

## Economics and Governance Committee

### Report No. 43, 57th Parliament

### Subordinate legislation tabled between 30 November 2022 and 21 February 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 30 November 2022 and 21 February 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),<sup>1</sup> its compatibility with human rights<sup>2</sup> and its lawfulness.<sup>3</sup>

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

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
168	Revenue Legislation Amendment Regulation 2022	21 February 2023	11 May 2023
169	Payroll Tax (Transitional) Regulation 2022	21 February 2023	11 May 2023
181	Superannuation (State Public Sector) Amendment Notice (No. 2) 2022	21 February 2023	11 May 2023
183	Superannuation (State Public Sector) Regulation 2022	21 February 2023	11 May 2023
189	Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) Amendment Regulation 2022	21 February 2023	11 May 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.

<sup>1</sup> *Legislative Standards Act 1992* (LSA) s 4.

<sup>2</sup> *Human Rights Act 2019* (HRA) s 8.

<sup>3</sup> *Parliament of Queensland Act 2001* (POQA) s 93.

<sup>4</sup> LSA, Part 4.

<sup>5</sup> HRA, s 41.

### 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 Payroll Tax (Transitional) Regulation 2022 or the Superannuation (State Public Sector) Amendment Notice (No. 2) 2022.

The committee identified potential FLP issues with the Revenue Legislation Amendment Regulation 2022 and Superannuation (State Public Sector) Regulation 2022, and potential FLP and human rights issues with the Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) Amendment Regulation 2022. These issues are discussed further in the next section of this report. However, the committee was ultimately satisfied that the subordinate legislation is consistent with FLPs and compatible with human rights.

The committee also considers that the explanatory notes tabled with the 5 items of subordinate legislation comply with the requirements of part 4 of the LSA. Further, the human rights certificates tabled with the regulations and amendment notice provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with the HRA.

### 4 Revenue Legislation Amendment Regulation 2022

The objectives of the Revenue Legislation Amendment Regulation 2022 (SL No. 168) are to:

- update the list of declared public unit trusts in the Duties Regulation 2013
- amend the Payroll Tax Regulation 2019 from 1 January 2023 to apply relevant provisions to the mental health levy imposed under the Payroll Tax Act 1971.<sup>6</sup>

With respect to the amendment to the Duties Regulation 2013, the explanatory notes state:

The QIC Growth Fund is currently included on the list of declared public unit trusts. However, the fund was renamed QIC Long Term Diversified Fund, with effect from 1 May 2020. The fund, as renamed, still satisfies the conditions in section 4(2) of the Duties Regulation 2013 and therefore it is considered appropriate that it retain its status as a declared public unit trust.

Several of the funds on the list have been wound up. Additionally, there are funds on the list which either no longer require declared public unit trust status or do not continue to satisfy the conditions in section 4(2) of the Duties Regulation 2013. It is necessary these funds are removed from the list to ensure the Duties Regulation 2013 remains current.<sup>7</sup>

Regarding the mental health levy amendments, the explanatory notes state:

Although taxable wages are to be determined in the same way for the purposes of payroll tax and the mental health levy, particular drafting adopted in the Payroll Tax Regulation 2019 necessitates amendments being made to ensure the existing provisions apply appropriately for the mental health levy.<sup>8</sup>

#### 4.1 Consistency with fundamental legislative principles

##### 4.1.1 Rights and liberties of individuals – retrospectivity

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.<sup>5</sup>

SL No. 168 provides that the name change of QIC Growth Fund to QIC Long Term Diversified Fund in the list of declared public unit trusts in schedule 1 of the Duties Regulation 2013 is to have effect from 1 May 2020.

The *Statutory Instruments Act 1992* enables a beneficial provision of a statutory instrument to be given retrospective operation.<sup>6</sup> According to the explanatory notes, the amendment is a beneficial provision

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<sup>6</sup> SL No. 168, explanatory notes, pp 1-3.

<sup>7</sup> SL No. 168, explanatory notes, p 2.

<sup>8</sup> SL No. 168, explanatory notes, p 3.

because ‘it would not operate to disadvantage a person by decreasing their rights or imposing liabilities on them’ as it simply ‘ensures dealings in units in the QIC Long Term Diversified Fund continue to be exempt from duty despite the change of name’.<sup>7</sup>

*Committee comment*

We are satisfied that although SL No. 168 has retrospective effect, it does not adversely affect rights and liberties or impose obligations, and is therefore not of concern from the perspective of FLPs.

**4.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

**4.3 Compatibility with human rights**

We are satisfied that the subordinate legislation is compatible with human rights.<sup>9</sup>

**4.4 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.

**5 Payroll Tax (Transitional) Regulation 2022**

The objective of the Payroll Tax (Transitional) Regulation 2022 (SL No. 169) is to ‘provide for a transitional framework to support the change to the payroll tax deduction phase out rate progressed in the Revenue Legislation Amendment Act 2022 for the 2022-23 financial year’.<sup>9</sup>

**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**

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.

**6 Superannuation (State Public Sector) Amendment Notice (No. 2) 2022**

The Superannuation (State Public Sector) Amendment Notice (No. 2) 2022 (SL No. 181):

- changes the arrangements of Central Queensland University, Golden Casket Lottery Corporation, Tabcorp Assets, University of Queensland and the Queensland Titles Registry, following requests from those entities
- prescribes the arrangements for employees of 2 new units of the State public sector – Queensland Hydro and the Brisbane Organising Committee for the 2032 Olympic and Paralympic Games.<sup>10</sup>

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<sup>9</sup> Section 8 of the Human Rights Act 2019 (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.

<sup>10</sup> SL No. 181, explanatory notes, p 2; SL No. 181, human rights certificate, p 1.

### **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 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 Superannuation (State Public Sector) Regulation 2022**

The Superannuation (State Public Sector) Regulation 2022 (SL No. 183) prescribes the compulsory contributions by employers and employees under section 23 of the *Superannuation (State Public Sector) Act 1990* (Superannuation Act) by referring to the rates and frequencies under section 64 of the Superannuation Act immediately before the commencement of SL No. 183. The chief executive must publish the rates and frequency for contributions on a Queensland Government website.<sup>11</sup>

The regulation is required because section 64 of the Superannuation Act, which continues the existing contribution arrangement for employees who have accumulation accounts, ceases to apply on 28 February 2023.<sup>12</sup>

### **7.1 Consistency with fundamental legislative principles**

#### **7.1.1 Rights and liberties of individuals**

The explanatory notes acknowledge that prescribing the rates and frequency of contributions in a way that does not set out the actual rates or frequencies may be inconsistent with FLPs because ‘employers and individuals will not know on the face of the legislation what their obligations and entitlements are’.<sup>13</sup>

The explanatory notes state that the inconsistency ‘is alleviated by a requirement under the regulation for the Chief Executive to publish the rates and frequency for contributions on a Queensland Government website (in line with current arrangements)’.<sup>14</sup>

#### Committee comment

We are satisfied that SL No. 183 has sufficient regard to the rights and liberties of individuals.

### **7.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

### **7.3 Compatibility with human rights**

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

### **7.4 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.

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<sup>11</sup> SL No. 183, s 4.

<sup>12</sup> SL No. 183, explanatory notes, p 2. Or when a regulation made under section 23 of the Superannuation Act comes into force.

<sup>13</sup> SL No. 183, explanatory notes, p 3.

<sup>14</sup> SL No. 183, explanatory notes, p 3.

## **8 Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) Amendment Regulation 2022**

The Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) Amendment Regulation 2022 (SL No. 189) amends the Major Sports Facilities Regulation 2014 to enable a greater number of major concerts to be held at Brisbane Stadium (Lang Park/Suncorp Stadium) in 2023 and 2024.

SL No. 189 permits up to 12 major concerts at Brisbane Stadium to be approved by the Minister in the calendar years 2023 and 2024, up from 6 major concerts. The explanatory notes explain the reason for the change as follows:

The current regulatory cap of six concerts per calendar year at Brisbane Stadium will be reached in March 2023, with Ministerial approval already provided for six concert events of major international artists to be held from January to March 2023. A further four concert events with major international artists have already been sought by promoters in 2023, however due to the limit on concerts per year, the stadium is unable secure these events at this stage.

...

A cap of 12 concerts per calendar year was identified as the best estimate of the maximum required to meet the extra demand for concerts from significant international artists at Brisbane Stadium in the years of 2023 and 2024, particularly when taking into account some highly popular artists booking two or more concerts at the venue to meet public demand (e.g., Ed Sheeran will play three sold out concerts in February 2023).<sup>15</sup>

Consultation was conducted with the community, including local residents and business owners within the Lang Park Traffic Area, during September and October 2022. The survey showed most respondents (78%) supported a temporary increase in the number of concerts from 6 to 12 per calendar year for 2023 and 2024. Some respondents were against the proposal, citing concerns about traffic and noise impacts and nuisance public behaviour.<sup>16</sup>

The explanatory notes advise that major concert events held at Brisbane Stadium:

... typically bring significant input to the local and regional economy, and due to the international significance of the artists they bring global attention to Brisbane and Queensland. The Brisbane Economic Development Agency (BEDA) estimates that a concert event selling 50,000 tickets (which is the estimated attendance for the first three concerts of 2023 already booked at Brisbane Stadium) will generate \$21.2 million dollars of economic activity, will support 650 FTE jobs, and bring around 30,000 out of region visitors to Brisbane (including interstate, international, intrastate visitors). Temporarily increasing the concert cap will also help to maximise the utility and public benefit of Brisbane Stadium, including supporting return on significant public investment in the venue.

Ultimately, a temporary increase in the concert cap will provide economic and social benefits at local, regional and state levels, satisfy demand for large concert events, support the recovering entertainment industry post the COVID-19 pandemic, and represent the views and support from survey respondents, including local community members and local business owners and operators.<sup>17</sup>

### **8.1 Consistency with fundamental legislative principles**

#### **8.1.1 Rights and liberties of individuals**

SL No. 189 could be considered to impact on the rights and liberties of individuals because the 6 additional major concerts it permits to be held at Brisbane Stadium in 2023 and 2024 will result in increased traffic and pedestrians, noise, light and parking restrictions.

The explanatory notes state that the Major Sports Facilities Regulation 2014 provides for mitigation of these impacts by placing conditions on special events at Brisbane Stadium. These conditions include the

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<sup>15</sup> SL No. 189, explanatory notes, pp 1-2.

<sup>16</sup> SL No. 189, explanatory notes, p 5.

<sup>17</sup> SL No. 189, explanatory notes, p 3.

preparation of transport management and operational plans, requiring the lighting to comply with a specified standard, and that the noise level must be below specified levels.<sup>18</sup>

Committee comment

Noting the benefits to the Queensland economy of major concerts, the temporary nature of the increase in major concerts, and the conditions in the Major Sports Facilities Regulation 2014 for major concerts at Brisbane Stadium, the committee is satisfied that SL No. 189 has sufficient regard to the rights and liberties of individuals.

We note the community consultation undertaken in relation to the additional major concerts, and the general support for the temporary increase amongst local residents and business owners.

**8.2 Explanatory notes**

The explanatory notes comply with part 4 of the LSA.

**8.3 Compatibility with human rights**

SL No. 189 engages various human rights,<sup>19</sup> but particularly freedom of movement (section 19 of the HRA). The right to freedom of movement is limited during major concerts due to 'increased traffic and parking restrictions, and increased activity around the stadium'.<sup>20</sup>

According to the human rights certificate, the purpose of the identified limitation is 'to meet heightened current and short-term future demand for Brisbane Stadium as a stadium size concert venue (more than 50,000 seat/person capacity) in the Brisbane central business district'.<sup>21</sup> The increase in the permitted number of major concerts is expected to deliver significant economic benefits and support the recovery of the arts and entertainment industry post COVID-19.<sup>22</sup> The human rights certificate states that these purposes are 'consistent with a free and democratic society based on human dignity, equality and freedom'.<sup>23</sup>

Further, the identified limitation is accompanied by safeguards which ensure the proposed option represents 'the least restrictive or reasonably available means to achieve the purpose' – in particular:

- the time-limited nature of the increase in the cap on major concerts, which applies only to the 2023 and 2024 calendar years
- the range of mitigation strategies required to be implemented under the regulation.<sup>24</sup>

On balance, the Minister considered that the limitation on the freedom of movement is reasonable and justified.<sup>25</sup>

Committee comment

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

**8.4 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.

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<sup>18</sup> SL No. 189, explanatory notes, pp 3-5.

<sup>19</sup> SL No. 189, human rights certificate, p 2.

<sup>20</sup> SL No. 189, human rights certificate, p 2.

<sup>21</sup> SL No. 189, human rights certificate, p 3.

<sup>22</sup> SL No. 189, human rights certificate, p 3.

<sup>23</sup> SL No. 189, human rights certificate, p 3.

<sup>24</sup> SL No. 189, human rights certificate, pp 3-4.

<sup>25</sup> SL No. 189, human rights certificate, p 5.

## 9 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

**Chair**

**April 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