

State Development, Natural Resources and Agricultural Industry Development Committee

Report No. 49, 56th Parliament

Subordinate legislation tabled between 16 October 2019 and
26 November 2019

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 16 October 2019 and 26 November 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
215	Planning (Regulated Requirements and Other Matters) Amendment Regulation 2019	26 November 2019	2 April 2020
220	Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019	26 November 2019	2 April 2020
221	Coal Mining Safety and Health and Other Legislation Amendment Regulation 2019	26 November 2019	2 April 2020
222	Fisheries (General) (Fees) Amendment Regulation 2019	26 November 2019	2 April 2020
230	Proclamation made under the <i>Economic Development and Other Legislation Amendment Act 2019</i>	26 November 2019	2 April 2020
232	Coal Mining Safety and Health (Use of Particular Electrical Equipment in Sealed Underground Mines) Amendment Regulation 2019	26 November 2019	2 April 2020

*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

No significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified.

The explanatory notes tabled with the regulations comply with the requirements of section 24 of the LSA.

3.1 Planning (Regulated Requirements and Other Matters) Amendment Regulation 2019 (SL 215)

The objectives are to:

- apply the regulated requirements to all planning schemes under the repealed *Sustainable Planning Act 2009* (Sustainable Planning Act) in the same way as they apply to planning schemes made under the *Planning Act 2016* (Planning Act) to ensure all planning schemes made under the Sustainable Planning Act and Planning Act apply the regulated requirements
- align the Planning Regulation 2017 (the planning regulation) provisions with the intent of section 19 of the *Sustainable Ports Development Act 2015*, that a port overlay cannot regulate certain priority development area development under the *Economic Development Act 2012* or regulate development for a state development area under the *State Development and Public Works Organisation Act 1971* (SDPWOA).¹

According to the explanatory notes, implementation of the regulated requirements will ensure consistency of terms and application of terms in planning schemes made under the Sustainable Planning Act and the Planning Act, with the exception of schemes that include industry use, which will continue to be defined by their existing scheme definition.²

The amendment to align the planning regulation with other existing applicable legislation is necessary to ensure consistency between SDPWOA and the planning regulation. To leave the provisions as they are currently worded in the planning regulation creates inconsistency between the primary and subordinate legislation.³

The explanatory notes advise that the Department of State Development, Manufacturing, Infrastructure and Planning consulted with the Department of Transport and Main Roads (DTMR) during drafting and that DTMR support the amendment regulation.⁴

Committee comment

The committee is satisfied that the Planning (Regulated Requirements and Other Matters) Amendment Regulation 2019 does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.2 Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019 (SL 220)

This regulation amends Schedule 1 of the Liquid Fuel Supply Regulation 2016 (Liquid Fuel Supply Regulation) made under the *Liquid Fuel Supply Act 1984* (Liquid Fuel Supply Act) to achieve the following objectives:

- improve flexibility by allowing biofuels producers to choose from a range of certification options currently contained in Schedule 1 of the Liquid Fuel Supply Regulation regardless of the feedstock they use to produce biofuel
- resolve implementation issues associated with the required sustainability criteria in order to support the Queensland biofuels mandates.⁵

The Liquid Fuel Supply Act establishes a requirement for liable fuel sellers to sell minimum amounts of sustainable biofuels. The sustainability criteria are contained in Schedule 1 of the Liquid Fuel Supply Regulation and are currently closely linked to the type of feedstock the producer is using. This amendment will give biofuel producers the capacity to choose from the range of certification options

¹ Explanatory notes, p 1.

² Explanatory notes, p 2.

³ Explanatory notes, p 3.

⁴ Explanatory notes, p 3.

⁵ Explanatory notes, p 1.

currently contained in Schedule 1 of the Regulation, regardless of the feedstock a biofuels producer chooses to use, with the exception of palm oil derived biofuels.⁶

The explanatory notes advise that the feedback received as a result of public consultation on the sustainability criteria for biobased petrol and biobased diesel indicated that while there was broad support to retain sustainability criteria, there was also scope to deliver similar outcomes in a way that provided industry more choice and flexibility. This feedback has been incorporated in the amendments.⁷

Committee comment

The committee is satisfied that the Liquid Fuel Supply (Sustainability Criteria) Amendment Regulation 2019 does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.3 Coal Mining Safety and Health and Other Legislation Amendment Regulation 2019 (SL 221)

The objectives are to:

- clarify that an employer's responsibility for the cost of an employee's health assessment (under the Coal Mining Safety and Health Regulation 2017 or the Mining and Quarrying Safety and Health Regulation 2017) is a civil penalty obligation
- provide for quarterly invoicing of the safety and health fee under various regulations
- clarify fee census requirements for operators or authority holders with 5 or fewer workers, and
- clarify the relevant safety requirements for the inspection of gas systems in used caravans and clarify the definition of 'construction and abandonment code'.⁸

The explanatory notes state that the amendments will provide certainty to relevant stakeholders, improve safety and health of workers in the mining industry, improve cash-flow planning for industry, and provide for administrative efficiencies.⁹

According to the explanatory notes, industry stakeholders were consulted on this amendment regulation. Stakeholders indicated support for the amendments to the P&G Safety Regulation and did not oppose the proposals relating to invoicing and census requirements for the safety and health fee.¹⁰

Issue of fundamental legislative principle – institution of Parliament

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the legislation sub-delegates a power delegated by an Act only:

- if authorised by an Act
- in appropriate cases and to appropriate persons.¹¹

Part of the rationale for this consideration, is to ensure that there is sufficient parliamentary scrutiny of a delegated legislative power.¹²

⁶ Explanatory notes, pp 1-2.

⁷ Explanatory notes, p 4.

⁸ Explanatory notes, pp 1-2.

⁹ Explanatory notes, pp 5-6.

¹⁰ Explanatory notes, p 7.

¹¹ Section 4(5)(e) of the *Legislative Standards Act 1992*

¹² Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p170.

The Amendment Regulation incorporates Australian Standard AS 5601 'Gas installations' (2004) as the relevant safety requirement for the inspection of a gas system installed in a vehicle or vessel before 31 December 2004 and for the inspection of an alteration of a gas system installed in a vehicle or vessel where the alteration was carried out before 31 December 2004. According to the explanatory notes:

*The incorporation of the 2004 edition of AS 5601 is to clarify and correct the unintended outcome of potentially applying Standards retrospectively for compliance certificates for gas systems in older vehicles and vessels.*¹³

The issue arises that, as the above document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is, incorporated into the legislative framework of the State, an extrinsic document (such as the Standard) 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.

Currently, the Standard is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House.

The explanatory notes provide the following justification:

*... Standards are documents made by entities outside the framework of government and this may be perceived as delegating law-making powers to those entities. However, the incorporation of Standards is common practice in State and Commonwealth legislation, particularly where consistency of requirements across jurisdictions is an intended outcome. Further, the [(Petroleum and Gas (Safety) Regulation 2018)] incorporates various Standards as safety requirements to ensure requirements relating to gas systems under Queensland gas safety laws are consistent with other Australian jurisdictions systems (where relevant Australian Standards are also applied).*¹⁴

Committee comment

The committee notes the fundamental legislative principle issue relating to the Australian Standard AS 5601 'Gas installations' (2004) in the subordinate legislation, and the justification for this provision provided within the explanatory notes. On balance, the committee is satisfied that the Mining Safety and Health and Other Legislation Amendment Regulation 2019 does not raise any significant issues relating to policy, fundamental legislative principles or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.4 Fisheries (General) (Fees) Amendment Regulation 2019 (SL 222)

The objective is to amend regulatory fees prescribed in the Fisheries (General) Regulation 2019 by the indexation rate of 2.25 per cent, in line with Government policy.¹⁵

The explanatory notes advise that all fee increases come within the 2.25% indexation rate (apart from some increases which are close to 2.3%, which are due to rounding). The explanatory notes also advise that fees for the Stocked Impoundment Permit Scheme in the Fisheries Regulation will not increase as they increase every five years.¹⁶

¹³ Explanatory notes, p 6.

¹⁴ Explanatory notes, p 6.

¹⁵ Explanatory notes, p 1.

¹⁶ The increase to SIPS fees every five years, instead of annually, is administratively efficient as it removes complexity around the previous financial arrangements. Fewer frequent fee increases reduce costs for businesses selling permits because they need to implement changes less frequently.

Public consultation was not undertaken as the amendments are administrative in nature.

Committee comment

The committee is satisfied that the Fisheries (General) (Fees) Amendment Regulation 2019 does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.5 Proclamation made under the *Economic Development and Other Legislation Amendment Act 2019 (SL 230)*

The objective is to fix a commencement date of 9 December 2019 for certain provisions of the *Economic Development and Other Legislation Amendment Act 2019*. The following provisions will commence on the Proclamation date:

- part 3 amending the *Building Act 1975*
- part 6, division 3 amending the *Economic Development Act 2012*
- part 7, division 3 amending the *Environmental Protection Act 1994*
- part 10 amending the *Land Valuation Act 2010*
- part 12 amending the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, and
- schedule 1, part 2 (various).¹⁷

Committee comment

The committee is satisfied that the Proclamation made under the *Economic Development and Other Legislation Amendment Act 2019* does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

3.6 Coal Mining Safety and Health (Use of Particular Electrical Equipment in Sealed Underground Mines) Amendment Regulation 2019 (SL 232)

The objective is to permit the safe use of non-explosion protected electrical equipment in a sealed underground coal mine, or a sealed part of an underground coal mine, if the atmosphere is not explosive.¹⁸

The change will permit a coal mine operator to use non-explosion protected electrical equipment - such as a camera down a borehole - to gather information about a sealed part of an underground coal mine that does not have an explosive atmosphere. The information gathered could help inform risk assessment activities necessary for re-ventilating or for planning the safe re-entry into the sealed mine. The amendment will ensure coal mine operators are able to critical safety related information about the conditions present in a sealed mine, without placing coal mine workers at risk.¹⁹

According to the explanatory notes, consultation occurred with the Construction, Forestry, Maritime, Mining and Energy Union and the amendments reflect its feedback about the risk assessment process, requiring a gas monitoring device to provide an audible or visible alarm, and for the tripping of electricity to the equipment, at the alarm warning point, which is if the general body concentration of oxygen exceeds 60 per cent of the oxygen nose point. The notes also advise that the Queensland Resources Council has also been consulted and did not raise any concerns in relation to the proposed amendment.²⁰

¹⁷ Explanatory notes, p 1.

¹⁸ Explanatory notes, p 1.

¹⁹ Explanatory notes, p 3.

²⁰ Explanatory notes, p 4.

Committee comment

The committee is satisfied that the Coal Mining Safety and Health (Use of Particular Electrical Equipment in Sealed Underground Mines) Amendment Regulation 2019 does not raise any significant issues relating to policy, FLPs or lawfulness. The explanatory notes comply with part 4 of the LSA.

4 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Chris Whiting MP

Chair

March 2020

State Development, Natural Resources and Agricultural Industry Development Committee

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