

Economics and Governance Committee

Report No. 19, 57th Parliament

Subordinate legislation tabled between 3 September 2021 and 14 September 2021

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 3 September 2021 and 14 September 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs)¹, its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA)⁴ and on the committee’s consideration of the human rights certificate tabled with the subordinate legislation.⁵

2 Subordinate legislation examined

The committee examined the subordinate legislation listed below.

No.	Subordinate legislation	Date tabled	Disallowance date*
137	Superannuation (State Public Sector) Notice 2021	14 September 2021	2 December 2021

*The disallowance date is 14 sitting days after the tabling date. (See section 50 of the *Statutory Instruments Act 1992*.) Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it 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 to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ LSA, Part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁵ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

3 Committee consideration of the subordinate legislation

The committee did not identify any significant issues regarding the policy, consistency with FLPs, lawfulness, or compatibility with human rights of the Superannuation (State Public Sector) Notice 2021 (SL No. 137 of 2021).

The committee considered that the explanatory notes tabled with the subordinate legislation broadly comply with the requirements of part 4 of the LSA. Further, the human rights certificate tabled with SL No. 137 of 2021 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

A brief overview of the subordinate legislation is set out below.

4 Superannuation (State Public Sector) Notice 2021

SL No. 137 of 2021 remakes the Superannuation (State Public Sector) Notice 2010 (Notice 2010), which was initially due to expire on 1 September 2020, but had its expiry extended by one year to 1 September 2021.⁶

The Notice 2010 sets out the QSuper membership categories and other conditions of membership for employees of the state public sector,⁷ and according to the explanatory notes, SL No. 137 of 2021:

... largely mirrors the provisions of the Notice 2010 and continues the QSuper membership arrangements approved by the Treasurer for employees of a unit of the State public sector, including those who are employed by an employer that has been declared to be a unit of the State public sector.⁸

SL No. 137 of 2021 does, however, vary from the Notice 2010, by making the following changes:

- changes to the arrangements for Gladstone Marine Services Pty Ltd (which the explanatory notes advise has requested to remove the comprehensive accumulation superannuation category for casual employees effective 1 September 2021)⁹
- updates to the names of 14 units of the state public sector and the removal of 3 entries for state public sector units ‘as these employers no longer operate’ (so no members are affected)¹⁰
- various other amendments, including:
 - the removal of the explicit requirement under the Notice 2010 for the QSuper Board to provide insurance to members, as these requirements are prescribed in Commonwealth superannuation legislation with which the Board must comply
 - the removal, where possible, of references to specific sections in the Superannuation (State Public Sector) Deed 1990 ‘for simplification purposes’
 - the inclusion of a new provision to clarify who can be a member of the standard defined benefit category and remove any doubt in respect of the application of SL No. 137 to contract employees and employees whose membership in a category is subject to employer approval.¹¹

⁶ Section 54 of the *Statutory Instruments Act 1992* (SIA) provides that subordinate legislation expires on 1 September first occurring after the 10th anniversary of the day of its making. However, s 56A(1)(a) of the SIA provides that a regulation may provide subordinate legislation that is due to expire with an exemption from expiry for a stated period of up to one year after the subordinate legislation would otherwise expire, if replacement subordinate legislation is being drafted and is proposed to be made before the stated period ends. In accordance with this provision, the Superannuation (State Public Sector) Notice 2010, which was due to expire on 1 September 2020, was extended from expiry by one year to 1 September 2021 by the Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2020.

⁷ Superannuation (State Public Sector) Notice 2021 (SL No. 137 of 2021), explanatory notes, p 1.

⁸ SL No. 137 of 2021, explanatory notes, p 2.

⁹ SL No. 137 of 2021, explanatory notes, p 2.

¹⁰ SL No. 137 of 2021, explanatory notes, p 2.

¹¹ SL No. 137 of 2021, explanatory notes, p 2.

In addition, SL No. 137 of 2021 makes a number of minor changes to improve readability and ensure that transitional provisions which provide for ongoing membership arrangements continue to apply as intended following the expiry of the Notice 2010.¹²

The explanatory notes advise that consultation on SL No. 137 of 2021 was undertaken with 'relevant employers and the Government Superannuation Officer' and that '[a]ll parties agree with the amendments'.¹³

5 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

November 2021

Economics and Governance Committee

Chair	Mr Linus Power MP, Member for Logan
Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
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¹² SL No. 137 of 2021, explanatory notes, p 2; SL No. 137 of 2021, human rights certificate, p 1.

¹³ SL No. 137, explanatory notes, p 3.