

Legal Affairs and Safety Committee

Report No. 44, 57th Parliament

Subordinate legislation tabled between 21 February 2023 and 13 March 2023

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 21 February 2023 and 13 March 2023. 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
172	Gaming Legislation Amendment Regulation (No. 3) 2022	21 February 2023	11 May 2023
173	Queensland Civil and Administrative Tribunal (Fees) Amendment Regulation 2022	21 February 2023	11 May 2023
184	Right to Information and Other Legislation Amendment Regulation 2022	21 February 2023	11 May 2023
185	Proclamation made under the <i>Inspector of Detention Services Act 2022</i>	21 February 2023	11 May 2023
186	Proclamation made under the <i>Public Trustee (Advisory and Monitoring Board) Amendment Act 2022</i>	21 February 2023	11 May 2023
187	Supreme Court (Admission) Amendment Rule 2022	21 February 2023	11 May 2023
188	Public Trustee (Interest Rate) Amendment Regulation (No. 4) 2022	21 February 2023	11 May 2023
1	Public Trustee (Interest Rate) Amendment Regulation 2023	21 February 2023	11 May 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 (LSA).

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

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. 3) 2022 (SL No. 172)

4.1 Policy objectives

The objectives of the Gaming Legislation Amendment Regulation (No. 3) 2022 (SL No. 172) are to:

- amend the *Casino Control Regulation 1999* (Casino Control Regulation) to require casino entities³ to pay for suitability investigations, rather than using public funds⁴
- amend the Casino Control Regulation so that the costs of a suitability investigation of an associate of a proposed casino lessee or proposed casino operator may be recouped from the proposed casino principal⁵
- amend the *Wagering Regulation 1999* (Wagering Regulation) to reduce the 90 day customer verification timeframe to 72 hours, to align with the Rules under the Commonwealth *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* about timeframes for verifying a customer's identity for the purposes of opening a betting account.⁶

The explanatory notes state that the Casino Control Regulation provides for the reasonable costs of most suitability investigations relating to casino entities and their associates to be recouped by the chief executive.

However, the Casino Control Regulation currently exempts existing casino licensees, casino lessees and casino operators from paying the reasonable costs of an investigation into their continued suitability for involvement in the management or operations of a casino or hotel-casino complex.⁷

SL No. 172 addresses this by providing that casino entities and their associates may be required to meet the reasonable costs of all investigations into their suitability to be involved in casino gambling, to:

... reflect the importance that the State and community place on ensuring casinos are conducted with the utmost integrity and fairness, remain free from criminal influence and exploitation and to minimise gambling related harms ...⁸

The explanatory notes further state that it is necessary for the Government to be able to pass on the costs to casino entities, as suitability investigations are becoming more complex and expensive 'involving large, international and multinational corporations with intricate corporate structures and differences in accounting standards and legal requirements between jurisdictions'.⁹

³ Including the relevant casino principal (being, a casino licensee, casino lessee, a casino operator under a casino management agreement or a proposed casino operator): SL No. 172, s 3.

⁴ SL No. 172, explanatory notes, p 1.

⁵ SL No. 172, explanatory notes, p 2.

⁶ SL No. 172, explanatory notes, p 1.

⁷ SL No. 172, explanatory notes, pp 1-2.

⁸ SL No. 172, explanatory notes, p 2.

⁹ SL No. 172, explanatory notes, p 3.

The explanatory notes state that the amendments to the Wagering Regulation are necessary because the existing provision has no effect, as it is inconsistent with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*. SL No. 172 provides consistency with that Act.¹⁰

4.2 Consistency with fundamental legislative principles – administrative power

Legislation should only delegate administrative power in appropriate cases and to appropriate persons.¹¹ Legislation having sufficient regard to the rights and liberties of individuals depends on, for example:

- whether the legislation makes rights and liberties, or obligations, dependent on administrative power
- whether the power has been sufficiently defined
- whether the power is subject to appropriate review.¹²

SL No. 172 enables the chief executive to issue a notice for payment to a proposed or existing casino principal to pay for the costs of a suitability investigation into the casino entity and/or their associates, but does not prescribe specific investigation costs.¹³ The explanatory notes state that suitability investigations are complex and lengthy undertakings, with variable costs depending on the investigated person's location, global footprint, financial affairs and company structure.¹⁴

According to the explanatory notes, the impact of not prescribing specific costs is minimal:

The obligations imposed by the Amendment Regulation are aimed at corporations, as all Queensland casino licensees, lessees, and operators are incorporated entities. The Amendment Regulation provides that the casino principal is ultimately responsible for suitability investigation costs, even if the investigation is into an existing or proposed associate who may be an individual person (noting that the casino principal and the associate may have separate, non-legislated commercial arrangements involving payment of the fees).¹⁵

The explanatory notes also state that SL No. 172 mitigates the impacts by providing that:

- only reasonable costs of an investigation are payable, such as legal, accounting, travel, and staff costs¹⁶
- prior to the commencement of an investigation, the chief executive is permitted to seek an upfront part payment of investigation costs¹⁷
- at the conclusion of an investigation, the chief executive must refund any overpayment of the costs or seek the payment of any shortfall.¹⁸

¹⁰ SL No. 172, explanatory notes p 2.

¹¹ LSA, s 4(3)(c).

¹² LSA, s 4(3)(a).

¹³ SL No. 172, explanatory notes p 4.

¹⁴ SL No. 172, explanatory notes p 4.

¹⁵ SL No. 172, explanatory notes p 4.

¹⁶ SL No. 172, s 46A(3).

¹⁷ SL No. 172, s 46B(2).

¹⁸ SL No. 172, s 46BA & 46BB.

Committee comment

Whilst the powers delegated to the chief executive are discretionary, the committee notes their use is limited by requiring that the chief executive decides on a fee that is the reasonable cost. The committee considers that the flexibility for the chief executive to make decisions based on individual circumstances outweighs any potential impact on fundamental legislative principles.

Regarding the potential impact on the rights and liberties of individuals, although SL No. 172 does not provide for how the investigation costs are to be quantified by the chief executive, the committee notes the provisions will only affect casino entities and are intended to apply to corporations, not individuals.

The committee is satisfied that the legislation has sufficient regard to rights and liberties of individuals.

4.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

4.4 Compatibility with human rights

Legislation must be compatible with human rights under the HRA. The committee is satisfied that the subordinate legislation is compatible with human rights.¹⁹

4.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Queensland Civil and Administrative Tribunal (Fees) Amendment Regulation 2022 (SL No. 173)

5.1 Policy objectives

The objective of the Queensland Civil and Administrative Tribunal (Fees) Amendment Regulation 2022 (SL No. 173) is to amend the *Queensland Civil and Administrative Tribunal Regulation 2019* (QCAT Regulation) to increase Queensland Civil and Administrative Tribunal (QCAT) fees for:

- applications or counter-applications for minor civil disputes (MCDs), as follows –
 - if no amount is claimed—105 fee units (\$107.63),²⁰ or
 - if the amount claimed is not more than \$1,000—85 fee units (\$87.13), or
 - if the amount claimed is more than \$1,000 but not more than \$10,000—145 fee units (\$148.63)²¹
- applications for a notice to produce a document or a witness to attend:
 - from 22.10 fee units (\$22.65) to 40.00 fee units (\$41.00).²²

¹⁹ 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.

²⁰ Under the *Acts Interpretation Act 1954*, s 48C, 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. Under s 48B, the value of a fee unit is \$1 unless another amount is prescribed. The *Acts Interpretation (Fee Unit) Regulation 2022*, s 2, provides that, from 1 July 2022, the value of a fee unit will be \$1.025 except under specified legislation.

²¹ SL No. 173 amended QCAT Regulation, s 7(2); explanatory notes, p 2.

²² SL No. 173 amended QCAT Regulation, schedule 1 (Other fees); explanatory notes, p 2.

According to the explanatory notes, the fee increases are intended to improve cost recovery and better align QCAT fees with similar fees in other jurisdictions.²³ According to the explanatory notes, the existing QCAT fees for such applications range from the lowest fee charged out of all Australian jurisdictions to the average range payable in other Australian jurisdictions.²⁴

The explanatory notes state that the fee increase is justified because QCAT's fees and charges do not reflect the increased number and complexity of matters being lodged. These increase have resulted in the need for more dedicated registry and tribunal resources.²⁵

The fee increase is also intended to:

- offset a portion of its service delivery costs, improve finalisation rates by allowing QCAT to conduct additional hearings and assist to address some of its workload demands
- not have significant adverse impacts on business, the community or government and not restrict access to QCAT's services or disproportionately impact any stakeholder group.²⁶

5.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

5.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

5.4 Compatibility with human rights – 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.²⁷

According to the human rights certificate, SL No. 173 will limit the right to property as increasing the prescribed fees for MCD applications and notices to produce/witnesses to attend 'will result in a deprivation of property in the form of money'.²⁸

However, the Minister considers that SL No. 173 strikes an appropriate balance between the importance of protecting property rights and the need to ensure QCAT can provide access to justice services, stating 'the increase is on balance considered to be outweighed by the importance of improving service delivery to Queenslanders'.²⁹

Committee comment

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

5.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

²³ SL No. 173, explanatory notes, p 1.

²⁴ QCAT's highest MCD application fee is 358.00 fee units for a claim over \$10,000. This fee is not amended by SL No. 173: explanatory notes, p 1.

²⁵ SL No. 173, explanatory notes, p 1.

²⁶ SL No. 173, explanatory notes, p 2.

²⁷ HRA, s 24.

²⁸ SL No. 173, human rights certificate, p 2.

²⁹ SL No. 173, human rights certificate, p 3.

6 Right to Information and Other Legislation Amendment Regulation 2022 (SL No. 184)

6.1 Policy objectives

The objective of the Right to Information and Other Legislation Amendment Regulation 2022 (SL No. 184) is to amend the *Information Privacy Regulation 2009* and the *Right to Information Regulation 2009* to declare principal office holders for courts and tribunals³⁰ (such as a registrar, principal registrar, court services officer, secretary, chairman) as ‘principal officers’ under the *Right to Information Act 2009* (RTI Act) and *Information Privacy Act 2009* (IP Act).

The explanatory notes state that the RTI Act and the IP Act require that information applications made to an agency must be dealt with by the agency’s ‘principal officer’.³¹ The definition of ‘principal officer’ is not easily applied to courts and tribunals, and the explanatory notes contend this may lead to uncertainty as to who must deal with applications under the RTI Act or the IP Act for a court or tribunal.

Therefore, SL No. 184 seeks to clarify the ‘principal officer’ for dealing with applications to the specified courts and tribunals.³²

6.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.4 Compatibility with human rights

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

6.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Proclamation made under the *Inspector of Detention Services Act 2022* (SL No. 185)

7.1 Policy objectives

The objective of the proclamation (SL No. 185) made under the *Inspector of Detention Services Act 2022* (Act) is to fix a commencement date of 9 December 2022 for the specific provisions of the Act that give effect to the appointment of the Inspector of Detention Services (Inspector), hiring of staff to support the Inspector’s functions and the regulation-making power.³³

7.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

³⁰ Specifically, for the Supreme Court, the District Court, a Magistrates Court, the Industrial Court of Queensland, the Land Court, the Mental Health Court, the Childrens Court of Queensland, the Planning and Environment Court, the Coroners Court, an Industrial Magistrates Court, QCAT, the Queensland Industrial Relations Commission, the Mental Health Review Tribunal, a development tribunal under the *Planning Act 2016*, a medical assessment tribunal under the *Workers’ Compensation and Rehabilitation Act 2003* and the Queensland Independent Remuneration Tribunal: SL No. 184, explanatory notes, p 2.

³¹ RTI Act, s 30; IP Act, s 50; SL No. 184, explanatory notes, p 2.

³² SL No. 184, explanatory notes, p 3.

³³ SL No. 185, explanatory notes, p 1.

7.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

7.4 Compatibility with human rights

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

7.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

8 Proclamation made under the *Public Trustee (Advisory and Monitoring Board) Amendment Act 2022* (SL No. 186)

8.1 Policy objectives

The objective of the proclamation (SL No. 186) made under the *Public Trustee (Advisory and Monitoring Board) Amendment Act 2022* (Act) is to fix a commencement date of 9 December 2022 for the remaining provisions of the Act that are not in force.³⁴

SL No. 186 will commence all provisions of the Act which establish the Public Trustee Advisory and Monitoring Board (Board).³⁵ According to the explanatory notes, the Board will provide additional oversight over the Public Trustee to enhance transparency and public accountability.³⁶

8.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

8.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

8.4 Human rights certificate

No human rights certificate was required to be tabled with the proclamation.³⁷

9 Supreme Court (Admission) Amendment Rule 2022 (SL No. 187)

9.1 Policy objectives

The objective of the Supreme Court (Admission) Amendment Rule 2022 (SL No. 187) is to amend the *Supreme Court (Admission) Rules 2004* to require applicants for admission, who have law qualifications that are a certain age, to refresh or renew these previously completed academic and practical legal training qualifications.³⁸

According to the explanatory notes, SL No. 187 will ‘promote a nationally consistent approach and will prevent applicants circumventing the stale qualification provisions in other jurisdictions by applying for admission in Queensland’.³⁹

9.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

³⁴ SL No. 186, explanatory notes, p 1.

³⁵ SL No. 186, explanatory notes, p 1.

³⁶ SL No. 186, explanatory notes, p 3.

³⁷ HRA, s 41(4A).

³⁸ SL No. 187, explanatory notes, p 1. SL No. 187 inserts new rules 6A, 7AA and 7B into the Rules.

³⁹ SL No. 187, explanatory notes, p 1.

9.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

9.4 Compatibility with human rights

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

9.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

10 Public Trustee (Interest Rate) Amendment Regulation (No. 4) 2022 (SL No. 188)

10.1 Policy objectives

The objective of the Public Trustee (Interest Rate) Amendment Regulation (No. 4) 2022 (SL No. 188) is to amend the *Public Trustee Regulation 2012* (PT Regulation) to increase the interest rates payable on amounts held in the Public Trustee's common fund from 1 January 2023, as follows:

- Class 2(c) and Class 3 amounts: Financial Management Customers and Enduring Powers of Attorney Accounts – from 0.70% to 0.71%
- Term Deposit Amounts: Term Investment Accounts – from 0.70% to 1.10%.⁴⁰

The interest rates are determined by the Public Trustee through an analysis of ‘the market return of a comparative set of competitive financial products and prevailing economic conditions’.⁴¹ In the review of the interest rates payable under the PT Regulation, the Public Trustee applied the methodology endorsed by the Public Trust Office Investment Board.⁴²

10.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

10.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

10.4 Compatibility with human rights – 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.⁴³

The human rights certificate notes that property could include a person's interest in trust funds held by the Public Trustee and that, although SL No. 188 restrains the ability of a person beneficially interested in the money in the common fund to derive profits from their property, ‘the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions’.⁴⁴

In the Minister's view the limitation is reasonable and demonstrably justified:

The Regulation strikes the appropriate balance between management of the common fund, on the one hand, and limiting certain human rights on the other. Although people with an interest in monies in the

⁴⁰ SL No. 188, explanatory notes, p 1.

⁴¹ SL No. 188, explanatory notes, p 1.

⁴² SL No. 188, explanatory notes, p 2.

⁴³ HRA, s 24.

⁴⁴ SL No. 188, human rights certificate, p 2.

common fund are not free to invest the monies as they choose, they receive a comparable market rate of return.⁴⁵

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights, noting it does not affect a person's control over assets held in the common fund in their name, rather it impacts the interest a person draws from those assets.

10.5 Human rights certificate

The human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

11 Public Trustee (Interest Rate) Amendment Regulation 2023 (SL No. 1)

11.1 Policy objectives

The objective of the Public Trustee (Interest Rate) Amendment Regulation 2023 (SL No. 1) is to amend the *Public Trustee Regulation 2012* (PT Regulation) to increase the interest rates payable on amounts held in the Public Trustee's common fund from 1 February 2023, as follows:

- Class 2(c) and Class 3 amounts: Financial Management Customers and Enduring Powers of Attorney Accounts – from 0.71% to 0.73%
- Term Deposit Amounts: Term Investment Accounts – from 1.10% to 1.28%.⁴⁶

The interest rates are determined by the Public Trustee through an analysis of 'the market return of a comparative set of competitive financial products and prevailing economic conditions'.⁴⁷ In the review of the interest rates payable under the PT Regulation, the Public Trustee applied the methodology endorsed by the Public Trust Office Investment Board.⁴⁸

11.2 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

11.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

11.4 Compatibility with human rights – 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.⁴⁹

The human rights certificate notes that property could include a person's interest in trust funds held by the Public Trustee and that, although SL No. 1 restrains the ability of a person beneficially interested in the money in the common fund to derive profits from their property, 'the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions'.⁵⁰

⁴⁵ SL No. 188, human rights certificate, p 3.

⁴⁶ SL No. 1, explanatory notes, p 1.

⁴⁷ SL No. 1, explanatory notes, p 1.

⁴⁸ SL No. 1, explanatory notes, p 2.

⁴⁹ HRA, s 24.

⁵⁰ SL No. 188, human rights certificate, p 3.

Committee comment

The committee is satisfied that the subordinate legislation is compatible with human rights, noting the same matters as raised for SL No. 188.

12 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

April 2023

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

Mr Jason Hunt MP, Member for Caloundra

Mr Jon Krause MP, Member for Scenic Rim