



## Education, Employment and Small Business Committee

### Report No. 15, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 31 October 2018 and 12 February 2019

##### 1 Aim of this report

This report summarises the committee's examination of subordinate legislation tabled from 31 October 2018 to 12 February 2019. It reports on any issues identified by the committee in relation to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs), and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).

##### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
194	Industrial Relations (Revocation of Declaration-LGIAsuper) Amendment Regulation 2018	12 February 2019	2 May 2019
204	Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2018	12 February 2019	2 May 2019
208	Work Health and Safety (Codes of Practice) (Respirable Coal Dust Hazards) Amendment Notice 2018	12 February 2019	2 May 2019
216	Work Health and Safety and Other Legislation Amendment Regulation 2018	12 February 2019	2 May 2019

##### 3 Committee consideration of the subordinate legislation

The committee has examined the policy to be given effect by the subordinate legislation, the application of FLPs, and its lawfulness.

No issues regarding consistency with FLPs or the lawfulness of the subordinate legislation were identified in the Industrial Relations (Revocation of Declaration-LGIAsuper) Amendment Regulation 2018, Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2018, or the Work Health and Safety and Other Legislation Amendment Regulation 2018.

A potential issue was identified in the Work Health and Safety (Codes of Practice) (Respirable Coal Dust Hazards) Amendment Notice 2018, which is discussed below.

##### 4 Industrial Relations (Revocation of Declaration-LGIAsuper) Amendment Regulation 2018 – SL No. 194

When LGIASuper replaced the Local Government Superannuation Scheme it become an open fund, no longer operating solely for local government purposes. It is therefore ineligible to be declared *not a*

*national system employer*. The Amendment Regulation revoked the declaration that enabled the Local Government Superannuation Scheme to remain in the state system.<sup>1</sup>

## **5 Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2018 – SL No. 204**

The Remote Kindergarten Pilot Program delivers kindergarten to prescribed state schools in rural and remote communities. It is being transitioned to an ongoing program from Term 1, 2019. The Education (General Provisions) (Prescribed State Schools) Amendment Regulation 2018 prescribes 30 additional state schools and removes Yowah State School which has closed, from the list of prescribed schools.

## **6 Work Health and Safety (Codes of Practice) (Respirable Coal Dust Hazards) Amendment Notice 2018 – SL No. 208**

The Work Health and Safety (Codes of Practice) (Respirable Coal Dust Hazards) Amendment Notice 2018 (the Notice) inserts a new code of practice into Schedule 1 of the Work Health and Safety (Codes of Practice) Notice 2011. The new *Managing respirable dust hazards in coal-fired power stations Code of Practice 2018* (Code of Practice), was approved by the Minister for Education and Minister for Industrial Relations. It provides safety standards for power station workers involved in the transportation and handling of coal outside a coal mine.<sup>2</sup>

The Code of Practice was recommended by the Coal Workers' Pneumoconiosis Select Committee in its Report No. 4<sup>3</sup>, and also implements the committee's recommendations in its earlier Report No.2<sup>4</sup> for consistent safety standards for all coal workers across Queensland.

### **6.1 Potential issue – sufficient regard to the institution of Parliament**

Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the sub-delegation of a power delegated by an Act only:

- in appropriate cases and to appropriate persons, and
- if authorised by an Act.<sup>5</sup>

Part of the rationale for this principle is to ensure sufficient parliamentary scrutiny of a delegated legislative power.<sup>6</sup>

It could be argued that the Code of Practice, and the process by which it is incorporated into the legislative framework, has insufficient regard to the institution of Parliament.

### **6.2 Authorised by an Act**

Section 274 of the *Work Health and Safety Act 2011* (the Act) enables the Minister to approve, vary or revoke a code of practice. Approval of a code of practice has effect if the Minister gives notice of its making, and a notice is subordinate legislation.<sup>7</sup>

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<sup>1</sup> Industrial Relations (Revocation of Declaration-LGIAsuper) Amendment Regulation 2018, explanatory notes, p 2.

<sup>2</sup> Work Health and Safety (Codes of Practice) (Respirable Coal Dust Hazards) Amendment Notice 2018, explanatory notes, p 2.

<sup>3</sup> Coal Workers' Pneumoconiosis Select Committee, Report No. 4, 55<sup>th</sup> Parliament, *Inquiry into occupational respirable dust issues*, September 2017, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T1855.pdf>

<sup>4</sup> Coal Workers' Pneumoconiosis Select Committee, Report No. 2, *Black lung white lies*, May 2017, <https://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T815.pdf>

<sup>5</sup> Section 4(5)(e) of the *Legislative Standards Act 1992*.

<sup>6</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 170.

<sup>7</sup> See sections 274(4) and (4A) of the *Work Health and Safety Act 2011*.

The sub-delegation of power is therefore authorised, and the notice is subject to disallowance as subordinate legislation.

### **6.3 Availability of document and parliamentary scrutiny**

Concerns about sub-delegation are reduced where the document which is notified is made available for inspection. Subsection 274(6) of the Act requires a copy is available for inspection by members of the public without charge. The Code of Practice is available on the Work Safe website.<sup>8</sup>

### **6.4 Committee comment**

The committee notes that the Code of Practice is lengthy and detailed and for practical reasons it is appropriate for the document to not be subordinate legislation. The committee also notes that the Code of Practice has effect if the Minister gives notice of its making, and that the notice itself is subordinate legislation, therefore subject to disallowance.

In the circumstances, the committee is satisfied that the Notice has sufficient regard to the institution of Parliament.

## **7 Work Health and Safety and Other Legislation Amendment Regulation 2018 – SL No. 216**

The Work Health and Safety and Other Legislation Amendment Regulation 2018 makes minor amendments to: the Electrical Safety Regulation 2013 to provide educational and work experience requirements for the positions of ‘qualified business person’ and ‘qualified technical person’; and various amendments to the Work Health and Safety Regulation 2011, including to ensure that Health and Safety Representative training is completed in a timely manner and to enable information sharing necessary for the administration of relevant Acts.<sup>9</sup>

## **8 Explanatory notes**

The potential FLP issue in the Work Health and Safety (Codes of Practice) (Respirable Coal Dust Hazards) Amendment Notice 2018 was not included in the explanatory notes. The committee notes that the LSA requires ‘a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency’.

Generally, the explanatory notes tabled with each of the items of subordinate legislation comply with the requirements of section 24 of the LSA.

## **9 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Leanne Linard MP  
**Chair**  
March 2019

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<sup>8</sup> Queensland Government, Worksafe, [www.worksafe.qld.gov.au](http://www.worksafe.qld.gov.au)

<sup>9</sup> Work Health and Safety and Other Legislation Amendment Regulation 2018, explanatory notes, pp 2-3.

**Education, Employment and Small Business Committee**

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