

Education, Employment and Training Committee

Report No. 12, 57<sup>th</sup> Parliament

Subordinate legislation tabled between 18 June 2021 and 9 August 2021

**1 Aim of this report**

This report summarises the Education, Employment and Training Committee's findings following its examination of subordinate legislation within its portfolio areas tabled between 18 June 2021 and 9 August 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),<sup>1</sup> its compatibility with human rights,<sup>2</sup> and its lawfulness.<sup>3</sup> It also reports on the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).<sup>4</sup>

**2 Subordinate legislation examined**

| No. | Subordinate legislation   | Date tabled   | Disallowance date* |
|-----|---|---------------|--------------------|
| —   | Education and Care Services National Amendment Regulations 2021 (made under the Education and Care Services National Law) | 9 August 2021 | 17 November 2021   |

\* 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**

No significant issues regarding policy, consistency with FLPs or the lawfulness of the Education and Care Services National Amendment Regulations 2021 (the Amendment Regulations) were identified.

The Amendment Regulations are not 'subordinate legislation' as the term is used in various Queensland Acts. Explanatory notes were not required to accompany the Amendment Regulations and consequently the committee has not reported on the compliance of any explanatory notes with the *Legislative Standards Act 1992* (LSA) as would usually occur for subordinate legislation. In the absence of explanatory notes, the committee sought further information from the Department of

<sup>1</sup> Section 4 of the *Legislative Standards Act 1992* 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.

<sup>2</sup> 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.

<sup>3</sup> *Parliament of Queensland Act 2001*, s 93.

<sup>4</sup> 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)).

Education (department). A written brief on the legislation provided by the department is published on the committee's webpage.<sup>5</sup>

The committee considers that the Amendment Regulations raise no human rights issues. The human rights certificate tabled with the Amendment Regulations provide a sufficient level of information to facilitate understanding of the Amendment Regulations in relation to compatibility with human rights.<sup>6</sup>

## **4 Education and Care Services National Amendment Regulations 2021 (made under the Education and Care Services National Law)**

### **4.1 Objectives**

The Amendment Regulations amend the Children's Education and Care Services National Regulations (the National Regulations) to:

- require an approved provider to display the certificate about the ratings of the service in the form provided by the regulatory authority (ie the chief executive of the Department of Education) or the national authority (ie the Australian Children's Education and Care Quality Authority)
- ensure consistency between provisions relating to authorisations for transportation following amendments made by the Education and Care Services National Amendment Regulations 2020.<sup>7</sup>

The Amendment Regulations also make other changes that do not apply in Queensland, including for example, extending to 31 December 2023 certain transitional workforce provisions that are due to expire on 31 December 2021.

### **4.2 Legislative background**

In December 2009, the Council of Australian Governments agreed to establish a National Quality Framework for early childhood education and care and outside school hours care services to provide a consistent, national approach to the regulation of providers and set minimum quality standards for service delivery. The National Quality Framework consists of the *Education and Care Services National Law* (the National Law) and National Regulations, and establishes a national scheme for the regulation of education and care services for children.<sup>8</sup>

The Amendment Regulations were made by the Education Council (a Ministerial Council), under ss 301 and 324 of the National Law, as applied by the law of the states and territories. For Queensland, the relevant Act is the *Education and Care Services National Law (Queensland) Act 2011*. Sections 301 and 324 of the National Law empower the Education Council to make regulations for purposes including matters to support the National Law, transitional matters and specific provisions which apply to individual jurisdictions.

Section 302 of the National Law provides that, for the National Regulations take effect, they must be published on the New South Wales Legislation website.<sup>9</sup> Section 303 requires the member of the

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<sup>5</sup> <https://www.parliament.qld.gov.au/work-of-committees/committees/EETC/inquiries/current-inquiries/SubLeg2020>

<sup>6</sup> HRA, s 41. The Amendment Regulations also include minor technical amendments.

<sup>7</sup> Education and Care Services National Amendment Regulations 2021, Human Rights Certificate, pp 1-3.

<sup>8</sup> Education and Care Services National Amendment Regulations 2021, Human Rights Certificate, p 1.

<sup>9</sup> The amendment regulations were published on the New South Wales Legislation website on 16 July 2021, see <https://legislation.nsw.gov.au/view/html/inforce/current/sl-2021-0380>.

Ministerial Council representing a participating jurisdiction to table a regulation made under the National Law in the parliament of the participating jurisdiction.<sup>10</sup>

### **4.3 Policy background**

The Education Council agreed on 7 July 2021 to amendments to the National Regulations related to:

- display of quality ratings
- transport of children
- workforce transitional provisions.<sup>11</sup>

#### **4.3.1 Display of quality ratings certificate**

Under the National Law, it is an offence for an approved provider of an education and care service to fail to display the rating of the service in a position that is clearly visible from the main entrance to the service premises.<sup>12</sup> The National Regulations prescribe the information about the rating of the service that must be displayed,<sup>13</sup> in particular, the current rating levels for each of the quality areas stated in the National Quality Standard and the overall rating of the service.

The Amendment Regulations insert a new requirement for an approved education and care service provider to display a rating certificate issued by or on behalf of the chief executive of the Department of Education as the regulatory authority, or if Australian Children's Education and Care Quality Authority (ACECQA) has given the service the highest rating level, the certificate issued by ACECQA. The amendment only applies to an approved provider issued a rating certificate on or after 30 July 2021.<sup>14</sup> The Amendment Regulations prescribe a penalty of \$2,000 for failure to comply.<sup>15</sup>

The human rights certificate tabled with the Amendment Regulations states that the amendments are needed as there was previously no prescribed format for the display of information about the rating of the service which 'increases the risk of inaccuracy, and may cause confusion for families with inconsistent formats being displayed by different services'.<sup>16</sup>

This amended regulation came into effect on 30 July 2021.

#### **4.3.2 Transportation of children**

The Amendment Regulations include provisions<sup>17</sup> to ensure effective interaction between provisions of the National Regulations concerning authorisations for transportation that were introduced by the Education and Care Services National Amendment Regulations 2020 (which commenced on 1 October 2020) and other provisions of the National Regulations related to transportation of children.<sup>18</sup>

The changes to the National Regulations in 2020 were made to ensure education and care services that provide transportation have specific transport related policies and procedures in place, including conducting risk assessments and obtain written authorisation for the transportation of children.

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<sup>10</sup> The amendment regulations were tabled in the Queensland Parliament on 9 August 2021, with a disallowance date of 17 November 2021.

<sup>11</sup> Australian Children's Education and Care Quality Authority, Education and Care National Amendment Regulations 2021, 19 July 2021, <https://www.acecqa.gov.au/latest-news/education-and-care-national-amendment-regulations-2021>.

<sup>12</sup> Education and Care Services National Law (Queensland), s 172(d).

<sup>13</sup> Education and Care Services National Regulations, s 173(1)(d).

<sup>14</sup> Education and Care Services National Amendment Regulations 2021, cl 22, proposed new s 412.

<sup>15</sup> Education and Care Services National Amendment Regulations 2021, cl 10, proposed new s 173(3).

<sup>16</sup> Education and Care Services National Amendment Regulations 2021 Human Rights Certificate, p 3.

<sup>17</sup> Education and Care Services National Amendment Regulations 2021, regulations 5–9.

<sup>18</sup> Australian Children's Education and Care Quality Authority, Education and Care National Amendment Regulations 2021, 19 July 2021, <https://www.acecqa.gov.au/latest-news/education-and-care-national-amendment-regulations-2021>.

Consequential amendments were also made to existing excursion requirements where they involve transport, to ensure they are clear and consistent.<sup>19</sup>

The Amendment Regulations clarify circumstances that a child can leave the service premises if the child is transported by the service or on transportation arranged by the service, and prescribe record keeping requirements for authorisations given for the transportation of children.<sup>20</sup>

These amended regulations came into effect on 1 October 2021.

#### **4.3.3 Workforce transitional provisions**

Transitional workforce provisions under Chapter 7 of the National Regulations were in place when the National Quality Framework was introduced in 2012. These provisions were introduced to address the disparity between workforces in jurisdictions, particularly in rural and remote areas, as well as the difficulties in securing early childhood teachers.<sup>21</sup>

Recognising that workforce challenges in some areas have been exacerbated by the COVID-19 pandemic, the Education Council agreed to amendments to extend transitional workforce provisions in the National Regulations until the end of 2023, for those jurisdictions which have identified a need for them to continue.<sup>22</sup>

In the human rights certificate tabled with Amendment Regulations, the Minister states that Queensland has not identified a need for continuation of the provisions.<sup>23</sup> Consequently the Amendment Regulations do not extend the date that these provisions apply in Queensland, where the expiry date for the transitional workforce provisions is 31 December 2021.<sup>24</sup>

The department stated in a written brief on the Amendment Regulations that ‘since their introduction in 2012, the transitional provisions had been extended twice (in 2017 and 2019) giving the sector almost a decade to comply’.<sup>25</sup>

#### **4.4 Consultation**

The department advised that:

- All jurisdictions have been consulted as part of the policy and drafting process for the Amendment Regulations.
- The Australasian Parliamentary Counsels’ Committee was consulted on the Amendment Regulations in accordance with the Protocol on Drafting National Uniform Legislation.<sup>26</sup>

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<sup>19</sup> See Education, Employment and Training Committee Report No. 5, 57<sup>th</sup> Parliament, Subordinate legislation tabled between 9 September 2020 and 14 September 2020, <https://documents.parliament.qld.gov.au/TableOffice/TabledPapers/2021/5721T322.pdf>.

<sup>20</sup> Education and Care Services National Amendment Regulations 2021, regulations 5–9.

<sup>21</sup> Department of Education, correspondence dated 9 September 2021, p 2.

<sup>22</sup> Australian Children’s Education and Care Quality Authority, Education and Care National Amendment Regulations 2021, 19 July 2021, <https://www.acecqa.gov.au/latest-news/education-and-care-national-amendment-regulations-2021>.

<sup>23</sup> Education and Care Services National Amendment Regulations 2021 Human Rights Certificate, p 3.

<sup>24</sup> Education and Care Services National Amendment Regulations 2021; Australian Children’s Education and Care Quality Authority, Education and Care National Amendment Regulations 2021, 19 July 2021, <https://www.acecqa.gov.au/latest-news/education-and-care-national-amendment-regulations-2021>.

<sup>25</sup> Department of Education, correspondence dated 9 September 2021, p 4.

<sup>26</sup> Department of Education, correspondence dated 9 September 2021, p 2.

#### **4.5 Fundamental legislative principle issues**

##### Committee comment

The committee identified no issues regarding the Amendment Regulations' consistency with FLPs or lawfulness.

#### **4.6 Explanatory notes**

As noted above, explanatory notes were not required to accompany the Amendment Regulations.

#### **4.7 Human rights considerations**

##### Committee comment

The committee identified no issues regarding the compatibility of the Amendment Regulations with the HRA.

##### **Human rights certificate**

A human rights certificate was tabled with the Amendment Regulations. The certificate contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

### **5 Recommendation**

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP

**Chair**

**October 2021**

#### **Education, Employment and Training Committee**

**Chair**

**Deputy Chair**

**Members**

Ms Kim Richards MP, Member for Redlands, Chair

Mr James Lister MP, Member for Southern Downs, Deputy Chair

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