

Transport and Resources Committee

Report No. 14, 57th Parliament

Subordinate legislation tabled between 16 June 2021 and 31 August 2021

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 16 June 2021 and 31 August 2021. 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*.¹

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

2 Subordinate legislation examined

No. of 2021	Subordinate legislation	Date tabled	Disallowance date*
75	Resources Safety and Health Legislation (Fees and Other Matters) Amendment Regulation 2021	31 August 2021	18 November 2021
83	Energy and Public Works Legislation (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
93	Cross River Rail Delivery Authority (Gold Coast Infill Stations Project) Amendment Regulation 2021	31 August 2021	18 November 2021
94	Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021	31 August 2021	18 November 2021
102	Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021	31 August 2021	18 November 2021
107	Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021	31 August 2021	18 November 2021
112	Transport Operations (Road Use Management – Driver Licensing) Regulation 2021	31 August 2021	18 November 2021

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

No. of 2021	Subordinate legislation	Date tabled	Disallowance date*
113	Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021	31 August 2021	18 November 2021
114	Transport Operations (Road Use Management— Vehicle Standards and Safety) Regulation 2021	31 August 2021	18 November 2021
121	Vegetation Management (Regional Ecosystems) Amendment Regulation 2021	31 August 2021	18 November 2021
126	Building Regulation 2021	31 August 2021	18 November 2021
130	Greenhouse Gas Storage Regulation 2021	31 August 2021	18 November 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

The committee received public briefings on SL No. 112 and SL No. 126. The committee also wrote to the relevant departments seeking additional information on SL No. 75 and SL No. 107.

While various issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified and considered, the committee was satisfied that each of the potential inconsistencies were justified. 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 is satisfied that the subordinate legislation is compatible with human rights. The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

4 SL No. 75 of 2021 - Resources Safety and Health Legislation (Fees and Other Matters) Amendment Regulation 2021

The objectives of the Regulation are to:

- increase regulatory fees for Resources Safety and Health Queensland by 1.7%. This aligns with the 2021-22 Government indexation rate and Queensland Treasury’s Principles for Fees and Charges.
- insert definitions of biogas and biomethane into the Petroleum and Gas (General Provisions) Regulation 2017 to provide clarity.
- streamline invoicing and employee census reporting requirements in the Coal Mining Safety and Health Regulation 2017, the Explosives Regulation 2017 and the Mining and Quarrying Safety and Health Regulation 2017 to improve efficiencies and remove unnecessary regulation.⁴

³ *Human Rights Act 2019*, s 41.

⁴ SL No. 75, explanatory notes, pp 1-2.

The regulation also makes minor consequential amendments to various pieces of resources safety legislation in line with drafting practices and recent amending legislation.⁵

All fee increases are within the 1.7% or have been rounded slightly higher.⁶

4.1 Fundamental legislative principle issues

The inclusion in subordinate legislation of references to external documents may mean that the subordinate legislation does not have sufficient regard to the institution of Parliament because the Parliament does not have any control over such documents, such as to disallow or amend them.⁷

SL No. 75 amends the Petroleum and Gas (General Provisions) Regulation 2017 and the Petroleum and Gas (Safety) Regulation 2018 to provide that biogas and biomethane have the meanings given by the International Organization for Standardization (ISO) document titled *ISO 20675:2018 Biogas—Biogas production, conditioning, upgrading and utilization—Terms, definitions and classification scheme*.⁸

The ISO is a Swiss based, independent, non-governmental international organisation that brings together experts to develop international standards.⁹

The committee noted that the explanatory notes reproduce the definitions of biogas and biomethane from ISO 20675, but that ISO 20675 was not tabled with the subordinate legislation. Therefore, if any changes are made to the definitions of biogas and biomethane in ISO 20675, they would not be tabled in the Queensland Parliament, or subject to disallowance processes, but would nevertheless have effect in Queensland.

The committee also noted that the full document ISO 20675 is available for purchase online from the ISO website at a cost of 118 Swiss Francs, which currently equates to AU\$172.¹⁰

The committee sought advice from the Resources Safety and Health Queensland (RSHQ) in regards to these issues, specifically:

- What were the reasons for the inclusion of the reference to ISO 20675 in the definitions rather than incorporating the definitions into SL No. 75?
- Whether there is any public availability of these definitions to persons or organisations that are required to access this or whether it is anticipated that Queenslanders would be required to purchase the document from the ISO at their own expense?
- What is the process regarding notification of any changes in the definition in ISO 20675 to both the Parliament and stakeholders?

⁵ SL No. 75, explanatory notes, p 3. The consequential amendments are outlined on page 2 of the Resources Safety and Health Legislation (Fees and Other Matters) Amendment Regulation 2021 human rights certificate.

⁶ See for example, s 13 (fees listed at 4(d) and 12(b) - 1.8% increase), s 32 (1.9% increase), s 38(1)(c) (2.1% increase) and s 39 (2.2% increase).

⁷ See *Legislative Standards Act 1992* (LSA), s 4(2)(b).

⁸ SL No. 75, ss 23, 43.

⁹ International Organization for Standardization, <https://www.iso.org/home.html>

¹⁰ Based on currency exchange information on 25 October 2021.

RSHQ advised the committee:

Including the ISO reference number ISO 20675:2018 for the biogas and biomethane definitional amendments to the Petroleum and Gas (Safety) Regulation 2017, rather than specifically including the wording of the definitions from ISO 20675:2018 in the regulation, was determined to be the most effective drafting for the regulation. The biogas industry is an emerging sector in Australia and technology in this industry is still evolving throughout the world. Including a standardised definition provides clarity on how these technologies are identified in the legislation and reduces complexity for users.

While the definition provides clarity, there are no proposed changes to the regulatory approach for biogas sites.

When referencing an ISO standard in Queensland legislation, drafting practice is to reference the ISO standard number without including the definition or standard requirement in full within the legislation.

...

The definitions for biogas and biomethane are publicly available on the ISO website via the online browsing platform (www.iso.org/obp/ui/#iso:std:iso:20675:ed-1:v1:en). Consultation between RSHQ and industry stakeholders has been ongoing since 2017 in relation to the introduction of definitions for biogas and biomethane. The consultation process included a consultation discussion paper which contained the full definition. A series of workshops was held with the biogas industry where the full definition was provided in presentations and distributed materials; and various additional communication materials have been distributed to the biogas industry explaining the amendment and providing the definition in full.

The process to start a biogas project is publicly available on the Business Queensland website - www.business.qld.gov.au/industries/mining-energy-water/energy/renewable/projects-queensland/starting-biogas-project/approvals-regulations. Included on the website is the 'Guideline for Operating Plant - Biogas' document which contains the full ISO 20675:2018 definition for biogas and biomethane. The regulation does not require that any other part of the standard apply other than the definitions which have been reproduced within the Guideline. Therefore access to the full standard is not necessary to understand how the provision applies. Based on the availability of the definition publicly and the regular communications between RSHQ and industry, there would be no necessity for stakeholders to pay to access the ISO 20675:2018 definitions for biogas and biomethane. RSHQ is a subscriber to Standards Australia, which provides timely and automatic updates to relevant standards, including ISO 20675:2018. As soon as RSHQ is made aware of any update to the standard, industry stakeholders will be made aware through RSHQ's communication channels. Amendments to the definition will also be able to be publicly viewed on the ISO website. RSHQ will ensure that any updates are also included in the Guideline for Operating Plant - Biogas documentation. RSHQ will continue to monitor the standard to confirm that ISO 20675:2018 and any updates remain suitable for biogas and biomethane definitions.¹¹

Committee comment

The committee considers that the inclusion of the references to ISO 20675 in the definitions of biogas and biomethane are justified in this instance because it is beneficial for the definitions to be consistent with those agreed internationally.

The committee is satisfied with the advice provided by RSHQ regarding options for any persons or entities to freely access the definitions as well as their consultation and communications processes with stakeholders.

4.2 Explanatory notes

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

¹¹ Resources Safety and Health Queensland, correspondence 25 October 2021, pp 1-2.

4.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.¹²

4.4 Human rights certificate

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

5 SL No. 83 of 2021 - Energy and Public Works Legislation (Fees) Amendment Regulation 2021

The objective of the Energy and Public Works Legislation (Fees) Amendment Regulation 2021 (SL No. 83) is to increase fees prescribed in the following regulations by 1.7% in accordance with the current 2021-2022 Queensland Government indexation rate:

- Architects Regulation 2019
- Building Industry Fairness (Security of Payment) Regulation 2018
- Building Regulation 2006
- Electricity Regulation 2006
- Gas Supply Regulation 2007
- Plumbing and Drainage Regulation 2019
- Professional Engineers Regulation 2019
- Queensland Building and Construction Commission Regulation 2018.

The increases in the fees come within the indexation rate of 1.7%, except for some fees which were slightly higher due to rounding.¹³

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 *Legislative Standards Act 1992*.

5.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

5.4 Human rights certificate

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

¹² Section 8 of the *Human Rights Act 2019* (HRA) relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

¹³ SL No. 83, s 4 (items 7 and 8 – per page copy fee increased from \$2.70 to 02.\$.75 – 1.8% increase), s 8 (item 8(b) per additional page copy fee increased from \$2.80 to \$2.85 – 1.8% increase), s18 (items 7 and 8 – copy of register or approved code fees for each page increased from \$2.55 to \$2.60 – 1.96% increase).

6 SL No. 93 of 2021 - Cross River Rail Delivery Authority (Gold Coast Infill Stations Project) Amendment Regulation 2021

The Cross River Rail Delivery Authority (Gold Coast Infill Stations Project) Amendment Regulation 2021 (SL No. 93) declares the 'Gold Coast Infill Stations Project' (GCIS Project) as a transport-related project for the purposes of the *Cross River Rail Delivery Authority Act 2016* (CRRDA Act).

The Gold Coast Infill Stations Project involves:

- providing new railway stations on the Brisbane to Gold Coast railway line at Merrimac, Pimpama and in the northern part of Helensvale
- providing or improving other rail transport infrastructure, road transport infrastructure and active transport infrastructure in relation to the stations.¹⁴

The effect of declaring a project as a transport-related project for the CRRDA Act is that the Cross River Rail Delivery Authority (Delivery Authority) is authorised to lead and deliver the project. Under the CRRDA Act, the Delivery Authority the power to deal with land or other property generally (eg building or moving ancillary works) or to take land, an easement or another interest in land for the purposes of the project.¹⁵

6.1 Fundamental legislative principle issues

The fundamental legislative principle which provides that property can only be compulsorily acquired with fair compensation¹⁶ is relevant to this regulation, given that there is likely to be an impact on individual property rights in the areas associated with the project.

Whilst the explanatory notes do not address this issue, the human rights certificate acknowledged that the regulation may limit property rights (see *Compatibility with human rights* below).

From a fundamental legislative principle perspective, the underlying principle is that 'A legislatively authorised act of interference with a person's property must be accompanied by a right of compensation, unless there is a good reason'.¹⁷

When discussing the power of the Delivery Authority to take land for the purposes of the project, the human rights certificate provides that the compensation provisions of the *Acquisition of Land Act 1967* (ALA) will apply:

The power is consistent with the existing and longstanding power of constructing authorities under the *Acquisition of Land Act 1967* to acquire land for the purposes of transportation, subject to pre- and post-acquisition processes designed to provide reasonable notice and compensation to property owners.¹⁸

...

The amendments clarify that the Delivery Authority can take land for the GCIS Project if necessary, but do not seek to change any aspect of the current statutory regime in the ALA, and any acquisition of land would be subject to the current statutory regime and its protections.¹⁹

¹⁴ SL No. 93, s 3.

¹⁵ CRRDA Act, ss 19-20.

¹⁶ LSA, s 4(3)(i).

¹⁷ Office of the Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook* (January 2008), p 73.

¹⁸ SL No. 93, explanatory notes, p 2.

¹⁹ SL No. 93, explanatory notes, p 3.

The CRRDA Act confirms that if land is taken for the purposes of a transport-related project, the ALA will apply.²⁰ However, regard must not be had to certain matters when determining compensation (for example, any change to the value of the land relating to a declaration of a Cross River Rail Priority Development Area).²¹

The availability of the ALA means that property owners will be compensated for any land that is acquired by the Delivery Authority. Former committees have considered that the application of the compensation provisions of the ALA to the compulsory acquisition of property have removed a breach of this fundamental legislative principle.²²

Committee comment

The committee is satisfied that SL No. 93 does not breach the fundamental legislative principle relating to the compulsory acquisition of property with fair compensation, as the ALA will apply to any property acquired as a result of this regulation (which, amongst other things, provides a process for compensation).

6.2 Explanatory notes

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

6.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

The issues outlined below are discussed in the human rights certificate.

Property rights

A person must not be arbitrarily deprived of their property.²³

SL No. 93 may limit this human right because the declaration of the Gold Coast Infill Station Project as a transport-related project means that land, or interests in land, in the relevant areas may be taken or dealt with by the Delivery Authority. In particular, the ability of the Delivery Authority to compulsorily acquire land will impact on the rights of landowners.

The human rights certificate acknowledges the right to property is limited by the regulation, but states that the purpose of the limitation is to facilitate the efficient delivery of the cross river rail project and transport related projects like the Gold Coast Infill Stations Project:

The projects being delivered by the Delivery Authority will improve public transport services for the South East Queensland community, including more frequent and accessible services, and stimulate economic development, including development for community purposes in Cross River Rail Project Development Areas. These improved services and developments for the community and associated indirect benefits to the environment (for example associated with reduction of car usage), are consistent with a free and democratic society based on human dignity, equality and freedom.²⁴

Further, the human rights certificate notes that the power to compulsorily acquire land is subject to the existing regime in the ALA which provides property owners with notice, options to negotiate the purchase of land, and the right to claim compensation.²⁵

²⁰ CRRDA Act, s 20.

²¹ CRRDA Act, s 24.

²² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 78.

²³ *Human Rights Act 2019*, s 24.

²⁴ SL No. 93, human rights certificate, p 2.

²⁵ SL No. 93, human rights certificate, p 3.

Cultural rights

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.²⁶

Declaring the Gold Coast Infill Stations Project as a transport-related project gives the Delivery Authority certain powers, including the ability to deal with land or other property generally.²⁷ According to the human rights certificate, this may impact the cultural rights of Aboriginal and Torres Strait Islander peoples.

The human rights certificate states that in delivering the project the Delivery Authority will be subject to other statutory processes aimed at protecting the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples, including the Queensland Government's *Duty of Care Guidelines* (Guidelines) gazetted under section 28 of the *Aboriginal Cultural Heritage Act 2003*.²⁸

These Guidelines include:

... the recommendation to consult with Aboriginal Parties in the area to assess and manage any activity to excavate, relocate, remove or harm possible Aboriginal cultural heritage prior to construction activities. A cultural heritage study or a cultural heritage survey should be carried out if necessary.²⁹

The human rights certificate also highlights that there is no other less restrictive, reasonably available ways to achieve the purpose of delivering the project due to the requirement to access and utilise additional land outside of the existing rail corridor for delivery of the project.³⁰ Further, that '[o]ther location alternatives would have similar limitations on human rights, including similar possible impacts under section 24 and section 28 of the HRA.'³¹

6.4 Human rights certificate

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

7 SL No. 94 of 2021 - Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021

The Building Industry Fairness (Security of Payment) and Other Legislation Amendment (Postponement) Regulation 2021 (SL No. 94) postpones the commencement of the following provisions of the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020* (BIFOLA Act):

- sections 46 to 48, 50 and 54(1), which establish an alternative recognition pathway for the licensing of building certifiers under the *Building Act 1975* (essentially, this will allow licensed certifiers without current accreditation to be licensed provided they meet prescribed qualification and experience requirements)
- section 125A, which repeals a licensing exemption for head contractors under the *Queensland Building and Construction Commission Act 1991* (QBCC Act) (essentially, this repeals a provision that allows unlicensed head contractors to enter into building contracts and arrange for building work to occur, provided the work is not residential/domestic building work and it is carried out by an appropriately licensed contractor).³²

²⁶ *Human Rights Act 2019*, s 28.

²⁷ CRRDA Act, s 19.

²⁸ SL No. 93, human rights certificate, p 4.

²⁹ SL No. 93, human rights certificate, p 4.

³⁰ SL No. 93, human rights certificate, p 4.

³¹ SL No. 93, human rights certificate, p 4.

³² SL No. 94, explanatory notes, p 1.

While all other provisions of the BIFOLA Act have commenced, these provisions have yet to be proclaimed and, unless delayed by the postponement regulation, would have automatically commenced on 24 July 2021. The postponement regulation will defer the automatic commencement of these provisions to 24 July 2022.³³

According to the explanatory notes, further time is required to consult on and finalise the framework for the alternative recognition pathway:

Extending the automatic commencement of the BIFOLA Act provisions will allow the Department of Energy and Public Works additional time to consult on and finalise the framework for the alternative recognition pathway. The framework will include technical qualifications and experience, continuing professional development requirements and QBCC [Queensland Building and Construction Commission] administrative processes.³⁴

In regard to the repeal of the licensing exemption for head contractors, the explanatory notes state that additional time is required to consult on implementation.³⁵

The explanatory notes state that 'All parties consulted on the proposals support the postponement'.³⁶

In relation to the alternative recognition pathway, this includes the Ministerial Construction Council whose members include the Australian Institute of Building Surveyors, Master Builders Queensland and the Housing Industry Association.³⁷

In relation to the head contractor licensing exemption, this includes the Master Builders Queensland, the National Fire Industry Association, the Plumbers' Union Queensland, the Civil Contractors' Federation of Queensland, the Queensland Major Contractors Association, the Property Council of Australia and the Queensland Building and Construction Commission (QBCC).³⁸

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 *Legislative Standards Act 1992*.

7.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

7.4 Human rights certificate

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

³³ SL No. 94, human rights certificate, p 2. Under section 15DA of the *Acts Interpretation Act 1954*, a regulation may extend the automatic commencement of provisions to not more than 2 years of the assent day.

³⁴ SL No. 94, explanatory notes, p 2.

³⁵ SL No. 94, explanatory notes, p 3.

³⁶ SL No. 94, explanatory notes, p 4.

³⁷ SL No. 94, explanatory notes, p 4.

³⁸ SL No. 94, explanatory notes, p 4.

8 SL No. 102 of 2021 - Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021

The policy objectives of the Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021 (SL No. 102) are to:

- address unsafe driving behaviours by providing that it is an offence for the driver of a vehicle to hold a mobile phone in the driver's hand or rest a mobile phone on any part of the driver's body while the vehicle is moving, or is stationary but not parked;
- facilitate camera enforcement of mobile phone and driver-related seatbelt offences; and
- encourage corporations to nominate the drivers of corporately-registered vehicles in which mobile phone or driver-related seatbelt offences are detected.³⁹

The amendment regulation restructures, but does not change, the current rules regarding seatbelts.⁴⁰

8.1 Fundamental legislative principle issues

Key issues of fundamental legislative principles are discussed below.

General rights and liberties

SL No. 102 amends the current prohibition on drivers using a mobile phone.⁴¹

The previous definition of use, in relation to a mobile phone, included holding the phone to the ear, and operating functions on the phone, such as sending a text message. The new definition of use, in relation to a mobile phone, is wider. It means holding the phone in the driver's hand or resting the phone on any part of the driver's body (such as a person's lap). It does not matter whether it is for operating the phone, whether the phone is turned on, or whether the phone is supported by anything else.

The amendment regulation also introduces certain circumstances in which it is permissible for a driver to use a phone, such as to pay for goods at a drive-through retail outlet.⁴²

Being prohibited from using a mobile phone impacts on a person's rights and liberties.

The explanatory notes contend that a balance has been reached between the usefulness of mobile phones and the need for drivers to focus on their driving because of the safety risk that arises from a driver's mobile phone use.⁴³

The explanatory notes cite research that shows that a person is 4 times more likely to be involved in a serious crash if they are using a mobile phone while driving. Also, that using a mobile phone while driving is as dangerous as driving with a blood alcohol content of 0.07-0.10.⁴⁴

With respect to a driver holding a mobile phone on their lap, the explanatory notes state:

... research shows that holding a mobile phone down around the driver's lap is a common strategy of drivers to avoid police detection and carries a high safety risk because it involves the driver taking their eyes off the road, their mind away from the driving task and their hand/s off the steering wheel. ... If the unsecured phone falls from their lap, which could easily happen while turning or braking, a driver may reach down to the footwell to pick it up, resulting in a reduction in attention to the driving task.

³⁹ SL No. 102, explanatory notes, p 1.

⁴⁰ SL No. 102, explanatory notes, p 5.

⁴¹ The maximum penalty of 20 penalty units and the infringement notice fine of 7.5 penalty units remain the same.

⁴² See SL No. 102, s 20 (Transport Operations (Road Use Management—Road Rules) Regulation 2009, s 300).

⁴³ SL No. 102, explanatory notes, p 10.

⁴⁴ SL No. 102, explanatory notes, p 2.

Alternatively, not picking it up is also dangerous as the phone may become lodged behind one of the vehicle's pedals and obstruct its function.⁴⁵

Committee comment

The committee noted that the above issues were canvassed and considered by the Parliament during consideration of the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020.

The committee is satisfied that the safety benefits for all road users that result from less drivers using mobile phones while driving justifies any infringement on the rights and liberties of individuals.

Privacy

The introduction of camera-detection of mobile phone and seatbelt offences by the amendment regulation infringes on a person's right to privacy and therefore the regulation could be considered inconsistent with the rights and liberties of individuals.

The digital driver behaviour camera system will take images or videos of all the vehicles that travel in a lane that has a camera system in operation, not just those who are offending against mobile phone or seatbelt road rules.⁴⁶ The image or video made by the camera system will show the view into the vehicle's interior at both a shallow and steep angle,⁴⁷ including high definition images of drivers and their front seat passengers.⁴⁸

The explanatory notes justify the breach of privacy that will result from the camera enforcement of mobile phone and seatbelt offences by highlighting the road safety benefits for the individuals and other road users. It also notes that the camera system includes a function that automatically deletes an image or video made by the system that does not possibly detect a prescribed offence and does not need to be kept for the proper operation of the system or for testing of the system to ensure it is operating correctly.⁴⁹

Committee comment

The committee noted that the above issues were canvassed and considered by the Parliament during consideration of the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020.

The committee is also satisfied that the inconsistency with fundamental legislative principles is justified because of the requirement in the legislation that the system automatically deletes unneeded images or video made by the system, and because of the likely safety benefits for all road users of less drivers using mobile phones, and for particular road users who elect to wear a seatbelt because of the increased likelihood of being caught for failing to do so.

Reverse onus of proof

If a person is unable to produce a seatbelt exemption certificate, or a copy of it, the amendment regulation places the evidential burden on that person in criminal proceedings if they wish to rely on a reasonable excuse defence.⁵⁰

⁴⁵ SL No. 102, explanatory notes, p 11.

⁴⁶ SL No. 102, explanatory notes, p 7.

⁴⁷ SL No. 102, s 7 (Traffic Regulation 1962, new s 210EA). The image or video will also show the front of the vehicle, including the vehicle's number plate.

⁴⁸ SL No. 102, explanatory notes, p 7.

⁴⁹ SL No. 102, explanatory notes, p 10. See also SL No. 102, s 6 (Traffic Regulation 1962, new s 208AA).

⁵⁰ SL No. 102, s 19 (Transport Operations (Road Use Management—Road Rules) Regulation 2009, s 267).

The explanatory notes explain why the onus of proof is reversed:

The purpose of placing the evidential burden on the defendant is to ensure that the provision allows for all those who are able to bring themselves within the statutory protection afforded to them by the law. This is done by ensuring that the evidence can be adduced by the party best able to satisfy the requirements of the defence. On that basis, the evidential burden of proving a reasonable excuse is considered justified.⁵¹

The TORUM enables a regulation to provide for evidence of matters to be provided by a certificate purporting to be signed by the chief executive, the commissioner or the chief executive administering a corresponding law to a transport Act.⁵²

The amendment regulation provides for certificates on the following matters to be evidence of the matter:

- at a particular time a stated motor vehicle was or was not a booked hire vehicle, limousine or taxi under the *Transport Operations (Passenger Transport) Act 1994*
- a seatbelt exemption certificate was or was not given to the chief executive or commissioner, in relation to a particular camera-detected offence within a specified period.

The explanatory notes justify the reversal of the onus of proof as follows:

This information is objective in nature and unlikely to be controversial. A person may still contest the evidence provided by certificate. However, certificate evidence supports a more efficient and cost-effective court process for all parties and is justified.⁵³

Committee comment

The committee noted that the above issues were canvassed and considered by the Parliament during consideration of the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020.

The committee is satisfied that any inconsistency with fundamental legislative principles is justified in the circumstances.

8.2 Explanatory notes

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

8.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Various human rights

The human rights certificate discusses the following rights and in each case, the Minister for Transport and Main Roads, Hon Mark Bailey MP, concludes that any limitation on the right is justified when balanced against the road safety benefits that would result from the subordinate legislation:

- right to recognition and equality before the law⁵⁴
- right to life⁵⁵

⁵¹ SL No. 102, explanatory notes, p 12.

⁵² *Transport Operations (Road Use Management) Act 1995*, s 123C(3).

⁵³ SL No. 102, explanatory notes, p 11.

⁵⁴ *Human Rights Act 2019*, s 15.

⁵⁵ *Human Rights Act 2019*, s 16.

- property rights⁵⁶
- privacy and reputation⁵⁷
- right to liberty and security of person⁵⁸
- right to a fair hearing.⁵⁹

Rights in criminal proceedings

With respect to rights in criminal proceedings,⁶⁰ the human rights certificate advises that SL No. 102 may limit the right to be presumed innocent until proved guilty according to law because the subordinate legislation places an evidential burden on a defendant to produce an exemption certificate to demonstrate that they, or a passenger, are exempt from wearing a certificate. If the defendant is unable to produce the certificate, or a copy of the certificate, they must establish that they have a reasonable excuse.

The human rights certificate explains why the evidential burden is placed on the defendant:

... the purpose of placing the evidential burden on the defendant is to ensure the provision allows for all those who are able to bring themselves within the statutory protection afforded to them by the law are given the opportunity to do so. This is done by ensuring that the evidence can be produced by the party best able to satisfy the requirements of the statutory protection.⁶¹

The human rights certificate adds: ‘the limitation is imposed only in respect of the defence. The prosecution will first have to establish the elements of the relevant offence’.⁶²

The Minister concludes that, on balance, the importance of adducing evidence to establish facts outweighs any limitation on rights.⁶³

8.4 Human rights certificate

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

9 SL No. 107 of 2021 - Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021

On 1 January 2020, a new mechanical services licensing framework commenced.⁶⁴ Under the licensing framework, refrigeration and air conditioning workers must be licensed by 1 January 2022.⁶⁵

To obtain the Mechanical services—refrigeration and air-conditioning occupational licence, an applicant must have the prescribed technical qualifications, but some refrigeration and air conditioning workers are unable to meet the technical qualification requirements.⁶⁶

⁵⁶ *Human Rights Act 2019*, s 24.

⁵⁷ *Human Rights Act 2019*, s 25.

⁵⁸ *Human Rights Act 2019*, s 29.

⁵⁹ *Human Rights Act 2019*, s 31.

⁶⁰ *Human Rights Act 2019*, s 32.

⁶¹ SL No. 102, human rights certificate, pp 14-15.

⁶² SL No. 102, human rights certificate, p 16.

⁶³ SL No. 102, human rights certificate, p 16.

⁶⁴ See SL No. 107, human rights certificate, p 1.

⁶⁵ Prior to this date, refrigeration and air conditioning workers did not need to be licensed or hold prescribed qualifications: SL No. 107, explanatory notes, p 2.

⁶⁶ SL No. 107, explanatory notes, p 2.

The objective of the Queensland Building and Construction Commission (Mechanical Services Licences) Amendment Regulation 2021 (SL No. 107) is to establish an alternative licensing pathway for certain refrigeration and air conditioning workers who have been lawfully performing work that now falls within the licensing framework.⁶⁷

Under SL No. 107, a refrigeration and air conditioning worker who does not have the prescribed technical qualifications can satisfy the qualifications required for a licence by demonstrating they had at least 2 years' experience performing refrigeration and air conditioning work prior to 1 January 2020 and for at least 6 months carried out work that complies with the *Work Health and Safety Act 2011*.

The worker must have submitted their application for the occupational licence by 30 September 2021.

9.1 Fundamental legislative principle issues

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with the principles of natural justice. One of the principles of natural justice is that procedural fairness must be accorded to a person.

The amendment regulation provides that a person who wishes to make an application for a Mechanical services—refrigeration and air-conditioning occupational licence using the alternative licensing pathway must do so by 30 September 2021. This means applicants have only 2 months from notification of the legislation on the Queensland Legislation website and 1 month from its tabling in the Queensland Parliament to apply for a licence using the alternative pathway.⁶⁸ It is also an earlier cut-off than that which applies to other licence applicants.⁶⁹

The limited time for refrigeration and air conditioning workers to find out about and act on the matters in the amendment regulation could be considered to be inconsistent with the principles of natural justice.

The explanatory notes justify the short timeframe as follows:

The early lodgement requirement enables the QBCC to work with applicants to ensure they have adequate evidence to meet licensing requirements and assess the application prior to 31 December 2021 when it becomes an offence to perform the work without an appropriate licence.⁷⁰

The human rights certificate identifies problems that may arise if the QBCC has insufficient time to process the alternative pathway applications:

The requirement for prospective licensees without technical qualifications to apply earlier than others (to be eligible for a licence) is necessary to provide the QBCC with adequate time to process applications. This will avoid adverse impacts on industry, such as labour shortages, higher costs, delays and potentially unsafe work from unlicensed individuals.⁷¹

The committee wrote to Department of Energy and Public Works (DEPW) regarding:

- the reasons for the length of time between notification of SL No. 107 and the closing date of applications using the alternative licensing pathway
- the methods used to notify industry participants about the alternative licensing pathway; and
- the number of workers impacted by the changes who have not applied by the 30 September 2021 deadline.

⁶⁷ SL No. 107, explanatory notes, p 1. SL No. 107 amends the Queensland Building and Construction Commission Regulation 2018.

⁶⁸ SL No. 107 was notified on 30 July 2021 and was tabled on 31 August 2021.

⁶⁹ Refrigeration and air conditioning workers must hold a mechanical services licence by 31 December 2021.

⁷⁰ SL No. 107, explanatory notes, p 2.

⁷¹ SL No. 107, human rights certificate, p 5.

The Department's response said:

The decision to introduce transitional provisions for the mechanical services - refrigeration and air conditioning (RAC) licence outlined in SL No. 107 was based on concerns raised by the Queensland Building and Construction Commission (QBCC) that some licence applicants, who had been working in the industry for long periods, were unable to meet the eligibility requirements for the licence.

The QBCC also projected approximately 3,000 applications would need to be submitted for the mechanical services licence in the last half of 2021 creating resourcing challenges and potentially resulting in individuals not being licensed before expiration of the deadline on 31 December 2021. If applications were not assessed before the deadline, individuals would need to stop work until licensed.

...

Timeframe for applicants using the alternative licensing pathway

During preparation of SL No. 107, the QBCC advised that applications would need to be submitted by 30 September 2021 to ensure the applications could be assessed and processed before the 1 January 2022 deadline. The QBCC required this time to work with applicants and collect sufficient evidence to assess the application.

Notification to industry participants

The industry was provided advice on the transitional arrangements through a range of sources that include:

- Building and Plumbing Newsflash 588 published by the department on 10 August 2021 providing an overview of the amendments and requirements
- QBCC notifications through the publication of fact sheets, social media posts, new QBCC website content and an article in QBCC's online newsletter
- emails from the QBCC to licensed RAC contractors to share with their employees who would benefit from this transitional opportunity
- emails to all members of the External Mechanical Services Stakeholder Group for on-sharing to their membership via their communication channels.

Workers impacted by the changes

As at 17 October 2021, the QBCC had received 1,300 applications for the RAC occupational licence since 1 January 2020. It is predicted over 3,300 applications will be received by January 2022. This prediction is based on enrolment data obtained from registered training organisations as well as the result of surveys taken by RAC licensees regarding their employees. The QBCC does not have definitive data to project the potential number of applicants as RAC occupational work has not previously been a licensed occupation.

The Amendment Regulation was developed in consultation with the QBCC and key industry stakeholders including the Air Conditioning and Mechanical Contractors Association, Australian Institute of Refrigeration, Air Conditioning and Heating and the Plumbers Union through the QBCC Mechanical Services Stakeholder Group. The Office of Best Practice Regulation was consulted in relation to the transitional amendments and advised they were unlikely to result in significant adverse impacts and no further regulatory analysis was required.

Although the mechanical services licence imposes a regulatory burden on the building and construction industry, it was considered the amendments minimise any impact of the regulatory burden by balancing the rights and liberties of existing workers and the need to provide consumer protection.⁷²

Committee comment

The committee is satisfied with the explanations provided by DEPW. The committee is satisfied that there is no inconsistency with fundamental legislative principles as potential applicants have had a reasonable time to submit their application.

⁷² Department of Energy and Public Works, correspondence 27 October 2021, pp 1-2.

9.2 Explanatory notes

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

9.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

9.4 Human rights certificate

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

10 SL No. 112 of 2021 - Transport Operations (Road Use Management – Driver Licensing) Regulation 2021

The legislative framework for Queensland's driver licence system (including the issue, variation, renewal, suspension and cancellation of licences) is provided through the Transport Operations (Road Use Management – Driver Licensing) Regulation 2010 (the 2010 regulation). The 2010 regulation automatically expired on 31 August 2021 and was replaced by the Transport Operations (Road Use Management – Driver Licensing) Regulation 2021 (SL No. 112).⁷³

According to the explanatory notes, SL No. 112 represents a significant restructure of the 2010 regulation, in particular 'the provisions that relate to the progression through the graduated licensing system have been restructured to aid readability and interpretation'.⁷⁴

The committee held a public briefing on the on the regulation with the Department of Transport and Main Roads (DTMR) on 11 October 2021. A copy of the briefing transcript has been published on the committee's webpage.

At the public briefing DTMR provided the following background on the regulation, as well as its purpose and key features:

The driver licensing regulation is important legislation that provides the legislative framework through which driver licensing functions operate in Queensland. This includes the issue, renewal, amendment, transfer, surrender, suspension and cancellation of driver licences. The provisions are primarily based on road safety requirements and are in line with the nationally agreed best practice. The regulation also prescribes rules about the testing and management of drivers, including standards about driver skills and knowledge. Driver licences also have a function as identification documents. The regulation supports this practice.

The main objective of the regulation is to prevent and reduce road trauma by providing the legislative requirements for drivers, including competency-based assessments and sanctions for driving offences. Road trauma costs Queensland about \$5 billion every year, not to mention the significant social cost caused to individuals, families and the broader community. The regulation alone cannot remove the risk of harm or guarantee driver compliance despite the inclusion of penalties to encourage compliance. However, the regulation provides a balanced approach to risk mitigation which complements and reinforces other activities undertaken by TMR, including driver education and awareness.

The key aspect of both the old and new regulation is the graduated licensing system which remains unchanged. Regrettably, young drivers are overrepresented in Queensland's road toll. The aim of the graduated licensing system is to develop safer, more proficient drivers in a progressive way. This is achieved by requiring novice drivers to gain minimum experience and improve their driving skills before they are allowed to progress to a higher type or class of licence.

...

⁷³ SL No. 112, explanatory notes, p 2.

⁷⁴ SL No. 112, explanatory notes, p 2.

The regulation also contains testing requirements, such as the knowledge test to obtain a learner licence, and a hazard perception and practical driving test to obtain a provisional licence.

...

Given the safety risks involved in driving a motor vehicle on the road, it is important that people comply with the various requirements set out in the regulation. To support that, the regulation sets out a range of sanctions that can apply.

...

The remade regulation does incorporate changes to support the government's recent drink-driving reforms. On 10 September, primary legislation expanding the Alcohol Ignition Interlock Program commenced. This requires a larger group of drink drivers to clearly demonstrate that they have separated drinking and driving. It also includes new education programs that must be completed. Provisions have been included in the regulation to support these laws that specify the new interlock devices to be used in the revised program. Provisions also deal with the limited exemptions that may be available from the drink-driving Repeat Offender Education Program, for example, where a person would need to travel more than a prescribed distance or time to attend a face-to-face program and they cannot attend the program virtually. Obsolete provisions were also removed. These include references to old P—probationary—licences that have not been used for some time.⁷⁵

SL No. 112 also incorporates a number of minor changes to clarify existing policy and to reflect current drafting practices.⁷⁶

The explanatory notes state:

Consultation on the proposed Regulation has been undertaken with the Australian Defence Force, the Queensland Trucking Association, the Royal Automobile Club of Queensland (RACQ), the Royal Australian College of General Practitioners, the Australian Driver Trainers Association and the now disbanded Motorcycle Riders Association of Queensland. No significant concerns were raised by these stakeholders.⁷⁷

10.1 Fundamental legislative principle issues

Natural justice – authority to drive – failing practical driving test

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.⁷⁸

These principles have been developed by the common law and include the following:

- Nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker.
- The decision maker must be unbiased.
- Procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.⁷⁹

⁷⁵ Public Briefing Transcript, Brisbane, 11 October 2021, pp 2-3.

⁷⁶ SL No. 112, explanatory notes, p 3.

⁷⁷ SL No. 112, explanatory notes, p 25.

⁷⁸ LSA, s 4(3)(b).

⁷⁹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 25.

Under SL No. 112, a person's authority to drive a class of motor vehicle in Queensland based on their non-Queensland driver licence will be withdrawn if the person fails the practical driving test.⁸⁰ This withdrawal of authority means that if a person fails a practical driving test for a higher class of vehicle (such as a truck), not only will their authority to drive a truck be withdrawn but also their authority to drive a car.⁸¹

Whilst this may raise issues of natural justice, the explanatory notes justify these provisions on the following basis:

The factors leading to a person failing a practical driving test are not arbitrary. These are serious infractions that reflect a lack of skill necessary for safe driving. For this reason, it is appropriate that the person be prevented from not only driving the class of vehicle in which they undertook their test, but also from driving a lower class of motor vehicle, such as a car as it is likely the infraction is fundamental to the way the person drives generally.⁸²

The committee sought further information from the department regarding how the regulation may impact on overseas persons in Queensland who drive under a foreign licence. DTMR advised:

Generally speaking, when you book a practical driving test as a foreign driver's licence holder, you do that over the phone. We do advise people generally that it is better to convert at your current class rather than have a tenure requirement and say, 'I've been on this licence for X number of years and I would like to upgrade to the next licence', because it increases the risk of failing the test and then having your authority to drive revoked. We do have a little bit of customer service in that aspect to say, 'Are you sure that you want to go for the higher licence or would you like to convert at your current driver licence?' We always recommend that it is a like for like. It makes a lot more sense and then they can always upgrade if need be.⁸³

The committee requested clarification on how the regulation would apply to an overseas student in Queensland, a permanent migrant and someone on a working visa. DTMR advised:

Once you have moved to Queensland you have got three months to convert your driver licence. Once you have moved as a permanent resident to Queensland then you have three months to convert your driver licence. After three months your authority to drive on your overseas licence is revoked and you will need to do the appropriate conversion and testing. If you are a person on a long-term visa, that is that example that you provided in terms of a student, you are not a permanent resident therefore that three-month requirement to convert does not apply to you.

...

In essence, the overseas licensing requirements align with the Migration Act. Once they take up permanent residency and get a permanent resident visa that is when it triggers the three-month requirement. If they are not triggered under that federal legislation they can continue to drive on their overseas licence for as long as they are a student.⁸⁴

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

⁸⁰ SL No. 112, s210(2).

⁸¹ SL No. 112, explanatory notes, p 16.

⁸² SL No. 112, explanatory notes, p 17.

⁸³ Public Briefing Transcript, Brisbane, 11 October 2021, p 5.

⁸⁴ Public Briefing Transcript, Brisbane, 11 October 2021, pp 6-7.

Natural justice – authority to drive – medical condition

SL No. 112 also provides the chief executive with the ability to immediately suspend a person’s licence, or withdraw their authority to drive in Queensland, if the chief executive receives information about a medical condition that may adversely affect the person’s ability to drive safely and the chief executive considers public safety to be endangered as a result.⁸⁵

This raises issues of natural justice, as the person immediately has their right to drive removed. The explanatory notes provide the following justification:

The significant danger presented by a person driving when they are not medically fit to drive justifies the need for the chief executive to be empowered to immediately act to suspend a Queensland licence or to withdraw a non-Queensland licence holder’s authority to drive. To allow a person to continue to drive where the chief executive has reliable information that they are not fit to drive, would breach the duty put upon TMR [Department of Transport and Main Roads] to create a safe road environment.⁸⁶

The explanatory notes highlight that there are safeguards in place to protect individual rights including notice provisions and the ability for the person to challenge the decision and/or obtain a new medical opinion.⁸⁷

In regards to this, DTMR added:

... to align with requirements based on the Queensland driver’s licence, non-Queensland licence holders, particularly those on long-term visas, are now required to notify the department of new or exacerbated medical conditions that are likely to impact their ability to drive safely—this reflects the need for all drivers to be safe on our roads regardless of licence type ...⁸⁸

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

Reversal of onus of proof

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.⁸⁹

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence:

For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.⁹⁰

SL No. 112 contains a number of provisions whereby a driver has the onus of establishing a particular fact, for example:

- A young driver bears the onus of proving that they have an immediate family relationship with a passenger in their car (for the purposes of section 248 which provides that young drivers can only have one passenger in the car under 21 years of age between 11pm and 5am, unless the person is an immediate family member).

⁸⁵ SL No. 112, s 213.

⁸⁶ SL No. 112, explanatory notes, p 17.

⁸⁷ SL No. 112, explanatory notes, p 18.

⁸⁸ Public Briefing Transcript, Brisbane, 11 October 2021, p 3.

⁸⁹ LSA, s 4(3)(d).

⁹⁰ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 36.

- In circumstances a certificate of exemption or a particular record is in effect in relation to a person, that person has the onus of producing the certificate of exemption or record.⁹¹

The explanatory notes justify these provisions on the basis that the matter to be established or provided by the defendant is peculiarly within the knowledge (eg family member) or possession (eg exemption certificate) of the defendant.⁹²

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

Penalties – proportion and relevance

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... 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.⁹³

The majority of the offence provisions contained within SL No. 112 remain unchanged from the 2010 regulation and have a maximum penalty amount of 20 penalty units and a penalty infringement notice penalty of no more than 2 penalty units.⁹⁴

There have been some changes to penalty amounts to 'reflect the severity of the offence, to provide greater consistency between offences of similar severity and to better comply with best practice guidelines for penalty infringement amounts'.⁹⁵ For example, the maximum penalty for the following offence provisions has been increased from 20 penalty units to 30 penalty units (the infringement notice penalty remains unchanged at 3 penalty units):

- a passenger of a learner driver using a mobile phone in loudspeaker mode
- a passenger of a provisional driver using a mobile phone in loudspeaker mode
- a novice driver driving a high-powered vehicle without an exemption
- a young driver subject to a licensing sanction driving late at night without an exemption
- a young driver carrying more than one person under 21 years who is not an immediate family member late at night.⁹⁶

The explanatory notes explain that these:

... maximum penalties were changed to reflect that failure to comply with the requirements could result in serious road safety consequences, particularly for young and novice drivers who continue to be overrepresented in fatal road crash statistics.⁹⁷

⁹¹ See, for example, SL No. 112 ss 240, 247, 250, 338, 360 and 261, 363, 367-369. See also SL No. 121, explanatory notes, pp 18-19.

⁹² SL No. 112, explanatory notes, pp 18-19.

⁹³ OQPC, *Fundamental legislative principles: the OQPC Notebook*, p 120.

⁹⁴ SL No. 112, explanatory notes, p 20.

⁹⁵ SL No. 112, explanatory notes, p 21.

⁹⁶ SL No. 112, explanatory notes, p 21.

⁹⁷ SL No. 112, explanatory notes, p 21.

Committee comment

The committee is satisfied that the penalties contained in SL No. 112 are proportionate and relevant to the conduct to which they relate.

Matters appropriate to subordinate legislation

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, subordinate legislation contains matters appropriate to subordinate legislation.⁹⁸ Generally, in Queensland legislation, review of decisions should be provided for in an Act of Parliament rather than through subordinate legislation.

Whilst chapter 14, part 2 of SL No. 112 provides for the reconsideration of a range of decisions made under the regulation, this is consistent with the suite of legislation under the *Transport Operations (Road Use Management) Act 1995* (TORUM Act). The TORUM Act authorises SL No. 112 to cover areas relating to the driver licensing framework and, according to the explanatory notes, by extension 'it is appropriate that the reconsideration provisions be located within the same instrument that the decisions it relates to are located.'⁹⁹

The explanatory notes also highlight the safeguards in place in relation to reconsideration of decisions, including the provision of notice, reasons for a decision and that a reconsideration must be made by a different person, one who is more senior, or at the same level, as the person who made the original decision. In certain circumstances a person can also apply to the Queensland Civil and Administrative Tribunal for review of a decision.¹⁰⁰

Committee comment

The committee is satisfied that any breach of fundamental legislative principles is justified in the circumstances.

Subdelegation of power

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, subordinate legislation allows the subdelegation of power in appropriate cases and to appropriate persons.¹⁰¹

Where there is, incorporated into the legislative framework of the State, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

SL No. 112 provides a definitions of 'experienced driver recognition country' as 'a country approved by Austroads and listed on its website as having obtained experienced driver recognition status' and 'recognised country' as 'a country approved by Austroads and listed on its website as a recognised country'.¹⁰² These definitions are relevant to a number of provisions in SL No. 112 relating to holders of non-Queensland driver licences.

⁹⁸ LSA, s 4(5)(c).

⁹⁹ SL No. 112, explanatory notes, p 22.

¹⁰⁰ SL No. 112, explanatory notes, pp 22-23.

¹⁰¹ LSA, s 4(5)(e).

¹⁰² SL No. 112, schedule 9.

In regards to this, DTMR explained:

There are categories of countries which are in line with Austroads, which is the national driver licensing body which has representation from all states and territories and New Zealand. They set the national driver licensing practices. There are different types of countries. There is a recognised country which is a country that in essence it has been assessed as being like for like. The UK, for example, is a country that we consider is much of a muchness with our graduated licensing system. Then there is experienced driver recognition countries. That is where a country has deficiencies in their GLS where we feel it is not quite like for like with us. That has a threshold of 25 years. There is the experienced driver recognition, which is in the middle. You have got your recognised country and your non-recognised country basically. Countries that we feel do not have an adequate safety record or an adequate graduated licensing system fit into the non-recognised category.

Depending on which country you come from means you will have different requirements. With a country that we would recognise as like for like you can just transfer your driver licence, whereas a country that we do not recognise as like for like we require you to do practical testing and a knowledge test just to make sure that you are meeting that benchmark as a safe driver on Queensland roads. That middle category is once you hit the 25-year-old mark, which is considered a more mature driver, then those testing requirements get lowered as well.¹⁰³

The reference to the Austroads website raises issues relating to the institution of Parliament, as the definitions included in SL No. 112 are subject to change without coming to the attention of the House. The explanatory notes justify the use of these references on the basis that Austroads manages the process of the recognition and determination of the status of driver licences issued outside Australia and that relying on their research ensures the Queensland approach is consistent with other jurisdictions and informed by in-depth research.¹⁰⁴

SL No. 112 also provides the chief executive with the ability to make decisions about the approval of external training courses and the types of documentary evidence to be provided with certain applications.¹⁰⁵ These are administrative decisions necessary to carry out the licensing framework and do not raise any significant issues from a fundamental legislative principle perspective.

Committee comment

The committee is satisfied that SL No. 112 contains matters appropriate to subordinate legislation, and therefore has sufficient regard to the institution of Parliament.

10.2 Explanatory notes

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

10.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Significant issues of human rights raised in the human rights certificate are considered below.

Recognition and equality before the law

Every person is equal before the law and is entitled to the equal protection of the law without discrimination.¹⁰⁶

SL No. 112 may limit this right because certain provisions impose additional requirements on people based on attributes mentioned in the *Anti-Discrimination Act 1991*, namely, age, country of issue of licence, and impairment.

¹⁰³ Public Briefing Transcript, Brisbane, 11 October 2021, p 5.

¹⁰⁴ SL No. 112, explanatory notes, p 24.

¹⁰⁵ See examples set out at SL No. 112, explanatory notes, pp 24-25.

¹⁰⁶ *Human Rights Act 2019*, s 15(3).

In particular, the graduated licensing system specifically targets younger drivers and applies requirements to them on the basis of their age.¹⁰⁷ There are also specific offences that only apply to novice drivers.¹⁰⁸

The human rights certificate states the purpose of the limitations on the rights of young drivers is public safety:

The purpose of these provisions is to allow novice drivers to gain driving experience and improve their driving skills in a safe and supervised manner before progressing to higher types or classes of licences. Young drivers are at greater risk of crashes overall due to a range of factors including developing visual and perceptual skills, and inability to accurately perceive or respond to hazards.

...

This purpose of the limitations is to ultimately reduce the risk of road trauma not only to the young driver themselves but also to other road users. This is considered consistent with a free and democratic society as it is based on the broader public interest.¹⁰⁹

Similarly, the justification for the offences that apply only to novice drivers is to ‘deter potentially unsafe driving practices’ in situations where it has been shown that novice drivers are less able to cope with the distraction that these offences target (eg use of mobile phone and driving with peers in the car).¹¹⁰

Overall, the human rights certificate concludes:

These restrictions are intended to maintain a safer environment for novice drivers to gain experience on the roads, and to minimise their risk of a crash as a result of established dangerous practices. The limitation of the human right of equality before the law is justifiably and demonstrably outweighed by the overriding benefit of reducing the significantly higher crash risk among novice drivers.¹¹¹

In regard to the requirements that any person over 75 years has to carry a medical certificate to demonstrate they are fit to drive, the human rights certificate states:

The purpose of this requirement is to reduce the risk of fatalities on the road as a result of licensed drivers developing medical conditions which may adversely impact their ability to drive. As individuals age, the risk of developing temporary or long-term medical conditions that can adversely impact driving skills is significantly higher... This limitation on the human right of equality before the law is considered in the interest of the public and justified in a free and democratic society.¹¹²

In regard to the additional requirements imposed on individuals who have a licence issued outside Queensland and who wish to obtain a Queensland licence, the human rights certificate states that the approach in SL No. 112 is consistent with Austroads and other Australian states and territories. The overall purpose of additional requirements is to ‘provide recognition for drivers with foreign licences while maintaining high-safety standards for licensing and road use in Queensland.’¹¹³

¹⁰⁷ SL No. 112, human rights certificate, p 3.

¹⁰⁸ See, for example, SL No. 112, chapter 3 and ss 228 – 230, 248.

¹⁰⁹ SL No. 112, human rights certificate, p 9.

¹¹⁰ SL No. 112, human rights certificate, p 10.

¹¹¹ SL No. 112, human rights certificate, p 11.

¹¹² SL No. 112, human rights certificate, p 12.

¹¹³ SL No. 112, human rights certificate, p 13.

In regard to the provisions in SL No. 112 which draw distinctions based on physical or mental impairment (in that a person may not be able to possess a licence or may have their licence suspended or cancelled), the human rights certificate cites public safety as the purpose of the limitation on human rights:

The purpose of these provisions is to ensure that drivers are both mentally and physically capable of driving safely. Common medical conditions that would be seen as a barrier to safe driving include, for example, blackouts and vision problems. This restriction, placed on the driver licence of a person with a mental or physical incapacity that is likely to adversely affect their ability to drive safely, is considered to be consistent with the values of a free and democratic society as it is in the best interest of the public.¹¹⁴

Finally, in regard to the provisions which exempt consular officials from having to pay certain fees under SL No. 112, the human rights certificate explains that this approach reflects international reciprocal agreements under the United Nations, Vienna Convention on Diplomatic Relations.¹¹⁵

Freedom of movement

The HRA protects a person's right to move freely within Queensland.¹¹⁶

SL No. 112 may limit a person's freedom of movement by restricting the hours that young people are allowed to drive a car or the ability of people to be passengers in a car or motorbike with others.¹¹⁷

The human rights certificate explains the basis for these limitations as road safety:

Peer passengers under 21 years have been shown to increase crash risk for novice drivers late at night, primarily due to distraction associated with intoxication. The purpose of the restriction is therefore to reduce this potential for driver distraction and to deter novice drivers from engaging in behaviours which have been shown to increase their risk of serious crash or injury.¹¹⁸

Further, the human rights certificate considers that the nature and extent of the impact on freedom of movement is not excessively onerous particularly in light of the importance of the graduated licensing system in contributing to a safe road environment.¹¹⁹

Privacy

A person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.¹²⁰

SL No. 112 compels individuals to report personal information pertaining to medical conditions that are likely to adversely impact their ability to safely operate a motor vehicle.¹²¹ This may limit an individual's right to privacy through the mandatory reporting of personal, medical information.

The human rights certificate states that the 'purpose of this requirement is to ensure that a person has the mental and physical capacity to safely operate a motor vehicle.'¹²² Further, that as 'this is an essential component of ensuring public safety on the roads, this requirement is consistent with a free and democratic society based on human dignity, equality and freedom.'¹²³

¹¹⁴ SL No. 112, human rights certificate, p 14.

¹¹⁵ SL No. 112, human rights certificate, p 16.

¹¹⁶ *Human Rights Act 2019*, s 19.

¹¹⁷ See, for example, SL No. 112, ss 248, 251, 252.

¹¹⁸ SL No. 112, human rights certificate, p 17.

¹¹⁹ SL No. 112, human rights certificate, p 18.

¹²⁰ *Human Rights Act 2019*, s 25.

¹²¹ See, for example, SL No. 112, ss 177, 178, 208.

¹²² SL No. 112, human rights certificate, p 20.

¹²³ SL No. 112, human rights certificate, p 20.

To safeguard this information, the human rights certificate states:

TMR does seek to uphold a driver's right to privacy by limiting the number of staff with access to a customer's medical information and ensuring that staff are regularly trained in the importance of protecting personal information.¹²⁴

Other provisions compel individuals to provide personal information, such as for the purposes of a change of address, or other information pertaining to licence-related applications. These provisions appear to be administrative in nature and there are protections in SL No. 112 to ensure that only relevant information is collected and that access to the information is logged and monitored.¹²⁵

10.4 Human rights certificate

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

11 SL No. 113 of 2021 - Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021

The legislative framework for Queensland's vehicle registration system (including vehicle registration requirements, setting registration fees, providing for fee concessions, enabling the issuance of number plates and the regulation of written-off vehicles) is provided through the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010 (the 2010 regulation). The 2010 regulation automatically expired on 31 August 2021 and was replaced by the Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021 (SL No. 113).¹²⁶

According to the explanatory notes, SL No. 113 reflects 'a restructure of the 2010 Regulation and amendments to align with contemporary drafting style. In particular, the provisions pertaining to application, renewal and cancellation of vehicle registration and dealer plates have been decoupled and are now contained in separate parts'.¹²⁷

SL No. 113 also incorporates a number of minor changes to clarify existing policy and to reflect current drafting practices.¹²⁸

According to the explanatory notes:

Consultation on the proposed Regulation has been undertaken with the Queensland Law Society, Royal Automobile Club of Queensland, Queensland Trucking Association, the Motor Trader Association of Queensland, the National Heavy Vehicle Regulator and members of the Recreational Motor Vehicle and Safety Group. This group of stakeholders did not raise any concerns with the Regulation.¹²⁹

11.1 Fundamental legislative principle issues

Reversal of onus of proof

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.¹³⁰

¹²⁴ SL No. 112, human rights certificate, p 21.

¹²⁵ SL No. 112, human rights certificate, p 22. See also SL No. 112, chapter 14.

¹²⁶ SL No. 113, explanatory notes, p 2.

¹²⁷ SL No. 113, explanatory notes, p 2.

¹²⁸ SL No. 113, explanatory notes, p 3.

¹²⁹ SL No. 113, explanatory notes, p 15.

¹³⁰ LSA, s 4(3)(d).

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence:

For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.¹³¹

SL No. 113 contains a number of provisions whereby an individual will have the evidentiary burden of proving that they had a reasonable excuse for failing to comply with certain requirements (eg for failing to return a number plate or giving notice to the chief executive within a required timeframe).

The explanatory notes justify these provisions on the basis that the matter to be established or provided by the defendant is peculiarly within the knowledge of the defendant.¹³²

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

Penalties – proportion and relevance

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

... 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.¹³³

According to the explanatory notes, the penalties contained in SL No. 113 were reviewed as part of the rewrite the 2010 regulation and are 'considered appropriate'.¹³⁴ It is not clear from the explanatory notes however, whether any penalties have been increased as part of the rewrite or any new offences introduced.¹³⁵ A review of SL No. 113 indicates that the penalties are within the range provided for by the Transport Operations (Road Use Management) Act (TORUM Act), in that they are not above the maximum penalty of 80 penalty units allowed under a regulation.¹³⁶

Administrative power

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.¹³⁷

Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.¹³⁸

¹³¹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 36.

¹³² SL No. 113, explanatory notes, p 15.

¹³³ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 120.

¹³⁴ SL No. 113, explanatory notes, p 14.

¹³⁵ In the explanatory notes for SL 112, for example, it was set out clearly which penalties were increased in the new regulation and which penalties were decreased, as appropriate.

¹³⁶ TORUM Act, s 171(2).

¹³⁷ LSA, s 4(3)(a).

¹³⁸ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 18.

Committees carefully scrutinise provisions that do not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.¹³⁹

SL No. 113 contains a number of provisions that provide for administrative decisions that may impact individual rights. These include, for example:

- the chief executive has the power to grant an authorisation for the use of an unregistered vehicle on a road.¹⁴⁰
- the chief executive can approve non-standard periods of registration in certain circumstances and approve direct debit arrangements for registration fees.¹⁴¹
- the chief executive can accept a registration renewal application at a time other than when normally required.¹⁴²

According to the explanatory notes, whilst these are discretionary powers, their use is limited to when the chief executive determines they are reasonable and appropriate.¹⁴³ This provides the necessary flexibility for the chief executive to make decisions based on individual circumstances (eg, where a person may not have been able to renew their vehicle registration in normal time due to exceptional circumstances).¹⁴⁴ In this sense, the ability of the chief executive to be flexible in the application of the requirements of SL No. 113 to allow for an individual's circumstances is likely to enhance their individual rights.

In the case of applications by a person to use an unregistered vehicle on a road, there is clear criteria set out in SL No. 113 and notice provisions to be given to an individual if an application is refused, including that the decision is reviewable.¹⁴⁵

Committee comment

The committee is satisfied that the administrative powers contained in SL No. 113 are sufficiently defined and subject to appropriate review.

Privacy

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual. The right to privacy is also protected by the HRA (discussed below).

SL No. 113 provides for the collection, handling, use and disclosure of personal information. This occurs through the collection of applications and forms with personal information, the keeping of the Register of Registered Vehicles (Register), the inspection of vehicles and the disclosure of information from the Register.¹⁴⁶ Additionally, if a person applies to be a written-off vehicle examiner, the chief executive may have regard to a person's criminal history.¹⁴⁷

¹³⁹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 15; citing Scrutiny of Legislation Committee, Report No. 13, 49th Parliament, *Annual Report 1998-1999*, October 1999, p 12, para 3.10.

¹⁴⁰ SL No. 113, ss 13-16.

¹⁴¹ SL No. 113, s 28.

¹⁴² SL No. 113, s 32.

¹⁴³ See, for example, SL No. 113, explanatory notes, p 15.

¹⁴⁴ See, for example, SL No. 113, explanatory notes, p 15.

¹⁴⁵ SL No. 113, ss 14-15.

¹⁴⁶ SL No. 113, explanatory notes, p 14.

¹⁴⁷ SL No. 113, s 166.

Whilst SL No. 113 may impact on a person's right to privacy, the explanatory notes highlight the following safeguards in place to protect personal information collected under the regulation:

Provisions which require or allow for the collection, use and disclosure of personal information are limited to the collection of information that is necessary for the purposes they are being collected, such as to register a vehicle. Provisions allowing the disclosure of information are constrained to particular purposes. Offences apply for the misuse or unauthorised disclosure of personal information.¹⁴⁸

In regard to the ability of third parties to access information held in the Register, the explanatory notes state:

In recognition of the importance of personal privacy, the circumstances where a client user can obtain an extract from the register are clearly specified in the proposed Regulation and are limited to where there is a broader community benefit or a compelling case for assisting individual members of the community (such as in a legal process). Client users are subject to auditing requirements, and it is an offence for a client user to disclose information in the extract other than in accordance with any conditions imposed by the chief executive.¹⁴⁹

And in regard to the ability to consider an applicant's criminal history when deciding on their application to be a written-off vehicle examiner, the explanatory notes provide this justification:

This is considered reasonable and appropriate as written-off vehicle examiners hold a position of trust, performing a role that is essential to ensuring stolen vehicles are not sold under fabricated identities and to ensure that repaired written-off vehicles are safe for use on public roads.¹⁵⁰

It is not clear from the explanatory notes whether the criminal history information is to be obtained by consent, whether there are penalties for unauthorised disclosure or whether the information is to be destroyed after it is no longer needed.

Committee comment

The committee is satisfied that the breach of fundamental legislative principles relating to privacy are sufficiently justified.

Subdelegation of power

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, subordinate legislation allows the subdelegation of power in appropriate cases and to appropriate persons.¹⁵¹

This question is concerned with the level at which delegated legislative power is used.

For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.¹⁵²

Generally, the greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

¹⁴⁸ SL No. 113, explanatory notes, p 14.

¹⁴⁹ SL No. 113, explanatory notes, p 13.

¹⁵⁰ SL No. 113, explanatory notes, p 15.

¹⁵¹ LSA, s 4(5)(e).

¹⁵² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 154.

SL No. 113 contains a number of provisions that subdelegate powers to the chief executive and other persons.¹⁵³ These include, for example:

- the chief executive may accept a written statement from a vehicle's manufacturer as evidence that a vehicle complies with a vehicle law requirement.¹⁵⁴
- the chief executive may decide an amount that must be paid for a special edition number plate.¹⁵⁵
- the chief executive may on receiving the fee for a personalised number plate (which is the fee stated on the Personalised Plates Queensland website) give a personalised number plate to a person.¹⁵⁶
- definitions for certain terms in SL No. 113 are by reference to documents published by Austroads.¹⁵⁷

The powers of the chief executive set out above appear to be administrative and technical in nature and necessary in order to carry out the administration of the vehicle registration framework. The explanatory notes provide adequate justification for each of these powers and they are not considered to raise any significant issues from a fundamental legislative principle perspective.¹⁵⁸

In regard to references to external websites or documents produced by Austroads, the explanatory notes state:

These documents are technical in nature and require regular amendment to keep up-to-date with changes in vehicle technology. The chief executive and Austroads, which is a collective of government agencies advised by technical experts, are well placed to do this. These technical documents are only updated following consultation with relevant industries and community groups. For these reasons, the potential sub-delegation of power for documents approved by the chief executive or that take effect through publication are considered appropriate.¹⁵⁹

In regard to accepting statements from a vehicle manufacturer as evidence of compliance, the explanatory notes state:

The vehicle's manufacturer is well placed to know whether a vehicle complies with a vehicle law requirement related to the vehicle's construction and this is not always easily ascertainable by the chief executive. For these reasons, the potential sub-delegation of power to a vehicle manufacturer to provide a written statement to the chief executive that a vehicle is compliant with a vehicle law is considered appropriate.¹⁶⁰

Committee comment

The committee is satisfied that SL No. 113 contains appropriate subdelegations of power necessary to carry out the administration of the vehicle registration framework, and therefore has sufficient regard to the institution of Parliament.

¹⁵³ The TORUM Act provides that regulations may prescribe rules about regulating vehicle operations and road rules, and about regulating the identification of vehicles (ss 146, 149). Together with s 22(1)(b) of the *Statutory Instruments Act 1992*, this provides implicit authority for the subdelegation of power to the chief executive.

¹⁵⁴ SL No. 113, s 9.

¹⁵⁵ SL No. 113, s 129.

¹⁵⁶ SL No. 113, s 132.

¹⁵⁷ See, for example, the definition of 'statutory write-off assessment criteria' in schedule 8 of SL No. 113.

¹⁵⁸ See SL No. 113, explanatory notes, pp 12-14.

¹⁵⁹ SL No. 113, explanatory notes, p 14.

¹⁶⁰ SL No. 113, explanatory notes, p 12.

11.2 Explanatory notes

Whilst the explanatory notes provide background information and commentary to facilitate understanding of SL No. 113, the explanatory notes did not clearly identify the specific clauses that gave rise to each issue of fundamental legislative principle. Bearing in mind the desirable outcome of better informing the community about proposed legislation, best practice is for explanatory notes to clearly identify each specific issue of fundamental legislative principle that arises and the specific clause giving rise to the issue.

In all other respects the explanatory notes comply with part 4 of the *LSA*.

11.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Significant issues of human rights raised in the human rights certificate are considered below.

Freedom of movement

The HRA protects a person's right to move freely within Queensland.¹⁶¹

SL No. 113 may limit a person's freedom of movement by restricting an individual's ability to move through an area of public space to the extent that they choose to do so in an unregistered or written-off vehicle.¹⁶² An individual's freedom of movement could also be limited to the extent that their vehicle registration has been cancelled under the regulation.¹⁶³

The human rights certificate states that the purpose of the limitation (ie providing that only registered vehicles can be used on roads) is public safety:

Current registration ensures that vehicles meet prescribed standards of safety and roadworthiness and are identifiable. Therefore, the purpose of the limitation is the safety of the vehicle operator, passengers and other road users which is in the public interest and protects the rights of others.¹⁶⁴

In assessing the balance between the human right and the limitation, the human rights certificate states:

In light of the nature and importance of the requirements in sections 10, 53, 55, 56, 58, 59 and 144, in keeping unsafe and unregistered vehicles off the road, as well as supporting the sale of vehicles in prescribed scenarios, the purpose of these provisions outweigh any limited impact on freedom of movement.

Further, the use and application of sections 53, 55, 56, 58 and 59 [cancellation of vehicle registration] is limited, extensive notice to the registered operator to remedy is provided and compliance to avoid cancellation is easily achievable. It is considered that these provisions strike a fair balance between the right to travel in a certain vehicle on the road and the broader public interest of road safety.

Should a registered operator be unable to avoid cancellation under these provisions in relation to a specific vehicle, they may travel via public transport, active transport or by using another registered vehicle. These restrictions do not prohibit the travel of individuals by any means other than by way of the cancelled vehicle.¹⁶⁵

¹⁶¹ *Human Rights Act 2019*, s 19.

¹⁶² See, for example, SL No. 113, ss 10, 144 and SL No. 113, human rights certificate, p 5.

¹⁶³ See, for example, SL No. 113, ss 53, 55, 56, 58 and 59, and SL No. 113, human rights certificate, p 5.

¹⁶⁴ SL No. 113, human rights certificate, p 10.

¹⁶⁵ SL No. 113, human rights certificate, p 12.

Property rights

The HRA protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property.¹⁶⁶

The provisions of SL No. 113 that prohibit the use of unregistered or written-off vehicles on a road¹⁶⁷ (discussed above in relation to freedom of movement) could also impact a person's property rights – in the sense that they limit the way a person can use their vehicle.

A person's right to property could also be limited by SL No. 113 whereby:

- the chief executive can deduct monies from a refund owing to a registered operator including an administration fee and any unpaid fees relating to the vehicle.¹⁶⁸
- registered operators have to return number plates in circumstances such as the vehicle's registration expiring, if the number plate is offensive and if a taxi or limousine licence is no longer in force.¹⁶⁹

In regard to the use of unregistered or written-off vehicles, the human rights certificate states that the purpose of the limitation on a person's right to property is 'to prevent unsafe vehicles from being used on the road and endangering the driver, passenger and other road users.'¹⁷⁰ Further, that 'these provisions support equality as all vehicle owners must pay the applicable fees in order to use their vehicle on a road.'¹⁷¹

Similarly, in regard to provisions that may limit a person's right to monetary property if the chief executive deducts unpaid fees from any refund owing, the human rights certificate states:

The objective of this provision is the protection of public money by ensuring full payment of all fees relating to the vehicle. This objective is consistent with a free and democratic society based on human dignity, equality and freedom as it is expected that all registered operators are treated equally and must make payment of all fees applicable to their vehicle registration.¹⁷²

Finally, in relation to the return of number plates, the human rights certificate notes that under section 128 of SL No. 113, number plates remain the property of the State.¹⁷³ Further, that any limitation on the right to deal with property is justified by the overall purpose of the provisions to prevent the misuse of number plates, and is intended to ensure there are no number plates in the community which are not linked to the vehicle they were issued to with current registration.¹⁷⁴

Right to privacy

A person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.¹⁷⁵

As noted above in relation to fundamental legislative principles, SL No. 113 provides for the collection, handling, use and disclosure of personal information. This occurs through the collection of applications and forms with personal information, the keeping of the Register, the inspection of vehicles and the disclosure of information from the Register.

¹⁶⁶ *Human Rights Act 2019*, s 24.

¹⁶⁷ SL No. 113, ss 10, 144.

¹⁶⁸ SL No. 113, s 65.

¹⁶⁹ SL No. 113, ss 125-128.

¹⁷⁰ SL No. 113, human rights certificate, p 13.

¹⁷¹ SL No. 113, human rights certificate, p 13.

¹⁷² SL No. 113, human rights certificate, p 13.

¹⁷³ SL No. 113, human rights certificate, p 13.

¹⁷⁴ SL No. 113, human rights certificate, p 13.

¹⁷⁵ HRA, s 25.

The human rights certificate states that the purpose of the collection of personal information is:

... to ensure the chief executive has a record of all registered vehicles for the purposes of identification, the charging of fees, enforcement, contacting registered operators and road safety (for example, keeping a register of written-off vehicles and a record of inspections). These provisions also allow Queensland to meet their national obligations of sharing vehicle registration information with other Australian jurisdictions through NEVDIS [National Exchange of Vehicle and Driver Information System] for vehicle identification, road safety and enforcement purposes. The collection of personal information is therefore critical to the operation of the vehicle registration scheme and is consistent with a free and democratic society based on human dignity, equality and freedom.¹⁷⁶

As noted above, there is also provision in SL No. 113 for the chief executive to release personal information of registered operators from the Register to third parties.¹⁷⁷ The human rights certificate justifies any limitation on the right on the following basis:

.. information is only provided to eligible persons who have an identified need for the information, tolling entities and NEVDIS. These parties have a direct role in providing equitable access to the road network, enforcing laws about vehicles or ensuring parties who have suffered loss or injury have mechanisms of recourse against the responsible parties. This in turn has a community benefit, which speaks to the balance that is being struck between the limitation and the human right to privacy. This balance is further reinforced by the system and administrative constraints that have been implemented to ensure that parties accessing personal information are limited and accountable for their use of that information.¹⁷⁸

11.4 Human rights certificate

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

12 SL No. 114 of 2021 - Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021

Light vehicle standards, modifications, projections and load security, and light and heavy vehicle inspections were regulated under the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010 (the 2010 Regulation) which expired on 31 August 2021. The 2010 Regulation was replaced by the Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021 (SL No. 114) on 1 September 2021.¹⁷⁹

According to the explanatory notes, SL No. 114 generally provides for continuity of the standards, requirements and processes that applied under the 2010 Regulation, however it also enhances the existing regulatory framework through a range of means.¹⁸⁰

SL No. 114:

- applies the nationally-harmonised Australian Light Vehicle Standards Rules 2015 (ALVSRs) to light vehicles in Queensland
- minimises the use of defective light vehicles on roads and ensure defective vehicles are repaired or removed from service
- manages light vehicle modifications to allow flexibility without compromising minimum safety standards
- guides drivers about requirements for light vehicle coupling and loading, including minimum standards for load restraint and placement, mass limits, and limits for projecting loads

¹⁷⁶ SL No. 113, human rights certificate, p 15.

¹⁷⁷ SL No. 113, ss 202, 203, 204 and 205.

¹⁷⁸ SL No. 113, human rights certificate, p 17.

¹⁷⁹ See SL No. 114, s 2.

¹⁸⁰ SL No. 114, explanatory notes, pp 3-4.

- requires light and heavy vehicle inspections at appropriate intervals to verify vehicle identity and to check whether the vehicle is defective
- ensures the integrity of inspection certificates issued for light and heavy vehicles
- allows flexibility to accommodate commercial, industrial or recreational interests while maintaining safety.¹⁸¹

12.1 Fundamental legislative principle issues

Key issues of fundamental legislative principle are discussed below.

Administrative power

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.¹⁸²

SL No. 114 prohibits a person from removing a vehicle identification plate or a modification plate from a light vehicle without the written approval of the chief executive. While a person may apply to the chief executive for approval, there is no criteria specified for the chief executive to have regard to in deciding such an application. This could raise an issue with respect to an administrative power not being sufficiently defined.¹⁸³

However, because the circumstances in which this might arise may vary widely, the explanatory notes contend it is unreasonable to specify criteria that limits the chief executive in granting such an approval.¹⁸⁴

Consistent with the 2010 Regulation, the chief executive may make the following decisions under SL No. 114 that are not subject to review:

- refusal of application for modifications not covered by the Modification Handbook¹⁸⁵
- refusal of extension of time to comply with defect notice or certificate of inspection requirements¹⁸⁶
- refusal of application to remove modification plates and vehicle identification plates.¹⁸⁷

The explanatory notes provide individual justifications for these decisions¹⁸⁸ and note that the persons involved in the decision-making processes are accountable under the *Code of Conduct for the Queensland Public* and that a statutory order of review of the decisions will be available under the *Judicial Review Act 1991*.¹⁸⁹

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

¹⁸¹ SL No. 114, explanatory notes, p 3.

¹⁸² LSA, s 4(3)(a).

¹⁸³ SL No. 114, explanatory notes, 12.

¹⁸⁴ SL No. 114, explanatory notes, 13.

¹⁸⁵ SL No. 114, s 24.

¹⁸⁶ SL No. 114, s 15, 16 and 72 to 74.

¹⁸⁷ SL No. 114, s 103.

¹⁸⁸ SL No. 114, explanatory notes, pp 13-15.

¹⁸⁹ SL No. 114, explanatory notes, p 13.

Reversal of onus of proof

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.¹⁹⁰ Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.¹⁹¹

SL No. 114 reverses the onus of proof by applying exceptions to certain offences where the defendant is considered best placed to provide the evidence needed.¹⁹² For example, a person must not drive or park a light vehicle that is defective on a road.¹⁹³ An exception to this would be if that person is driving the defective vehicle to a location for repair. The explanatory notes provide that the defendant is the only person who would know whether they are genuinely driving to a place for repair.¹⁹⁴

Some provisions also place an evidentiary onus on a defendant who has breached an obligation to establish that they had reasonable excuse for that breach.¹⁹⁵ The explanatory notes advise that providing a reasonable excuse defence ensures people are not unjustly held liable for these offences. As above, the defendant is considered best placed to provide evidence about the reasons for their conduct.¹⁹⁶

The explanatory notes justify the reversal of onus in the above circumstances as it provides a balance between allowing some limited reasonable use of vehicles that would otherwise not be permitted, while ensuring prosecutions are effective and the deterrent value of the offences is preserved.¹⁹⁷

Some provisions potentially limit the presumption of innocence (for example, evidence that a load has fallen from a vehicle is evidence it was not properly secured).¹⁹⁸ The explanatory notes provide that this rebuttal presumption will assist with court processes and that the provisions are justified in the interests of road safety.

SL No. 114 allows for certificate evidence to be provided about the calibration of noise testing equipment. Evidentiary provisions reverse the onus of proof insofar as they can remove the need for the prosecution to call witnesses. However, no evidentiary provisions provide any evidence tendered is conclusive and cannot be challenged. The explanatory notes justify the certificate provision on the grounds that efficient court processes benefit all parties.¹⁹⁹

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

¹⁹⁰ LSA, s 4(3)(d).

¹⁹¹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 36.

¹⁹² SL No. 114, ss 8(2) and (3), 11(2), 18(3), 71(2), 75(2) and 76(2).

¹⁹³ SL No. 114, ss 8(2).

¹⁹⁴ SL No. 114, explanatory notes, p 15.

¹⁹⁵ SL No. 114, s 10, 11 and 12.

¹⁹⁶ SL No. 114, explanatory notes, p 15.

¹⁹⁷ SL No. 114, explanatory notes, p 16.

¹⁹⁸ SL No. 114, ss 44(1) and 44(2).

¹⁹⁹ SL No. 114, explanatory notes, p 17.

External documents

The inclusion in subordinate legislation of references to external documents may mean that the subordinate legislation does not have sufficient regard to the institution of Parliament because the Parliament does not have any control over such documents, such as to disallow or amend them.²⁰⁰

Schedule 1 provides the *light vehicle standards (model provisions)* (model provisions) which are based on the ALVSRs. The model provisions incorporate the Australian Design Rules by reference, together with a number of Australian Standards, British Standards and standards produced by other countries.²⁰¹

This is justified in the explanatory notes, which state that it would be impractical to incorporate numerous, sometimes technical, documents into the legislation. The Modification Handbook and Inspections Manual which are referenced in SL No. 114 are publicly available on the TMR website.²⁰²

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified.

Subdelegation of power

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons.²⁰³ For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation.²⁰⁴

SL No. 114 contains a number of provisions that subdelegate powers to the chief executive and other persons. These include, for example:

- the chief executive may, by publishing a notice on the Department of Transport and Main Roads (TMR) website, approve a way in which an application may be made or require stated information to be included in, or to accompany, an application²⁰⁵
- the chief executive may approve modifications²⁰⁶ and issue safe movement guidelines and permits.²⁰⁷

²⁰⁰ See LSA, s 4(2)(b). The incorporation by reference of external documents can also be considered in relation to the rights and liberties of individuals. Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is unambiguous and drafted in a clear and precise way: LSA, s 4(3)(k). In addition, legislation should be structured in a logical, user-friendly and accessible way: OQPC, *Fundamental legislative principles: the OQPC notebook*, p 89. External information underpins certain provisions of the subordinate legislation which could impact an individual's access to the relevant laws: SL No. 114, explanatory notes, p 12.

²⁰¹ SL No. 114, explanatory notes, pp 12, 18.

²⁰² SL No. 114, explanatory notes, p 12.

²⁰³ LSA, s 4(5)(e).

²⁰⁴ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 154.

²⁰⁵ SL No. 114, Part 8.

²⁰⁶ SL No. 114, Part 3.

²⁰⁷ SL No. 114, Part 5.

With respect to notice about applications via the TMR website, the explanatory notes state:

Any infringement of the fundamental legislative principles is, however, justified by the increased flexibility it provides to not only the chief executive but also, very importantly, to customers of TMR. For example, it potentially allows the chief executive to approve applications being made orally by telephone or over the counter at a CSC or being made by electronic communication such as by email.²⁰⁸

In regard to approving modification and safe movement approvals, the explanatory notes state:

Allowing the chief executive to approve these matters facilitates practical and responsive processes that recognise the need to consider individual circumstances and changing technologies, without compromising road safety.²⁰⁹

Committee comment

The committee is satisfied that SL No. 114 contains appropriate subdelegations of power necessary to carry out the administration of the road use management framework, and therefore has sufficient regard to the institution of Parliament.

12.2 Explanatory notes

The explanatory notes comply with part 4 of the Legislative Standards Act 1992.

12.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

The right to freedom of movement and property rights are discussed below.

Freedom of movement

The HRA protects a person's right to move freely within Queensland.²¹⁰

SL No. 114 prohibits the driving of vehicles that do not comply with certain requirements.²¹¹ These provisions operate to ensure vehicles that are used on roads comply with vehicle standards and safe loading practices. Modifications to vehicles that do not meet legislative standards also carry road safety risks.²¹² These provisions may limit a person's freedom of movement if they choose to drive a defective (including illegally modified) or incorrectly loaded vehicle to move through Queensland.

The human rights certificate states that the purpose of the limitation (ie providing vehicle standards and load practices) is public safety:

Ensuring that vehicles used on road are safe promotes human rights for other road users relating to right to life and protection of families. The limitations in the above provisions also protects property rights of others by reducing the possibility a defective vehicle may cause an incident resulting in damage to another person's property.²¹³

In assessing the balance between the human rights and the limitation, the human rights certificate states that without the limitation, there may be increased use of defective and unsafely loaded vehicles increasing the road safety risks in the community, potentially impacting the right to life and protection of family and property rights.²¹⁴

²⁰⁸ SL No. 114, explanatory notes, p 19.

²⁰⁹ SL No. 114, explanatory notes, p 20.

²¹⁰ *Human Rights Act 2019*, s 19.

²¹¹ SL No. 114, ss 8, 20, 32-36, 40-44, 46, 47, 52.

²¹² SL No. 114, human rights certificate, p 13.

²¹³ SL No. 114, human rights certificate, p 13.

²¹⁴ SL No. 114, human rights certificate, p 14.

Property rights

The HRA protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their right to property.²¹⁵

The provisions of SL No. 114 that prohibit the driving and parking on public roads of defective or modified vehicles or vehicles that are not loaded correctly (discussed above in relation to freedom of movement) in that they limit the way a person can use their vehicle. The issue of defect notices may also impact a person's property rights in that it compels a vehicle owner to rectify a registered vehicle's defects, or they must dispose of the vehicle to a dealer or de-register it.

SL No. 114 also prohibits specific vehicle modifications, and altering, defacing or removing modification and identification plates or defective vehicle labels. These provisions may limit the ability of the owner of a registered vehicle or a vehicle proposed to be used on the road by to do as they like with vehicle plates and labels attached to their vehicle.

The human rights certificate outlines states the purpose of the limitation:

The data outlined above shows there is a clear link between ensuring vehicles comply with vehicle standards and road safety. In addition, as discussed above, vehicle loading also impacts road safety. Prohibiting the altering, defacing or removing of modification or identification plates or defective vehicle labels protects the property rights of others and community amenity as well as promoting road safety.²¹⁶

With respect to the balance between the human right and the limitation, the human rights certificate states:

Without the limitation on use of the vehicle or the ability to remove identification plates, modification plates and defective vehicle labels, there may be increased safety risks, and potentially impact the human rights of others including the right to life and the protection of family. In addition, the property rights of others may be impacted through damage in an incident caused by a defective vehicle, or incorrectly loaded vehicle.²¹⁷

12.4 Human rights certificate

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

13 SL No. 121 of 2021 - Vegetation Management (Regional Ecosystems) Amendment Regulation 2021

The objective of the Vegetation Management (Regional Ecosystems) Amendment Regulation 2021 (SL No. 121) is to update the regional ecosystems and conservation classes declared in the schedules to the Vegetation Management Regulation 2012.

The explanatory notes provide the background to the amendments:

The Queensland Herbarium maps the regional ecosystems that occur in Queensland. ... In March 2021, the Queensland Herbarium finalised version 12 of its regional ecosystem mapping and this map along with the updated list of regional ecosystems and conservation classes, ensures that the vegetation mapping being used under the vegetation management framework represents the best available science.

The explanatory notes describe the amendments:

Schedules 1 to 3 of the *Vegetation Management Regulation 2012* will be amended to provide for:

- one regional ecosystem that is changing to a higher conservation class schedule (e.g. from least concern to of concern), and

²¹⁵ *Human Rights Act 2019*, s 24.

²¹⁶ SL No. 114, human rights certificate, p 16.

²¹⁷ SL No. 114, human rights certificate, p 16.

- 10 regional ecosystems that are changing to a lower conservation class schedule (e.g. from of concern to least concern),
- two new regional ecosystems being added to the schedules, and
- 13 regional ecosystems being removed from the schedules.²¹⁸

13.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

13.2 Explanatory notes

The explanatory notes comply with part 4 of the Legislative Standards Act 1992.

13.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

13.4 Human rights certificate

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

14 SL No. 126 of 2021 - Building Regulation 2021

The objective of the Building Regulation 2021 (SL No. 126) is to remake the *Building Regulation 2006* which expired on 31 August 2021. The Building Regulation 2006 had been exempted from expiry since 2016 because the *Building Act 1975* (Building Act) was undergoing review as a part of the *Building Industry Fairness (Security of Payment) Act 2017*, *Building Industry Fairness and Other Legislative Amendments Act 2020* and certification reforms being progressed through the Queensland Building Plan.²¹⁹

SL No. 126 supports the objectives of the Building Act and prescribes a range of industry matters, for example building work regulated under the Act and fees payable under the Act.²²⁰

Given the significance of the Building Regulation 2021, which replaces the Building Regulation 2006, the committee held a public briefing with DEPW on 11 October 2021. A copy of the briefing transcript has been published on the committee's webpage.

14.1 Fundamental legislative principle issues

Penalties

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence. Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence, and penalties within legislation should be consistent with each other.²²¹

Building certifiers rely on other competent or QBCC licensed individuals to determine whether building work complies with a building development approval. It is critical that the information used to certify that a building meets the relevant standards and codes and is safe to occupy is accurate and reliable.²²²

²¹⁸ SL No. 121, explanatory notes, p 2.

²¹⁹ SL No. 126, explanatory notes, p 1. The remake of the Building Regulation 2006 was also delayed by the COVID-19 pandemic: SL No. 126, explanatory notes, p 1.

²²⁰ SL No. 126, explanatory notes, p 2.

²²¹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 120.

²²² SL No. 126, explanatory notes, p 7.

The Building Regulation 2006 provided that it was an offence for a competent person or QBCC licensee to give a certifier a document or certificate that the person knows is false or misleading. A maximum penalty of 20 penalty units applied for each offence.²²³ The explanatory notes advise that these offences are ineffective because proving the level of culpability is extremely problematic and the consequences of the actions arising from the offence are serious and significant, potentially fatal.²²⁴

SL No. 126 preserves the objectives of the former provisions, while increasing the maximum penalty for each offence from 20 to 100 penalty units and changing the level of knowledge required about the false or misleading documents. The explanatory notes provide:

It is not in the public interest to have offence provisions that cannot be enforced due to the need to prove a person knew (as opposed to reasonably suspected) that the documents that they had completed or provided were false or misleading. Therefore, on balance it is considered appropriate and proportionate to the seriousness of the offences to prove that the person knew or reasonably suspected the document or certificate was false or misleading.²²⁵

The explanatory notes justify the increase in penalty, asserting that the former maximum does not act as a deterrent for reckless or deliberately dishonest behaviour, nor is it proportionate to the potential serious consequences of the offence.²²⁶ The explanatory notes state that the increased penalty values are likely to act as a deterrent, and will improve confidence in the integrity of the certification process. The increase is also argued to be consistent with similar offence provisions.²²⁷

The committee sought further information from the department in regards to how the proposed new maximum penalty for offences relating to giving false or misleading documents (sections 40 and 71) compared with the penalties for similar offences in other Australian jurisdictions. DEPW provided the following response:

As at 13 October 2021, the Penalties and Sentences Regulation 2015 (section 3) prescribes the value of a penalty unit as \$137.85. For an offence committed in Queensland, where the maximum penalty is 100 penalty units, this equals \$13,785. The new maximum penalty in the Building Regulation 2021 is lower than most other Australian jurisdictions, as reflected in the table below.²²⁸

Jurisdiction	Offence	Maximum penalty unit (PU) or fine
New South Wales	Knowingly issuing a false certificate	10,000 PU (\$1,100,000) or two-years imprisonment (or both)
Victoria	Giving false or misleading statements or documents	Individual 60 PU (\$10,904.40) Body corporate 300 PU (\$54,522)
Tasmania	Giving false or misleading statements	Individual 100 PU (\$17,300) Body corporate 500 PU (\$86,500)
Western Australia	Giving false or misleading information	\$25,000
South Australia	Knowingly giving false or misleading information	\$10,000

²²³ Building Regulation 2006, ss 23 and 45.

²²⁴ SL No. 126, explanatory notes, p 7.

²²⁵ SL No. 126, explanatory notes, p 7.

²²⁶ SL No. 126, explanatory notes, p 7.

²²⁷ For example, *Plumbing and Drainage Act 2018* (s 84 - 100 penalty units) and the *Queensland Building and Construction Commission Act 1991* (s 53B -100 penalty units or 2 years imprisonment).

²²⁸ Department of Energy and Public Works, correspondence, 18 October 2021, p 2.

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified to ensure that building certifiers receive accurate and reliable information to prevent dishonest behaviour that potentially endangers lives.

Subdelegation of power

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, subordinate legislation allows the subdelegation of a power only in appropriate cases and to appropriate persons.²²⁹

This fundamental legislative principle concerns the level at which delegated legislative power is used. The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament.²³⁰

SL No. 126 restates the subdelegated legislative power for a local government to designate, under a local planning scheme, bush fire prone areas and flood hazard areas, for all or part of its local government area, to ensure that the relevant fire and flood safety provisions and standards applicable to dwellings in those areas apply.²³¹

Matters that are relevant to determining whether fundamental legislative principle is infringed upon include the importance of the subject matter and practicalities in dealing with the subject matter entirely in subordinate legislation.²³²

The explanatory notes state that the importance of the subject matter of these subdelegations (ie bush fire and flood zoning) are indisputable and that it would be impractical for the designation of those areas to be dealt with entirely in subordinate legislation because the areas prone to bush fires or floods can change frequently. The explanatory notes contend it is appropriate that local government exercise these powers in relation to their local areas.²³³

SL No. 126 also restates the power in the Building Regulation 2006 for local government areas to declare, by resolution, a locality or type of building or structure in the locality exempt from inspection at a stage of assessable building work if the work is for a single detached house or a garage, car port or shed, and is not a swimming pool.²³⁴ This resolution may be made only if the local government is satisfied the exemption will not adversely affect public safety.

The restated power for local governments to declare certain matters exempt from inspection supports local governments in adjusting their inspection requirements as appropriate to local government area needs. The explanatory notes contend this is particularly important for remote and rural areas where there is a shortage of inspectors working in those areas.²³⁵

Committee comment

The committee is satisfied that SL No. 126 contains appropriate subdelegations of power necessary to carry out the administration of the Building Act, and therefore has sufficient regard to the institution of Parliament.

²²⁹ LSA, s 4(5)(e); OQPC, *Fundamental legislative principles: the OQPC notebook*, p 120.

²³⁰ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 145.

²³¹ SL No. 126, ss 7, 8; SL No. 126, explanatory notes, p 8.

²³² SL No. 126, explanatory notes, p 8.

²³³ SL No. 126, explanatory notes, p 8.

²³⁴ SL No. 126, explanatory notes, p 8; SL No. 126, s 45.

²³⁵ SL No. 226, explanatory notes, p 9.

Privacy

The right to privacy, and the disclosure of private or confidential information are relevant to a consideration of whether subordinate legislation has sufficient regard to the rights and liberties of the individual. The right to privacy is also protected by the HRA (discussed below).²³⁶

SL No. 126 restates the obligations prescribed by the Building Regulation 2006 relating to the collection of personal information, keeping records and sharing personal information relevant to building work compliance with the relevant standards, codes and statutory requirements and enforcement action. This raises an inconsistency with a person's right to privacy in that processes required to ensure building work is compliant under the Building Act requires personal information to be shared between building contractors, the competent person and building certifier, and with building regulators.

The explanatory notes contend that the sharing of personal information is justified to ensure buildings and structures, such as regulated pools, are constructed fit for purpose and to ensure the safety of occupiers and the general public. It is argued that the building certifier, owner, pool safety inspector, building contractors, QBCC or the relevant local government cannot achieve their statutory obligations to ensure building work is compliant, or take enforcement actions to rectify noncompliant building work, without the necessary and essential personal information required to be collected under SL No. 126.²³⁷

Committee comment

The committee is satisfied that any inconsistency with fundamental legislative principle is justified to ensure the effective regulation of the building industry and the accuracy of recordkeeping.

14.2 Explanatory notes

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

14.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

The right to privacy is discussed below.²³⁸

Right to privacy

A person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.²³⁹

As noted above, a person's privacy may be interfered with to the extent that personal information is shared to various parties involved in building and structure inspection and certification processes.²⁴⁰ The human rights certificate contends that the collection of information and sharing of personal information for the purposes prescribed by SL No. 126 does not arbitrarily interfere with privacy and is essential and necessary to ensuring the safety of building occupants and the general public.

²³⁶ *Human Rights Act 2019*, s 25.

²³⁷ SL No. 126, human rights certificate, p 7.

²³⁸ The human rights certificate raises other human rights issues.

²³⁹ *Human Rights Act 2019*, s 25.

²⁴⁰ For example, the building certifier, owner, pool safety inspector, building contractors, QBCC or the relevant local government.

The human rights certificate highlights the following safeguards which purport to restrict the impact of any limitation on an individual's right to privacy:

The QBCC Act 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. Information held by a local government is protected in accordance with section 27 of the *Information Privacy Act 2009*.²⁴¹

14.4 Human rights certificate

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

15 SL No. 130 of 2021 - Greenhouse Gas Storage Regulation 2021

The objective of Greenhouse Gas Storage Regulation 2021 (SL No. 130) is to replace the Greenhouse Gas Storage Regulation 2010 which expired on 31 August 2021. The provisions contained in the regulation remain necessary for the continued operation of the *Greenhouse Gas Storage Act 2009*.

According to the explanatory notes, SL No. 130 is substantially the same to the preceding statute.²⁴²

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 *Legislative Standards Act 1992*.

15.3 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights.

15.4 Human rights certificate

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

²⁴¹ SL No. 126, human rights certificate, p 9.

²⁴² SL No. 130, explanatory notes, p 1.

16 Recommendation

The committee recommends that the House notes this report.



Shane King MP

Chair

November 2021

Transport and Resources Committee

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Lachlan Millar MP, Member for Gregory
Members	Mr Colin Boyce MP, Member for Callide
	Mr James Martin MP, Member for Stretton
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North