

Education, Employment and Training Committee

Report No. 9, 57th Parliament

Subordinate legislation tabled between 25 February 2021 and 17 June 2021

1 Aim of this report

This report summarises the findings of the Education, Employment and Training Committee (the committee) following its examination of the subordinate legislation within its portfolio areas tabled between 25 February 2021 and 17 June 2021. 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 (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),⁴ and the compliance of the human rights certificates with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
54	Work Health and Safety (Codes of Practice) (Scaffolding) Amendment Notice 2021	15 June 2021	27 October 2021
59	Workers' Compensation and Rehabilitation (QOTE) Notice 2021	17 June 2021	16 November 2021

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ LSA, part 4. Section 24 sets out the information that must be included in the explanatory notes for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁵ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister's opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister's opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the policy, consistency with FLPs, human rights compatibility, or lawfulness of SL 2021 No. 54 and SL 2021 No. 59.

The committee considered that the explanatory notes tabled with the two items of subordinate legislation comply with the requirements of part 4 of the LSA. Further, 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.

A brief overview of the subordinate legislation is provided below.

4 SL No. 54 - Work Health and Safety (Codes of Practice) (Scaffolding) Amendment Notice 2021

4.1 Objectives

The notice revokes the *Scaffolding Code of Practice 2009* and approves the *Scaffolding Code of Practice 2021* in its place.⁶ The notice is made pursuant to s 274(4) of the *Work Health and Safety Act 2011*.⁷

According to the explanatory notes, in June 2015, employer and worker representatives requested a review of construction-related codes of practice, including the *Scaffolding Code of Practice 2009*, to ensure codes of practice were responsive to industry needs and safety concerns, and reflected best practice in the industry.⁸ A Scaffolding Industry Steering Committee (including worker, employer and government representatives) reviewed and updated the Scaffolding Code of Practice.⁹

The explanatory notes state that the majority of the amendments to the Scaffolding Code of Practice are considered minor in nature or otherwise reflective of current best practice in the scaffolding industry.¹⁰ Some of the key changes to the code include:

- A new table recommends when an engineer, rather than a scaffolder or competent person, should design, verify and undertake the initial inspection of various scaffolds. These recommendations are based on the level of risk and largely reflect current industry practice.
- A requirement for 2 means of access and egress for external perimeter scaffolds over a certain size, excluding detached dwellings. One means of access and egress should be suitable for emergency stretcher access.
- A requirement to minimise the step height from a scaffold stair module on to a working platform so it is no more than 300 millimetres, where there is a change in direction between landings.
- An amendment to advise that where it has been identified that non-destructive testing (NDT) for cracks in high stress areas of suspended scaffold components is needed to identify cracks not easily visible, the NDT should be conducted every 3 years.¹¹

The explanatory notes state that there will be some increased costs to industry associated with these new requirements.¹²

⁶ SL 2021 No. 54, ss 4, 5.

⁷ Section 274, of the *Work Health and Safety Act 2011* provides, in part, that: '(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; and (4A) A notice under subsection (4) is subordinate legislation'.

⁸ SL 2021 No. 54, explanatory notes, p 1.

⁹ SL 2021 No. 54, explanatory notes, p 3.

¹⁰ Explanatory notes, p 2.

¹¹ WorkSafe, Scaffolding Code of Practice, <https://www.worksafe.qld.gov.au/laws-and-compliance/codes-of-practice/scaffolding-code-of-practice>.

¹² SL 2021 No. 54, explanatory notes, p 2.

5 SL No. 59 - Workers' Compensation and Rehabilitation (QOTE) Notice 2021

5.1 Objectives

Compensation entitlements of injured workers and dependants of deceased workers under the *Workers' Compensation and Rehabilitation Act 2003* are subject to indexation in accordance with increases in Queensland Ordinary Time Earnings (QOTE) to ensure the relative value of those amounts over time.

Under the *Workers' Compensation and Rehabilitation Act 2003*, the Workers' Compensation Regulator must, before the start of a financial year, notify the QOTE figure for the financial year and the percentage difference in QOTE for the financial year compared to QOTE for the previous financial year.¹³ Such a notice is subordinate legislation.¹⁴

The explanatory notes state that QOTE for 2020-21 was \$1,609.30. According to the latest Australian Statistician's report released on 25 February 2021, QOTE will increase to \$1,615.40 in 2021-22, an increase of 0.38%.¹⁵

6 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP
Chair

August 2021

Education, Employment and Training Committee

Chair	Ms Kim Richards MP, Member for Redlands
Deputy Chair	Mr James Lister MP, Member for Southern Downs
Members	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

¹³ *Workers' Compensation and Rehabilitation Act 2003*, s 10A(2).

¹⁴ *Workers' Compensation and Rehabilitation Act 2003*, s 10A(4).

¹⁵ SL 2021 No. 59, explanatory notes, p 1.