

Education, Employment and Training Committee

Report No. 27, 57th Parliament

Subordinate legislation tabled between 22 June 2022 and 16 August 2022

1 Aim of this report

This report summarises the findings of the Education, Employment and Training Committee (the committee) following its examination of the subordinate legislation within its portfolio areas tabled between 22 June 2022 and 16 August 2022. 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,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
93	Workers' Compensation and Rehabilitation (QOTE) Notice 2022	16 August 2022	27 October 2022
96	Work Health and Safety (Codes of Practice) Notice 2022	16 August 2022	27 October 2022
97	Safety in Recreational Water Activities (Code of Practice) Notice 2022	16 August 2022	27 October 2022
98	Education and Care Services National Law (Queensland) Regulation 2022	16 August 2022	27 October 2022

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that fundamental legislative principles 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 The 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)).

100	Industrial Relations and Other Legislation Amendment Regulation 2022	16 August 2022	27 October 2022
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*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 were identified by the committee regarding the policy, consistency with fundamental legislative principles, human rights compatibility, or lawfulness of the subordinate legislation.

The committee considered that the explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA. 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 their compatibility with the HRA.

A brief overview of the subordinate legislation is provided below.

4 SL No. 93 – Workers' Compensation and Rehabilitation (QOTE) Notice 2022

4.1 Objectives

The objective of the Workers' Compensation and Rehabilitation (QOTE) Notice 2022 (SL No. 93) is to ensure that workers' compensation entitlements are indexed to maintain their relative value over time. SL No. 93 achieves this objective by notifying that QOTE for the 2022-23 financial year is \$1671.40, which is an increase of 3.47 per cent from 2021-22.⁶

Under section 10A of the *Workers' Compensation and Rehabilitation Act 2003*, QOTE is the amount of a Queensland full-time adult persons ordinary earnings as declared by the Australian Statistician in the original series of the publication '6302.0 Average Weekly Earnings, Australia', most recently published before the start of the financial year.⁷

5 SL No. 96 – Work Health and Safety (Codes of Practice) Notice 2022

5.1 Objectives

The main objective of the Work Health and Safety (Codes of Practice) Notice 2022 (SL No. 96) is to repeal and replace the Work Health and Safety (Codes of Practice) Notice 2011 which expired on 1 September 2022, allowing the new notice to commence on 1 August 2022.⁸

SL No. 96 is designed to ensure that a record of notification of approved codes of practice under the *Work Health and Safety Act 2011* (WHS Act) is retained. It does this by including a list of past notifications given by the Minister for approval or variation of codes under the WHS Act, including codes of practice made under the repealed *Workplace Health and Safety Act 1995*.⁹

SL No. 96 also provides that the Work Health and Safety Consultation, Cooperation and Coordination Code of Practice 2021 (Code of Practice) has been varied to ensure that it is consistent with the revised national model code of practice, in accordance with recommendations 6, 7a and 11 of the Boland Review.¹⁰ The recommendations required amendments to the Code of Practice to provide practical

⁶ SL No. 93, explanatory notes, p 1.

⁷ SL No. 93, explanatory notes, p 1.

⁸ SL No. 96, explanatory notes, p 1.

⁹ *Health and Safety Act 2011*, ss 274, 284; SL No. 96, explanatory notes, p 1.

¹⁰ As noted in the explanatory notes for SL No. 96, in 2018, Safe Work Australia engaged Marie Boland to review the model work health and safety legislation. The Boland Review examined the operation of the model laws in practice and made several recommendations for their improvement.

examples and greater clarity about how businesses can meet their duties under the WHS Act in relation to consultation on work health and safety issues.¹¹

6 SL No. 97 – Safety in Recreational Water Activities (Code of Practice) Notice 2022

6.1 Objectives

The objective of the Safety in Recreational Water Activities (Codes of Practice) Notice 2022 (SL No. 97) is to repeal and replace the Safety in Recreational Water Activities (Codes of Practice) 2011, which expired on 1 September 2022, allowing the new notice to commence on 1 August 2022.

SL No. 97 has been designed to retain notification of approved codes under the *Safety in Recreational Water Activities Act 2011*. The notice includes past notifications given by the Minister for approval or variation of codes under that Act.¹²

7 SL No. 98 – Education and Care Services National Law (Queensland) Regulation 2022

7.1 Objectives

In 2009, Queensland agreed to establish a National Quality Framework for Early Childhood Education and Care services to provide a consistent, national approach to the regulation of early childhood providers and set minimum quality standards for service delivery. This included the adoption of the Education and Care Services National Law (National Law).

The objective of the Education and Care Services National Law (Queensland) Regulation 2022 (SL No. 98) is to replace the Education and Care Services National Law (Queensland) Regulation 2011, which expired on 1 September 2022.¹³

SL No. 98 gives meaning to the definition of a central governing body (CGB), in section 32 of the Enabling Act, which states that a is an entity, prescribed under a regulation, that receives funding from the department for an approved kindergarten program provided by one or more relevant services to which the entity provides all or part of the funding.¹⁴

The CGBs prescribed in SL No. 98 are:

- Independent Schools Queensland
- Queensland Lutheran Early Childhood Services
- the Corporation of the Roman Catholic Bishops of Queensland
- The Creche and Kindergarten Association Limited
- The Gowrie (Qld) Inc.¹⁵

SL. 98 replaces the Association of Independent Schools of Queensland Inc as a CGB, which was deregistered in 2016, with Independent Schools Queensland Ltd, which now represents independent schools.¹⁶

8 SL No. 100 – Industrial Relations and Other Legislation Amendment Regulation 2022

8.1 Objectives

The objective of the Industrial Relations and Other Legislation Amendment Regulation 2022 (SL No. 100) is to make minor amendments to several statutory instruments.

¹¹ SL No. 96, explanatory notes, p 2.

¹² *Safety in Recreational Water Activities Act 2011*, s 43(2).

¹³ SL No. 98, explanatory notes, p 1.

¹⁴ SL No. 98, explanatory notes, p 2.

¹⁵ SL No. 98, s 3.

¹⁶ SL No. 98 p 2.

SL No. 100 amends the Industrial Relations (Tribunals) Rules 2011 (IR Rules) to support the development of a 'benchbook' for wage recovery matters.¹⁷ SL No. 100 also makes minor amendments to the IR Rules to:

- clarify the different ways in which requests for discontinuances may be made
- provide that simplified procedures for an unpaid amount claim in the Queensland Industrial Relations Commission or Industrial Magistrates Court are not available for claims over the small claim threshold.¹⁸

SL No. 100 amends the Statutory Bodies Financial Arrangements Regulation 2019 (SBFA Regulation) to ensure consistency between the portable long service schemes applicable. Currently, the Community Services Industry (Portable Long Service Leave) Authority (CSI Authority) does not have investment powers.

Amendments to the SBFA Regulation will enable the CSI Authority to enable to enter into Category 2 investments. This ensures that the CSI Scheme is consistent with the portable long service leave schemes managed by QLeave currently operating in the building and construction industry and the contract cleaning industry.¹⁹

SL No. 100 also amends the Workers' Compensation and Rehabilitation Regulation 2014 to correct drafting errors and the Industrial Relations Regulation 2018 to simplify photograph requirements for authority applications.²⁰

9 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP
Chair

October 2022

Education, Employment and Training Committee

Chair	Ms Kim Richards MP, Member for Redlands
Deputy Chair	Mr James Lister MP, Member for Southern Downs
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

¹⁷ A benchbook provides judges with guidance on relevant legal procedures.

¹⁸ SL No. 100, explanatory notes, p 1.

¹⁹ SL No. 100, explanatory notes, p 2.

²⁰ SL No. 100, explanatory notes, p 2.