

Transport and Resources Committee

Report No. 3, 57th Parliament

Subordinate legislation tabled 8 September 2020

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled on 8 September 2020. 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).¹

The report identifies any issues identified by the committee in its consideration of the human rights certificate[s] tabled with the subordinate legislation.²

2 Subordinate legislation examined

No. of 2020	Subordinate legislation	Date tabled	Disallowance date*
169	Mining Safety and Health Legislation (Respirable Coal Dust and Silica) Amendment Regulation 2020	8 September 2020	10 March 2021
170	Explosives (Security Clearances and Other Matters) Amendment Regulation 2020	8 September 2020	10 March 2021
171	Petroleum and Gas (General Provisions) and Other Legislation	8 September 2020	10 March 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. However, the committee identified minor FLP issues in relation to SL 170 as outlined below. The committee considers that the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

The committee considers that SL 170 also raises a potential human rights issue which is discussed below. The human rights certificates tabled with the subordinate legislation, in accordance with section 41 of the HRA, provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

4 Mining Safety and Health Legislation (Respirable Coal Dust and Silica) Amendment Regulation 2020

The regulation amends:

- the Coal Mining Safety and Health Regulation 2017 to:
 - reduce the exposure limit for respirable coal dust from 2.5mg/m³ to 1.5mg/m³
 - reduce the exposure limit for respirable crystalline silica from 0.1mg/m³ to 0.05mg/m³
- the Mining and Quarrying Safety and Health Regulation 2017, to reduce the exposure limit for respirable crystalline silica from 0.1mg/m³ to 0.05mg/m³.⁴

This follows revised limits being published by Safe Work Australia in December 2019. The reduced exposure limits took effect from 1 September 2020.

4.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the *LSA*.

4.3 Human rights considerations

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

4.4 Human rights certificate

Section 41 of the *Human Rights Act 2019* requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation.

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

5 Explosives (Security Clearances and Other Matters) Amendment Regulation 2020

The main objectives are to:

- require security clearance holders to notify prescribed persons as soon as practicable if the holder's clearance is suspended, cancelled or surrendered, to ensure security sensitive authority holders are informed if the security clearance status of a person associated with their authority changes, and
- provide for a register of authorities and security clearances, and enable the disclosure and publication of register information, including online, to ensure essential details about an authority or security clearance can be verified.⁵

³ *Human Rights Act 2019*, s 41.

⁴ Explanatory notes, p 2.

⁵ Explanatory notes, p 3.

The regulation also:

- broadens the application of the existing 'copy of licence' fee to also apply to a copy of 'security clearance' (so the cost of providing a copy of a security clearance card to a holder is recoverable), and
- repeals explosives security and transportation restriction provisions associated with the 2018 Commonwealth Games, as these are no longer required.⁶

5.1 Fundamental legislative principle issues

The committee identified potential FLP issues relating to the subordinate legislation. The committee's consideration of these issues is set out below.

5.1.1 Section 4(2)(a) Legislative Standards Act 1992 – rights and liberties of individuals – privacy

Reasonableness and fairness of treatment of individuals is relevant to deciding whether legislation has sufficient regard to rights and liberties of individuals. This includes regard for a person's right to privacy, including in relation to their personal information.

Section 8 of the regulation inserts a new s 47A, which allows certain information from the register to be disclosed or published. The explanatory notes set out how the information will be used:

... the Amendment Regulation specifically prevents the chief inspector from disclosing or publishing other personal information such as an individual's contact details and the circumstances surrounding the suspension, cancellation or surrender of an authority or security clearance. In practice, the disclosure or publication of information would be further limited to that which the chief inspector considers appropriate to allow industry (including employers) to check key authority or security clearance details...⁷

The explanatory notes state:

The proposed register is also consistent with other Queensland [licensing] regimes (e.g driver's licence, electrical licence, building trades licences), which also feature an online mechanism for verifying licence status.⁸

Committee comment

The committee considers that the potential impact on rights and liberties of individuals – privacy is justified.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Human rights considerations

Under s 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

Sections 5 and 8 of the regulation require a security clearance holder to notify certain persons if the holder's clearance is suspended, cancelled or surrendered and also provides that certain information about a holder's authority or security clearance may be disclosed or published, including online.

These requirements potentially impact on a person's right to privacy.

⁶ Explanatory notes, p 3.

⁷ Explanatory notes, p 6.

⁸ Explanatory notes, p 6.

The Minister refers to limitations on the scope of required disclosure and other safeguards in place:

The Amendment Regulation provisions have been drafted in a way to ensure the limitation on privacy and reputation is engaged only to the extent necessary. The notification requirement only relates to giving notice of the change in security clearance status, which is the key information required by security sensitive authority holders. The requirement does not extend to providing the reasons for, or circumstances surrounding, the suspension, cancellation or surrender of the clearance, as this information is not critical. Similarly, the register provision explicitly prohibits the disclosure or publication of contact details of an individual and the circumstances surrounding the suspension, cancellation or surrender of an authority or security clearance. The safeguards included in the Amendment Regulation restrict the impact of the limitation on privacy and reputation and ensure the purpose of the amendments is achieved whilst ensuring the least possible impact on human rights.⁹

The Minister provides the following justification:

While the Amendment Regulation does limit a person's right to privacy and reputation, the limitation has been restricted by including appropriate protections as outlined above to minimise the impact. Further, the potential limitation on a person's right to privacy and reputation needs to be considered on balance with the greater right to life and community expectations.

The changes ... support the effective operation of the explosives authorisation and security clearance frameworks under the Explosives Act and take a fair and reasonable approach to how they affect an individual's human rights for the broader benefit of the community. On balance, it is considered that any potential impact that the Amendment Regulation makes upon the rights and liberties of individuals in this context is reasonable and justified, given the amendments are aimed at helping to protect the right to life of explosives industry workers and the wider community. Further, the Amendment Regulation limits an individual's right to privacy and reputation only to the extent necessary to achieve the improved public safety outcomes, considered necessary to safeguard the community and workplaces from the misuse of explosives.¹⁰

Committee comment

The committee is satisfied that the above potential impact on privacy and reputation is justified.

5.4 Human rights certificate

Section 41 of the *Human Rights Act 2019* requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation.

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

6 Petroleum and Gas (General Provisions) and Other Legislation

The regulation introduces three application fees (required to be prescribed in the Mineral Resources Regulation 2013 and the Petroleum and Gas (General Provisions) Regulation 2017, as a result of recent amendments to the principal Acts). They are for these applications:

- an application for extension of the last renewed term of an exploration permit (under new s 147CA(3)(b)(ii) of the *Mineral Resources Act 1989*)
- an application to the Minister to amalgamate two or more potential commercial areas for an authority to prospect into a single potential commercial area for the authority to prospect (under new s 107AB(d) of the *Petroleum and Gas (Production and Safety) Act 2004*), and

⁹ Human rights certificate, p 5.

¹⁰ Human rights certificate, p 6.

- an application to the Minister to amalgamate two or more petroleum leases into a single petroleum lease under s 170C(c) of the *Petroleum and Gas (Production and Safety) Act 2004*.¹¹

The proposed fees for an application for extension of the last renewed term of an exploration permit are:

- \$667.00 for an exploration permit for coal
- \$200.50 for an exploration permit for any other mineral for four or fewer sub-blocks in specified restricted areas¹², and
- \$667.00 for any other exploration permit for minerals.

The proposed fee for an application to the Minister to amalgamate two or more potential commercial areas for an authority to prospect into a single potential commercial area for the authority to prospect is \$2005.00.

The proposed fee for an application to the Minister to amalgamate two or more petroleum leases into a single petroleum lease is \$4687.00.

6.1 Fundamental legislative principle issues

No issues of fundamental legislative principle were identified.

6.2 Explanatory notes

While the committee found that the explanatory notes complied with part 4 of the LSA, it notes that the wording used in the explanatory notes regarding this was imprecise. Rather than stating-

No potential breaches of fundamental legislative principles have been identified¹³

The explanatory notes should have stated clearly that either the legislation is consistent with fundamental legislative principles, or set out any areas of inconsistency.

6.3 Human rights considerations

The committee considers that the subordinate legislation raise no human rights issues.

6.4 Human rights certificate

Section 41 of the *Human Rights Act 2019* requires that the responsible Minister for the subordinate legislation must prepare a human rights certificate for the legislation.

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

¹¹ Explanatory notes pp 1-2.

¹² Restricted areas 256, 257, 258, 259, 260, 261, 262, 263, 264 or 265.

¹³ Explanatory notes, p 3.

7 Recommendation

The committee recommends that the House note this report.



Shane King MP

Chair

March 2021

Transport and Resources Committee

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