

Legal Affairs and Community Safety Committee

Report No. 63, 56<sup>th</sup> Parliament

Subordinate legislation tabled between 27 November 2019 and 4 February 2020

**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 27 November 2019 and 4 February 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its compliance with fundamental legislative principles and lawfulness. It also reports on the committee’s consideration of the compliance of the explanatory notes with the *Legislative Standards Act 1992*.

For the subordinate legislation notified on or after 1 January 2020, the report identifies any issues identified by the committee in its consideration of the human rights certificates tabled with the subordinate legislation and the compatibility of the subordinate legislation with the *Human Rights Act 2019*.

**2 Subordinate legislation examined**

The committee examined the subordinate legislation listed in the tables.

**2019 subordinate legislation series**

No.	Subordinate legislation	Date tabled	Disallowance date*
235	Liquor Amendment Regulation 2019	4 February 2020	1 May 2020
236	Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2019	4 February 2020	1 May 2020
260	Proclamation made under the <i>Youth Justice and Other Legislation Amendment Act 2019</i>	4 February 2020	1 May 2020
261	Youth Justice and Other Legislation Amendment Regulation 2019	4 February 2020	1 May 2020
266	Professional Standards (The CPA Australia Ltd Professional Standards (Accountants) Scheme) Notice 2019	6 January 2020	30 May 2020
268	**Legal Profession (Society Rules) Amendment Notice (No. 3) 2019	6 January 2020	30 May 2020
269	Supreme Court (Admission Guidelines) Amendment Notice 2019	4 February 2020	1 May 2020

**2020 subordinate legislation series**

No.	Subordinate legislation	Date tabled	Disallowance date*
2	Proclamation made under the <i>Civil Liability and Other Legislation Amendment Act 2019</i>	4 February 2020	1 May 2020
3	Proclamation made under the <i>Electoral and Other Legislation Amendment Act 2019</i>	4 February 2020	1 May 2020
4	Public Trustee (Interest Rate) Amendment Regulation 2020	4 February 2020	1 May 2020

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

\*\* All subordinate legislation notified on or after 1 January 2020 must be accompanied by a human rights certificate when it is tabled.<sup>1</sup> Even though the Legal Profession (Society Rules) Amendment Notice (No. 3) 2019 (SL 268 of 2019) is part of the 2019 subordinate legislation series, it was notified on 1 January 2020 and therefore it was tabled with a human rights certificate.

**3 Committee consideration of the subordinate legislation**

Apart from those issues discussed below, no significant issues regarding policy, compatibility with human rights, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified.

The explanatory notes tabled with the regulations comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

The relevant subordinate legislation is compatible with human rights.

Where required, a human rights certificate was tabled with the subordinate legislation. The human rights certificates provide a sufficient level of information to facilitate understanding of the pieces of subordinate legislation in relation to their compatibility with human rights.

**4 Youth Justice and Other Legislation Amendment Regulation 2019 (SL 261 of 2019)**

The stated objective of the Youth Justice and Other Legislation Amendment Regulation 2019 (the amendment regulation) is to ensure the Youth Justice Regulation 2016 and the Police Powers and Responsibilities Regulation 2012 accurately reflect and support the *Youth Justice Act 1992* (YJ Act) and the *Police Powers and Responsibilities Act 2000* (PPRA) following the changes made in the *Youth Justice and Other Legislation Amendment Act 2019* (the amendment Act).<sup>2</sup>

The amendment regulation will:

- amend the Police Powers and Responsibilities Regulation 2012 (PPR Regulation) to prescribe legal aid organisations for the purposes of amended section 421 of the PPRA
- make amendments to the Youth Justice Regulation 2016 (YJ Regulation) to support changes in relation to pre-sentence reports following the proclamation of the amendment Act
- make amendments to the YJ Regulation to support the implementation of the information sharing framework into the YJ Act. To limit the inappropriate sharing of information under an arrangement, limitations are being inserted into the YJ Regulation that provide for increased

<sup>1</sup> *Human Rights Act 2019*, s 41(3); Proclamation under the *Human Rights Act 2019* (SL 224 of 2019).

<sup>2</sup> Youth Justice and Other Legislation Amendment Regulation 2019, explanatory notes, p 1.

accountability and transparency as well as greater protection of the interests of vulnerable young people and their families under information sharing arrangements.<sup>3</sup>

#### 4.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

In considering issues of fundamental legislative principle arising from the information sharing provisions in the amendment Act, the committee (in its report on the Bill that became that Act) stated:

*The disclosure and use of personal information of a child charged with an offence, could be seen to be breaching that child's right to privacy, especially noting that children are regarded as being particularly vulnerable.*

*The committee considers sufficient regard has been given to an individual child's right to privacy, noting the purpose of the disclosure and the safeguards provided.<sup>4</sup>*

The changes made to the YJ Regulation in this amendment regulation provide limitations on sharing the information and:

*... provide for increased accountability and transparency as well as greater protection of the interests of vulnerable young people and their families under information sharing arrangements'.<sup>5</sup>*

The committee is satisfied that any breach of fundamental legislative principle with regard to the disclosure of a child's information has been sufficiently justified.

## 5 Supreme Court (Admission Guidelines) Amendment Notice 2019 (SL 269 of 2019)

The Supreme Court (Admission Guidelines) Amendment Notice 2019 inserts into the Supreme Court (Admission Guidelines) Notice 2016 three new guidelines, which will replace the existing guidelines:

- Admission Guidelines for Approving Academic Qualifications – Admission Guidelines Number 1 (2019)
- Admission Guidelines for Approving Practical Legal Training Requirements – Admission Guidelines Number 2 (2019), and
- Admission Guidelines for Assessing Overseas Applications – Admission Guidelines Number 3 (2019).

### 5.1 Fundamental legislative principle issue – institution of Parliament

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

- if authorised by an Act, and
- in appropriate cases and to appropriate persons.<sup>6</sup>

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.<sup>7</sup>

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<sup>3</sup> Youth Justice and Other Legislation Amendment Regulation 2019, explanatory notes, p 2.

<sup>4</sup> Legal Affairs and Community Safety Committee, *Youth Justice and Other Legislation Amendment Act 2019*, report no.43, 56<sup>th</sup> Parliament, August 2019, p 38.

<sup>5</sup> Explanatory notes, p 2.

<sup>6</sup> *Legislative Standards Act 1992*, s 4(5)(e).

<sup>7</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p170.

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

Where there is incorporated into the legislative framework of the State, an extrinsic document (such as the guidelines) that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament.

Currently, the guidelines are not contained in the subordinate legislation in their entirety, and as such their contents do not come to the attention of the House. Similarly, while a future amending notice will alert the House there has been an amendment to the guidelines (e.g. if a future notice states that it is replacing the guidelines), it will not contain information about the changes that have been made.

#### Authorised by an Act

Section 86 of the *Supreme Court of Queensland Act 1991* provides:

- The admission rules may provide that the Chief Justice may issue guidelines about a matter prescribed under the admission rules.
- A guideline is a statutory instrument but is not subordinate legislation.
- A guideline has no effect unless the minister gives notice of the issuing of the guideline.
- Such a notice is subordinate legislation.

The sub-delegation is authorised. Further, any concerns that the Parliament might have about the content might be met by the ability to move disallowance of the notice.

#### Appropriate cases and to appropriate persons

In considering whether it was appropriate for matters to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered the importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.<sup>8</sup>

The guidelines include detailed information and it can be accepted that it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation.

#### Availability of document and parliamentary scrutiny

Pursuant to section 86(4) of the *Supreme Court of Queensland Act 1991*, the registrar must ensure that a copy of any current guideline is available for public inspection at regional registries and on the court's internet website.

Concerns about sub-delegation are reduced where the document in question could only be incorporated under subordinate legislation (which could be disallowed) and was attached to the subordinate legislation, or required to be tabled with the subordinate legislation. Neither of those features are present here.

The admission guidelines have no effect unless the minister gives notice of their issuing, and any such notice is subordinate legislation.<sup>9</sup> Any concerns that the Parliament might have about the content might be met by the ability to move disallowance of the notice.

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<sup>8</sup> See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-56, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p 1, paras 1.65-1.67.

<sup>9</sup> *Supreme Court of Queensland Act 1991*, s 86(2) and (3) .

In the circumstances, the committee is satisfied that the notice has sufficient regard to the institution of Parliament.

## 6 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

**Chair**

**March 2020**

### **Legal Affairs and Community Safety Committee**

**Chair**

Mr Peter Russo MP, Member for Toohey, Chair

**Deputy Chair**

Mr James Lister MP, Member for Southern Downs, Deputy Chair

**Members**

Mr Stephen Andrew MP, Member for Mirani

Mr Jim McDonald MP, Member for Lockyer

Mrs Melissa McMahon MP, Member for Macalister

Ms Corrine McMillan MP, Member for Mansfield