

## Economics and Governance Committee

Report No. 13, 56<sup>th</sup> Parliament

Subordinate legislation tabled between 7 March 2018 and 1 May 2018

### Introduction

#### *Role of the committee*

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.<sup>1</sup> The committee's primary areas of responsibility include:

- Premier and Cabinet, and Trade
- Treasury, and Aboriginal and Torres Strait Islander Partnerships
- Local Government, Racing and Multicultural Affairs.

The committee is responsible for examining each 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, and the lawfulness of the legislation.<sup>2</sup>

#### *Aim of this report*

This report summarises the committee's examination of subordinate legislation tabled between 7 March 2018 and 1 May 2018. It reports on any identified fundamental legislative principle issues and the explanatory notes' compliance with the *Legislative Standards Act 1992*.

### Subordinate legislation considered

The committee considered the following subordinate legislation.

SL No.	Subordinate legislation	Tabled date	Disallowance date
32 of 2018	Motor Accident Insurance and Other Legislation (Fees and Levies) Amendment Regulation 2018	1 May 2018	5 September 2018
36 of 2018	Superannuation (State Public Sector) Amendment Notice (No. 1) 2018	1 May 2018	5 September 2018
45 of 2018	Public Service and Other Legislation Amendment Regulation (No. 1) 2018	1 May 2018	5 September 2018

<sup>1</sup> *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

<sup>2</sup> *Parliament of Queensland Act 2001*, s 93.

## ***SL 32 of 2018 - Motor Accident Insurance and Other Legislation (Fees and Levies) Amendment Regulation 2018***

The objective of the Motor Accident Insurance and Other Legislation (Fees and Levies) Amendment Regulation 2018 is to fix the levies and the administration fee to apply to compulsory third party (CTP) insurance premiums from 1 July 2018 (in accordance with the *Motor Accident Insurance Act 1994*), fix the levy for the National Injury Insurance Scheme, Queensland for the 2018-2019 financial year to apply from 1 July 2018 (in accordance with the *National Injury Insurance Scheme (Queensland) Act 2016* and to make administrative and other minor technical amendments to ensure consistency and to rectify outdated references.<sup>3</sup>

The *Motor Accident Insurance Act 1994* provides for a compulsory third-party insurance scheme covering liability for personal injury arising out of motor vehicle accidents, as well as for other purposes.<sup>4</sup> Pursuant to the *Motor Accident Insurance Act 1994*, the levies and the administration fee to apply to CTP insurance premiums from 1 July 2018 are required to be fixed by regulation. The regulation must be made before 1 April 2018.<sup>5</sup>

The levies and administration fee applicable under the *Motor Accident Insurance Act 1994* are the Statutory Insurance Scheme Levy, the Hospital and Emergency Services Levy, the Nominal Defendant Levy, the Injury Insurance Scheme Levy and the Administration Fee.<sup>6</sup>

The injury insurance scheme levy is fixed under the *National Injury Insurance Scheme (Queensland) Act 2016*. The levy aims to cover the estimated costs of the National Injury Insurance Scheme in Queensland, which provides necessary and reasonable lifetime treatment, care and support to those who sustain eligible serious personal injuries in a motor vehicle accident in Queensland on or after 1 July 2016.<sup>7</sup>

### *Committee comment*

The committee identified no issues regarding consistency with fundamental legislative principles or the lawfulness of the Motor Accident Insurance and Other Legislation (Fees and Levies) Amendment Regulation 2018.

The committee notes that the explanatory notes outline that various entities were consulted in relation to various levies. However, they do not include an outline of the results of the consultation as required by section 24(2)(a)(ii) of the *Legislative Standards Act 1992*.

The explanatory notes otherwise comply with part 4 of the *Legislative Standards Act 1992*.

## ***SL 36 of 2018 - Superannuation (State Public Sector) Amendment Notice (No. 1) 2018***

The *Superannuation (State Public Sector) Act 1990* provides for the operation of an established superannuation scheme (QSuper) for the State public sector and other persons. Under section 14B of this Act, the Minister declares, by written notice, the QSuper membership categories and other conditions of membership for employees of Queensland public sector employers.<sup>8</sup>

The objectives of the Superannuation (State Public Sector) Amendment Notice (No. 1) 2018 are to approve QSuper membership for employees of certain newly established entities, continued QSuper membership for transferring employees, and changes in QSuper arrangements for certain employees.

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<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> *Motor Accident Insurance Act 1994*, preamble.

<sup>5</sup> Under the *Statutory Instruments Act 1992* subordinate legislation automatically expires on 1 September, first occurring after the tenth anniversary of the day of its making, unless it is sooner repealed or expires, or a regulation is made exempting it from expiry (*Statutory Instruments Act 1992*, s 54).

<sup>6</sup> Explanatory notes, p 1.

<sup>7</sup> Explanatory notes, p 2.

<sup>8</sup> *Superannuation (State Public Sector) Act 1990*, s 14B.

### *Committee comment*

The committee identified no issues regarding consistency with fundamental legislative principles or the lawfulness of the Superannuation (State Public Sector) Amendment Notice (No. 1) 2018.

The committee notes that the explanatory notes tabled with the regulation comply with the requirements of the *Legislative Standards Act 1992*.

### ***SL 45 of 2018 - Public Service and Other Legislation Amendment Regulation (No. 1) 2018***

The objectives of the Public Service and Other Legislation Amendment Regulation (No. 1) 2018 are to prescribe a new public sector entity as a public service agency for the purpose of applying the Code of Conduct under the *Public Sector Ethics Act 1994*, to update schedules of the Public Service Regulation 2008 to apply additional sections of the *Public Service Act 2008* and/or directives issued under that Act to a number of public sector entities as declared public service offices, and to prescribe nominated persons or office holders as persons to whom the civil liability protections under the *Public Service Act 2008* apply.<sup>9</sup>

The amendments to the Public Sector Ethics Regulation 2010 prescribe the Queensland Building and Construction Commission and Queensland Building and Construction Employment Office established under the *Queensland Building and Construction Commission Act 1991* as a 'public service agency' for the purpose of applying the Code of Conduct for the Queensland public service.<sup>10</sup>

The office holders prescribed as State employees through the amendments to the Public Service Regulation 2008 include the Queensland Ambulance Service Commissioner, certain officers employed under the *Electoral Act 1992* and *Local Government Electoral Act 2001*, the Public Advocate, the Privacy Commissioner, the Legal Services Commissioner, the Ombudsman or an officer of the Ombudsman, the Right to Information Commissioner, and a person appointed as a member of the Queensland Sentencing Advisory Council or the Prostitution Licensing Authority.<sup>11</sup>

The amendments to the Public Service Regulation 2008 also include a clarification of the application of the managing employee complaints directive to hospital and health service employees so that complaints by hospital and health service employees working in hospital and health services about their chief executive are handled by the Board of the service.<sup>12</sup>

### *Committee comment*

The committee identified a potential issue with the Public Service and Other Legislation Amendment Regulation (No. 1) 2018 regarding consistency with fundamental legislative principles.

Section 4(3)(h) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on a number of factors, including that it does not confer immunity from proceeding or prosecution without adequate justification.

Section 26C of the *Public Service Act 2008* provides a State employee with immunity from civil liability for engaging, or for the result of engaging, in conduct in an official capacity. If a State employee engages in conduct with gross negligence and other than in good faith, the State can recover contribution from the employee.

Section 26B(1)(g) provides in effect that the immunity extends, inter alia, to 'another person prescribed by regulation as a State employee'.

Clause 6 of the amending regulation inserts a substituted Section 14A in the Public Service Regulation 2008, which provides:

*For section 26B(1)(g) of the Act, each person mentioned in schedule 3A ... is a State employee.*

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<sup>9</sup> Explanatory notes, p 1.

<sup>10</sup> Explanatory notes, p 2.

<sup>11</sup> Explanatory notes, p 2.

<sup>12</sup> Explanatory notes, p 2.

Clause 19 of the amending regulation inserts Schedule 3A which specifies a range of persons as prescribed State employees, including for the purposes of conferring immunity.

This raises the abovementioned issue of fundamental legislative principle.

The explanatory notes state that the aim is to put beyond doubt the civil liability protection under the Act of a range of persons:

*The amendments will clarify that immunity applies to a number of office holders and employees that were intended to be covered by the broad definition of state employee in the [Act].<sup>13</sup>*


The committee notes the Act provides that where section 26(1) prevents liability attaching to a State employee, liability will attach instead either to the State (or, in some circumstances, to any relevant body corporate). Thus, any right of a party to take civil action is preserved.

Given that the right to take civil action is preserved because liability instead attaches to the State or relevant body corporate, and given the nature of the roles of the listed office holders, the committee considered the potential breach of fundamental legislative principle justified.

The committee notes that the explanatory notes tabled with the regulation comply with the requirements of the *Legislative Standards Act 1992*.

## Recommendation

The committee recommends that the Legislative Assembly note this report.



Linus Power MP

**Chair**

### Economic and Governance Committee

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<sup>13</sup> Explanatory notes, p 5.