

Economics and Governance Committee

Report No. 48, 57th Parliament

Subordinate legislation tabled between 24 May 2023 and 13 June 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 24 May 2023 and 13 June 2023.

It reports on any identified issues relating to the policy to be given effect by the 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.	Subordinate legislation	Date tabled	Disallowance date*
41	Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2023	13 June 2023	25 October 2023
47	Superannuation (State Public Sector) Regulation 2023	13 June 2023	25 October 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

The committee identified potential issues of FLP in relation to both items of subordinate legislation, as well as potential human rights issues in relation to the Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2023. These issues are discussed further in the next section. However, the committee was ultimately satisfied that the subordinate legislation is consistent with FLPs and compatible with human rights.

The committee was also satisfied that the explanatory notes to the subordinate legislation comply with part 4 of the LSA, and that the accompanying human rights certificates provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

A brief overview of the subordinate legislation is provided below.

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

² *Human Rights Act 2019* (HRA), s 8.

³ *Parliament of Queensland Act 2001* (POQA), s 93.

⁴ LSA, pt 4 (s 24).

⁵ HRA, s 41.

4 Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2023

The objective of the Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2023 (SL No. 41) is to facilitate the holding of the 2023 NTI Townsville 500 V8 motor racing event (Townsville 500), from 7 to 9 July 2023.⁶

SL No. 41 seeks to achieve this by prescribing the Townsville 500 as a major event under the *Major Events Act 2014* (MEA).⁷ It also prescribes the major event period (from 6 July 2023 to midday on 10 July 2023⁸), and the periods for carrying out temporary works for the event (from the beginning of the day on 12 June 2023 to midday on 6 July 2023, and from midday on 10 July 2023 to midnight on 22 July 2023⁹).

The prescribed major event area for the Townsville 500 in 2023 is the same as for the 2021 and 2022 events.¹⁰

4.1 Consistency with fundamental legislative principles

4.1.1 Rights and liberties of individuals

The FLPs include a requirement that legislation has sufficient regard to the rights and liberties of individuals.¹¹

The declaration of a major event results in restrictions on individuals in the major event area, limiting their rights and liberties. These restrictions potentially commence with the carrying out of temporary works prior to the event, and continue until the return of the land to the condition it was in immediately before the temporary works were carried out.

The restrictions include altered access to roads and paths, limitations on entering the event area (eg not being able to enter the event area without paying the entry fee¹²), and persons being subject to possible infringements on their rights within the event area.

The potential infringements on rights and liberties include:¹³

- being frisked by a police officer¹⁴
- limitations on what a person may possess or do while entering or when within the major event area (eg no weapons and no soliciting money without approval of the event organiser)¹⁵
- being directed to immediately leave the event area and not enter it for up to 24 hours¹⁶
- not being permitted to park a car in the event area.¹⁷

⁶ SL No. 41, explanatory notes, p 1.

⁷ SL No. 41, s 3; SL No. 41, explanatory notes, p 1.

⁸ SL No. 41, s 4.

⁹ SL No. 41, s 5.

¹⁰ SL No. 41, explanatory notes, p 1.

¹¹ *Legislative Standards Act 1992*, s 4(2)(a).

¹² Unless certain exceptions apply, such as the person has an occupant's pass: *Major Events Act 2014* (MEA), ss 18(1)-(4), 19.

¹³ Major Events (Motor Racing Events) Regulation 2015, s 15.

¹⁴ MEA, s 18(6).

¹⁵ MEA, s 20.

¹⁶ MEA, s 26. In certain circumstances, the event organiser may direct the person not to enter the major event area for a period of more than 24 hours.

¹⁷ Except in specified circumstances. MEA, s 28.

The explanatory notes contend that the limitations on the rights and liberties of individuals are reasonable and justifiable on the grounds that the Townsville 500:

... is consistent with the objectives of the MEA; meets the public's expectation during the nominated duration based off historic hosting of the event; and ensures public safety during the duration of the event.¹⁸

Further:

... the provisions in [SL No. 41] specify timeframes and includes other limits which help to minimise undue impacts on individuals' rights and liberties.¹⁹

The explanatory notes state that the time limitations on the restrictions:

... will help ensure relevant provisions in [SL No. 41] do not have a significant impact outside of these times and help ensure they have sufficient regard for the rights and liberties of individuals who may be inconvenienced by altered access to roads and paths and the carrying out of temporary works.²⁰

Elsewhere in the explanatory notes, the expected benefits of the event are outlined as follows:

The 2023 NTI Townsville 500 event delivers tourism and economic benefits for Townsville and the State of Queensland. This includes generating local jobs and showcasing Townsville and Queensland to a significant television audience around Australia and overseas. The total attendance for the 2019 Townsville 400 was 121,000, generating direct and incremental spending of \$35 million in Queensland and reaching a cumulative broadcast audience of 1.04 million. It is expected that the 2023 NTI Townsville 500 will achieve similar outcomes.²¹

Committee comment

The committee is satisfied the economic and tourism benefits for Townsville from hosting the event outweigh the potential temporary inconvenience to local residents resulting from noise, road closures, diversions and other restrictions associated with the event, such that any breach of FLPs is justified.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.3 Compatibility with human rights

4.3.1 Freedom of movement

Every person lawfully in Queensland has the right to move freely within the state.²²

The MEA and the Major Events (Motor Racing Events) Regulation 2015 (combined, the motor events legislation) limit the ability of persons to move freely due to road closures, other restrictions on vehicles, being subject to a possible decision to leave an area, and limited entry and exit points.

With respect to these limitations on the freedom of movement, the human rights certificate states:

The limitations help achieve the purpose by limiting the movement of individuals into and within the major event area, ensure appropriate behaviour of visitors and spectators, and are necessary to ensure the major event organisers have sufficient capacity to provide for and manage a safe event space for the Townsville 500 event.²³

Further:

... management of vehicles entering and within the major event area is essential to the safety of visitors and spectators, but also as a road event, it is critical for the safety of the event's drivers.

While these limitations on movement are necessary to provide for a safe major event area, to ensure these limitations aren't unduly restrictive, section 19 of the MEA provides for the granting of an occupant's pass

¹⁸ SL No. 41, explanatory notes, p 2.

¹⁹ SL No. 41, explanatory notes, p 2.

²⁰ SL No. 41, explanatory notes, p 3.

²¹ SL No. 41, explanatory notes, p 2.

²² HRA, s 19.

²³ SL No. 41, human rights certificate, p 4.

to individuals who live, work or have a business within a major event area. The occupant's pass authorises a person to enter and remain in the major event area during the major event period.²⁴

4.3.2 Freedom of expression

Every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.²⁵

The motor events legislation involves limits on this right through advertising restrictions, limits on conduct within the event area, prohibitions on broadcast, and the use of official logos.²⁶

Regarding the restriction on broadcasting, the human rights certificate states:

The potential limitation on the right to freedom of expression by [the ban on broadcasting or recording a major event] ... is justifiable, in that it prevents unauthorised third parties from exploiting the major event for their own gain or affecting the integrity of the event or the exclusive rights of the event's official sponsors. The freedom of [expression] is not unreasonably limited because an individual may still broadcast or record the major event ... on a personal device; ... for personal use; and ... for a purpose other than for profit or gain.²⁷

Regarding the restriction on the use of logos and the like, the human rights certificate advises:

... the provisions regarding the use of the official logo or title are not intended to limit freedom of expression; rather, they are intended to protect the rights of event organisers and sponsors from unauthorised activities, consistent with the objective of the MEA.²⁸

4.3.3 Property rights

Section 24(2) of the HRA states that a person must not be arbitrarily deprived of their property.²⁹

The motor events legislation makes provision for limitations to property rights, which include:

- the imposition of conditions of entry to a person's property (if within the event area)
- limits on conduct within the event area (such as not being permitted to sell or distribute certain items without approval)
- powers to move unattended vehicles and inspect a person's possessions, including removing articles of clothing from a person or items from a vehicle for the purposes of inspection.³⁰

Regarding the possible limit on the right to property by allowing the movement of an individual's unattended vehicle if located in the major event area, the human rights certificate states:

The potential for a limitation to occur on property rights is managed through provisions under the MEA which require details of the temporary works and time periods to be published in advance of the works occurring.³¹

Further, in relation to other limits on property rights:

The power to seize an item from a person is also available ... where the person has an item that displays the official logo or official title of the event, and it is reasonably suspected that the person intends to sell the item and does not have the authority to do so.

²⁴ SL No. 41, human rights certificate, p 5.

²⁵ HRA, s 21.

²⁶ See for example, MEA, pt 5, subdivs 3, 4; pt 6.

²⁷ SL No. 41, human rights certificate, p 5.

²⁸ SL No. 41, human rights certificate, p 5.

²⁹ HRA, s 24.

³⁰ SL No, 41, human rights certificate, p 3.

³¹ SL No. 41, human rights certificate, p 6.

These limitations are considered reasonable and are aimed at preventing unauthorised persons from seeking to exploit a major event for their own gain. The provisions are intended to protect the rights of the event organisers and sponsors from unauthorised street trading, consistent with the object of the MEA.³²

4.3.4 Privacy and reputation

A person has the right to not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.³³

The major events legislation provides for potential impacts on this right, including by providing that:

- persons entering the major event area may be asked to consent to:
 - the use of an electronic detection device on them or their possessions
 - inspection of their belongings, and the removal and inspection of outer garments and articles in their possession for the purpose of inspection
 - inspection of their vehicle and removal and inspection of an article from their vehicle
- persons within the major event area may be asked to consent to opening and allowing the inspection of an item in their possession
- persons who are directed to leave the major event area may have their photo (or other image) taken
- persons who are found to be committing, or are reasonably suspected of having just committed, an offence against the MEA, may be required to state their name and address, and provide evidence of the correctness of that statement.³⁴

The human rights certificate states:

The limitations on the right to privacy ... are non-arbitrary and required to meet the objectives of the MEA to ensure the safety of visitors and spectators at major events or to enforce other sections of the MEA such as the use of official logo ... The inspection of property and the search of a person is necessary to ensure prohibited items are not being carried and is similar to a search at an airport or private ticketed venue.³⁵

Further, regarding the power to photograph a person who is being removed from the event area:

This limitation is considered reasonable and necessary in circumstances where multiple entry points to the major event area are available and will assist the major event organiser in managing disruptive behaviour and the potential for the reoccurrence of unauthorised or un-ticketed entry by individuals.³⁶

Broadly, the human rights certificate concludes that the limitations on the right to privacy:

... are considered necessary and appropriate to ... meet the objective of the MEA which is to ensure the safety and enjoyment of visitors and spectators at a major event, and the restrictions to the type of authorised person who may exercise the powers under sections 25 [Inspecting thing in person's possession inside major event area] and 63 [Requiring name and address] of the MEA helps reduce the potential impact on the right to privacy when applying the powers.³⁷

³² SL No. 41, human rights certificate, p 6.

³³ HRA, s 25(2).

³⁴ SL No. 41, human rights certificate, pp 3-4.

³⁵ SL No. 41, human rights certificate, p 7.

³⁶ SL No. 41, human rights certificate, p 7.

³⁷ SL No. 41, human rights certificate, p 7.

Committee comment

The committee is satisfied that SL No. 41 is compatible with human rights and that any limitations regarding freedom of expression, property rights, and privacy and reputation are reasonable and justifiable.³⁸

4.4 Human rights certificate

The human rights certificate tabled with SL No. 41 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Superannuation (State Public Sector) Regulation 2023

The Queensland Government has announced changes to superannuation arrangements for public sector employees which commenced on 1 July 2023 (new arrangements).³⁹ The new arrangements provide for an employer contribution of 12.75 per cent (18 per cent for police officers and 14.25 per cent for fire service officers) of ordinary time earnings, including amounts earned when on paid leave, without the requirement for a compulsory member contribution to be made by the employee (as previously required).⁴⁰

The Superannuation (State Public Sector) Regulation 2023 (SL No. 47) gives effect to these changes by:

- repealing the Superannuation (State Public Sector) Regulation 2022⁴¹
- prescribing the frequency and rate of member and employer contributions for state public sector employees who are subject to the new arrangements
- prescribing the frequency and rate of member and employer contributions for employees who remain subject to legacy arrangements (to remain unchanged, as consistent with the pre-existing arrangements prescribed in detail under the now repealed Superannuation State Public Sector) Deed 1990).⁴²

5.1 Consistency with fundamental legislative principles

4.4.1 Institution of Parliament

The LSA provides that whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act.⁴³

The *Superannuation (State Public Sector) Act 1990* (Superannuation Act) states that a unit of the state public sector must pay contributions for each of its employees into the employee's chosen fund at the rate and frequency prescribed by regulation.⁴⁴ SL No. 47 subdelegates this prescriptive power to the Superannuation (State Public Sector) Notice 2021 (Notice), by setting out the frequency and rates in provisions amending that Notice (specifically, replacing Schedule 2 of the Notice).⁴⁵ As acknowledged in the explanatory notes, this may infringe on FLPs.⁴⁶

³⁸ 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 s 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.

³⁹ SL No. 47, p 2.

⁴⁰ SL No. 47, p 2.

⁴¹ SL No. 47, s 20.

⁴² SL No. 47, s 35 (proposed replacement sch 2, pts 1 and 2 of the Superannuation (State Public Sector) Notice 2021); SL No. 47, explanatory notes, pp 1-3. Note – Defined benefit members are unaffected by the changes.

⁴³ LSA, s 4(5)(e).

⁴⁴ *Superannuation (State Public Sector) Act 1990* (Superannuation Act), s 23(1).

⁴⁵ SL No. 47, explanatory notes, p 4; SL No. 47, pt 2, divs 1 and 2.

⁴⁶ SL No. 47, explanatory notes, p 4.

Under the Superannuation Act, the Minister has the power to declare certain matters by written notice, such as declaring entities to be units of the state public sector. These notices are subordinate legislation.⁴⁷ As a result of SL No. 47, the Minister will be able to impact the rate and frequency of contributions for employees by making changes to the Notice:

Whilst the initial location of employers in part 1 or 2 of the Schedule of the Notice will be determined by the amendments made by the Regulation, there will be nothing preventing the Minister from amending the Notice, Schedule 2 in the future to move employers between parts 1 and 2 which will in turn affect the rates and frequencies for compulsory contribution in relation to their employees.⁴⁸

The explanatory notes justify the subdelegation on the basis that amendments to the Notice are subordinate legislation and therefore have to be tabled and may be disallowed:

... the FLP issue is mitigated as the sub-delegation is subordinate legislation (Notice) and any future amendment of the Notice would be subject to Parliamentary scrutiny by way of a disallowance motion by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*.⁴⁹

Committee comment

The committee notes that the Minister will be able to impact the rate and frequency of superannuation contributions for employees by making changes to the Notice. However, as the Notice, like SL No. 47, is subordinate legislation which is required to be tabled and is subject to parliamentary scrutiny, the subdelegation does not reduce the capacity for the relevant provisions to be examined. The committee is therefore satisfied that SL No. 47 has sufficient regard to the institution of Parliament.

5.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.3 Compatibility with human rights

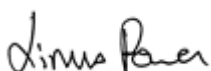
The committee is satisfied that the subordinate legislation is compatible with human rights.

5.4 Human rights certificate

The human rights certificate tabled with SL No. 47 provides a sufficient level of information to facilitate understanding of the regulation in relation to its compatibility with human rights.

5 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

July 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

⁴⁷ See Superannuation Act, ss 4, 10, 17.

⁴⁸ SL No. 47, explanatory notes, p 4.

⁴⁹ SL No. 47, explanatory notes, p 4.