

Legal Affairs and Safety Committee

Report No. 43, 57th Parliament

Subordinate legislation tabled between 9 November 2022 and 20 February 2023

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 9 November 2022 and 20 February 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).¹

The report also notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
155	Queensland Civil and Administrative Tribunal and Other Legislation Amendment Regulation 2022	29 November 2022	19 April 2023
162	Proclamation – Child Protection Reform and Other Legislation Amendment Act 2022	29 November 2022	19 April 2023
163	Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2022	29 November 2022	19 April 2023
167	Proclamation – Building Units and Group Titles and Other Legislation Amendment Act 2022	29 November 2022	19 April 2023

*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

Unless noted below, the committee did not identify any significant issues regarding the policy, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or non-compliance with the HRA.

The committee considers that the explanatory notes tabled with the subordinate legislation noted in this report comply with the requirements of section 24 of the LSA and that the human rights

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

4 Queensland Civil and Administrative Tribunal and Other Legislation Amendment Regulation 2022 (SL No. 155)

4.1 Policy overview

The *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Regulation 2022* (SL No. 155) proposes to amend the *Queensland Civil and Administrative Tribunal Regulation 2019* and the *Queensland Civil and Administrative Tribunal Rules 2009* (QCAT Rules) to:

- support the new case management system for minor civil disputes
- reflect recent changes to how affidavits may be made, signed and witnessed under the *Oaths Act 1867*
- ensure the Queensland Civil and Administrative Tribunal (QCAT) can charge a fee for retail tenancy disputes referred to it under the *Retail Shop Leases Act 1994*.³

4.2 Fundamental legislative principles

4.2.1 Rights and liberties of individuals – Natural justice and procedural fairness

Legislation should be consistent with the principles of natural justice. Procedural fairness is a principle of natural justice and involves ‘a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case’.⁴

SL No. 155 removes the requirement to personally serve an entity with an application for a minor debt claim.⁵ The QCAT Rules now permit an application for a minor debt claim to be given to an entity in several ways, including: delivering it personally; sending it by post, fax or email; and leaving it with someone who is at the relevant address.⁶

The explanatory notes address the potential impact on natural justice:

This amendment potentially limits access to justice by removing the procedural protection provided by personal service which ensures that a recipient is aware of a proceeding made against them.

However, rule 39 provides appropriate safeguards for service by post or email by effectively providing a ‘consent-based’ approach to service. Before documents can be sent by post or electronically, rule 39 requires an entity to have filed an address for service nominating a service address (an address in Queensland) or electronic address (a fax number, email address or other electronic address). Documents may also be sent by post to a relevant address provided for in the service practice direction (e.g. for an individual, their last known residential or business address) if the party does not have an address for service.

The benefits gained from allowing all [minor civil disputes] to be served in a consistent way while maintaining appropriate safeguards outweigh the potential limitations on a person’s access to justice.⁷

³ SL No. 155, explanatory notes, pp 1-3.

⁴ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 25.

⁵ SL No. 155, s 17 (omitted QCAT Rules, r 38).

⁶ QCAT Rules, r 39 (as amended by SL No. 155, s 18).

⁷ SL No. 155, explanatory notes, p 4.

Committee comment

We are satisfied that SL No. 155 has sufficient regard to fundamental legislative principles. It can be unreasonable and may be impractical to require the personal delivery of claims for minor civil matters in every circumstance, and it is reasonable to use other contact methods where suitable and with appropriate safeguards to ensure the recipient is made aware of the claim.

4.2.2 Institution of Parliament – Subdelegation of power

Subordinate legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons.⁸

SL No. 155 amended the QCAT Rules to enable a practice direction to prescribe:

- How to send an affidavit to the registry
- the file format of an affidavit.⁹

Committee comment

We are satisfied that SL No. 155 has sufficient regard to the institution of Parliament. Under the *Queensland Civil and Administrative Tribunal Act 2009*, the QCAT President may make directions about QCAT's practices and procedures.¹⁰ It is appropriate to delegate such administrative matters.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA, except that the explanatory notes do not provide an explanation of how the legislation is consistent with the policy objectives of the authorising law, as required by section 24(1)(e) of the LSA. The explanatory notes simply state that SL No. 155 is consistent with the policy objectives of the authorising law.

4.4 Human rights compatibility

4.4.1 Fair hearing

A party to a proceeding has the right to have the proceeding decided by a court or tribunal after a fair hearing.¹¹ The human rights certificate identifies that 'each party must be given a reasonable opportunity to present their case, which involved being informed of the case being made by the opposing party and having the opportunity to respond'.¹²

As noted above, SL No. 155 omits the personal service requirement for minor debt claims. The human rights certificate sets out the impacts that this could have on the right to a fair hearing, namely that a respondent, who is genuinely unaware of an application served against them, would lose the opportunity to respond.¹³

As noted above, SL No. 155 enables an applicant to a minor debt claim to serve the respondent in several ways including by delivering it personally or sending it via email or post.

The purpose of the amendment is to create consistency for the service of applications for all minor civil disputes.¹⁴ The human rights certificate highlights benefits of the change, namely flexibility, but with appropriate safeguards.¹⁵

⁸ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 170; *Legislative Standards Act 1992*, s 4(5)(e).

⁹ SL No. 155, s 8, new rule 25.

¹⁰ *Queensland Civil and Administrative Tribunal Act 2009*, s 226.

¹¹ *Human Rights Act 2019*, s 31(1),

¹² SL No. 155, human rights certificate, p 3.

¹³ SL No. 155, human rights certificate, p 3.

¹⁴ SL No. 155, human rights certificate, p 3.

¹⁵ SL No. 155, human rights certificate, p 4.

The safeguards include:

- documents can only be served on a respondent electronically where the respondent has specified an electronic address for service in documents already filed in QCAT
- documents sent by post must be sent to the relevant address of the entity, i.e. the entity's address for service filed in QCAT or the address prescribed in the service practice direction
- a decision for default can only be made by QCAT¹⁶ after the applicant has provided proof that the respondent has been given a copy of the application.¹⁷

Committee comment

We are satisfied that SL No. 155 is compatible with human rights and that any limits are demonstrably justified. Serving an application through email or post is a reasonable method of serving and there are appropriate safeguards to reduce the risk of a person being unaware of an application against them.¹⁸

4.5 Human rights certificate

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

5 Proclamation - Child Protection Reform and Other Legislation Amendment Act 2022 (SL No. 162)

5.1 Policy overview

The Proclamation made under the *Child Protection Reform and Other Legislation Amendment Act 2022* fixed the 2 December 2022 for the commencement of certain provisions of the Act. The provisions amend the *Working with Children (Risk Management and Screening) Act 2000*.¹⁹

5.2 Fundamental legislative principles

No issues of fundamental legislative principle were identified.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Human rights compatibility

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

5.5 Human rights certificate

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

¹⁶ *Queensland Civil and Administrative Tribunal Act 2009*, ss 50(5) and 50A(6).

¹⁷ SL No. 155, human rights certificate, pp 4-5.

¹⁸ Section 8 of the *Human Rights Act 2019* relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act. Section 13 provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

¹⁹ SL No. 162, explanatory notes, p 1.

6 Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2022 (SL No. 163)

6.1 Policy overview

The *Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2022* (SL No. 163) raises the interest payable on amounts in the common fund from 0.54% to 0.7% from 1 December 2022.

The interest rate is determined by the Public Trustee through an analysis of ‘the market return of a comparative set of competitive financial products and prevailing economic conditions’.²⁰ In the review of the interest rates payable under the *Public Trustee Regulation 2012*, the Public Trustee applied the methodology endorsed by the Public Trust Office Investment Board.²¹

6.2 Fundamental legislative principles

No issues of fundamental legislative principle were identified.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA, except that SL No. 163 does not include an explanation of how the legislation is consistent with the policy objectives of the authorising law, as required by section 24(1)(e) of the LSA. The explanatory notes simply state that SL No. 163 is consistent with the policy objectives of the *Public Trustee Act 1978*.

6.4 Human rights compatibility

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

6.5 Human rights certificate

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

7 Proclamation – Building Units and Group Titles and Other Legislation Amendment Act 2022 (SL No. 167)

7.1 Policy overview

The Proclamation made under the *Building Units and Group Titles and Other Legislation Amendment Act 2022* (SL No. 167) fixed 1 December 2022 for the commencement of the remaining provisions of the Act that are yet to commence.

7.2 Fundamental legislative principles

No issues of fundamental legislative principle were identified.

7.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.4 Human rights compatibility

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

7.5 Human rights certificate

No human rights certificate was required to be tabled with the proclamation.²²

²⁰ SL No. 63, explanatory notes, p 1.

²¹ SL No. 63, explanatory notes, p 2.

²² *Human Rights Act 2019*, s 41(4A).

8 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

March 2023

Legal Affairs and Safety Committee

Chair

Deputy Chair

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Mrs Laura Gerber MP, Member for Currumbin

Ms Sandy Bolton MP, Member for Noosa

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