

Legal Affairs and Community Safety Committee

Report No. 22, 56th Parliament

Subordinate legislation tabled between 16 May 2018 and 21 August 2018

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 May 2018 and 21 August 2018. 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*.

2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table below.

No.	Subordinate legislation	Date tabled	Disallowance date
069	Proclamation made under the <i>Criminal Law (Historical Homosexual Convictions Expungement) Act 2017</i>	21 August 2018	1 November 2018
070	Criminal Law (Historical Homosexual Convictions Expungement) Regulation 2018	21 August 2018	1 November 2018
071	Liquor (Identified Organisation – Satudarah) Amendment Regulation 2018	21 August 2018	1 November 2018
072	Justice Legislation (Fees) Amendment Regulation 2018	21 August 2018	1 November 2018
078	Disaster Management (QDMC Membership) Amendment Regulation 2018	21 August 2018	1 November 2018
079	Fire and Emergency Services Legislation (Fees) Amendment Regulation 2018	21 August 2018	1 November 2018
080	Property Law (Prescribed Exemption) Amendment Regulation 2018	21 August 2018	1 November 2018
082	Civil Liability and Other Legislation (Prescribed Amounts) Amendment Regulation 2018	21 August 2018	1 November 2018
085	State Buildings Protective Security Amendment Regulation 2018	21 August 2018	1 November 2018

086	Weapons and Other Legislation Amendment Regulation 2018	21 August 2018	1 November 2018
092	Liquor (Undesirable Liquor Product - Powdered Alcohol) Amendment Regulation 2018	21 August 2018	1 November 2018
100	Disposal of Unexecuted Warrants Regulation 2018	21 August 2018	1 November 2018
111	Liquor (Identified Organisation – Mongrel Mob) Amendment Regulation 2018	21 August 2018	1 November 2018
116	British Probates Regulation 2018	21 August 2018	1 November 2018

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified in respect of subordinate legislation Nos 69, 70, 72, 78, 79, 80, 82, 85, 86, 100 or 116.

In respect of subordinate legislation Nos 71, 92 and 111 of 2018, the committee identified potential issues of fundamental legislative principle, as noted below.

SL No 71 Liquor (Identified Organisation – Satudarah) Amendment Regulation 2018

The objective of this Amendment Regulation is to amend the Liquor Regulation 2002 to prescribe the outlaw motorcycle gang known as Satudarah as an ‘identified organisation’, for the purpose of preventing items bearing Satudarah ‘colours’ and other paraphernalia from being worn or carried in public places. Under the *Liquor Act 1992* (the Liquor Act):

173EAA Identified organisations

(1) A regulation may declare an entity to be an identified organisation.

(2) The Minister may recommend the making of a regulation under subsection (1) about an entity only if the Minister is satisfied the wearing or carrying of a proposed prohibited item by a person in a public place -

(a) may cause members of the public to feel threatened, fearful or intimidated; or

(b) may otherwise have an undue adverse effect on the health or safety of members of the public, or the amenity of the community, including by increasing the likelihood of public disorder or acts of violence.

...

The explanatory notes state that, based on advice from the Queensland Police Service, the Attorney-General and Minister for Justice is satisfied under s 173EAA of the Liquor Act.¹

By prescribing Satudarah as an identified organisation, the act of wearing or carrying items bearing Satudarah colours in a public place constitutes an offence, under s 10C of the *Summary Offences Act 2005*. An individual will be subject to a penalty of imprisonment or a prescribed number of penalty units. The restriction also applies when in or on a vehicle in a public place, in a way that can be seen.

As a result of this regulation, individuals can also be excluded or removed from licensed premises if wearing or carrying prohibited items under s 173EB of the Liquor Act.

¹ Explanatory notes, p 3.

By restricting what can be worn by an individual and what they can carry, the regulation imposes on their rights and liberties. The explanatory notes state the amendment regulation ‘is considered to support the broader policy objectives of creating a safer environment in and around licensed premises, and tackling organised crime in Queensland.’²

In respect of this inconsistency with fundamental legislative principles, the explanatory notes state:

*Section 10C of the Summary Offences Act prohibits the wearing or carrying of prohibited items (colours) in a public place. These provisions apply to Satudarah as a consequence of this Regulation. The removal of the right of individuals to wear or carry the colours of an identified organisation, and any related fundamental legislative principles, were considered when the provisions of clauses 210 and 398 of the Serious and Organised Crime Legislation Amendment Bill 2016 were passed by Parliament.*³

In its report on the Serious and Organised Crime Legislation Amendment Bill, the Legal Affairs and Community Safety Committee of the 55th Parliament (former committee) considered issues of fundamental legislative principles. The former committee specifically noted that cl 398 infringed the rights and liberties of individuals and did not provide compensation for forfeiture of items.⁴ The former committee also noted the potential incursion of cl 210 on the institution of Parliament.⁵ In each case the former committee noted the issue of fundamental legislative principle and made no further comment.⁶ Issues of fundamental legislative principles were not considered in the Parliamentary debate.

The committee took account of these considerations when examining the Liquor (Identified Organisation – Satudarah) Amendment Regulation 2018 and concluded that public safety considerations justify the incursions into personal liberty of members of the Satudarah organisation.

SL No 92 Liquor (Undesirable Liquor Product - Powdered Alcohol) Amendment Regulation 2018

The objective of this Amendment Regulation is to prevent powdered and crystalline alcohol products, such as Palcohol, from being sold or supplied in Queensland.

Under the *Liquor Act 1992* (s 156B(1)), a Minister may by regulation declare a liquor product to be an undesirable liquor product (and therefore unable to be lawfully sold or supplied). The Minister must form the opinion that:

- the name, design of packaging of the liquor product or class of liquor products is likely to be attractive to minors or young people
- the liquor product or class of liquor products is likely to be confused with soft drinks or confectionery
- the liquor product or class of liquor products, for any other reason, is likely to have a special appeal to minors or young people, or
- it is otherwise in the public interest to declare the liquor product or class of liquor products to be an undesirable liquor product.

The Minister is required to make every reasonable effort to consult with relevant liquor industry representatives and the manufacturer and distributor of the liquor product before making the regulation (s 156B(4)). The explanatory notes record that the Queensland Hotels Association and Clubs

² Explanatory notes, p 3.

³ Explanatory notes, p 4.

⁴ Legal Affairs and Community Safety Committee (LACSC) Report No. 42, 55th Parliament, Serious and Organised Crime Legislation Amendment Bill 2016, pp 65-6, 79.

⁵ LACSC Report No. 42, pp 80-1.

⁶ LACSC Report No. 42, pp 65-6, 79-81.

Queensland were consulted and support the regulation, and that the manufacturer did not respond to correspondence.

This regulation has some impact on the rights and liberties of individuals by reducing choice in their preferred manner of enjoying alcohol products.

The Minister has formed an opinion under s 156(3) of the Liquor Act which declares the product as an undesirable liquor product. The explanatory notes state that the regulation is intended to minimise the potential risk of alcohol-related harm to the community.

Given this policy aim, the committee is satisfied that sufficient regard has been given to the rights and liberties of individuals.

SL No 111 Liquor (Identified Organisation – Mongrel Mob) Amendment Regulation 2018

The Amendment Regulation amends the Liquor Regulation 2002 to prescribe the entity known as ‘the Mongrel Mob’ as an identified organisation, for the purpose of preventing items bearing the Mongrel Mob ‘colours’ and other paraphernalia from being worn or carried in public places.

The explanatory notes state that, based on advice from the Queensland Police Service, the Attorney-General and Minister for Justice is satisfied under s 173EAA of the Liquor Act.⁷

By prescribing the Mongrel Mob as an identified organisation, the regulation makes the act of wearing or carrying items bearing Mongrel Mob colours in a public place, or while in or on a vehicle in a public place (in a way that can be seen), an offence under s 10C of the *Summary Offences Act 2005*. An individual will be subject to a penalty of imprisonment or a prescribed number of penalty units.

As a result of this regulation, individuals can also be excluded or removed from licensed premises for wearing or carrying the prohibited items (s 173EB of the Liquor Act).

By restricting what can be worn by an individual and what they can carry, the regulation imposes on their rights and liberties. The explanatory notes state that the amendment regulation ‘is considered to support the broader policy objectives of creating a safer environment in and around licensed premises, and tackling organised crime in Queensland.’⁸

In respect of this inconsistency with fundamental legislative principles, the explanatory notes state:

*Section 10C of the Summary Offences Act prohibits the wearing or carrying of prohibited items (colours) in a public place, or while in or on a vehicle in a public place, in a way that can be seen. These provisions apply to Mongrel Mob as a consequence of this Regulation. The removal of the right of individuals to wear or carry the colours of an identified organisation, and any related fundamental legislative principles, were considered when the [Serious and Organised Crime Legislation Amendment Act] was debated and passed by Parliament, particularly in relation to clauses 210 and 398.*⁹

In its report on the Serious and Organised Crime Legislation Amendment Bill, the former Legal Affairs and Community Safety Committee considered issues of fundamental legislative principles. The former committee specifically noted that cl 398 infringed the rights and liberties of individuals and did not provide compensation for forfeiture of items.¹⁰ The former committee also noted the potential incursion of cl 210 on the institution of Parliament.¹¹ In each case the former committee noted the

⁷ Explanatory notes, p 3.

⁸ Explanatory notes, p 4.

⁹ Explanatory notes, p 4.

¹⁰ Legal Affairs and Community Safety Committee (LACSC) Report No. 42, 55th Parliament, Serious and Organised Crime Legislation Amendment Bill 2016, pp 65-6, 79.

¹¹ LACSC Report No. 42, pp 80-1.

issue of fundamental legislative principle and made no further comment.¹² Issues of fundamental legislative principles were not considered in the Parliamentary debate.

The committee took account of these considerations when examining the Liquor (Identified Organisation – Mongrel Mob) Amendment Regulation 2018 and concluded that public safety considerations justify the incursions into personal liberty of members of the Mongrel Mob.

4 Explanatory notes

The explanatory notes tabled with the above regulations essentially comply with the requirements of s 24 of the *Legislative Standards Act 1992*.

5 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

October 2018

Legal Affairs and Community Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mr James Lister MP, Member for Southern Downs
Members	Mr Stephen Andrew MP, Member for Mirani
	Mr Jim McDonald MP, Member for Lockyer
	Mrs Melissa McMahon MP, Member for Macalister
	Ms Corrine McMillan MP, Member for Mansfield

¹² LACSC Report No. 42, pp 65-6, 79-81.