

## Community Support and Services Committee

### Report No. 13, 57th Parliament

#### Subordinate legislation tabled between 26 May 2021 and 31 August 2021

#### 1 Aim of this report

This report summarises the Community Support and Services Committee's (committee) findings following its examination of the subordinate legislation within its portfolio areas tabled between 26 May 2021 and 31 August 2021. 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* (LSA).<sup>1</sup>

The report outlines the committee's consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificate tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
73	Disability Services (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
74	Adoption (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
87	Housing Legislation (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
119	Public Records (Queensland Coal Mining Board of Inquiry) Amendment Regulation 2021	31 August 2021	18 November 2021
120	Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021	31 August 2021	18 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

The committee identified no significant issues regarding the policy, consistency with FLPs or the lawfulness of the subordinate legislation.

The committee considered potential human rights implications in relation to the:

- Adoption (Fees) Amendment Regulation 2021, and
- Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021.

<sup>1</sup> LSA, Part 4.

<sup>2</sup> HRA, s 41.

However, in each instance, the committee is satisfied that the relevant provisions have sufficient regard to the rights and liberties of individuals and institution of Parliament, in the circumstances. The committee is also satisfied that any associated human rights limitations are reasonable and demonstrably justifiable.

The committee considers that the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

The committee considers that 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 its compatibility with human rights.

## **4 Disability Services (Fees) Amendment Regulation 2021 (SL 73)**

The objective of the Disability Services (Fees) Amendment Regulation 2021 (SL No. 73) is to increase the fees in the Disability Services Regulation 2017 in the following ways:

- for a National Disability Insurance Scheme (NDIS) worker screening clearance – in accordance with a cost model to achieve cost recovery<sup>3</sup>
- for other fees associated with an NDIS worker screening clearance and the fees associated with a State disability worker screening clearance – in accordance with the government indexation rate of 1.7%.<sup>4</sup>

Apart from the NDIS worker screening clearance which was amended in line with a cost recovery model, all the other fees in the regulation come within the 1.7% range.

### **4.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. The explanatory notes comply with part 4 of the LSA.

### **4.2 Human rights considerations and certificate**

The committee considers that the subordinate legislation is compatible with human rights.

A human rights certificate was tabled with the subordinate legislation, in accordance with section 41 of the HRA. The committee considers that the certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **5 Adoption (Fees) Amendment Regulation 2021 (SL 74)**

The objective of the Adoption (Fees) Amendment Regulation 2021 (SL No. 74) is to apply the government indexation rate to fees and charges in the Adoption Regulation 2020.

All the fee changes come within the 1.7% indexation rate.

### **5.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. The explanatory notes comply with part 4 of the LSA.

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<sup>3</sup> The fee for an NDIS clearance rose from \$117 to \$120, an increase of 2.6%: SL No. 73, s 4; SL No. 73, explanatory notes, p 2.

<sup>4</sup> SL No. 73, explanatory notes, pp 1-2.

## **5.2 Human rights considerations**

Section 8 of the 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 section 13 of that Act.

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 of the HRA sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

### **5.2.1 Property rights**

The human rights certificate states that the increase in fees brought about by SL No. 74 limits the right to property because it results in a deprivation of property in the form of money.

The human rights certificate advises that the cost of providing adoption services is subsidised by the Queensland Government because full cost recovery would be prohibitive for those seeking to adopt. The human right certificate continues:

... Imposing only minimal fees in comparison to the full cost of providing the service makes adoption services in Queensland accessible to a greater number of people. Fees increased for indexation, such as the fee increase proposed, occur annually, are routine and are not arbitrarily applied. These increases in fees are intended to maintain the value of the fees over time relative to the anticipated increase in associated costs.<sup>5</sup>

The limitation on the right to property is considered justified because the fee increases help maintain the value of fees over time and enable the Queensland Government to provide adoption services that 'serve the best interest of both prospective families and adoptive children'.<sup>6</sup>

#### Committee comment

In light of the Minister's explanation, the committee is satisfied that any limitation on a person's property rights is reasonable and demonstrably justified.

## **5.3 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, in accordance with section 41 of the HRA. The committee considers that the certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **6 Housing Legislation (Fees) Amendment Regulation 2021 (SL 87)**

The objective of the Housing Legislation (Fees) Amendment Regulation 2021 (SL No. 87) is to apply the government indexation rate of 1.7% to fees and charges in the following regulations:

- Housing Regulation 2015
- Residential Services (Accreditation) Regulation 2018
- Residential Tenancies and Rooming Accommodation Regulation 2009
- Retirement Villages Regulation 2018.<sup>7</sup>

All the fee changes come within the 1.7% indexation rate.

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<sup>5</sup> SL No. 74, human rights certificate, p 2.

<sup>6</sup> SL No. 74, human rights certificate, p 2.

<sup>7</sup> SL No. 87, explanatory notes, p 1.

## **6.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. The explanatory notes comply with part 4 of the LSA.

## **6.2 Human rights considerations and certificate**

The committee considers that the subordinate legislation is compatible with human rights.

A human rights certificate was tabled with the subordinate legislation, in accordance with section 41 of the HRA. The committee considers that the certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **7 Public Records (Queensland Coal Mining Board of Inquiry) Amendment Regulation 2021 (SL 119)**

Public authorities are responsible for ensuring the safe custody and preservation of records in their possession.<sup>8</sup> The responsible public authority, for a public record, is set out in the *Public Records Act 2002* (PR Act). In some instances, it is the public authority prescribed under a regulation.<sup>9</sup> If a public authority ceases to exist, and the functions of the public authority are not to be carried out by another public entity, the records of the public authority must be given to the public authority that is the relevant public authority under a regulation.<sup>10</sup>

The Queensland Coal Mining Board of Inquiry (Board) was established on 22 May 2020 under the *Coal Mining Safety and Health Act 1999*. It ceased to exist on 31 May 2021.<sup>11</sup>

The Public Records (Queensland Coal Mining Board of Inquiry) Amendment Regulation 2021 (SL No. 119) amends the Public Records Regulation 2014 to prescribe Resources Safety and Health Queensland as the relevant and responsible public authority for public records of the Board.<sup>12</sup>

## **7.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. The explanatory notes comply with part 4 of the LSA.

## **7.2 Human rights considerations and certificate**

The committee considers that the subordinate legislation is compatible with human rights.

A human rights certificate was tabled with the subordinate legislation, in accordance with section 41 of the HRA. The committee considers that the certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **8 Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021 (SL 120)**

On 8 September 2020, the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020* was passed in the Legislative Assembly. The Act provides for the legal

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<sup>8</sup> PR Act, s 8(1).

<sup>9</sup> PR Act, s 15.

<sup>10</sup> PR Act, s 8(3)(b).

<sup>11</sup> SL No. 119, explanatory notes, p 1.

<sup>12</sup> SL No. 119, ss 3-4; SL No. 119, explanatory notes, p 1.

recognition of Ailan Kastom traditional child rearing practice, through the making of a cultural recognition order.<sup>13</sup>

The objective of the Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021 (SL No. 120) is:

... to provide safeguards against the potential for fraud and undue influence in the making of an application for a cultural recognition order for a child and a request for confidential information; and to support the commissioner in being satisfied that each birth parent and cultural parent gave free consent by requiring the following:

- evidence to accompany an application for cultural recognition order for a child and a request for confidential information as proof of a person's identity; and
- statements made as part of an application for a cultural recognition order be witnessed in the presence of an authorised witness.<sup>14</sup>

### **8.1 Fundamental legislative principle issues and explanatory notes**

The committee identified no issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. The explanatory notes comply with part 4 of the LSA.

### **8.2 Human rights considerations**

Section 8 of the 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 section 13 of that Act.

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 of the HRA sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

#### **8.2.1 Right to privacy and reputation**

The Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Regulation 2021 may interfere with a person's right to privacy,<sup>15</sup> because specific proof of identity documents are required for certain applications and to request certain information or documents, and consenting statements must be witnessed by approved witnesses.

The human rights certificate provides a justification for these limitations on the right to privacy:

Given the significance of the legal effects of a cultural recognition order (the permanent transfer of parentage), the purpose of the requirement for identity documents is to ensure that the commissioner is able to verify the identity of parties to a cultural recognition order; and to ensure that information about the order, which is generally highly sensitive and confidential, can only be accessed by those people entitled to that information.

Requiring the production of identity documents is a reasonable method of achieving this purpose and strikes a fair balance between the right to privacy of the person giving the information, the privacy of the parties to the cultural recognition order, and the ability of the Commissioner to verify the identity of the parties.

... the purpose of requiring witnesses is to support full, free and informed consent, and to ensure the correct person has signed the statement. Given the significance of the legal impact of a cultural recognition ... this requirement is considered necessary and justified.<sup>16</sup>

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<sup>13</sup> SL No. 120, explanatory notes, p 1.

<sup>14</sup> SL No. 120, explanatory notes, p 2.

<sup>15</sup> See HRA, s 25.

<sup>16</sup> SL No. 120, human rights certificate, p 2.

Committee comment

The committee considers that any limitation on a person's right to privacy is reasonably and demonstrably justified in the circumstances.

**8.2.2 Protection of families and children**

That certain people have to provide identifying documents and witnessed consenting statements has the potential to limit the right to protection of families and children<sup>17</sup> because:

... some prospective applicants may be prevented from applying for a cultural recognition order if they do not have the necessary identity documents or have limited access to an approved witness. This may prevent an order being made even though legal recognition of the Torres Strait Islander cultural practice may be in the best interests of the child.<sup>18</sup>

On balance, considering the legal significance of the order and the need for the commissioner to verify the identity of applicants and ensure that free consent was given, ensuring the application process for legal recognition contains such safeguards outweighs any limitation of the right relating to the protection of families and children.<sup>19</sup>

Committee comment

The committee is satisfied that any impact on the right to protection of families and children is reasonable and justified.

**8.3 Human rights certificate**

A human rights certificate was tabled with the subordinate legislation, in accordance with section 41 of the HRA. The committee considers that the certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

**9 Recommendation**

The committee recommends that the House notes this report.



Corrine McMillan MP

**Chair**

**November 2021**

**Community Support and Services Committee**

<b>Chair</b>	Ms Corrine McMillan, Member for Mansfield
<b>Deputy Chair</b>	Mr Stephen Bennett, Member for Burnett
<b>Members</b>	Mr Michael Berkman, Member for Maiwar
	Mr Jon Krause, Member for Scenic Rim
	Ms Cynthia Lui, Member for Cook
	Mr Robert Skelton, Member for Nicklin

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<sup>17</sup> See HRA, s 26.

<sup>18</sup> SL No. 120, human rights certificate, p 3.

<sup>19</sup> SL No. 120, human rights certificate, pp 3-4.

