

## Education, Employment and Training Committee

### Report No. 7, 57<sup>th</sup> Parliament

## Subordinate legislation tabled between 27 November 2020 and 24 February 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 27 November 2020 and 24 February 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 explanatory notes with the *Legislative Standards Act 1992* (LSA),<sup>4</sup> and the compliance of the human rights certificates with the *Human Rights Act 2019* (HRA).<sup>5</sup>

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
10	Industrial Relations (Tribunals) Amendment Rule 2021	23 February 2021	13 May 2021
12	Electrical Safety (Codes of Practice) and Other Legislation Amendment Notice 2021	24 February 2021	25 May 2021

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

<sup>1</sup> 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.

<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> 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).

<sup>5</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)).

### 3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with FLPs or the lawfulness of SL No. 10 and SL No. 12 were identified. The committee considers the explanatory notes tabled with the subordinate legislation generally comply with the requirements of s 24 of the LSA.

The committee considers that SL No. 10 and SL No. 12 raise no human rights issues. 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.<sup>6</sup>

### 4 SL No. 10 – Industrial Relations (Tribunals) Amendment Rule 2021

#### 4.1 Objectives

According to the explanatory notes, the objectives of SL No. 10 of 2021 are to:

- align the Industrial Relations (Tribunals) Rule 2011 (IR Rules) with amendments made to the *Industrial Relations Act 2016* by the *Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020* (the Wage Theft Act), and
- create greater efficiencies in tribunal proceedings and to reflect current practice, including to respond to changes brought about by technological change.<sup>7</sup>

##### 4.1.1 Wage theft amendments

The Wage Theft Act amended the *Industrial Relations Act 2016* to provide for new simplified and low cost wage recovery processes through the Industrial Magistrates Court. To support these amendments, the amendment rule inserts new Part 3B in the IR Rules which sets out:

- how these claims are to be started<sup>8</sup>
- simplified procedures that can apply<sup>9</sup>
- conciliation processes that can apply<sup>10</sup>
- settlement conference procedures<sup>11</sup>
- procedures for hearing the claim<sup>12</sup>
- other matters such as costs and fees for copying documents.<sup>13</sup>

The explanatory notes state that ‘these amendments are designed to provide necessary rules and guidance to regulate the practice and procedures to be followed for wage recovery processes adopted through the Wage Theft Act’.<sup>14</sup>

##### 4.1.2 Other amendments

SL No. 10 of 2021 makes a range of other amendments to the IR Rules that are largely administrative and procedural in nature. These amendments relate to, for example:

- filing documents (eg allowing imaged documents to be electronically filed)<sup>15</sup>

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<sup>6</sup> *Human Rights Act 2019*, s 41.

<sup>7</sup> SL No. 10 of 2021, explanatory notes, p 1.

<sup>8</sup> SL No. 10 of 2021, s 38 (Division 2).

<sup>9</sup> SL No. 10 of 2021, s 38 (Division 3).

<sup>10</sup> SL No. 10 of 2021, s 38 (Division 4).

<sup>11</sup> SL No. 10 of 2021, s 38 (Division 5).

<sup>12</sup> SL No. 10 of 2021, s 38 (Division 6).

<sup>13</sup> SL No. 10 of 2021, s 38 (Division 7).

<sup>14</sup> SL No. 10 of 2021, explanatory notes, p 1.

<sup>15</sup> SL No. 10 of 2021, s 7.

- signing of documents (eg allowing for electronic signature)<sup>16</sup>
- serving documents (eg removing the requirement to produce original documents, special requirements for service by email)<sup>17</sup>
- how documents are to be inspected under an attendance notice<sup>18</sup>
- changes in terminology (eg replacing ‘application’ with ‘proceeding’ in some sections).<sup>19</sup>

The explanatory notes describe these changes as ‘necessary to formalise and reflect current practice’ and to ‘respond to changes brought about by technological change’.<sup>20</sup>

SL No 10 of 2021 introduces two new types of fees:

- certifying a copy of a record of the court or commission, or a document filed in the registry - \$70.50
- retrieval of an archived file - \$28.80 for each file.<sup>21</sup>

The new fees are commensurate with current fees payable under various regulations for such processes in Queensland’s courts.<sup>22</sup>

#### **4.2 Fundamental legislative principles considerations**

The committee identified no issues regarding the subordinate legislation’s consistency with FLPs or its lawfulness.

#### **4.3 Explanatory notes**

According to s 24(1)(d) of the LSA, explanatory notes for subordinate legislation must include, in clear and precise language, a brief statement of the way the policy objectives will be achieved by the legislation and why this way of achieving them is reasonable and appropriate.

In this regard, the explanatory notes state only the following:

The Industrial Relations (Tribunals) Amendment Rule 2021 achieves the policy objectives by:

- providing necessary rules and guidance to regulate the practice and procedure to be followed for wage recovery processes adopted through the Wage Theft Act; and
- by making minor amendments to reflect current practice.<sup>23</sup>

The committee considers that it would have been beneficial for the explanatory notes to have provided more detail about the content of the amendment rule, in order to better inform the community about the proposed legislation. A summary of the amendments, or examples of key changes, would have been useful in this regard.

The committee considers that the explanatory notes otherwise comply with part 4 of the LSA.

#### **4.4 Human Rights Act 2019 considerations**

The committee identified no issues regarding the compatibility of SL No. 10 of 2021 with the HRA.

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<sup>16</sup> SL No. 10 of 2021, s 8.

<sup>17</sup> SL No. 10 of 2021, ss 9, 10 and 15.

<sup>18</sup> SL No. 10 of 2021, s 20.

<sup>19</sup> See, for example, SL No. 10 of 2021, s 24.

<sup>20</sup> SL No. 10 of 2021, explanatory notes, pp 1, 2.

<sup>21</sup> SL No. 10 of 2021, s 58.

<sup>22</sup> Queensland Courts, Fees in the courts, <https://www.courts.qld.gov.au/about/fees/fees-in-the-courts>.

<sup>23</sup> SL No. 10 of 2021, explanatory notes, pp 1, 2.

## Human rights certificate

The committee considers that the human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

## 5 SL No. 12 Electrical Safety (Codes of Practice) and Other Legislation Amendment Notice 2021

### 5.1 Objectives

The objective of SL No. 12 of 2021 is to give notice of:

- new versions of the following codes of practice under the *Work Health and Safety Act 2011* –
  1. Abrasive Blasting Code of Practice
  2. Confined Spaces Code of Practice
  3. Demolition work Code of Practice
  4. Excavation work Code of Practice
  5. First Aid in the Workplace Code of Practice
  6. Hazardous Manual Tasks Code of Practice
  7. How to Manage and Control Asbestos in the Workplace Code of Practice
  8. How to Manage Work Health and Safety Risks Code of Practice
  9. How to Safely Remove Asbestos Code of Practice
  10. Labelling of Workplace Hazardous Chemicals Code of Practice
  11. Managing Noise and Preventing Hearing Loss Code of Practice
  12. Managing Risks of Hazardous Chemicals in the Workplace Code of Practice
  13. Managing Risks of Plant in the Workplace Code of Practice
  14. Managing the Risks of Falls at Workplaces Code of Practice
  15. Managing the Work Environment and Facilities Code of Practice
  16. Preparation of Safety Data Sheets for Hazardous Chemicals Code of Practice
  17. Safe Design of Structures Code of Practice
  18. Spray Painting and Powder Coating Code of Practice
  19. Welding Processes Code of Practice
  20. Work Health and Safety Consultation, Coordination Code of Practice
- a new version of the Managing Electrical Risks in Workplace Code of Practice under the *Electrical Safety Act 2002*.

The codes have been updated to reflect the outcomes of a review of model codes of practice by Safe Work Australia (SWA). According to the explanatory notes, the scope of SWA's review of the national model codes was 'limited to examining the technical accuracy, readability and useability of the codes'.<sup>24</sup> Content or policy changes were not included within the scope of the review.<sup>25</sup>

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<sup>24</sup> SL No. 12 of 2021, explanatory notes, p 1.

<sup>25</sup> SL No. 12 of 2021, human rights certificate, p 1.

The explanatory notes state:

In adopting the revised model codes of practice in Queensland, additional modifications were made to ensure Queensland-specific requirements are reflected and there is consistency with Queensland's regulatory framework.<sup>26</sup>

Under s 274 of the *Work Health and Safety Act 2011*<sup>27</sup> and s 44 of the *Electrical Safety Act 2002*,<sup>28</sup> the Minister has the power to make, approve, revoke or amend a code of practice. Under both Acts, any such approval has no effect unless the Minister gives notice of its making by way of subordinate legislation.<sup>29</sup>

## 5.2 Fundamental legislative principles considerations

The committee identified no issues regarding the subordinate legislation's consistency with FLPs or its lawfulness.

## 5.3 Explanatory notes

The committee considers that the explanatory notes comply with part 4 of the LSA.

## 5.4 Human Rights Act 2019 considerations

The committee identified no issues regarding the compatibility of SL No. 12 of 2021 with the HRA.

### Human rights certificate

The committee considers that the human rights certificate tabled with the subordinate legislation contains a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

## 6 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP

**Chair**

**March 2021**

## Education, Employment and Training Committee

### Chair

Ms Kim Richards MP, Member for Redlands, Chair

### Deputy Chair

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

### 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

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<sup>26</sup> SL No. 12 of 2021, explanatory notes, p 1.

<sup>27</sup> *Work Health and Safety Act 2011*, s 274(1).

<sup>28</sup> *Electrical Safety Act 2002*, s 44(1).

<sup>29</sup> *Work Health and Safety Act 2011*, ss 274(4) and 274(4A); *Electrical Safety Act 2002*, ss 44(2) and 44(3).