

Economics and Governance Committee

Report No. 10, 57th Parliament

Subordinate legislation tabled between 21 April 2021 and 15 June 2021

1 Aim of this report

This report summarises the findings of the Economic and Governance Committee (committee) following its examination of the subordinate legislation within its portfolio areas tabled between 21 April 2021 and 15 June 2021. It reports on any issues identified by the committee 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 the committee's consideration of the human rights certificates tabled with the subordinate legislation.⁵

2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table below.

No.	Subordinate legislation	Date tabled	Disallowance date*
047	Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021	15 June 2021	27 October 2021
051	Superannuation (State Public Sector) Amendment Notice 2021	15 June 2021	27 October 2021
052	Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2021	15 June 2021	27 October 2021

* 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.

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to: a) rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it 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 to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

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

⁴ LSA, Part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁵ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister's opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister's opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

3 Committee consideration of the subordinate legislation

The committee did not identify any significant issues regarding the policy, consistency with FLPs, or lawfulness of the Superannuation (State Public Sector) Amendment Notice 2021 (SL No. 51 of 2021) or Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2021 (SL 52 of 2021).

The committee considered a number of FLP and human rights implications of the Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021 (SL No. 47 of 2021), but was satisfied that the provisions in question were appropriate and reasonably and demonstrably justifiable in the circumstances.

For all 3 items of subordinate legislation, the explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA.⁶ Further, the committee considered the human rights certificates tabled with the subordinate legislation provide sufficient levels of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

A brief overview of the subordinate legislation – including a summary of the committee’s consideration of FLP and human rights impacts in respect of SL No. 47 of 2021 – is set out below.

4 SL No. 47 of 2021 – Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021

The objective of SL No. 47 of 2021 is to facilitate the 2021 Townsville 500 V8 motor racing event held from 9 to 11 July 2021.⁷

The explanatory notes advise that SL No. 47 of 2021 achieves this objective by amending the Major Events (Motor Racing Events) Regulation 2015 to prescribe the 2021 Townsville 500 as a major event under the *Major Events Act 2014* (ME Act).⁸

The prescription of an event as a ‘major event’ under the ME Act enlivens various legislative protections and powers intended to:

- support the safety of visitors and spectators at events (eg including through restrictions on access to enable areas to be set up as event spaces, powers of inspection on entry to event spaces, and other related provisions)
- allow visiting healthcare practitioners to provide health care services for major events without becoming registered under state law
- protect the rights of event organisers and sponsors by preventing unauthorised commercial activities in relation to major events
- facilitate various other related measures to support the conduct of significant events.⁹

In relation to the 2021 Townsville 500, in prescribing the event as a major event, SL No. 47 of 2021:

- prescribes the event organiser and the area and period of the event¹⁰
- prescribes the periods for carrying out temporary works for the event¹¹
- declares the official title for the Townsville 500.¹²

⁶ A further comment about the explanatory notes for the Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021 (SL No. 47 of 2021) is provided below.

⁷ SL No. 47 of 2021, explanatory notes, p 1.

⁸ SL No. 47 of 2021, explanatory notes, p 1.

⁹ *Major Events Act 2014*, s 3.

¹⁰ SL No. 47 of 2021, s 5 (Major Events (Motor Racing Events) Regulation 2015, new ss 4, 5, 6, schedule 1). The major event period runs from midday, 8 July 2021 to midday, 12 July 2021.

¹¹ SL No. 47 of 2021, s 5 (Major Events (Motor Racing Events) Regulation 2015, new s 7). SL No. 47 of 2021 prescribes two works periods – one leading into the event (from the beginning of the day on 14 June 2021 to midday on 8 July 2021) and one following the event (midday on 12 July 2021 to midnight on 23 July 2021).

¹² SL No. 47 of 2021, s 5 (Major Events (Motor Racing Events) Regulation 2015, new s 8).

The event organiser (V8 Supercars Australia Pty Ltd) is the same as for the 2020 event, and the prescribed event area (the area surrounding the Townsville Civic Theatre) is the same as for the 2020 event (and substantially the same as in 2018 and 2019).¹³

4.1 Legislative Standards Act 1992 considerations

4.1.1 Fundamental legislative principles – rights and liberties of individuals

The Townsville 500 impacts on the rights and liberties of those individuals who are inconvenienced by altered access to roads from the permitted commencement of the temporary works (14 June 2021) to the end of the temporary works (23 July 2021).¹⁴

After referring to the set time limitations for the temporary works, the explanatory notes state:

These limitations will help ensure relevant provisions in the Amendment Regulation 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.¹⁵

Committee comment

On balance, the committee considers the economic and tourism benefits for Townsville from hosting the event outweigh the potential temporary inconvenience caused to local residents by associated noise, road closures and diversions, and the like, such that any breach of FLP is justified.

4.1.2 Explanatory notes

Under the heading *Consistency with fundamental legislative principles* the explanatory notes state that the regulation is ‘machinery in nature and consistent with fundamental legislative principles’.¹⁶ The explanatory notes then proceed to address the issues of impacts on the rights and liberties of individuals (including the statement quoted above).

Committee comment

The committee notes that the LSA requires the explanatory notes for subordinate legislation to include ‘a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency’.¹⁷

In this context, the committee considers that the correct approach in dealing with a regulation’s consistency with FLPs is to acknowledge any inconsistency with the FLPs, and then proceed to address the reasons for any inconsistency, including any justifications for any breach.

The committee notes that the explanatory notes otherwise comply with part 4 of the LSA.

4.2 Compatibility with the Human Rights Act 2019

In the human rights certificate accompanying the regulation, the Minister for Tourism Industry Development and Innovation and Minister for Sport, the Hon Stirling Hinchliffe MP, states his opinion that the regulation is compatible with the HRA because while it does limit, restrict or interfere with a human right, any limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.¹⁸

The human rights limited by SL No. 47 of 2021 are addressed below.

¹³ SL No. 47 of 2021, explanatory notes, p 1.

¹⁴ See SL No. 47 of 2021, s 5 (Major Events (Motor Racing Events) Regulation 2015, new s 7). The event period is from 8-12 July 2021.

¹⁵ SL No. 47 of 2021, explanatory notes, p 3.

¹⁶ SL No. 47 of 2021, explanatory notes, p 2.

¹⁷ LSA, s 24(1)(i).

¹⁸ SL No. 47 of 2021, human rights certificate, p 9.

4.2.1 Freedom of movement - *Human Rights Act 2019*, section 19

The HRA provides that every person lawfully in Queensland has the right to move freely within the state.¹⁹

SL 47 of 2021 limits the ability of persons to move freely in Townsville because it allows for road closures, other restrictions on vehicles, limited entry and exit points to the Townsville 500 venue, and the potential for persons to be subject to directions to leave an area.

The Minister 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.²⁰

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, [there is provision for] the granting of an *occupant's pass* 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.²¹

Committee comment

The committee considers the limitations on the right to freedom of movement are reasonable and demonstrably justifiable given the need to provide a safe environment for participant and spectators, the limited duration of the major event declaration, and the availability of an occupant's pass for persons who live, work or have a business in the major event area.

4.2.2 Freedom of expression - *Human Rights Act 2019*, section 21

The HRA provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.²²

SL No. 47 of 2021 limits the right to freedom of expression in the event area through restrictions on advertising, limits on certain conduct within the event area (eg touting for business), and restrictions on broadcasting and on the use of official logos or titles.

Regarding the prohibition on broadcasting, the Minister states:

The potential limitation on the right to freedom of expression ... 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 electronic device ... for personal use; and ... for a purpose other than for profit or gain.²³

Regarding the restrictions on use of logos and the like, the Minister states that 'they are intended to protect the rights of event organisers and sponsors from unauthorised activities, consistent with the object of the ME Act'.²⁴ The Minister added:

The limitation is justifiable as it prevents unauthorised third parties from exploiting the 2021 Townsville 500 event for their own gain or affecting the integrity of the event or the exclusive rights of the event's official sponsors.²⁵

¹⁹ See HRA, s 19.

²⁰ SL No. 47 of 2021, human rights certificate, p 4.

²¹ SL No. 47 of 2021, human rights certificate, p 5.

²² HRA, s 21.

²³ SL No. 47 of 2021, human rights certificate, p 5.

²⁴ SL No. 47 of 2021, human rights certificate, p 5.

²⁵ SL No. 47 of 2021, human rights certificate, p 5.

Committee comment

The committee considers the limitations on the right to freedom of expression are reasonable and demonstrably justifiable because they protect the interests of the event organisers and sponsors who have an economic stake in the event. In addition, the committee notes that the limitation on the right to freedom of expression relating to broadcasting is constrained: individuals are permitted to broadcast or record the event for personal use.

4.2.3 Property rights - *Human Rights Act 2019*, section 24

The HRA provides that a person must not be arbitrarily deprived of their property.²⁶

The human rights certificate identifies a number of ways in which SL No. 47 of 2021 may engage a person's right not to be arbitrarily deprived of property. These include powers to move unattended vehicles and to seize items.²⁷

Regarding the movement of a person's unattended vehicle located in the major event area, the Minister states:

The potential for a limitation to occur on property rights is managed through provisions ... which require details of the temporary works and time periods to be published in advance of the works occurring; to allow individuals time to prepare and remove vehicles which might otherwise need to be moved. There are also restrictions on how vehicles may be moved or removed ... including notification procedures once a vehicle has been moved.²⁸

The ME Act provides authorised persons with the power to seize certain property, such as unauthorised promotional material.²⁹ The authorised person is generally required to provide a receipt for the seized thing, and to return the seized thing after 6 months, unless it is forfeited to the state. If the seized thing was lawful for the owner to possess and has been destroyed, the event organiser must pay compensation to the owner.³⁰

With respect to the seizure of property, the Minister advises:

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 event organisers and sponsors from unauthorised street trading, consistent with the object of the ME Act.³¹

Committee comment

In relation to the limitation on the right to property regarding the movement of unattended vehicles, the committee notes that the Townsville motor racing event is held annually, is widely known in the Townsville area, and that before temporary works are permitted, the Minister has to publish a notice in a newspaper circulating in the Townsville area stating what powers the organiser intends to exercise in the event area. The committee also notes that the ME Act has procedures that the organiser must follow in respect of any moved vehicles. The committee therefore considers the limitation to be reasonable and demonstrably justifiable.

With respect to the limitation on property rights relating to the seizure of property, the committee considers it to be reasonable and demonstrably justifiable given the purpose of the provisions is to protect the rights of event organisers and sponsors from unauthorised street trading (which is consistent with a purpose of the ME Act), and noting the presence of safeguards in the ME Act around seized property.

²⁶ HRA, s 24(2).

²⁷ SL No. 47 of 2021, human rights certificate, p 3.

²⁸ SL No. 47 of 2021, human rights certificate, p 6.

²⁹ See *Major Events Act 2014* (ME Act), s 32. See also ME Act, s 54.

³⁰ See ME Act, ss 68-74.

³¹ SL No. 47 of 2021, human rights certificate, p 6.

4.2.4 Right to privacy and reputation - *Human Rights Act 2019*, section 25

The HRA provides that a person has the right to not have the person's privacy, family, home, or correspondence unlawfully or arbitrarily interfered with.³²

SL No. 47 of 2021 limits this right in ways including:

- persons entering the Townsville major event area may be asked to consent to:
 - o the use of an electronic detection device on the person or on their possessions
 - o inspection of their belongings, removal and inspection of outer garments and of articles in their possession, and where relevant inspection of a person's vehicle and contents of the vehicle, removal of an article from the vehicle and inspection of the article³³
- persons within the major event area being asked to consent to open and allow the inspection of an item in their possession³⁴
- a person who is directed to leave the major event area may have their photo (or other image) taken³⁵
- a person who is found to be committing, or is reasonably suspected of having just committed, an offence against the ME Act may be required to state their name and address, and provide evidence of correctness of that statement.³⁶

The Minister states:

The limitations on the right to privacy ... are non-arbitrary, and required in order to meet the objective of the Act to ensure the safety of visitors and spectators at a major event or to enforce other sections of the Act such as the use of official logo under *Part 6 official logos or titles*. 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 a private ticketed venue.³⁷

Further, regarding the power to photograph certain persons:

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.³⁸

Additionally, the Minister also advises more broadly:

The limitations on the right to privacy ... are considered necessary and appropriate to ... meet the objective of the ME Act 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 and 63 of the ME Act helps reduce the potential impact on the right to privacy when applying the powers.³⁹

Committee comment

The committee considers the limitations on the right to privacy are reasonable and demonstrably justifiable given the need to protect the safety of participants and spectators.

³² HRA, s 25(a).

³³ ME Act, s 18(5).

³⁴ ME Act, s 18(5).

³⁵ ME Act, s 26(7).

³⁶ ME Act, s 63(1-2).

³⁷ SL No. 47 of 2021, human rights certificate, p 7.

³⁸ SL No. 47 of 2021, human rights certificate, p 7.

³⁹ SL No. 47 of 2021, human rights certificate, p 7.

5 SL No. 51 of 2021 – Superannuation (State Public Sector) Amendment Notice 2021

The Superannuation (State Public Sector) Notice 2010 (Superannuation Notice) sets out the QSuper membership arrangements approved by the Treasurer for employees of a Queensland public sector employer, including employers that have been declared to be a unit of the state public sector.⁴⁰

SL No. 51 of 2021 amends the Superannuation Notice to provide for the following:

- amendments in relation to James Cook University, who requested changes to better reflect its superannuation arrangements (ie employees ordinarily default to UniSuper but those who were QSuper members prior to commencing employment can continue their QSuper arrangements)⁴¹
- changes to superannuation arrangements for SunWater Ltd, who requested a change to its arrangements to offer choice of fund and to better reflect the superannuation arrangements offered to its different groups of employees⁴²
- the declaration of HV Rail Pty Ltd as a unit of the state public sector in respect of employees transferring from Aurizon Operations Limited (Aurizon) following the sale of part of Aurizon’s rail operations to HV Rail Pty Limited, thereby maintaining the superannuation arrangements of transferring employees.⁴³
- access to superannuation arrangements applying to core government employees for all staff transferring from the public service to Queensland Titles Registry Pty Ltd (as a result of the *Debt Reduction and Savings Act 2021 (Queensland Future Fund (Titles Registry) Act 2021)*, as well as for any new staff employed by this entity.⁴⁴
- arrangements to support the ongoing transition of employees of Serco Australia Pty Ltd to Queensland Corrective Services as part of the transfer of privately owned correction facilities back to state control (transferring employees will be able to retain their current level of superannuation contributions in the basic accumulation category or choose the superannuation arrangements that apply to core Government employees).⁴⁵

6 SL No. 52 of 2021 – Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2021

SL No. 52 of 2021 effects increases to the costs and offer limits, monetary caps, and thresholds under the Civil Liability Regulation 2014, the Motor Accident Insurance Regulation 2018 and the Personal Injuries Proceedings Regulation 2014, for injuries occurring on or after 1 July 2021.⁴⁶

These increases are based on the value of Queensland full-time adult ordinary time earnings as declared by the Australian Statistician. The explanatory notes advise that the annual indexing of these amounts to this value this results in an increase of 0.38% for 2021-22.⁴⁷

The majority of the increases come within the 0.38% amount (some are slighter higher, due to rounding⁴⁸).

⁴⁰ Superannuation (State Public Sector) Amendment Notice 2021 (SL No. 51 of 2021), explanatory notes, p 2.

⁴¹ SL No. 51 of 2021, explanatory notes, p 2. See SL No. 51 of 2021, s 4.

⁴² SL No. 51 of 2021, explanatory notes, p 2. See SL No. 51 of 2021, s 4.

⁴³ SL No. 51 of 2021, explanatory notes, p 2. See SL No. 51 of 2021, ss 3 and 4.

⁴⁴ SL No. 51 of 2021, explanatory notes, p 2. See SL No. 51 of 2021, s 4.

⁴⁵ SL No. 51 of 2021, explanatory notes, p 2. See SL No. 51 of 2021, s 4.

⁴⁶ Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2021 (SL No. 52 of 2021), explanatory notes, p 2.

⁴⁷ SL No. 52 of 2021, explanatory notes, p 2.

⁴⁸ For example, some of the amounts included at section 6 of the regulation (increases to general damages calculation provisions contained in schedule 7 of the Civil Liability Regulation 2014) are slightly higher than a 0.38% increase because the amounts are rounded to the nearest 10 dollars (which is provided for by section 75(2) of the *Civil Liability Act 2003*).

7 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

July 2021

Economics and Governance Committee

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