

Legal Affairs and Safety Committee

Report No. 40, 57th Parliament

Subordinate legislation tabled between 1 September 2022 and 8 November 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 1 September 2022 and 8 November 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
130	Gaming Legislation Amendment Regulation (No. 2) 2022	12 October 2022	21 February 2023
131	Oaths (Document Reforms) Amendment Regulation 2022	12 October 2022	21 February 2023
132	Public Trustee (Interest Rate) Amendment Regulation 2022	12 October 2022	21 February 2023
145	Proclamation—Personal Injuries Proceedings and Other Legislation Amendment Act 2022	25 October 2022	14 March 2023
146	Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022	25 October 2022	14 March 2023
148	Public Trustee (Interest Rate) Amendment Regulation (No.2) 2022	8 November 2022	29 March 2023
153	Liquor (Pompuraaw) and Other Legislation Amendment Regulation 2022	8 November 2022	29 March 2023

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

¹ *Legislative Standards Act 1992*, Part 4.

² *Human Rights Act 2019*, s 41.

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.

4 Gaming Legislation Amendment Regulation (No. 2) 2022 (SL No. 130 of 2022)

The objective of the Gaming Legislation Amendment Regulation (No. 2) 2022 (SL No. 130) is to update schedule 1 of each gaming regulation to ensure the most up to date regulatory and law enforcement agencies involved in the oversight of the gambling industry in their respective jurisdictions are prescribed.³

The gambling Acts include provisions allowing disclosure of confidential information.⁴ Confidential information means information, other than publicly available information, about:

- a person's personal affairs, business affairs or reputation, character, criminal history, current financial position or financial background, or
- a person making an application under the relevant Act.⁵

The gaming regulator may need to disclose confidential information about a person to obtain information from other regulatory bodies, including regulatory bodies in other jurisdictions about the person's suitability to be involved in, or to remain involved in, the Queensland gambling industry. Alternatively, other jurisdictions may request information from Queensland concerning the personal affairs and other details of entities that seek to participate in their gambling industries.⁶

4.1 Fundamental legislative principle issues

4.1.1 Rights and liberties of individuals – Right to privacy

Legislation should not abrogate common law rights without sufficient justification.⁷ These rights include an individual's right to privacy with respect to their personal information.⁸ The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of individuals.

The explanatory notes acknowledge that SL No. 130 'may impact a person's right to privacy in so far as it will allow confidential information about the person to be shared with a prescribed regulator or law enforcement agency'.⁹

³ SL No. 130, explanatory notes, p 2.

⁴ SL No. 130, explanatory notes, p 1.

⁵ *Casino Control Act 1982*, s 14; *Charitable and Non-Profit Gaming Act 1999*, s 183; *Gaming Machine Act 1991*, s 54; *Interactive Gambling (Player Protection) Act 1998*, s 260; *Keno Act 1996*, s 240; *Lotteries Act 1997*, s 225; *Wagering Act 1998*, s 308.

⁶ SL No. 130, explanatory notes, p 2.

⁷ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 95.

⁸ LSA, s 4(2)(a). OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 95.

⁹ SL No. 130, explanatory notes, p 3.

The following justification is offered for the impact on the right to privacy:

... it is a reasonable, necessary and proportionate way to ensure regulators are appropriately empowered to maintain the integrity of state-sanctioned gambling activities, so as to protect players and the community from potential harm associated with the industry.¹⁰

Committee comment

The committee is satisfied there is sufficient justification for the impacts on an individual's privacy, taking into account the need to protect players and the community from the potential harm associated with the gambling industry on the one hand and the rights and liberties of individuals on the other.

4.2 Consideration of human rights compatibility

4.2.1 Right to privacy and reputation

A person must not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.¹¹ SL No. 130 may limit a person's right to privacy as it will allow the gambling regulator to share a person's confidential information with other regulatory agencies and law enforcement agencies.

The human rights certificate explains that the purpose of the limitation is to:

... obtain information relevant to whether the person is suitable to be involved in the gambling industry so as to protect players and the community from potential harm associated with the industry, a purpose consistent with a free and democratic society based on human dignity, equality and freedom. In part, this protection is achieved through ensuring the probity of those involved in the conduct of gambling by investigating their financial stability, general reputation and character. An arrangement which allows information to be shared about a person's activities in another national or international jurisdiction is a crucial part of any probity suitability investigation.¹²

The human rights certificate offers the following justification:

Prescribing entities by regulation facilitates the timely sharing of information amongst relevant agencies in the course of an investigation into the suitability of a person to be involved in an authorised gambling activity. The extent of the limitation is also mitigated by ensuring that only the most relevant regulatory and law enforcement agencies responsible for oversight of the gambling industry in their respective jurisdictions are prescribed.

It is therefore considered that the limitation on the right to privacy is appropriately balanced against the right, as the limitation is a reasonable, necessary and proportionate way to ensure regulators are appropriately empowered to maintain the integrity of state-sanctioned gambling activities.¹³

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 justified in accordance with section 13 of the HRA.¹⁴

¹⁰ SL No. 130, explanatory notes, p 3.

¹¹ HRA, s 25.

¹² SL No. 130, human rights certificate, p 2.

¹³ SL No. 130, human rights certificate, p 3.

¹⁴ 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 section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

5 Oaths (Document Reforms) Amendment Regulation 2022 (SL No. 131 of 2022)

The objectives of the Oaths (Document Reforms) Amendment Regulation 2022 (SL No. 131) are to:

- clarify that a substitute signatory may be directed to sign an affidavit or statutory declaration by a signatory when the document is witnessed in person (regardless of whether it is signed electronically or on paper)
- provide that the substitute signatory must not also be the witness to the document or, for a document used in a proceeding for a party, another party to the proceeding or a relation of another party to the proceeding (consistent with section 31P of the *Oaths Act 1867* (Oaths Act)) or a person who would otherwise be excluded under the law
- require a witness to:
 - observe the signatory direct the substitute signatory to sign an affidavit or declaration
 - be satisfied that the substitute signatory is permitted to be a substitute signatory
 - be satisfied that the signatory is freely and voluntarily directing the substitute signatory to sign the affidavit or declaration.¹⁵

The *Justice and Other Legislation Amendment Act 2021* amended the Oaths Act to provide for a substitute signatory to be directed by a signatory to sign an affidavit or statutory declaration when:

- the document is electronically signed in the physical presence of a witness (section 16C of the Oaths Act)
- the document is made over audio visual link, with prescriptive requirements that apply in such circumstances (such as limitations on who can act as a substitute signatory and obligations on the witness (sections 31P, 31Q, 31R and 31T of the Oaths Act)).¹⁶

A substitute signatory was intended to be able to sign an affidavit or statutory declaration that is witnessed in person, or over audio visual link. While this can be inferred, the lack of prescriptive requirements in Part 4 of the Oaths Act raises doubt about whether a substitute signatory can sign an affidavit or statutory declaration when the document is signed on paper and witnessed in person (although the power to direct a substitute signatory in this context can be inferred as a matter of statutory interpretation).¹⁷

SL No. 131 therefore specifies the prescriptive requirements that apply when a substitute signatory is directed to sign an affidavit or statutory declaration by a signatory when the affidavit or statutory declaration is witnessed in person (regardless of whether it is signed on paper or electronically).¹⁸

Committee comment

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.

¹⁵ SL No. 131, explanatory notes, p 2.

¹⁶ SL No. 131, explanatory notes, pp 1–2.

¹⁷ SL No. 131, explanatory notes, p 2.

¹⁸ SL No. 131, explanatory notes, p 2.

6 Public Trustee (Interest Rate) Amendment Regulation 2022 (SL No. 132 of 2022)

The objective of the Public Trustee (Interest Rate) Amendment Regulation 2022 (SL No. 132) is to adjust the interest rates payable on amounts held in the Public Trustee's common fund from 1 October 2022 as follows:

- Class 2(c) and Class 3 amounts: Financial Management Customers and Enduring Powers of Attorney Accounts – from 0.25% to 0.40%
- Term Deposit Amounts: Term Investment Accounts – from 0.25% to 0.40%.¹⁹

The interest rates in the Public Trustee Regulation 2012 are intended to reflect the regular review undertaken by the Public Trustee of interest rates payable under the Public Trustee Regulation 2012.²⁰

6.1 Consideration of human rights compatibility

6.1.1 Right to property

A person must not be arbitrarily deprived of their property.²¹

The human rights certificate notes that:

Money held in the common fund is held by the Public Trustee as a trustee. Property includes all real and personal property interests recognised under the general law and could include a person's interest in trust funds held by the Public Trustee.

Deprivation of property will not be limited to situations of forced transfer or extinguishment of title or ownership but will include any “de facto expropriation” by means of a substantial restriction in fact on a person's use or enjoyment of their property.

This may include a substantial restriction on a person's ability to derive profits from their property.

The effect of the Regulation is to set the amount of the profit that a person beneficially interested in the money in the common fund can derive from their property.

The Regulation does not arbitrarily deprive a person of their property because the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.²²

It is difficult to see how, in this context, any deprivation of property would be arbitrary. This is particularly so, given that the interest rate reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.

Committee comment

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

7 Proclamation—Personal Injuries Proceedings and Other Legislation Amendment Act 2022 (SL No. 145 of 2022)

The Proclamation fixes 31 October 2022 for the commencement of the provisions of the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (Amendment Act) that are not already in force.

The Amendment Act:

- prohibits a person cold-calling or personally approaching another person without their consent and soliciting or inducing them to make a claim

¹⁹ SL No. 132, explanatory notes, p 1.

²⁰ SL No. 132, explanatory notes, p 1.

²¹ HRA, s 24.

²² SL No. 132, human rights certificate, p 2.

- makes it an offence for any person to pay claim farmers for the details of potential claimants or to receive payment for a claim referral or potential claim referral
- imposes obligations on legal practitioners who represent injured claimants to certify during the claims process by way of a law practice certificate that neither they nor their associates have paid a claim farmer for the claim
- requires law practices retained by respondents and insurers to notify the relevant regulator if they suspect a contravention of the law practice certificate requirements.²³

Committee comment

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.

8 Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022 (SL No. 146 of 2022)

The objective of the Personal Injuries Proceedings and Other Legislation Amendment Regulation 2022 (SL No. 146) is to assist in implementing the claim farming reforms in the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022*, which received assent on 30 June 2022.

SL No. 146 amends the following regulations:

- Legal Profession Regulation 2017, by inserting new section 79A, which provides that a person required to attend for examination under chapter 6A of the Act is entitled to allowances and expenses on the same basis as a witness in a proceeding before the District Court
- Personal Injuries Proceedings Regulation 2014, section 5 and inserts new section 5A to require the notice of claim to be accompanied by a certificate signed by the claimant stating certain matters, with special provision for cases where a claimant's lawyer signs the notice of claim
- Workers' Compensation and Rehabilitation Regulation 2014, by inserting new section 147A to provide that a person required to attend for examination under chapter 12, part 1A of the Act is entitled to allowances and expenses on the same basis as a witness in a proceeding before the District Court.

Committee comment

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 Public Trustee (Interest Rate) Amendment Regulation (No.2) 2022 (SL No. 148 of 2022)

The objective of the Public Trustee (Interest Rate) Amendment Regulation (No. 2) 2022 is to increase interest rates payable under the Public Trustee Regulation 2012 (PT Regulation) on amounts held in the Public Trustee's common fund from 1 November 2022 as follows:

- Class 2(c) and Class 3 amounts: Financial Management Customers and Enduring Powers of Attorney Accounts – from 0.40% to 0.54%
- Term Deposit Amounts: Term Investment Accounts – from 0.40% to 0.54%.²⁴

The interest rates in the PT Regulation are intended to reflect the regular review undertaken by the Public Trustee. At the time of each review, the Public Trustee analyses the market return of a comparative set of competitive financial products and prevailing economic conditions to arrive at an

²³ Explanatory notes, pp 1–2.

²⁴ Explanatory notes, p 1.

appropriate interest rate for each of the classes of amounts within the common fund held on behalf of customers of the Public Trustee.²⁵

9.1 Consideration of human rights compatibility

The human rights certificate notes that:

Money held in the common fund is held by the Public Trustee as a trustee. Property includes all real and personal property interests recognised under the general law and could include a person's interest in trust funds held by the Public Trustee. Deprivation of property will not be limited to situations of forced transfer or extinguishment of title or ownership but will include any "de facto expropriation" by means of a substantial restriction in fact on a person's use or enjoyment of their property. This may include a substantial restriction on a person's ability to derive profits from their property. The effect of the Regulation is to set the amount of the profit that a person beneficially interested in the money in the common fund can derive from their property. The Regulation does not arbitrarily deprive a person of their property because the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.²⁶

As noted in the human rights certificate, in this context, any deprivation of property would not be arbitrary, given that the interest rate reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.

Committee comment

The committee is satisfied that any limitation on human rights is reasonable and demonstrably justifiable.

10 Liquor (Pormpuraaw) and Other Legislation Amendment Regulation 2022 (SL No. 153 of 2022)

The objective of the Liquor (Pormpuraaw) and Other Legislation Amendment Regulation 2022 (SL No. 153) is to assist the Pormpuraaw Aboriginal Shire Council (Council) address the damaging effects to health and wellbeing and the local economy of sly grog and are in line with the staged re-introduction of alcohol into the community.²⁷

SL No. 153 amends the:

- Aboriginal and Torres Strait Communities (Justice, Land and Other Matters) Regulation 2008 to prescribe Pormpuraaw as a community area to maintain the prohibition of the possession and supply of home brew and home brew equipment under section 38(3) of the *Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- Liquor Regulation 2002 to increase the alcohol carriage limit prescribed for Pormpuraaw in Schedule 1H from zero to 4.5L of mid-strength alcohol (the equivalent of 12 x 375ml containers), being either beer or pre-mixed alcoholic drinks (or any combination of both), with an alcohol concentration of no more than 4% alcohol by volume. The alcohol carriage limit also applies per vehicle.²⁸

According to the explanatory notes, a locally led review of the alcohol restrictions for Pormpuraaw recommended a greater than zero carriage limit and the retention of the prohibition on home brew and home brew equipment.²⁹

²⁵ Explanatory notes, p 1.

²⁶ Human rights certificate, p 2.

²⁷ Explanatory notes, p 1.

²⁸ Explanatory notes, p 2.

²⁹ Explanatory notes, p 2.

As regards the ban on home brew and home brew equipment, the explanatory notes state that:

Consultation on maintaining the ban on home brew and home brew equipment has occurred with the 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.³⁰

10.1 Fundamental legislative principle issues

10.1.1 Rights and liberties of individuals—Ordinary activities should not be unduly restricted

Clause 3 prohibits an individual possessing or supplying a home brew or home brew equipment.

Clause 5 increases the alcohol carriage limit to 4.5L for beer, pre-mixed drink and any combination of permissible beer and a pre-mix drink. A zero limit remains for any other liquor.

The explanatory notes observe that limitations on alcohol possession in the Pormpuraaw restricted area still remain, which may impact on general rights and liberties of person within the community.³¹

The explanatory notes state that the restrictions in place in Queensland are considered a 'special measure' under the *Racial Discrimination Act 1975* (Cth), in line with the decision of *Maloney v the Queen* [2013] HCA 28 as 'they impose constraints on individual liberties in favour of promoting safety for the broader community'.³²

Whether legislation has sufficient regard to the rights and liberties of individuals, depends on whether, for example, legislation unduly restricts ordinary activities.³³

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.³⁴ 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.³⁵

The limits on an individual's ability to possess alcohol in the Pormpuraaw restricted area and the ban on the possession and supply of home brew and home brew equipment affects individuals' rights and liberties, in particular considering that individuals in most other areas are not subject to such restrictions.

The explanatory notes maintain that the potential impacts are justified based on the broader purpose of promoting health and safety for the Pormpuraaw community.

Committee comment

The committee is satisfied the impact on an individual's rights and liberties is justified, based on the broader purpose of the measures to promote safety for the Pormpuraaw community and that consultation with the Pormpuraaw Aboriginal Shire Council was undertaken.

10.2 Consideration of human rights compatibility

10.2.1 Equity before the law

Every person is equal before the law and has the right to enjoy the person's human rights without discrimination.³⁶

The human rights certificate acknowledges that prescribing permissible quantities and types of liquor for individual possession engages this human right 'as the restrictions do not apply to persons located

³⁰ Explanatory notes, p 5.

³¹ Explanatory notes, p 4.

³² SL No. 153, explanatory notes, pp 2–3.

³³ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 118; LSA, s 4(2)(a).

³⁴ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 118.

³⁵ OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 130.

³⁶ HRA, s 15.

outside of the restricted area'.³⁷ The human rights certificate justifies this limitation on the basis that these restrictions are a 'special measure' and that increasing the alcohol carriage limit (from zero to 4.5L) is a lessening of restrictions and therefore increases individual liberty.³⁸ The human rights certificate states:

On balance, it is considered increasing the carriage limit to provide for individual possession of certain low to mid-strength alcohol products in defined quantities is regulated 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 Human Rights Act.³⁹

10.2.2 Property rights

All persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of their property.⁴⁰

The continuation of the ban on home brew and home brew equipment may potentially limit property rights, in that people in Pormpuraaw 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'.⁴¹

Committee comment

The committee notes the consultation undertaken with the Pormpuraaw Aboriginal Shire Council and is satisfied that the limitations of human rights are reasonable and demonstrably justifiable.

11 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

January 2023

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
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³⁷ SL No. 153, human rights certificate, p 2.

³⁸ SL No. 153, human rights certificate, p 3.

³⁹ SL No. 153, human rights certificate, p 3.

⁴⁰ HRA, s 24.

⁴¹ SL No. 153, human rights certificate, p 3.