



Education, Employment and Small Business Committee

Report No. 31, 56th Parliament

Subordinate legislation tabled between 16 October 2019 and 4 February 2020

1 Aim of this report

This report summarises the committee's examination of subordinate legislation tabled between 16 October 2019 and 4 February 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (Legislative Standards Act).

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
214	Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019	20 November 2019	2 April 2020
237	Education (General Provisions) (Tambo State School) Amendment Regulation 2019	4 February 2020	30 April 2020
270	Electrical Safety (Codes of Practice) Amendment Notice 2019	4 February 2020	30 April 2020

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified in the Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019 or the Education (General Provisions) (Tambo State School) Amendment Regulation 2019.

Minor issues arise in relation to the Electrical Safety (Codes of Practice) Amendment Notice 2019 which are discussed below.

The explanatory notes tabled with the regulations comply with the requirements of section 24 of the Legislative Standards Act.

4 Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019 – SL 214

In June 2015 employer and worker representatives made a joint submission to the then Treasurer, Minister for Employment and Industrial Relations and Minister for Aboriginal and Torres Strait Islander Partnerships requesting a review of construction-related codes of practice including the Concrete Pumping Code of Practice 2005 (the Code).¹

¹ Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019, explanatory notes, p 1.

A Concrete Pumping Industry Steering Committee, which included worker representatives, employer representatives and government representatives, was established in April 2017 to review and update the Code.²

The explanatory notes provide that the majority of the updates to the Code are considered minor in nature or otherwise reflective of current best practice already being undertaken, and are not expected to increase regulatory burden or go beyond existing regulatory requirements.³

The objective of the Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019 (the Notice) is to update and remake the Concrete pumping Code of Practice 2005:

*... to ensure it is responsive to industry needs and reflects current best practice and consistent with the model WHS laws implemented in Queensland in 2012.*⁴

The Notice commenced on 2 December 2019.

The Notice was made pursuant to section 274(4) of the *Work Health and Safety Act 2011*. Section 274 is headed *Approved codes of practice* and provides in part:

(1) The Minister may approve a code of practice for the purposes of this Act and may vary or revoke an approved code of practice.

(3) A code of practice may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—

(a) with or without modification; or

(b) as in force at a particular time or from time to time.

(4) An approval of a code of practice, or an instrument varying or revoking an approved code of practice, has no effect unless the Minister gives notice of its making.

(4A) A notice under subsection (4) is subordinate legislation.

5 Education (General Provisions) (Tambo State School) Amendment Regulation 2019 – SL. 237

The objective of the Education (General Provisions) (Tambo State School) Amendment Regulation 2019 (Amendment Regulation) is to prescribe Tambo State School as a state school that can participate in the remote kindergarten program, allowing the school to deliver a remote kindergarten program from term 1 of 2020.

Under the 2018 *National Partnership Agreement on Universal Access to Early Childhood Education*, the Queensland Government committed to ensuring all children have the opportunity to access kindergarten prior to full time school.⁵

Access to Kindergarten for children in remote communities remains a challenge, with participation in 2018 estimated to be approximately 73.5 percent. This can be related to difficulties in attracting and retaining early childhood teachers and fluctuating cohorts of four year olds. In 2016, a Remote Kindergarten Pilot Program (the pilot) was introduced to trial the delivery of kindergarten to 11 prescribed state schools in remote communities.⁶

² Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019, explanatory notes, p 2.

³ Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019, explanatory notes, p 1.

⁴ Work Health and Safety (Codes of Practice) (Concrete Pumping) Amendment Notice 2019, explanatory notes, p 1.

⁵ Education (General Provisions) (Tambo State School) Amendment Regulation 2019, explanatory notes, p 1.

⁶ Education (General Provisions) (Tambo State School) Amendment Regulation 2019, explanatory notes, p 1.

The *Education (General Provisions) Act 2006* (EGP Act) provides that the minister may approve a program focused on literacy and numeracy, for preparing a child for education in the preparatory year, to be a kindergarten learning program for a prescribed state school or a prescribed non-state school. The *Education (General Provisions) Regulation 2017* (EGP Regulation) provides that the state schools mentioned in Schedule 4 are the state schools prescribed for section 419A(5) of the EGP Act. The state schools listed are those allowed to participate in the Remote Kindergarten Program to be delivered from prescribed state schools in remote communities.⁷

There are no early childhood programs provided in the Tambo community and the nearest approved kindergarten service is 101 kilometres by road in Blackall. Tambo State School (Tambo SS) meets the Remote Kindergarten Program eligibility criterion in that it is located at least 50 kilometres from the nearest Queensland Government approved kindergarten service.⁸ The Amendment Regulation amends the EGP Regulation to prescribe Tambo SS to deliver a Remote Kindergarten program for term 1, 2020.⁹

6 Electrical Safety (Codes of Practice) Amendment Notice 2019 – SL 270

At December 2019, there were five codes of practice made under the *Electrical Safety Act 2002* (ES Act). The following three codes were due to expire on 1 January 2020 following 10 years of operation:

- the Electrical Equipment Rural Industry Code of Practice 2010
- the Working Near Overhead and Underground Electrical Lines Code of Practice 2010, and
- the Works Code of Practice 2010.¹⁰

These three codes of practice all commenced on 1 January 2010. Under section 44(5) of the ES Act, codes of practice expire automatically 10 years after commencement. In September and October 2019, the Office of Industrial Relations conducted a limited review of the expiring codes of practice, including targeted consultation with key stakeholders, and examined the codes for technical accuracy, useability and readability.¹¹

Outcomes of the review led to a number of minor changes that have been included in the updated codes of practice.

The Electrical Safety (Codes of Practice) Amendment Notice approves the following codes:

- Electrical Safety Code of Practice 2020—Electrical Equipment Rural Industry
- Electrical Safety Code of Practice 2020—Working Near Overhead and Underground Electric Lines
- Electrical Safety Code of Practice 2020—Works.¹²

6.1 Fundamental legislative principle issues – sufficient regard to the institution of parliament

The Electrical Safety (Codes of Practice) Amendment Notice inserts three new codes into the Electrical Safety (Codes of Practice) Notice 2013, giving notice of the making of the codes by the minister.

Under section 4(5)(e) of the Legislative Standards Act, whether subordinate legislation has sufficient regard for the institution of Parliament depends on a range of factors, including whether it allows the sub-delegation of a power delegated by an Act only:

- if authorised by an Act, and

⁷ Education (General Provisions) (Tambo State School) Amendment Regulation 2019, explanatory notes, p 2.

⁸ Education (General Provisions) (Tambo State School) Amendment Regulation 2019, explanatory notes, p 1.

⁹ Education (General Provisions) (Tambo State School) Amendment Regulation 2019, explanatory notes, p 2.

¹⁰ Electrical Safety (Codes of Practice) Amendment Notice 2019, explanatory notes, p 1; *Electrical Safety Act 2002*, s 44(5).

¹¹ Electrical Safety (Codes of Practice) Amendment Notice 2019, explanatory notes, p 1.

¹² Electrical Safety (Codes of Practice) Amendment Notice 2019, explanatory notes, p 2.

- in appropriate cases and to appropriate persons.¹³

Authorised by an Act

Section 44 of the ES Act provides that the minister may make a code of practice that states a way of discharging a person's electrical safety duty. The approval of a code of practice, or an instrument amending or repealing a code of practice, has no effect unless the minister gives notice of its making and any such notice is subordinate legislation. Thus, the sub-delegation is authorised.

Further, any concerns that the Parliament might have about the content might be met by the ability to move disallowance of the notice.

Appropriate cases and to appropriate persons

In considering whether it is appropriate for matters to be dealt with by an instrument (in this instance, each of the codes) that is not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees will consider:

- the importance of the subject dealt with
- the commercial or technical nature of the subject-matter, and
- the practicality or otherwise of including that matter entirely in subordinate legislation.¹⁴

Availability of document and parliamentary scrutiny

Pursuant to section 44(6) of the ES Act, the minister must ensure that a copy of each of the codes is available for inspection at each department office dealing with electrical safety, during normal business hours.

The minister has provided information about the reasons for and nature of the changes to the codes in the explanatory notes. This helps to ensure that Queenslanders and the Parliament are informed.

Importantly, as noted above, a code of practice has no effect unless the minister gives notice of its making. Any such notice is subordinate legislation. Any concerns that the Parliament might have about the content might be lessened by the ability to move disallowance of the notice.

Committee comment

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

¹³ Section 4(5)(e) of the *Legislative Standards Act 1992*.

¹⁴ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p 10, paras 1.65-1.67.

7 Recommendation

The committee recommends that the Legislative Assembly note this report.



Ms Leanne Linard MP

Chair

March 2020

Education, Employment and Small Business Committee

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