

Education, Employment and Training Committee

Report No. 4, 57th Parliament

Subordinate legislation tabled between 16 July 2020 and 8 September 2020

1 Aim of this report

This report summarises the Education, Employment and Training Committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 16 July 2020 and 8 September 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).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
167	Electrical Safety and Other Legislation (Fees) Amendment Regulation 2020	8 September 2020	10 March 2021
182	Proclamation No. 2—Community Services Industry (Portable Long Service Leave) Act 2020 (commencing remaining provisions)	8 September 2020	10 March 2021
183	Community Services Industry (Portable Long Service Leave) Regulation 2020	8 September 2020	10 March 2021
184	Education Legislation (Fees) Amendment Regulation 2020	8 September 2020	10 March 2021

*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) the 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 notes 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

No significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified. The committee considers the explanatory notes tabled with the subordinate legislation comply with the requirements of s 24 of the LSA.

The committee considers that SL 167, SL 182, SL 183 and SL 184, raise no human rights issues. The human rights certificates tabled with SL 167, SL 183 and SL 184 provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.⁶ A human rights certificate was not tabled with SL 182 as it was not required (under s 41(4A) of the HRA, where a proclamation fixes a date for commencement of all the provisions of an Act that are not in force, a human rights certificate is not required to be prepared).

4 SL No. 167 – Electrical Safety and Other Legislation (Fees) Amendment Regulation 2020

The objective of the Electrical Safety and Other Legislation (Fees) Amendment Regulation 2020 is to increase fees and charges prescribed under the *Electrical Safety Act 2002*, *Labour Hire Licensing Act 2017* and the *Work Health and Safety Act 2011*, in accordance with Queensland Treasury Principles for Fees and Charges and the government endorsed indexation rate of 1.8 percent for the 2020-21 financial year.⁷ The new fees apply from 1 September 2020.

4.1 Fundamental legislative principle issues

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.3 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the Minister states 'I consider that the Electrical Safety and Other Legislation (Fees) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue'.⁸

Committee comment

The committee considers that the subordinate legislation raises no human rights issues.

Human rights certificate

A human rights certificate was tabled with the subordinate legislation. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

⁶ *Human Rights Act 2019*, s 41.

⁷ Explanatory notes, Electrical Safety and Other Legislation (Fees) Amendment Regulation 2020, p 1.

⁸ Human rights certificate, Electrical Safety and Other Legislation (Fees) Amendment Regulation 2020, p 1.

5 SL No. 182 – Proclamation No. 2—Community Services Industry (Portable Long Service Leave) Act 2020 (commencing remaining provisions)

The objective of Proclamation No. 2—Community Services Industry (Portable Long Service Leave) Act 2020 is to fix 1 January 2021 for the commencement of the provisions in the *Community Services Industry (Portable Long Service Leave) Act 2020* that are not in force.

These include provisions designed to support the operation of the portable long service leave scheme for Queensland’s community services industry including those parts that pertain to:

- registration of workers and employers
- recording of service and payment of the levy that funds the scheme
- calculation, application and payment of an entitlement
- reviews and appeals, and
- enforcement of compliance with the *Community Services Industry (Portable Long Service Leave) Act 2020*.⁹

5.1 Fundamental legislative principle issues

Committee comment

The committee identified no issues regarding the subordinate legislation’s consistency with FLPs or its lawfulness.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Human rights considerations

A human rights certificate was not tabled with SL 182 as it was not required by the HRA.¹⁰

6 SL No. 183 – Community Services Industry (Portable Long Service Leave) Regulation 2020

The objective of the Community Services Industry (Portable Long Service Leave) Regulation 2020 (CSI(PLSL) Regulation) is to support the operation of the *Community Services Industry (Portable Long Service Leave) Act 2020* in achieving its purpose of implementing a portable long service leave scheme in a manner that is efficient and does not unduly burden employers and other stakeholders.¹¹

The CSI(PLSL) Regulation does this by prescribing the following:

- certain worker details to be included in employers’ returns
- the prescribed classification level where a worker is not engaged under an industrial instrument
- dates for quarterly lodgement of returns
- that the rate of the levy is set at 1.35 percent of workers’ ordinary wages, and

⁹ Explanatory notes, Proclamation No. 2—Community Services Industry (Portable Long Service Leave) Act 2020 (commencing remaining provisions), p 1.

¹⁰ Under s 41(4A) of the HRA, where a proclamation fixes a date for commencement of all the provisions of an Act that are not in force, a human rights certificate is not required to be prepared.

¹¹ Explanatory notes, Community Services Industry (Portable Long Service Leave) Regulation 2020, p 1.

- that the rate of interest that may be imposed for failure to pay a levy as required will be set at the rate prescribed for unpaid tax interest in accordance with the Taxation Administration Regulation 2012.¹²

6.1 Fundamental legislative principle issues

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

6.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.3 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the Minister states 'I consider that the Regulation is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue'.¹³

Committee comment

The committee considers that the subordinate legislation raises no human rights issues.

Human rights certificate

A human rights certificate was tabled with the subordinate legislation. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

7 SL No. 184 – Education Legislation (Fees) Amendment Regulation 2020

The objective of the Education Legislation (Fees) Amendment Regulation 2020 is to increase the fees in the following regulations by 1.8 percent, in line with the government's indexation figure for 2020-21:

- Education (General Provisions) Regulation 2017 (EGP Regulation)
- Education (Overseas Students) Regulation 2018
- Education (Queensland College of Teachers) Regulation 2016 (QCT Regulation)
- Education (Queensland Curriculum and Assessment Authority) Regulation 2014, and
- Education and Care Services Regulation 2013 (ECS Regulation).¹⁴

The Education Legislation (Fees) Amendment Regulation 2020 also increases the fees in the ECS Regulation, which prescribes the fees under the *Education and Care Services Act 2013* required to be paid by Queensland education and care providers not covered by the *Education and Care Services National Law (Queensland) Act 2011* (National Law). These fees also increase by 1.8 percent. This follows a decision by the Queensland Government in 2014 that the fees prescribed in the ECS Regulation are to be indexed at a rate consistent with the indexation of fees prescribed under the National Law. The indexation rate for fees under the National Law for the 2020–21 financial year is 1.8 percent.¹⁵

Fees payable in relation to undertaking criminal history checks for mature age students and teachers, in the EGP Regulation and the QCT Regulation respectively, increase from \$26.95 to \$27.05.

¹² Explanatory notes, pp 1-2.

¹³ Human rights certificate, Community Services Industry (Portable Long Service Leave) Regulation 2020, p 1.

¹⁴ Explanatory notes, Education Legislation (Fees) Amendment Regulation 2020, p 1.

¹⁵ Explanatory notes, Education Legislation (Fees) Amendment Regulation 2020, p 2.

This matches the increase in the amount charged by the Queensland Police Service to undertake the criminal history check.¹⁶

7.1 Fundamental legislative principle issues

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

7.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.3 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the Minister states 'I consider that the Education Legislation (Fees) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* as it does not raise a human rights issue'.¹⁷

Committee comment

The committee considers that the subordinate legislation raises no human rights issues.

Human rights certificate

A human rights certificate was tabled with the subordinate legislation. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

8 Recommendation

The committee recommend that the Legislative Assembly notes this report.



Kim Richards MP
Chair

February 2021

Education, Employment and Training Committee

Chair	Ms Kim Richards MP, Member for Redlands, Chair
Deputy Chair	Mr James Lister MP, Member for Southern Downs, Deputy Chair
Members	Mr Mark Boothman MP, Member for Theodore Mr Nick Dametto MP, Member for Hinchinbrook Mr Barry O'Rourke MP, Member for Rockhampton Mr Jimmy Sullivan MP, Member for Stafford

¹⁶ Explanatory notes, Education Legislation (Fees) Amendment Regulation 2020, p 2.

¹⁷ Human rights certificate, Education Legislation (Fees) Amendment Regulation 2020, p 2.