



## Education, Employment and Small Business Committee

### Report No. 23, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 1 May and 20 August 2019

### 1 Background and aim of this report

This report summarises the committee's examination of subordinate legislation tabled from 1 May to 20 August 2019. In this role, the committee considers the policy to be given effect, consistency of the legislation with fundamental legislative principles (FLPs), compliance of the explanatory notes with the requirements of the *Legislative Standards Act 1992* (Legislative Standards Act), and the lawfulness of the subordinate legislation.

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
107	Further Education and Training (Fees) Amendment Regulation 2019	20 August 2019	24 October 2019
111	Workers' Compensation and Rehabilitation (QOTE) Notice 2019	20 August 2019	24 October 2019
119	Electrical Safety and Other Legislation (Fees) Amendment Regulation 2019	20 August 2019	24 October 2019
139	Electrical Safety Amendment Regulation (No. 1) 2019	20 August 2019	24 October 2019
149	Education (Queensland Curriculum and Assessment Authority) Amendment Regulation 2019	20 August 2019	24 October 2019

### 3 Committee consideration of the subordinate legislation

No issues regarding consistency with FLPs or the lawfulness of the subordinate legislation were identified in the Further Education and Training (Fees) Amendment Regulation 2019; the Electrical Safety and Other Legislation (Fees) Amendment Regulation 2019; or the Electrical Safety Amendment Regulation (No. 1) 2019. Minor issues arise in relation to the Workers' Compensation and Rehabilitation (QOTE) Notice 2019 and the Education (Queensland Curriculum and Assessment Authority) Amendment Regulation 2019, which are discussed below.

### 4 Further Education and Training (Fees) Amendment Regulation 2019 – SL 107

*The Queensland Government Principles for Fees and Charges* (January 2018) (the Fees and Charges Principles) require agencies to set fees and charges to accurately reflect the cost of providing their services and ensure fees and charges maintain their value over time.<sup>1</sup> This also applies to the other regulations below concerning fee increases.

<sup>1</sup> Explanatory notes, p 1.

The Further Education and Training (Fees) Amendment Regulation 2019 indexes regulatory fees for the Department of Employment, Small Business and Training for 2019-20. The fees relate to requests for copies of a certificate of achievement or a training contract. The amendment regulation increases fees in accordance with the approved Government indexation factor of 2.25% for 2019-20.<sup>2</sup> All regulatory fees are within the 2.25% indexation factor.

## 5 Workers' Compensation and Rehabilitation (QOTE) Notice 2019 – SL No. 111

Compensation entitlements of injured workers and dependants of deceased workers under the *Workers' Compensation and Rehabilitation Act 2003* (the Act) are subject to indexation in accordance with increases in Queensland Ordinary Time Earnings (QOTE) to ensure the relative value of those amounts over time.<sup>3</sup>

Section 107 of the Act sets out the meaning of QOTE for a financial year. It is the amount of Queensland full-time adult persons ordinary time average weekly earnings, declared by the Australian Statistician in the most recently published of the original series of the statistician's average weekly earnings publication.

The QOTE for 2018-19 is \$1,527.80. According to the latest Australian Statistician's report released on 21 February 2019, QOTE will increase to \$1,574.00 for 2019-20, an increase of 3.02%.<sup>4</sup>

### 5.1 Compliance of explanatory notes

Subsection 24(2) of the *Legislative Standards Act 1992* requires that explanatory notes provide an outline of the results of consultation if it has been undertaken, or a statement of the reasons for no consultation. While the explanatory notes do not include either, they state, 'WorkCover Queensland and licensed self-insurers have been advised of the notification'.<sup>5</sup> Given the routine nature of the annual indexing of QOTE the committee considers the notification is sufficient.

## 6 Electrical Safety and Other Legislation (Fees) Amendment Regulation 2019 – SL No. 119

The Office of Industrial Relations (OIR) administers the *Electrical Safety Act 2002*, the *Work Health and Safety Act 2011* and the *Labour Hire Licensing Act 2017* which provide for the prescribing of various licensing fees and charges. The current Government endorsed indexation factor is 2.25%.<sup>6</sup> The Electrical Safety and Other Legislation (Fees) Amendment Regulation 2019 indexes OIR's administered fees and charges in accordance with the Fees and Charges Principles.

## 7 Electrical Safety Amendment Regulation (No. 1) 2019 – SL No. 139

The Electrical Safety Amendment Regulation (No. 1) 2019 removes section 73A (Work involving PV modules at solar farms) from the Electrical Safety Regulation 2013. Section 73A was declared invalid by the Supreme Court of Queensland on 29 May 2019: *Maryrorough Solar Pty Ltd v The State of Queensland* [2019] QSC 135. This decision was affirmed by the Court of Appeal on 25 June 2019: *State of Queensland v Maryrorough Solar Pty Ltd* [2019] QCA 129.<sup>7</sup>

The Education, Employment and Small Business Committee Report No. 19, tabled on 12 August 2019, provides the background to the invalidity of section 73A of the Electrical Safety Regulation 2013.<sup>8</sup>

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<sup>2</sup> Explanatory notes, p 1.

<sup>3</sup> Explanatory notes, p 1.

<sup>4</sup> Explanatory notes, p 1.

<sup>5</sup> Explanatory notes, p 2.

<sup>6</sup> Explanatory notes, p 1.

<sup>7</sup> Explanatory notes, p 1.

<sup>8</sup> Education, Employment and Small Business Committee Report No. 19, <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T1090.pdf>

## **8 Education (Queensland Curriculum and Assessment Authority) Amendment Regulation 2019 – SL No. 149**

The Education (Queensland Curriculum and Assessment Authority) Amendment Regulation 2019 (the amendment regulation) is intended to:

- *prescribe the Queensland Curriculum and Assessment Authority (QCAA) the powers to administer the new senior assessment and tertiary entrance system (new SATE system), starting with students entering Year 11 in 2019*
- *remove redundant provisions and fees that are no longer required following the introduction of the new SATE system*
- *prescribe new and revised fees to support the new SATE system, and*
- *index fees in accordance with Queensland Government policy.*<sup>9</sup>

### **8.1 Potential issue – rights and liberties of individuals – external review rights**

The explanatory notes state there is no external review of a moderation decision regarding school-based senior assessment by the Queensland Curriculum and Assessment Authority (QCAA). Paragraph 4(3)(c) of the Legislative Standards Act provides that an example of the FLP of legislation having sufficient regard to rights and liberties should be dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

The following justification for this potential departure from FLPs is provided by the explanatory notes:

*While there is no external review of a moderation decision by the QCAA, the moderation process is robust and involves a series of independent assessment and reviews of a student's statement of result undertaken by specialist confirmers. In addition, a student may seek either verification of the accuracy of the information in the statement, or review the fairness of a final subject result included in the statement by the QCAA.*<sup>10</sup>

On balance, the committee considers this is justified given the specialist nature of the decision making; the committee also notes the following rationale from the explanatory notes:

*The moderation process is justified and not considered a breach of FLPs on the basis the decisions involve technical issues and that specialist confirmers are best placed to make these assessments. External review of a moderation decision would therefore not be appropriate.*<sup>11</sup>

### **8.2 Potential issue – rights and liberties of individuals – fee increase**

The amendment regulation prescribes new and revised fees to support the new senior and tertiary entrance system and indexes fees in accordance with the Queensland Government policy of 2.25%, unless specific approval has been sought.<sup>12</sup>

All fees in the amendment regulation are within the 2.25% increase, except:

- Late application fee to take an external senior examination for an examination subject (Schedule 1, Item 3) – increase from \$71.90 to \$109.40 – an increase of 52.2%, and

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<sup>9</sup> Explanatory notes, p 1.

<sup>10</sup> Explanatory notes, p 4.

<sup>11</sup> Explanatory notes, p 4.

<sup>12</sup> Explanatory notes, p 3.

- Service fee for one year (Schedule 1, Item 9) – increase from \$453.55 to \$779.75 – an increase of 71.9%.

Under Schedule 1, the service fee for one year (Item 9) applies to students who are not Australian citizens or permanent residents. The explanatory notes state full cost recovery applies to the above fees:

*The introduction of the new SATE (senior assessment and tertiary entrance) system will require new fees for additional services provided by the QCAA, increases in certain existing fees to represent full cost recovery, and removal of fees for discontinued services, which were approved as part of the Queensland Government 2019-20 Budget process.<sup>13</sup>*

These fee increases could be considered a potential breach of FLPs however, the committee notes the explanation provided and considers the full cost recovery for the above fees justified.

## 9 Recommendation

The committee recommends that the Legislative Assembly note this report.



Ms Leanne Linard MP

**Chair**

October 2019

### **Education, Employment and Small Business Committee**

Chair	Ms Leanne Linard MP, Member for Nudgee
Deputy Chair	Mrs Jann Stuckey MP, Member for Currumbin
Members	Mr Bruce Saunders MP, Member for Maryborough
	Mrs Simone Wilson MP, Member for Pumicestone
	Mr Michael Healy MP, Member for Cairns
	Mr Nick Dametto MP, Member for Hinchinbrook

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<sup>13</sup> Explanatory notes, p 2.