

Economics and Governance Committee

Report No. 45, 57th Parliament

Subordinate legislation tabled between 22 February 2023 and 28 March 2023

1 Aim of this report

This report summarises the findings of the Economics and Governance Committee (committee) following our examination of the subordinate legislation within our portfolio areas tabled between 22 February 2023 and 28 March 2023.

It reports on any identified issues relating to the policy to be given effect by the subordinate legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness.³

It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA)⁴ and on our consideration of the compliance with the *Human Rights Act 2019* (HRA) of the human rights certificates tabled with the subordinate legislation.⁵

2 Subordinate legislation examined

No.	Public Sector Regulation 2023	Date tabled	Disallowance date*
9	Public Sector Regulation 2023	14 March 2023	25 May 2023
10	Proclamation – <i>Integrity and Other Legislation Amendment Act 2022</i>	14 March 2023	25 May 2023
19	Superannuation (State Public Sector) Amendment Notice 2023	28 March 2023	15 June 2023

*The disallowance date is 14 sitting days after the tabling date. (See section 50 of the *Statutory Instruments Act 1992*.) 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

No significant issues were identified with the policy, consistency with FLPs, lawfulness, or compatibility with human rights of the Superannuation (State Public Sector) Amendment Notice 2023.

The committee identified potential FLP and human rights issues in relation to the Public Sector Regulation 2023 and potential human rights issues in relation to the proclamation made under the *Integrity and Other Legislation Amendment Act 2022* – matters that are discussed further in the next section of this report.

¹ *Legislative Standards Act 1992* (LSA) s 4.

² *Human Rights Act 2019* (HRA) s 8.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ LSA, Part 4.

⁵ HRA, s 41.

However, the committee was ultimately satisfied that all 3 items of subordinate legislation are consistent with FLPs and compatible with human rights.

The committee also considers that the explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA. Further, the accompanying human rights certificates provide a sufficient level of information to facilitate an understanding of factors relevant to the compatibility of the subordinate legislation with the HRA.

4 Public Sector Regulation 2023

The Public Sector Regulation 2023 (SL No. 9) is intended to support the *Public Sector Act 2022* (Public Sector Act) from its commencement on 1 March 2023, with the Public Sector Act and SL No. 9 having respectively replaced the now repealed *Public Service Act 2008* and Public Service Regulation 2018 (2018 regulation) at that time.⁶

In prescribing the application of relevant provisions of the Public Sector Act, SL No. 9 continues and modernises certain existing arrangements and requirements from the repealed 2018 regulation, including in relation to:

- transfer and secondment arrangements applying to certain public sector entities
- appeal arrangements in relation to transfer decisions where transfer arrangements are prescribed
- appeal arrangements which permit movement decisions to be treated as transfer decisions for appeal purposes for health service employees of Queensland Health or a Hospital and Health Service
- directive arrangements applying a change of pay date for Queensland Health employees to health service employees of Hospital and Health Services
- record keeping arrangements that apply to public service and health service employees
- the listing of prescribed persons for whom protection against civil liability applies.⁷

In addition, SL No. 9 would continue:

- prescribing the Crime and Corruption Commission (CCC) and the Queensland Police Service (QPS) as external agencies for the purpose of an information exchange agreement⁸
- existing arrangements in the *Ambulance Service Act 1991* and the *Fire and Emergency Services Act 1990* governing the disclosure of serious disciplinary action under the Public Sector Act when screening potential candidates for employment with the Queensland Ambulance Service (QAS) or the Queensland Fire and Emergency Service (QFES).⁹

4.1 Consistency with fundamental legislative principles

4.1.1 Rights and liberties of individuals

The right to privacy is relevant to a consideration of the rights and liberties of individuals. The right to privacy is discussed below under the heading of 'Compatibility with human rights' (report section 4.3.1).

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

⁶ SL No. 9, explanatory notes, p 1; human rights certificate, p 1.

⁷ SL No. 9, human rights certificate, p 2; explanatory notes, p 3.

⁸ SL No. 9, human rights certificate, p 2. Under the *Public Service Act 2008*, an information exchange agreement applied to a review into a department's handling of work performance matters. Under the *Public Sector Act 2022* (Public Sector Act), it will apply to a review into a public sector entity's handling of work performance matters.

⁹ SL No. 9, human rights certificate, p 2.

4.3 Compatibility with human rights

4.3.1 Right to privacy

Section 25(a) of the HRA provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

There are a number of provisions in SL No. 9 that potentially limit this right. In particular:

- part 3, which sets out arrangements for the retention and handling of employee records, including providing for access to and the sharing of those records in certain circumstances
- section 15, which prescribes the CCC and the QPS as external agencies with which the Public Sector Commissioner (commissioner) may enter into an information exchange agreement
- section 17, which effectively provides for the disclosure to the chief executive of serious disciplinary action taken against a person who is seeking to be employed in, or seconded to, the QAS or the QFES.¹⁰

4.3.1.1 Employee records

Certain information is contained in employee records, including information about the employee's work performance, medical reports, and written allegations of misconduct by the employee. As noted above, SL No. 9 contains provisions which allow for the access to and sharing of these records, which potentially impinges on employee rights to privacy.

The human rights certificate advises that the purpose of the employee record provisions is to protect against the employment of inappropriate persons, which will help safeguard the government's 'resources and reputation' and contribute to the overall goal of ensuring the efficient management of relevant entities by employed personnel.¹¹ It also identifies various restrictions and safeguards that apply in relation to the keeping and treatment of employee records, including through:

- limits on what is defined as an employee record¹²
- provisions permitting an employee to access records that may be detrimental to their interests, and affording them a right to respond to certain actions in relation to the records.¹³

4.3.1.2 Information sharing

The Public Sector Act enables the commissioner to enter into an information exchange agreement with the chief executive officer of an external agency to obtain and give information for the purpose of a review of a public sector entity's handling of work performance matters.¹⁴ The external agencies prescribed in SL No. 9 are the CCC and the QPS. The exchange of information could include information relating to individual employees, impacting the right to privacy.¹⁵

Under the Public Sector Act, a review is only conducted if the commissioner considers it may be beneficial to conduct a review to promote:

- the continuous improvement of a public sector entity's practices regarding the handling of work performance matters, or
- the optimal resolution of a current work performance matter.¹⁶

¹⁰ See Public Sector Act, ss 70, 71.

¹¹ SL No. 9, human rights certificate, p 5.

¹² See SL No. 9, s 9(2).

¹³ See SL No. 9, s 11; human rights certificate, pp 4-5.

¹⁴ Public Sector Act, ss 123, 126. 'Work performance matter' means a matter involving a public sector employee's work performance or personal conduct, including, for example, an allegation against the employee that constitutes or would, if proved, constitute, a disciplinary ground.

¹⁵ SL No. 9, human rights certificate, p 6.

¹⁶ Public Sector Act, s 123(1).

According to the human rights certificate, the limitation on the right to privacy is necessary to enable the commissioner to 'obtain and consider all relevant information, when undertaking a review of a public sector entity's handling of work performance matters', thereby ensuring 'the review is conducted fulsomely'.¹⁷

The human rights certificate states that being able to undertake a review into the handling of a work performance matter effectively has the potential to benefit the relevant agency, the public sector and the Queensland community 'by ensuring a responsive and effective Government'.¹⁸ It also notes that the Public Sector Act provides a safeguard for the right to privacy by imposing a duty of confidentiality on certain persons.¹⁹

4.3.1.3 Disclosure of serious disciplinary action

The human rights certificate advises that the purpose of SL No. 9's provision for the disclosure of serious disciplinary action is to ensure only fit and proper people are employed by the QAS and the QFES.²⁰ The human rights certificate further states:

Given the important role QAS and QFES have in serving the community, stringent screening of potential employees and any limitation of a human right that occurs as a result of this is justified on the basis that the limitation is consistent with protecting the human dignity of those that may use the services provided by these entities.²¹

As above, the duty of confidentiality applies.²²

Committee comment

The committee is satisfied that SL No. 9 has sufficient regard for the rights and liberties of individuals referenced in section 4.1.1 of this report, including the individual right to privacy recognised in section 25(a) of the HRA.

The identified limitations on this right are reasonable and readily justifiable,²³ serving the important purpose of ensuring our government entities are equipped with information necessary to support their engagement of appropriate persons in the delivery of government services, and with relevant accompanying safeguards in place.

4.3.2 Right to take part in public life

The right to take part in public life includes eligible persons, without discrimination, having access, on general terms of equality, to the public service.²⁴

The human rights certificate observes that the additional disclosure requirements included in section 17 of SL No. 9 'may limit the person's access to public service'.²⁵

¹⁷ SL No. 9, human rights certificate, p 6.

¹⁸ SL No. 9, human rights certificate, p 7.

¹⁹ SL No. 9, human rights certificate, p 7. See *Public Sector Act 2022*, ch 8, pt 3.

²⁰ SL No. 9, human rights certificate, pp 8-9.

²¹ SL No. 9, human rights certificate, p 9.

²² SL No. 9, human rights certificate, p 9.

²³ Section 8 of the HRA 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 HRA. Section 13 of the HRA 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.

²⁴ HRA, s 23(2)(b).

²⁵ SL No. 9, human rights certificate, p 9.

Committee comment

The justifications noted above with respect to the disclosure of serious disciplinary action are also relevant to a consideration of the limitation on the right to take part in public life.

Noting the critical nature of the safety services provided by the QAS and QFES, the committee is satisfied that the potential restriction on a prospective employee's engagement by these entities is reasonable and appropriate, and that SL No. 9 is compatible with human rights.

4.4 Human rights certificate

The human rights certificate tabled with SL No. 9 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Proclamation – Integrity and Other Legislation Amendment Act 2022

The Proclamation made under the *Integrity and Other Legislation Amendment Act 2022* (IOLA Act) (SL No. 10) commenced specified provisions of the IOLA Act on 1 March 2023.

The primary purposes of the provisions commenced by SL No. 10 are to:

1. Establish the Auditor-General as an Officer of the Parliament and include a requirement for an oath of office, to be given within 28 days of commencement of the provision.
2. Place an employment restriction on a person who has been the Auditor-General, prohibiting employment in the public sector for two years after leaving the role.
3. Enable the Auditor-General to undertake performance audits of Government Owned Corporations.
4. Ensure the Queensland Integrity Commissioner is not subject to any direction concerning the way the commissioner performs their functions under the Act and priority given to ethics or integrity issues.
5. Create the new Office of the Queensland Integrity Commissioner and the new role of Queensland Deputy Integrity Commissioner.
6. Create the new offence of unregistered lobbying.
7. Reduce the strategic review period for the Ombudsman from seven years to five, in line with other integrity bodies' strategic review timeframes.²⁶

5.1 Consistency with fundamental legislative principles

No FLP issues were identified.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Compatibility with human rights

5.3.1 Right to take part in public life

As noted above, the right to take part in public life includes eligible persons, without discrimination, having access, on general terms of equality, to the public service.²⁷

SL No. 10 commenced new section 19A of the *Auditor-General Act 2009*, which prohibits a former auditor-general from holding an office in, or being employed by, a public sector entity for 2 years after the person stops holding the office. It therefore limits the right of former auditors-general to take part in public life.

²⁶ SL No. 10, explanatory notes, p 1.

²⁷ HRA, s 23(2)(b).

The intent of the provision is to 'reinforce the independence of the Auditor-General and support increased community confidence in the integrity and impartiality of the role'.²⁸ The human rights certificate states that:

- there is no less restrictive and reasonably available way of achieving this purpose
- the approach is consistent with a requirement in section 324CI and 324CJ of the *Commonwealth Corporations Act 2001* (Cth), which provides that a private sector auditor cannot become an officer of a former audit client for a 2-year period.²⁹

5.3.2 Right to freedom of expression

The right to freedom of expression includes that every person has the freedom to impart information and ideas of all kinds.³⁰

SL No. 10 commenced new section 71A of the *Integrity Act 2009* (Integrity Act), which established an offence for unregistered lobbyists to undertake lobbying activities or certain other activities associated with the carrying out of lobbying activities. The associated maximum penalty is 200 penalty units (\$28,750).³¹

While unregistered lobbying was already prohibited under the Integrity Act, the human rights certificate advises that accompanying offence provision was considered necessary as '[r]ecent reviews of Queensland's integrity framework have identified that sanctions for unregistered lobbying are required if the regulation of lobbying is to be effective under the Integrity Act'.³²

The human rights certificate, in acknowledging the potential effect of the newly commenced provision on the right to freedom of expression, emphasises that lobbying itself is not a prohibited activity, and that the offence provision does not affect the ability of individuals to engage in lobbying activities, so long as they register to do so.³³

In supporting the registration requirement, the newly commenced offence provision is intended to contribute to the Integrity Act's purpose of encouraging confidence in public institutions by regulating contact between lobbyists and government and opposition representatives, so that lobbying is conducted 'ethically' and 'in accordance with public expectations of transparency and integrity'.³⁴

The certificate adds: 'The public should be able to easily access information about who is lobbying government, and this information should be up to date and accurate'.³⁵

Committee comment

We are satisfied that the subordinate legislation is compatible with human rights.

5.4 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.

²⁸ SL No. 10, human rights certificate, p 3.

²⁹ SL No. 10, human rights certificate, p 3.

³⁰ HRA, s 21(2).

³¹ *Integrity Act 2009*, s 71A(1). The value of a penalty unit is \$143.75. See Penalties and Sentences Regulation 2015, s 3 (current from 1 July 2022, as amended by the Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022). Note: The value of a penalty unit will increase to \$154.80 from 1 July 2023.

³² SL No. 10, human rights certificate, p 4.

³³ SL No. 10, human rights certificate, p 4.

³⁴ SL No. 10, human rights certificate, p 4.

³⁵ SL No. 10, human rights certificate, p 5.

6 Superannuation (State Public Sector) Amendment Notice 2023

The Superannuation (State Public Sector) Amendment Notice 2023 (SL No. 19) amends the Superannuation (State Public Sector) Notice 2021 (superannuation notice) to:

- replace a reference to the repealed *Public Service Act 2008* with the relevant chapters of the Public Sector Act³⁶
- omit a number of entries in schedule 2 of the superannuation notice³⁷ because they are ‘no longer in operation or no longer have any members contributing to QSuper’³⁸
- provide employees of the entities in schedule 2 of the superannuation notice with access to the basic accumulation arrangement.³⁹

The amendments commenced on 1 April 2023.⁴⁰

6.1 Consistency with fundamental legislative principles

No FLP issues were identified.

6.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.3 Compatibility with human rights

We are satisfied that the subordinate legislation is compatible with human rights.

6.4 Human rights certificate

The human rights certificate tabled with SL No. 19 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

May 2023

Economics and Governance Committee

Chair	Mr Linus Power MP, Member for Logan
Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
Members	Mr Michael Crandon MP, Member for Coomera
	Mrs Melissa McMahon MP, Member for Macalister
	Mr Daniel Purdie MP, Member for Ninderry
	Mr Adrian Tantari MP, Member for Hervey Bay

³⁶ SL No. 19, s 4.

³⁷ SL No. 19, s 5.

³⁸ SL No. 19, explanatory notes, p 2.

³⁹ SL No. 19, s 5. Note: This also ‘allows for the simplification or deletion of a number of entries and definitions’. See SL No. 19, explanatory notes, p 1.

⁴⁰ SL No. 19, s 2.