup>36</sup>

The committee wrote to the Department of Resources regarding the introduction of confidentiality periods creating an adverse retrospective effect on the way a person's information is handled and disclosed.

The department responded that it considered the regulation does not operate retrospectively for the following reasons:

- The Mineral Regulation operates prospectively from its commencement on 1 October 2020.
- Clause 16 of the Mineral Regulation inserts a new chapter into the Mineral Resources Regulation 2013 that establishes the period of time information must be kept confidential by the department before the chief executive is taken to have authorisation to publish the required information.
- It provides a prospective obligation on the chief executive of the department to publish information provided by companies as part of their reporting obligations. It does not impose any retrospective obligations on individuals or companies.
- During consultation, it was identified that information lodged with the department well before the introduction of confidentiality periods might be published after commencement of the Mineral Regulation, resulting in the potential release of commercial-in-confidence information.
- The Department of Resources notes the issues raised by the committee however the department considers that the Mineral Regulation and Petroleum Regulation do not operate retrospectively for the reasons outlined below:
- This issue however was addressed by Clause 18 of the Mineral Regulation, which inserts transitional provisions that allow tenure holders to re-submit certain reports in a way that meets the standard required but protects commercial-in-confidence information.
- These issues are addressed in the Explanatory Notes for the Mineral Regulation in the sections on Fundamental Legislative Principles, Consultation, and in the Notes on Provisions.

While the department does not agree that these provisions have retrospective effect, any retrospectivity would be justifiable because the broader benefits from the release of geological data relating to the State's resources outweigh the potential impacts to the rights of individuals. This is because it will ensure the release of additional geological data, which will stimulate exploration in Queensland. This will generate economic activity and employment opportunities with the end goal of assisting explorers to make discoveries that will lead to new mining projects in Queensland.

### Committee comment

The committee is satisfied that any breach of fundamental legislative principle in relation to any retrospective operation of the provision is justified.

## **10.2 Explanatory notes**

Section 23(1)(f) of the LSA requires the explanatory notes to provide a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

To comply with this statutory requirement, explanatory notes should either (depending on the factual position) state that a Bill is consistent with fundamental legislative principles, or set out any areas of inconsistency, with reasons for any inconsistency.

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<sup>36</sup> Explanatory notes, p 3.

In this instance, the explanatory notes have failed to identify the breach of fundamental legislative principle nor provide reasons for the inconsistency.

The explanatory notes comply with part 4 of the *LSA*.

### **10.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

### **10.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **11 SL 208 of 2020 – Petroleum and Gas (General Provisions) (Reporting Requirements) Amendment Regulation 2020**

The stated objectives are to:

- establish a more modern and responsive reporting framework
- clarify the information requirements for certain documents and reports under the Petroleum and Gas (General Provisions) Regulation 2017 that must be lodged with the DNRME by resource companies
- seek more detailed information about Queensland’s petroleum and gas reserves, and
- provide an appropriate amount of time for information submitted to DNRME from petroleum companies to remain confidential prior to it being published.<sup>37</sup>

### **11.1 Fundamental legislative principle issues**

#### ***Legislative Standards Act 1992, Section 4(3)(g) – retrospectivity***

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, it does not adversely affect rights and liberties retrospectively.<sup>38</sup>

The introduction of confidentiality periods means that information submitted to DNRME under the previous reporting regime can now be released publicly at the end of the prescribed confidentiality period. This can have an adverse retrospective effect on the way a person’s information is handled and disclosed, in relation to the right of an individual to maintain information as commercial-in-confidence.

The explanatory notes do not consider this issue of fundamental legislative principle (though it was addressed in the explanatory notes for SL 207 above).

The committee wrote to the Department of Resources regarding the introduction of confidentiality periods creating an adverse retrospective effect on the way a person’s information is handled and disclosed.

The department responded that it considered the regulation does not operate retrospectively for the following reasons:

- Similar to the Mineral Regulation, the Petroleum Regulation updates the prospective confidentiality periods for required information. It does not impose retrospective obligations on individuals or companies.
- The effect of the Petroleum Regulation is to extend existing confidentiality periods (i.e. increase the amount of time required data is kept confidential before publication).

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<sup>37</sup> Explanatory notes, pp 1-2.

<sup>38</sup> *LSA*, s 4(3)(g).

- As this change allows affected companies and individuals to maintain the confidentiality of data for a longer period of time, the department did not consider this as a breach of the fundamental legislative principles. It is therefore not discussed further in the explanatory notes.

#### Committee comment

For the reasons stated above in discussing SL 207, the committee is satisfied that any breach of fundamental legislative principle in relation to a retrospective action is justified.

#### **11.2 Explanatory notes**

Section 23(1)(f) of the LSA requires the explanatory notes to provide a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

To comply with this statutory requirement, explanatory notes should either (depending on the factual position) state that a Bill is consistent with fundamental legislative principles, or set out any areas of inconsistency, with reasons for any inconsistency.

In this instance, the explanatory notes do not canvass the issue of fundamental legislative principle mentioned above.

The explanatory notes otherwise comply with part 4 of the LSA.

#### **11.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

#### **11.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **12 SL 209 – Building (Professional Indemnity Insurance) Amendment Regulation 2020**

The regulation extends the exemption period for licensing private certifiers who may hold professional indemnity insurance (PII) with a cladding exclusion PII (from 30 June 2021 until 30 June 2022). The period is being extended because certifiers are experiencing difficulties in obtaining compliant PII, with insurers no longer offering the product.

The regulation also clarifies that compliant PII held when a licence is issued will remain valid for the duration of the licence, provided the licence is current when the exemption period ends.

#### **12.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **12.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

#### **12.3 Human rights considerations**

In the human rights certificate accompanying the amendment regulation, the Minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>39</sup> and

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<sup>39</sup> Human rights certificate, p 1.



- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>40</sup>

The committee's consideration of potential human rights issues follows.

### **12.3.1 Human Rights Act 2019, section 25 – right to privacy and reputation**

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

The regulation allows the Queensland Building and Construction Commission to collect information about a building certifier's professional indemnity (PI) insurance cover. The collection of this information may impact on a person's right to privacy.

The Minister advises:

The collection of an applicant's personal information, relating to their PI insurance coverage, under the Amendment Regulation is necessary to demonstrate that an individual holds the prescribed insurance under the Regulation to be licenced as a building certifier.

On balance, I consider the importance of ensuring building certifiers hold the prescribed PI insurance with exclusions for external cladding work ensures they may continue to perform certification functions during the extended exemption period, which outweighs the limitation on the right to privacy and reputation.<sup>41</sup>

#### Committee comment

The committee is satisfied that any limitation on a person's right to privacy is reasonable and demonstrably justified.

### **12.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **13 SL 220 of 2020 – Transport and Other Legislation Amendment Regulation 2020**

The objectives are to:

- adopt the 6th package of nationally agreed agreements to the Model Subordinate Instrument on the Transport of Dangerous Goods by Road or Rail
- introduce a requirement for electric and hydrogen powered vehicles to display identification labels on number plates
- clarify how an approved examiner and the proprietor of an approved inspection station (AIS) can approve an inspection certificate that is issued electronically
- make consequential amendments to the State Penalties and Enforcement Regulation 2014 to renumber the entries for section 52 and 53 of the *Transport Operations (Road Use Management) Act 1995* (TORUM Act) to ensure that the entries correspond to renumbered offence provisions in that Act.

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<sup>40</sup> Human rights certificate, p 6.

<sup>41</sup> Human rights certificate, p 5.

### 13.1 Fundamental legislative principle issues

#### 13.1.1 *Legislative Standards Act 1992, Section 4(2)(a)* – new offences should be warranted and penalties should be reasonable and proportionate

A penalty should be proportionate to the offence. The OQPC Notebook states:

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.<sup>42</sup>

The regulation introduces a number of new penalties relating to actions by a prime contractor with maximum penalties of up to 40 penalty units (\$5,338). [One penalty unit is \$133.45.] Penalties have also been introduced in relation to duties around nominally empty storage vessels (with penalties up to 20 penalty units or \$2,669), and dangerous goods packed in limited quantities (with maximum penalties up to 40 penalty units or \$5,338).

The explanatory notes state:

The offences and penalty amounts contained in the Amendment Regulation align with the penalties imposed for other similar offences in the Road Regulation and the Rail Regulation. The offence provisions and corresponding maximum penalties have been reviewed to ensure that the penalties are proportionate to the seriousness of the offences.<sup>43</sup>

For comparison, the maximum penalty imposed in the Transport Infrastructure (Dangerous Goods by Rail) Regulation 2018 and Transport Operations (Road Use Management – Dangerous Goods) Regulation 2018 is 40 penalty units.

#### Committee comment

In this instance, the committee is satisfied that the new penalties are reasonable and proportionate.

#### 13.1.2 *Legislative Standards Act 1992, Section 4(5)(e)* – sub-delegation of power

The amendments incorporate references to the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code).

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.<sup>44</sup>

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.<sup>45</sup>

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 in Part 6 of the *Statutory Instruments Act 1992*.

The ADG Code is a lengthy document of over 1,000 pages, and contains detailed and technical requirements for classifying and transporting dangerous goods by road and rail and gives effect, where possible, to international requirements for transporting dangerous goods.<sup>46</sup>

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<sup>42</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>43</sup> Explanatory notes, p 7.

<sup>44</sup> Section 4(5)(e) of the *Legislative Standards Act 1992*.

<sup>45</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 170.

<sup>46</sup> Explanatory notes, p 7.

The explanatory notes state:

The technical detail contained in the ADG Code would be inappropriate to incorporate into the Road Regulation and the Rail Regulation and would expand the size of these regulations considerably. Stakeholders support the use of the ADG Code as they have a high level of understanding and familiarity with it. The ADG Code has also been adopted in each jurisdiction in Australia and is developed and maintained by the NTC [National Transport Commission] in consultation with each jurisdiction and industry.<sup>47</sup>

The explanatory notes further state:

The latest version of the ADG Code, and any proposed amendments to the ADG Code, are also readily accessible by the public on the NTC's website. For these reasons, it is believed that referencing the ADG Code in the Road Regulation and the Rail Regulation is appropriate and adequately considers fundamental legislative principle considerations.<sup>48</sup>

The committee wrote to the Department of Transport and Main Roads to seek advice on whether references to the Australian Code for the Transport of Dangerous Goods by Road and Rail (ADG Code) in the Transport and Other Legislation Amendment Regulation 2020, constituted a potential breach of the fundamental legislative principles in regards to Section 4(5)(e) – sub-delegation of power.

The department advised:

In relation to whether the amendments to adopt the latest version of the ADG Code (ADG 7.7) might raise the fundamental legislative principles, it is noted that:

- the model legislation for the transport of dangerous goods, including its incorporation of references to the ADG Code, has been adopted in all Australian jurisdictions;
- all Australian jurisdictions incorporate provisions of the ADG Code by reference rather than including the code in their legislation;
- incorporation of the ADG Code by reference ensures that the adoption of its requirements by the jurisdictions can be implemented nationally in a rapid, efficient and cost-effective manner;
- the detailed, technical and extensive nature of the information contained in the ADG Code makes it inappropriate to include in the text of the Road Regulation or Rail Regulation;
- incorporation of the ADG Code by reference in Queensland's dangerous goods regulation is long-standing;
- the ADG Code is developed and maintained by the NTC in consultation with each jurisdiction and industry;
- Queensland is represented on, and actively contributes to, the Dangerous Goods Maintenance Advisory Group that undertakes that development and maintenance task;
- the latest version of the ADG Code, and any proposed amendments to the ADG Code, are readily accessible by the public on the NTC's website; and
- changes to the ADG Code are developed in consultation with industry and are communicated by both the NTC and TMR.<sup>49</sup>

### Committee comment

The committee is satisfied that the reference to the ADG code has sufficient regard to the institution of Parliament, given the additional information provided by the department.

## **13.2 Explanatory notes**

Under the heading 'Consistency with fundamental legislative principles', the explanatory notes state:

The Amendment Regulation is consistent with the fundamental legislative principles as required under the Legislative Standards Act 1992.<sup>50</sup>

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<sup>47</sup> Explanatory notes, p 7.

<sup>48</sup> Explanatory notes, p 7.

<sup>49</sup> Department of Transport and Main Roads, correspondence dated 12 March 2021, pp 3-4.

<sup>50</sup> Explanatory notes, p 7.

This statement is erroneous, as is evidenced by the explanatory notes themselves, which proceed (correctly) to discuss issues of fundamental legislative principle.

The explanatory notes otherwise comply with part 4 of the LSA.

### **13.3 Human rights considerations**

In the human rights certificate accompanying the amendment regulation, the Minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>51</sup> and
- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>52</sup>

The committee's consideration of potential human rights issues follows.

#### **13.3.1 Human Rights Act 2019, section 24 – property rights**

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

The amendment regulation prescribes infringement notice offences. This may limit the right to property, as failure to pay an infringement notice fine may lead to enforcement action, including vehicle immobilisation or seizure and sale of property.

Infringement notice offences apply in relation to nominally empty storage offences, dangerous goods packed in limited quantities, prime contractors' duties and failure to comply with labelling requirements for electric and hydrogen powered vehicles.

The Minister states:

... I consider the balance between the importance of protecting road safety and ensuring an effective enforcement system for the transport of dangerous goods, labelling of electric and hydrogen powered vehicles and false or misleading information offences outweighs the potential negative impact on the right, and as a result, I consider any limitation to be reasonable and demonstrably justified.<sup>53</sup>

#### Committee comment

The committee is satisfied that the impact on a person's property rights is reasonable and justified.

#### **13.3.2 Human Rights Act 2019, section 29 – right to liberty and security of person**

Under section 29(3) of the HRA, a person must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law.

Enforcement action following the non-payment of infringement notice penalties may result in arrest and imprisonment where a person fails to comply with the notice.

The Minister advises:

Having regard to the nature and extent of the potential limitation on the right to liberty and security of persons, I consider that the importance of meeting road safety objectives by ensuring there is an efficient system for issuing and enforcing fines, outweighs the potential limit on the right to liberty and security, which in practice is unlikely to be imposed as a result of enforcement under the SPE Act [State Penalties Enforcement Act 1999] of unpaid fines.<sup>54</sup>

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<sup>51</sup> Human rights certificate, p 1.

<sup>52</sup> Human rights certificate, p 17.

<sup>53</sup> Human rights certificate, p 10.

<sup>54</sup> Human rights certificate, p 13.

Committee comment

The committee is satisfied that the impact on a person's right to liberty and security of person is reasonable and demonstrably justified.

**13.3.3 Human Rights Act 2019, section 31 – right to a fair hearing, and Human Rights Act 2019, section 32 – rights in criminal proceedings**

Under section 31 of the HRA, a person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing,

Under section 32(1) of the HRA, a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

The regulation may limit the right to a fair hearing and rights in criminal proceedings as it prescribes infringement notice offences. A person does not have to attend court in relation to an infringement notice offence.

The Minister advises:

Although this may limit the right to fair hearing and rights in criminal proceedings, there are various protections under the SPE Act which include the option for persons to elect to have their matter heard in court at various stages of the process.

In particular, section 15 of the SPE Act requires that all penalty infringement notices must indicate that the alleged offender may elect to have the matter of the offence decided by a court, which promotes awareness that persons may elect for the matter of the offence to be heard by a court at the time the person is issued with an infringement notice fine.

This gives the person the choice between electing to have the matter dealt with under the SPE Regulation or electing to have the matter heard by a court. Without that option, all persons charged under sections 102C, 133A, 133B, 144A and 146A of the Road Regulation, sections 52(2)(a), 52(2)(c), 53(2)(a) and 53(2)(c) of TORUM Act, or under section 5(1)(b) of the Vehicle Standards Regulation for failing to have a label attached, would be forced to expend the time, effort and stress involved in court proceedings. If found guilty, they would also be required to pay the costs associated with the offender levy and the issuing of the complaint and summons, whether or not they wanted their matter heard before a court. In addition, there are various protections to assist persons who are unable to pay their penalty infringement fines.<sup>55</sup>

Committee comment

The committee is satisfied that the impact on a person's rights in criminal proceedings are reasonable and justified.

**13.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

**14 SL 221 of 2020 – Coal Mining Safety and Health (Explosion Barriers) Amendment Regulation 2020**

The regulation requires explosion barriers to be installed and maintained in underground coal mines, as additional risk controls, to suppress any coal dust explosion and to limit its propagation to other parts of the mine.

**14.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

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<sup>55</sup> Human rights certificate, pp 16-17.

#### **14.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

#### **14.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

#### **14.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **15 SL 223 of 2020 – Queensland Building and Construction Commission and Other Legislation (Fire Protection Licensing) Amendment Regulation 2020**

The objective is to provide a modernised and effective fire protection licensing framework.

The existing fire protection licensing framework is complex with multiple licence classes and subclasses relating to fire protection work. The regulation will streamline the fire protection licensing framework. The regulation contains amendments to classes of licence, scopes of work, key definitions and technical qualifications to address gaps between licence requirements, safety standards and current best practice in industry.

#### **15.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **15.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

#### **15.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

#### **15.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **16 SL 241 of 2020 – Building Industry Fairness (Security of Payment) and Other Legislation Amendment Regulation 2020**

The objectives are to support the commencement of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* and to prescribe penalty infringement notices for certain offences that are created by that Act.

#### **16.1 Fundamental legislative principle issues**

##### **16.1.1 Legislative Standards Act 1992, Section 4(2)(a) – privacy and confidentiality of information**

Section 29 of the Regulation inserts new section 48A into the Queensland Building and Construction Commission Regulation 2018, which relates to agencies with which the Queensland Building and Construction Commission (QBCC) may exchange information.

Reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals. This includes the reasonable and fair treatment of an individual's personal information and regard for a person's right to privacy.

This provision impacts on a person's privacy as their personal information can be disclosed to and used by an agency that can receive such information through an information sharing agreement with QBCC.

The explanatory notes state the amendments are considered justifiable:

... as the collection of information and evidence is necessary to ensure that QBCC can identify and address offending fraudulent behaviour and effectively perform its role as regulator. The QBCC Act [Queensland Building and Construction Commission Act 1991] provides safeguards to lessen potential privacy impact, in that an information-sharing arrangement may relate only to information that helps the QBCC or the other agency to perform its functions, or information the disclosure of which is reasonably necessary for protecting the health or safety of a person or property.<sup>56</sup>

#### Committee comment

The committee is satisfied that the use and disclosure of a person's private information as a result of the information sharing agreement has sufficient regard to the rights and liberties of individuals.

#### **16.1.2 Legislative Standards Act 1992, Section 4(3)(f) – appropriate protection against self-incrimination**

Clause 15 introduces new sections 8 and 10B into the Building Industry Fairness (Security of Payment) Regulation 2018, which requires the trustee to provide information to the QBCC about the opening, closing and transferring of a project trust account or retention trust account. It is an offence not to comply with these provisions. In this light, the information required to be included in a notice to the QBCC could be seen as involving self-incrimination.

Former committees have noted that the denial of the protection of self-incrimination is only potentially justifiable if:

- the questions posed or information required, concern matters which are peculiarly within the knowledge of the person to whom the requirements are directed
- the legislation prohibits the use of the information obtained in prosecutions against the person, and
- in order to secure this restriction on the use of the information obtained, the person should not be required to fulfil any conditions (such as formally claiming the right).<sup>57</sup>

The explanatory notes state these information requirements are justified:

... on the basis that failing to manage the trust accounts in the way specified may undermine the intended benefits of the new trust framework. The trust framework is intended to alter the culture of the building and construction industry to one that makes payment on time and in full, and which is transparent between parties. Providing subcontractors with information about the name of the trust account and financial institution, and when the account was opened or closed, aids in this transparency. Ensuring the QBCC, as the regulator, also has this information will further encourage this transparency, consistency and accountability.<sup>58</sup>

It is for the committee to decide whether the breach of fundamental legislative principle relating to self-incrimination has been justified.

#### **16.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

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<sup>56</sup> Explanatory notes, p 9.

<sup>57</sup> Office of the Queensland Parliamentary Counsel, *Principles of Good Legislation – Self-incrimination*, p 11.

<sup>58</sup> Explanatory notes, p 8.

### 16.3 Human rights considerations

In the human rights certificate accompanying the amendment regulation, the minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA,<sup>59</sup> and
- with the HRA because it does limit human rights, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.<sup>60</sup>

The committee's consideration of potential human rights issues follows.

#### 16.3.1 *Human Rights Act 2019, section 25 – right to privacy and reputation*

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Section 29 of the regulation provides for the Queensland Building and Construction Commission (QBCC) to enter into information sharing arrangements with agencies set out in section 48A of the Queensland Building and Construction Commission Regulation 2018. Such an agreement allows the QBCC to ask for and receive information held by another agency and to disclose information to the other agency.

A person's personal information could be disclosed and used between agencies, thus impacting on a person's right to privacy regarding personal information.

The Minister states:

The limitation is considered reasonable and is demonstrably justified. More collaborative enforcement between the QBCC and other agencies will improve the QBCC's ability to identify and address fraudulent or dishonest behaviour within the building and construction industry. The collection of information and evidence to ensure the integrity of industry participants does not constitute an arbitrary interference with privacy and the QBCC remains subject to the legal obligation to only ask for, and disclose, relevant information.<sup>61</sup>

The Minister also refers to safeguards provided in relation to these information sharing agreements:

The QBCC Act [Queensland Building and Construction Commission Act 1991] provides safeguards to restrict the impact of the limitation, in that an information-sharing arrangement may relate only to information that helps the QBCC or the other agency to perform its functions, or information the disclosure of which is reasonably necessary for protecting the health or safety of a person or property.<sup>62</sup>

#### Committee comment

The committee is satisfied that the impact on a person's privacy is reasonable and justified.

#### 16.3.2 *Human Rights Act 2019, section 24 – property rights, Human Rights Act 2019, section 15 – recognition and equality before the law, Human Rights Act 2019, section 31 – right to a fair hearing, and Human Rights Act 2019, section 32 – rights in criminal proceedings*

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

Under section 15 of the HRA, every person is equal before the law and is entitled to equal protection of the law without discrimination.

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<sup>59</sup> Human rights certificate, p 1.

<sup>60</sup> Human rights certificate, p 9.

<sup>61</sup> Human rights certificate, p 5.

<sup>62</sup> Human rights certificate, p 5.



Under section 31 of the HRA, a person has the right to have a criminal charge or civil proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 32 of the HRA provides a number of minimum guarantees to a person in relation to criminal proceedings, including the right to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

The regulation provides for the issuing of a Penalty Infringement Notice (PIN). This could be seen as depriving a person of their money, if required to pay the PIN penalty amount. This could be seen as depriving a person of other property, as a failure to pay such an amount may result in further enforcement action including vehicle immobilisation or seizure and sale of property.

A person's right to recognition and equality before the law may be limited because the imposition of a PIN penalty could be seen as disproportionately impacting on the rights of individuals that have reduced capacity to pay a fine.

A person issued with a PIN could be seen as being liable for a penalty for committing an offence without a trial, and the rights that accompany a criminal proceeding.

The Minister advises in relation to the issuing of PINs:

The Regulation will support compliance with the building legislation by ensuring there is an efficient system for issuing and enforcement fines. If the offences were not prescribed as infringement notice offences, the threat of enforcement may be less credible due to the cost to regulators associated with court proceedings. In this respect, the limitation through enforcement also acts as a deterrent to offenders and individuals that might otherwise consider offending in the same way.<sup>63</sup>

The Minister sets out relevant safeguards:

... once a PIN has been issued to a person, there are several protections built into the SPE Act [State Penalties Enforcement Act 1999], including the ability for persons to elect to have the matter heard in court at various stages of the process. Further, there are supports and options available to assist persons who are experiencing hardship and unable to pay their fines. These protections ensure enforcement action such as the immobilisation of vehicles or seizure and sale of property would only occur infrequently. Accordingly, issuing a PIN will not lead to the deprivation of property on an arbitrary basis and is unlikely to limit a person's right not to be arbitrarily deprived of their property. These safeguards also reduce the extent to which the issuing of a PIN limits the right to recognition and equality before the law.<sup>64</sup>

In relation to all of the limitations on human rights set out above, the Minister concludes:

The nature and extent of the limitations on human rights are minor and are adequately addressed through existing safeguards in the SPE Act including the ability to elect to challenge a PIN in court, the ability to appeal enforcement orders and mechanisms that allow individual circumstances to be taken into account and alternative methods of satisfying the debt to be agreed, including instalment plans and work and development orders.<sup>65</sup>

#### Committee comment

The committee is satisfied that the human rights impacts resulting from the provisions regarding penalty infringement notices are reasonable and demonstrably justified.

#### **16.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>63</sup> Human rights certificate, p 7.

<sup>64</sup> Human rights certificate, p 8.

<sup>65</sup> Human rights certificate, p 8.

## **17 SL 242 of 2020 – Building Industry Fairness (Security of Payment) (Transitional) Regulation 2020**

The regulation includes transitional provisions for the following sections in Part 4 of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act):

- section 64, which amends the definition of ‘complex payment claim’ under section 64 of the *Building Industry Fairness (Security of Payment) Act 2017* (BIF Act) to remove reference to GST
- section 74, which amends section 99 of the BIF Act (which requires the claimant to give notice to a respondent about their intention to start proceedings in a court to recover an amount owed to the claimant), by extending the timeframe for giving such a notice from 20 business days after the due date for the progress payment, to 30 business days after that date.

The explanatory notes state:

There is concern that without transitional provisions, the amendments may cause existing payment claims and proceedings to be affected causing confusion for industry. Clear transitional provisions will avoid any misunderstanding or misinterpretation about the application of the two specific amendments to progress payments.<sup>66</sup>

### **17.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

### **17.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

### **17.3 Human rights considerations**

The subordinate legislation is compatible with human rights.

### **17.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **18 SL 253 of 2020 – Mineral Resources and Other Legislation (Extension of Waiver Provisions—COVID-19) Amendment Regulation 2020**

The objectives are to:

- extend short-term economic relief to the resource exploration industry by waiving rent payable by exploration permit and authority to prospect (petroleum and gas) holders; and
- provide flexibility to exploration tenure holders to assist with meeting their regulatory obligations whilst complying with the current public health directions issued by the Queensland Government in response to the COVID-19 pandemic.
- extending the rent waiver for exploration permit (coals and minerals) and authority to prospect (petroleum and gas) holders by six months to ensure that, in total, no rent will be payable by these holders for the period between 1 April 2020 and 31 March 2021, and
- waiving for a further six months the fee payable by authority to prospect holders who apply for a special amendment so that, in total, no fee will be payable for the period between 1 April 2020 and 31 March 2021.

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<sup>66</sup> Explanatory notes, p 2.

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No issues of fundamental legislative principle were identified.

### **18.2 Explanatory notes**

The explanatory notes comply with part 4 of the *LSA*.

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The subordinate legislation is compatible with human rights.

### **18.4 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **19 Recommendation**

The committee recommends that the House notes this report.



Shane King MP

**Chair**

**March 2021**

### **Transport and Resources Committee**

<b>Chair</b>	Mr Shane King MP, Member for Kurwongbah
<b>Deputy Chair</b>	Mr Lachlan Millar MP, Member for Gregory
<b>Members</b>	Mr Colin Boyce MP, Member for Callide
	Ms Jess Pugh MP, Member for Mt Ommaney
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North