

## Community Support and Services Committee

### Report No. 36, 57<sup>th</sup> Parliament

#### Subordinate legislation tabled between 19 April and 22 August 2023

### 1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 19 April 2023 and 22 August 2023. 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 (FLP)
- its compatibility with human rights
- its lawfulness.

It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA), and the human rights certificates with the *Human Rights Act 2019* (HRA).

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
53	Disability Services (Fees) Amendment Regulation 2023	22 August 2023	16 November 2023
105	Child Protection Regulation 2023	22 August 2023	16 November 2023

\*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



In relation to the Disability Services (Fees) Amendment Regulation 2023, the committee is satisfied that the subordinate legislation raises no FLP issues and is compatible with human rights.

The committee identified a potential human rights issue in relation to the Child Protection Regulation 2023. However, the committee was ultimately satisfied that the subordinate legislation is consistent with FLPs and compatible with human rights.

The committee considers that:

- the explanatory notes tabled with the subordinate legislation noted in this report comply with the requirements of s 24 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.

The committee acknowledges that the Child Protection Regulation 2023 (SL No. 105) poses a degree of risk in relation to human rights; however, it is satisfied that the subordinate legislation is compatible with human rights.

The following sections provide a brief overview of the subordinate legislation.

#### 4 Disability Services (Fees) Amendment Regulation 2023

The objective of the Disability Services (Fees) Amendment Regulation 2023 (SL No. 53) is to update the screening and renewal fees for National Disability Insurance Scheme (NDIS) worker clearances.<sup>1</sup> The fees are being increased from \$129 to \$138.<sup>2</sup> This change is intended to align the fees with Queensland Treasury's *Principles for Fees and Charges*.<sup>3</sup>

#### 5 Child Protection Regulation 2023

The objective of the Child Protection Regulation 2023 (SL No. 105) is to replace the expiring Child Protection Regulation 2011 (the 2011 Regulation). The Department of Child Safety, Seniors and Disability Services (the department) conducted a sunset review of the expiring 2011 Regulation and determined the regulation should be remade. The department's findings indicated that there was an ongoing need for the regulation; it is operating efficiently and effectively; and amendments would be required to improve clarity and consistency with the Act.<sup>4</sup>

The committee acknowledges that the Child Protection Regulation 2023 (the Regulation) poses a degree of risk in relation to human rights. The Regulation outlines matters to be considered when deciding whether somebody is a 'suitable person' to 'have custody or guardianship of a child; be a foster, kinship or provisionally approved carer; associate on a daily basis with a child; or perform a particular role (director, nominee, or risk-assessed role) in relation to a licensed care service'.<sup>5</sup> The Regulation provides that the chief executive or a court may consider a person's employment history and their physical or mental health and 'any other matter relevant to deciding whether the person is a suitable person'.<sup>6</sup> That is, there is an 'unlimited scope of matters which may be considered in determining whether a person is a suitable person'.<sup>7</sup> The human rights certificate acknowledges the potential for 'limiting opportunity and enabling discriminatory decision making'.<sup>8</sup>

The human rights certificate provides the following justification for the scope of matters that the chief executive may consider:

It is necessary for the protection of children and the provision of care that persons providing care or care services do not pose risks to the safety of children, and otherwise meet the requirements of being a suitable person. It is reasonable and necessary that a broad range of matters be able to be considered in making such assessments.<sup>9</sup>

The human rights certificate notes that there are other safeguards to mitigate the risk of discrimination, including the *Anti-Discrimination Act 1991* and the *Human Rights Act 2019*.

The committee wrote to the department on 15 September 2023 seeking further information regarding the process for determining suitability. The committee requested examples or guidance as to the types of matters that would be relevant when assessing suitable persons to be a foster or kinship carer, or a nominee for a licence.

In its response, the department advised the following:

---

<sup>1</sup> SL No. 53-2023, explanatory notes, p 1.

<sup>2</sup> SL No. 53-2023, explanatory notes, p 2.

<sup>3</sup> SL No. 53-2023, explanatory notes, p 1.

<sup>4</sup> SL No. 53-2023, explanatory notes, pp 1-2.

<sup>5</sup> SL No. 53-2023, explanatory notes, p 2.

<sup>6</sup> SL No. 105, s 27.

<sup>7</sup> SL No. 105, human rights certificate, p 13.

<sup>8</sup> SL No. 105, human rights certificate, p 13.

<sup>9</sup> SL No. 105, human rights certificate, p 14.

- ‘other matters’ to be taken into consideration will depend on the role being applied for<sup>10</sup>
- while there is discretion around ‘other matters’ to be considered, such information ‘is only obtained when the consideration of that information will directly inform the suitability assessment, and with the consent of the applicant’<sup>11</sup>
- applicants are ‘afforded procedural fairness through an opportunity to respond’.<sup>12</sup>

When determining whether a person is suitable to be a foster or kinship carer, examples of other matters the department might consider include:

- referee checks from current or previous employers or other personal referees who know the applicant
- information from foster and kinship care service providers who have had previous contact with the applicant
- international child protection or criminal history checks if applicants have lived overseas for six months or more.<sup>13</sup>

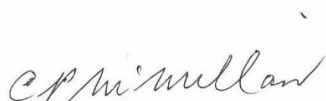
The department advised that to determine if a person is suitable to be a nominee for a licence additional information might be sought through referee checks and a review of a person’s work history and qualifications. This helps to decide ‘whether a person’s employment history is contrary to the requirements of the role, including whether they have sufficient experience to undertake the role and previous disciplinary information recorded when performing similar roles’.<sup>14</sup>

The department expressed the view that this level of discretion is essential both for ‘meeting the paramount principle of the Act’, and enabling ‘courts to consider any relevant matter in making decisions about whether a person is a suitable person to have custody or guardianship of a child’.<sup>15</sup> The department noted that protections are in place for applicants, as exercising this discretion must be compatible with the *Human Rights Act 2019* and the *Anti-Discrimination Act 1991*.<sup>16</sup>

The committee is satisfied that the subordinate legislation is compatible with human rights.

## 6 Recommendations

The committee recommends that the Legislative Assembly notes this report.



Corrine McMillan MP

**Chair**

**October 2023**

### **Community Support and Services Committee**

**Chair** Ms Corrine McMillan MP, Member for Mansfield

**Deputy Chair** Mr Stephen Bennett MP, Member for Burnett

**Members** Mr Michael Berkman MP, Member for Maiwar Ms Cynthia Lui MP, Member for Cook  
Dr Mark Robinson MP, Member for Oodgeroo Mr Robert Skelton MP, Member for Nicklin

<sup>10</sup> Department of Child Safety, Seniors and Disability Services (DCSSDS), correspondence, 28 September 2023, attachment, p 1.

<sup>11</sup> DCSSDS, correspondence, 28 September 2023, attachment, p 1.

<sup>12</sup> DCSSDS, correspondence, 28 September 2023, attachment, p 1.

<sup>13</sup> DCSSDS, correspondence, 28 September 2023, attachment, p 2.

<sup>14</sup> DCSSDS, correspondence, 28 September 2023, attachment, p 2.

<sup>15</sup> DCSSDS, correspondence, 28 September 2023, attachment, p 2.

<sup>16</sup> DCSSDS, correspondence, 28 September 2023, attachment, p 2.