

## State Development and Regional Industries Committee

### Report No. 3, 57<sup>th</sup> Parliament

Subordinate legislation tabled between 4 August 2020 and 11 August 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 between 4 August 2020 and 11 August 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)<sup>1</sup> and discusses the committee's consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

| No. | Subordinate legislation  | Date tabled    | Disallowance date |
|-----|--|----------------|-------------------|
| 139 | Animal Care and Protection (Use of Electrical Device on Horses) Amendment Regulation 2020                        | 11 August 2020 | 24 February 2021  |
| 149 | Rural and Regional Adjustment (COVID-19 Taxi and Limousine Industry Assistance Scheme) Amendment Regulation 2020 | 11 August 2020 | 24 February 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 Animal Care and Protection (Use of Electrical Device on Horses) Amendment Regulation 2020, and the Rural and Regional Adjustment (COVID-19 Taxi and Limousine Industry Assistance Scheme) Amendment Regulation 2020.

The committee canvassed several potential FLP and human rights issues within the report. In each instance the committee was satisfied that the provisions of the subordinate legislation are appropriate in the circumstances and that potential human rights limitations are reasonable and demonstrably justifiable.

The committee also considers that the explanatory notes and human rights certificates accompanying the subordinate legislation comply with the requirements of the LSA and the HRA respectively.<sup>3</sup>

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

<sup>3</sup> *Human Rights Act 2019*, s 41.

## **4 Animal Care and Protection (Use of Electrical Device on Horses) Amendment Regulation 2020 (SL 139)**

### **4.1 Purpose**

The *Animal Care and Protection Act 2001* (the Act) prohibits animal cruelty and provides for penalties of up to 2,000 penalty units (\$266,900)<sup>4</sup> or 3 years imprisonment, for an animal cruelty offence.<sup>5</sup> The purpose of this subordinate legislation is to prescribe the use of an electrical prod on a horse as an act of cruelty for the purposes of the Act.

The subordinate legislation implements a recommendation of the *Final Report of the independent Inquiry into animal cruelty in the management of retired Thoroughbred and Standardbred horses in Queensland* (the Martin Inquiry). The explanatory notes state that the legislation also aligns Queensland animal welfare legislation with international standards, including compliance with European Union Council requirements for the transport of livestock.<sup>6</sup>

According to the explanatory notes, no additional costs to the community or the government are expected as enforcement activities will be undertaken within existing resources.<sup>7</sup> The explanatory notes also state that broad consultation was undertaken as part of the Martin Inquiry, with stakeholders endorsing the proposed protection of horses.<sup>8</sup>

### **4.2 Fundamental legislative principle issues**

Fundamental legislative principles are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. Under the LSA legislation must have: sufficient regard to the rights and liberties of individuals; and the institution of Parliament. The committee identified the following potential FLP issues relating to the legislation:

#### **4.2.1 Rights and liberties of individuals – penalties**

A penalty should be proportionate to the offence. A higher penalty should be provided for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.<sup>9</sup>

Although the explanatory notes do not address this FLP directly, they indicate that the impact of the legislation on the community is expected to be minimal and that the use of an electrical prod on a horse is already prohibited under state codes of practice for the transport of livestock:

*The expected impact on the community of making the use of electric prods on all horses in all circumstances an act of cruelty is considered to be minimal. The use of an electric prod on a horse is already prohibited under section 19(1)(e) of Schedule 3 of the Animal Care and Protection Regulation 2012 (the Code of Practice for the Transport of Livestock) and it is not considered to be a wide spread practice.*<sup>10</sup>

##### **4.2.1.1 Committee comment**

The committee considers that prescribing the use of an electrical device or prod on a horse as an act of cruelty is reasonable and proportionate.

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<sup>4</sup> *Penalties and Sentences Regulation 2015*, s 5A(1) prescribes the value of a penalty unit is \$133.45.

<sup>5</sup> *Animal Care and Protection (Use of Electrical Device on Horse) Amendment Regulation 2020* (SL 139), explanatory notes, p 3.

<sup>6</sup> Explanatory notes, SL 139, p 3.

<sup>7</sup> Explanatory notes, SL 139, p 3.

<sup>8</sup> Explanatory notes, SL 139, p 3.

<sup>9</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 120.

<sup>10</sup> Explanatory notes, SL 139, p 3.

#### **4.2.2 Institution of Parliament – contains only matter appropriate to subordinate legislation**

Whether the legislation has sufficient regard to the institution of Parliament, depends on among other things, whether the material included is appropriate for it to be in a regulation rather than an Act.

The penalty for the offence is relatively significant. However, it should be noted that the offence and the penalty are contained in the Act itself, rather than the regulation and that the effect of the regulation is to extend the reach of the Act only. The explanatory notes provide the following rationale as to why the subordinate legislation is appropriate:

*Recommendation 10.2.4 [of the Martin Inquiry], which was supported in full by the Government, required the Department of Agriculture and Fisheries to take steps to amend the Animal Care and Protection Act 2001 (the Act) to make the use of an electric device or prod on a horse an act of cruelty.<sup>11</sup>*

Further, in relation to the animal cruelty offence, the explanatory notes for the Bill that became the Act stated:

*What amounts to cruelty will often depend on the individual circumstances of the animal in question and what the community perceives as 'cruel'.<sup>12</sup>*

#### **Committee comment**

The committee is satisfied that the subordinate legislation has sufficient regard to the institution of Parliament.

#### **4.3 Explanatory notes**

The explanatory notes tabled with SL 139 comply with part 4 of the *Legislative Standards Act 1992*.

#### **4.4 Human rights considerations**

The subordinate legislation raises no human rights issues.

#### **4.5 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.

The human rights certificate tabled with SL 139 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

### **5 Rural and Regional Adjustment (COVID-19 Taxi and Limousine Industry Assistance Scheme) Amendment Regulation 2020 (SL 149)**

#### **5.1 Purpose**

The objective of this subordinate legislation is to establish a scheme of financial assistance for taxi and limousine operators and licence holders in recognition of the effects of COVID.

According to the explanatory notes, some parts of the industry have reported the loss of over 90 per cent of patronage, based on the same rates in the previous year, and that resulting hardship means that many operators have de-registered their vehicles.<sup>13</sup>

Under this scheme, taxi and limousine operators will be entitled to a one-off payment of \$3,500 per vehicle and a \$1,000 incentive payment per vehicle for eligible wheelchair accessible taxi operators.

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<sup>11</sup> Explanatory notes, SL 139, p 1.

<sup>12</sup> *Animal Care and Protection Bill 2001*, Explanatory notes, p 24.

<sup>13</sup> Rural and Regional Adjustment (COVID-19 Taxi and Limousine Industry Assistance Scheme) Amendment Regulation 2020 (SL 149), Explanatory notes, p 2.

Eligible taxi and limousine licence holders will be provided with a one-off payment of \$1,000 per taxi service licence or limousine licence. Eligible authorised booking entities will also be provided a one-off payment of \$1,500 per licensed taxi and/or limousine on the books for the booking entity.<sup>14</sup>

Eligible grants will be provided by the Queensland Rural and Industry Development Authority (QRIDA).

According to the explanatory notes, the Queensland Government will incur a cost of \$23.16 million to implement the scheme.<sup>15</sup> The notes also state that the Department of Transport and Main Roads consulted with the Taxi Council of Queensland (TCQ) following the announcement of the scheme and that TCQ supports the scheme and the approach taken.<sup>16</sup>

## **5.2 Fundamental legislative principle issues**

No issues of fundamental legislative principle were identified.

## **5.3 Explanatory notes**

The explanatory notes tabled with SL 149 comply with part 4 of the *Legislative Standards Act 1992*.

## **5.4 Human rights considerations**

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

## **5.5 Human rights certificate**

The human rights certificate tabled with SL 149 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

# **6 Recommendation**

The committee recommends that the House notes this report.



Mr Chris Whiting MP

**Chair**

**February 2021**

## **State Development and Regional Industries Committee**

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|---------------------|---|
| <b>Chair</b>        | Mr Chris Whiting MP, Member for Bancroft  |
| <b>Deputy Chair</b> | Mr Jim McDonald MP, Member for Lockyer    |
| <b>Members</b>      | Mr Michael Hart MP, Member for Burleigh   |
|                     | Mr Robbie Katter MP, Member for Traeger   |
|                     | Mr Jim Madden MP, Member for Ipswich West |
|                     | Mr Tom Smith MP, Member for Bundaberg     |

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<sup>14</sup> Explanatory notes, SL 149, p 2.

<sup>15</sup> Explanatory notes, SL 149, p 3.

<sup>16</sup> Explanatory notes, SL 149, p 3.