

Economics and Governance Committee

Report No. 5, 57th Parliament

Subordinate legislation tabled between 9 September 2020
and 26 November 2020

1 Aim of this report

This report summarises the findings of the Economic and Governance Committee (committee) following its examination of the subordinate legislation within its portfolio areas tabled between 9 September 2020 and 26 November 2020. 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 the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA or HR Act).⁵

2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table below.

No.	Subordinate legislation	Date tabled	Disallowance date*
217	Superannuation (State Public Sector) Amendment of Deed Regulation (No. 2) 2020	26 November 2020	20 April 2021
218	Major Events (T20 World Cup) Repeal Regulation 2020	26 November 2020	20 April 2021

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 s 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)).

228	Superannuation (State Public Sector) Amendment Notice (No. 2) 2020	26 November 2020	20 April 2021
247	Public Service (Public Service Offices and Other Matters) Amendment Regulation 2020	26 November 2020	20 April 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.

3 SL No. 217 of 2020 – Superannuation (State Public Sector) Amendment of Deed Regulation (No. 2) 2020

The Superannuation (State Public Sector) Amendment of Deed Regulation (No. 2) 2020 (SL No. 217 of 2020) amends the Superannuation (State Public Sector) Deed 1990 to:

- facilitate the conditions that apply to lifetime products,⁶ and ensure the deed’s family law provisions comply with the *Family Law Act 1975* (Cth), to enable the QSuper Board to offer a lifetime retirement income product as per Commonwealth regulations,⁷ as part of its future product suite
- clarify that members can commence a superannuation income stream with moneys held in their current income stream (either by partially commuting or ceasing the income stream), instead of first having to transfer these moneys to an accumulation account and then starting the new income stream.
- provide that members who suffer a terminal medical condition have their deferred retirement benefit transferred to an accumulation account without the discount that would usually apply, similar to the treatment on total and permanent disablement or death, to apply retrospectively from 1 July 2020 in line with original policy intent.⁸

3.1 *Legislative Standards Act 1992* considerations

The committee identified no issues regarding SL No. 217 of 2020’s consistency with FLPs or its lawfulness.

The committee considers that the explanatory notes comply with part 4 of the LSA.

3.2 *Human Rights Act 2019* considerations

The committee identified no issues regarding the compatibility of SL No. 217 of 2020 with human rights.

The committee considers that 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 Lifetime products allow individuals to invest in retirement income stream products that pool their savings with those of others to secure lifetime payments, and provide protection against longevity risk (an individual’s risk of outliving their savings). See: SL No. 217 of 2020, explanatory notes, p 1.

⁷ On 1 July 2017, Commonwealth regulations were amended to facilitate the development and introduction of new lifetime retirement income stream products by superannuation funds. Lifetime products offered under the Commonwealth regulations must meet prescribed conditions, including regarding the amount that can be commuted to a lump sum by a person after commencing the product. See: SL No. 217 of 2020, explanatory notes, p 1.

⁸ SL No. 217 of 2020, explanatory notes, p 2.

4 SL No. 118 of 2020 – Major Events (T20 World Cup) Repeal Regulation 2020

The Major Events (T20 World Cup) Repeal Regulation 2020 (SL No. 118 of 2020) repeals the Major Events (T20 World Cup) Regulation 2019, in light of the postponement of the Men's T20 World Cup event to 2022. This ends the declaration of the event as a major event under section 12 of the *Major Events Act 2014*, thus removing the application of all regulatory powers made available under the Act by the declaration.⁹

4.1 Legislative Standards Act 1992 considerations

The committee identified no issues regarding SL No. 118 of 2020's consistency with FLPs or its lawfulness.

The committee considers that the explanatory notes comply with part 4 of the LSA.

4.2 Human Rights Act 2019 considerations

The committee identified no issues regarding the compatibility of SL No. 218 of 2020 with human rights.

The committee considers that 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. 228 of 2020 – Superannuation (State Public Sector) Amendment Notice (No. 2) 2020

Under the *Superannuation (State Public Sector) Act 1990*, the Minister may declare QSuper membership categories and other conditions of membership for employees of units of the State public sector.¹⁰ The definition of 'unit of the public sector' in section 2 of the Act includes an entity declared under section 2A of the Act to be a unit of the State public sector.

The Superannuation (State Public Sector) Notice 2010 (Superannuation Notice) sets out the QSuper membership arrangements approved by the Treasurer for employees of a Queensland public sector employer, including employers that have been declared to be a unit of the State Public Sector.

The objective of the Superannuation (State Public Sector) Amendment Notice (No. 2) 2020 (SL No. 228 of 2020) is to amend the Superannuation Notice to include various arrangements to:

- ensure the continuation of existing QSuper membership arrangements of employees who were subject to a transfer of employment from existing units of the State public sector to new employers
- prescribe arrangements for employees of a new unit of the State public sector
- address requests from non-core units to offer choice of fund
- remove redundant entries and amend department names that have changed.¹¹

5.1 Legislative Standards Act 1992 considerations

The committee identified no issues regarding the consistency with FLPs or lawfulness of SL No. 228 of 2020.

The committee considers that the explanatory notes comply with part 4 of the LSA.

⁹ SL No. 118 of 2020, explanatory notes, p 1.

¹⁰ *Superannuation (State Public Sector) Act 1990*, s 14B.

¹¹ SL No. 228 of 2020, explanatory notes, p 2.

5.2 *Human Rights Act 2019* considerations

The committee identified no issues regarding the compatibility of SL No. 228 of 2020 with human rights.

The committee considers that 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. 247 of 2020 – Public Service (Public Service Offices and Other Matters) Amendment Regulation 2020**

The *Public Service Act 2008* (PS Act) permits a designated entity, or part of a designated entity, to be declared under a regulation as a public service office (declared public service office (DPSO)).¹² The Public Service Regulation 2018 (PS Regulation) sets out the provisions of the Act, and the rulings (directives and guidelines¹³) made under that Act, that apply to each DPSO and its employees.¹⁴

The Public Service (Public Service Offices and Other Matters) Amendment Regulation 2020 (SL No. 247 of 2020) applies new and amended provisions of the PS Act and rulings to DPSOs and their employees.

The amendments in SL No. 247 of 2020 flow from changes made to the PS Act by the *Public Service and Other Legislation Amendment Act 2020* which implemented ‘the priority stage one public sector reforms’¹⁵ arising from recommendations of the Bridgman review.¹⁶

The amendments in SL No. 247 of 2020 relate to matters including discipline, investigations, positive performance management, suspensions, appeals, appointing a public service employee acting in a position to a higher classification level, casual employment, fixed term temporary employment, independent medical examinations, individual employee grievances, and recruitment and selection.¹⁷ The amendment regulation applies certain of these such provisions and rulings to:

- the Gasfields Commission
- Hospital and Health Services and Queensland Health
- Legal Aid Queensland
- Queensland Ambulance Service
- the Queensland Building and Construction Commission and Queensland Building and Construction Employing Office
- Queensland Fire and Emergency Services
- the Residential Tenancies Authority and Residential Tenancies Employing Office
- Trade and Investment Queensland.

The explanatory notes advise that the DPSOs and the public sector unions consulted regarding proposed SL No. 247 of 2020 did not raise any concerns about the subordinate legislation.¹⁸

¹² *Public Service Act 2008*, s 21.

¹³ *Public Service Act 2008*, s 47(6).

¹⁴ See also, *Public Service Act 2008*, ss 21, 23, 222.

¹⁵ SL No. 247 of 2020, explanatory notes, p 1.

¹⁶ See [A fair and responsive public service for all: independent review of Queensland’s state employment laws \(Bridgman report\)](#), May 2019.

¹⁷ SL No. 247 of 2020, human rights certificate, pp 1-2.

¹⁸ SL No. 247 of 2020, explanatory notes, p 5.

6.1 Legislative Standards Act 1992 considerations

6.1.1 Privacy and confidentiality of information – Legislative Standards Act 1992, section 4(2)(a)

The reasonableness and fairness of treatment of individuals is relevant to deciding whether legislation has sufficient regard to the rights and liberties of individuals. This includes the reasonable and fair treatment of an individual's personal information and regard for a person's right to privacy.

SL No. 247 of 2020 applies the criminal history provisions in the PS Act and the employment screening directive to Legal Aid Queensland. The provisions enable the chief executive of Legal Aid Queensland to obtain (with consent) a person's criminal history report in order to assess the person's suitability for engagement to perform particular duties.

Further, the regulation applies the directive relating to independent medical examinations to Trade and Investment Queensland, Queensland Ambulance Service, the Residential Tenancies Authority, and to employees of the Queensland Fire and Emergency Services (other than auxiliary fire officers). As a result, in certain circumstances, an employee of these agencies could be required to undertake a medical examination.

The obtaining of a person's criminal history and of a medical report after requiring that a person undergo a medical examination both interfere with a person's right to privacy.

The explanatory notes do not address these issues. In the human rights certificate, in considering the employment screening provisions, the Premier states:

The purpose of the employment screening provisions ... is for the protection of children (where child-related duties are applied to a DPSO) and to ensure the suitability of those working in public service roles, particularly those involving public monies, positions of influence and public accountability. ...¹⁹

Also in the human rights certificate, regarding the medical examination provisions, the Premier states:

... This is a reasonable interference with the employee's privacy to ensure their wellbeing and safety, and for the effective management of the workplace. Confidentiality obligations protect the rights of the employee, and appeal rights also exist for their protection.²⁰

There is further analysis of this issue under Part 6.2 of this report.

Committee comment

The committee considers the breaches of FLP are justified in the circumstances.

Explanatory notes for subordinate legislation are required to provide a brief assessment of the consistency of the legislation with FLPs and, if the subordinate legislation is inconsistent with FLPs, the reasons for the inconsistency.²¹ These explanatory notes are deficient in this respect. The notes assert that the regulation 'is consistent with the fundamental legislative principles', and do not mention any issues of FLPs, including regarding the above issues relating to the privacy of an individual.²² The explanatory notes otherwise comply with part 4 of the LSA.

6.2 Human Rights Act 2019 considerations

In the human rights certificate accompanying SL No. 247 of 2020, the Premier and Minister for Trade, the Hon Anastacia Palaszczuk MP, states her opinion that the amendment regulation is compatible:

- with the human rights protected by the HRA²³

¹⁹ SL No. 247 of 2020, human rights certificate, p 4.

²⁰ SL No. 247 of 2020, human rights certificate, p 6.

²¹ LSA, s 24(1)(i).

²² SL No. 247 of 2020, explanatory notes, p 5. Contrast the human rights certificate for the regulation.

²³ SL No. 247 of 2020, human rights certificate, p 1.

- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.²⁴

The Premier states:

The PS Act provisions and rulings that are being applied through the Amendment Regulation to DPSOs are existing rulings that already apply to public service employees. These rulings and provisions are not incompatible with human rights and generally do not directly limit human rights. Rather, decisions made by chief executives under these provisions or directives have the potential to limit a person's human rights. All directives issued following the commencement of the Amending Act contain a clause to alert decision makers to consider the human rights implications of decisions they may make under the rulings.²⁵

The Premier identified 3 human rights as being relevant to SL No. 247 of 2020:

- recognition and equality before the law (section 15 of the HRA)
- taking part in public life (section 23 of the HRA)
- privacy and reputation (section 25 of the HRA).²⁶

Recognition and equality before the law - Human Rights Act 2019, section 15

Under section 15 of the HRA, every person has the right to recognition as a person before the law, and to enjoy their human rights without discrimination.

Taking part in public life - Human Rights Act 2019, section 23

Under section 23 of the HRA, every person has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, and to have access, on general terms of equality, to the public service and public office.

Privacy and reputation - Human Rights Act 2019, section 25

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with and not to have their reputation unlawfully attacked.

6.2.1 Employment screening

SL No. 247 of 2020 applies the criminal history provisions and the employment screening directive to Legal Aid Queensland.

Because of the nature of particular employment duties, the chief executive may obtain (with consent) a person's criminal history. The chief executive has discretion to decide whether a person is suitable for engagement on the basis of this information.²⁷

The employment screening provisions may limit a person's right to recognition and equality before the law, without discrimination, if they possess a relevant criminal record and wish to be engaged in particular duties within the public service.

Further, a person's right to privacy and reputation will be impacted as these provisions require the disclosure of personal information.

The Premier states:

The purpose of the employment screening provisions ... is for the protection of children (where child-related duties are applied to a DPSO) and to ensure the suitability of those working in public service roles, particularly those involving public monies, positions of influence and public accountability. Protection of

²⁴ SL No. 247 of 2020, human rights certificate, p 7.

²⁵ SL No. 247 of 2020, human rights certificate, p 3.

²⁶ SL No. 247 of 2020, human rights certificate, p 2.

²⁷ *Public Service Act 2008*, chapter 5, part 6, division 2. See also, *Directive No. 7/11 – Employment screening*.

children and proper administration of government are pressing and substantial concerns in a free and democratic society. The potential limitations of the employment screening provisions and ruling on the human rights in section 15 of the HR Act are justified and proportionate to achieve these purposes and [those purposes] cannot be achieved in any other way.²⁸

The Premier also makes reference to safeguards in the PS Act, aimed at ensuring criminal history and other sensitive information obtained in employment screening is only accessed, disclosed and used for employment screening purposes.²⁹

Committee comment

The committee considers the limitations on these human rights are reasonable and demonstrably justified.

6.2.2 Citizenship

The regulation applies section 127 of the PS Act to the Residential Tenancies Authority and Residential Tenancies Employing Office. Section 127 provides that only an Australian citizen or a person residing in Australia who has permission to work in Australia, is eligible to be a public service officer.

The right to take part in public life is impacted, in that some individuals would be unable to participate in public life as a public servant. The certificate notes that the right has been interpreted by the United Nations Human Rights Committee as providing a right of access, on general terms of equality, to positions in the public service and in public office.³⁰

The Premier notes that the PS Act had previously included citizenship and residency requirements for employment as a public service officer which excluded from permanent employment those who had a right to work in Australia but may not have permanent residency, such as refugees and asylum seekers. She explains:

The purpose of the citizenship requirement in section 127 of the PS Act is to ensure that the Act does not limit permanent employment in the Queensland Public Service to only Australian citizens, but rather all persons who have a lawful right to work in Australia will be eligible to be employed on tenure. ...

... it is considered that the application of section 127 ... by the PS Regulation furthers the objects of the HR Act by broadening the right to take part in public life by ensuring equality of eligibility and access to the public service.³¹

Committee comment

The committee considers the limitations on the right to take part in public life are reasonable and demonstrably justified. The committee notes the Premier's comments regarding the regulation's broadening of the right to take part in public life, by way of its expansion of eligibility and access to the public service.

6.2.3 Suspension, discipline and investigations

The regulation applies certain provisions and rulings regarding termination, suspension and disciplinary action to additional DPSOs.³² This is aimed at aligning the suspension, discipline,

²⁸ SL No. 247 of 2020, human rights certificate, p 4.

²⁹ SL No. 247 of 2020, human rights certificate, p 4. An unauthorised disclosure of, or access to, criminal history or police information attracts a maximum penalty of 100 penalty units – see s 172 of the PS Act.

³⁰ SL No. 247 of 2020, human rights certificate, p 4.

³¹ SL No. 247 of 2020, human rights certificate, p 5. Note that the reference to the Queensland Ambulance Service (omitted here) in the human rights certificate is incorrect as the regulation applies section 127 only to the Residential Tenancies Authority and Residential Tenancies Employing Office.

³² See, for example, schedules 4 (Legal Aid Queensland), 7 (Queensland Building and Construction Commission and Queensland Building and Construction Employing Office), 8 (Queensland Fire and Emergency Service), 10 (Residential Tenancies Authority and Residential Tenancies Employing Office), 12 (Trade and Investment Queensland).

investigation and termination processes for those officers with those employed across the public service.³³

The regulation applies section 137 of the PS Act, which provides that a chief executive may suspend a public service employee if the officer is liable to discipline under disciplinary law, or in the case of a public service officer, where the proper and efficient management of the agency might be prejudiced if the officer is not suspended.

These provisions pose a number of potential human rights limitations regarding rights of recognition and equality, taking part in public life, and privacy and reputation.

The Premier states:

Given the objective of these provisions is to govern the management of employees, it is appropriate that agencies have the ability to discipline employees where appropriate for the effective and efficient management of their offices in the public interest and to ensure worker health and safety. This requires access to relevant information about employees and the ability to take disciplinary action that may remove a person from their employment, for the protection of other employees or the public interest.³⁴

The Premier further states:

The principles in relation to disciplinary action apply equally to all employees. The principles are applied through the chief executive's decision making power under the PS Act and directive, and decisions may be subject to review by complaint to the agency by appeal to the Queensland Industrial Relations Commission.³⁵

Additionally:

These limitations to human rights are therefore reasonable in order to ensure an effective public service and to manage inappropriate conduct which may impact other employees, the government and the broader community.³⁶

Committee comment

The committee considers that the limitations on human rights set out above are reasonable and demonstrably justified. The committee notes that the engagement of these limitations is subject to a clearly articulated process, principles and right of appeal, to help ensure disciplinary decisions are made in the public interest and in fairness to the individual.

6.2.4 Independent medical examinations

SL No. 247 of 2020 applies the independent medical examinations directive to Trade and Investment Queensland, Queensland Ambulance Service, Residential Tenancies Authority and Residential Tenancies Employing Office, and Queensland Fire and Emergency Services (other than auxiliary fire officers).

The PS Act provides that if a public service employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing his or her duties satisfactorily, and the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by a mental or physical illness or disability, the chief executive may require an employee to submit to a medical examination.³⁷

These provisions limit a person's right to privacy by requiring disclosure of confidential medical information.

³³ SI No. 247 of 2020, human rights certificate, p 5.

³⁴ SI No. 247 of 2020, human rights certificate, p 5.

³⁵ SL No. 247 of 2020, human rights certificate, p 6.

³⁶ SL No. 247 of 2020, human rights certificate, p 6.

³⁷ *Public Service Act 2008*, ss 174, 175.

The Premier sets out this justification:

... This is a reasonable interference with the employee's privacy to ensure their wellbeing and safety, and for the effective management of the workplace. Confidentiality obligations protect the rights of the employee, and appeal rights also exist for their protection.³⁸

Further, the regulation provides for the ability for a chief executive to retire a public service employee under section 178 of the PS Act. This would impact an employee's ability to take part in public life.

The Premier advises:

Limitations on the rights to privacy and reputation and to take part in public life are reasonable and justifiable as agencies have a legal obligation to ensure a safe workplace, and the rights to safety of other people in the workplace.³⁹

Committee comment

Noting the explanations and safeguards provided in respect of the provisions, the committee considers that the limitations on a person's right to privacy are reasonable and demonstrably justified, as are the limitations on a person's ability to take part in public life.

6.3 Human rights certificate

The committee considers that the human rights certificate tabled with SL No. 247 of 2020 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

February 2021

Economics and Governance Committee

Chair	Linus Power MP, Member for Logan
Deputy Chair	Ray Stevens MP, Member for Mermaid Beach
Members	Michael Crandon MP, Member for Coomera
	Melissa McMahon MP, Member for Macalister
	Dan Purdie MP, Member for Ninderry
	Adrian Tantari MP, Member for Hervey Bay

³⁸ SL No. 247 of 2020, human rights certificate, p 6.

³⁹ SL No. 247 of 2020, human rights certificate, p 6.