

Economics and Governance Committee

Report No. 1, 57th Parliament

Subordinate legislation tabled between 17 June 2020 and 14 July 2020

1 Aim of this report

This report summarises the Economics and Governance Committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 17 June 2020 and 14 July 2020. 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 certificate with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table below.

No.	Subordinate legislation	Date tabled	Disallowance date*
097	Superannuation (State Public Sector) Amendment Notice (No. 1) 2020	14 July 2020	3 December 2020
113	Mutual Recognition (Queensland) (WA Container Deposit Scheme) Amendment Regulation 2020	14 July 2020	3 December 2020
114	Trans-Tasman Mutual Recognition (Queensland) (WA Container Deposit Scheme) Notice 2020	14 July 2020	3 December 2020

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 note 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)).

115	Public Service (Rulings and Other Matters) Amendment Regulation 2020	14 July 2020	3 December 2020
116	Revenue Legislation (Fees) Amendment Regulation 2020	14 July 2020	3 December 2020

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House, and may be subject to change. (Section 50 of the *Statutory Instruments Act 1992* specifies that the deadline for a notice of disallowance motion is 14 sitting days after the legislation is tabled in the Legislative Assembly.)

3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the policy, consistency with FLPs, or lawfulness of the subordinate legislation.

The committee considered a potential human rights issue raised by SL No. 115 of 2020, as outlined below. However, the committee was satisfied that the identified limitation on human rights is reasonable and demonstrably justifiable.

The committee also considers the explanatory notes tabled with these 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 its compatibility with the HRA.

4 SL No. 97 of 2020 – Superannuation (State Public Sector) Amendment Notice (No. 1) 2020

The Superannuation (State Public Sector) Notice 2010 (Superannuation Notice) sets out the QSuper membership arrangements approved by the Treasurer for employees of a Queensland public sector employer, including employers that have been declared to be a unit of the State public sector.⁶

Under the *Superannuation (State Public Sector) Act 1990*, the Minister may declare an entity to be a unit of the state public sector.⁷ Some entities are declared units of the state public sector in order to guarantee the continuation of superannuation arrangements for employees transferring to the entity from an existing unit of the state public sector.⁸

The objective of the Superannuation (State Public Sector) Amendment Notice (No. 1) 2020 (SL No. 97 of 2020) is to amend the Superannuation Notice to include the following arrangements:

- continued QSuper membership for transferring employees – for employees of Loram Pty Ltd associated with a sale of part of Aurizon Operations Limited to Loram Pty Ltd; for employees of SunWater Ltd associated with a sale of some Fairbairn Dam facilities to Fairbairn Irrigation Network Ltd; and for former Golden Casket employees who transferred to Tattersalls Limited and then to Tabcorp Assets following a merger with Tattersalls Group
- a membership option for employees transferring to the Queensland Government – which recognises the acquisition by Queensland Corrective Services of the operation of the Arthur Gorrie Correctional Centre from GEO Group Australia Pty Ltd
- new employer sponsors (responsible for superannuation contributions) – for employees transferred to Endpoint IQ as a result of the establishment of Endpoint IQ by the Queensland Institute of Medical Research Berghofer

⁶ A unit of the state public sector includes government entities such as departments, entities established under a Queensland Act and body corporates wholly owned by the state (see *Superannuation (State Public Sector) Act 1990*, s 2).

⁷ *Superannuation (State Public Sector) Act 1990*, s 2A.

⁸ Superannuation (State Public Sector) Amendment Notice (No. 1) 2020 (SL No. 97 of 2020), explanatory notes, p 1.

- the removal of employer sponsors – specifically, the removal of South East Qld Bulk Water as an employer sponsor, as the entity no longer has staff with entitlements under this instrument.⁹

4.1 Legislative Standards Act 1992 considerations

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

The explanatory notes comply with part 4 of the LSA.

4.2 Human Rights Act 2019 considerations

The committee identified no issues regarding the compatibility of the subordinate legislation with the HRA.

The committee considers the human rights certificate tabled with SL No. 97 of 2020 contains a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 SL No. 113 of 2020 – Mutual Recognition (Queensland) (WA Container Deposit Scheme) Amendment Regulation 2020

The objective of the *Mutual Recognition (Queensland) (WA Container Deposit Scheme) Amendment Regulation 2020* (SL No. 113 of 2020) is to amend the *Mutual Recognition (Queensland) Regulation 2009* to approve proposed amendments to the *Mutual Recognition Act 1992* (Cth) (Commonwealth MRA), as required under section 5(1)(b) and section 6 of the *Mutual Recognition (Queensland) Act 1992* (Queensland MRA). The amendments will permanently exempt certain parts of the Western Australian *Waste Avoidance and Resource Recovery Act 2007* and regulations made under that Act from the Commonwealth MRA.¹⁰

The Commonwealth MRA, as adopted in Queensland by the Queensland MRA, establishes a scheme for mutual recognition within each state and territory of regulatory standards adopted elsewhere in Australia in relation to goods and occupations.

The exempted parts of the *Waste Avoidance and Resource Recovery Act 2007* (WA) specifically relate to the container deposit scheme (for the recycling of beverage containers) established in WA by that Act.¹¹ The WA container deposit scheme legislation imposes requirements on the sale of beverages that are not required in other jurisdictions that do not have a container deposit scheme, including that eligible beverages sold in WA are labelled in a way that meets requirements prescribed in regulation (including the display of a 10 cent refund mark¹²), and that suppliers must obtain approval for their beverage containers.¹³ As such, elements of the WA container deposit scheme may be considered inconsistent with the Commonwealth MRA, and for this reason an exemption is required.

The permanent exemption of the WA container deposit scheme follows a precedent set by other state and territory container deposit schemes, as advised in the explanatory notes:

The *Mutual Recognition (Queensland) Regulation 2009* was made to approve amendments to the Commonwealth Act to permanently exempt certain legislation of South Australia and was amended in 2013, 2017 and 2018 to approve amendments to the Commonwealth Act to permanently exempt the container deposit scheme legislation of the Northern Territory, New South Wales, and the Australian Capital Territory respectively. It is appropriate that the approval of the amendments to the

⁹ SL No. 97 of 2020, explanatory notes, p 2.

¹⁰ *Mutual Recognition (Queensland) (WA Container Deposit Scheme) Amendment Regulation 2020* (SL No. 113 of 2020), explanatory notes, p 1.

¹¹ SL No. 113 of 2020, human rights certificate, p 1.

¹² SL No. 113 of 2020, human rights certificate, p 1.

¹³ Government of Western Australia, *Consultation Regulation Impact Statement - Western Australian Container Deposit Scheme*, August 2018, p 4.

Commonwealth Act to permanently exempt the relevant parts of the WA Container Deposit Laws should also be included in the *Mutual Recognition (Queensland) Regulation 2009*.¹⁴

5.1 Legislative Standards Act 1992 considerations

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

The explanatory notes comply with part 4 of the LSA.

5.2 Human Rights Act 2019 considerations

The committee identified no issues regarding the compatibility of the subordinate legislation with the HRA.

The committee considers the human rights certificate tabled with SL No. 113 of 2020 contains a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 SL No. 114 of 2020 – Trans-Tasman Mutual Recognition (Queensland) (WA Container Deposit Scheme) Notice 2020

The objective of the Trans-Tasman Mutual Recognition (Queensland) (WA Container Deposit Scheme) Notice 2020 (SL No. 114 of 2020) is to endorse a proposed Commonwealth regulation to be made by the Governor-General under the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth TTMRA), adopted as a law of Queensland by the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* (Queensland TTMRA).¹⁵

The Commonwealth TTMRA provides that goods that may lawfully be sold in New Zealand may be sold in an Australian jurisdiction without the necessity for compliance with further requirements under Australian legislation.¹⁶ However, the Commonwealth TTMRA also provides for circumstances where the Trans-Tasman mutual recognition principle will not apply, including provision for permanent and temporary exemptions.¹⁷

Certain requirements of the container deposit scheme established by the *Waste Avoidance and Resource Recovery Act 2007* (WA) and regulations introduced in Western Australia (WA) are contrary to the Trans-Tasman mutual recognition principle.¹⁸ As noted above in relation to SL No. 113 of 2020, the WA container deposit scheme legislation imposes requirements on the sale of beverages that are not required in other jurisdictions, including New Zealand (which does not have a container deposit scheme¹⁹), and as such, elements of the WA container deposit scheme are contrary to the mutual recognition principle.²⁰ The proposed Commonwealth regulation will amend Schedule 2 of the Commonwealth TTMRA to permanently exempt the WA container deposit laws from the application of the Commonwealth TTMRA.²¹

Under section 45(4) of the Commonwealth TTMRA, the Governor-General may not make the regulation unless all of the then participating jurisdictions have endorsed the regulation. Section 43(1) provides that a jurisdiction endorses a regulation if the designated person for the jurisdiction publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation

¹⁴ SL No. 113 of 2020, explanatory notes, p 2.

¹⁵ Trans-Tasman Mutual Recognition (Queensland) (WA Container Deposit Scheme) Notice 2020 (SL No. 114 of 2020), explanatory notes, p 1.

¹⁶ *Trans-Tasman Mutual Recognition Act 1997* (Cth), s 10.

¹⁷ *Trans-Tasman Mutual Recognition Act 1997* (Cth), ss 45, 46.

¹⁸ SL No. 114 of 2020, explanatory notes, p 1.

¹⁹ New Zealand, Ministry for the Environment, 'Container return scheme: An option for reducing litter and waste to landfill', <https://www.mfe.govt.nz/waste/container-return-scheme-option>.

²⁰ SL No. 114 of 2020, explanatory notes, p 1.

²¹ SL No. 114 of 2020, explanatory notes, p 2.

before it is made. By virtue of section 7(2) of the Queensland TTMRA, the gazette notice is subordinate legislation.²²

6.1 *Legislative Standards Act 1992* considerations

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

The explanatory notes comply with part 4 of the LSA.

6.2 *Human Rights Act 2019* considerations

The committee identified no issues regarding the compatibility of the subordinate legislation with the HRA.

The committee considers the human rights certificate tabled with SL No. 114 of 2020 contains a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 **SL No. 115 of 2020 – Public Service (Rulings and Other Matters) Amendment Regulation 2020**

The objectives of the *Public Service (Rulings and Other Matters) Amendment Regulation 2020* (SL No. 115 of 2020) are to:

- establish two new declared public service offices (DPSOs),²³ the National Insurance Agency Queensland and WorkCover Queensland
- apply the *Minister for Industrial Relations and Commission Chief Executive Directive: Employment Arrangements in the Event of a Health Pandemic*²⁴ (Directive) to all DPSOs and their employees that are not otherwise subject to the Public Service Act 2008.²⁵

The Directive prescribes the specific employment conditions in relation to leave arrangements and other matters to apply in case of disruption caused by a health pandemic, as identified by a declaration of a public health emergency made under section 319 of the *Public Health Act 2005*.²⁶

The explanatory notes advise that it is understood that DPSOs are already administratively applying the Directive, formally applying it via regulation 'will help ensure a clear and consistent sector wide approach to managing the industrial and workforce scenarios that are likely to occur as a result of the pandemic'.²⁷

²² SL No. 114 of 2020, explanatory notes, p 2.

²³ Section 21(1)(b) of the *Public Service Act 2008* provides that a public service office is a 'designated entity, or part of a designated entity, declared under a regulation to be a public service office'. The declared public service offices currently listed in the *Public Service Regulation 2018* are the Gasfields Commission, Hospital and Health Services and Queensland Health, Legal Aid Queensland, Queensland Ambulance Service, Queensland Building and Construction Commission, Queensland Fire and Emergency Service, Queensland Rural and Industry Development Authority, Residential Tenancies Authority, Safe Food Production Queensland, Trade and Investment Queensland: SL No. 115 of 2020, explanatory notes, pp 1-2.

²⁴ Office of Industrial Relations, *Minister for Industrial Relations and Commission Chief Executive Directive 01/20: Employment Arrangements in the Event of a Health Pandemic*, <https://www.forgov.qld.gov.au/sites/default/files/documents/directive-01-20-employment-arrangements-in-the-event-of-a-health-pandemic.pdf?v=1586934044>.

²⁵ *Public Service (Rulings and Other Matters) Amendment Regulation 2020* (SL No. 115 of 2020), explanatory notes, pp 1-2.

²⁶ SL No. 115 of 2020, explanatory notes, p 2; Directive, ss 8,9.

²⁷ SL No. 115 of 2020, explanatory notes, pp 2-3.

7.1 Legislative Standards Act 1992 considerations

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

The explanatory notes comply with part 4 of the LSA.

7.2 Human Rights Act 2019 considerations

In the human rights certificate accompanying SL No. 115 of 2020, the Premier and Minister for Trade, Hon Anastacia Palaszczuk MP (Premier), states her opinion that the amendment regulation is compatible with the HRA because it does not limit, restrict or interfere with human rights, but that the limitation in question is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.²⁸

In examining the human rights certificate, the committee considered the identified human rights issue, and the explanation provided by the Premier, as set out below.

7.2.1 Privacy and reputation – Human Rights Act 2019, section 25

The HRA provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with.²⁹

As the Directive now applies to DPSOs, employees of the DPSOs who request pandemic leave under the Directive may be required to provide medical and other personal information to support their applications for leave.³⁰ The disclosure and use of this information poses a limitation on the human right to privacy.

In relation to this limitation, the Premier stated:

It is considered that any potential impact that the Amendment Regulation makes upon the rights and liberties of individuals is justified. The limitation of the right to privacy is for the purpose of ensuring that paid leave is only granted where the conditions for that leave entitlement are met and other support options are accessed where more appropriate. This ensures equitable, consistent support for employees across the sector and maintains an available workforce for essential government services during a pandemic.³¹

Committee comment

The committee is satisfied that the subordinate legislation's limitation on privacy is reasonable and demonstrably justified, noting the explanation provided by the Premier.

The committee considers the human rights certificate tabled with SL No. 115 of 2020 contains a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 SL No. 116 of 2020 – Revenue Legislation (Fees) Amendment Regulation 2020

The objective of the *Revenue Legislation (Fees) Amendment Regulation 2020* (SL No. 116 of 2020) is to increase the fees in the following regulations in line with the government policy on the indexation of fees and charges:³²

- *Duties Regulation 2013*
- *Land Tax Regulation 2010*

²⁸ SL No. 115 of 2020, human rights certificate, p 3.

²⁹ HRA, s 25(1).

³⁰ Directive, s 14.5.

³¹ SL No. 115 of 2020, human rights certificate, p 2.

³² The Government Indexation Rate for fees and charges for the financial year 2020-21 is 1.8%: *Revenue Legislation (Fees) Amendment Regulation 2020* (SL No. 116 of 2020), explanatory notes, p 2.

- *Mineral Resources Regulation 2013*
- *Petroleum and Gas (Royalty) Regulation 2004*
- *State Penalties Enforcement Regulation 2014*.³³

All fee increases are within the 1.8% government indexation rate for 2020-21.

8.1 Legislative Standards Act 1992 considerations

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

The explanatory notes comply with part 4 of the LSA.

8.2 Human Rights Act 2019 considerations

The committee identified no issues regarding the compatibility of the subordinate legislation with the HRA.

The committee considers the human rights certificate tabled with SL No. 116 of 2020 contains 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 Legislative Assembly notes this report.



Linus Power MP

Chair

November 2020

Economics and Governance Committee

Chair

Mr Linus Power MP, Member for Logan

Deputy Chair

Mr Ray Stevens MP, Member for Mermaid Beach

Members

Mr Michael Crandon MP, Member for Coomera

Mrs Melissa McMahon MP, Member for Macalister

Mr Dan Purdie MP, Member for Ninderry

Mr Adrian Tantari MP, Member for Hervey Bay

³³ SL No. 116 of 2020, explanatory notes, p 2.