

Legal Affairs and Safety Committee

Report No. 32, 57th Parliament

Subordinate legislation tabled between 30 March 2022 and 21 June 2022

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 30 March 2022 and 21 June 2022. 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
33	Liquor (Mornington) and Other Legislation Amendment Regulation 2022	10 May 2022	31 August 2022
34	Police Service Administration (Reviews) Amendment Regulation 2022	10 May 2022	31 August 2022
42	Liquor (Kowanyama) and Other Legislation Amendment Regulation 2022	10 May 2022	31 August 2022
43	Building Units and Group Titles Amendment Regulation 2022	10 May 2022	31 August 2022
44	Proclamation – <i>Police Legislation (Efficiencies and Effectiveness) Amendment Act 2022</i>	10 May 2022	31 August 2022
48	Legal Profession (Society Rules) Amendment Notice 2022	10 May 2022	31 August 2022
49	Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022	10 May 2022	31 August 2022
51	Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022	10 May 2022	31 August 2022

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019* (HRA), s 41.

Subordinate legislation tabled between 30 March 2022 and 21 June 2022

63	Professional Standards (Law Institute of Victoria Limited Professional Standards Scheme) Notice 2022	21 June 2022	12 October 2022
64	Professional Standards (South Australian Bar Association Professional Standards Scheme) Notice 2022	21 June 2022	12 October 2022
74	Weapons (Fee Unit Conversion) Amendment Regulation 2022	21 June 2022	12 October 2022

*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 significant issues regarding the policy, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or non-compliance with the HRA.

Unless noted below, the committee considers the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA and that the human rights 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.

A brief overview of the subordinate legislation is provided below.

4 Liquor (Mornington) and Other Legislation Amendment Regulation 2022 (SL No. 33 of 2022)

The objective of the Liquor (Mornington) and Other Legislation Amendment Regulation 2022 is to 'assist the Mornington Shire Council address the damaging effects of illicit home brew consumption on their community.'³

The regulation:

- increases the alcohol carriage limit for Mornington Shire to allow for the lawful possession of up to 4.5L of beer or pre-mixed spirits (the equivalent of 12 x 375mL containers), with an alcohol concentration of up to and including 4% alcohol by volume⁴
- prescribes Mornington Shire as a community area under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Regulation 2008 to maintain the prohibition of the possession and/or supply of home brew and home brew equipment in that area.⁵

According to the explanatory notes, a review of the alcohol restrictions for Mornington Shire recommended a greater than zero carriage limit and the retention of the prohibition on home brew and home brew equipment.⁶

³ SL No. 33, explanatory notes, p 1.

⁴ SL No. 33, s 6.

⁵ SL No. 33, s 4.

⁶ SL No. 33, explanatory notes, p 2.

The Mornington Shire Council formally requested the alcohol carriage limit be increased and this proposal had the support of key community stakeholders (Mission Australia, Gunnamamba Store and Junkuri Laka (the Community Justice Group)).⁷

In relation to maintaining the ban on home brew and home brew equipment, the explanatory notes state:

Consultation on maintaining the ban on home brew and home brew equipment has occurred with the Mornington Shire Council and included discussion about the devastating impacts of home brew on the community's health and wellbeing and the need to maintain the ban on home brew.⁸

4.1 Fundamental legislative principle issues

4.1.1 Rights and liberties of individuals

General rights and liberties

The explanatory notes did not identify any issues of fundamental legislative principle. Presumably this is on the basis that the regulation involves a lifting of the zero carriage limit, which allows individuals the right to possess alcohol in the Mornington Shire. However, the regulation still provides limits on an individual's ability to possess alcohol, which impacts on their general rights and liberties.

Further, the continuation of the ban on home brew and home brew equipment also impacts upon an individual's general rights and liberties in that they are prevented from doing something that is lawful in other areas.

Whether legislation has sufficient regard to the rights and liberties of individuals, depends on whether, for example, legislation unduly restricts ordinary activities.⁹ The most general concept of liberty logically requires that an activity should be lawful unless for a sufficient reason it is declared unlawful by an appropriate authority.¹⁰ Further, the general concept of equality requires that, for a particular matter, in the absence of justification to treat persons differently, all persons should be treated in the same way.¹¹

The limits on an individual's ability to possess alcohol in the Mornington Shire and the ban on individuals from possessing home brew equipment or possessing or supplying home brew affects their rights and liberties, in particular considering that individuals in most other areas are not subject to such restrictions.

While these impacts on individuals were not addressed in the explanatory notes in the context of fundamental legislative principles, it can be seen elsewhere in the notes that the primary justification for these measures is to assist in preventing alcohol-related harm and promote safety for the broader community.¹²

The explanatory notes state:

Amending the carriage limit prescribed in the Liquor Regulation [Liquor Regulation 2002] to allow a limited type and volume of liquor is the only way to effectively regulate and manage alcohol-related harm in the Mornington Shire.

⁷ SL No. 33, explanatory notes, p 4.

⁸ SL No. 33, explanatory notes, p 5.

⁹ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 118; LSA, s 4(2)(a).

¹⁰ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

¹¹ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 130.

¹² SL No. 33, explanatory notes, p 3.

... It is anticipated unregulated access to liquor would result in significant adverse impacts to individual and community health and safety, amplifying the existing negative impacts resulting from the consumption of illicit high alcohol content home brew prevalent on Mornington Island.¹³

In regard to maintaining the ban on home brew, the explanatory notes state:

The prohibition of home brew and home brew equipment supports supply reduction strategies, and the removal of the ban in Mornington Shire would be counterproductive to the introduction of a regulated supply of liquor. Removing the ban would legitimise the unhealthy behaviours that are the cause of community concern for individual health and wellbeing, that prompted calls for a changed carriage limit. ... General consumption of under fermented or 'green' home brew and high alcohol content home brew has had significant impacts, not only on individual health and wellbeing, but also the broader community with social disfunction [sic], violence and grief.¹⁴

More specifically in relation to the issue of equality, the explanatory notes state that Queensland's alcohol restrictions (such as those contained in the regulation) were found to be a 'special measure' by the High Court in *Maloney v the Queen* [2013] HCA 28 as 'they impose constraints on individual liberties in favour of promoting safety for the broader community'.¹⁵ (Equality is also discussed in the human rights certificate in the context of section 15 of the *Human Rights Act 2019* (HRA)¹⁶ – see human rights discussion below).

Committee comment

The committee is satisfied that the impact on an individual's rights and liberties is justified, based on the broader purpose of the special measures to promote health and safety for the Mornington Shire community.

4.2 Explanatory notes

The explanatory notes, for the most part, comply with part 4 of the LSA. However, as noted earlier, the explanatory notes did not include a discussion of some of the general rights and liberties that could be impacted by the regulation. These are relevant to the assessment of whether the subordinate legislation is consistent with fundamental legislative principles.

4.3 Human rights considerations

4.3.1 Equality before the law

Every person is equal before the law and has the right to enjoy the person's human rights without discrimination.¹⁷

The human rights certificate acknowledges that the regulation potentially limits this human right 'as it applies to a community that has a predominant population of Aboriginal peoples. Accordingly, Aboriginal peoples are more likely to be affected by the ban'.¹⁸

However, the human rights certificate justifies this limitation on the basis that these restrictions are a 'special measure' (as discussed above) and that increasing the alcohol carriage limit (from zero to 4.5L) is a lessening of restrictions and therefore increases individual liberty.¹⁹ The human rights certificate states further:

¹³ SL No. 33, explanatory notes, p 3.

¹⁴ SL No. 33, explanatory notes, pp 3-4.

¹⁵ SL No. 33, explanatory notes, p 3.

¹⁶ SL No. 33, human rights certificate, pp 2-3.

¹⁷ HRA, s 15.

¹⁸ SL No. 33, human rights certificate, p 2.

¹⁹ SL No. 33, human rights certificate, p 2.

On balance, it is considered increasing the carriage limit to provide for individual possession of low to mid-strength alcohol in defined quantities is regulating only to the extent required to promote community safety and, based on the High Court precedent, is reasonable and justifiable with regards to the rights engaged under section 15(3) of the HR Act.²⁰

4.3.2 Property rights

All persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of the person's property.²¹

The continuation of the ban on home brew and home brew equipment may potentially limit property rights, in that people in Mornington Shire are not permitted to possess this type of property despite people in most other areas being able to do so.

However, based on similar reasoning to the above, the human rights certificate states that any limitation on property rights is justifiable as these provisions constitute a 'special measure' as they 'impose constraints on individual liberties in favour of promoting safety for the broader community.'²²

Committee comment

The committee is satisfied that the limitation of human rights in this context is reasonably and demonstrably justified.

4.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation. A more comprehensive discussion in the human rights certificate surrounding the reasonableness of, and justification for, the potential limitations on human rights (as per section 13(2) of the HRA) would have assisted in determining the subordinate legislation's compatibility with human rights.

5 Police Service Administration (Reviews) Amendment Regulation 2022 (SL No. 34 of 2022)

The objective of the Police Service Administration (Reviews) Amendment Regulation 2022 is to change the period in which a police officer may apply to the Commissioner for Police Service Reviews (Review Commissioner) to start a review into a reviewable decision, from within 14 days to within 7 days.²³

Part 9 of the *Police Service Administration Act 1990* (PSAA) provides a review mechanism for a police officer who is aggrieved by the specified reviewable decisions, including (by way of general description):

- the selection of an officer for appointment to a police officer position by promotion or transfer made by fair and equitable procedures
- the selection of an officer for transfer to a police officer position
- the suspension or standing down of the officer
- a decision by the Police Commissioner to appoint a police officer as a staff member.²⁴

The PSAA provides that a review conducted by a Review Commissioner into these reviewable decisions is an informal, administrative proceeding of a non-adversarial nature, and that any recommendations the Review Commissioner makes to the Police Commissioner are not binding on the Police Commissioner, who, upon consideration, is to take such action as appears to the Police Commissioner to be just and fair.²⁵

²⁰ SL No. 33, human rights certificate, p 2.

²¹ HRA, s 24.

²² SL No. 33, human rights certificate, p 3.

²³ SL No. 34, explanatory notes, p 2; SL No. 34, s3(3).

²⁴ PSAA, Part 9 'Review of decisions'.

²⁵ PSAA, ss 9.4 and 9.5.

Provisions about how to apply for review, including the application timeframe, are set out in section 34 of the Police Service Administration Regulation 2016, which is amended by this regulation.

According to the explanatory notes:

A multi-party working group, comprising of QPS [Queensland Police Service] members and representatives of the Queensland Police Union of Employees and the Queensland Police Commissioned Officers' Union of Employees was established to evaluate the efficiency of the review process.

This working group identified that the review process would be improved if it was more timely. The proposed amendment will enable reviews to be finalised more expediently by allowing a review to start within 7 days of a police officer being notified of a reviewable decision.²⁶

5.1 Fundamental legislative principle issues

5.1.1 Rights and liberties of individuals

Natural justice

Whether legislation has sufficient regard to the rights and liberties of individuals, depends on whether, for example, legislation is consistent with principles of natural justice.²⁷ The principles of natural justice include that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present the person's case to the decision-maker.²⁸ The principles also require procedural fairness, involving a flexible obligation to adopt fair procedures that are appropriate and adapted to the circumstances of the particular case.²⁹

The reduction in the application timeframe may impact a person's opportunity to present their case to the decision-maker and may not be fair for this reason. However, the explanatory notes provide a reasonable level of detail in offering justification and explanation:

In determining whether the Amendment Regulation impacts upon the principles of natural justice, consideration must be given to how applications are made under part 9 of the PSAA and to the review process itself. A police officer intending to apply for a review of a reviewable decision need only provide the minimum information required for this process to commence. Information sought includes the applicant's personal details, the details of the decision and limited information to support the grounds to have the decision reviewed. The information required to start a review of a reviewable decision is not onerous and may be readily compiled within a 7 day timeframe.³⁰

Additionally, the explanatory notes state:

- the reviews are 'informal which is conducive to the sharing and supplying of information between parties'³¹
- any further information sought from an applicant may be submitted either prior to the review or during the review itself
- these reviews do not stay a decision pending the outcome of the review nor prohibit an aggrieved applicant from seeking other forms of redress, such as judicial review.³²

²⁶ SL No. 34, explanatory notes, p 2.

²⁷ LSA, s 4(3)(b).

²⁸ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 25.

²⁹ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 25.

³⁰ SL No. 34, explanatory notes, p 3.

³¹ SL No. 34, explanatory notes, p 3.

³² SL No. 34, explanatory notes, p 3.

The explanatory notes conclude that the regulation:

... strikes an appropriate balance between allowing an applicant sufficient time to prepare an application to start a review of a reviewable decision and the expediency of the review process whilst still maintaining fairness for affected parties through complying with the principles of natural justice.³³

Committee comment

The committee is satisfied that the impact on an individual's rights and liberties is justified, noting the purpose of the regulation is to achieve greater efficiency in conducting reviews of reviewable decisions and that the information required to start a review is not 'onerous'.

5.2 Human rights considerations

5.2.1 Taking part in public life

While the human rights certificate does not raise any human rights as being relevant to the subordinate legislation, there is potential for the right to take part in public life (section 23 of the HRA) to be limited by this regulation.

Section 23 of the HRA provides that every eligible person has the right, and is to have the opportunity, to have access, on general terms of equality, to the public service and public office. Limiting the period by which a person can apply for review of a decision (including decisions about appointments, transfers and standing down of police officers) may impact on this right.

While not addressed in the human rights context, the justification for this measure (timely finalisation of review processes) was provided in the explanatory notes.³⁴

Committee comment

The committee is satisfied that the limitation of human rights in this context is reasonably and demonstrably justified.

5.3 Human rights certificate

A human rights certificate was tabled with the subordinate legislation. It did not, however, consider any possible limitations on human rights, such as on the right to take part in public life, which would have assisted in determining the subordinate legislation's compatibility with human rights.

6 Liquor (Kowanyama) and Other Legislation Amendment Regulation 2022 (SL No. 42 of 2022)

The Liquor (Kowanyama) and Other Legislation Amendment Regulation 2022 increased the alcohol carriage limit in Kowanyama from a zero-alcohol carriage limit to one that allows the possession of 4.5 litres of mid-strength alcohol (beer or pre-mixed alcoholic drinks or a combination) and 2 litres of wine (other than fortified wine).³⁵ SL No. 42 maintains the ban on home brew and home brew equipment.³⁶

The objective of increasing the carriage limits is 'to assist the Kowanyama Aboriginal Shire Council (Council) address the damaging effects to health and well-being and the local economy of sly grog'.³⁷ The amendment is a step in the staged re-introduction of alcohol into the community.³⁸

³³ SL No. 34, explanatory notes, p 3.

³⁴ SL No. 34, explanatory notes, p 2.

³⁵ SL No. 42, explanatory notes, pp 1-2.

³⁶ SL No. 42, Part 2; SL No. 42, explanatory notes, pp 2, 3.

³⁷ SL No. 42, explanatory notes, p 1.

³⁸ SL No. 42, explanatory notes, p 1.

The human rights certificate provides further background on SL No. 42:

... Except for a 12-month period in 2020-21 wherein a temporary carriage limit of 2.25L of low to mid-strength liquor was in place, a zero-alcohol carriage limit has applied to Kowanyama since 2003.

On 2 June 2021, the Kowanyama Aboriginal Shire Council (Council), following community and stakeholder consultation, submitted an updated Community Safety Plan (CSP) and a formal request to the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) in support of ... permanently increasing amend [sic] the carriage limit.

The Council identified concerns around sly grog, being predominately the illicit sale and consumption of 5L cask wine products, having detrimental impacts on community health and wellbeing, and the local economy. Council proposes increasing the carriage limit to allow residents to legally drink alcohol in their own homes. The CSP includes strategies to mitigate risks and encourage behavioural change to help normalise alcohol consumption in the community. Strategies include holding additional 'domestic and family violence Strategy' and 'Ending Family Violence' workshops, and a campaign to increase community understanding of the harm caused by alcohol and drugs.

Alongside the introduction of regulated responsible access to liquor, the CSP identifies strategies to promote community safety and harm minimisation including point of sale and education strategies.³⁹

Key community stakeholders – the Kowanyama Community Justice Group, Kowanyama Men's Group and Kowanyama Women's Group – supported the Council's request for the increased carriage limit.⁴⁰

6.1 Fundamental legislative principle issues

6.1.1 Rights and liberties of individuals

General rights and liberties

The explanatory notes did not identify any issues of fundamental legislative principle. Presumably this is on the basis that SL No. 42 involves a lifting of the zero carriage limit, which allows individuals the right to possess alcohol in Kowanyama. However, the regulation still places limits on an individual's ability to possess alcohol, which impacts on their general rights and liberties.

Further, the continuation of the ban on home brew and home brew equipment also impacts upon an individual's general rights and liberties in that they are prevented from doing something that is lawful in most other areas.

Whether legislation has sufficient regard to the rights and liberties of individuals, depends on whether, for example, legislation unduly restricts ordinary activities.⁴¹ The most general concept of liberty logically requires that an activity should be lawful unless for a sufficient reason it is declared unlawful by an appropriate authority.⁴² Further, the general concept of equality requires that, for a particular matter, in the absence of justification to treat persons differently, all persons should be treated in the same way.⁴³

The limits on an individual's ability to possess alcohol in Kowanyama and the ban on individuals possessing home brew equipment or possessing or supplying home brew affects their rights and liberties, in particular considering that individuals in most other areas are not subject to such restrictions.

While these impacts on individuals were not addressed in the explanatory notes in the context of fundamental legislative principles, it can be seen elsewhere in the notes that the primary justification

³⁹ SL No. 42, human rights certificate, pp 1-2.

⁴⁰ SL No. 42, explanatory notes, p 4.

⁴¹ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 118; LSA, s 4(2)(a).

⁴² OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

⁴³ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 130.

for these measures is to assist in prevention of alcohol-related harm and provide social benefits for the broader community.⁴⁴

The explanatory notes state:

Amending the carriage limit prescribed in the Liquor Regulation [Liquor Regulation 2002] to allow limited types and volumes of liquor is the only way to effectively regulate and manage alcohol-related harm in Kowanyama.

... It is anticipated unregulated access to liquor would result in significant adverse impacts to individual and community health and safety, amplifying the existing negative impacts resulting from the illicit consumption of sly grog in Kowanyama.

Allowing a restricted amount of mid-strength beer and pre-mixed alcoholic drinks, and limited volumes of wine, will provide a safer alternative to unregulated access to liquor.⁴⁵

In regard to maintaining the ban on home brew, the explanatory notes state:

The prohibition of home brew and home brew equipment supports supply reduction strategies, and the removal of the ban in Kowanyama would be counterproductive to the introduction of a safe, regulated supply of liquor. Removal of the ban would legitimise the unhealthy behaviours that are the cause of community concern for individual health and wellbeing identified in Kowanyama's CSP. Along with addressing sly grog, maintaining the ban on home brew and home brew equipment is part of a suite of strategies being led by Council to encourage consumption of small quantities of regulated liquor as a safer option.⁴⁶

More specifically in relation to the issue of equality, the explanatory notes state that Queensland's alcohol restrictions (such as those contained in the regulation) were found to be a 'special measure' by the High Court in *Maloney v the Queen* [2013] HCA 28 as 'they impose constraints on individual liberties in favour of promoting safety for the broader community'.⁴⁷ (Equality is also discussed in the human rights certificate in the context of section 15 of the HRA)⁴⁸ – see human rights discussion below).

Committee comment

The committee is satisfied that the impact on an individual's rights and liberties is justified, based on the broader purpose of the measures to promote health and safety in Kowanyama.

6.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA. However, as noted earlier, the explanatory notes did not include a discussion of some of the general rights and liberties that could be impacted by the regulation. These are relevant to the assessment of whether the subordinate legislation is consistent with fundamental legislative principles.

6.3 Human rights considerations

6.3.1 Equality before the law

Every person is equal before the law and has the right to enjoy the person's human rights without discrimination.⁴⁹

The human rights certificate acknowledges that the regulation potentially limits this human right with respect to the continuance of the ban on home brew and home brew equipment 'as it applies to a

⁴⁴ SL No. 42, explanatory notes, pp 2-3.

⁴⁵ SL No. 42, explanatory notes, p 3.

⁴⁶ SL No. 42, explanatory notes, p 3.

⁴⁷ SL No. 42, explanatory notes, p 3.

⁴⁸ SL No. 42, human rights certificate, pp 2-3.

⁴⁹ HRA, s 15.

community that has a predominant population of Aboriginal peoples. Accordingly, Aboriginal peoples are more likely to be affected by the ban'.⁵⁰

As discussed above in relation to fundamental legislative principles, it can also be argued that alcohol carriage limits in Kowanyama limit the human right to equality before the law because not all other people are subject to the restrictions.

The human rights certificate justifies this limitation on the basis that these restrictions are a 'special measure' (as discussed above) and that increasing the alcohol carriage limit is 'a lessening of restrictions and increases individual liberty'.⁵¹ The human rights certificate continued:

On balance, it is considered increasing the carriage limit to provide for individual possession of low to mid-strength alcohol and certain types of wine in defined quantities is regulated only to extent required to promote community safety and, based on the High Court precedent, is reasonable and justifiable with regards to the rights engaged under section 15(3) of the Human Rights Act.⁵²

6.3.2 Property rights

All persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of the person's property.⁵³

The continuation of the ban on home brew and home brew equipment may potentially limit property rights, in that people in Kowanyama are not permitted to possess this type of property despite people in most other areas being able to do so.

However, based on similar reasoning to the above, the human rights certificate states that any limitation on property rights is justifiable as these provisions constitute a 'special measure' as they 'impose constraints on individual liberties in favour of promoting safety for the broader community.'⁵⁴

Committee comment

The committee is satisfied that the limitation of human rights in this context is reasonably and demonstrably justified.

6.4 Human rights certificate

A human rights certificate was tabled with the subordinate legislation. A more comprehensive discussion surrounding the reasonableness of, and justification for, the potential limits on human rights (as per section 13(2) of the HRA) would have assisted in determining the subordinate legislation's compatibility with human rights.

7 Building Units and Group Titles Amendment Regulation 2022 (SL No. 43 of 2022)

The objective of the Building Units and Group Titles Amendment Regulation 2022 is to give referees under the *Building Units and Group Titles Act 1980* greater ongoing discretion to waive prescribed dispute resolution fees if a person is experiencing financial hardship.⁵⁵

Prior to the COVID-19 pandemic, a referee was permitted to excuse a person from paying a fee, or part of a fee, payable to the referee only if the referee was satisfied the person was suffering 'extreme

⁵⁰ SL No. 42, human rights certificate, p 3.

⁵¹ SL No. 42, human rights certificate, p 3.

⁵² SL No. 42, human rights certificate, p 3.

⁵³ HRA, s 24.

⁵⁴ SL No. 42, human rights certificate, p 3.

⁵⁵ SL No. 43, explanatory notes, p 1.

financial hardship'.⁵⁶ During the pandemic, the threshold for excusing a person from payment was temporarily lowered to 'financial hardship'.⁵⁷

SL No. 43 amends the Building Units and Group Titles Regulation 2008 (BUGT Regulation) to enable a referee to excuse a person from paying certain fees if the a person is suffering from 'financial hardship', and it makes the consequential amendment of omitting the provision which modified the referee's power to remit fees for the period ending on the COVID-19 legislation expiry day.

The explanatory notes contend:

... it is considered preferable to provide referees with increased flexibility to excuse a person from paying relevant fees on an ongoing basis. This will facilitate increased access to dispute resolution services for parties that are experiencing financial hardship.⁵⁸

7.1 Fundamental legislative principle issues

7.1.1 Rights and liberties of individuals

Administrative power and natural justice

SL No. 43 makes ongoing the ability of a referee to waive fees for a person suffering financial hardship, rather than 'extreme' financial hardship. While this is a lessening of the threshold for waiving fees, and therefore likely to benefit more people, it nevertheless potentially raises issues of fundamental legislative principle relating to administrative power and natural justice.

Fundamental Legislative Principles: The OQPC Notebook relevantly states:

Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria or other guidance for making the decision.⁵⁹

...

Natural justice includes a person's right to know the criteria necessary to satisfy an entity's requirements in a particular subject area.⁶⁰

In this instance, there are no criteria prescribed in the BUGT Regulation for the referee to make the decision about whether a person is suffering financial hardship. This means applicants cannot rely on the BUGT Regulation to know the grounds on which the decision will be made. It may also lead to inconsistency in waiver decisions between applicants.

The explanatory notes do not consider this matter.

Committee comment

It is always preferable to have criteria to guide a decision-maker in exercising administrative powers, as this makes the exercise of power more transparent. However, the intention of the subordinate legislation is to provide the flexibility to waive fees in the event of hardship. If criteria were too prescriptive, it may inadvertently lead to a genuine case of hardship not receiving a fee waiver because they did not meet the strict terms of the prescribed criteria. In this case, the committee is satisfied that the absence of decision-making criteria should facilitate more flexibility in recognising genuine cases of hardship.

⁵⁶ Building Units and Group Titles Regulation 2008, ss 16, 16A.

⁵⁷ The relevant provision expires on the COVID-19 legislation expiry day: Building Units and Group Titles Regulation 2008, s 16A.

⁵⁸ SL No. 43, explanatory notes, p 1.

⁵⁹ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 15.

⁶⁰ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: the OQPC Notebook*, p 28.

7.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA, except, as noted above, the notes do not address the possible inconsistency of the subordinate legislation with the rights and liberties of individuals with respect to administrative power and natural justice.

7.3 Human rights considerations

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

8 Proclamation – Police Legislation (Efficiencies and Effectiveness) Amendment Act 2022 (SL No. 44 of 2022)

The objective of the Proclamation made under the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2022* (SL No. 44) was to commence parts 2 and 7 and schedule 1 of the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2022* on 30 April 2022. These provisions authorise senior police officers to witness specified affidavits.⁶¹

The committee did not identify any issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

9 Legal Profession (Society Rules) Amendment Notice 2022 (SL No. 48 of 2022)

Section 696(1) of the *Legal Profession Act 2007* (Legal Profession Act) provides for the Queensland Law Society (QLS) to make rules (society rules) for various purposes, including to fix fees, levies and subscriptions in relation to QLS membership.

Under section 697 of the Legal Profession Act, society rules have no effect unless the Minister notifies the making of the rules. The notice is subordinate legislation.⁶²

The society rules made and notified to date are consolidated in the *Legal Profession (Society) Rules 2007* (Society Rules).⁶³

The purpose of the *Legal Profession (Society Rules) Amendment Notice* (SL No. 48) is to give notice of the making of the *Legal Profession (Society) Amendment Rule (No. 1) 2022* (Amendment Rule) by the QLS Council.

The Amendment Rule amends the Society Rules to:

- set the annual membership fees for the financial year commencing 1 July 2022 (\$515.00 plus GST for full members and \$297.00 plus GST for associate members)⁶⁴
- allow an incorporated legal practice (ILP) which has all legal practitioner directors and employed solicitors holding current Australian practising certificates and full or honorary membership of the QLS to apply for ILP membership of the QLS⁶⁵
- provide that ILP membership ceases if any legal practitioner director or employed solicitor ceases to be a full or honorary member of the QLS.⁶⁶

The committee did not identify any issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. In addition, the committee is satisfied that the subordinate legislation is compatible with human rights.

⁶¹ SL No. 44, explanatory notes, p 1.

⁶² Legal Profession Act, s 697(2).

⁶³ SL No. 48, explanatory notes, p 1.

⁶⁴ See Rule 16 of the Society Rules, as amended by the Amendment Rule.

⁶⁵ See Rule 10B(1) of the Society Rules, as amended by the Amendment Rule.

⁶⁶ See Rule 10B(1) of the Society Rules, as amended by the Amendment Rule.

10 Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022 (SL No. 49 of 2022)

Part 6 of the *Justice and Other Legislation Amendment Act 2021* (JOLA Act) made amendments to the *Oaths Act 1867* (Oaths Act) to modernise the way that affidavits and statutory declarations can be made, signed and witnessed. These ‘documents reforms’ commenced on 30 April 2022.⁶⁷

This Uniform Civil Procedure (Affidavits and Statutory Declarations) Amendment Rule 2022 (Amendment Rule) amends the *Uniform Civil Procedure Rules 1999* (UCPR) to accommodate the documents reforms by:

- updating terminology to align with new terminology used in the Oaths Act
- providing for the filing of affidavits and statutory declarations, however made (including affidavits or statutory declarations that are made in the form of electronic documents, electronically signed or made using counterparts and those signed by a substitute signatory at the direction of the signatory)
- specifying additional requirements for the completion of affidavits and statutory declarations to complement the requirements in the Oaths Act
- specifying a retention period of 7 years for original physical versions of affidavits and statutory declarations for the purposes of section 31Y(3) of the Oaths Act.⁶⁸

The Amendment Rule commenced on 30 April 2022 to align with the commencement of part 6 of the JOLA Act.⁶⁹

The committee did not identify any issues regarding the subordinate legislation’s consistency with fundamental legislative principle or its lawfulness. In addition, the committee is satisfied that the subordinate legislation is compatible with human rights.

11 Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022 (SL No. 51 of 2022)

Penalty units are used to calculate most monetary penalties imposed for criminal and regulatory offences.⁷⁰ The Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022 provides that from 1 July 2022, the value of a penalty unit will rise from \$137.85 to \$143.75.

Under the *Penalties and Sentences Act 1992*, the value of a penalty unit may be increased once in a financial year by 3.5% or a percentage change published by the Treasurer in the Queensland Government Gazette on or before 31 March.

On 31 March 2022, the Treasurer and Minister for Trade and Investment, Hon Cameron Dick MP, published a percentage change of 4.3% for the penalty unit value.⁷¹

In July 2021, the monetary value of a penalty unit was increased by 3.3% from \$133.45 to \$137.85⁷² and in July 2020, there was no increase due to the COVID-19 pandemic.

⁶⁷ SL No 49, explanatory notes, p 1.

⁶⁸ SL No. 49, explanatory notes, p 2.

⁶⁹ SL No. 49, s 2.

⁷⁰ SL No. 51, human rights certificate, p 1.

⁷¹ SL No. 51, explanatory notes, p 1.

⁷² Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2021.

The explanatory notes justify the increase on the basis of deterrence and punishment: 'Increasing the penalty unit value ensures the deterrent and punishment effect of fines and infringement notices is maintained'.⁷³

11.1 Fundamental legislative principle issues

The committee did not identify any issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness.

11.2 Human rights considerations

The human rights certificate identifies the right to equality before the law (section 15 of the HR Act) and property rights (section 24 of the HRA) as being relevant to SL No. 51. The certificate provides that the right to equality before the law is limited because increasing the monetary value of the penalty unit may disproportionately impact certain groups in society, such as Aboriginal and Torres Strait Islanders and people with disability, and that the right to property is limited because the increase in the amount of a penalty unit results in a deprivation of property in the form of money and possibly the seizure of other property if fines are not paid.⁷⁴

The human rights certificate explains the purpose of the limitations on the rights:

The purpose of limiting the right to recognition and equality before the law and property rights is to ensure the value of the penalty unit increases relative to inflation to ensure the deterrent and punishment effects of monetary penalties are maintained. This promotes safe, fair and responsible communities as an important aspect of a free and democratic society.⁷⁵

The Attorney-General concludes:

While the increase in the prescribed value of a penalty unit limits the right to recognition and equality before the law through the potential disproportionate impact on sectors of the community, on balance having regard to the extent of the limitation, it is considered that the importance of maintaining the punishment and deterrent effects of monetary penalties outweighs any harm to the right. The limitation on property rights associated with the increase in the prescribed value of a penalty unit is not arbitrary and any deprivation of property as a result of the increase is on balance considered to be outweighed by the importance of maintained monetary fines at appropriate levels to discourage and penalise unlawful behaviour.⁷⁶

The committee is satisfied that SL No. 51 is compatible with human rights.

12 Professional Standards (Law Institute of Victoria Limited Professional Standards Scheme) Notice 2022 (SL No. 63)

Each state and territory has similar professional standards legislation which is designed to facilitate the obtaining of professional indemnity insurance for members of an occupational association that has an approved scheme.⁷⁷ Schemes are monitored and approved by the Professional Standards Council (PSC) in each jurisdiction.⁷⁸ The Minister is required under the *Professional Standards Act 2004* to give notice of the approval of an interstate scheme by the appropriate PSC.⁷⁹

⁷³ SL No. 51, explanatory notes, p 1.

⁷⁴ SL No. 51, human rights certificate, p 2.

⁷⁵ SL No. 51, human rights certificate, p 2.

⁷⁶ SL No. 51, human rights certificate, p 3.

⁷⁷ SL No. 63, explanatory notes, p 1.

⁷⁸ SL No. 63, explanatory notes, p 1.

⁷⁹ SL No. 63, explanatory notes, p 1.

The objective of the Professional Standards (Law Institute of Victoria Limited Professional Standards Scheme) Notice 2022 (SL No. 63) is to give notice of the approval of the Law Institute of Victoria Limited (LIV) Professional Standards Scheme by the PSC of Victoria.⁸⁰

This scheme limits liability of participating members of LIV, including:

... full members who hold a current Australian practising certificate, who are not corporate legal practitioners or government legal practitioners or exempted from participation in the Scheme by the LIV; and incorporated legal practices, that are not exempted from participation in the Scheme by the LIV.⁸¹

The committee did not identify any issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. In addition, the committee is satisfied that the subordinate legislation is compatible with human rights.

13 Professional Standards (South Australian Bar Association Professional Standards Scheme) Notice 2022 (SL No. 64 of 2022)

The objective of the Professional Standards (South Australian Bar Association Professional Standards Scheme) Notice 2022 (SL No. 64) is to give notice of the approval of the South Australian Bar Association Professional Standards Scheme by the PSC of South Australia.⁸²

This scheme limits liability of all ordinary members, including bar readers, of the South Australian Bar Association who: 'have professional indemnity insurance that complies with the approved Insurance Standard; are not exempted members; and hold an Australian practising certificate in the practice of domestic law within Australia'.⁸³

The committee did not identify any issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. In addition, the committee is satisfied that the subordinate legislation is compatible with human rights.

14 Weapons (Fee Unit Conversion) Amendment Regulation 2022 (SL No. 74 of 2022)

In 2021, the *Acts Interpretation Act 1954* (AI Act) was amended to introduce a fee unit model 'to streamline the annual process of indexing regulatory fees'.⁸⁴ Under the AI Act, the amount of a fee is the number of dollars obtained by multiplying the value of a fee unit by the number of fee units.⁸⁵ The AI Act provides that the value of a fee unit is \$1 unless another amount is prescribed.⁸⁶ On 1 July 2022, the value of a fee unit will rise to \$1.025.⁸⁷

The Weapons (Fee Unit Conversion) Amendment Regulation 2022 (SL No. 74) amends the Weapons Regulation 2016 by applying the fee unit model, changing any regulated in-scope fees and charges from dollar amounts to fee units.⁸⁸ It does not change any fees or charges.⁸⁹

⁸⁰ SL No. 63, explanatory notes, p 1.

⁸¹ SL No. 63, explanatory notes, p 2.

⁸² SL No. 64, explanatory notes, p 1.

⁸³ SL No 64, explanatory notes, p 2.

⁸⁴ Debt Reduction and Savings Bill 2021, explanatory notes, p 1. The amendments commenced on 1 January 2022: SL No. 74, explanatory notes, p 1.

⁸⁵ *Acts Interpretation Act 1954*, s 48C.

⁸⁶ *Acts Interpretation Act 1954*, s 48B.

⁸⁷ Acts Interpretation (Fee Unit) Regulation 2022, s 2.

⁸⁸ SL No. 74, explanatory notes, p 2.

⁸⁹ SL No. 74, explanatory notes, p 3.

The committee did not identify any issues regarding the subordinate legislation's consistency with fundamental legislative principle or its lawfulness. In addition, the committee is satisfied that the subordinate legislation is compatible with human rights.

15 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

August 2022

Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	Ms Sandy Bolton MP, Member for Noosa
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra
	Mr Jon Krause MP, Member for Scenic Rim