

Legal Affairs and Safety Committee

Report No. 36, 57th Parliament

Subordinate legislation tabled between 22 June 2022 and 31 August 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 22 June 2022 and 31 August 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
79	Justice Legislation (Fee Unit Conversion and Other Matters) Amendment Regulation 2022	16 August 2022	28 October 2022
80	Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2022	16 August 2022	28 October 2022
81	Building Fire Safety (Fee Unit Conversion) Amendment Regulation 2022	16 August 2022	28 October 2022
82	Fire and Emergency Services (Annual Contributions) Amendment Regulation 2022	16 August 2022	28 October 2022
88	Uniform Civil Procedure and Other Rules Amendment Rule 2022	16 August 2022	28 October 2022
89	Associations Incorporation and Other Legislation Amendment Regulation 2022	16 August 2022	28 October 2022
101	State Buildings Protective Security Amendment Regulation 2022	16 August 2022	28 October 2022
109	Evidence (Domestic Violence Proceedings) Amendment Regulation 2022	30 August 2022	10 November 2022

¹ *Legislative Standards Act 1992*, Part 4.

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

110	Proclamation— <i>Evidence and Other Legislation Amendment Act 2022</i>	30 August 2022	10 November 2022
111	Guardianship and Administration Regulation 2022	30 August 2022	10 November 2022
115	Status of Children Regulation 2022	30 August 2022	10 November 2022
117	Legal Profession (Australian Solicitors Conduct Rules) Notice 2022	31 August 2022	29 November 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 any significant issues regarding the policy, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or non-compliance with the HRA.

The committee considers that the explanatory notes tabled with the subordinate legislation noted in this report 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.

3.1 Forms notified

The committee considered a number of forms approved for use under the *Legal Profession Act 2007*, *Corrective Services Act 2006*, *Keno Act 1996*, and the *Working with Children (Risk Management and Screening) Act 2000*. The committee did not identify any issues from a technical perspective. As these forms are not subordinate legislation, there is no requirement to table explanatory notes or a human rights certificate with them.

4 Justice Legislation (Fee Unit Conversion and Other Matters) Amendment Regulation 2022 (SL No. 79 of 2022)

The objective of the Justice Legislation (Fee Unit Conversion and Other Matters) Amendment Regulation 2022 (SL No. 79) is to amend numerous regulations across the Justice and Attorney-General portfolio to express fees and charges as fee units rather than dollars.³

SL No. 79 is intended to reduce the administrative burden of amending multiple regulations each year. By referencing fee units, rather than dollars, multiple instruments can be amended simultaneously by amending a single regulation that specifies the value of a fee unit.⁴

The value of a fee unit increased from \$1 to \$1.025 on 1 July 2022.⁵

Some figures in the regulations fall out of the scope of the fee unit model. In these instances, where allowances and remuneration are provided for, these have increased in line with the Government Indexation Rate of 2.5%.⁶

³ SL No. 79, explanatory notes, p 3.

⁴ SL No. 79, explanatory notes, p 3; *Acts Interpretation Act 1954*, s 48B permits the value of a fee unit to be prescribed by regulation.

⁵ *Acts Interpretation (Fee Unit) Regulation 2022*, s 2.

⁶ SL No. 79, s 87.

As noted in the explanatory notes for SL No. 79:

[SL No. 79] also makes some technical drafting amendments to correct minor and technical errors, remove redundant provisions, clarify the application of provisions and align the subordinate legislation with current drafting conventions.⁷

4.1 Consistency with fundamental legislative principles

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

4.2 Human rights considerations

4.2.1 Property rights

A person cannot be arbitrarily deprived of their own property.⁸

SL No 79 increases the remuneration and allowances paid to jurors in a civil trial.⁹ A person who is party to proceedings covers the costs of a jury; therefore, that person will be deprived of additional money under SL No. 79.

However, the right to property is only enlivened if the deprivation is arbitrary. In this case, the increase in juror remuneration and allowances is to reflect adequate compensation for completing jury duty.¹⁰ Further, the increase is in line with the Government Indexation Rate and is not an arbitrary figure.

Therefore, the increased costs to a party in a civil trial are not arbitrary, and it is unlikely that the right to property is enlivened. The increased costs are comparable to a reasonable fee for a service.

Committee comment

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

5 Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2022 (SL No. 80 of 2022)

The objective of the Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2022 (SL No. 80) is to increase the amount of various costs and offer limits, monetary caps and thresholds, in relation to common law damages for personal injury contained in the applicable regulations.¹¹

The explanatory notes for SL No. 80 set out the legislative requirements for these amounts to be reviewed and amended annually:

Provisions in the primary legislation¹² for each regulation require the relevant Minister to recommend to the Governor in Council on or before 1 July each year the amounts that are to be prescribed for the indexation of these costs and offer limits, monetary caps and thresholds. The indexed amount is determined by the amount last prescribed, adjusted by the percentage change in the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings (AWE) publication most recently published before the start of the financial year and rounded to the nearest ten dollar.¹³

⁷ SL No. 79, explanatory notes, p 4.

⁸ HRA, s 24(2).

⁹ SL No. 79, s 87.

¹⁰ SL No. 79, human rights certificate, p 2.

¹¹ SL No. 80, explanatory notes, p 1. See Civil Liability Regulation 2014; Motor Accident Insurance Regulation 2018; Personal Injuries Proceedings Regulation 2014.

¹² *Civil Liability Act 2003; Motor Accident Insurance Act 1994; Personal Injuries Proceedings Act 2022.*

¹³ SL No. 80, explanatory notes, p 1.

According to the Bureau of Statistics, the average weekly earnings amount to be applied from 1 July 2022 is \$1671.40 and represents an annual increase of 3.47% when applied to each costs and offer limit, monetary cap and threshold set out in the applicable regulations.¹⁴

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 the subordinate legislation is compatible with human rights.

6 Building Fire Safety (Fee Unit Conversion) Amendment Regulation 2022 (SL No. 81 of 2022)

The objective of the Building Fire Safety (Fee Unit Conversion) Amendment Regulation 2022 (SL No. 81) is to amend the Building Fire Safety Regulation 2008 to express fees and charges as fee units rather than dollars.¹⁵

SL No. 81 maintains the value of prescribed fees by replacing the current dollar values with the equivalent fee unit. The fee unit at the date of commencement of SL No. 81 was \$1.¹⁶ On 1 July 2022, the value of a fee unit increased to \$1.025.¹⁷

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 the subordinate legislation is compatible with human rights.

7 Fire and Emergency Services (Annual Contributions) Amendment Regulation 2022 (SL No. 82 of 2022)

The objective of the Fire and Emergency Services (Annual Contributions) Amendment Regulation 2022 (SL No. 82) is to amend the Fire and Emergency Services Regulation 2011 to apply the annual indexation to the emergency management levy.¹⁸ Indexation of fees is intended to maintain the value of a fee over time. The current Government Indexation Policy is that fees and charges are to increase by 2.5% from 1 July 2022.¹⁹

SL No. 82 also makes the following amendments:

- amends the date of the levy district map to reflect the current year
- removes the levy district name of Wallaville
- changes the levy district classes for the Charters Towers and Tully levy districts.²⁰

7.1 Consistency with fundamental legislative principles

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

7.2 Human rights considerations

While the human rights certificate for SL No. 82 raises a potential limitation on the right to property, as was discussed in relation to SL No. 79, an increase to a fee that is in line with the indexation rate,

¹⁴ SL No. 80, explanatory notes, p 2; Applicable regulations: Civil Liability Regulation 2014; Motor Accident Insurance Regulation 2018; Personal Injuries Proceedings Regulation 2014.

¹⁵ SL No. 81, explanatory notes, p 1.

¹⁶ SL No. 81, explanatory notes, p 1. SL No. 81 was notified on 24 June 2022.

¹⁷ Acts Interpretation (Fee Unit) Regulation 2022, s 2.

¹⁸ SL No. 82, explanatory notes, p 1.

¹⁹ SL No. 82, explanatory notes, p 1.

²⁰ SL No. 82, explanatory notes, pp 1-2.

and hence is not arbitrary, does not enliven the right to property. The committee is satisfied that the subordinate legislation is compatible with human rights.

8 Uniform Civil Procedure and Other Rules Amendment Rule 2022 (SL No. 88 of 2022)

The objective of the Uniform Civil Procedure and Other Rules Amendment Rule 2022 (SL No. 88) is to adjust the scales of costs for the Supreme, District and Magistrates Courts under the *Uniform Civil Procedure Rules 1999* (UCPR) in line with a formula developed for the indexation of scales of costs in the federal courts which reflects movements in the consumer price index and wage price index.²¹

The last time these amounts were increased was in 2018, so the adjustment includes increases in the indexes for the period 2019 to 2022.²²

The *Domestic and Family Violence Protection Rules 2014* (DFVPR) are based on the UCPR, and therefore, this scale of costs is updated also.

The scales of costs are used to assess costs under the UCPR and DFVPR in relation to the award and assessment of legal costs for court proceedings.²³

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 the subordinate legislation is compatible with human rights.

9 Associations Incorporation and Other Legislation Amendment Regulation 2022 (SL No. 99 of 2022)

The objective of the Associations Incorporation and Other Legislation Amendment Regulation 2022 (SL No. 99) is to amend the Associations Incorporation Regulation 1999 and the Collections Regulation 2008 to support the commencement of the *Associations Incorporation and Other Legislation Amendment Act 2020* (AIOLAA).²⁴ These are consequential amendments to ensure the regulations are consistent with the changes to primary legislation brought by the AIOLAA.²⁵ One such amendment is transposing into SL No. 99 the existing qualifications defining accountant and auditor, as contained in the *Collections Act 1966* before commencement of the AIOLAA.²⁶

SL No. 99 also exempts a class of entities from the financial reporting obligations under the *Associations Incorporation Act 1981* and the *Collections Act 1966*. An exempt class is one that is registered with the Australian Charities and Not-for-profits Commission (ACNC) and has met its ACNC reporting obligations for the year.²⁷ This amendment is intended to reduce red tape for entities that conduct fundraising in Queensland.²⁸

Finally, SL No. 99 removes a provision in the Collections Regulation 2008 that allowed a member of the public to obtain the residential address of a charity board member's address for a fee.²⁹

²¹ SL No. 88, explanatory notes, p 2.

²² SL No. 88, explanatory notes, p 2.

²³ SL No. 88, explanatory notes, p 1.

²⁴ SL No. 99, explanatory notes, p 1.

²⁵ SL No. 99, explanatory notes, pp 1-2. See the list of consequential amendments on page 2 of the explanatory notes for detailed information.

²⁶ SL No. 99, s 20.

²⁷ This does not include organisations that are part of group reporting arrangements or organisations that the ACNC withholds the publication of financial information.

²⁸ SL No. 99, explanatory notes, pp 1-2.

²⁹ SL No. 99, explanatory notes, p 2.

9.1 Consistency with fundamental legislative principles

9.1.1 Sufficient regard to the institution of Parliament

Appropriate subdelegation of power

Whether SL No. 99 has sufficient regard to the institution of Parliament depends on whether it allows the subdelegation of power only in appropriate cases and to appropriate persons.³⁰ The greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater will be the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.³¹

SL No. 99 includes an amendment to the Collections Regulation 2008 that permits the chief executive to determine an alternative qualification for a person that is permitted to audit financial statements under the *Collections Act 1966*, in addition to the prescribed qualifications in SL No. 99.

The explanatory notes provide an explanation for this amendment:

These subsections retain a delegation that existed in the [Collections Act 1966] prior to amendment by the AIOLAA and allow small entities to reduce their regulatory costs by applying to the [Office of Fair Trading] to have a person with equivalent experience to an accountant or auditor, but without current registration, to audit their financial statement. Without the ability for the chief executive to approve other qualifications, the cost of having the financial statement audited by a registered accountant or auditor (up to \$5,000) could consume a significant proportion of a small charity's or association's revenue.³²

The relevant provisions in SL No. 99 appeared in the *Collections Act 1966* (before the AIOLAA) in materially the same form, including the power for the chief executive to determine alternative qualifications. Further, the financial burden created for charities by removing such a provision would be significant.

Committee comment

The committee is satisfied that SL No. 99 has sufficient regard to the institution of Parliament, noting the chief executive's existing power to determine alternative qualifications under the *Collections Act 1966*. In addition, the committee is satisfied the subordinate legislation is compatible with human rights.

10 State Buildings Protective Security Amendment Regulation 2022 (SL No. 101 of 2022)

Protective Services security officers appointed under the *State Buildings Protective Security Act 1983* (Act) provide security services for state buildings.³³

State buildings are defined in the Act to include a building and its precincts declared in a regulation to be a state building.³⁴

A regulation may only declare a building and its precincts, or a part of a building and its precincts, to be a state building if the building or part of the building is to be used for an activity with which the State is directly concerned and the regulation provides for its expiry at a stated time.³⁵

³⁰ *Legislative Standards Act 1992*, s 4(5)(e).

³¹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

³² SL No. 99, explanatory notes, p 4.

³³ *State Buildings Protective Security Act 1983*; SL No. 101, explanatory notes, p 1.

³⁴ *State Buildings Protective Security Act 1983*, s 4.

³⁵ *State Buildings Protective Security Act 1983*, ss 4-5.

The State Buildings Protective Security Regulation 2008 declares the Queensland Cultural Centre and certain Legal Aid Queensland offices to be state buildings.³⁶ Protective Services within the Queensland Police Service therefore meet the security needs for the Queensland Cultural Centre and Legal Aid Queensland offices in the Brisbane central business district.³⁷

The *Police Service Administration and Other Legislation Amendment Act 2022*, which received royal assent on 20 May 2022, will repeal the Act and the State Buildings Protective Security Regulation 2008, and relocate relevant provisions into the *Police Powers and Responsibilities Act 2000*.³⁸

Given that these amendments will commence on proclamation (and not before 31 August 2022),³⁹ SL No. 101 amends the State Buildings Protective Security Regulation 2008 to extend to 31 August 2023 the declarations of the Queensland Cultural Centre and Legal Aid Queensland offices as state buildings.⁴⁰ This means that the current security arrangements may continue past 31 August 2022.

10.1 Consistency with fundamental legislative principles

The extension of the declaration of the Queensland Cultural Centre and Legal Aid Queensland offices as state buildings means that Protective Services security officers are authorised to exercise certain powers in those buildings and precincts. These powers are described and discussed in the human rights certificate, and are considered briefly below with respect to fundamental legislative principles and under the heading *Human rights considerations*.

10.1.1 Common law rights

Legislation should not abrogate common law rights without sufficient justification.⁴¹ These rights include the rights to privacy and liberty.

10.1.1.1 Right to liberty and right to freedom of movement

The right to personal liberty has been described as ‘the most elementary and important of all common law rights’.⁴² The power to detain a person infringes on the right to freedom of movement and must be fully justified.⁴³

A senior protective security officer is authorised to detain a person if the senior protective security officer suspects on reasonable grounds that a person has committed an offence against:

- the *State Buildings Protective Security Act 1983*, or
- any other law by reason of having done anything or having had anything in the person’s possession in a state building.⁴⁴

As soon as practicable after a senior protective security officer detains the person, the senior protective security officer must surrender the person to a police officer.⁴⁵

This ability to detain a person is inconsistent with the rights to liberty and freedom of movement.

³⁶ State Buildings Protective Security Regulation 2008, ss 3, 3A.

³⁷ SL No. 101, explanatory notes, p 1.

³⁸ SL No. 101, explanatory notes, pp 1-2.

³⁹ So that the necessary training of affected staff may be undertaken, and relevant policies and procedures may be developed; SL No. 101, explanatory notes, p 2.

⁴⁰ SL No. 101, explanatory notes, p 2.

⁴¹ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 95.

⁴² *Trowbridge v Hardy* (955) 94 CLR 147 at 152.

⁴³ OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 99.

⁴⁴ *State Buildings Protective Security Act 1983*, s 24(1).

⁴⁵ *State Buildings Protective Security Act 1983*, s 24(2).

The human rights certificate contends that the power to detain a person 'is an appropriate security measure that provides due process while ensuring good order can be maintained within the Queensland Cultural Centre and all Legal Aid Queensland offices located in the Brisbane CBD'.⁴⁶

The safeguards that apply to the power include that to be a senior protective security officer, the person must meet certain standards of fitness and propriety, and undertake a training course.⁴⁷ Also, a senior protective security officer who is not wearing a uniform may exercise a power in relation to a person only if the officer first produces the officer's identity card for inspection by the person.⁴⁸

Given the safeguards that apply, and that it is in the public interest to provide safe government precincts, the committee is satisfied that any inconsistency with fundamental legislative principles is justified.

10.1.1.2 Right to privacy

SL No. 101 enables a senior protective security officer to demand a person's name and reason for attending the Queensland Cultural Centre or Legal Aid Queensland offices. It also enables the officer to require a person to undertake certain actions, such as pass the person's belongings through an x-ray machine. A senior protective security officer may touch garments worn by the person to the extent reasonably necessary to detect articles carried by the person.

Given that these powers assist Protective Services to protect staff, visitors and the public who attend the Queensland Cultural Centre and Legal Aid Queensland offices from risks such as explosives and firearms,⁴⁹ the committee is satisfied that any inconsistency with fundamental legislative principles is justified.

10.2 Human rights considerations

10.2.1 Property rights

A person must not be arbitrarily deprived of their property.⁵⁰

The declaration of the Queensland Cultural Centre and Queensland Legal Aid offices as state buildings enables senior protective security officers at those sites to seize and detain explosive substances, firearms, noxious or offensive substances and offensive weapons (proscribed matter) at these locations, unless the person is lawfully in possession of it in the course of the person's trade, business or calling.⁵¹

The *Police Powers and Responsibilities Act 2000* provides for the return of proscribed matter if certain criteria are met.⁵²

The human rights certificate states that the power to seize property is not arbitrary⁵³ and is justified 'given the paramount importance of ensuring the safety of visitors and employees at the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD'.⁵⁴

⁴⁶ SL No. 101, human rights certificate, p 9.

⁴⁷ See *State Buildings Protective Security Act 1983*, ss 8, 9.

⁴⁸ *State Buildings Protective Security Act 1983*, s 10B. If, for any reason, it is not practicable to comply before exercising the power, the senior protective security officer must comply at the first reasonable opportunity.

⁴⁹ See SL No. 101, human rights certificate, pp 5-7.

⁵⁰ HRA, s 24(2).

⁵¹ *State Buildings Protective Security Act 1983*, ss 3, 22; SL No. 101, human rights certificate, p 9. Proscribed matter is that which would present a security threat to a place: SL No. 101, human rights certificate, p 9.

⁵² SL No. 101, human rights certificate, p 10.

⁵³ SL No. 101, human rights certificate, p 9.

⁵⁴ SL No. 101, human rights certificate, p 10-11.

The human rights certificate lists the safeguards:

Concerns about this power's impact upon a person's property rights are mitigated through the restriction of this power to a clearly defined area, the limitation of the application of this power to property that is inherently dangerous if inappropriately used and the existence of an avenue for the return of seized property.⁵⁵

10.2.2 Privacy and reputation

A person has the right not to have the person's privacy unlawfully or arbitrarily interfered with.⁵⁶

Senior protective security officers at state buildings have powers that limit a person's right to privacy. These include the power to:

- demand a person's name and address and reason for entry to the building
- ask a person to pass through a walk-through detector and/or submit to a scan by a security officer using a hand held scanner and/or pass their belongings through an x-ray machine
- examine an outer garment removed by a person
- inspect a vehicle
- remove and inspect a detected article.⁵⁷

The human rights certificate advises that the purpose of SL No. 101 is 'to ensure that appropriate security measures are applied to the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD'.⁵⁸

Regarding the authority of senior protective security officers and police officers to demand a person's name and reason for entering the building, the human rights certificate states:

... This power is required to ensure that entrants into state buildings may be identified and are at this location for a lawful purpose. This is a security measure that has been universally adopted for state buildings by all Australian jurisdictions.

The impact of the exercise of this power on the right to privacy is minimal as the only information sought is the entrant's name and address details and the reason why the person is at a specific location. The amount of information sought is not overly intrusive and is the minimum needed to identify a person and to determine that the person has a legitimate reason for being present.⁵⁹

With respect to inspections of a person's belongings, the human rights certificate states:

The Amendment Regulation also affects a person's right to privacy by permitting inspections of the entrant's belongings and outer garments. The purpose of these inspections is to detect proscribed matter. These inspections are designed to be sufficient for this purpose while not being excessively intrusive.⁶⁰

10.2.3 Freedom of movement

In certain circumstances, a senior protective security officer may direct a person to leave the Queensland Cultural Centre or Queensland Legal Aid offices.⁶¹ A senior protective security officer can

⁵⁵ SL No. 101, human rights certificate, p 11.

⁵⁶ HRA, s 25(1).

⁵⁷ *State Buildings Protective Security Act 1983*, part 3.

⁵⁸ SL No. 101, human rights certificate, p 6.

⁵⁹ SL No. 101, human rights certificate, p 6.

⁶⁰ SL No. 101, human rights certificate, p 6.

⁶¹ *State Buildings Protective Security Act 1983*, s 21D; SL No. 101, human rights certificate, p 7.

remove a person from the building, using such force as is necessary, if the person fails to comply with a demand or direction.⁶²

While these powers limit a person's right to move freely within Queensland, they may only be exercised 'if the person fails to comply with a direction such as a requirement to allow their belongings to be inspected or fails to satisfy a senior protective security officer or police officer that they have a lawful reason for being in the area'.⁶³ The human rights certificate explains that the power 'is appropriate and necessary as it allows the senior protective security officer or police officer to resolve a potential risk to the security and safety of the area and no other reasonable security measures would be effective'.⁶⁴

10.2.4 Right to liberty and security

A person must not be subjected to arbitrary arrest or detention.⁶⁵

If a senior protective security officer suspects on reasonable grounds that a person has committed an offence, the senior protective security officer may detain a person, using such force as is reasonably necessary for the purpose, until the person can be surrendered to a police officer.⁶⁶

The human rights certificate justifies the limitation:

The power to detain a person under the circumstances outlined in the Amendment Regulation is an appropriate security measure that provides due process while ensuring good order can be maintained within the Queensland Cultural Centre and all Legal Aid Queensland offices located in the Brisbane CBD.⁶⁷

Committee comment

The committee is satisfied that the limitations of human rights in the contexts identified above are reasonably and demonstrably justified.

11 Evidence (Domestic Violence Proceedings) Amendment Regulation 2022 (SL No. 109 of 2022)

The objective of the Evidence (Domestic Violence Proceedings) Amendment Regulation 2022 (SL No. 109) is to prescribe proceedings⁶⁸ and places⁶⁹ in which video recorded statements (taken by trained police officers) can be used as an adult victim's evidence-in-chief in domestic violence proceedings.⁷⁰

SL No. 109 commenced on 12 September 2022.

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 the subordinate legislation is compatible with human rights.

12 Proclamation—Evidence and Other Legislation Amendment Act 2022 (SL No. 110 of 2022)

The objective of the Proclamation—*Evidence and Other Legislation Amendment Act 2022* (SL No. 110) is to fix a commencement date of 12 September 2022 for remaining provisions of the *Evidence and*

⁶² *State Buildings Protective Security Act 1983*, s 23; SL No. 101, human rights certificate, p 7.

⁶³ SL No. 101, human rights certificate, p 7.

⁶⁴ SL No. 101, human rights certificate, p 8.

⁶⁵ HRA, s 29.

⁶⁶ *State Buildings Protective Security Act 1983*, s 24; SL No. 101, human rights certificate, p 8.

⁶⁷ SL No. 101, human rights certificate, p 9.

⁶⁸ Summary proceeding under the *Justices Act 1886* and a committal proceeding.

⁶⁹ Ipswich Magistrates Court and the South Port Magistrates Court.

⁷⁰ SL No. 109, explanatory notes, p 1.

Other Legislation Amendment Act 2022, establishing a video recorded evidence pilot scheme and shield laws designed to protect the identity of journalists' confidential informants.⁷¹

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 the subordinate legislation is compatible with human rights.

13 Guardianship and Administration Regulation 2022 (SL No. 111 of 2022)

The objective of the Guardianship and Administration Regulation 2022 (SL No. 111) is to repeal and remake the Guardianship and Administration Regulation 2012 (expiring regulation).

Like the expiring regulation, SL No. 111 prescribes recognised provisions from laws of other Australian jurisdictions and New Zealand to enable orders made under those laws similar to guardianship and administration orders to be recognised in Queensland.⁷²

SL No. 111 prescribes 12 laws as recognised provisions. Three are new,⁷³ six have been carried over from the expiring regulation,⁷⁴ and three have been updated to reflect the current laws in Victoria and the Northern Territory.⁷⁵

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 the subordinate legislation is compatible with human rights.

14 Status of Children Regulation 2022 (SL No. 115 of 2022)

The objective of the Status of Children Regulation 2022 (SL No. 115) is to repeal and replace the Status of Children Regulation 2012, which expired on 1 September 2022.

SL No. 115 prescribes the requirements for:

- carrying out a parentage testing procedure⁷⁶
- preparing a parentage testing procedure report.⁷⁷

14.1 Consistency with fundamental legislative principles

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

⁷¹ SL No. 110, explanatory notes, p 1.

⁷² SL No. 111, explanatory notes, p 2.

⁷³ *Aged and Infirm Persons' Property Act 1940* (SA); *NSW Trustee and Guardian Act 2009* (NSW); *Public Trustee and Guardian Act 1985* (ACT), SL No. 111, s 3(a), (j), (l). SL No. 111, explanatory notes, p 2.

⁷⁴ *Guardianship Act 1987* (NSW); *Guardianship and Administration Act 1990* (WA); *Guardianship and Administration Act 1993* (SA); *Guardianship and Administration Act 1995* (Tas); *Guardianship and Management of Property Act 1991* (ACT); *Protection of Personal and Property Rights Act 1988* (New Zealand), SL No. 111, s 3(b), (d), (e), (f), (h), (k). SL No. 111, explanatory notes, p 2.

⁷⁵ The repealed *Guardianship and Administration Act 1986* (Vic); *Guardianship and Administration Act 2019* (Vic); the *Guardianship of Adults Act 2016* (NT), SL No. 111, s 3(c), (g), (i). SL No. 111, explanatory notes, p 2.

⁷⁶ The Supreme Court may make a parentage testing order directing a person to submit to carrying out a parentage testing procedure, *Status of Children Act 1978*, s 11. SL No. 115, explanatory notes, p 2.

⁷⁷ A parentage testing report is to be prepared according to the requirements prescribed by regulation, *Status of Children Act 1978*, s 12. SL No. 115, explanatory notes, p 2.

14.2 Human rights considerations

14.2.1 Taking part in public life

Section 23 of the HRA protects the right of every person in Queensland to have the opportunity, without discrimination, to participate in the conduct of public affairs directly or through freely chosen representatives. Participation in the conduct of public affairs may include voting, standing for public office, being considered for employment in the public service, being elected to the legislative assembly, and participating in public debate.⁷⁸

The statement of compatibility states SL No. 115 engages and promotes section 23 of the HRA because a declaration of parentage may enable a child to become an Australian citizen and in the future become eligible to take part in public life by way of voting, standing for office and being employed in the public service.⁷⁹

14.2.2 Privacy and reputation

Section 25 of the HRA protects a person's privacy, family, home or correspondence from unlawful or arbitrary interference, and a person's reputation from being unlawfully attacked. The scope of the right is broad. It protects personal information, data collection and correspondence as well as an individual's private life more generally. For example, it protects individuals against interference with their physical or mental integrity, freedom of thought, legal personality, sexuality, family and home, and individual identity.⁸⁰

Only lawful and non-arbitrary intrusion may occur upon privacy, family, home, correspondence or reputation.⁸¹ In this context, a 'lawful' interference is one that is authorised by a positive law that is adequately accessible and formulated with sufficient precision to enable a person to regulate his or her conduct by it.⁸² 'Arbitrariness' is concerned with capriciousness, unpredictability, injustice, and unreasonableness in the sense of not being proportionate to the legitimate aim sought.⁸³

The statement of compatibility notes that carrying out parentage testing and preparing a parentage testing report inherently involves interference with the right to privacy because individuals must allow their personal information to be collected and used. However, the purpose for the test and the report is consistent with a free and democratic society based on human dignity, equality and freedom because a declaration of parentage creates certainty for the status of children, which in turn supports protection of human rights under sections 23 and 26 of the HRA.⁸⁴

In addition, the Supreme Court may only make an order for parentage testing when it has no alternative evidence (such as a will or birth certificate) to make a declaration of parentage. Testing must also be carried out in accredited laboratories, which must adhere to standards of practice that include specific privacy and confidentiality provisions on the management and release of information to ensure personal information is only used for the purposes of carrying out the testing and preparing the parentage testing report.⁸⁵

⁷⁸ A Pound and K Evans, *Annotated Victorian Charter of Rights* 2nd edn, Lawbook Co., Sydney, 2019, p 172.

⁷⁹ SL No. 115, statement of compatibility, p 2.

⁸⁰ Human Rights, Respect protect promote, Guide: Nature and scope of the human rights protected in the *Human Rights Act 2019* (version 2, May 2022), p 77.

⁸¹ Human Rights, Respect protect promote, Guide: Nature and scope of the human rights protected in the *Human Rights Act 2019* (version 2, May 2022), p 78.

⁸² A Pound and K Evans, *Annotated Victorian Charter of Rights* 2nd edn, Lawbook Co., Sydney, 2019, p 113.

⁸³ *WBM v Chief Commissioner of Police* (2012) 43 VR 446. A Pound and K Evans, *Annotated Victorian Charter of Rights* 2nd edn, Lawbook Co., Sydney, 2019, p 114.

⁸⁴ SL No. 115, statement of compatibility, p 4.

⁸⁵ SL No. 115, statement of compatibility, p 5.

The statement of compatibility states SL No. 115 maintains consistency with other Australian jurisdictions in the way parentage testing is carried out.⁸⁶

As there are no less restrictive ways to achieve parentage testing, and given the limited circumstances in which the Supreme Court may make an order as well as the standards of practice for accredited laboratories carrying out a parentage testing procedure, the committee is satisfied the limitation on the right to privacy is reasonably and demonstrably justified.

14.2.3 Protection of families and children

Section 26 of the HRA protects families and children. The statement of compatibility maintains that SL No. 115 engages and promotes the right by:

- enabling the making of a declaration of parentage. Such a declaration may support an application to amend a birth certificate to correctly reflect a child's legal parentage.
- promoting the best interests of the child by giving children and their parents legal certainty.⁸⁷

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

15 Legal Profession (Australian Solicitors Conduct Rules) Notice 2022 (SL No. 117 of 2022)

The objective of the Legal Profession (Australian Solicitors Conduct Rules) Notice 2022 (SL No. 117) is to repeal and replace the Legal Profession (Australian Solicitors Conduct Rules) Notice 2012 (expiring notice), which expired on 1 September 2022.⁸⁸

Section 219 of the *Legal Profession Act 2007* allows the Queensland Law Society to make rules about:

- legal practice in this jurisdiction engaged in by Australian legal practitioners as solicitors
- engaging in legal practice in this jurisdiction as an Australian-registered foreign lawyer.

The rules have no effect until the Minister notifies their making⁸⁹. The expiring notice notified the 'Australian Solicitors Conduct Rules'. SL No. 117 continues to give effect to those Rules.⁹⁰

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 the subordinate legislation is compatible with human rights.

⁸⁶ SL No. 115, statement of compatibility, p 6.

⁸⁷ SL No. 115, statement of compatibility, p 4.

⁸⁸ SL No. 117, explanatory notes, p 1.

⁸⁹ *Legal Profession Act 2007*, s 225. SL No. 117, explanatory notes, p 1. Under section 225(2), a notice is subordinate legislation.

⁹⁰ SL No. 117, statement of compatibility, p 1.

16 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

October 2022

Legal Affairs and Safety Committee

Chair

Deputy Chair

Members

Mr Peter Russo MP, Member for Toohey

Mrs Laura Gerber MP, Member for Currumbin

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