

Transport and Resources Committee

Report No. 21, 57th Parliament

Subordinate legislation tabled between 30 March 2022 and 21 June 2022

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 30 March 2022 and 21 June 2022. 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 2022	Subordinate legislation	Date tabled	Disallowance date*
n/a	National Energy Retail Amendment (Regulated stand-alone power systems) Rule 2022 (South Australia)	9 May 2022	Not subject to disallowance
41	Transport and Other Legislation Amendment Regulation (No.2) 2022	10 May 2022	31 August 2022
47	Resources Legislation (Fee Unit Conversion) Amendment Regulation 2022	10 May 2022	31 August 2022
56	Transport Legislation (Fee Unit Conversion and Registration Fees) Amendment Regulation 2022	24 May 2022	14 September 2022
57	Building Amendment Regulation 2022	21 June 2022	12 October 2022
68	Resources Safety and Health Legislation (Fee Unit Conversion) Amendment Regulation 2022	21 June 2022	12 October 2022
69	Mining Legislation (Continuing Professional Development) Amendment Regulation 2022	21 June 2022	12 October 2022
73	Transport Legislation (Fees and Other Matters) Amendment Regulation 2022	21 June 2022	12 October 2022

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

3 Committee consideration of the subordinate legislation

The committee wrote to the Department of Transport and Main Roads seeking additional information on SL No. 56 of 2022.

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 considers 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 National Energy Retail Amendment (Regulated stand-alone power systems) Rule 2022 (South Australia)

The National Energy Retail Rules (NERR) govern the sale and supply of energy (electricity and natural gas) from retailers and distributors to customers in New South Wales, Queensland, South Australia, Tasmania and the Australian Capital Territory.

The NERR have the force of law and are made by the Australian Energy Market Commission (AEMC) under the 'National Energy Retail Law'.⁴

The National Energy Retail Law is set out in Schedule 1 of the *National Energy Retail Law (South Australia) Act 2011* ('National Energy Retail Law') and incorporated into Queensland law through the *National Energy Retail Law (Queensland) Act 2014* ('Queensland Act'), the National Energy Retail Law (Queensland) and National Energy Retail Law (Queensland) Regulation 2014 ('Queensland Regulation').⁵

4.1 Rules made by the South Australian Minister responsible for Energy

Under section 238(1) of the National Energy Retail Law, the South Australian Minister responsible for energy made the initial NERR.

Further, under section 238AB of the National Energy Retail Law, the South Australian Minister responsible for energy may make initial rules and amendments with respect to stand-alone power systems.

The rule was made 'on the unanimous recommendation of the Ministers of the participating jurisdictions sitting as the Ministerial Council on Energy'.⁶

As soon as is practicable after making the rules, the South Australian Minister must:

- publish notice of the making of the rules in the South Australian Government Gazette; and
- make the rules publicly available.⁷

³ *Human Rights Act 2019*, s 41.

⁴ Australian Energy Market Commission, 'National Energy Retail Rules', <https://www.aemc.gov.au/regulation/energy-rules/regulation>.

⁵ See sections 4 and 5 of the Queensland Act which state, respectively, that the National Energy Retail Law and regulations, as amended from time to time, apply as if they were laws of Queensland.

⁶ *The South Australian Government Gazette*, 24 February 2022, No. 12, p 602.

⁷ Section 238AB(2) of the South Australian Act.

The notice must state the day the rules commence.⁸

The National Energy Retail Amendment (Regulated stand-alone power systems) Rule 2022 was made on 17 February 2022.

Notice of the rule was published in the South Australian Government Gazette on 24 February 2022.⁹ The notice stated the rule would commence 7 days from the publication of the notice (3 March 2022).

4.2 Tabling requirements under the Queensland Act

Section 8 of the Queensland Act requires an instrument made under the National Energy Retail Law to be tabled in the Legislative Assembly within 10 sitting days after it is enacted or made. However, failure to comply with this requirement does not affect the application of the instrument as part of the law of Queensland.¹⁰

A copy of the National Energy Retail Amendment (Regulated stand-alone power systems) Rule 2022 was tabled in the Legislative Assembly of Queensland on 9 May 2022.¹¹ This is within 10 sitting days of the rule being made.

Under section 7 of the *National Energy Retail Law (Queensland) Act 2014* the *Acts Interpretation Act 1954* and the *Statutory Instruments Act 1992* do not apply to the National Energy Retail Law (Queensland). Therefore the usual disallowance procedures do not apply.

5 SL No. 41 of 2022 - Transport and Other Legislation Amendment Regulation (No.2) 2022

The objectives of the regulation are to:

- ensure that a device that complies with the most recent Australian Standard for breath alcohol testing devices can be used to perform a preliminary breath test on rail safety workers
- increase penalties for offences relating to: speeding, the failure to properly wear a seatbelt, and the failure to obey red traffic lights and similar traffic light signals¹²
- reinstate medical certificate requirements for drivers aged 75 years.¹³

⁸ Section 238AB(3) of the South Australian Act.

⁹ A copy of the gazette notice can be found here - https://governmentgazette.sa.gov.au/sites/default/files/public/documents/gazette/2022/February/2022_012.pdf

¹⁰ Section 8(3) of the Queensland Act.

¹¹ A copy of the paper tabled in the Queensland Parliament can be found here: <https://documents.parliament.qld.gov.au/tp/2022/5722T541-B910.pdf>

¹² Parts 3 and 5 of SL No. 41, which include the increases in penalty units for these offences, commence on 1 July 2022 (SL No 41, s 2). The value of a penalty unit is currently \$137.85, however the value will increase to \$143.75 on the same date as commencement of Parts 3 and 5. Therefore, there will be a simultaneous increase in the penalty units for certain offences and an increase in the value of a penalty unit, which will be taken into account in this brief when calculating the percentage increase in penalties.

¹³ SL No. 41, explanatory notes, pp 1, 2 and 4.

5.1 Fundamental legislative principle issues

5.1.1 Rights and liberties of individuals

5.1.1.1 *Proportion and relevance of penalties*

SL No. 41 changes the lowest two speeding offence brackets from 1-12 km/h and 13-20 km/h to 1-10 km/h and 11-20 km/hr.¹⁴ The explanatory notes state that this change addresses a current penalty discrepancy:

... the same penalty is currently applied for speeding 11-12 km/h over the limit as speeding 1- 5 km/h over the limit. This is despite the crash risk being more than double for 11-12 km/h over the limit. This change also aligns Queensland's speeding brackets to other jurisdictions.¹⁵

Section 6 amends Schedule 1 'Infringement notice offences and fines for nominated laws' of the State Penalties Enforcement Regulation 2014 to increase the maximum penalty units attributed to the following existing offence provisions in the Transport Operations (Road Use Management—Road Rules) Regulation 2009 (Queensland Road Rules):

- failure to obey red traffic lights and similar traffic light signals¹⁶ (from 3 penalty units to 4 penalty units¹⁷)
- failure to properly wear a seatbelt¹⁸ (from 3 penalty units to 7 ½ penalty units¹⁹), which applies to both the driver and passenger seatbelt offences
- speeding.²⁰

Part 5 amends the Transport Operations (Road Use Management—Driver Licensing) Regulation 2021 (Driver Licensing Regulation) to increase the demerit points attributed to the following existing offence provisions:

- the seatbelt offences outlined above (from 3 to 4 demerit points)²¹
- where a driver commits one of the specified seatbelt offences, within 12 months of a previous such offence²² (from 3 to 4 demerit points).²³

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.

¹⁴ SL No. 41, ss 6, 16 and 19. The new penalty intervals for speeding apply to both the calculation of the fine based on penalty units and the number of applicable demerit points.

¹⁵ SL No. 41, s 27; explanatory notes, p 2.

¹⁶ Amending the Queensland Road Rules, ss 56(1), 56(2), 57(1), 57(2), 59(1), 60, 60A(1), 60A(2), 61(2), 66(1), 66(4), 274, 275, 277, 279(2), 281, 282, 284 and 286(2).

¹⁷ This equates to an increase of \$161.45 (from \$431.25 to \$575.00), constituting a 33% increase.

¹⁸ Amending the Queensland Road Rules, ss 264(1), 264A(1) and 265(1).

¹⁹ This equates to an increase of \$664.57 (from \$431.25 to \$1,078.13), constituting a 150% increase.

²⁰ Amending the Queensland Road Rules, s 20. See SL No. 41, explanatory notes, p 5, for a table outlining the penalty increases for the various penalty intervals relating to speeding offences.

²¹ SL No. 41, s 14.

²² Specifically, the following offences: a driver failing to properly wear a seat belt; and a driver failing to ensure a passenger under 16 years properly wears a seatbelt.

²³ SL No. 41, s 15.

... 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.²⁴

The explanatory notes seek to justify any potential breach of fundamental legislative principle related to the increased penalties, stating that current penalties and deterrent approaches have not achieved the desired level of compliance among the driving public and have not resulted in the desired reduction in motor vehicle accidents:

The deterrent effect of increased monetary penalties on rates of offending is supported by infringement data ... from January 2019 to November 2019 (when the mobile phone penalty increases were first announced) there was an average of 1,164 mobile phone infringements issued per month. From February 2020 (post the commencement of the increased penalties) to March 2021 there was an average of 485 mobile phone infringements issued per month, a 58 per cent reduction. While reduced travel during COVID-19 will have had an impact on this result, the reduction in mobile phone infringements was greater than other high-risk offences during this period.

Increasing monetary fines for traffic offences has also been shown to reduce recidivism rates in Queensland. The specific deterrent effect of increased monetary penalties on rates of reoffending is evidenced by an analysis of an increase to monetary penalties for speeding offences published in 2015 which revealed a subsequent 6.3 percent reduction in recidivism.²⁵

In relation to the dual increase in fines and demerit points for the driver and passenger seatbelt offences, the explanatory notes observe that:

This will align the penalty for seatbelt offences with existing mobile phone offences and reflects the potentially devastating personal consequences of a lack of proper restraint in a vehicle. It also takes into account the significant burden on the State's health care system in the treatment of those seriously injured in a crash due to lack of proper restraint. These penalty increases aim to send a strong deterrent message to the small portion of the community that refuse to properly wear a seatbelt.²⁶

The explanatory notes assert that 'significantly increasing the infringement notice fine, combined with increasing demerit points for the offence, is justified as being the most likely approach to improve road safety outcomes and promote behavioural change' and 'the increase in infringement notice fines for the offences for traffic light noncompliance and speeding is justified as the approach most likely to increase compliance with the legislative requirements'.²⁷

According to the explanatory notes, although some stakeholders²⁸ raised concerns during consultation with respect to the impacts of increased penalties on the community and the importance of an effective communication and education package, these groups acknowledged the rationale behind the penalty increases in achieving road safety outcomes.²⁹

The explanatory notes also highlighted processes that exist for those individuals who may not be able to pay the fines immediately:

... if a person cannot afford to pay their fine immediately, there are options available through the State Penalties Enforcement Registry such as payment by regular instalments. Also, if a licence holder (other than a learner licence holder) reaches their allowable demerit point limit, they are given the option to choose a one-year good driving behaviour period. This enables the licence holder to continue to drive during this period, while they have a one demerit point limit.³⁰

²⁴ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

²⁵ SL No. 41, explanatory notes, p 8.

²⁶ SL No. 41, explanatory notes, p 9.

²⁷ SL No. 41, explanatory notes, p 9.

²⁸ Specifically, the Queensland Council for Civil Liberties, Queensland Law Society and Royal Automobile Club of Queensland.

²⁹ SL No. 41, explanatory notes, p 9.

³⁰ SL No. 41, explanatory notes, p 7.

Despite the policy objectives and justifications provided, the committee notes that SL No. 41 contains some considerable penalty increases. Most significantly, a 33% penalty increase in various offence provisions relating to the failure to obey the specified traffic light signals, and a 150% penalty increase in various offence provisions relating to the failure to properly wear a seatbelt.

Despite the noted options for impacted individuals, such as the availability of an instalment plan for payment of fines, it is arguable that these significant increases may disproportionately affect individuals of a lower socio-economic status or those who may encounter challenges in sourcing funds to pay the increased fines, including individuals who may rely on their licence for work, health, care and other purposes.

The committee therefore sought advice from the Department of Transport and Main Roads (DTMR) regarding:

- the potential impacts on those least able to afford these penalties and
- whether the proposed penalties are achieving the desired results of improving road safety.

The committee also requested a report on the outcomes from the initiatives 12 months after commencement, with the report to include:

- any decrease (or increase) in the number of offences
- demographic information on where offences have occurred and the age group of offenders
- the trends associated with whether further enforcement action has been necessary in order to collect the penalties.

The Department's response said:

The Department of Transport and Main Roads (TMR) has committed to undertaking an independent evaluation of the proposed penalties.

TMR has engaged an independent consultant with subject matter expertise in evaluating and monitoring to progress the development of an evaluation framework for changes in penalties for high-risk driving offences.

The evaluation framework will be finalised by the end of June 2022, and data collection will commence from 1 July 2022 when the increase to the penalties commences. An independent impact evaluation will commence in mid-2023.

The independent consultant is developing an appropriate methodology to evaluate and monitor the penalty increases on driver behaviour while accounting for driving exposure, enforcement, public awareness and attitudinal campaigns.

The scope of the methodology and framework includes (but is not limited to) the following elements:

- assessing the increase in road safety penalties on driver behaviour and recidivism
- assessing the impact of the increase in road safety penalties in different regions and across age cohorts
- assessing potential related effects, including, the trends associated with whether further enforcement action has been necessary in order to collect the penalties.

Preliminary findings about the number of offences, demographics and increases in enforcement action will be made available in a report by early December 2023 to ensure 12 months of data is analysed for the purpose of the requested report. However, TMR will monitor the effect of these penalties beyond December 2023, and a full outcome evaluation will be undertaken when sufficient data is available.³¹

³¹ Department of Transport and Main Roads, correspondence 16 June 2022, pp 1-2.

5.1.1.2 *Committee comment*

The committee notes the department's response that it will undertake an evaluation and table a report on the evaluation in December 2023. The committee is satisfied that the penalties contained in SL No. 41 are proportionate and relevant, including that the higher penalties are for offences of greater seriousness.

5.1.2 General rights and liberties

Part 4 of SL No. 41 omits Part 4 division 2 of the Transport Legislation (COVID-19 Emergency Response) Regulation 2020 (COVID Regulation) to reinstate the pre-pandemic requirement in section 253 of the Transport Operations (Road Use Management—Driver Licensing) Regulation 2021 (Driver Licensing Regulation) that licence holders aged 75 years or older must carry and drive in accordance with a medical certificate issued within the past 13 months.³²

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation justifies any restrictions on ordinary activities, the treatment of affected persons is reasonable and fair, and there is a balance between individual and community interests.³³

According to the explanatory notes, the pre-pandemic requirements recognise that medical conditions can become more prevalent with age, which may affect a person's ability to drive safely, and the modified medical certificate requirements for older drivers were among a number of measures implemented to assist licence holders during challenging times of the pandemic.³⁴

Although not identifying any matters of fundamental legislative principle, the explanatory notes state:

However, the impact of COVID-19 on the Queensland community and the level of public health risk has changed significantly since 2020. The rollout of the vaccine program has and will continue to lessen the health risks and community impacts. The availability of, and access to, medical services has also stabilised or increased with medical practices now offering additional services.

Given the high vaccination rates in the community and increased options to access medical services, the public health risk caused by COVID-19 no longer outweighs the road safety risk of continuing to allow medical certificates for older drivers to be valid under the modified arrangements. In some cases, it may have been over two years since a driver aged 75 or over has been medically assessed as being fit to drive. This is inconsistent with the operation and intent of section 253 of the Driver Licensing Regulation and poses road safety risks to older drivers and others sharing the road.³⁵

The amendment will commence on 1 August 2022 'to allow time for public education activities to be undertaken and affected drivers to obtain a medical certificate'.³⁶

Further, the explanatory notes state that there has been no consultation on the amendments as the modified medical certificate arrangements in the COVID Regulation were introduced only as a temporary measure:

The temporary nature of the modified arrangements has been publicly communicated since they were introduced.

Relevant licence holders will be informed of the reinstatement of medical certificate requirements in the Driver Licensing Regulation through individual letters, updates to information on the Queensland Government website and a social media campaign.³⁷

³² SL No. 41, ss 7-12; explanatory notes pp 5 and 7.

³³ Department of the Premier and Cabinet, *The Queensland Legislation Handbook*, 5th Edition, January 2014, p 35. See also LSA, s 4(2)(a).

³⁴ SL No. 41, explanatory notes, p 3.

³⁵ SL No. 41, explanatory notes, p 3.

³⁶ SL No. 41, explanatory notes, p 5.

³⁷ SL No. 41, explanatory notes, p 10.

5.1.2.1 *Committee comment*

The committee is satisfied that the reinstatement of the medical certificate requirements has sufficient regard to rights and liberties of individuals, including by striking an appropriate balance between individual and community interests.

5.1.3 Institution of Parliament

5.1.3.1 *Incorporation of external documents*

Whether legislation has sufficient regard for the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of power in appropriate cases and to appropriate persons.³⁸

If subordinate legislation refers to a document that is not reproduced in full in the subordinate legislation, and changes can be made to that document without it being brought to the attention of the Legislative Assembly, the relevant subordinate legislation may be considered to have insufficient regard to the institution of Parliament.³⁹

Section 21 of the *Rail Safety National Law (Queensland) Act 2017* (Queensland Act) provides that an authorised person may require a rail safety worker to submit to a ‘preliminary breath test’ under section 126 of the Rail Safety National Law. Section 15 of the Queensland Act defines ‘preliminary breath test’ to mean a test to obtain an indication of the concentration of alcohol in a person’s breath using a device approved by regulation.

Currently, section 5 of the Rail Safety National Law (Queensland) Regulation 2017 (Rail Safety Regulation) provides that, for section 15 of the Act, a device that complies with AS 3547–1997 is approved. SL No. 41 removes the reference to ‘1997’ and inserts a new definition of AS 3547 to mean ‘the Australian Standard as in force from time to time under that designation (regardless of the edition or year of publication of the standard)’.⁴⁰

The explanatory notes state that this approach ‘caters for the possibility of subsequent versions of AS 3547 being released over time’ and that ‘AS 3547—1997 will continue in force until 28 June 2022’.⁴¹

The new definition means that changes to the standard will not be brought to the attention of the Parliament through amendments to the Rail Safety Regulation.

In seeking to provide justification for any breach of the fundamental legislative principle that subordinate legislation should allow the subdelegation of a power only in appropriate cases, the explanatory notes state:

AS 3547 specifies detailed technical requirements for the performance, testing and marking of breath alcohol testing devices for uses such as, but not limited to, personal, workplace and medical screening purposes. Incorporating the standard by reference allows any developments and improvements to be quickly applied in Queensland as the standard is updated. Due to the technical detail contained in the standard, it would not be practical to include it in the Rail Safety Regulation and therefore reference to the AS 3547 is considered appropriate.⁴²

There are a variety of factors to consider when determining if the inclusion of, or reference to, an external document in legislation is justified, such as whether the document is lengthy, detailed and technical in nature, whether it is readily accessible to the public, and the importance of the subject matter dealt with by the document.⁴³

³⁸ LSA, s 4(5)(e).

³⁹ LSA ss 4(2)(b), 4(5)(e).

⁴⁰ SL No. 41, s 4.

⁴¹ SL No. 41, explanatory notes, p 6.

⁴² SL No. 41, explanatory notes, p 9.

⁴³ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 149.

An internet search indicates that AS 3457 – 1997, which is titled ‘Breath alcohol testing devices for personal use’, is 30 pages long and has been superseded by AS 3457 – 2019, which is titled ‘Breath alcohol testing devices’ and is 24 pages long.⁴⁴ Both editions of this standard are able to be purchased for a fee and appear to include technical information. For example, the 2019 edition appears to include service and calibration recommendations applicable to breath alcohol testing devices.

5.1.3.2 Committee comment

In the circumstances, the committee is satisfied that amending the definition of ‘preliminary breath test’ by reference to an external document, being the Australian Standard as in force from time to time, is justified given the detailed and technical nature of the document and noting that it is the Australian Standard.

5.2 Explanatory notes

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

The committee is satisfied that the subordinate legislation is compatible with human rights.⁴⁵

5.3 Human rights considerations

Limitations on human rights are discussed below.

5.3.1 Property rights

A person must not be arbitrarily deprived of their property.⁴⁶

The regulation increases infringement notice fines, which may result in enforcement action being taken by the registrar of the State Penalties Enforcement Registry (SPER) against the person, including among other actions, the seizure of the person’s property and vehicle immobilisation.

The Minister notes that the right to property may be engaged and observes:

Increasing infringement notice fines to deter high-risk driving behaviours provides a proportionate response to encourage road safety. A person who is issued with an infringement notice fine has a number of options available ... These include paying the fine by instalments or settling the debt through other means. These options help to ensure that a person is not arbitrarily deprived of their property. Any limitation on property rights is justified in light of the benefit to the person and the broader road-using public due to increased compliance with the Queensland Road Rules and reduction in road trauma.⁴⁷

5.3.1.1 Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights.⁴⁸

⁴⁴ Standards Australia website, accessed 9 May 2022, <https://www.standards.org.au/>.

⁴⁵ 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.

⁴⁶ HRA, s 24.

⁴⁷ SL No. 41, human rights certificate, p 6.

⁴⁸ Section 8 of the 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.

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.

6 SL No. 47 of 2022 - Resources Legislation (Fee Unit Conversion) Amendment Regulation 2022

In 2021, the *Acts Interpretation Act 1954* (AI Act) was amended to introduce a fee unit model 'to streamline the annual process of indexing regulatory fees'.⁴⁹ Under the AI Act, the amount of a fee is the number of dollars obtained by multiplying the value of a fee unit by the number of fee units.⁵⁰ The AI Act provides that the value of a fee unit is \$1 unless another amount is prescribed.⁵¹

The objective of the Resources Legislation (Fee Unit Conversion) Amendment Regulation 2022 (SL No. 47) is to convert regulatory fees under the following regulations from dollar amounts to the number of fee units:

- Acquisition of Land Regulation 2014
- Fossicking Regulation 2019
- Geothermal Energy Regulation 2012
- Greenhouse Gas Storage Regulation 2021
- Land Regulation 2020
- Mineral and Energy Resources (Common Provisions) Regulation 2016
- Mineral Resources Regulation 2013
- Petroleum and Gas (General Provisions) Regulation 2017
- Stock Route Management Regulation 2003
- Surveyors Regulation 2014
- Valuation of Land Regulation 2003
- Valuers Registration Regulation 2013
- Vegetation Management Regulation 2012.⁵²

SL No. 47 does not, however, amend fees that are not indexed annually at the government indexation rate.⁵³ The explanatory notes elaborate:

This includes the fee for national regulation of gas pipelines (that ensures recovery of Queensland's contribution to the gas market functions of the Australian Energy Market Commission) under the Petroleum and Gas (General Provisions) Regulation 2017; and percentage rate for weighted average cost of capital and the net present value in Land Regulation 2020. These will require an annual regulation amendment to update.⁵⁴

⁴⁹ Debt Reduction and Savings Bill 2021, explanatory notes, p 1.

⁵⁰ *Acts Interpretation Act 1954*, s 48C.

⁵¹ *Acts Interpretation Act 1954*, s 48B.

⁵² SL No. 47 also makes minor amendments including grammar corrections and consistency of wording across regulations: SL No. 47, explanatory notes, p 2.

⁵³ SL No. 47, explanatory notes, p 2.

⁵⁴ SL No. 47, explanatory notes, p 2.

SL No. 47 makes minor changes to the amount of a small number of fees.⁵⁵

From 1 July 2022, the value of a fee unit will be \$1.025, except under specified legislation including the Geothermal Energy Regulation, schedule 2; the Greenhouse Gas Storage Regulation 2021, schedule 1; the Mineral Resources Regulation 2013, schedule 4; and the Petroleum and Gas (General Provisions) Regulation 2017, schedule 2, part 4, items 4 and 6 and schedule 4.⁵⁶ The value of a fee unit for these regulations will rise from \$1 to \$1.025 (an increase of 2.5%) on 1 September 2022.⁵⁷

6.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

6.2 Explanatory notes

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

6.3 Human rights considerations

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

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. 56 of 2022 - Transport Legislation (Fee Unit Conversion and Registration Fees) Amendment Regulation 2022

In 2021, the *Acts Interpretation Act 1954* (AI Act) was amended to introduce a fee unit model 'to streamline the annual process of indexing regulatory fees'.⁵⁸ Under the AI Act, the amount of a fee is the number of dollars obtained by multiplying the value of a fee unit by the number of fee units.⁵⁹ The AI Act provides that the value of a fee unit is \$1 unless another amount is prescribed.⁶⁰

From 1 July 2022, the value of a fee unit will be \$1.025 except under specified legislation.⁶¹

The Transport Legislation (Fee Unit Conversion and Registration Fees) Amendment Regulation 2022 (SL No. 56) converts most of the fees and charges in regulations administered by the Department of Transport and Main Roads (TMR) to fee units. In most instances, the final amount for fees will be rounded to the nearest 5 cents to facilitate cash payments.⁶² The explanatory notes advise that the dollar value of TMR fees and charges for the 2022-23 financial year (using the value of a fee unit of \$1.025) will be published on the TMR website.⁶³

⁵⁵ See, for example, the Stock Route Management Regulation 2003 - SL No. 47 provides for additional decimal places in certain fees. The permit fee for stock route agistment permit for small stock – the minimum fee, for each head, for each week was \$0.11 and now it is 0.113 fee units, and the maximum fee was \$0.47 and now it is 0.465 fee units.

⁵⁶ Acts Interpretation (Fee Unit) Regulation 2022, s 2, schedule 1.

⁵⁷ Acts Interpretation (Fee Unit) Regulation 2022, s 3, schedule 1.

⁵⁸ Debt Reduction and Savings Bill 2021, explanatory notes, p 1.

⁵⁹ *Acts Interpretation Act 1954*, s 48C.

⁶⁰ *Acts Interpretation Act 1954*, s 48B.

⁶¹ Acts Interpretation (Fee Unit) Regulation 2022, s 2.

⁶² SL No. 56, explanatory notes, pp 2, 3, 4.

⁶³ SL No. 56, explanatory notes, p 4.

Heavy vehicle registration fees and number plate fees are not indexed by the government indexation rate so SL No. 56 does not convert these fees to fee units; it prescribes them in dollar amounts for the 2022-23 financial year.⁶⁴ The explanatory notes provide detail about the level of the fees:

The heavy vehicle registration fees have a regulatory and road use component. The regulatory component will not increase this financial year and will remain unchanged. The road use component will increase by 2.75 per cent. The National heavy vehicle number plate fees will increase by 3.5 per cent rounded to the nearest 10 cents. This increase is based on a 3.5 per cent increase in the year to December 2021 quarter for the National All Groups Consumer Price Index.⁶⁵

SL No. 56 also removes redundant fees from the Traffic Regulation 1962 and the Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021.⁶⁶

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.

8 SL No. 57 of 2022 - Building Amendment Regulation 2022

The objectives of the Building Amendment Regulation 2022 (SL No. 57) are to:

- clarify the documentation requirements for an inspection of the excavation, footings and slab stages of assessable building work, and to make it clear when a building certifier may sign the certificate of inspection for these stages without personally inspecting them
- extend the exemption period (from 30 June 2022 to 30 June 2023) for licensing private building certifiers who hold Professional Indemnity Insurance (PII) with certain cladding exclusions
- clarify that compliant PII held when a licence is issued will remain valid for the duration of the licence, provided the licence is current when the exemption period ends.⁶⁷

The amendments relating to documentation were required because it was unclear whether a building certifier could sign a certificate of inspection for the excavation stage of certain assessable building work.⁶⁸ According to the explanatory notes, the uncertainty arose due to modernised drafting in the Building Regulation 2021.⁶⁹

With respect to the personal inspection requirements for building certifiers, it was unclear whether a certifier was required to personally inspect the excavation, footing and/or slab stages as well as the final stage of work.⁷⁰

⁶⁴ SL No. 56, explanatory notes, pp 2, 4.

⁶⁵ SL No. 56, explanatory notes, p 4.

⁶⁶ SL No. 56, explanatory notes, p 4.

⁶⁷ SL No. 57, explanatory notes, p 1.

⁶⁸ SL No. 57, explanatory notes, p 2.

⁶⁹ SL No. 57, explanatory notes, p 2.

⁷⁰ SL No. 57, human rights certificate, p 2.

Private building certifiers have to hold PII.⁷¹ Historically, this PII has had to be exclusion free. However, since 2018 it has been difficult for private building certifiers to obtain compliant and affordable PII, in part because of the use of combustible cladding. As a result, in 2019, the Building Regulation 2006 was amended to temporarily permit private building certifiers to be licensed while holding PII with certain cladding exclusions. This time limited amendment was included in the Building Regulation 2021 and was extended to 30 June 2022.⁷² SL No. 57 extends it to 30 June 2023.⁷³

8.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

8.2 Explanatory notes

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

8.3 Human rights considerations

Property rights and the right to privacy are discussed below.

8.3.1 Property rights

Everyone has the right to own property, and a person must not be arbitrarily deprived of their property.⁷⁴

SL No. 57 extends the period in which private building certifiers can have an exclusion on their PII policy for a further 12 months.⁷⁵ This allows private building certifiers to renew a licence, or apply for a new a licence, while their PII policy contains external cladding exclusions.

This amendment limits some certifying functions, relating to external cladding, that are permitted under a licence. Therefore, if a person requires certification of external cladding, it may be difficult to find a private building certifier to do this work, and the person may be unable to access their property in circumstances where building work cannot be inspected and approved.⁷⁶

However, by permitting the exclusion on external cladding in PII policies, all other private certifying functions are allowed to continue. With respect to whether the potential limitation on property rights helps achieve its purpose, the human rights certificate states: 'The limitation achieves the purpose by allowing certifiers to hold a licence and to continue to perform private certifying functions which will protect consumers from being deprived of their property.'⁷⁷

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

If PII could not be obtained, private building certifiers could not be licensed which would prevent them from legally performing their job. [SL No. 57] only limits private certifying functions related to external cladding and ensures private building certifiers can still perform all other certifying functions. The limitation is expected to prevent delays and ensure that private building certifiers can continue to carry out inspections to progress building work. On balance, I consider that the limitation assists in preserving the human right of people not being arbitrarily deprived of their property.⁷⁸

⁷¹ *Building Act 1975*, s 63(1).

⁷² SL No. 57, explanatory notes, p 3; SL No. 57, human rights certificate, p 2.

⁷³ SL No. 57, ss 5, 6.

⁷⁴ HRA, s 24.

⁷⁵ SL No. 57, s 5.

⁷⁶ SL No. 57, human rights certificate, p 4.

⁷⁷ SL No. 57, human rights certificate, pp 5-6.

⁷⁸ SL No. 57, human rights certificate, p 7.

8.3.2 Privacy and reputation

The *Human Rights Act 2019* (HRA) protects a person's right not to have their privacy and reputation unlawfully or arbitrarily interfered with.⁷⁹

SL No. 57 permits the Queensland Building and Construction Commission (QBCC) to collect information about a building certifier's PII cover for a further 12 months.⁸⁰ The QBCC requires this information to assess whether an individual is able to acquire a new private certifier licence or renew an existing licence.

The human rights certificate states:

[Section 5 of SL No. 57] may limit a person's right to privacy by extending the period in which a licence application can be made with a PII cladding exemption which will extend the length of time that information can be collected.⁸¹

With respect to whether the limitation on the right to privacy helps to achieve the purpose, the human rights certificate states 'The limitation on the right to privacy is necessary to allow the QBCC to adequately assess licence applications by considering whether an applicant's PII coverage is subject to exclusions for external cladding'.⁸²

It goes on to say:

The information is collected by the QBCC to ensure that appropriately qualified and experienced building certifiers perform certifying functions. This in turn enhances the safety of buildings and the quality of building work.⁸³

With respect to whether there is a less restrictive and reasonably available way to achieve the purpose, the human rights certificate states:

Legal protections are in place to ensure that the QBCC may not collect personal information in an arbitrary and unreasonable way, when assessing the application. Information collected by the QBCC for licence applications is protected under section 110 of the Queensland Building and Construction Commission Act 1991. A maximum penalty of 100 penalty units applies where such information is unlawfully disclosed.⁸⁴

8.3.3 Committee comments

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

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. 68 of 2022 - Resources Safety and Health Legislation (Fee Unit Conversion) Amendment Regulation 2022

In 2021, the *Acts Interpretation Act 1954* (AI Act) was amended to introduce a fee unit model 'to streamline the annual process of indexing regulatory fees'.⁸⁵ Under the AI Act, the amount of a fee is the number of dollars obtained by multiplying the value of a fee unit by the number of fee units.⁸⁶

⁷⁹ HRA, s 25.

⁸⁰ See SL No. 57, ss 5, 6.

⁸¹ SL No. 57, human rights certificate, p 5.

⁸² SL No. 57, human rights certificate, p 6.

⁸³ SL No. 57, human rights certificate, p 6.

⁸⁴ SL No. 57, human rights certificate, p 7.

⁸⁵ Debt Reduction and Savings Bill 2021, explanatory notes, p 1.

⁸⁶ *Acts Interpretation Act 1954*, s 48C.

The objective of the Resources Safety and Health Legislation (Fee Unit Conversion) Amendment Regulation 2022 (SL No. 68) is to convert all fees prescribed under the following regulations into the fee unit model:

- Coal Mining Safety and Health Regulation 2017
- Explosives Regulation 2017
- Mining and Quarrying Safety and Health Regulation 2017
- Petroleum and Gas (Safety) Regulation 2018.⁸⁷

It would do this by changing the fees prescribed in the regulations to fee units.⁸⁸

SL No. 68 maintains the value of prescribed fees in the regulations by simply replacing the current dollar value with the equivalent fee unit, with the current fee unit equating to one dollar.

From 1 July 2022, the value of a fee unit will be \$1.025.⁸⁹

SL No. 68 will take effect on all the regulatory fees from 1 July 2022, except for the methane/biogas fees,⁹⁰ which are subject to Queensland Treasury's exemption from the fee unit conversion until 1 July 2023.⁹¹

The explanatory notes state that SL No. 68 also makes minor amendments to the regulatory fees to conform with drafting practices, as identified by the Office of the Queensland Parliamentary Council.⁹²

9.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

9.2 Explanatory notes

The explanatory notes comply with part 4 of the *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. 69 of 2022 - Mining Legislation (Continuing Professional Development) Amendment Regulation 2022

The objective of the Mining Legislation (Continuing Professional Development) Amendment Regulation 2022 (SL No. 69) is to commence the Practising Certificate Scheme (Scheme).⁹³

⁸⁷ SL No. 68, explanatory notes, p 1.

⁸⁸ In accordance with *Acts Interpretation Act 1954* and Queensland Treasury's Principles for Fees and Charges Policy.

⁸⁹ Acts Interpretation (Fee Unit) Regulation 2022, s 2.

⁹⁰ Prescribed under Petroleum and Gas (Safety) Regulation 2018, sch 6, part 3, s 14.

⁹¹ SL No. 68, explanatory notes, p 2.

⁹² SL No. 68, explanatory notes, p 2.

⁹³ On 9 November 2018, the regulation making powers in the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* were amended to confirm that the Board of Examiners can implement requirements for continuing professional development; SL No. 69, explanatory notes p 1.

According to the explanatory notes, the Scheme is based on persons who hold a certificate of competency, or a site senior executive notice completing continuing professional development (CPD) to support their knowledge and competence over time.⁹⁴

SL No. 69 commences the Scheme⁹⁵ and enables the Board of Examiners to establish the details of the Scheme, including details about CPD activities, CPD hours and CPD periods.⁹⁶

The explanatory notes state:

The Board of Examiners will publish on the Resources Safety and Health Queensland website the Practising Certificate Scheme covering CPD requirements and details under the Practising Certificate Scheme.

The Board of Examiners will also keep information about the completion of CPD by persons holding a certificate of competency or site senior executive notice, and whether a Practising Certificate has been issued, and remains current, in the Board of Examiners' register.⁹⁷

According to the explanatory notes, SL No. 69 'will not impose any significant costs on participants completing CPD, compared to the potentially significant benefits to workers, their families and communities, from further safeguarding the safety and health of workers'.⁹⁸

Consultation indicated that:

- industry stakeholders did not raise any concerns about the amendments
- the amendments largely formalise and recognise CPD training that is already being voluntarily completed.⁹⁹

10.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

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.

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. 73 of 2022 - Transport Legislation (Fees and Other Matters) Amendment Regulation 2022

Most of the fees and charges subject to the government indexation rate (GIR) in regulations administered by the Department of Transport and Main Roads were converted to fee units in May 2022.¹⁰⁰

⁹⁴ SL No. 69, explanatory notes, p 2.

⁹⁵ By amending the Coal Mining Safety and Health Regulation 2017 and Mining and Quarrying Safety and Health Regulation 2017.

⁹⁶ SL No. 69, explanatory notes, pp 2-3.

⁹⁷ SL No. 69, explanatory notes, p 3.

⁹⁸ SL No. 69, explanatory notes, p 3.

⁹⁹ SL No. 69, explanatory notes, p 4.

¹⁰⁰ See Transport Legislation (Fee Unit Conversion and Registration Fees) Amendment Regulation 2022 (SL No. 56); SL No. 73, explanatory notes, p 1.

Some fees, however, were exempt from the conversion. Under the Transport Legislation (Fees and Other Matters) Amendment Regulation 2022 (SL No. 73) these fees remain as dollar values and are increased by the GIR (2.5%).¹⁰¹

SL No. 73 commences on 1 July 2022. It increases fees and charges related to:

- the management of operations in state managed boat harbours and non-state managed boat harbours (for example, buoy moorings) (public marine facilities (PMF) fees)
- the taxi industry security levy (TISL), which contributes to the cost of improving the security of taxi services in prescribed taxi service areas (for example, by funding the costs of rank marshals and security guards at taxi ranks).¹⁰²

SL No. 73 also introduces an interstate licence transfer fee (ITLF). The ITLF will only be charged when a person from an interstate jurisdiction applies to have the unexpired portion of their interstate licence transferred to a Queensland licence.¹⁰³

11.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

11.2 Explanatory notes

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

11.3 Human rights considerations

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

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 Recommendation

The committee recommends that the House notes this report.



Shane King MP

Chair

August 2022

Transport and Resources Committee

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Lachlan Millar MP, Member for Gregory
Members	Mr Bryson Head MP, Member for Callide (from 24 June 2022)
	Mr James Martin MP, Member for Stretton
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North
	Mr Pat Weir MP, Member for Condamine (to 24 June 2022)

¹⁰¹ SL No. 73, explanatory notes, p 3.

¹⁰² SL No. 73, human rights certificate, p 2.

¹⁰³ SL No. 73, human rights certificate, p 2.