

Economics and Governance Committee

Report No. 57, 57th Parliament

Subordinate legislation tabled between
13 September 2023 and 10 October 2023

1 Aim of this report

This report summarises the findings of the Economics and Governance Committee (committee) following our examination of the subordinate legislation within our portfolio areas tabled between 13 September 2023 and 10 October 2023.

It reports on any identified issues relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles,¹ its compatibility with human rights,² and its lawfulness.³

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

2 Subordinate legislation examined

| No. | Subordinate legislation | Date tabled | Disallowance date* |
|-----|---|-----------------|--------------------|
| 129 | Mutual Recognition (Queensland) (Tasmanian Container Deposit Scheme) Amendment Regulation 2023 | 10 October 2023 | 15 February 2024 |
| 130 | Trans-Tasman Mutual Recognition (Queensland) (NT and Tasmanian Container Deposit Schemes) Notice 2023 | 10 October 2023 | 15 February 2024 |

*The disallowance date is 14 sitting days after the tabling date. (See section 50 of the *Statutory Instruments Act 1992*.) Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Committee consideration of the subordinate legislation

No significant issues were identified with the policy, consistency with fundamental legislative principles, lawfulness, or compatibility with human rights of either item of subordinate legislation.

The committee was also satisfied that the explanatory notes to the regulation and notice respectively comply with part 4 of the LSA, and that the accompanying human rights certificates 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.

¹ *Legislative Standards Act 1992* (LSA), s 4.

² *Human Rights Act 2019* (HRA), s 8.

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

⁴ LSA, pt 4 (s 24).

⁵ HRA, s 41.

4 Mutual Recognition (Queensland) (Tasmanian Container Deposit Scheme) Amendment Regulation 2023

According to the explanatory notes, the Tasmanian Container Deposit Laws ‘may result in increased compliance costs for beverage manufacturers and importers in Queensland who sell products covered by the laws in Tasmania. Key costs relate to the approval of beverage containers and labels and contributions to scheme costs’.⁶

The objective of the Mutual Recognition (Queensland) (Tasmanian Container Deposit Scheme) Amendment Regulation 2023 (SL No. 129) is to amend the Mutual Recognition (Queensland) Regulation 2009 to approve amendments to the *Mutual Recognition Act 1992* (Cth) (Commonwealth MRA), as required under the *Mutual Recognition (Queensland) Act 1992* (Queensland MRA).⁷ The amendments to the Commonwealth MRA will permanently exempt certain parts of the *Container Refund Scheme Act 2022* (Tas) and regulations made under that Act from the Commonwealth MRA.⁸

The Commonwealth MRA, as adopted in Queensland by the Queensland MRA, establishes a scheme for mutual recognition within each state and territory of regulatory standards adopted elsewhere in Australia in relation to goods and occupations.⁹

The explanatory notes state:

The *Mutual Recognition (Queensland) Regulation 2009* was made to approve amendments to the Commonwealth Act to permanently exempt certain legislation of South Australia and was amended in 2013, 2017, 2018 and 2020 to approve amendments to the Commonwealth Act to permanently exempt the container deposit scheme legislation of the Northern Territory, New South Wales, the Australian Capital Territory, and Western Australia respectively. It is appropriate that the approval of the amendments to the Commonwealth Act to permanently exempt the relevant parts of the Tasmanian Container Deposit Laws should also be included in the *Mutual Recognition (Queensland) Regulation 2009*.¹⁰

The explanatory notes state the Tasmanian container deposit laws ‘are unlikely to result in significant adverse impacts for Queensland’.¹¹

4.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

4.2 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.3 Compatibility with human rights

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

4.3.1 Human rights certificate

The human rights certificate tabled with SL No. 129 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁶ SL No. 129, explanatory notes, p 2.

⁷ See Queensland MRA, ss 5(1)(b), 6.

⁸ SL No. 129, explanatory notes, p 1. The Container Deposit Scheme for Tasmania is a recycling scheme for beverage containers, similar to those in operation in other jurisdictions such as Queensland, New South Wales, South Australia, the Northern Territory, Western Australia and the Australian Capital Territory (see SL No. 129, human rights certificate, p 1).

⁹ SL No. 129, explanatory notes, p 1.

¹⁰ SL No. 129, explanatory notes, p 2.

¹¹ SL No. 129, explanatory notes, p 2.

7 Trans-Tasman Mutual Recognition (Queensland) (NT and Tasmanian Container Deposit Schemes) Notice 2023

The objective of the Trans-Tasman Mutual Recognition (Queensland) (NT and Tasmanian Container Deposit Schemes) Notice 2023 (SL No. 130) is to endorse proposed Commonwealth regulations to be made by the Governor-General under the *Trans-Tasman Mutual Recognition Act 1997* (Commonwealth TTMRA).¹² The Commonwealth TTMRA was adopted as a law of Queensland by the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* (Queensland TTMRA).

The Commonwealth TTMRA provides that goods that may lawfully be sold in New Zealand may be sold in an Australian jurisdiction without the necessity for compliance with further requirements under Australian legislation.¹³ However, the Commonwealth TTMRA also provides for circumstances where the Trans-Tasman mutual recognition principle will not apply, including provision for permanent and temporary exemptions.¹⁴

Certain requirements of the container deposit schemes established by Tasmania and the Northern Territory¹⁵ are contrary to the Trans-Tasman mutual recognition principle.¹⁶ The proposed Commonwealth regulations will amend the Commonwealth TTMRA to permanently exempt the container deposit laws of Tasmania and the Northern Territory from the application of the Commonwealth TTMRA.

Under the Commonwealth TTMRA, the Governor-General may not make the regulation unless all of the then participating jurisdictions have endorsed the regulation.¹⁷ A jurisdiction endorses a regulation if the designated person for the jurisdiction (in Queensland, the Governor) publishes a notice in the official gazette of the jurisdiction setting out and endorsing the terms of the regulation before it is made.¹⁸ By virtue of the Queensland TTMRA, such a notice is subordinate legislation.¹⁹

4.4 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

4.5 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.6 Compatibility with human rights

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

4.7 Human rights certificate

The human rights certificate tabled with SL No. 130 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

¹² SL No. 130, explanatory notes, p 1.

¹³ Commonwealth TTMRA, s 10.

¹⁴ Commonwealth TTRMA, ss 45, 46.

¹⁵ As introduced by the *Container Refund Scheme Act 2022* (Tas) and the *Environmental Protection (Beverage Containers and Plastic Bags) Act 2011* (NT), and associated regulations.

¹⁶ SL No. 130, explanatory notes, p 2.


¹⁷ Commonwealth TTRMA, s 45(4).

¹⁸ Commonwealth TTRMA, s 43(1).

¹⁹ Queensland TTMRA, s 7(2).

5 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

December 2023

Economics and Governance Committee

Chair

Deputy Chair

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Mr Linus Power MP, Member for Logan

Mr Ray Stevens MP, Member for Mermaid Beach

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