

## Transport and Resources Committee

### Report No. 17, 57th Parliament

#### Subordinate legislation tabled between 17 November 2021 and 29 March 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 17 November 2021 and 29 March 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*.<sup>1</sup>

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

#### 2 Subordinate legislation examined

No. of 2021	Subordinate legislation	Date tabled	Disallowance date*
176	Resources Legislation (Safety and Health Fees) Amendment Regulation 2021	22 February 2022	26 May 2022
180	Transport Legislation Amendment Regulation (No. 3) 2021	22 February 2022	26 May 2022
181	Building Industry Fairness (Security of Payment) (Retention Trust Training) Amendment Regulation 2021	22 February 2022	26 May 2022
182	Energy and Water Ombudsman (Prescribed Energy Entities) Amendment Regulation 2021	22 February 2022	26 May 2022
183	Transport Legislation Amendment Regulation (No. 3) 2021	22 February 2022	26 May 2022
186	Coal Mining Safety and Health (Explosion Barriers) Amendment Regulation 2021	22 February 2022	26 May 2022
187	Petroleum and Gas (Safety) (Gas Devices) Amendment Regulation 2021	22 February 2022	26 May 2022

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

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

Subordinate legislation tabled between 17 November 2021 and 29 March 2022

No. of 2022	Subordinate legislation	Date tabled	Disallowance date*
3	Transport and Other Legislation Amendment Regulation 2022	22 February 2022	26 May 2022
13	Transport Infrastructure (Ports) (Port of Maryborough) Amendment Regulation 2022	15 March 2022	23 June 2022
20	Transport Legislation Amendment Regulation 2022	29 March 2022	18 August 2022
30	Proclamation No. 5—Building Industry Fairness (Security of Payment) Act 2017 (repealing previous proclamation)	29 March 2022	18 August 2022
31	Proclamation No. 6—Building Industry Fairness (Security of Payment) Act 2017 (commencing remaining provisions)	29 March 2022	18 August 2022

\*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 wrote to the Department of Transport and Main Roads seeking additional information on SL No. 180 of 2021 and SL No. 3 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.<sup>3</sup>

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

#### **4 SL No. 176 of 2021 - Resources Legislation (Safety and Health Fees) Amendment Regulation 2021**

The regulation amends the Coal Mining Safety and Health Regulation 2017, Explosives Regulation 2017, and the Mining and Quarrying Safety and Health Regulation 2017 to adjust regulatory fees paid by the mining and resources industry to recover the cost of the activities of Resources Safety and Health Queensland as the regulator of mining safety and health including coal workers' pneumoconiosis, and explosives safety and security.<sup>4</sup>

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

No issues of fundamental legislative principle were identified.

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

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

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

The committee is satisfied that the subordinate legislation is compatible with human rights.<sup>5</sup>

##### **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. 180 of 2021 - Transport Legislation Amendment Regulation (No. 3) 2021**

The regulation amends:

- the Transport Infrastructure (Public Marine Facilities) Regulation 2011 to commence, vary and end the appointment of managers of particular public marine facilities
- the Transport Operations (Marine Safety) Regulation 2016 (Marine Safety Regulation)
  - to ensure the definition of 'ABP Standard' reflects the updated Australian Builders Plate Standard
  - to extend Vessel Traffic Services reporting requirements to additional areas within the Gladstone pilotage area
  - to provide that Cawarral Creek Bar is a designated coastal bar requiring the wearing of lifejackets by persons 12 years and older while crossing the bar
  - to ensure consistency in the safety management system requirements that apply to Queensland regulated ship and similar nationally regulated ships
  - to allow Queensland Parks and Wildlife Service Officers to contravene certain regulations so as to carry out their duties
- the Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021 to clarify when prescribed evidence of an inspection certificate must be provided with a vehicle registration application.<sup>6</sup>

---

<sup>4</sup> SL No. 176, explanatory notes, p 2.

<sup>5</sup> 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.

<sup>6</sup> SL No. 180, explanatory notes, pp 2-4.

## 5.1 Fundamental legislative principle issues

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.<sup>7</sup>

The amendments relating to the definition of the 'ABP Standard' raise this issue of fundamental legislative principle because they update the definition with reference to the *National Standard for the Australian Builders Plate for Recreational Boats* as in force from time to time.<sup>8</sup> The concern arises from the fact that the national standard can be amended in the future without action by the Queensland Parliament.

In seeking to provide justification for any breach of fundamental legislative principle, the explanatory notes refer to the level of consultation undertaken at the national level when developing the standard:

The national standard is the responsibility of the Australian Recreational Boating Safety Committee which is comprised of senior boating safety representatives from each Australian jurisdiction. The Committee is under the oversight of the Marine Agencies Forum which reports to the relevant Ministerial Council related to transport. Prior to the national standard being updated, public consultation is undertaken by the Australian Recreational Boating Safety Committee.

...

Due to the level of consultation that is undertaken when updating the national standard and the need for it to be endorsed by the Ministerial Council, and in recognition of the benefits that arise from applying consistent standards across Australia, it is considered that any potential breach is justified.<sup>9</sup>

Whilst this consultation might be useful in ensuring the national standard is accepted by relevant stakeholders across jurisdictions, it is not necessarily relevant in determining whether the provision has sufficient regard to the institution of Parliament. Ultimately, the consultation outlined involves the executive, not the legislature.

The Office of the Queensland Parliamentary Counsel (OQPC) sets out a variety of relevant 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.<sup>10</sup>

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

- advice on how references to the ABP Standard in the regulation does not constitute a potential breach of the fundamental legislative principles in regards to Section 4(5)(e) – sub-delegation of power, and
- additional information about the process used to communicate with stakeholders that would occur following any changes to the ABP Standard.

The department's response stated:

An Australian Builders Plate, or ABP, is an information plate which is attached to new powered recreational boats, including imported boats, and provides essential information regarding the safe operation of the boat. This includes, for example, the boat's maximum loading capacity, maximum engine power and the flotation performance of the boat.

The information required to be displayed on the ABP is set out in the National Standard for the Australian Builders Plate for Recreational Boats (the ABP Standard).

---

<sup>7</sup> See *Legislative Standards Act 1992* (LSA), ss 4(2)(b), 4(5)(e).

<sup>8</sup> SL No. 180, s 4.

<sup>9</sup> SL No. 180, explanatory notes, p 6.

<sup>10</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 149.

The requirement for new boats sold in Queensland to have an ABP was introduced in 2006 as part of a national move to provide consumer protection. The obligation to affix an ABP and the related offences are contained in the Transport Operations (Marine Safety) Regulation 2016 (the Marine Safety Regulation). The ABP Standard itself is the nationally agreed consistent technical standard about the information to be displayed on an ABP.

The Transport Legislation Amendment Regulation (No. 3) 2021 updated the definition of ABP Standard as it appeared in the Marine Safety Regulation. Specifically, the definition was amended to reflect revisions to the ABP Standard that had been developed by the Australian Recreational Boating Safety Committee (ARBSC) and approved by the former Transport and Infrastructure Council in June 2020.

The Marine Safety Regulation contains provisions that rely on the ABP Standard including, for example, that the registration of certain ships can be refused if an ABP is not fixed to the ship in accordance with the ABP Standard.

Incorporation of the ABP Standard into the Marine Safety Regulation by reference, rather than by drafting its provisions into the Marine Safety Regulation, is the preferable approach for a range of reasons.

Firstly, the ABP Standard is detailed and technical in nature. It not only sets out the information to be displayed on an ABP but also the way in which the information must be displayed (for example, through the use of symbols, text, size etc), how and where the ABP needs to be fixed to the ship, the ships to which the standard applies and who is competent to determine the information on the ABP.

Secondly, the ABP Standard is relatively lengthy, running to 37 pages, and includes a number of tables and diagrams as well as ABP templates for different categories of ships.

Thirdly, representatives of the Queensland Government are involved in the development of any new ABP Standard through representation on and participation in the ARBSC. Before the ABP Standard was updated in June 2020, a reference group of industry and government representatives from across Australia informed the process, and the ARSBC undertook public consultation nationally. Following this consultation, the revised ABP Standard was submitted to and endorsed by the relevant Ministerial Council related to transport (then the Transport and Infrastructure Council, and more recently the Infrastructure and Transport Ministers' Meeting). This process ensures issues relevant to Queensland stakeholders can be considered in the development of any new ABP Standard.

Fourthly, the ABP Standard is readily available on the internet free of charge and each jurisdiction, including Queensland, provides detailed information on its application within their jurisdiction (for Queensland, see: <https://www.msq.qld.gov.au/Registration>).

Fifthly, it is noted that other States incorporate the ABP Standard by reference rather than by drafting its provisions directly into their legislation (see, for example, section 62 of the Marine Safety Regulation 2016 (NSW); section 3 of the Marine Safety Act 2010 (VIC); section 142 of the Harbors and Navigation Regulations 2009 (SA); section 3 of the Marine and Safety (Motor Boats and Licences) By-Laws 2013 (TAS)). This ensures consistent application of the standard in the different jurisdictions.

Finally, the incorporation of documents about ships approved by an Australian entity dealing with marine safety matters is specifically authorised by section 212 of the Transport Operations (Marine Safety) Act 1994.

For the reasons outlined above, it is submitted that any issues relating to the fundamental legislative principles that arise from the incorporation by reference of the ABP Standard are justified.

The Committee has also sought information on the process used to communicate with stakeholders following any changes to the ABP Standard. For the most recent change to adopt the 5th edition of the ABP Standard as approved in June 2020, Maritime Safety Queensland:

- communicated the changes with the relevant stakeholders, including Queensland boat builders, dealers and importers, by way of an extensive mailout;
- contacted Boating Industry Australia (BIA) about potential compliance and education strategies and opportunities to promote awareness, which were disseminated to BIA members by way of their newsletter;

- included a story in *Maritime Matters* (June 2021, with a follow-up story planned for the next edition), which is a quarterly newsletter distributed by Maritime Safety Queensland to subscribers with an interest in marine safety and the maritime industry, focusing on maritime issues, information and services; and
- included information on the Marine Safety Queensland website about the changes including, for example, by publishing the leaflet Australian Builders Plate (ABP) 2022 (see <https://www.msq.qld.gov.au/-/media/MSQInternet/MSQFiles/Home/Registration/Australian-builders-plate/Australian-Builders-Plate-DL-Brochure-V0-07.pdf?la=en>).<sup>11</sup>

#### Committee comment

In the circumstances, the committee is satisfied that updating the definition of the ABP Standard by reference to an external document is justified, given the detailed and technical nature of the document and noting it is freely accessible to the public.

#### **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.

### **6 SL No. 181 of 2021 - Building Industry Fairness (Security of Payment) (Retention Trust Training) Amendment Regulation 2021**

The regulation prescribes the compulsory retention trust training, provided by the Queensland Building and Construction Commission, for persons responsible for administering retention trust accounts. It also stipulates the period within which the training must be completed. The explanatory notes state:

It is intended that the course will take approximately two hours to complete including assessment, be free of charge and be progressively offered through a number of means to provide flexibility for participants.<sup>12</sup>

#### **6.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

#### **6.2 Explanatory notes**

The explanatory notes state that the regulation ‘has sufficient regard to the institution of Parliament, is consistent with the policy objectives of the authorising law and only contains matters appropriate to subordinate legislation’ and is therefore ‘consistent with fundamental legislative principles as outlined in the *Legislative Standards Act 1992*’.<sup>13</sup>

This statement in and of itself is inaccurate, as it does not address the rights and liberties of individuals which are also relevant to a consideration of whether legislation has regard to fundamental legislative principles.

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

---

<sup>11</sup> Department of Transport and Main Roads, correspondence 19 April 2022, pp 1-3.

<sup>12</sup> SL No. 181, explanatory notes, pp 1-2.

<sup>13</sup> SL No. 181, explanatory notes, p 3.

### **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. 182 of 2021 - Energy and Water Ombudsman (Prescribed Energy Entities) Amendment Regulation 2021**

The explanatory notes set out three main objectives of the regulation:

- to enable residential customers of ‘exempt sellers’, ‘exempt network operators’, and ‘individual exemption holders’ to access the free dispute resolution services provided by the Energy and Water Ombudsman Queensland (EWOQ).
- to remove ambiguity that currently exists in the legislation, to ‘ensure that customers of a retailer that is authorised to on-sell electricity to customers in an embedded network can access the services of the EWOQ.’
- to prescribe the fees payable by the ‘prescribed energy entities’ to EWOQ and ensure the fees payable reflect the ‘prescribed energy entity’s’ ability to pay.’<sup>14</sup>

### **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.

### **7.5 Regulatory impact statement**

The regulatory impact statement tabled with the subordinate legislation forms part of the consultation process leading to the making of the regulation. The recommendations that came about as a result of the consultation process are reflected in the content of the regulation regarding the fee structure for ‘prescribed energy entities’.<sup>15</sup>

---

<sup>14</sup> SL No. 182, explanatory notes, p 1.

<sup>15</sup> SL No. 182, regulatory impact statement, p 4; SL No. 182, explanatory notes, p 2.

## **8 SL No. 183 of 2021 - Transport Legislation (Distracted Driver and Other Matters) Amendment Regulation 2021 Transport Legislation Amendment Regulation (No. 3) 2021**

The objective of the regulation is to ‘make minor transitional amendments to assist the ongoing implementation of Queensland’s new fire protection licensing framework’.<sup>16</sup> On 1 May 2021, the new fire protection licensing framework, which included new licence classes, transitional arrangements and technical qualifications, commenced in Queensland. As a result of the regulation:

- only licensees with appropriate qualifications can perform fire protection work on sprinkler systems
- licence applications that were lodged prior to commencement of the framework on 1 May 2021 can still be assessed for eligibility for a continuing licence class, and
- the Queensland Building and Construction Commission Regulation will be amended to reflect updated terminology, in particular the term ‘fire alarm system’.<sup>17</sup>

### **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**

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. 186 of 2021 - Coal Mining Safety and Health (Explosion Barriers) Amendment Regulation 2021**

The regulation provides for the installation and maintenance of active explosion barriers in underground coal mines as alternative risk controls to passive explosion barriers, or in combination with passive explosion barriers, to suppress coal dust explosions, and to limit the propagation of coal dust explosions in mines.<sup>18</sup>

The explanatory notes state that:

Active explosion barriers are now a tested, proven, and available alternative, to traditional passive explosion barriers, and can be used as an alternative to, or in combination with passive explosion barriers. Further amendments are required to provide for the minimum requirements for active explosion barriers.<sup>19</sup>

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

No issues of fundamental legislative principle were identified.

---

<sup>16</sup> SL No. 182, explanatory notes, p 2.

<sup>17</sup> SL No. 182, explanatory notes, p 2.

<sup>18</sup> SL No. 186, explanatory notes, p 1.

<sup>19</sup> SL No. 186, explanatory notes, p 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. 187 of 2021 - Petroleum and Gas (Safety) (Gas Devices) Amendment Regulation 2021

The regulation amends the *Petroleum and Gas (Production and Safety) Act 2004* and the Petroleum and Gas (Safety) Regulation 2018, the principle purpose of which is to ‘facilitate and regulate the carrying out of responsible petroleum activities and the development of a safe, efficient and viable petroleum and fuel gas industry.’

The regulation revises the regulation of biogas flares. The explanatory notes state that ‘to ensure that the flares meet the required standards, it is necessary to prescribe gas flares located at biogas facilities as gas devices (Type B) under the PG Regulation’. Additionally, in Queensland, small gas engine driven appliances have typically been regulated as Type B devices. However, the regulation ensures that these devices will now be regulated as Type A devices in Queensland, which aligns with the Australian Standards and other Australian jurisdictions.<sup>20</sup>

### 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. 3 of 2022 - Transport and Other Legislation Amendment Regulation 2022

The policy objectives of the regulation are to:

- adopt a number of amendments from the 13<sup>th</sup> package of Australian Road Rules amendments (the 13<sup>th</sup> package) to enhance road safety, accommodate electric-powered vehicle-only parking for charging, and provide greater consistency with the road rules in other jurisdictions
- ensure that motorbike helmets that are compliant with the most recent UN ECE 22 standard may be used in Queensland

---

<sup>20</sup> SL No. 187, explanatory notes, pp 1-2.

- ensure that officers involved in the management of fines under the new integrated approach to issuing and administering infringement notices under the *State Penalties Enforcement Act 1999* (SPE Act) can access information contained in the Department of Transport and Main Roads' (TMR) databases.<sup>21</sup>

### 11.1 Fundamental legislative principle issues

#### *Rights and liberties of individuals*

##### Proportion and relevance of penalties

The regulation creates new offence provisions relating to:

- a breach of the requirement that a driver must not make a U-turn at a place with traffic lights where a road and a road-related area intersect unless there is a U-turn permitted sign at the place (maximum penalty of 20 penalty units (\$2,757) or a penalty infringement notice fine (PIN fine) of 0.8 of a penalty unit (\$100)). A person who commits this offence will also have two demerit points recorded on their traffic history.<sup>22</sup>
- a breach of the requirement that a driver must not make a U-turn at a children's crossing, level crossing, marked foot crossing or pedestrian crossing, with or without traffic lights, unless there is a U-turn permitted sign (maximum penalty of 20 penalty units or a PIN fine of \$100). A person who commits this offence will also have two demerit points recorded on their traffic history.<sup>23</sup>
- breaches of new requirements relating to driving in 'bus only lanes' (maximum penalties of 20 penalty units or a PIN fine of \$137 (one penalty unit)).<sup>24</sup>
- a breach of the requirement that a driver must not stop in a bus only lane unless the driver is driving a bus and is dropping off, or picking up, passengers and is permitted to drive in a bus only lane (maximum penalty of 20 penalty units or a PIN fine of \$55 (2/5 of a penalty unit)).<sup>25</sup>
- a breach of the requirement that a driver must not stop in a parking area for the charging of electric-powered vehicles other than for charging purposes (maximum penalty of 20 penalty units or a PIN fine of \$55 (2/5 of a penalty unit)).<sup>26</sup>
- a breach of the requirement that a driver must not, without reasonable excuse, interfere with, or interrupt, the free passage along any length of road of a funeral procession 20 penalty units or a PIN fine of \$55 (2/5 of a penalty unit)).<sup>27</sup>
- a breach of the requirement that an authorised person must not use information from a transport information database for a purpose other than a purpose relating to performing a function under the SPE Act or in contravention of a condition imposed by the chief executive (maximum penalty of 20 penalty units).<sup>28</sup>

The creation of new offences and penalties affects the rights and liberties of individuals.

---

<sup>21</sup> SL No. 3, explanatory notes, p 2.

<sup>22</sup> SL No. 3, ss 4, 14; explanatory notes, p 2.

<sup>23</sup> SL No. 3, ss 4, 14; explanatory notes, p 3.

<sup>24</sup> SL No. 3, ss 4, 17; explanatory notes, pp 3-4.

<sup>25</sup> SL No. 3, ss 4, 18; explanatory notes, pp 3-4.

<sup>26</sup> SL No. 3, ss 4, 19; explanatory notes, p 4.

<sup>27</sup> SL No. 3, ss 4, 21; explanatory notes, p 4. Note that this offence was previously contained in section 125 of the Traffic Regulation 1992 but, for consistency with the Australian Road Rules, the offence is being moved into the Queensland Road Rules.

<sup>28</sup> SL No. 3, s 27; explanatory notes, pp, 5, 7.

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.<sup>29</sup>

In relation to the offences regarding to U-turns, bus only lanes, parking areas for the charging of electric-powered vehicles and funeral processions, the explanatory notes state:

The penalties are considered appropriate in light of the potential consequences for road safety and for the efficient operation of the road network, and are consistent with other similar offences contained in the Queensland Road Rules.<sup>30</sup>

Whilst no examples are given in the explanatory notes as to similar offences contained in the Queensland Road Rules, the penalties do appear to be consistent with similar offences contained in the Transport Operations (Road Use Management – Road Rules) Regulation 2009.<sup>31</sup>

In relation to the offence regarding the unlawful use of information, the explanatory notes state:

The offence provision is considered to be appropriate given that it is aimed at preventing the misuse of information that is likely to include personal information. The maximum penalty of 20 penalty units is considered to be appropriate and is consistent with the penalty for similar offence provisions in Part 10 of the Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021.<sup>32</sup>

Part 10 of the Transport Operations (Road Use Management-Vehicle Registration) Regulation 2021 deals with the use and release of information (such as name and address of a vehicle operator and their contact details) from the vehicle registration register. If a person uses or discloses information other than in accordance with Part 10, a maximum penalty of 20 penalty units applies.<sup>33</sup>

#### Committee comment

The committee is satisfied that the penalties contained in the regulation are proportionate and relevant to the actions to which the consequences relate.

#### Privacy

The regulation introduces a new Part 2A into the Transport Planning and Coordination Regulation 2017 regarding access to transport information databases. This is to implement the new integrated approach to issuing and administering infringement notices, which will be centralised within the Queensland Revenue Office in Queensland Treasury.<sup>34</sup>

Under Part 2A, the chief executive may disclose information in a transport information database to an authorised person to enable the person to use the information to perform a function under the SPE Act.<sup>35</sup> An authorised person is an individual, or a member of a class of individuals, who is:

---

<sup>29</sup> OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>30</sup> SL No. 3, explanatory notes, pp 6-7.

<sup>31</sup> See, for example, ss 39 (U-turns), 154 (bus lanes), 179 (stopping in zones for particular vehicles) – all maximum penalties of 20 penalty units. See also s 125 of the Traffic Regulation 1992 which contained the offence regarding funeral processions, with a maximum penalty of 20 penalty units.

<sup>32</sup> SL No. 3, explanatory notes, p 7.

<sup>33</sup> Transport Operations (Road Use Management-Vehicle Registration) Regulation 2021, s 202, 203, 204, 206.

<sup>34</sup> SL No. 3, explanatory notes, p 5.

<sup>35</sup> SL No. 3, s 27 (proposed s 10A).

- a SPER official
- a service contractor
- employed or otherwise engaged by a service contractor that is not an individual
- a service subcontractor, or
- employed or otherwise engaged by a service subcontractor that is not an individual and is authorised in writing by the chief executive to directly access a transport information database.<sup>36</sup>

The ability of these individuals to access a person's information from the transport information database (which may include personal information such as name, address and contact details), can impact a person's right to 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.<sup>37</sup>

The explanatory notes state that the purpose of these amendments is to 'efficiently undertake the roles of issuing and administering enforcement notices'.<sup>38</sup> For example, allowing authorised persons to access the vehicle registration and driver licensing database can ensure that contact can be made with customers using their most recent contact details.<sup>39</sup>

Further, the explanatory notes highlight the following limits, and safeguards, contained within the amendments:

.. new section 10A(2) makes it clear that the disclosure of information is for the sole purpose of performing a function under the State Penalties Enforcement Act 1999. This means that the information can only be used in relation to the management of fines. Also, new section 10A(4) provides that the chief executive may provide the information on conditions the chief executive considers appropriate.

These protections are further enhanced by the creation of an offence provision in new section 10B which is aimed at preventing the misuse of any information that has been obtained from a transport information database.<sup>40</sup>

Whilst there are limits on the use of the information, and a penalty for unauthorised disclosure, the definition of authorised person potentially captures a wide range of individuals which may raise privacy concerns. However, it can be seen that the overall intention of the amendments is to provide for a more efficient administration of infringement notices.

#### Committee comment

The committee is satisfied that the potential breach of an individual's right to privacy is justified in the circumstances.

#### ***Institution of Parliament***

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.<sup>41</sup>

---

<sup>36</sup> SL No. 3, s 27 (proposed s 9).

<sup>37</sup> LSA, s 4(2)(a).

<sup>38</sup> SL No. 3, explanatory notes, p 5.

<sup>39</sup> SL No. 3, explanatory notes, p 5.

<sup>40</sup> SL No. 3, explanatory notes, p 7.

<sup>41</sup> LSA ss 4(2)(b), 4(5)(e).

Section 270 of the Queensland Road Rules requires a person riding a motorbike, quad bike or driving a utility off-road vehicle to wear an ‘approved motorbike helmet’. Currently section 270(3) defines an approved motorbike helmet as a helmet that complies with AS 1698, AS/NZS 1698 or UN ECE 22.05.

The regulation amends the definition to refer to the relevant UN ECE (United Nations Economic Commission for Europe) regulation that is in force from time to time,<sup>42</sup> which raises this issue of fundamental legislative principle because the definition can be amended in the future without any action by the Queensland Parliament.

In seeking to provide justification for any breach of fundamental legislative principle, the explanatory notes refer to the technical detail of UN ECE 22 and consultation with experts:

UN ECE 22 contains details and technical specifications in relation to motorbike helmets and has been developed in consultation with relevant experts. This technical detail would not be appropriate or practical to include in the Queensland Road Rules and therefore reference to the UN ECE 22 is considered appropriate.<sup>43</sup>

The OQPC sets out a variety of relevant 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.<sup>44</sup>

Excerpts and summaries of UN ECE 22 are available via the UN ECE and related websites (the full version is available for a fee). It is a lengthy document that covers issues such as general specifications, markings, approval, tests and product qualifications. It is produced by the United Nations Economic Commission for Europe and sets the relevant standards for motorbike helmets in Europe.

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

- how references to the UN ECE Regulation No. 22 in the regulation do not constitute a potential breach of the fundamental legislative principles in regards to Section 4(5)(e) – sub-delegation of power
- additional information about the process used to communicate with stakeholders that would occur following any changes to the UN ECE Regulation No. 22 (as well as Australian Standard 1698, AS/NZS 1698 that is similarly referred to in Section 270(3) of the Queensland Road Rules in relation to the definition of an approved motorbike helmet), and
- advice on what the potential legal consequences would be for a motorcycle rider who is found to be using a motor cycle helmet that is no longer compliant following any possible future changes to the UN ECE Regulation No. 22.

The department’s response stated:

Section 270 of the Queensland Road Rules requires a person riding a motorbike, quad bike or driving a utility off-road vehicle, to wear an *approved motorbike helmet*.

Since the making of the Queensland Road Rules in 1999, this provision, which is based on national model legislation, has relied on the incorporation by reference of certain externally determined standards. Initially, that was Australian Standard 1698-1988. Since 2015, however, approved helmets have included those that meet either AS1698, AS/NZS1698, the United Nations Economic Commission for Europe (UN ECE) Standard 22.05 or another standard that the chief executive considers is at least equal to one of those standards.

The incorporation by reference of the requirements of these standards has been an effective and efficient means of ensuring that helmets worn on Queensland roads meet certain specifications designed to enhance the safety of their users.

---

<sup>42</sup> SL No. 3, s20; explanatory notes, p 5.

<sup>43</sup> SL No. 3, s20; explanatory notes, p 7.

<sup>44</sup> OQPC, *Fundamental legislative principles: the OQPC notebook*, p 149.

Helmets complying with UN ECE Standards have similar road safety outcomes to those complying with Australian Standards, so the range of helmets approved for use in Queensland previously included those that comply with UN ECE Standard 22.05. In June 2020, UN ECE 22.05 was updated to UN ECE 22.06.

To recognise this, the *Transport and Other Legislation Amendment Regulation 2022* amended the Queensland Road Rules to ensure that helmets that complied with UN ECE 22.06 were legal for use within Queensland. It did this by simply referring to UN ECE 22 without the additional version reference included. This allows for compliance with either UN ECE 22.05 or 22.06. The effect of section 5(2) of the Queensland Road Rules is that the wearer of a helmet complies with the requirement in section 270 if, when the helmet was manufactured, it complied with the standard that was in force at that time.

... incorporation of the UN ECE 22 into the Queensland Road Rules by reference, rather than by drafting provisions into the Queensland Road Rules, is the preferable approach for a number of reasons.

Firstly, the UN ECE 22 standards contain detailed information and technical specifications for manufacturers when producing motorbike helmets. The standards deal with issues such as the process of applying for approvals, the markings to be shown on approved helmets, the general specifications for those helmets and the range of tests that the helmets must undergo to be approved.

The standards are also lengthy documents that would significantly increase the size of any regulation that they were drafted into.

Finally, section 270 of the Queensland Road Rules is drafted in line with the national model legislation, the Australian Road Rules (ARR). The ARR is maintained by the Australian Road Rules Maintenance Group which has representatives from each of the Australian jurisdictions, including Queensland. This ensures Queensland actively participates in the development of new road rules and any amendment to existing road rules such as section 270. Any amendments must also be approved by the Infrastructure and Transport Ministers' Meetings.

It is noted that other States incorporate the UN ECE standards by reference rather than by drafting them directly into their legislation (see, for example, section 270 of the *Road Rules 2014* (NSW); section 270 of the *Road Safety Road Rules 2017* (VIC); section 270 of the *Australian Road Rules* (as applied in South Australia); section 270 of the *Road Rules 2019* (TAS)). This facilitates the national scheme legislation and ensures consistent application of the standards in the different jurisdictions.

For the reasons outlined above, it is submitted that any issues relating to the fundamental legislative principles that arise from the incorporation by reference of the UN ECE 22 are justified.

The Committee has also sought information on the process used to communicate with stakeholders that occurs following any changes to the standards called up by section 270 of the Queensland Road Rules.

Whenever a significant change is made to the Queensland Road Rules, it is accompanied by a public education package that typically involves a range of different mediums. The extent of that package will be dependent on the importance of the change and its potential impact on road users.

In this case, the amendment made by the Transport and Other Legislation Amendment Regulation 2022 was beneficial as it expanded the range of motorbike helmets that are approved for use in Queensland. The amendment had no negative impact on the users of existing motorbike helmets, which remained compliant with the requirements of section 270.

There is no peak industry body that represents motorbike helmet retailers in Queensland. As a result, the Department:

- provided information on the amendment to the Queensland Motorcycle Council on 21 January 2022 for distribution to its members;
- notified a major motorcycle dealership and accessories group which operates from various locations throughout Queensland;
- updated the *Motorcycle Riders Guide* which is an online document maintained by the Department that is a comprehensive one-stop reference handbook for all motorcyclists covering a range of topics including licensing and registration, road rules, protective gear, safe riding techniques, how to cope with hazards, motorcycle maintenance, modifications, offences and current penalties (see <https://www.tmr.qld.gov.au/Safety/Motorcycle-safety/Queensland-Motorcycle-Riders-Guide>); and

- updated the Queensland Government website to reflect the changes (see [www.qld.gov.au/transport/safety/road-safety/motorcycle-safety/safety-gear](http://www.qld.gov.au/transport/safety/road-safety/motorcycle-safety/safety-gear)).

Finally, the Committee has sought advice on the potential legal consequences for a motorbike rider who is found to be using a motorbike helmet that is no longer compliant following future changes to the UN ECE 22. As noted above, the Queensland Road Rules is drafted to ensure that a UN ECE 22.05 compliant helmet, that was manufactured when that version of the standard was in force, can continue to be used in Queensland. This is done through section 5(2) of the Queensland Road Rules which provides that the person complies with the requirement if, when the helmet was manufactured, the helmet complied with the standard in force at that time.<sup>45</sup>

### *Committee comment*

In the circumstances, the committee is satisfied that updating the definition of ‘approved motorbike helmet’ by reference to an external document is justified, given the detailed and technical nature of the document and noting that it is prepared by the international body with responsibility for setting motorcycle helmet standards in Europe.

### **11.2 Explanatory notes**

Whilst the explanatory notes address issues of fundamental legislative principle, the notes do not include an overall statement as to the consistency of the regulation with fundamental legislative principles.

Part 4 of the LSA requires explanatory notes to include:

... a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.

The explanatory notes otherwise comply with the requirements set out in part 4.

### **11.3 Human rights considerations**

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

The human rights certificate raises a number of human rights issues.<sup>46</sup> The right to privacy is addressed below.

#### ***Right to privacy and reputation***

A person must not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.<sup>47</sup>

As noted above in the context of fundamental legislative principles, the ability of ‘authorised persons’ to access a person’s information from the transport information database (which may include personal information such as name, address and contact details), is likely to impact a person’s right to privacy.

The human rights certificate states that the purpose of this provision ‘is only for performing a function under the SPE Act. That is, the information can only be released for the purpose of managing the issuing and administration of fines.’<sup>48</sup>

---

<sup>45</sup> Department of Transport and Main Roads, correspondence 19 April 2022, pp 3-5.

<sup>46</sup> The right to recognition and equality before the law; property rights; right to liberty and security of person; the right to a fair hearing; and rights in criminal proceedings were raised by in the human rights certificate in relation to the imposition of PINS for the new offences contained in the regulation. These were not considered to be significant human rights issues in the context of this regulation, so have not been addressed in this brief. However, further information can be provided to the committee if required.

<sup>47</sup> HRA, s 25.

<sup>48</sup> SL No. 3, human rights certificate, p 8. See also SL No. 3, s 27 (proposed ss 10A (disclosure and use of information), 10B (restriction on use of information)).

The human rights certificate also highlights the safeguards incorporated into the provision to protect an individual's privacy, being:

- the chief executive can release the information on conditions that the chief executive considers appropriate, and
- there is an offence provision (maximum penalty of 20 penalty units) aimed at deterring the misuse of information.<sup>49</sup>

Further:

Prior to gaining access, all authorised persons will be required to be criminal history checked and acknowledge their understanding of the Queensland Public Service Code of Conduct, which includes an obligation to keep personal information confidential and secure. Access to TMR's registration and licensing database will be logged.<sup>50</sup>

Overall, the human rights certificate concludes that 'the benefit of facilitating the performance of functions under the SPE Act outweighs any limitation of the human right to privacy.'<sup>51</sup>

#### **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. 13 of 2022 - Transport Infrastructure (Ports) (Port of Maryborough) Amendment Regulation 2022**

The objective of the regulation is to transfer the management of the Port of Maryborough from the North Queensland Bulk Ports Corporation Limited to the Gladstone Ports Corporation Limited.<sup>52</sup>

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

No issues of fundamental legislative principle were identified.

#### **12.2 Explanatory notes**

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

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

The regulation is compatible with human rights.<sup>53</sup>

#### **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.

---

<sup>49</sup> SL No. 3, human rights certificate, p 8. See also SL No. 3, s 27 (proposed ss 10A, 10B).

<sup>50</sup> SL No. 3, human rights certificate, p 9.

<sup>51</sup> SL No. 3, human rights certificate, p 9.

<sup>52</sup> Explanatory notes, p 1.

<sup>53</sup> 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. 20 of 2022 - Transport Legislation Amendment Regulation 2022

The regulation:

- provides for self-servicing of inflatable lifejackets in accordance with manufacturers' requirements
- prescribes the Bribie Island Bar as a coastal bar
- clarifies lifejacket labelling requirements
- removes annual vehicle inspection requirements for particular vehicles.

#### 13.1 Fundamental legislative principle issues

##### *Institution of Parliament*

###### Subdelegation of power

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of power only in appropriate cases and to appropriate persons, and only if authorised by an Act.<sup>54</sup>

Where subordinate legislation incorporates external documents the issue of subdelegation of power commonly arises. Where these documents are not reproduced in full in subordinate legislation, and where changes to such documents can be made without the content of those changes coming to the attention of the House, the incorporation of these documents can mean there is insufficient regard to the institution of Parliament.

The regulation incorporates, by reference, into the Transport Operations (Marine Safety) Regulation 2016 (TOMSR) external documents, by defining types of lifejackets in terms which refer variously to the relevant Australian Standard (AS4758), the International Convention for the Safety of Life at Sea (SOLAS) and the National Standard for Commercial Vessels (NSCV). These provisions and these documents may be amended without the scrutiny of the Queensland Parliament.

The explanatory notes justify this incorporation on the basis that it allows for the quick application of developments and improvements to safety standards. There is also reliance on the length and complexity of the external documents:

The standards or requirements in these documents are well established and adopted by the maritime industry including by lifejacket manufacturers. Due to the length, complexity and technical nature of the documents it would not be appropriate or practical to reproduce SOLAS, NSCV or AS4758 in TOMSR so that it is subject to Parliamentary scrutiny each time it is amended. Relying on these internationally and nationally accepted documents improves consistency across jurisdictions making it easier for people to travel between jurisdictional waters. As a result, any breach of fundamental legislative principles is justified.<sup>55</sup>

###### Committee comment

The committee is satisfied that the breach of fundamental legislative principle arising from the incorporation of external documents is justified, having regard to the acceptance of the documents by the maritime industry and the complex and technical nature of the documents.

#### 13.2 Explanatory notes

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

---

<sup>54</sup> *Legislative Standards Act 1992* (LSA), s 4(5)(e).

<sup>55</sup> Explanatory notes, p 6.

### **13.3 Human rights considerations**

The committee is satisfied that the regulation is compatible with human rights.<sup>56</sup>

### **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. 30 of 2022 - Proclamation No. 5—Building Industry Fairness (Security of Payment) Act 2017 (repealing previous proclamation)**

The proclamation repeals the proclamation made under the *Building Industry Fairness (Security of Payment) Act 2017* on 27 August 2020. That proclamation fixed various commencement dates for phases of the new trust account framework inserted into the *Building Industry Fairness (Security of Payment) Act 2017* by the *Building Industry Fairness (Security of Payment) and Other Legislation Amendment Act 2020*. It is now proposed to commence some phases at dates later than those previously fixed.

### **14.1 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

### **14.2 Explanatory notes**

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

### **14.3 Human rights considerations**

The proclamation is compatible with human rights.

### **14.4 Human rights certificate**

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

## **15 SL No. 30 of 2022 - Proclamation No. 5—Building Industry Fairness (Security of Payment) Act 2017 (repealing previous proclamation)**

This proclamation replaces the previous commencement dates for the phases of the new trust account framework (those dates having being repealed by SL 30 above) with new dates that extend the commencement dates by 9 months.

### **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 proclamation is compatible with human rights.

---


<sup>56</sup> The human rights certificate raises a number of human rights as being relevant to the regulation, however these were not considered to present significant human rights issues and so have not been addressed in this brief. Further information can be provided to the committee if required.

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

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

#### **16 Recommendation**

The committee recommends that the House notes this report.



Shane King MP

**Chair**

**May 2022**

#### **Transport and Resources Committee**

<b>Chair</b>	Mr Shane King MP, Member for Kurwongbah
<b>Deputy Chair</b>	Mr Lachlan Millar MP, Member for Gregory
<b>Members</b>	Mr 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