

## Education, Employment and Training Committee

### Report No. 5, 57<sup>th</sup> Parliament

#### Subordinate legislation tabled between 9 September 2020 and 14 September 2020

### 1 Aim of this report

This report summarises the Education, Employment and Training Committee’s findings following its examination of subordinate legislation within its portfolio areas tabled between 9 September 2020 and 14 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),<sup>1</sup> its compatibility with human rights,<sup>2</sup> and its lawfulness.<sup>3</sup> It also reports on the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).<sup>4</sup>

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
	Education and Care Services National Amendment Regulations 2020 (made under the Education and Care Services National Law)	14 September 2020	23 March 2021

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

### 3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with FLPs or the lawfulness of the Education and Care Services National Amendment Regulations 2020 (the Amendment Regulations) were identified.

The Amendment Regulations are not ‘subordinate legislation’ as the term is used in various Queensland Acts. Explanatory notes were not required to accompany the Amendment Regulations and consequently the committee has not reported on the compliance of any explanatory notes with

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> *Parliament of Queensland Act 2001*, s 93.

<sup>4</sup> 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)).

the *Legislative Standards Act 1992* (LSA) as would usually occur for subordinate legislation. In the absence of explanatory notes, the committee sought further information from the Department of Education (the department). The department provided a written brief and attended a public briefing on the legislation. The department's advice is referenced throughout this report, and the written brief and transcript of the public briefing are published on the committee's webpage.<sup>5</sup>

The committee considers that the Amendment Regulations raise no human rights issues. The human rights certificate tabled with the Amendment Regulations provide a sufficient level of information to facilitate understanding of the Amendment Regulations in relation to compatibility with human rights.<sup>6</sup>

## **4 Education and Care Services National Amendment Regulations 2020 (made under the Education and Care Services National Law)**

### **4.1 Objectives**

The Amendment Regulations amend the Children's Education and Care Services National Regulations (the National Regulations) to:

- clarify and strengthen operational requirements for Early Childhood Education and Care (ECEC) service operators providing transportation for purposes other than transportation for excursions, such as a regular transport service to and from the service and the family home, and
- make consequential amendments to existing policies and procedures in place for excursions involving transport, to ensure clarity and consistency.<sup>7</sup>

### **4.2 Legislative background**

In December 2009, the Council of Australian Governments agreed to establish a National Quality Framework for ECEC services to provide a consistent, national approach to the regulation of early childhood providers and set minimum quality standards for service delivery. The National Quality Framework consists of the *Education and Care Services National Law* (the National Law) and National Regulations, and establishes a national scheme for the regulation of ECEC services for children.<sup>8</sup>

The Amendment Regulations were made by the Education Council (a Ministerial Council), under ss 301 and 324 of the National Law, as applied by the law of the states and territories. For Queensland, the relevant Act is the *Education and Care Services National Law (Queensland) Act 2011*. Sections 301 and 324 of the National Law empower the Education Council to make regulations for purposes including matters to support the National Law, transitional matters and specific provisions which apply to individual jurisdictions.<sup>9</sup>

Section 302 of the National Law provides that, for the National Regulations take effect, they must be published on the New South Wales Legislation website. Section 303 requires all participating jurisdictions to table the Amendment Regulations in their parliaments as soon as reasonably practicable.<sup>10</sup>

### **4.3 Policy background**

The department advised the committee that amendments to the National Regulations are partly in response to a significant number of serious incidents which have occurred in recent years during

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<sup>5</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/EETC/inquiries/current-inquiries/SubLeg2020>

<sup>6</sup> *Human Rights Act 2019*, s 41. The Amendment Regulations also include minor technical amendments.

<sup>7</sup> Human Rights Certificate, Education and Care Services National Amendment Regulations 2020, p 1.

<sup>8</sup> Human Rights Certificate, Education and Care Services National Amendment Regulations 2020, p 1.

<sup>9</sup> Department of Education, correspondence dated 5 February 2021, p 2.

<sup>10</sup> Department of Education, correspondence dated 5 February 2021, p 2.

transportation of children attending ECEC services. In its written brief on the Amendment Regulations, the department noted:

While the National Regulations already require approved providers of ECEC services to have policies and procedures in place for excursions, the relevant provisions were not adequate to cover transportation that may not be for the purposes of an excursion, such as providing a regular transport service to and from the service and family home.<sup>11</sup>

The safety of children while being transported by an ECEC service provider is currently being considered as part of a National Quality Framework review, however it is anticipated that any regulatory amendments arising from this review are not likely to be made until 2022. Consequently the Education Council decided more immediate regulatory amendments were required to clarify and strengthen operational requirements for ECEC service operators providing transportation.<sup>12</sup>

The department advised the committee:

The National Regulations have been amended to ensure ECEC services that provide transportation have specific transport related policies and procedures in place. Those services must also conduct risk assessments and obtain written authorisation for the transportation of children, based on the existing provisions for excursions (regulations 100 to 102 of the National Regulations). Consequential amendments have also been made to existing excursion requirements where they involve transport, to ensure they are clear and consistent.

A key objective of the amendments is to strike a balance between having appropriate risk assessment processes in place without those processes becoming unnecessarily onerous. Guidance to assist services to comply with the new requirements is available in the Australian Education and Care Quality Authority's *Guide to the National Quality Framework*...<sup>13</sup>

Prior to the amendment of the National Regulations, the department, as the regulatory authority for ECEC services in Queensland, instigated five strategies in response to the tragic death of a child transported by a childcare service in Cairns in February 2020. The department advised the committee that these strategies involved:

- producing recommended procedures for ECEC services when transporting children, including risk assessments
- conducting an audit of the sector to determine how many services provided regular transport, which found that approximately 22% of services offered a regular transport service to the families enrolled with the ECEC service provider
- undertaking a digital communication campaign, 'Look before you lock',<sup>14</sup> to deliver the message that if you are transporting a child in your own car, in a vehicle operated by a service, or in a school bus, you need to ensure that every child has exited that vehicle
- briefing the Minister for Education to enable her to advocate for amendments to the National Regulations at the Education Council, which are, in part, the subject of the Amendment Regulations
- conducting targeted monitoring of ECEC service providers that the department had taken compliance action against to ensure these service providers had developed or revised their policies and procedures for the transport of children to meet the new requirements contained in the Amendment Regulations.<sup>15</sup>

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<sup>11</sup> Department of Education, correspondence dated 5 February 2021, p 1.

<sup>12</sup> Department of Education, correspondence dated 5 February 2021, p 1.

<sup>13</sup> Department of Education, correspondence dated 5 February 2021, p 1.

<sup>14</sup> The campaign was led jointly by the Minister for Education and the Minister for Transport, as the Minister for Transport is responsible for school buses.

<sup>15</sup> Catherine O'Malley, Department of Education, public briefing transcript, Brisbane, 5 March 2021, pp 2-3, 5.

The provisions of the Amendment Regulations relating to transport policies and procedures commenced on 1 October 2020. The Amendment Regulations include some penalty provisions, with a maximum penalty of up to \$2,000.<sup>16</sup>

#### 4.4 Fundamental legislative principle issues

##### Committee comment

The committee identified no issues regarding the Amendment Regulations' consistency with FLPs or lawfulness.

#### 4.5 Explanatory notes

As noted above, explanatory notes were not required to accompany the Amendment Regulations.

#### 4.6 Human rights considerations

In the human rights certificate accompanying the subordinate legislation, the Minister states 'I consider that the Education and Care Services National Amendment Regulations 2020 are compatible with the HR Act because they do not raise a human rights issue'.<sup>17</sup>

##### Committee comment

The committee identified no issues regarding the compatibility of the Amendment Regulations with the HRA.

#### Human rights certificate

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

## 5 Recommendation

The committee recommend that the Legislative Assembly notes this report.



Kim Richards MP  
Chair

March 2021

#### Education, Employment and Training Committee

<b>Chair</b>	Ms Kim Richards MP, Member for Redlands, Chair
<b>Deputy Chair</b>	Mr James Lister MP, Member for Southern Downs, Deputy Chair
<b>Members</b>	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

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<sup>16</sup> The *Education and Care Services National Law (Queensland)*, s 301(4)(g) expressly provides that regulations may impose penalties not exceeding \$2,000.

<sup>17</sup> Human Rights Certificate, Education and Care Services National Amendment Regulations 2020, p 3.