

Finance and Administration Committee

Subordinate legislation tabled between 12 October 2016 and 14 February 2017

Report No. 39, May 2017

1. Introduction

The Finance and Administration Committee (the committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 27 May 2015.¹ The committee's primary areas of responsibility include:

- Premier, Cabinet and the Arts
- Treasury, Trade and Investment
- Employment, Industrial Relations, Racing and Multicultural Affairs.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider the policy to be given effect by the legislation, the application of fundamental legislative principles to the legislation and, for subordinate legislation, its lawfulness.

2. Subordinate legislation considered

The committee considered the following subordinate legislation (NOTE: the table includes the tabling date and the deadline for members to give notice of a disallowance motion (Standing Order 59).²

	Subordinate Legislation	Tabled Date	Disallowance Date ³
SL 211 of 2016	Duties (Declared Public Unit Trusts) Amendment Regulation 2016	29 November 2016	11 May 2017
SL 229 of 2016	Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016	14 February 2017	25 May 2017
SL 6 of 2017	Public Service Amendment Regulation (No. 1) 2017	14 February 2017	25 May 2017

2.1 SL 211 of 2016 Duties (Declared Public Unit Trusts) Amendment Regulation 2016

The objective is to amend the Duties Regulation 2013 to include the QIC Infrastructure Portfolio No. 1 Trust on the list of declared public unit trusts in schedule 1, part 2. The regulation would amend the Duties Regulation 2013 to include the QIC Infrastructure Portfolio No.1 Trust on the list of declared public unit trusts in schedule 1, part 2.

The explanatory notes state:⁴

Under the Duties Act 2001, transfer duty applies to dutiable transactions, including the acquisition or surrender of an interest in a trust which directly or indirectly holds dutiable property in Queensland. However, unit dealings in public unit trusts that hold Queensland

¹ *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

² The Parliament may resolve to disallow subordinate legislation following notice of a disallowance motion given by a Member within 14 sitting days after the legislation is tabled, refer s 50 of the *Statutory Instruments Act 1992*.

³ Disallowance dates are based on proposed sitting dates as advised by the Leader of the House and may change.

⁴ Duties (Declared Public Unit Trusts) Amendment Regulation 2016, explanatory notes, p 2.

dutiable property do not usually attract duty as it is recognised that investments in these trusts are more akin to shareholdings rather than beneficial interests in the underlying trust property.

There are five categories of public unit trusts, including *declared public unit trusts*, which are declared under a regulation.⁵ Unit trusts listed in schedule 1 of the Duties Regulation 2013 are declared public unit trusts for chapter 2, part 8, division 7 of the *Duties Act 2001*. For a trust to become a declared public unit trust, it must meet and maintain certain conditions set out in section 4(2) of the Duties Regulation 2013. The QIC Infrastructure Portfolio No.1 Trust currently satisfies the conditions in section 4(2) of the Duties Regulation 2013 and therefore qualifies for declared public unit trust status.⁶

The explanatory notes further provide that the amendment will not result in any costs to the Government. No revenue implications flow from the change to the status of the QIC Infrastructure Portfolio No.1 as it is not intended that duty be imposed on dealings in units in unit trusts that qualify for declared public unit trust status.

2.2 SL 229 of 2016 Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016

The objective of the Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016 (the Regulation) is to implement the Globally Harmonised System of Classification and Labelling of Chemicals (GHS).

Hazardous chemical labelling

From 1 January 2017, manufacturers, importers and suppliers of hazardous workplace chemicals must classify and label the chemicals in accordance with the GHS. This followed a five year transition period.

The amendment Regulation provides that hazardous chemical end users are not required to re-label existing chemicals in their workplace if they were supplied to the workplace before 1 January 2017. This is because in order to correctly label a hazardous chemical the end user must have a high level of understanding about the classification and labelling requirements of hazardous chemicals which may be beyond their level of knowledge. Further, requiring the end user to relabel an existing chemical introduces the risk that the correct National Occupation Health and Safety Commission labelling for the chemical will be replaced with an incomplete or incorrect GHS label.⁷

The amendment Regulation would also reduce duplication of information where it does not reduce the level of protection e.g. where one label requires 'face protection' and one requires 'gloves and face protection' only the latter is necessary given its higher level of protection.

Additionally, the amendment Regulation would exempt veterinary chemicals listed in Schedule 4 (prescription only medicines or prescription animal remedy) and Schedule 8 (controlled drugs) of the Standard for the Uniform Scheduling of Medicines and Poisons when they are in a form and intended for direct administration to animals for therapeutic purposes. The explanatory notes explain this is because:

Schedule 4 and 8 veterinary medicines are akin to therapeutic goods which are exempt from WHS labelling requirements and therefore should be dealt with consistently under the WHS Regulation. In addition, veterinarians handling them have extensive training and qualifications or animal owners are administering these medicines under the direction of veterinarians.⁸

Infringement notices

The amendment Regulation would add 18 offences which are eligible to be infringement notice offences, commonly known as "on the spot fines" under the State Penalties Enforcement Regulation 2014. The explanatory notes state that the offences relate to high risk areas such as asbestos,

⁵ See *Duties Act 2001*, Chapter 2, part 8, division 7

⁶ Duties (Declared Public Unit Trusts) Amendment Regulation 2016, explanatory notes, p 2.

⁷ Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016, explanatory notes, p 1.

⁸ Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016, explanatory notes, p 2.

hazardous chemicals and construction work, and provide a cost-effective method of enforcement which can be immediately applied to the alleged offender.⁹

Information sharing

The amendment Regulation prescribes a list of Acts, enabling sharing of information with another Queensland Government enforcement agency where it is necessary for the administration or enforcement of the *Electrical Safety Act 2002*, the *Safety in Recreational Water Activities Act 2011* and the *Work Health and Safety Act 2011*, each of which has confidentiality requirements.

Plant item registration

Model WHS laws adopted by Queensland in 2012 allow for 5 yearly registration of plant, including lifts and tower cranes but Queensland delayed commencement of that timeframe and continued its annual registration due to operational considerations. The Council of Australian Government (COAG) is reviewing the removal of plant item registration. The regulation maintains the annual registration for a further two years. The explanatory notes state that this is so there is minimal disruption for business until the Government considers the recommendations arising from the COAG review.¹⁰

Consultation

The explanatory notes state that consultation was undertaken with various industry stakeholders.¹¹ There was no consultation on the amendments regarding plant item registration renewal as they preserve existing arrangements.

2.3 SL no 6 of 2017 Public Service Amendment Regulation (No. 1) 2017

The objective is to amend the Public Service Regulation 2008 (PS Regulation), and schedules to:

- apply sections of the *Public Service Act 2008* (PSA) or directives to a number of declared public service offices
- prescribe nominated persons or office holders as persons to whom the civil liability protections apply under the *Public Service Act 2008*
- amend specific provisions relating to Hospital and Health Services and Department of Health and Queensland Building and Construction Commission and employing office
- update a ruling to reflect a title change – amend employees requiring placement to employees affected by workplace change, and
- remove all references to a repealed ruling – protection of personal employee information.

The regulation amends the PS Regulation which applies provisions of the PSA and nominated directives to public sector entities and their employees that are not otherwise subject to the PSA.

Amendments to the PSA, which commenced on 31 March 2017, protect state employees from civil liability when acting in an official capacity. The regulation will include the following officers as prescribed state employees to which the protection will apply:

- a commission officer within the meaning of the *Crime and Corruption Act 2001*, schedule 2
- a person who is a commissioner for police service reviews under the *Police Service Administration Act 1990*, section 9.2A(1)
- a person employed by Legal Aid Queensland
- a person employed by the commission or the employing office within the meaning of the *Queensland Building and Construction Act 1991*, and
- the commissioner, the executive officer of the employing office or a member, within the meaning of the *Queensland Building and Construction Act 1991*.

⁹ Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016, explanatory notes, p 2.

¹⁰ Work Health and Safety and Other Legislation Amendment Regulation (No. 1) 2016, explanatory notes, p 3.

¹¹ Master Builders Queensland, Housing Industry Association, Australian Industry Group, Construction Forestry Mining Energy Union of Queensland, Queensland Council of Unions, Department of Justice and Attorney General, State Penalties Enforcement Registry, Electrical Safety Commissioner, Chairperson of the Interim Consultative Committee for Work Related Fatalities and Serious Injuries, Safe Work Australia.

The amendment regulation updates schedule 1 of the PS Regulation to apply sections of the PSA or directives to the Crime and Corruption Commission (CCC) and Trade and Investment Queensland (TIQ).

Crime and Corruption Commission

The changes will allow the CCC Chairperson to take disciplinary action against officers who change employment from a department to the CCC where the previous chief executive delegates the authority to the CCC Chairperson to make a disciplinary finding or where there is agreement that the disciplinary action is reasonable. The Chairperson can also request disciplinary information about a former or current public service employee to make a decision on the person's appointment or employment (including continued appointment or employment). Prosecuting authorities must also advise the CCC Chairperson where any CCC employee is charged, committed for trial or convicted of a related offence.

Trade and Investment Queensland

Section 8 of the PS Regulation provides that rulings about matters mentioned in schedule 3 of the regulation for a declared public service office and stated employees of the office apply to the office and employees with all necessary changes. The amendment regulation applies rulings to TIQ employees (excluding contractors and employees employed under a law outside Australia). There are a range of rulings that will apply, including using criminal history checks to assess the suitability of a person to be engaged. It also requires that prosecuting authorities advise the chief executive when any TIQ employee is charged, committed for trial or convicted of a relevant offence.

It extends the provisions regarding the management of TIQ employees with a mental, and/or physical incapacity or disability whose absence from duty or unsatisfactory performance is suspected to be caused by mental or physical illness or disability, including referrals for medical examinations and the action that can be taken following the receipt of a medical report.

Other amendments

The explanatory notes state that the amendment regulation also makes minor changes to:

- Hospital and Health Services and Department of Health – excess travel entitlements under the ruling relating to hours, overtime and excess travel, and the requirement to consider the temporary employment of employees for conversion to permanent employment
- Queensland Building and Construction Commission and employing office – the ruling that applies to supporting employees affected by workplace change, and the ruling that applies to attendance, only to the extent of recording and reporting attendance
- Update a ruling to reflect a title change – amend 'employees requiring placement' to 'employees affected by workplace change', and
- Removing all references to a repealed ruling – protection of personal employee information.

Committee comment

The committee identified no issues regarding consistency with fundamental legislative principles or the lawfulness of the subordinate legislation considered in this report.



Mr Peter Russo MP

Chair

Finance and Administration Committee

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