

Economics and Governance Committee

Report No. 36, 56th Parliament

Subordinate legislation tabled between 21 August 2019 and 15 October 2019

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 21 August 2019 and 15 October 2019. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, its consistency with fundamental legislative principles (FLPs), and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).¹

2 Subordinate legislation examined

No.	Subordinate legislation (SL)	Date tabled	Disallowance date
160 of 2019	Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2019	3 September 2019	28 November 2019
161 of 2019	Superannuation (Public Employees Portability) Regulation 2019	3 September 2019	28 November 2019
182 of 2019	Financial and Performance Management Standard 2019	3 September 2019	28 November 2019
183 of 2019	Superannuation (Public Employees Portability) Notice 2019	3 September 2019	28 November 2019
193 of 2019	Superannuation (State Public Sector) Amendment Notice (No. 1) 2019	15 October 2019	20 February 2020

3 Committee consideration of the subordinate legislation

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

The explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA.

3.1 SL No. 160 of 2019 – Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2019

The *Statutory Instruments Act 1992* requires regular review of Queensland’s subordinate legislation by causing most subordinate legislation to automatically expire on 1 September first occurring after the tenth anniversary of the day of its making.² The Act allows a regulation to be made to exempt subordinate legislation from expiry for one year if:

- replacement subordinate legislation is being drafted and is proposed to be made before the stated period ends

¹ All Acts referenced are Queensland Acts unless otherwise specified.

² *Statutory Instruments Act 1992*, s 54.

- the subordinate legislation is not proposed to be replaced or preserved when it expires at the end of the stated period, or
- the Act or provision under which or in relation to which the subordinate legislation or part of the subordinate legislation is made or preserved, is subject to review.³

The objective of the Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2019 (SL No. 160) is to amend the Statutory Instruments Regulation 2012, to exempt from expiry a range of items of subordinate legislation:

- one item of subordinate legislation for a period of one year, on the grounds that replacement subordinate legislation is being drafted and is proposed to be made before the stated period ends
- six items of subordinate legislation for a period of one year, on the grounds that the Act or provision under which (or in relation to which) the subordinate legislation or part of the subordinate legislation is made or preserved, is subject to review, and
- 42 items of subordinate legislation for a further period of one year, on the grounds that the Act or provision under which (or in relation to which) the subordinate legislation or part of the subordinate legislation is made or preserved, is subject to review.⁴

The Act specifies that after the first exemption from expiry of subordinate legislation for a period of not more than one year, for any subsequent regulation that extends the exemption ('extension regulation')⁵:

(4) Within 7 sittings days after the extension regulation is made, the responsible Minister for the subordinate legislation being exempted must table in the Legislative Assembly a report stating—

(a) how the Act or provision is subject to review; and

(b) if subsection (6)(a) applies—

(i) the extent to which the Act or provision is being reviewed; and

(ii) when the Minister expects the review to end.⁶

A range of such reports by various ministers have been tabled on dates ranging from 2 to 15 October 2019 – all within the required period of seven sitting days. Those reports between them cover all the regulations dealt with by SL No. 160 for which such reports are required.

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the requirements of part 4 of the LSA.

3.2 SL No. 161 of 2019 – Superannuation (Public Employees Portability) Regulation 2019 and SL No. 183 of 2019 – Superannuation (Public Employees Portability) Notice 2019

The *Superannuation (Public Employees Portability) Act 1985* establishes portability arrangements whereby Queensland's public sector employees, on transferring employment between public employers, have been able to transfer their superannuation to their new employer's superannuation scheme. The Act allows for transfers within Queensland and to other jurisdictions.⁷

³ Explanatory notes, Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2019, p 1.

⁴ Explanatory notes, Statutory Instruments (Exemptions from Expiry) Amendment Regulation 2019, p 2.

⁵ See *Statutory Instruments Act 1992*, ss 56A(2)-(4) for the definition of an 'extension regulation' and the requirement for the responsible Minister to table a report with respect to the subordinate legislation being exempted by the extension regulation.

⁶ *Statutory Instruments Act 1992*, s 56A.

⁷ Explanatory notes, Superannuation (Public Employees Portability) Regulation 2019, p 1.

The subordinate legislation of the Act is being remade into the Superannuation (Public Employees Portability) Regulation 2019 (SL No. 161) and the Superannuation (Public Employees Portability) Notice 2019 (SL No. 183).⁸

The objectives of SL No. 161 are to:

- set out the following public employers as participators in Queensland’s superannuation portability arrangements:
 - the Queensland Government
 - a local government
 - a State electricity entity, and
 - a public university, and
- set out the following superannuation schemes as participating schemes (known as ‘approved superannuation schemes’):
 - Energy Super, and
 - LGIASuper.⁹

Complementing these changes, SL No. 183 lists the following superannuation schemes as declared by the Minister to be schemes that participate in the Act’s portability arrangements (known as ‘eligible superannuation schemes’):

- Commonwealth Superannuation Scheme
- Defence Force Retirement and Death Benefits Scheme, and
- UniSuper.¹⁰

The explanatory notes to these two items of subordinate legislation advise that the employers and superannuation schemes that participate in Queensland’s portability arrangements have been consulted, and that all parties agree with the Regulation and Notice being remade to ensure the continued operation of the State’s defined benefit portability arrangements.¹¹

Committee comment

The committee identified no issues regarding the consistency with FLPs or the lawfulness of these items of subordinate legislation. The explanatory notes also comply with the requirements of part 4 of the LSA.

3.3 SL No. 182 of 2019 – Financial and Performance Management Standard 2019

SL No. 182 remakes the Financial and Performance Management Standard 2009, which was to expire on 1 September 2019.

⁸ Explanatory notes, Superannuation (Public Employees Portability) Regulation 2019, p 2; explanatory notes, Superannuation (Public Employees Portability) Notice 2019, p 2.

⁹ Explanatory notes, Superannuation (Public Employees Portability) Regulation 2019, p 1.

¹⁰ Explanatory notes, Superannuation (Public Employees Portability) Notice 2019, p 2.

¹¹ Explanatory notes, Superannuation (Public Employees Portability) Regulation 2019 p 3; explanatory notes, Superannuation (Public Employees Portability) Notice 2019, p 3.

The explanatory notes advise that most of the proposed amendments to the Standard are administrative in nature and reflect current practice or updated wording. Three, more significant changes to the Standard aim to improve its efficiency and effectiveness by:

- allowing the Treasurer greater flexibility to delegate responsibilities where assessed as appropriate and desirable
- providing an increased emphasis on the importance of digital and information communication technology controls by requiring accountable officers/statutory bodies to have regard to the Queensland Government Enterprise Architecture, and
- streamlining provisions regarding contract performance guarantees and broadening the criteria for allowable security providers.¹²

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the requirements of part 4 of the LSA.

3.4 SL No. 193 of 2019 – Superannuation (State Public Sector) Amendment Notice (No. 1) 2019

Under the *Superannuation (State Public Sector) Act 1990*, the relevant minister (the Treasurer) may, by written notice, declare certain matters about membership of a superannuation scheme by an employee of a unit of the State public sector, including:

- the membership category or categories for which the employee is eligible
- any conditions applying to the employee's membership of the scheme, and
- for an employee other than a core government employee, whether the employee's membership in the scheme is compulsory.¹³

The Act also provides that the Treasurer may, by written notice, declare an entity to be a unit of the State public sector under the Act, including for particular purposes.¹⁴

Such written notices are subordinate legislation.¹⁵

The objective of SL No. 193 is to amend the Superannuation (State Public Sector) Amendment Notice (No. 1) 2019 to set out changes to QSuper membership arrangements approved by the Treasurer for employees of Queensland public sector employers, including employers that have been declared to be a unit of the State public sector.¹⁶

The changes affected by SL No. 193 reflect the existence of new employing entities and various other events and developments. This includes, for example, recognising CleanCo Queensland Limited (CleanCo) as a unit of the State public sector under the Act, and providing for continuing membership arrangements for employees transferred to CleanCo from CS Energy Ltd and Stanwell Corporation Limited. As a further example, SL No. 193 also clarifies arrangements for employees transferring to the National Disability Insurance Agency as part of the implementation of the National Disability Insurance Scheme.

Committee comment

The committee identified no issues regarding the subordinate legislation's consistency with FLPs, or its lawfulness. The explanatory notes comply with the requirements of part 4 of the LSA.

¹² Explanatory notes, Financial and Performance Management Standard 2019, pp 1-2.

¹³ *Superannuation (State Public Sector) Act 1990*, s 14B(1).

¹⁴ *Superannuation (State Public Sector) Act 1990*, s 2A.

¹⁵ *Superannuation (State Public Sector) Act 1990*, s 14B(2), section 2A(3).

¹⁶ Explanatory notes, Superannuation (State Public Sector) Amendment Notice (No. 1) 2019, p 3.

4 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

November 2019

Economics and Governance Committee

Chair:	Mr Linus Power MP, Member for Logan	Contact details
Deputy Chair:	Mr Ray Stevens MP, Member for Mermaid Beach	Post: Parliament House Brisbane Queensland 4000
Members:	Ms Nikki Boyd MP, Member for Pine Rivers Mr Sam O'Connor MP, Member for Bonney Mr Dan Purdie MP, Member for Ninderry Ms Kim Richards MP, Member for Redlands	Email: egc@parliament.qld.gov.au Phone: 07 3553 6637 Web: www.parliament.qld.gov.au/egc