

Education, Employment and Training Committee

Report No. 6, 57th Parliament

Subordinate legislation tabled between 15 September 2020 and 26 November 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 15 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 certificates with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
251	Proclamation – Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (commencing remaining provisions)	26 November 2020	20 April 2021
252	Work Health and Safety (Plant Registration) Amendment Regulation 2020	26 November 2020	20 April 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 No. 251 and SL No. 252 raise no human rights issues. The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.⁶

4 SL No. 251 – Proclamation—Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020 (commencing remaining provisions)

The proclamation fixes commencement dates for provisions of the *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* not already in force, as follows:

- for Part 3, excluding ss 8 to 15, to commence on 2 October 2020
- for all remaining provisions of Part 3, and Parts 4 and 5, to commence on 1 March 2021.

The *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* amends the Criminal Code to provide for ‘stealing’ to include failure to pay an employee or another person on behalf of the employee, and increases the penalties in the Criminal Code for the offences of stealing and fraud relating to wage theft. The *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* also amends the *Industrial Relations Act 2016*, the *Magistrates Courts Act 1921* and the *Queensland Civil and Administrative Tribunal Act 2009* to enable wage recovery claims through the Industrial Magistrates Court.

4.1 Fundamental legislative principles considerations

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 Act 2019 considerations

In the statement of compatibility accompanying the subordinate legislation, the Minister stated, ‘In my opinion, the Proclamation is compatible with human rights under the *Human Rights Act 2019* because it does not limit a human right’.⁷

Committee comment

The committee identified no issues regarding the compatibility of SL No. 251 with the HRA.

Human rights certificate

A statement of compatibility was tabled with the subordinate legislation. The statement 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 Statement of Compatibility, Proclamation – Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020, p 1.

5 SL No. 252 – Work Health and Safety (Plant Registration) Amendment Regulation 2020

The objectives of SL No. 252 of 2020 are to:

- maintain a requirement for the annual renewal of plant item registration
- allow the Regulator to waive and refund the plant item registration fee for amusement devices in the current plant registration cycle.

The Amendment Regulation omits provisions providing for five-yearly renewal of plant item registration and inserts new provisions to preserve an annual renewal period. The provisions requiring five-yearly renewal of plant item registration were introduced in Queensland as part of the implementation of national model work health and safety laws in 2012. However, these provisions have never commenced under Queensland's Work Health and Safety Regulation 2011 (WHS Regulation), and an annual renewal period has been maintained instead. According to the explanatory notes the existing annual registration cycle has been continued 'due to operational and information technology system considerations'.⁸

The explanatory notes describe the information obtained by the Regulator in the process of the renewal of plant item registration:

As part of renewing plant item registration, the owner of the plant makes a declaration the plant has been maintained, inspected and tested as required under the WHS Regulation. The Regulator also requires amusement device owners to provide information about the annual inspection of their amusement device as required under section 241 of the WHS Regulation. Information required in the renewal of registration enables the Regulator to select certain high-risk plant for follow up auditing to verify the inspection of the plant by competent persons, particularly in relation to amusement devices.⁹

With regard to the waiving of amusement device plant item registration fees for the current registration cycle, the explanatory notes state that this is a temporary measure for the period 1 February 2020 to 31 January 2021, in response to the significant hardship the COVID-19 public health emergency has caused the amusement device industry.¹⁰

5.1 Fundamental legislative principles considerations

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 Act 2019 considerations

In the human rights certificate accompanying the subordinate legislation, the Minister stated, 'I consider that the *Work Health and Safety (Plant Registration) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue'.¹¹

Committee comment

The committee identified no issues regarding the compatibility of SL No. 252 with the HRA.

⁸ Explanatory notes for SL 2020 No. 252, p 1.

⁹ Explanatory notes for SL 2020 No. 252, p 2.

¹⁰ Explanatory notes for SL 2020 No. 252, p 2.

¹¹ Human Rights Certificate, Work Health and Safety (Plant Registration) Amendment Regulation 2020, p 1.

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 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP

Chair

March 2021

Education, Employment and Training Committee

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