

Finance and Administration Committee

Subordinate legislation tabled between 15 and 28 February 2017

Report No. 40, 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 13 of 2017	Statutory Bodies Financial Arrangements (Universities) Amendment Regulation 2017	28 February 2017	15 June 2017
SL 24 of 2017	Proclamation made under the <i>Industrial Relations Act 2016</i>	28 February 2017	15 June 2017
SL 25 of 2017	Industrial Relations (Transitional) Regulation 2017	28 February 2017	15 June 2017
SL 26 of 2017	Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017	28 February 2017	15 June 2017

2.1 SL 13 of 2017 – Statutory Bodies Financial Arrangements (Universities) Amendment Regulation 2017

The objective of the Statutory Bodies Financial Arrangements (Universities) Amendment Regulation 2017 (the Regulation) is to amend schedule 8 of the Statutory Bodies Financial Arrangements Regulation 2007.

The Regulation will prescribe the Central Queensland University (CQU), James Cook University (JCU), the University of Southern Queensland (USQ) and the University of the Sunshine Coast (USC) as

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.

statutory bodies that may enter into derivative transactions. The aforementioned universities have been approved by the Treasurer as statutory bodies that may enter into derivative transactions.

Consultation on the regulation

The explanatory notes state that consultation was undertaken with the Department of Education and Training and Queensland Treasury. No parties expressed issues with the proposed amendments.⁴

2.2 SL 24 of 2017 – Proclamation made under the *Industrial Relations Act 2016*

The objective of the proclamation is to fix a commencement date of 1 March 2017 for certain provisions of the *Industrial Relations Act 2016*.

The majority of the provisions of the *Industrial Relation Act 2016* (IR Act 2016) commenced upon proclamation, i.e. 1 March 2017. Certain provisions of Chapter 19, Part 8 (Amendment of the *Public Service Act 2008*), commenced upon assent, i.e. 9 December 2016.

Consultation on the proclamation

The explanatory notes state:

*Extensive consultation occurred with all relevant stakeholders in the preparation of the Industrial Relations Act 2016 and prior to its passage. This consultation included the anticipated date of Proclamation. Further consultation in relation to the making of the Proclamation with the Queensland Council of Unions, Together Queensland, the Australian Workers' Union and the Local Government Association Queensland has been conducted. No party has objected.*⁵

2.3 SL 25 of 2017 – Industrial Relations (Transitional) Regulation 2017

As noted above, the IR Act 2016 commenced on 1 March 2017. The explanatory notes state that a regulation is required to give effect to certain provisions in that Act.⁶

Section 1085 of the IR Act 2016 provides for a transitional regulation-making power allowing for the amendment of the Industrial Relations Regulation 2011 (IR Regulation 2011), so that the provisions meet the requirements of the IR Act 2016. The majority of amendments to the IR Regulation 2011 involve minor amendments to replace cross-references to provisions in the *Industrial Relations Act 1999* (IR Act 1999) with the relevant provisions in the IR Act 2016.

Other amendments make minor changes to reflect amendments to the underpinning legislative provision; to reflect current drafting styles; and to alter a prescribed amount. Further amendments are also made to omit regulations that have been made obsolete as the underpinning legislative provision has not been included in the IR Act 2016 or no longer requires a regulation.

Section 1085 of the IR Act 2016 states:

- (1) *A regulation (a transitional regulation) may make provision about a matter for which—*
 - (a) *it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the repealed Act to the operation of this Act; and*
 - (b) *this Act does not make provision or sufficient provision.*
- (2) *A transitional regulation may have retrospective operation to a day not earlier than the day of the commencement.*

⁴ Statutory Bodies Financial Arrangements (Universities) Amendment Regulation 2017, explanatory notes, p 2.

⁵ Proclamation – *Industrial Relations Act 2016*, explanatory notes, p 2.

⁶ Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 1.

(3) *A transitional regulation must declare it is a transitional regulation.*

(4) *This section and any transitional regulation expire 1 year after the day of the commencement.*

In accordance with s 1085(3) above, this regulation commenced on 1 March 2017, the same date that the majority of the provisions in the IR Act 2016 commenced (see proclamation in SL no 24 of 2017 above). As a transitional regulation, this regulation expires one year after the commencement of section 1085(4) of the IR Act 2016 (the provision under which the regulation was made). Accordingly, this regulation will expire on 28 February 2018.

As noted above, the regulation would mainly amend a range of cross-referencing errors in the Act. Examples of the amendments, set out in the explanatory notes, include:⁷

Amendment to part 2, sections 4 and 5 (clause 8)

These sections are omitted and replaced with a new section 4 which reflects a change in the language of the substantive provision, section 297 of the IR Act 2016. The intention of the provision is consistent with existing section 5 of the IR Regulation 2011.

Amendments to reflect change in language of substantive legislation from ‘certified agreement’ to ‘proposed bargaining instruments’ (clause 12)

Amendments are made throughout the regulation, to reflect the references in the IR Act 2016 to ‘proposed bargaining instruments’, to encompass both ‘certified agreements’ and ‘bargaining awards’.

The regulation also contains a provision to amend a cross referencing error in section 1076 of the IR Act 2016. The explanatory notes state that this minor amendment replaces the reference to section 845 of the IR Act 2016 with section 839 of the Act and is necessary as the Queensland Industrial Relations Commission (QIRC) will need to rely upon this provision to finalise applications currently before it.⁸

The regulation also extends Chapter 20, Part 20, Division 3 of the now repealed IR Act 1999. Those provisions relate to changes to certified agreements, including the nominal expiry dates for the agreements. The explanatory notes state:⁹

An amendment is included to carry forward specific provisions (Chapter 20, Part 20, Division 3) of the IR Act 1999 which may not have had their legislative effect by commencement. These provisions are to issue relevant certified agreements with an earlier nominal expiry date and to provide that the parties to those agreements are taken to be in negotiations so they are free to bargain under the newly varied modern award.

Consistency with fundamental legislative principles

The explanatory notes identify two matters which may infringe the fundamental legislative principles. Firstly the transitional regulation making power in the IR Act 2016.¹⁰ The committee considered this provision in its report and noted:¹¹

The transitional regulation-making power in clause 1085 provides for transitional regulations to be made to allow or facilitate the transition from the operation of the repealed Act to the operation of this Act and where this Act does not make provision or sufficient provision. Clause 1085 could be considered an acceptable Henry VIII clause in so far as it facilitates transitional arrangements. In respect of clause 1085, the explanatory notes have stated:

⁷ Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 2.

⁸ Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 2.

⁹ Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 2.

¹⁰ Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 4.

¹¹ Finance and Administration Committee, Report no. 32, Industrial Relations Bill 2016, October 2016, p 32.

The provision is considered necessary to ensure the orderly transition between the legislative frameworks and contains safeguards such as sun-setting of 1 year.

The department advised this provision is identical to the current s 83(7) of the Industrial Relations Act, has existed in this form in the Industrial Relations Act, and existed previously as a regulation making power under s 216(5) of the Workplace Relations Act 1997. It is being carried across to the new legislation without change. As noted in the explanatory notes, a transitional regulation making power (a Henry VIII provision) is also proposed for the Bill to enable a regulation to be made to provide for matters necessary to achieve the transition from the repealed Act to the new Act. The provision is considered necessary to ensure the orderly transition between the legislative frameworks and contains safeguards such as sun-setting of one year.

Additionally, the explanatory notes identify that the use of the transitional regulation to amend the cross referencing error in section 1076 of the IR Act 2016 also potentially offends section 4 (5)(a) of the *Legislative Standards Act 1992*. It states however, that this amendment is necessary as the QIRC needs to rely upon the correct provision to finalise matters currently before it.¹²

Consultation on the regulation

The explanatory notes state that Queensland Council of Unions (QCU), the Australian Workers Union (AWU), Together Queensland (TQ), the Local Government Association of Queensland (LGAQ), the President and Deputy President O'Connor of the QIRC and staff of the Industrial Registry considered the provisions of the Transitional Regulation. It further states that no party has objected to the contents of this Regulation.¹³

2.4 SL 26 of 2017 – Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017

The IR Act 2016 is due to commence on proclamation on 1 March 2017. This Act will replace the IR Act 1999.

The current Rules were created under the IR Act 1999 to give effect to certain provisions of that Act. Section 1025 of the IR Act 2016 permits rules made under the IR Act 1999 to continue to have effect as if they were rules made under the IR Act 2016. However, the Rules as they exist for the purpose of the IR Act 1999 require amendment to meet the requirements of the IR Act 2016.

The Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017 (the Amendment Rule) makes minor amendments to replace cross-references to provisions in the IR Act 1999 with the relevant provisions in the IR Act 2016. Other amendments make minor changes to reflect or correct amendments to the underpinning legislative provision or to reflect current drafting styles. Further amendments are also made to omit rules that have been made obsolete as the underpinning legislative provision has not been included in the IR Act 2016.

The most substantial amendments to existing Rules are those required for new provisions introduced in the IR Act 2016, including the transfer of the industrial jurisdiction for anti-discrimination matters to the QIRC. These amendments involve the insertion of a new subdivision for applications and proceedings under the *Anti-Discrimination Act 1991 (ADA)*.

The filing fees contained at section 113 of the Amendment Rules have not changed.

The policy objective of the Industrial Relations (Tribunal) Rules 2011 (the Rules) is to provide for the just and expeditious disposition of the business of the court, the QIRC, the Industrial Magistrates Court and the Industrial Registrar. The Rules support administrative functions of the tribunals, as provided for in the primary legislation.

¹² Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 3.

¹³ Industrial Relations (Transitional) Regulation 2017, explanatory notes, p 4.

Given the repeal of the IR Act 1999 and the passing of the IR Act 2016, the Rules need to be updated. As noted above, the explanatory notes provide that the majority of the amendments to the Rules are minor and replace cross referencing in the rules, updated drafting styles, correction of, and omitting obsolete, rules to reflect the legislative changes in the Act.¹⁴

The most substantial changes to the Rules relate to the transfer of jurisdiction of anti-discrimination matters to the QIRC. There will be a new anti-discrimination subdivision in the rules which will include rules for:¹⁵

- applications for exemptions or renewals of exemptions, from the operation of a specified provision of the ADA;
- applications for orders under the ADA protecting complainant's interests;
- applicants obligation to provide copies of QIRC orders in relation to complaints made under the ADA;
- applications for the review of a decision of the anti-discrimination commissioner's about a complaint lapsing under the ADA;
- QIRC obligations regarding dissemination of written reasons for decisions on proceedings under the ADA;
- Industrial Registrar obligations to provide the anti-discrimination commissioner notice of appeal against a QIRC decision;
- Industrial Registrar obligations with respect to publishing amendments of bargaining instrument on the QIRC website.

The explanatory notes advise that these amendments replicate Queensland Civil and Administrative Tribunal Rules.¹⁶

Consultation on the regulation

The explanatory notes state:

Amendments to the Rules are required as a result of the introduction of the IR Act 2016. Extensive consultation on the provisions of the IR Act 2016 was undertaken during the development of that legislation.

Consultation specifically on the Amendment Rule was also undertaken with the Queensland Council of Unions (QCU), the Australian Workers Union (AWU), Together Queensland (TQ) and the Local Government Association of Queensland (LGAQ).

In addition to this, the Rules Committee has been consulted in accordance with Division 8, Chapter 11 of the IR Act 2016.

With the exception of the removal of the application fee charged to an employee for reinstatement, in accordance with the Queensland Government Guide to Better Regulation, the Office of Industrial Relations (OIR) applied the following self-assessable exclusions from undertaking further regulatory impact analysis:

- *Category (d) – Regulatory proposals of a savings nature; and*
- *Category (e) – Regulatory proposals that are of a transitional nature.*

OIR consulted the Queensland Productivity Commission in relation to the removal of the fee applied to an employee making an application for reinstatement.¹⁷

¹⁴ Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017, explanatory notes, p 2.

¹⁵ Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017, explanatory notes, p 2.

¹⁶ Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017, explanatory notes, p 2.

¹⁷ Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017, explanatory notes, p 3.

The explanatory notes further state:

The Rules Committee has approved the amendments to the Rules as required by Division 8, Chapter 11 of the IR Act 2016.

The QCU, AWU, TQ, LGAQ, and staff of the Industrial Registry have considered the provisions of the Amended Rule, no party has objected to the contents of this Regulation.

The Queensland Productivity Commission has advised that it considers the removal of the fee for reinstatement applications reduces the burden of regulation with no apparent significant adverse impacts and is therefore excluded from further assessment under the Queensland Government Guide to Better Regulation.¹⁸

Committee comment

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



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Chair

Finance and Administration Committee

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¹⁸ Industrial Relations (Tribunals) (Reform of Act) Amendment Rule 2017, explanatory notes, p 3.