

**STATE DEVELOPMENT, NATURAL RESOURCES AND AGRICULTURAL
INDUSTRY DEVELOPMENT COMMITTEE**

REPORT No. 38, 56th PARLIAMENT

**SUBORDINATE LEGISLATION TABLED BETWEEN 15 MAY 2019 AND
11 JUNE 2019**

QUEENSLAND GOVERNMENT RESPONSE

INTRODUCTION

On 8 October 2019 the State Development, Natural Resources and Agricultural Industry Development Committee (the Committee) tabled its Report No. 38 (the report) in relation to the subordinate legislation tabled between 15 May 2019 and 11 June 2019.

In the report the Committee made one recommendation (the recommendation) relating to the *Electricity (CleanCo) Amendment Regulation 2019* (SL 92) (the regulation) and noted two matters relating to the regulation's explanatory notes.

The Hon. Anthony Lynham MP, Minister for Natural Resources, Mines and Energy, is the minister responsible for these matters. In accordance with section 107 of the *Parliament of Queensland Act 2001*, the Queensland Government response to the recommendation and related matters noted in the report are provided as follows.

RESPONSE TO RECOMMENDATION

Recommendation 1

The Committee recommended the Department of Natural Resources, Mines and Energy provide further information to the Committee regarding how s 256 of the *Electricity Act 1994*, as it relates to decisions by CleanCo Queensland Limited (CleanCo), are 'appropriate and proportionate' in the context of the commercial and community service responsibilities placed upon state electricity entities.

Government Response

The government thanks the Committee for the recommendation and provides the further information requested from the Department of Natural Resources, Mines and Energy (the department), as follows.

The explanatory notes for the regulation flag that the exemption provided by section 256 of the *Electricity Act 1994* – to exempt State electricity entities from the *Judicial Review Act 1991* – is appropriate and proportionate in the context of the commercial and community service obligations placed upon State electricity entities.

This exemption has applied to State electricity entities since the commencement of the *Electricity Act 1994* and forms part of the regulatory framework applying to State electricity entities. The department notes that CleanCo is an electricity generator government owned corporation (GOC) that competes in competitive markets with other electricity generator GOCs, including Stanwell Corporation Limited (Stanwell) and CS Energy Limited (CS Energy), as well as private market participants, none of which are subject to the *Judicial Review Act 1991*.

The regulation's purpose was to declare CleanCo as a State electricity entity to ensure it is subject to the same regulatory framework as the other electricity generator GOCs that were already State electricity entities (and were already subject to the exemption from the *Judicial Review Act 1991*). The regulatory framework applying to State electricity entities makes them subject to (among other things):

- Ministerial directions under section 257 of the *Electricity Act 1994*;
- employment provisions under chapter 8 of the Electricity Regulation 2006 (which will enable employees transferring to CleanCo from each of Stanwell and CS Energy to have the protection afforded by the employment provisions); and
- section 256 of the *Electricity Act 1994*, which excludes the application of the *Judicial Review Act 1991*.

MATTERS NOTED BY THE COMMITTEE

Explanatory notes to include assessment of consistency of the legislation with fundamental legislative principles

The Committee noted that in accordance with part 4 of the *Legislative Standards Act 1992*, the explanatory notes should include an assessment to ensure that the Electricity (CleanCo) Amendment Regulation 2019 is consistent with fundamental legislative principles.

Government Response

The government thanks the Committee for bringing this matter to the department's attention.

The government accepts the committee's concerns that an assessment of fundamental legislative principles is required to address the issue of consistency and any reasons for inconsistency.

An assessment of consistency with fundamental legislative principles was undertaken by the department and Queensland Treasury when formulating the legislative amendments required for CleanCo's establishment. The explanatory notes include the disclosure of CleanCo's exemption from the *Judicial Review Act 1991*.

As a newly established company, the department notes that judicial review rights relating to CleanCo did not previously exist before its incorporation.

Explanatory notes to set out the provision of the Act or subordinate legislation under which the legislation is made

The Committee noted that in accordance with paragraph 24(1)(b) of the *Legislative Standards Act 1992*, the explanatory notes could have referred to section 259A of the *Electricity Act 1994* as the provision under which the regulation was made.

Government Response

The government thanks the Committee for bringing this matter to the department's attention.

This matter was previously considered by the department and Queensland Treasury when formulating the legislative amendments required for CleanCo's establishment.

It was not possible for CleanCo to be declared a State electricity entity under section 259A of the *Electricity Act 1994* as CleanCo did not fall within the definition of a 'related group entity', as required by section 259A. While CleanCo and other electricity generator GOCs share the same shareholding Ministers, they do not form part of the same corporate group.

For this reason, the authorising law referred to in the explanatory notes was Schedule 5, definition *State electricity entity*, paragraph (b)(ii) of the *Electricity Act 1994*, which permits an entity to be declared a State electricity entity by regulation.
