



Education, Employment and Small Business Committee

Report No. 29, 56th Parliament

Subordinate legislation tabled between 4 September and 15 October 2019

1 Background and aim of this report

This report summarises the committee's examination of subordinate legislation tabled from 4 September to 15 October 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
184	Education (Fees) Amendment Regulation 2019	17 September 2019	6 February 2020
190	Work Health and Safety (Codes of Practice)(Stone Benchtop Industry) Amendment Notice 2019	15 October 2019	20 February 2020
192	Electrical Safety (Codes of Practice) and Other Legislation (Solar Farms) Amendment Notice (No. 2) 2019	15 October 2019	20 February 2020

3 Committee consideration of the subordinate legislation

The committee has examined the policy to be given effect by the subordinate legislation, the application of FLPs, compliance of the explanatory notes and the legislation's lawfulness. No issues regarding consistency with FLPs, explanatory notes or the lawfulness of the subordinate legislation were identified in the Education (Fees) Amendment Regulation 2019 and the Electrical Safety (Codes of Practice) and Other Legislation (Solar Farms) Amendment Notice (No. 2) 2019. Minor issues arise in relation to the Work Health and Safety (Codes of Practice)(Stone Benchtop Industry) Amendment Notice 2019 which are discussed below.

4 Education (Fees) Amendment Regulation 2019 – SL. 184

Unless specific approval is sought, the Queensland Government requires agencies to increase fees and charges to accurately reflect cost over time. For the 2019-20 financial year the approved indexation factor for fees and charges is 2.25%.¹ While some fee increases are above the indexed rate, this is due to rounding. In accordance with this, the Education (Fees) Amendment Regulation 2019 (the Amendment Regulation) indexes fees prescribed in the following regulations at 2.25%:

- Education (General Provisions) Regulation 2017
- Education (Overseas Students) Regulation 2018, and
- Education (Queensland College of Teachers) Regulation 2016.

¹ Explanatory notes, p 1.

Section 76 and schedule 5 of the Education (General Provisions) Regulation 2017 prescribe criminal history check fees for mature age student enrolment; and, item 10 of schedule 1 of the Education (Queensland College of Teachers) Regulation 2016 prescribes criminal history check fees for teacher certification. These fees reflect the exact amount charged by the Queensland Police Service (QPS). The QPS fee for undertaking a criminal history check increased from 1 July 2019 to \$26.95, which is within the 2.25%.

The Amendment Regulation also indexes fees in the Education and Care Services Regulation 2013 (ECS Regulation). Under the *Education and Care Service Act 2013*, the ECS Regulation prescribes fees payable by Queensland education and care providers that are not covered by the *Education and Care Services National Law (Queensland) Act 2011* (National Law).²

The National Law legislates a national approach to the regulation, assessment and quality improvement of early childhood education and care and outside school hours care.³ In 2014, the Queensland Government decided fees prescribed in the ECS Regulation would be indexed consistent with the indexation rate prescribed under the National Law. For the 2019-20 financial year, the National Law indexation rate is 1.8%, which is applied to fees prescribed in the ECS regulation.⁴

5 Work Health and Safety (Codes of Practice)(Stone Benchtop Industry) Amendment Notice 2019 – SL No. 190

On 18 September 2018 the Minister for Education and Minister for Industrial Relations announced a new code of practice to support the stone benchtop industry in protecting workers from respirable crystalline silica.⁵ The *Managing respirable crystalline silica dust exposure in the stone benchtop industry code of practice 2019* (code of practice) responds to safety concerns identified in an audit undertaken by Work Health and Safety Queensland. The audit revealed high worker exposure to respirable crystalline silica due to non-compliance with existing work health and safety requirements.⁶

The purpose of the Work and Health and Safety (WHS) Amendment Notice is to provide a framework for continuous improvement and progressively higher standards of work health and safety by approving the code of practice. The code of practice sets minimum safety standards for:

- dust control methods to eliminate or minimise respirable crystalline silica dust being generated during the mechanical processing of engineered or natural stone
- the selection and use of appropriate respirable protective equipment to adequately protect worker health, and
- air monitoring and health monitoring of workers to verify and routinely check that dust controls are effective and worker health is monitored to identify any changes in their health status.⁷

Section 26A of the *Work Health and Safety Act 2011* (WHS Act) requires persons conducting a business or undertaking, to comply with approved codes of practice unless an equivalent or higher standard is implemented.

² Explanatory notes, p 1.

³ *Education and Care Services National Law (Queensland) Act 2011*, Part 2 Adoption of National Law.

⁴ Explanatory notes, p 2.

⁵ Queensland Parliament, Record of Proceedings, 18 September 2018, p 2460.

⁶ *Managing respirable crystalline silica dust exposure in the stone benchtop industry code of practice 2019*, pp 6-7, https://www.worksafe.qld.gov.au/__data/assets/pdf_file/0005/181940/Managing-respirable-crystalline-silica-dust-exposure-in-the-stone-benchtop-industry-Code-of-Practice-2019.pdf

⁷ Explanatory notes, pp 1-2.

5.1 Potential issue – sufficient regard to the institution of parliament

Section 4(5)(e) of the Legislative Standards Act provides subordinate legislation has sufficient regard for the institution of parliament when it allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons; and if authorised by an Act. Section 274 of the WHS Act provides that the minister may approve a code of practice for the purposes of that Act and may vary or revoke an approved code of practice.

In considering whether it was appropriate for the code of practice to be dealt with by an instrument that was not subordinate legislation, and therefore not subject to parliamentary scrutiny, committees have considered the importance of the subject dealt with, the commercial or technical nature of the subject-matter, and the practicality or otherwise of including those matters entirely in subordinate legislation.⁸

The code of practice includes detailed information and is 48 pages long. The committee accepts that it is appropriate for practical reasons for such detailed matters to be set out in a document other than subordinate legislation.

Pursuant to section 274(6) of the WHS Act, the regulator must ensure that a copy is available for inspection by members of the public without charge at the office of the regulator during normal business hours. The code of practice is available on the Worksafe website. The committee is satisfied the WHS Amendment Notice has sufficient regard for the institution of Parliament.

5.2 Explanatory notes

The explanatory notes are required to consider the consistency of the subordinate legislation with FLPs. The above issue regarding sufficient regard to the institution of parliament is not considered in the explanatory notes for the WHS Amendment Notice. Otherwise, the explanatory notes comply with the Legislative Standards Act.

6 Electrical Safety (Codes of Practice) and Other Legislation (Solar Farms) Amendment Notice (No. 2) 2019 – SL. 192

Section 73A of the Electrical Safety Regulation 2013 (ES Regulation) 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 129.⁹ 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 ES Regulation.¹⁰

On 19 July 2019, section 73A was removed from the ES Regulation. The Electrical Safety (Codes of Practice) and Other Legislation (Solar Farms) Amendment Notice (No. 2) removes references to section 73A within the *Construction and Operation of Solar Farms Code of Practice 2019* and gives notice of this variation.

⁸ See the Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, pp 155-156, and Scrutiny of Legislation Committee, *Alert Digest 1999/04*, p.10, paras 1.65-1.67.

⁹ *State of Queensland v Maryrorough Solar Pty Ltd* [2019] QCA 129, <https://www.sclqld.org.au/caselaw/QCA/2019/129>

¹⁰ Education, Employment and Small Business (EESBC) Committee Report No. 19, <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2019/5619T1090.pdf>

7 Recommendation

The committee recommends that the Legislative Assembly note this report.



Ms Leanne Linard MP

Chair

February 2020

Education, Employment and Small Business Committee¹¹

Chair

Ms Leanne Linard MP, Member for Nudgee

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

¹¹ NB: The former Member for Currumbin and Deputy Chair, Mrs Jann Stuckey, resigned from Parliament as at 1 February 2020.