

Legal Affairs and Safety Committee

Report No. 24, 57th Parliament

Subordinate legislation tabled between

16 October 2021 and 6 December 2021

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 16 October 2021 and 6 December 2021. 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

In addition, the report 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*
155	Liquor and Other Legislation (Fee Relief) Amendment Regulation 2021	26/10/21	17/03/22
Other	Takeaway Liquor Notice 27	11/11/21	30/3/2022
168	Professional Standards (The Institute of Public Accountants Professional Standards Scheme) Notice 2021	6/12/21	25/5/22

*Disallowance dates are based on proposed sitting dates advised by the Leader of the House. The dates are subject to change.

3 Committee consideration of the subordinate legislation

Unless noted below, the committee did not identify any significant issues regarding policy, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or non-compliance with the HRA.

The committee considers the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

The committee also considers 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 its compatibility with human rights.

¹ LSA, Part 4.

² HRA, s 41.

Takeaway Liquor Authority Notice No 27 was also examined by the committee³. The committee did not identify any issues from a technical scrutiny perspective. As these notices are not subordinate legislation,⁴ there is no requirement to table explanatory notes or a human rights certificate with them.⁵

4 Liquor and Other Legislation (Fee Relief) Amendment Regulation 2021 (SL No. 155)

On 10 August 2021, the Premier and Minister for Trade announced a \$47.75 million COVID-19 support package to assist the tourism and hospitality industry in dealing with the continuing impacts of COVID-19, including the August 2021 lockdowns. The support package includes these initiatives:

- Annual licensing fees for 2021-22 will be waived or refunded for businesses that were licensed under the *Liquor Act 1992* (Liquor Act) or the *Wine Industry Act 1994* (Wine Industry Act) as at 30 June 2021.
- Licensing application fees for changes to liquor trading hours and variations to licensed premises will be waived or refunded for applications made between 1 July 2021 and 30 June 2022.
- Registration renewal fees for inbound tour operators will be waived or refunded in respect of renewals falling due between 1 February 2021 and 30 June 2022.⁶

The objective of the regulation is to implement the support package through amendments to the Liquor Regulation 2002, Tourism Services Regulation 2003 and the Wine Industry Regulation 2009.

4.1 Consistency with fundamental legislative principles

Institution of Parliament - Matters appropriate to subordinate legislation

Whether legislation has sufficient regard to the institution of Parliament depends on whether, for example, subordinate legislation contains only matters appropriate to subordinate legislation.⁷

Generally, the greater the level of political interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in a primary Act as opposed to subordinate legislation.

The explanatory notes acknowledge that the regulation might raise this issue of fundamental legislative principle, in that the power to waive fees is contained in subordinate legislation rather than through amendment to the primary Acts.⁸ However, as stated in the explanatory notes, the relevant primary legislation (the Liquor Act, Wine Industry Act and *Tourism Services Act 2003* (Tourism Services Act)) provide that fees may be prescribed in the respective regulations (which they are, through the Liquor Regulation 2002, Tourism Services Regulation 2003 and the Wine Industry Regulation 2009).⁹

Further, as highlighted in the explanatory notes, the *Statutory Instruments Act 1992* provides a mechanism for fees to be waived through subordinate legislation:

³ The Notice is issued by the Commissioner for Liquor and Gaming under s 235 of the *Liquor Act 1992*. Although these notices are not subordinate legislation (and do not form part of the usual numbered subordinate legislation series), they are subject to disallowance.

⁴ *Liquor Act 1992*, s 235I(2).

⁵ *Liquor Act 1992*, s 235I(4).

⁶ SL No. 155, explanatory notes, p 1.

⁷ LSA, s 4(5)(c).

⁸ SL No. 155, explanatory notes, p 5.

⁹ SL No. 155, explanatory notes, p 5. See, for example: s 235(c) of the Liquor Act, which provides that a regulation may be made with respect to fees, including the refund of fees under that Act; s 100 of the Tourism Services Act which provides that a regulation may be made with respect to fees, including the refund of fees under that Act; and ss 53 and 62 of the Wine Industry Act which respectively provide that regulations may prescribe the amount of fees and that regulations made be made under that Act.

Section 30B(1) of the *Statutory Instruments Act 1992* (Statutory Instruments Act) provides that, if a power is conferred under a law for a statutory instrument to prescribe a fee, the power also includes a power to exempt a person or matter from payment of the fee, or waive payment of the fee for any person or matter.

As each of the authorising acts include a power to prescribe fees, it is considered section 30B(1) of the Statutory Instruments Act provides suitable authority for the respective regulations to also exempt or waive payment of the prescribed fees.¹⁰

The explanatory notes conclude by suggesting that any potential breach of this fundamental legislative principle is justified on the grounds of public interest, 'due to the necessity to provide financial relief to businesses experiencing significantly reduced trading and closures related to the COVID-19 lockdowns.'¹¹

Committee comment

The committee is satisfied that any breach of fundamental legislative principle is justified, such that the subordinate legislation has sufficient regard for the institution of Parliament.

4.2 Compatibility with human rights

The right to equality before the law is discussed below.¹²

The HRA provides that every person is equal before the law and is entitled to equal protection of the law without discrimination.¹³ This right places an obligation on public entities to treat people equally and to not apply the law in a discriminatory or arbitrary way.

The regulation potentially limits this right because the fee waivers will only apply to certain categories of licences and therefore only these individuals will benefit from the waivers or refunds.¹⁴ For example, new applicants to the liquor and wine industry, who are licensed after 30 June 2021, will still be required to pay licensing fees.¹⁵

The human rights certificate outlines that the purpose of limiting the right to equality before the law is to ensure that only individuals whose businesses were directly and negatively affected by the recent COVID-19 lockdowns receive financial support.¹⁶

The human rights certificate concludes:

Limiting the right to recognition and equality before the law to support the continued financial viability of affected Queensland tourist and hospitality businesses is consistent with the values of a free and democratic society.

...

The limitation ... is considered fair, necessary and appropriately defined for the purpose of ensuring the financial assistance only supports those businesses that have experienced direct financial hardship as a result of COVID-19 lockdowns.¹⁷

¹⁰ SL No. 155, explanatory notes, p 2.

¹¹ SL No. 155, explanatory notes, p 5.

¹² Note that only individuals have human rights under s 11 of the HRA. Therefore, this discussion is relevant only to individuals who may be affected by SL No. 155 as opposed to businesses or corporations.

¹³ HRA, s 15.

¹⁴ SL No. 155, human rights certificate, p 3.

¹⁵ SL No. 155, human rights certificate, p 3.

¹⁶ SL No. 155, human rights certificate, p 3.

¹⁷ SL No. 155, human rights certificate, p 4.

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.¹⁸

5 Professional Standards (The Institute of Public Accountants Professional Standards Scheme) Notice 2021 (SL No. 168)

One of the main objects of the *Professional Standards Act 2004* (PSA) is to enable the creation of schemes to limit the civil liability of professionals and others.¹⁹

The PSA requires the Attorney-General and Minister for Justice, Minister for Women and Minister for the Prevention of Domestic and Family Violence to give notice of the approval of a scheme by the Professional Standards Council or the appropriate council for the jurisdiction in which the scheme was prepared. The notice is subordinate legislation, but the scheme is not.²⁰

The notice gives notice of the approval, by the Professional Standards Council of Victoria, of The Institute of Public Accountants Professional Standards Scheme (the scheme).²¹

The explanatory notes explain that the scheme will limit the occupational liability of all participating members of The Institute of Public Accountants who reside in Australia and hold a current Professional Practice Certificate.²² The scheme also provides for monetary ceilings (caps) based on the annual turnover of members and a discretionary authority for The Institute of Public Accountants to specify a higher cap.²³

The explanatory notes advise that, in compliance with the PSA, notice of the scheme was published in newspapers circulating throughout each state and territory.²⁴

Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

Compatibility with human rights

The subordinate legislation is compatible with human rights.

¹⁸ Section 8 of the HRA relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

¹⁹ PSA, s 4.

²⁰ PSA, s 14(1)-(3). However, under s 14(4), if the notice is disallowed under, or is not tabled as required under, the *Statutory Instruments Act 1992*, s 51 of that Act applies to the scheme as if it were subordinate legislation.

²¹ Explanatory notes, pp 1-2. A copy of the scheme was tabled with SL No. 168 on 6 December 2021.

²² Explanatory notes, p 2.

²³ Explanatory notes, p 2.

²⁴ Explanatory notes, p 2; see PSA, s 9.

6 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

March 2022

Legal Affairs and Safety Committee

Chair

Deputy Chair

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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

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