

## Education, Employment and Training Committee

### Report No. 42, 57<sup>th</sup> Parliament

#### Subordinate legislation tabled between 11 October and 14 November 2023

### 1 Aim of this report

This report summarises the findings of the Education, Employment and Training Committee (the committee) following its examination of subordinate legislation within its portfolio areas.

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
- 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
-	Education and Care Services National Further Amendment Regulations 2023	17 October 2023	6 March 2024
-	Education and Care Services National Amendments (Bassinets) Regulations 2023	17 October 2023	6 March 2024
143	Industrial Relations and Other Legislation Amendment (Postponement) Regulation 2023	24 October 2023	7 March 2024
150	Racing Integrity Amendment Regulations 2023	14 November 2023	21 March 2024
157	Industrial Relations (Tribunals) Amendment Rule 2023	14 November 2023	21 March 2024

\*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



The Racing Integrity Amendment Regulation 2023 (SL50) potentially limits the right to privacy by requiring a person, supplying a horse to an abattoir, to provide personal information to enable the facility to comply with its record keeping and reporting requirements to the Queensland Racing Integrity Commission (QRIC). However, the committee is satisfied that the personal information provided to QRIC is subject to privacy obligations limited to contact details, and can only be used for compliance purposes.

New penalty provisions (and penalty increases) within the Education and Care Services National Further Amendment Regulations 2023 and the Education and Care Services National Amendment (Bassinets) Regulations 2023 are proportionate to the corresponding offences, and consistent with existing penalties under the National Regulations.

The committee did not identify any other issues regarding the policy, consistency with fundamental legislative principles, human rights compatibility, or lawfulness of the subordinate legislation covered by this report.

The committee considers that:

- Where they were required, 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.

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

#### **4 Education and Care Services National Further Amendment Regulations 2023**

The Education and Care Services National Further Amendment Regulations 2023 (Further Amendment Regulations) amend the Education and Care Services National Regulations (National Regulations) to:

- improve safety and oversight of centre-based and family day care (FDC) services located in multi-storey buildings to ensure the safe evacuation of children from the service during an emergency, including new requirements for emergency evacuation policies and procedures and conducting risk assessments, service approval applications, and the consideration of direct egress to safe assembly areas for all children
- strengthen the requirements for safe sleep practices, including new requirements for sleep and rest policies and procedures and conducting risk assessments
- strengthen the safety and oversight in FDC services by requiring additional details be included on the FDC register of educators providing education and care to additional children due to exceptional circumstances, creating an explicit obligation on FDC educators to notify of circumstances at the FDC residence that may pose a risk to the safety, health and wellbeing of children, and clarify the information that must be displayed at the FDC residence/venue
- provide additional safeguards for FDC residences with swimming pools, including compliance with local pool fencing requirements and the conduct of monthly inspections of swimming pools and other water hazards
- strengthen the safety of children in early childhood services by addressing gaps between the National Principles for Child Safe Organisations and the National Quality Framework (NQF)
- strengthen the requirements for the safe arrival of children between an education and care service and another education or early childhood settings
- provide further privacy protections for the personal information of parents and other authorised persons contained in prescribed records of the service
- prescribe the currency period of approved first aid qualifications, approved anaphylaxis management training and approved emergency asthma management training
- require the approved provider to notify the regulatory authority of changes to the age range of children catered for by a service and the nature of education and care offered by the service
- increase the maximum penalties for offences in the National Regulations to keep up with the cumulative increase in the consumer price index (CPI) since the commencement of the NQF in 2012

- make minor and technical amendments to clarify existing provisions, such as safety glass height requirements in FDC, the ability for approved providers to apply for service waivers and temporary waivers relating to compliance with the National Quality Standard and clarify the application of the *Freedom of Information Act 1982* (Cth) for the purposes of the NQF.<sup>1</sup>

The Amendment Regulations are not 'subordinate legislation' as the term is used in various Queensland Acts, and does not form part of the usual numbered subordinate legislation (SL) series. Explanatory notes were not required to accompany the Amendment Regulations and, consequently, the committee has not reported on their compliance with the *Legislative Standards Act 1992* (LSA) as would usually occur for subordinate legislation. This is in line with the tabling of previous regulations made under the National Law.

In the absence of explanatory notes, the committee sought a written brief from the Department of Education (the department) explaining the background and effects of the legislation. The department's brief is published in full on the committee's examination of portfolio subordinate legislation webpage.<sup>2</sup>

The committee notes the new penalty provisions (and penalty increases) within the Further Amendment Regulations and considers them proportionate to the corresponding offences, and consistent with existing penalties under the National Regulations.

The committee notes the human rights certificate provided, and is satisfied that the Further Amendment Regulations are compatible with the HRA.

#### **4.1 Rights and liberties of individuals - Penalties**

The Further Amendment Regulations increase the value of maximum penalties for offences contained in the National Regulations.<sup>3</sup> The increase in penalties in all circumstances is limited to 10 per cent.<sup>4</sup>

The human rights certificate states that the increase in penalties is to 'keep up with the cumulative increase in the consumer price index (CPI) since the commencement of the NQF in 2012'.<sup>5</sup>

The Further Amendment Regulations also introduce the following new penalty provisions:

- an approved provider of an education and care service must ensure a sleep and rest risk assessment is conducted in accordance with the regulation (penalty \$2,200).<sup>6</sup>
- an approved provider of a centre-based service must review the emergency and evacuation procedures every 12 months, and as soon as practicable after becoming aware of any circumstance that may affect the safe evacuation of children from the service (penalty \$2,200).<sup>7</sup> After the review, the necessary updates must be made to the procedures (penalty \$2,200).<sup>8</sup>

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<sup>1</sup> Further Amendment Regulations, human rights certificate, p 2.

<sup>2</sup> See 'Examination of portfolio subordinate legislation during the 57<sup>th</sup> Parliament': <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=166&id=2873>.

<sup>3</sup> See, for example, further amendment regulations, regulations 18 and 19 which relate to offences contravening the health, hygiene and safe food practices (reg 18) and food and beverage requirements (reg 19) of the National Regulations. There are approximately 95 provisions in the further amendment regulations that increase the maximum penalty units for offences contained in the National Regulations.

<sup>4</sup> The penalty increases in all circumstances under the further amendment regulations either resulted in a penalty increase from \$1,000 to \$1,100 (see, for example, reg 63) or from \$2,000 to \$2,200 (see, for example, reg 62).

<sup>5</sup> Further Amendment Regulations, human rights certificate, p 2.

<sup>6</sup> Further Amendment Regulations, s 26 (inserts new reg 84C National Regulations).

<sup>7</sup> Further Amendment Regulations, s 31(4) (inserts new reg 97(2A) National Regulations).

<sup>8</sup> Further Amendment Regulations, s 31(4) (inserts new reg 97(2B) National Regulations).

- an approved provider of an education and care service must ensure a risk assessment is conducted for the purposes of the safe arrival of children (penalty \$2,200).<sup>9</sup>
- an approved provider of a FDC must conduct a monthly inspection of any swimming pool or other water feature located at the care service (penalty \$2,200).<sup>10</sup>



The committee considers the new penalty provisions (and penalty increases) proportionate to the corresponding offences, and consistent with existing penalties under the National Regulations. The committee therefore considers the Further Amendment Regulations have sufficient regard to the rights and liberties of individuals.

## 5 Education and Care Services National Amendments (Bassinets) Regulations 2023

The Education and Care Services National Amendment (Bassinets) Regulations 2023 (Bassinets Regulations) amend the National Regulations to prohibit the use of bassinets at education and care service premises at any time during which children are being educated and cared for by the service.<sup>11</sup>

A human rights certificate is tabled with the Bassinets Regulations, but not explanatory notes. As noted above, this is in line with the tabling of previous regulations made under the National Law.

In the absence of explanatory notes, the department's written brief for the committee explaining the background and effect of the legislation is published in full on the committee's webpage.<sup>12</sup>

The committee notes the new penalty provisions (and penalty increases) within the Amendments Regulations and considers them proportionate to the corresponding offences and consistent with existing penalties under the National Regulations.

### 5.1 Rights and liberties of individuals - Penalties

The Amendment (Bassinets) Regulations introduce three penalty provisions relating to the prohibition of bassinets – it will be an offence for an 'approved provider', 'nominated supervisor' or 'family day care educator' to contravene the requirement not to have a bassinet at an ECEC premises. The penalty for each circumstance is \$2,200.<sup>13</sup>



The committee considers that the new penalty provisions (and penalty increases) are proportionate to the corresponding offences, and consistent with existing penalties under the National Regulations, such that the Bassinets Regulations have sufficient regard to the rights and liberties of individuals.

## 6 SL No. 143 – Industrial Relations and Other Legislation Amendment (Postponement) Regulations 2023

The objective of the Industrial Relations and Other Legislation Amendment (Postponement) Regulation 2023 (SL No. 143) is to extend the period before the automatic commencement of Part 2, Division 3<sup>14</sup> of the *Industrial Relations and Other Legislation Amendment Act 2022* (IROLA Act) to 4 November 2024.

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<sup>9</sup> Further Amendment Regulations, s 36 (inserts new reg 102AAC(1) National Regulations).

<sup>10</sup> Further Amendment Regulations, s 49 (inserts new reg 116A National Regulations).

<sup>11</sup> Bassinets Regulations, schedule 1; human rights certificate, p 1.

<sup>12</sup> See 'Examination of portfolio subordinate legislation during the 57th Parliament': <https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=166&id=2873>.

<sup>13</sup> Bassinets Regulations, Schedule 1 (inserts new regulation 84D, National Regulations).

<sup>14</sup> Part 2, Division 3 was to commence by proclamation: *Industrial Relations and Other Legislation Amendment Act 2022*, s 2.

Part 2, Division 3 of the IROLA Act will introduce a new Chapter 10A into the *Industrial Relations Act 2016* (IR Act) to:

- empower the Queensland Industrial Relations Commission to make determinations to set minimum standards of work for independent courier drivers
- make consequential amendments for civil penalty breaches under Chapter 10A
- make updates to the IR Act's Dictionary.<sup>15</sup>

Currently, Commonwealth legislation<sup>16</sup> governs services contracts under which independent couriers are engaged to perform work. As the Australian Government 'is investigating industrial reforms, including to consider empowering the Fair Work Commission (FWC) to set minimum standards for workers in 'employee-like' forms of work, and giving the FWC powers to set minimum standards to improve road and transport safety and sustainability',<sup>17</sup> SL No. 143 postpones the automatic commencement of new chapter 10A in the IROLA Act.<sup>18</sup>

## 7 SL No. 150 Racing Integrity Amendment Regulations 2023

The objective of the Racing Integrity Amendment Regulation 2023 (SL No. 150) is to amend the Racing Integrity Regulation 2016 to provide that the owner of a livestock slaughter facility:

- must keep a record of the colour and sex of each horse that arrives at the facility
- includes in the monthly report to the Queensland Integrity Racing Commission (QRIC), the information that is provided by the person supplying a horse to the facility under section 210A of the *Racing Integrity Act 2016* and the colour and sex of each horse that has arrived at the facility.<sup>19</sup>

According to the explanatory notes, the *Animal Care and Protection Amendment Act 2022*<sup>20</sup> implemented certain recommendations of the independent inquiry into animal cruelty in the management of retired Thoroughbred and Standardbred horses in Queensland.<sup>21</sup>

The reason for SL No. 150 is because the QRIC has since 'identified further information that it requires to be recorded and reported to enable it to verify that a horse has been sent to a facility as a last resort'.<sup>22</sup>

### 7.1 Right to privacy

Section 25 of the HR Act protects the right to privacy and reputation.

The committee notes that SL No. 150 potentially limits the right to privacy because, if a supplier of a horse to a facility is a natural person, their right to privacy is engaged as they are required to provide personal information to enable the facility to comply with its record keeping and monthly reporting requirements to the QRIC.<sup>23</sup> The monthly report to QRIC will include personal information such as the supplier's name and contact details.<sup>24</sup>

According to the human rights certificate, the purpose of the limitation on the right to privacy is to:

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<sup>15</sup> SL No. 143, explanatory notes, p 1.

<sup>16</sup> *Independent Contractors Act 2006* (Cth) and *Independent Contractors Regulation 2016* (Cth).

<sup>17</sup> SL No. 143, explanatory notes, p 1.

<sup>18</sup> SL No. 143, explanatory notes, p 1.

<sup>19</sup> SL No. 150, explanatory notes, p 2.

<sup>20</sup> Which commenced in December 2022.

<sup>21</sup> SL No. 150, explanatory notes, p 1.

<sup>22</sup> SL No. 150, explanatory notes, pp 1, 2.

<sup>23</sup> SL No. 150, human rights certificate, p 1.

<sup>24</sup> SL No. 150, human rights certificate, p 1.

... enable QRIC to have sufficient information in a facility's monthly reports to effectively monitor and investigate whether an owner has complied with obligations for the rehoming of retired racing horses before the horse is sent to a facility.<sup>25</sup>

However, the human rights certificate concludes that SL No. 150 is compatible with human rights, stating that community expectations necessitate 'that the owner of a retired racing horse makes a proper effort to rehome the horse'.<sup>26</sup>

The certificate further notes that the personal information provided to QRIC is 'subject to privacy obligations which is limited to contact details and under the *Information Privacy Act 2009* (IPA) can only be used for compliance purposes under the Act'.<sup>27</sup>



In light of the explanation given in the human rights certificate that the personal information provided to QRIC is limited to contact details, and can only be used for compliance purposes, the committee is satisfied that SL.150 is compatible with the HRA.

## 8 SL No. 157 – Industrial Relations (Tribunals) Amendment Rule 2023

The Industrial Relations (Tribunals) Amendment Rule 2023 (SL No. 157) amends the Industrial Relations (Tribunals) Rules 2011 (the IR Rules) to ensure consistency with recently amended industrial legislation.<sup>28</sup>

Specifically, SL No. 157:<sup>29</sup>

- replaces certain references to 'association' with the terms 'organisation' or an 'industrial organisation' to reflect the updated definition in the *Industrial Relations Act 2016* (IR Act)
- updates certain provisions to ensure that actions taken by agents representing parties pursuing industrial matters (e.g. lodging a notice of appointment, service of documents, and changing a lawyer or agent) reflect the requirements for agents in the IR Act.

## 9 Recommendation

The committee recommends that the House notes this report.

Kim Richards MP  
**Chair**

**January 2024**

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<sup>25</sup> SL No. 150, human rights certificate, p 2.

<sup>26</sup> SL No. 150, human rights certificate, p 3.

<sup>27</sup> SL No. 150, human rights certificate, p 3.

<sup>28</sup> On 3 November 2022, the *Industrial Relations and Other Legislation Amendment Act 2022* amended the *Industrial Relations Act 2016* to ensure, among other objectives, the transparency, accountability and reporting obligations for organisations who promote and represent industrial interests, and representation requirements for agents. SL No. 157 makes minor amendments to support these policy objectives. SL No. 157, explanatory notes, p 1.

<sup>29</sup> SL No. 157, explanatory notes, pp 1-2.

**Education, Employment and Training Committee**

<b>Chair</b>	Ms Kim Richards MP, Member for Redlands
<b>Deputy Chair</b>	Mr James Lister MP, Member for Southern Downs
<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 <sup>30</sup>

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<sup>30</sup> In accordance with SO 202, Mr Don Brown MP, Member for Capalaba, was appointed to the committee from 22 December 2023, due the unavailability of Mr Jimmy Sullivan MP, Member for Stafford for any committee business.