



Education, Employment and Small Business Committee

Report No. 18, 56th Parliament

Subordinate legislation tabled between 13 February and 2 April 2019

1 Aim of this report

This report summarises the committee's examination of subordinate legislation tabled from 13 February to 2 April 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
23	Proclamation made under the <i>Work Health and Safety and Other Legislation Amendment Act 2017</i>	26 March 2019	13 June 2019
24	Electrical Safety (Delegation by Regulator) Amendment Regulation 2019	26 March 2019	13 June 2019
27	Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019	26 March 2019	13 June 2019
36	Education (General Provisions) (Westmar State School) Amendment Regulation 2019	2 April 2019	21 August 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 Proclamation made under the *Work Health and Safety and Other Legislation Amendment Act 2017*; the Electrical Safety (Delegation by Regulator) Amendment Regulation 2019; or the Education (General Provisions) (Westmar State School) Amendment Regulation 2019.

A potential issue was identified in the Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, which is discussed below.

4 Proclamation made under the *Work Health and Safety and Other Legislation Amendment Act 2017* – SL No. 23

The Proclamation fixed a commencement date of 18 March 2019 for provisions of the *Work Health and Safety and Other Legislation Amendment Act 2017* that were not in force.

The explanatory notes state that these provisions were to commence upon proclamation to enable time to advertise and recruit for the position of Work Health and Safety Prosecutor.¹

¹ Proclamation made under the *Work Health and Safety and Other Legislation Amendment Act 2017*, explanatory notes, p 1.

5 Electrical Safety (Delegation by Regulator) Amendment Regulation 2019 – SL No. 24

The Electrical Safety (Delegation by Regulator) Amendment Regulation 2019 amends the Electrical Safety Regulation 2013 to prescribe the Work Health and Safety Prosecutor (WHS Prosecutor) under the *Work Health and Safety Act 2011* as a person to whom the Regulator can delegate functions under section 122B of the *Electrical Safety Act 2002*.

Under the *Work Health and Safety and Other Legislation Amendment Act 2011* the WHS Prosecutor automatically has the power to conduct prosecutions for offences under the *Work Health and Safety Act 2011*. As result of the Electrical Safety (Delegation by Regulator) Amendment Regulation 2019, the WHS Prosecutor will be able to prosecute offences under both the *Work Health and Safety and Other Legislation Amendment Act 2011* and the *Electrical Safety Act 2002*.

The Electrical Safety (Delegation by Regulator) Amendment Regulation 2019 commenced immediately after the commencement of the *Work Health and Safety and Other Legislation Amendment Act 2017*, section 51.²

6 Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019— SL No. 27

A best practice review of Workplace Health and Safety Queensland was conducted following fatalities at Dreamworld and an Eagle Farm construction site in 2016 (the Best Practice Review). The final report for the Best Practice Review was provided to Government in July 2017. Most of the proposed recommendations in the Best Practice Review relating to legislative amendment were given effect through the *Work Health and Safety and Other Legislation Amendment Act 2017* that was passed in October 2017.³

The explanatory notes state that the Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019 (the Amendment Regulation) gives effect to the Best Practice Review recommendations that introduce regulatory amendment to improve the safety of amusement devices.⁴

The Amendment Regulation amends the Work Health and Safety Regulation 2011 to:

- require major inspections of amusement devices by a competent person at specified intervals, generally every 10 years
- introduce mandatory elements that must be covered in instruction and training of amusement device operators and require operators to be determined as competent before operating any amusement device
- require additional information to be included in log books for amusement devices including details about the competent operators for the device, past inspections and enforcement notices issued in relation to the device by inspectors under relevant legislation
- introduce a safety case and licence regime for major amusement parks, requiring a comprehensive and integrated approach for managing safety of amusement devices at the parks.⁵

The Amendment Regulation commenced on 1 May 2019.⁶

² Electrical Safety (Delegation by Regulator) Amendment Regulation 2019, explanatory notes, p 3; Proclamation made under the *Work Health and Safety and Other Legislation Amendment Act 2017*.

³ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, explanatory notes, p 1.

⁴ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, explanatory notes, p 1.

⁵ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, explanatory notes, p 2.

⁶ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, clause 2.

6.1 Potential issue – rights and liberties of individuals

Under section 4(2)(a) of the *Legislative Standards Act 1992*, legislation should have sufficient regard to the rights and liberties of individuals.

An amusement park operator and employees have a number of duties and responsibilities imposed on them including: a requirement to undertake major inspections of amusement devices (clause 7); increased mandatory training requirements for ride operators (clause 5); additional information to be included in log books for amusement devices (clause 8); and the introduction of a safety case and licence regime (clause 11).

These additional requirements and duties will increase the regulatory and administrative burden on operators and employees. Operators and employees will be required to undertake additional tasks and will be subject to penalties for non-compliance. This can be regarded as potentially affecting their rights and liberties as individuals.

The explanatory notes state that the Amendment Regulation is expected to cost the industry \$31.8m over 10 years. According to the explanatory notes:

*... there are concerns about the capacity of the engineering industry to meet the new major inspection requirement, as there is currently only a small number of competent engineers undertaking inspections of amusement rides and engineers have experienced difficulties in obtaining professional indemnity insurance.*⁷

According to the explanatory notes the Amendment Regulation addresses these concerns by phasing in the major inspection requirement, providing time for the industry to engage 'suitably qualified engineers to carry out inspections'.⁸

Clause 13 of the Amendment Regulation provides that for an amusement device that was manufactured before 1 May 2009 and has not had a relevant inspection in the 10 years prior to commencement of the Amendment Regulation, the first major inspection must be carried out before 1 May 2021.⁹ This provides a two year transitional period for industry to comply with the major inspection requirement for those devices.

Given the serious consequences of non-compliance with safety requirements, the committee considers the additional requirements, including the 'major inspection' requirement, are reasonable and necessary measures to ensure a safe workplace. The committee therefore considers the legislation has sufficient regard to the rights and liberties of individuals.

6.2 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.¹⁰

Part of the rationale for this principle is to ensure sufficient parliamentary scrutiny of a delegated legislative power.¹¹

The existing Work Health Safety Regulation 2011 harmonised national work health and safety laws. It covered a wide range of work health and safety matters including: risk management and general

⁷ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, explanatory notes, p 3.

⁸ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, explanatory notes, p 3.

⁹ Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019, explanatory notes, p 3.

¹⁰ *Legislative Standards Act 1992*, section 4(5)(e).

¹¹ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p 170.

workplace management; hazardous work, for example demolition or diving work; construction work; asbestos; and major hazard facilities.¹²

The Amendment Regulation inserts a large number of penalties for offences into the Work Health and Safety Regulation 2011. The creation of offences and imposition of penalties, other than minor offences or penalties, may be regarded as having insufficient regard to the institution of Parliament. The OQPC Notebook states, 'The principal means for creating offences should always be through Acts of Parliament rather than delegated legislation'.¹³

The committee notes the penalties in this Amendment Regulation are commensurate with penalties for similar offences in the Work Health and Safety Regulation 2011. They include, for example, penalties for offences by operators and workers at licensed major hazard facilities, similar to those for workers at licenced major amusement parks in the Amendment Regulation. The committee also notes that the Amendment Regulation is consistent with the policy objectives of the Work Health and Safety Regulation 2011, namely to protect the safety of workers and to improve safety outcomes.

In considering whether the Amendment Regulation has sufficient regard to the institution of Parliament, the committee took into account the offence provisions currently in the Work Health and Safety Regulation 2011, and the importance of maintaining harmonisation with national occupational health and safety laws. The committee is satisfied that the Amendment Regulation has sufficient regard to the institution of Parliament.

6.3 Potential issue – proportionality of penalties

Consequences imposed by legislation should be proportionate and relevant to the actions to which those consequences are applied by the legislation. The OQPC Notebook states:

*Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*¹⁴

The regulation introduces a maximum penalty of 60 penalty units (\$7,833) for a number of offences that apply to operators. Where the operator is a corporation, the penalty would be 300 penalty units. Offences include:

- failing to identify and document amusement device incidents and amusement device hazards (section 608K)
- failing to conduct or document a safety assessment for all amusement devices at a major amusement park (section 608L)
- failing to implement risk control measures designed to minimise the magnitude and severity of an amusement park incident occurring (section 608M)
- failing to prepare or keep and give a copy (to the relevant body), an amusement device emergency plan for a major amusement park (section 608N)
- failing to test the amusement device emergency plan (section 608N)
- failing to implement the safety management system for amusement devices (section 608O).

Penalties of up to 36 penalty units (\$4,699.80) will apply to workers at major amusement parks, including for failing to comply with procedures, or failing to inform the operator about circumstances that may cause an amusement device incident and corrective action taken by the worker (section 608ZC).

¹² Work Health and Safety Regulation 2011, explanatory notes, pp 1-2, 7.

¹³ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 150-151.

¹⁴ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

In addition to those set out above, the Amendment Regulation introduced other offences maximum penalties ranging from 12.5 to 60 penalty units.

The explanatory notes offer the following regarding the aims and benefits of the offence provisions:

*The amendment regulation is primarily intended to prevent fatalities and serious injuries in the future as a result of improved safety standards. It is also likely to increase patronage at theme parks as a result of improved public confidence.*¹⁵

The committee considers that the penalties that apply are significant but reasonable considering the serious consequences of non-compliance. The committee also notes the considerable penalties for offences that already apply under the *Work Health and Safety Act 2011*. On balance, the committee believes that the penalties are proportionate to the offences.

6.4 Committee comment

The committee is satisfied that sufficient justification has been provided with regard to:

- the rights and liberties of individuals, considering the additional burden placed on individuals in order to comply
- the institution of Parliament, and
- the proportionality of penalties.

The committee notes the overall benefits provided by the Amendment Regulation and that the explanatory notes reported broad general support among stakeholders for the proposed changes.

7 Education (General Provisions) (Westmar State School) Amendment Regulation 2019 – SL No. 36

The Education (General Provisions) (Westmar State School) Amendment Regulation 2019 prescribes the Westmar State School as a prescribed state school in order for it to deliver a remote kindergarten program from term 2, 2019.

8 Explanatory notes

The potential FLP issues in the Work Health and Safety (Amusement Devices—Public Safety) Amendment Regulation 2019 were 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

June 2019

¹⁵ Explanatory notes, p 2.

Education, Employment and Small Business Committee

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