

Transport and Resources Committee

Report No. 40, 57th Parliament

Subordinate legislation tabled between 15 July 2023 and 22 August 2023

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 15 July 2023 and 22 August 2023. 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* (LSA).¹

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

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
58	Transport Legislation (Fees) Amendment Regulation 2023	22 August 2023	16 November 2023
62	Building Industry Fairness (Security of Payment) Amendment Regulation 2023	22 August 2023	16 November 2023
70	Proclamation No. 2 – Land and Other Legislation Amendment Act 2023	22 August 2023	16 November 2023
71	Mining and Quarrying Safety and Health (Lead) Amendment Regulation 2023	22 August 2023	16 November 2023
83	Transport Operations (Road Use Management—Vehicle Registration) and Other Legislation Amendment Regulation 2023	22 August 2023	16 November 2023
98	Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023	22 August 2023	16 November 2023
102	Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2023	22 August 2023	16 November 2023

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

3 Committee consideration of the subordinate legislation

Unless noted below, the committee did not identify any significant issues regarding the policy, consistency with fundamental legislative principles (FLP), the lawfulness of the subordinate legislation or non-compliance with the *Human Rights Act 2019* (HRA).

The committee considers that the explanatory notes tabled with the subordinate legislation noted in this report comply with the requirements of section 24 of the LSA and that 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 their compatibility with the HRA.

4 Transport Legislation (Fees) Amendment Regulation 2023 (SL No. 58)

4.1 Policy objective

The Transport Legislation (Fees) Amendment Regulation 2023 (SL No. 58) increases and decreases a number of departmental fees and charges for the 2022-23 financial year.

Public marine facility fees,³ which are currently exempted from Queensland Treasury's Fee Unit Model, are increased by SL No. 58 in accordance with the Government indexation rate of 3.4 per cent.⁴

SL No. 58 also amends various regulations⁵ to reduce smartcard replacement fees,⁶ which are applicable to Department of Transport and Main Roads issued identification products, including a driver's licence, photo identification card, accreditation document, tow truck driver certificate and tow truck assistant's certificate.⁷

4.2 Fundamental legislative principle issues

No FLP issues were identified.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.4 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

4.5 Human rights certificate

Section 41 of the *Human Rights Act 2019* requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation.

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.

³ Being, fees under the Transport Infrastructure (Public Marine Facilities) Regulation 2011.

⁴ By amending the Transport Infrastructure (Public Marine Facilities) Regulation 2011. SL No. 58, explanatory notes, p 1.

⁵ Namely, the Photo Identification Card Regulation 2019, Tow Truck Regulation 2009, Transport Operations (Road Use Management-Accreditation and Other Provisions) Regulation 2015 and Transport Operations (Road Use Management-Driver Licensing) Regulation 2021

⁶ The amendments will reduce the fee for a replacement driver licence, industry authority, tow truck driver's certificate and tow truck assistant's certificate from 80.10 fee units (\$82.10 (the value of a fee unit in 2022-23 was \$1.025)) to 33.01 fee units (\$35 (the value of a fee unit in 2023-24 is \$1.060)). For a replacement photo identification card, the fee will be reduced from 73.00 fee units (\$74.85 in 2022-23) to 33.01 fee units (\$35.00 in 2023-24).

⁷ SL No. 58, explanatory notes, p 2.

5 Building Industry Fairness (Security of Payment) Amendment Regulation 2023 (SL No. 62)

5.1 Policy objective

The Building Industry Fairness (Security of Payment) Amendment Regulation 2023 (SL No. 62) amends the fee schedule in the Building Industry Fairness (Security of Payment) Regulation 2018 to increase the progress payment thresholds and percentages to reflect the applicable indexation rate.⁸

5.2 Fundamental legislative principle issues

No FLP issues were identified.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Human rights considerations

The committee considers that the subordinate legislation raises no human rights issues.

5.5 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 Proclamation No. 2 – Land and Other Legislation Amendment Act 2023 (SL No. 70)

6.1 Policy objective

The Proclamation made under the *Land and Other Legislation Amendment Act 2023* (SL No. 70) fixes 3 July 2023 as the commencement date of sections 79, 81, 83 and 86 of the *Land and Other Legislation Amendment Act 2023*.

The explanatory notes state that, once commenced, these sections will:

... omit certain technical and procedural surveying requirements from the Survey and Mapping Infrastructure Act 2003 (SMI Act). Instead, the Chief Executive will make survey standards under the SMI Act to stipulate these requirements. The use of survey standards rather than provisions of the SMI Act for this purpose allows greater flexibility to administer technical and procedural requirements when necessary.⁹

6.2 Fundamental legislative principle issues

No FLP issues were identified.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.4 Human rights considerations

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

6.5 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 The existing formula (which uses a percentage of the progress payment amount) has been converted to 'fee units equal to' the dollar value calculated using the formula. SL No. 62, explanatory notes, p 1.

⁹ SL No. 70, explanatory notes, p 1.

7 Mining and Quarrying Safety and Health (Lead) Amendment Regulation 2023 (SL No. 71)

7.1 Policy objective

The Mining and Quarrying Safety and Health (Lead) Amendment Regulation 2023 (SL No. 71) amends the Mining and Quarrying Safety and Health Regulation 2017 (Regulation) with the intention of improving the risk control of lead and lead health surveillance of workers at mineral mines, lowering the risk to workers of adverse health outcomes from lead.¹⁰

SL No. 71 amends the Regulation to:¹¹

- update blood lead levels and airborne exposure standards to align with current Safe Work Australia (SWA) recommended lower blood lead levels and airborne exposure standards, and remove existing references to the relevant National Occupational Health and Safety Commission standard and guidance note, which are outdated
- provide for lead risk management and lead health surveillance requirements, similar to the current relevant sections in SWA's Model Work Health and Safety Regulations, including:
 - references to SWA's airborne contaminants standards and guide, for airborne exposure limits
 - mining and quarrying safety and health framework specific requirements¹²
- implement significantly lower blood lead level requirements:
 - for the identification of a lead risk job
 - in relation to last biological monitoring blood lead levels that determine the frequency of biological monitoring
 - for removal of a worker from a lead risk job¹³
 - for return of a worker to a lead risk job
- confirm that female workers who are (or may be) pregnant or are breastfeeding, must be removed from lead risk jobs (there is now no allowable blood lead level)
- reduce the exposure limit for airborne lead monitoring from 0.15mg/m³ to 0.05mg/m³
- update schedule 5, covering general exposure limits for hazards
- require risk management controls for controlling hand-to-mouth ingestion of lead,¹⁴ which must be reviewed in specific circumstances

¹⁰ SL No. 71, explanatory notes, p 1.

¹¹ SL No. 71, explanatory notes, pp 3-4.

¹² Including reporting of high potential incidents and prescribed diseases. According to the explanatory notes, medical removal of a worker from a lead risk job due to blood lead level exceedance will be a high potential incident. SL No. 71, explanatory notes, p 3.

¹³ The explanatory notes (p 3) state that blood lead levels in workers must be reduced when necessary by removing them from lead risk jobs and through appropriate controls, including adhering to strict hygiene procedures until their blood lead levels are sufficiently reduced.

¹⁴ Including, providing information about health risks of lead exposure to workers, restricting eating and drinking in lead process areas, providing change room and washing facilities, laundry requirements for personal protective equipment contaminated with lead, as well as biological monitoring and blood lead removal level controls. SL No. 71, explanatory notes, p 4.

- consolidate existing requirements for general and respiratory health surveillance, with the new lead health surveillance requirements¹⁵
- provide for requirements for notifying the chief inspector, in the approved form, of: lead risk jobs, changes to lead risk jobs, lead health surveillance of workers, removal of a worker from a lead risk job, returning of a worker to a lead risk job, and additional information about a worker diagnosed with a disease^{16,17}
- provide transitional provisions for the changes related to lead health surveillance¹⁸
- consolidate requirements for keeping health surveillance reports across the Regulation, including requiring that a report for a hazard with a cumulative or delayed effect is kept for at least 30 years after it is received (and for another hazard, for at least 7 years after it is received).¹⁹

7.2 Fundamental legislative principle issues

Rights and liberties of individuals

To have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.²⁰

SL No. 71 includes a range of provisions relating to reporting requirements or payment by an employer for health surveillance, which contain maximum penalties ranging from 10 penalty units (\$1,548) to 60 penalty units (\$9,288).²¹

According to the explanatory notes, the maximum penalties in any comparable existing sections in the Regulation and in the equivalent sections in the Work Health and Safety Regulation 2011:

... were considered when determining the maximum penalty for each new offence provision, to ensure the maximum penalties are justified through being at an appropriate level for the specific new offences.

The maximum penalties in new sections 145J, 145K, and schedule 2E sections 23, 24, 26, and 29 are similar to the maximum penalties in comparable offence provisions in part 7.2 divisions 3 and 4 of the Work Health and Safety Regulation 2011.²²

The intent of the offence provisions is to ‘deter non-compliance with important lead risk management or lead health surveillance reporting requirements or administrative requirements’.²³ Additionally, the information to be reported will:

... significantly improve data collection related to lead health surveillance, so that more effective, data driven audits and inspections at mines can be conducted by the inspectorate who regulate compliance

¹⁵ SL No. 71 inserts new sch 2E into the Regulation.

¹⁶ The explanatory notes (p 4) advise that this information will enable any adverse trends in lead hazard management to be identified at any particular mines or in any particular lead risk jobs, so that more effective, data driven audits and inspections at mines can be conducted by inspectors.

¹⁷ According to the explanatory notes (p 4), the amendment of section 120 of the Regulation to clarify data collection related to lead health surveillance (SL No. 71, s 7) is based on the similar approach in the SWA Model Work Health and Safety Regulation, which provides that a worker’s written consent is not required prior to a worker’s health monitoring report being provided to the regulator.

¹⁸ SL No. 71, ss 13, 14.

¹⁹ SL No. 71, s 18 inserts new Regulation, s 30; explanatory notes, p 4.

²⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook (Notebook)*, 2008, p 120. See also LSA, s 4(2)(a).

²¹ SL No. 71, inserts new ss 12C(2), 145J(1) and (3), 145K(1) and (2), and sch 2E ss 23(2), 24(3), 26(4), and 29(1); explanatory notes, p 7.

²² SL No. 71, explanatory notes, pp 7-8.

²³ SL No. 71, human rights certificate, p 4.

with safety and health obligations at mines. Administrative requirements relate to the employer arranging and paying for lead health surveillance, or part of the health surveillance of a worker.²⁴

Committee comment

We note that the intent of the offence provisions is to deter non-compliance with lead risk management or health surveillance requirements, and facilitate more effective safety and health compliance audits and inspections at mines. We also note that the maximum penalties in the new offence provisions are consistent with comparable, existing sections in the Regulation and the Work Health and Safety Regulation 2011.

We are therefore satisfied that the new provisions have sufficient regard to rights and liberties of individuals.

7.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.4 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights. Potential limitations regarding the right to privacy and reputation are discussed below.

7.4.1 Right to privacy and reputation

A person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.²⁵

SL No. 71 contains limits on this human right by ‘enabling information from workers’ health surveillance reports to be provided to the Chief Inspector through an approved form’, which the explanatory notes contend will ‘improve the regulatory response to any blood lead level exceedances at particular mines, and to enable more targeted interventions by the inspectorate based upon data’.²⁶

Any information about particular workers will be kept confidentially within the databases of Resources Safety and Health Queensland.²⁷ The human rights certificate concludes:

The benefits of receiving timely information in a Chief Inspector approved form about a worker’s lead health surveillance, without first seeking a worker’s consent, substantially outweigh the limitation on the right of privacy, and are reasonable and justified.

The Chief Inspector will be receiving information about whether risk controls have failed at a particular mineral mine based upon the blood lead levels of particular workers, or if a worker has been diagnosed with a prescribed workplace related disease.²⁸

7.5 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.

²⁴ SL No. 71, Human Rights Certificate, p 4.

²⁵ HRA, s 25(a).

²⁶ SL No. 71, Human Rights Certificate, p 5.

²⁷ SL No. 71, Human Rights Certificate, p 5.

²⁸ SL No. 71, Human Rights Certificate, p 6.

8 Transport Operations (Road Use Management—Vehicle Registration) and Other Legislation Amendment Regulation 2023 (SL No. 83)

8.1 Policy objective

The Transport Operations (Road Use Management—Vehicle Registration) and Other Legislation Amendment Regulation 2023 (SL No. 83) amends a range of subordinate legislation²⁹ to:

- provide for sharing (between primary producers) of heavy vehicles that are used in primary production (HPPVs) and are concessionally registered under the Primary Producer Concession Scheme (PPCS),³⁰ by enabling a Recognised Primary Producer (RPP) to nominate up to 5 other RPPs with whom they may share vehicles registered under the PPCS³¹
- provide the chief executive with discretion to allow only one number plate to be attached to the rear of specific vehicles, including motorised golf buggies, registered under limited access conditional registration³²
- provide that a vehicle is eligible for concessional registration if the vehicle's garage address is in a prescribed restricted area³³
- prescribe cocaine as a relevant drug for the purpose of Queensland's roadside drug testing program and approve a new drug testing device³⁴
- adopt a number of amendments to the Australian Light Vehicle Standards Rules 2015 (ALVSRs),³⁵ including to clarify rules relating to left-hand drive vehicles and to correct cross-referencing errors³⁶

²⁹ Namely, the State Penalties Enforcement Regulation 2014 (SPE Regulation), Tow Truck Regulation 2009, Traffic Regulation 1962, Transport Operations (Road Use Management—Accreditation and Other Provisions) Regulation 2015, Transport Operations (Road Use Management—Driver Licensing) Regulation 2021, Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021 (Registration Regulation) and Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021. See also SL No. 83, human rights certificate, p 1.

³⁰ The PPCS provides registration fee relief to primary producers to support the use of HPPVs directly related to their primary production business. SL No. 83, explanatory notes, pp 1-2.

³¹ SL No. 83, explanatory notes, p 5.

³² The chief executive may exercise this discretion when considering an application made by a registered operator to attach only one number plate. In making a decision, the chief executive must have regard to a range of considerations including, for example, whether granting the application might endanger public safety or hinder or prevent enforcement. SL No. 83, explanatory notes, pp 2, 5.

³³ See the explanatory notes (p 3) for a list of these areas, which are identified as remote areas, which may lack a number of essential services. Existing restrictions on where the vehicles are permitted to travel are removed.

³⁴ SL No. 83 creates the possibility of the imposition of financial penalties for criminal proceedings on a driver who, under the Roadside Drug Testing program, tests positive for the presence of cocaine. These financial penalties are in the form of a court-imposed fine under the existing drug driving provisions in section 79 of the *Transport Operations (Road Use Management) Act 1995*. SL No. 83, human rights certificate, p 9.

³⁵ The Australian Design Rules (ADRs) provide the rules for designing and building vehicles that apply at the time a vehicle is built or imported into Australia. The ALVSRs, which are based on the ADRs, are the model law for implementing these nationally agreed standards in each jurisdiction. SL No. 83, explanatory notes, p 4.

³⁶ These amendments were approved by the Infrastructure and Transport Ministers' Meeting (ITMM), in December 2022: SL No. 83, explanatory notes, p 4. The ITMM consists of the various transport and infrastructure ministers of the Australian states and territories, as well as the Commonwealth Minister for Infrastructure, Transport, Regional Development and Local Government. The ITMM provides a forum for intergovernmental collaboration, decision-making and progressing priorities of national importance.

- provide for a person to apply for a replacement smartcard identification product where they have been subject to a data breach.

8.2 Fundamental legislative principle issues

Rights and liberties of individuals

The explanatory notes discuss SL No. 83's consistency with fundamental legislative principles regarding:

- the increase in the existing penalty for non-compliance with the requirements for HPPVs registered under the PPCS
- the new penalty for failure to notify the chief executive of a change related to primary producer status and, consequently, eligibility for HPPV concessional registration.³⁷

These provisions are considered in the human rights certificate in terms of their compatibility with human rights in accordance with the HRA. Further commentary on these matters is contained in section 8.4.1 below.

8.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.4 Human rights considerations

The committee is satisfied that the subordinate legislation is compatible with human rights. Potential limitations regarding the right to a fair hearing and rights in criminal proceedings are discussed below.

8.4.1 Right to a fair hearing, and rights in criminal proceedings

In its consideration of the amendments to the Transport Operations (Road Use Management - Vehicle Registration) Regulation 2021, the human rights certificate acknowledges that SL No. 83 may limit a range of human rights.³⁸

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.³⁹

A person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law, as well as rights to certain minimum guarantees, including:

- to be informed promptly and in detail of the nature and reason for a charge
- to have adequate time and facilities to defend themselves personally or through legal assistance.⁴⁰

The human rights certificate acknowledges that SL No. 83 may limit the right to a fair hearing, and rights in criminal proceedings, to the extent that it creates infringement notice offences and extends

https://www.infrastructure.gov.au/infrastructure-transport-vehicles/transport-strategy-policy/infrastructure-and-transport-ministers-meetings#_membership

³⁷ SL No. 83, Explanatory Notes, p 9.

³⁸ Being, the right to recognition and equality before the law (section 15 of the HRA), property rights (section 24 of the HRA), the right to liberty and security of person (section 29 of the HRA), the right to a fair hearing (section 31 of the HRA) and rights in criminal proceedings (section 32 of the HRA). SL No. 83, Human Rights Certificate, pp 5-9.

³⁹ HRA, s 31(1).

⁴⁰ HRA, s 32(1), (2).

the scope of existing infringement notice offences,^{41,42} because a person does not have to attend court in relation to an infringement notice offence.⁴³

According to the human rights certificate, the fines 'send a strong deterrent message' which will assist in ensuring that 'those who receive the concessional registration benefit abide by the scheme's requirements'.⁴⁴ The explanatory notes provide that prior to the amendments, the maximum penalties for misuse of a concessional registered HPPV were 'less than the concessional benefit for a number of different types of vehicles'.⁴⁵

Additionally, the human rights certificate contends that the prescription of Penalty Infringement Notices (PIN) related to the PPCS provides an efficient means of enforcing the offences and avoiding court costs 'because the infringement notice fine system allows enforcement through the issue of a fine by an authorised officer which the alleged offender can pay while avoiding a court process'.⁴⁶

The human rights certificate concludes that:

It is important for the integrity of the PPCS that those who have received concessional registration for heavy vehicles for use in their primary production business comply with requirements of the PPCS, and that they are held accountable when non-compliance occurs.

In addition, allowing PINs to be issued for non-compliance with requirements of the PPCS provides an efficient enforcement option. If this enforcement option was not available, there would likely be reduced deterrence. This is because a decision to prosecute is made on public interest grounds, including the consideration of the cost of prosecution.

...

Infringement notice offences provide several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as giving them certainty about their legal position ...⁴⁷

8.5 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.

⁴¹ SL No. 83 increases the penalty for misuse of a vehicle registered under the PPCS by the registered operator in section 241 of the Registration Regulation and expands the offence to cover misuse of the vehicle by a nominated RPP. The maximum penalty has increased from 60 penalty units (\$9,288) to 80 penalty units (\$12,384) and the Penalty Infringement Notice (PIN) amount will change from 4 4/5 penalty units to 6 2/5 penalty units. SL No. 83, human rights certificate, p 2.

⁴² SL No. 83 amends the SPE Regulation to make certain offences related to the misuse of a vehicle registered under the PPCS by registered operators and nominated RPPs, subject to the issuing of a PIN under the *State Penalties Enforcement Act 1999*. Namely, by: increasing the penalty for use of a vehicle registered under the PPCS for a purpose other than the registered operator's primary production business, and expansion of the offence to cover a nominated RPP's use for a purpose other than their primary production business; and a new offence where a registered operator for a vehicle registered under the PPCS (or a nominated RPP) fails to notify the chief executive of changes in their status as a primary producer. PIN offences are an alternative to prosecution through the court system. SL No. 83, human rights certificate, p 4.

⁴³ SL No. 83, human rights certificate, p 7.

⁴⁴ SL No. 83, human rights certificate, p 7.

⁴⁵ SL No. 83, explanatory notes, p 9.

⁴⁶ SL No. 83, human rights certificate, p 7.

⁴⁷ SL No. 83, human rights certificate, pp 8-9.

9 Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023 (SL No. 98)

9.1 Policy objective

The Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023 (SL No. 98) introduces a new regulatory framework for public cyclone shelters into the Building Regulation 2021.⁴⁸

Amongst other things, SL No. 98:

- sets minimum standards for ‘the location, design, construction, maintenance and operation of privately-owned buildings or parts of buildings used as public cyclone shelters’⁴⁹
- introduces an offence provision which states the owner or occupier of a building or part of a building must not, without a reasonable excuse, use the words ‘public cyclone shelter’ in a broadcast or publication to indicate the building or part is available for occupation as a shelter by the public during a cyclone.⁵⁰

9.2 Fundamental legislative principle issues

To have sufficient regard to rights and liberties of individuals, the consequences of legislation should be relevant and proportionate. In line with this, a penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.⁵¹

The new offence introduced by SL No. 98 has a maximum penalty of 20 penalty units (\$3,096). SL No. 98 prescribes the new offence as an infringement notice offence.

The purpose of the offence provision is ‘to prevent confusion around the identification of public cyclone shelters and to ensure that shelters are operated by the local disaster management group’.⁵²

The explanatory notes outline the benefits of prescribing the offence as an infringement notice offence:

[It] will provide administrators with a swift and inexpensive means of addressing breaches of section 78D that would otherwise be required to be dealt with by means of costly and time-consuming prosecutions. Offenders will benefit from a fixed and discounted penalty for the offence, avoidance of court proceedings, and no finding of guilt in relation to the offence.⁵³

The maximum penalty for the new offence is consistent with the maximum penalty for many of the other offences in the Building Regulation 2021.

Committee comment

Given the intent of the offence provision is to reduce potential for confusion around the identification of public cyclone shelters, the importance of ensuring the safety of people during a cyclone, and that the maximum penalty for the offence is consistent with other maximum penalties in the Building Regulation 2021, we are satisfied the new provision has sufficient regard to rights and liberties of individuals.

9.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

⁴⁸ SL No. 98, explanatory notes, p 2.

⁴⁹ SL No. 98, explanatory notes, p 2.

⁵⁰ SL No. 98, s 3 (Building Regulation 2021, new s 78D); SL No. 98, explanatory notes, p 2. The maximum penalty is 20 penalty units (\$3,096).

⁵¹ OQPC, *Notebook*, 2008, p 120. See also LSA, s 4(2)(a).

⁵² SL No. 98, human rights certificate, p 2.

⁵³ SL No. 98, explanatory notes, p 4.

9.4 Human rights considerations

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

9.5 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 Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2023 (SL No. 102)

10.1 Policy objective

The Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2023 (SL No. 102) amends the Petroleum and Gas (Safety) Regulation 2018 (P&G Regulation) to expand its coverage to include safety issues relating to hydrogen and to include hydrogen fuel applications (such as hydrogen fuel cells), including by:

- prescribing relevant parts of the Hydrogen Safety Code of Practice (CoP) in the P&G Regulation as preferred standards for hydrogen-related activities
- prescribing relevant local and international standards to apply as alternative standards where the current prescribed standard for fuel quality requirements cannot be satisfied
- providing amendments and definitions to include hydrogen fuel applications in the current fuel gas requirements.⁵⁴

In this regard, SL No. 102:

- introduces parts 7.1–7.3 of the CoP into the P&G Regulation, which provide alternative processes for supplying unodourised hydrogen⁵⁵
- introduces part 5.4.1 of the CoP into the design requirements of a distribution system to provide that the operator may supply fuel gas with a hydrogen content of over 15%, by giving notice that a formal safety assessment has been conducted ensuring that an equal or less level of risk has been achieved⁵⁶
- introduces two new international standards⁵⁷ to prescribe fuel quality requirements that apply to hydrogen⁵⁸
- provides that the requirement to test for carbon monoxide will only apply for a vehicle that uses fuel gas, other than hydrogen fuel gas⁵⁹

⁵⁴ SL No. 102, explanatory notes, p 1.

⁵⁵ Parts 7.2 and 7.3 will be introduced to schedule 2, parts 1 to 3 of the P&G Regulation as a preferred standard dealing with the supply of unodourised hydrogen to a consumer and the process for design and installation of a gas system using unodourised hydrogen. Part 7.1 of the CoP will be introduced into section 73 to provide alternative means of satisfying the prescribed odour requirements. SL No. 102, explanatory notes, p 3.

⁵⁶ Where the hydrogen component of a fuel gas is outside the scope of the requirements of AS/NZ 4645 (the existing standard), part 5.4.1 now provides an alternative method of compliance. SL No. 102, explanatory notes, p 3.

⁵⁷ AS/ISO 19880.8 Gaseous hydrogen fuelling stations Part 8: Fuel quality control clause 8 - Hydrogen quality assurance methodology; and SAE J2719 - Hydrogen Fuel Quality for Fuel Cell Vehicles.

⁵⁸ If the supply does not conform to these prescribed qualities, a gas quality approval or gas quality agreement will need to be in place, as per existing requirements. SL No. 102, explanatory notes, p 3.

⁵⁹ SL No. 102, explanatory notes, pp 3-4.

- adds hydrogen specific gauge pressure requirements that apply to a person who connects a consumer's gas system to a fuel gas network.⁶⁰

SL No. 102 also prescribes the Australian Standard Gas appliances - Servicing of Type A appliances (AS 4575), as the preferred standard for repairing, servicing and testing Type A gas devices.⁶¹

Additionally, SL No. 102 makes consequential amendments to the State Penalties Enforcement Regulation 2014, in relation to penalty infringement notices for offences under the *Petroleum and Gas (Production and Safety) Act 2004* that were impacted by the commencement of the *Land, Explosives and Other Legislation Amendment Act 2019*.⁶²

10.2 Fundamental legislative principle issues

Institution of Parliament - subdelegation of a power

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act.⁶³

In determining whether it is appropriate for matters to be dealt with by an instrument that is not subordinate legislation, parliamentary committees have taken into account the importance of the subject dealt with and the practicality or otherwise of including those matters in subordinate legislation.⁶⁴

SL No. 102 incorporates a range of non-legislative documents by reference,⁶⁵ which the explanatory notes acknowledge may be considered a subdelegation of power:

... as by incorporating a non-legislative document by reference, by a non-parliamentary body, such as Standards Australia and, for the CoP, RSHQ [Resources Safety and Health Queensland], is given the power to change the document without parliamentary oversight. Changes to the CoP are intended to be made using the same consultative process as during the development process.⁶⁶

The explanatory notes justify SL No. 102's incorporation of documents by reference, as follows:

- incorporating the documents allows for the simplest and the most effective, efficient and timely means of making and amending safety requirements that are highly technical and complex
- the incorporated standards and requirements are well-established and accepted by the Australian petroleum and gas industry
- the CoP can be readily updated to provide for improvements in safety requirements as the industry matures, with such changes envisaged to be consequential to a national approach
- given that the intricacy, technical nature and length of the standards and CoP make it impractical for their reproduction in the P&G Regulation, reliance on locally (or otherwise internationally) accepted documents guarantees uniformity across the Australian jurisdictions and heightens safety standards

⁶⁰ Or supplies fuel gas to a consumer's gas system through a fuel gas network for the first time. SL No. 102, explanatory notes, p 4.

⁶¹ Type A gas devices are natural gas or LPG appliances used in domestic or light commercial areas, such as cookers and heaters. SL No. 102, explanatory notes, pp 1-2.

⁶² SL No. 102, explanatory notes, p 2.

⁶³ LSA, s 4(5)(e).

⁶⁴ OQPC, *Notebook*, p 170.

⁶⁵ Being, parts 1, 5.4.1, 7.2–7.3 of the CoP; AS 4575; AS/ISO 19880.8; SAE J2719. SL No. 102, explanatory notes, p 7.

⁶⁶ SL No. 102, explanatory notes, p 7.

- the P&G Regulation already includes multiple standards as safety requirements to ensure consistency with other jurisdictions, where the same standards are followed or endorsed
- incorporating the CoP is consistent with the existing codes and standards in the legislation,⁶⁷ and is a practical and accessible means of providing industry with guidance about regulatory compliance and approval processes and safety requirements for emerging applications.⁶⁸

Committee comment

We note that SL No. 102 subdelegates a range of matters to a range of documents not subject to the parliamentary disallowance process. However, we also note the justifications provided in the explanatory notes that are repeated above. In the circumstances, we are satisfied that the justifications are considered appropriate.

10.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

10.4 Human rights considerations

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

10.5 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 Recommendation

The committee recommends that the House notes this report.



Shane King MP

Chair

October 2023

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
	Mr James Martin MP, Member for Stretton (to 24 August 2023)
	Ms Joan Pease MP, Member for Lytton (from 24 August 2023)
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North

⁶⁷ According to the explanatory notes, RSHQ uses existing Codes of Practice to regulate safety requirements across the petroleum and gas industry, for example the 'Code of practice for the construction and abandonment of petroleum wells and associated bores in Queensland.'

⁶⁸ SL No. 102, explanatory notes, pp 7-8.