Parliamentary Committees



Racing Integrity Amendment Bill 2022

Report No. 18, 57th Parliament
Education, Employment and Training Committee
April 2022

Education, Employment and Training Committee

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Deputy Chair	Mr James Lister MP, Member for Southern Downs
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	Mr Jimmy Sullivan MP, Member for Stafford
***Note:**	The Member for Stretton, Mr James Martin MP, attended the committee's briefing for its inquiry into the Bill on 7 March 2022 as a substitute for the Member for Rockhampton.
	At the committee's hearing and briefing on 21 March 2022, the Member for Mount Ommaney, Ms Jess Pugh MP, attended as a substitute for the Member for Rockhampton, and the Member for Surfers Paradise, Mr John-Paul Langbroek MP, attended as the substitute for the Member for Southern Downs.
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All web address references are current at the time of publishing.

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Abbreviations

AJA	Australian Jockeys Association
Bill	Racing Integrity Amendment Bill 2022
committee	Education, Employment and Training Committee
CPG	Coalition for the Protection of Greyhounds
department	Department of Agriculture and Fisheries
HRA	*Human Rights Act 2019*
LSA	*Legislative Standards Act 1992*
Minister	Minister for Education, Minister for Industrial Relations, and Minister for Racing
OBPR	Office of Best Practice Regulation
OQPC	Office of the Queensland Parliamentary Counsel
Panel	Racing Appeals Panel, as proposed in the Racing Integrity Amendment Bill 2022
QCAT	Queensland Civil and Administrative Tribunal
QJA	Queensland Jockeys Association
QLS	Queensland Law Society
QRIC, Commission	Queensland Racing Integrity Commission
RI Act	*Racing Integrity Act 2016*
VCAT	Victorian Civil and Administrative Tribunal

All Acts are Queensland Acts unless otherwise specified.

Chair's foreword

This report presents a summary of the Education, Employment and Training Committee's examination of the Racing Integrity Amendment Bill 2022.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, thank you to those who made written submissions to the inquiry into the Bill, and provided evidence at the public hearing. I also thank the Department of Agriculture and Fisheries and our Parliamentary Service staff.

I commend this report to the House.

Kim Richards MP
Chair

Recommendations

The committee recommends the Racing Integrity Amendment Bill 2022 be passed.

The committee recommends that the Minister in her second reading speech clarify whether a 'racing decision', as defined in clause 24 (proposed section 252AA) of the Bill, includes a decision made by a steward under the rules of racing, irrespective of whether the rules expressly refer to a 'steward' as the decision-maker.

The committee recommends that the Minister in her second reading speech clarify the intended meaning of 'extent' in clause 24 (proposed section 252AU(2)) of the Bill.

The committee recommends that the Minister in her second reading speech clarify the timeframes intended to apply to the publication of stewards' reports.

The committee recommends that the Minister in her second reading speech clarify the eligibility for appointment to the Panel for employees of the Queensland Racing Integrity Commission, persons registered or licensed by the Queensland Racing Integrity Commission, and board directors of licensed clubs under proposed s 252BD Eligibility for appointment in clause 24 of the Bill.

1 Introduction

1.1 Role of the committee

The Education, Employment and Training Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's primary areas of responsibility include:

- Education, Industrial Relations and Racing
- Employment, Small Business, Training and Skills Development.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Racing Integrity Amendment Bill 2022 (the Bill) was introduced into the Legislative Assembly by Hon Grace Grace MP, Minister for Education, Minister for Industrial Relations, and Minister for Racing (Minister) and referred to the committee on 24 February 2022. The committee was required to report to the Legislative Assembly by 8 April 2022.

1.2 Inquiry process

On 25 February 2022, the committee invited stakeholders and subscribers to make written submissions on the Bill.

The committee received a written briefing about the Bill from the Department of Agriculture and Fisheries (department) on 2 March 2022, and a public briefing on 7 March 2022.

Six submissions to the inquiry into the Bill were received (see Appendix A for a list of submitters). Further written advice was provided by the department in response to matters raised in submissions.

On 21 March 2021, the committee held a public hearing and an additional public briefing (see Appendix B for a list of witnesses).

The submissions, correspondence from the department, and transcripts of the hearing and briefings are published on the committee's inquiry webpage.[3]

1.3 Policy objectives of the Bill

According to the explanatory notes the main policy objective of the Bill is to reform the review processes for decisions made by stewards under the rules of racing by:

- replacing the current internal and external review processes for decisions made by racing stewards under the rules of racing with review by an independent panel
- ensuring reviews are finalised within a reasonable timeframe

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1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and *Human Rights Act 2019* (HRA), ss 39, 40, 41 and 57.

3 https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=166&id=4149.

- reducing serious welfare, human safety or integrity risks from being stayed pending hearing of an appeal by the Queensland Civil and Administrative Tribunal (QCAT).[4]

An additional policy objective of the Bill is to provide for the publication of stewards' reports and other reports online. The explanatory notes state that 'amendments are required to clarify and ensure compliance with the *Information Privacy Act 2009* by authorising the publication of prescribed reports'.[5]

The Bill also provides for a number of technical and minor amendments to the *Racing Integrity Act 2016* (RI Act).

1.4 Government consultation on the Bill

The explanatory notes state that the Queensland Government 'committed to review of the operation of the RI Act in consultation with stakeholders in its response to the 2016 Parliamentary Agriculture and Environment Committee report on the Racing Integrity Bill 2015',[6] and released a discussion paper[7] in June 2019 for public comment by the end of August 2019. According to the explanatory notes, 'a significant majority questioned the effectiveness and appropriateness of current review process' with 'some specific suggestions that an independent appeals body was needed'.[8]

Following feedback on proposed changes to the review processes for stewards' decisions in September 2020, and further consideration of options to address stakeholders' concerns, the department conducted 'targeted consultation with stakeholders, principally the Queensland Jockeys Association and the Queensland Thoroughbred Alliance' in June and October 2021.[9]

Consultation on a revised reform proposal occurred in December 2021 with 'targeted industry stakeholders, including the Thoroughbred Alliance, Queensland Jockey Association, Australian Jockey Association, and Harness Racing Australia'.[10] The explanatory notes state that these stakeholders 'were broadly supportive of the proposal' with one concern about 'whether the combination of reduced timeframes for matters to be finalised and the current provision for a 9 day deferment for stewards' penalties would be sufficient to ensure riding penalties under the rules of racing for thoroughbred racing did not come into force after acceptances for upcoming races'.[11]

Consultation was also undertaken with the Office of Best Practice Regulation (OBPR) through a preliminary impact assessment of the Bill. The OBPR advised that 'it is reasonably clear the proposed amendments will not result in significant adverse impacts, and hence no further regulatory impact assessment is required'.[12]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

4 Explanatory notes, p 2.

5 Explanatory notes, p 3.

6 Explanatory notes, pp 1, 18.

7 Queensland Government, 2016, *Racing Integrity Reforms – Review of the Racing Integrity Act 2016 in June 2018;* https://cabinet.qld.gov.au/documents/2019/Jun/RacIng/Attachments/Paper.PDF.

8 Explanatory notes, p 19

9 Explanatory notes, p 19.

10 Explanatory notes, p 20.

11 Explanatory notes, p 20.

12 Explanatory notes, p 20.

After examination of the Bill and its policy objectives and consideration of the information provided by the department, submitters, and witnesses, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Racing Integrity Amendment Bill 2022 be passed.

2 Examination of the Bill

2.1 Background to the Bill

The RI Act established the Queensland Racing Integrity Commission (QRIC) as an independent statutory body responsible for the management of animal welfare and integrity matters within the 3 codes of thoroughbred horse racing, greyhound racing and harness horse racing. The QRIC employs stewards to oversee race meetings and apply the rules of racing for each code. Under the RI Act, a person can seek an internal review of a steward's decision, and then external review by QCAT.[13]

The Queensland Government's review of the operation of the RI Act included consultation with stakeholders between June 2019 and December 2021. Industry participants and the community expressed concerns about the system of review of stewards' decisions undermining confidence in the integrity of the industry, particularly in relation to:

- a perceived lack of independence of QRIC's internal review process
- dissatisfaction with the level of racing expertise at QCAT in its role in external reviews under the RI Act
- the average time taken for QCAT to consider reviews, of more than 200 days
- assertions that stays were being used to enable offenders to continue racing despite serious and/or repeated breaches of the rules of racing until it was convenient to accept the penalty.[14]

The review of the RI Act and industry consultation highlighted the need for reform of the processes to review stewards' racing decisions, including establishing an independent panel.[15]

2.1.1 Reform of processes for review of stewards' racing decisions

The Bill establishes an independent panel, the Racing Appeals Panel (Panel), to review decisions of stewards under the rules of racing,[16] and includes procedures for the review of racing decisions by the Panel, for applications to the Panel for stays of racing decisions, and for appeal of Panel decisions.

The Bill provides that applications for review by the Panel must be made within 3 business days after a person is given notice of a racing decision.[17] The Panel must finalise its review of an application within 7 days, unless the review is of a decision to take disqualification action, in which case it must be finalised within 20 business days.[18]

Appeals of Panel decisions to the QCAT appeals tribunal are proposed to be available only for reviews of disqualification actions, and only on a question of law in relation to the extent of the disqualification action.[19]

The Bill restricts the QCAT appeals tribunal from granting a stay for appeals involving decisions that involve disqualification action for a serious risk to animal welfare, human safety, or the integrity of the Queensland racing industry.[20]

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13 *Racing Integrity Act 2016*; Department of Agriculture and Fisheries, correspondence dated 2 March 2022, p 1.

14 Explanatory notes, pp 1-2.

15 Department of Agriculture and Fisheries, correspondence dated 2 March 2022, p 2.

16 Rules of racing, which are statutory instruments under the *Racing Act 2002*, are made by Racing Queensland and enforced by the Queensland Racing Integrity Commission.

17 Bill, cl 24, proposed s 252AB(2).

18 Bill, cl 24, proposed s 252AG.

19 Bill, cl 24, proposed s 252AU.

20 Bill, cl 24, proposed s 252AV.

The Bill does not change the arrangements for review of other administrative decisions made by QRIC, such as licensing decisions, which continue to be subject to the current arrangements for internal review and external merits review by QCAT. Other actions under the RI Act, such as the seizure of animals or property and the issuing of animal welfare directions, also continue to be subject to internal review and appeal to the Magistrates Court.[21]

2.1.2 Publication of information

The Bill includes amendments to clarify and ensure compliance with the *Information Privacy Act 2009* by authorising the publication online of stewards' reports and other reports of detection of prohibited substances.[22] Provisions provide for the types of reports, the matters that may be published, and for a person to request information not be published on a non-disclosure ground.[23]

2.1.3 Other provisions

The Bill also makes a number of technical and minor amendments to the RI Act to:

- remove the historical requirement for QRIC to obtain and store fingerprints prior to licensing bookmakers
- align the time a racing bookmaker's clerk can act as agent at no more than 12 weeks in any year for all approved purposes, including reasons of illness or accident, by providing that 'temporarily incapacitated' means no more than 12 weeks in any year
- clarify that an approved telecommunications system must be used regardless of whether the bookmaker is making a bet with a person who is not present at a licensed venue or the bookmaker themselves is not present at a licensed venue, rather than the Minister to approve an independent entity used by the QRIC to assess a bookmaker's telecommunications system
- enable a racing bookmaker to apply for an amendment of an offcourse approval, as there are currently no provisions to amend an offcourse approval
- clarify that the Minister may delegate the Minister's powers relating to offcourse approvals to the Queensland Racing Integrity Commissioner to consider and decide offcourse approvals
- provide that a person must not improperly influence, or attempt to improperly influence, a person, including a witness or expert, who they know will be participating in an audit or investigation
- amend ss 177, 200, 201 and 231 of the RI Act that have been identified by the department as being incompatible with the HRA on the basis that the provisions do not allow for a reasonable excuse not to comply with a document or certification requirement if it might tend to incriminate the person, or for the reason that the onus of proof is reversed.[24]

2.2 Issues raised about aspects of the Bill

All submitters to the inquiry supported the Bill's objective to establish an independent panel to review decisions made by racing stewards under the rules of racing.

However, submitters raised concerns about some aspects of the Bill related to:

- clarification of the definition of a 'racing decision' that is within the jurisdiction of the Panel
- appeals of decisions of the Panel to QCAT being limited to the size of a disqualification penalty
- clarification of the nature of allowable appeals of decisions of the Panel to QCAT

21 Explanatory notes, p 2.

22 Explanatory notes, pp 2-3.

23 Bill, cl 24, proposed s 252BM; cl 25, proposed ss 256A- 256C.

24 Explanatory notes, pp 3-4.

- publication of stewards' race day reports
- clarification of the grounds for non-disclosure of information
- publication of decisions of the Panel
- eligibility for appointment to the Panel
- resourcing of the Panel.

The timeframe for deferment of suspensions imposed by stewards was also raised in relation to the Bill.

2.2.1 Definition of 'racing decision'

As outlined above, the Bill provides a procedure for the Panel to review racing decisions made by stewards. A 'racing decision' is defined in proposed s 252AA:

> ***racing decision***, of a steward, means a decision of the steward under the rules of racing for a code of racing.

Racing Queensland recommended clarification that 'a decision of the steward under rules of racing' is not restricted to those rules that expressly refer to a 'steward' as the entity making the decision.[25] Racing Queensland noted that:

> … not all decisions made by the Commission under the rules of racing are expressed to be a decision of a steward. For example, Australian Rules of Racing AR.16 gives broad power to discipline or penalise a participant to the "PRA" [Principal Racing Authority], which by virtue of s.113A of the *Racing Act 2002* is deemed to refer to the Commission. Presumably, the Commission would delegate that decision to a steward.[26]

The department advised that while the QRIC does not currently exercise functions under the rules of racing via delegation to a steward, 'it could be clarified that decisions made by a steward under the rules of racing are amenable to review by the Panel regardless of whether the rules expressly refer to the "steward" as the relevant decision-maker'.[27]

Racing Queensland also noted that the definition of 'racing decision' in the Bill means that not all stewards' decisions are subject to review by the Panel, such as decisions under the RI Act to refuse a licence to a person or to make an animal welfare direction. Racing Queensland submitted that with respect to disciplinary action that QRIC may take under the standards for a licensing scheme for each code of racing under s 65 of the RI Act, it also understands that such a decision is not intended to be a 'racing decision'. Racing Queensland stated:

> There is some overlap between the standard and the rules of racing, so that it is at least technically possible for the Commission to have a choice in those matters to either take action under the rules (and the panel will have jurisdiction) or under the standards (in which case the existing internal review and QCAT process will apply). Racing Queensland supports that approach.[28]

Committee comment

The committee recommends that the Minister in her second reading speech clarify the definition of 'racing decision'.

[25] Submission 3, p 1.

[26] Submission 3, p 2.

[27] Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 6.

[28] Submission 3, p 2.

Recommendation 2

The committee recommends that the Minister in her second reading speech clarify whether a 'racing decision', as defined in clause 24 (proposed section 252AA) of the Bill, includes a decision made by a steward under the rules of racing, irrespective of whether the rules expressly refer to a 'steward' as the decision-maker.

2.2.2 Appeal of Panel decisions

2.2.2.1 *Limitation on appeals of Panel decisions to QCAT*

Under proposed new *Division 6 Appeal of panel decisions*, proposed s 252AU limits the matters that a party dissatisfied with the Panel's decision on their review application may appeal to the QCAT appeals tribunal. Section 252AU provides that:

- the decisions that may be appealed will be limited to a decision of the Panel which includes disqualification action (ie a disciplinary action relating to the person's approval or licence or exclusion action against the person that prevents a person from racing an animal, attending a race meeting, betting, or bookmaking, for 3 months or longer)
- the person may appeal to the QCAT appeals tribunal against the Panel's decision only on a question of law relating to the extent of the disqualification action.

In regard to the limitation on appeals of decisions of the Panel to decisions about disqualification actions and then only on the extent of the disqualification, the Australian Jockeys Association (AJA) submitted that 'in other jurisdictions when appealing a decision to a higher body, the appellant can appeal on penalty and severity' and that this also should be the case in Queensland.[29]

Further, the AJA stated that 'just because the appellant has lost the original appeal to the racing appeals panel does not mean the appellant should be denied due process when appealing to a higher body'.[30]

The explanatory notes comment on the Bill's consistency with principles of natural justice in respect of appeals of decisions of the Panel being limited to a question of law relating to the extent of a disqualification action:

> This approach is justified because an objective of establishing an independent review panel is to finalise review applications in a shorter timeframe. Limiting appeals to the QCAT appeal tribunal is consistent with the approach taken in New South Wales and Victoria which allows matters to be finalised quickly. Any errors of law or procedural fairness will still be subject to judicial review under the *Judicial Review Act 1991*.[31]

The explanatory notes also provide the following information about appeals of decisions in other states:

- appeals can be made to the New South Wales Racing Appeals Tribunal if the decision was to disqualify a person, revoke their licence or suspend them for a period of 3 months or more, or for a fine of $2,000 or more (in the case of thoroughbred racing)
- decisions made by the Victorian Racing Tribunal can be appealed to the Victorian Civil and Administrative Tribunal (VCAT) on a question of penalty only (noting that the powers and jurisdiction of VCAT are somewhat different from QCAT which has a separate appeals jurisdiction).[32]

[29] Submission 1, p 1.

[30] Submission 1, p 1.

[31] Explanatory notes, p 16.

[32] Explanatory notes, p 16.

2.2.2.2 *Clarification of the nature of allowable appeals to QCAT*

The Queensland Law Society (QLS) queried the meaning of 'extent' in proposed s 252AU(2) which, as noted above, provides that a person 'may appeal to the appeal tribunal against the panel's decision only on a question of law relating to the extent of the disqualification action'.

Specifically, the QLS queried whether the Bill provided for an appeal on the law as to the 'extent' of the period (of suspension of cancellation), or the 'extent' to which, for example, suspension or cancellation was appropriate, or whether the intention was to further limit what aspect of a 'disqualification action' may be appealed.[33]

The department clarified that 'extent' in this provision is intended to refer to the size of the penalty, that is, 'an appeal will be permitted only on the basis that the imposed penalty, lasting three months or more, is either manifestly inadequate or excessive'.[34]

The QLS also suggested that the Bill define the nature of any review by the Panel or appeal of a Panel decision to the QCAT appeals tribunal. The QLS urged that, in the context of the Bill's objectives, a review or appeal should be 'purely on the material that was before the stewards at the time' of the decision, rather than a hearing afresh.[35]

The department advised that the approach to reviews and appeals, either in hearing matters afresh, or on the findings of the first level review, is not consistent across Australian jurisdictions.[36]

Committee comment

The committee agrees that the wording of proposed s 252AU(2) in cl 24 of the Bill may result in the right of appeal not being clearly understood by all parties. The committee appreciates the department's clarification of what is intended. The committee considers that it would be useful for the Minister to clarify the intention of proposed s 252AU(2) in her second reading speech, to ensure appeal rights are clearly understood by all parties.

Recommendation 3

The committee recommends that the Minister in her second reading speech clarify the intended meaning of 'extent' in clause 24 (proposed section 252AU(2)) of the Bill.

2.2.3 Publication of information

2.2.3.1 *Publication of stewards' reports*

The Bill authorises publication of stewards' race day reports on the QIRC website and provides that the information must be removed from the QRIC website 6 months after the day the information was published, or if it relates to a disqualification action, no later than the day the effect of a disqualification ends.[37] The Bill also provides for the removal of personal information contained in a steward's report if a person asks for it to be removed and the QRIC is satisfied that the information should not be published for non-disclosure reasons.[38]

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33 Submission 6, p 2.

34 See Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 15, and correspondence dated 7 March 2022, p 3.

35 Andrew Forbes, Deputy Chair, Occupational Discipline Law Committee, Queensland Law Society, public hearing transcript, Brisbane, 21 March 2022, p 5.

36 Graeme Bolton, Deputy Director-General, Fisheries and Forestry, Department of Agriculture and Fisheries, public briefing transcript, Brisbane 21 March 2022, p 1.

37 Bill cl 25, proposed s 256A.

38 Bill cl 25, proposed s 256B.

The explanatory notes state that stewards' race day reports and inquiry reports are published for the purpose of providing transparency, and note that the Bill includes safeguards to protect privacy and reputation, including limiting the period of publication. However, while the Bill limits the timeframe for information to be published on the QRIC website, the explanatory notes also observe, in relation to publication of stewards' reports and the register of Panel decisions, that:

> … the publication of these reports has been a long-standing practice in all Australian jurisdictions with industry participants overwhelmingly supporting publication of the reports because they provide the transparency required to promote and retain confidence in the integrity of the racing industry.
>
> The potential impact on privacy is justified to ensure transparency of decision-making, which is essential to the integrity of the Queensland racing industry. It is also justified on the basis of protecting the right to a fair hearing, of which publishing decisions is a component.[39]

In regard to the removal of stewards' reports from publication on the QRIC website, Racing Queensland submitted that it:

- 'does not support removing this information from public view, as it is an important element in ensuring visibility within the racing industry'
- would prefer to continue its practice of publishing stewards' race day reports on the Racing Queensland website for more than 6 months after the event.[40]

Racing Queensland stated that it 'uses this information to perform its statutory functions, including managing handicapping, prizemoney payments and planning race days. Racing Queensland is also asked for this information in relation to insurance claims, as Racing Queensland manages jockey WorkCover claims and each race club's public liability insurance program'.[41]

Racing Queensland requested that if the information is not available online, there be a process to enable Racing Queensland to receive stewards' reports, in its capacity as the control body, after the reports are removed from the website.

The Coalition for the Protection of Greyhounds (CPG) was concerned that the publication of stewards' race day and investigation reports continue, noting that the Bill authorises but does not require the QRIC to publish the information, as proposed s 256A provides that the QRIC *may* publish information on its website, and that the Bill proposes the information is only to be available for 6 months. The CPG also noted that other jurisdictions (New South Wales, South Australia, Tasmania and Victoria) publish such information without time limits.[42]

The CPG submitted that the Bill's provision for the publishing of stewards' reports fails to ensure that the public has adequate time to access all race day and inquiry information and recommended that all stewards' reports be made available to the public, regardless of whether they are the subject of a review by the Panel.[43]

The CPG noted that a broad spectrum of stakeholders were concerned about the provision, explaining that for punters and breeders, stewards' reports contain a dispassionate observation of what has occurred in a race, and that when a breeder is making breeding decisions, the racing behaviour of the dogs and their racing record is very important. The analysis of stewards' reports is also of particular interest to organisations such as the CPG that are concerned about the welfare of animals, and also to governments and regulators in Australia, as well as overseas parties who are interested in Australian greyhound racing. The CPG noted that punters also research stewards' reports to obtain background

39 Explanatory notes, p 13.

40 Submission 3, p 2.

41 Submission 3, p 2.

42 Submission 5, pp 6-7.

43 Submission 5, pp 6-7.

on particular dogs and the progeny of particular dogs, because the reports are a good source of information about how a dog behaves on the track.[44]

The CPG highlighted the significance of the publication of stewards' reports to racing integrity, and stated that 'for Queensland to only have them around for six months not only would be a departure from practice in terms of best practice transparency but also would be behind every other jurisdiction in Australia'.[45]

In response to stakeholders' emphasis on the need to publish race day stewards' reports for more than 6 months after the event, and the current practice by both the QRIC and Racing Queensland and interstate agencies of publishing stewards reports for much longer periods, the department advised:

> I cannot speak to whether this is an issue interstate because of the fact that each state has its own privacy legislation. We have identified a potential inconsistency between the publication of these reports and the Information Privacy Act. We need to do something active to manage that to enable them to continue to be published. … these reports can be quite wide ranging in what they mention. They definitely would cross that threshold into discussing things that could affect someone's reputation.
>
> The racing industry has argued … that there is an important transparency function and that it is important to publish those. It is about finding the right balance between privacy, reputation and the importance of transparency and the use of those reports. Obviously we have suggested six months. We have heard others suggest today that that might not be long enough.[46]

The department also suggested that that Racing Queensland could 'access and make use of the information whilst it is published by QRIC' which could include 'downloading a copy of a stewards' report for Racing Queensland's use', or enter into an information-sharing arrangement with QRIC to access this information, as well as information that is not published on non-disclosure grounds.[47]

2.2.3.2 *Clarification of the grounds for non-disclosure of information*

As noted above, the Bill provides for a person identified in a stewards' report to ask QRIC not to publish any personal information about them contained in the report, or if it has been published, to remove the information from QRIC's website. QRIC would be required to not publish personal information if it is satisfied that it should not be published on a non-disclosure ground, such as danger to physical or mental health or safety, or damage to commercial activities.[48]

The CPG suggested that the definition of a 'non-disclosure ground' in Schedule 1[49] is 'extremely broad' and needs to be narrowed to specify particular commercial activities, to ensure the provision is not used to prevent proceedings from being made public for inappropriate reasons. The CPG recommended that the definition should not allow information to be withheld from the public for the

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44 Fiona Chisholm, Director, Coalition for the Protection of Greyhounds, public hearing transcript, Brisbane, 21 March 2022, pp 7-8.

45 Fiona Chisholm, Director, Coalition for the Protection of Greyhounds, public hearing transcript, Brisbane, 21 March 2022, p 8.

46 Marguerite Clarke, Director, Legislation and Regulation, Department of Agriculture and Fisheries, public briefing transcript, Brisbane 21 March 2022, p 3.

47 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, pp 8-9. The department noted that s 53A of the RI Act permits QRIC to enter into an information-sharing arrangement with a relevant agency for the purposes of exchanging information that assists QRIC or the relevant agency to perform its functions, and that the Chief Executive Officer of the Racing Queensland Board is prescribed in the Racing Integrity Regulation 2016 as a relevant agency.

48 Bill, cl 25, proposed s 256B.

49 Bill, cl 28.

reason that it is likely to damage the commercial activities of a person to whom the information relates.[50]

The department noted that the Bill allows discretion to be exercised about whether the disclosure or publication should proceed regardless, and that 'in each case, the fact that disclosure or publication would release information that would be likely to damage the commercial activities of a person to whom the information relates does not automatically mean that the information will not be disclosed or published'.[51]

The department further noted that the definition of 'non-disclosure ground' is relied on in several places in the Bill[52] and that:

> … the impact on each circumstance would need to be given careful consideration if, for example, it was decided to narrow (c) in the definition of non-disclosure grounds to only include circumstances where there would be a significant impact on the commercial activities of a person to whom the information relates.[53]

Committee comment

The committee considers that further consideration of the timeframe for online publication of stewards' reports and other reports is needed.

The committee acknowledges the concerns of submitters regarding the practicalities of access to stewards' reports and the significance of these reports to industry and community confidence in racing integrity.

The committee also notes the statement in the explanatory notes and in advice provided by the department that there is an issue with compliance with the *Information Privacy Act 2009* for publication of these reports. However the committee queries the solution proposed in the Bill. The committee suggests that if there is a privacy issue at the end of a 6 month period then presumably it also exists at the time of the initial publication.

Further, proposed s 256A, which states that the QRIC must remove from its website any information published 'no later than (a) if the information relates to disqualification action taken against a person by a race day steward – the day the effect of the action ends; or (b) otherwise – 6 months after the day the information is published', appears to enable a steward's report to be removed earlier than a period of 6 months, for example after 3 months if a disqualification action is for a period of 3 months. This provision would also appear to allow the information to continue to be published on the QRIC website for more than 6 months if the disqualification action is for a longer period.

The committee recommends that the Minister clarify the timeframes intended to apply to the publication of stewards' reports.

Recommendation 4

The committee recommends that the Minister in her second reading speech clarify the timeframes intended to apply to the publication of stewards' reports.

50 Submission 5, p 7.

51 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 13.

52 Bill, proposed ss 252AF, 252AJ, 252AS, 252BM, 256B.

53 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 14.

2.2.3.3 *Publication of Panel decisions*

The Bill provides for a register of decisions of the Panel to be published on the Panel's website. The register is to contain a brief description of each application for review and the information in the notice of the panel's decision, including reasons for the panel's decision.[54]

The CPG noted that provisions in the Bill such as disclosure of conflicting interest by a Panel member,[55] eligibility for appointment to the Panel,[56] and removal from office as a member of the Panel,[57] directly support the impartiality of decision makers. The CPG also stated that allowing parties to appeal disqualification action to the QCAT appeals tribunal,[58] and requiring that hearings are heard in public unless there are grounds for non-disclosure[59] 'appear to indirectly support fair and impartial decision making'.[60] However the CPG considered that 'these mechanisms are not sufficient to ensure decisions are impartial' and 'that the Bill does not sufficiently address the lack of independence (perceived or otherwise) of the decision-making authority'.[61]

In this regard, the CPG was particularly concerned that the Bill provides for a register containing only brief details of decisions of the Panel:

> Only having a brief description of each application is not an ideal situation in terms of best practice transparency. ... That does not help either participants in the industry or potential entrants to the industry—or bodies such as ourselves who are particularly interested in the welfare of the animals involved—to really understand what is going on.[62]

The AJA told the committee that it had no issue with publication of the details of Panel decisions and noted that generally decisions are published in other jurisdictions.[63]

2.2.4 Eligibility for appointment to the Panel

Several issues were raised by submitters about eligibility for appointment to the Panel, as proposed in the Bill.

Proposed s 252BD *Eligibility for appointment* states:

(1) A person is eligible for appointment to the panel if—
- (a) for appointment as the chairperson or a deputy chairperson—the person is a lawyer of at least 5 years standing; or
- (b) otherwise—the person has professional experience in 1 or more of the following areas—
  - (i) chemistry relating to animals;
  - (ii) law;
  - (iii) racing;
  - (iv) veterinary science.

54 Bill, cl 24, proposed s 252BM.

55 Bill, cl 24, proposed s 252AE.

56 Bill, cl 24, proposed s 252BD.

57 Bill, cl 24, proposed s 252BI.

58 Bill, cl 24, proposed s 252AU.

59 Bill, cl 24, proposed s 252AJ.

60 Submission 5, p 5.

61 Submission 5, p 6.

62 Fiona Chisholm, Director, Coalition for the Protection of Greyhounds, public hearing transcript, Brisbane, 21 March 2022, p 7.

63 Kevin Ring, Director and National WHS Officer, Australian Jockeys Association, public hearing transcript, Brisbane, 21 March 2022, p 2.

(2) However, a person is not eligible for appointment to the panel if the person—

(a) is, or has in the 2 years before the proposed appointment, been a member or employee of a control body; or

(b) is registered or licensed by a control body; or

(c) has a financial or proprietary interest in a licensed animal; or

(d) is a member of a committee, or an employee, of—

(i) a licensed club; or

(ii) an association formed in Australia to promote the interests of 1 or more participants in a code of racing; or

(e) is affected by bankruptcy action; or

(f) has a conviction, other than a spent conviction, for—

(i) an offence against this Act or the Racing Act; or

(ii) an indictable offence against any Act; or (iii) an indictable offence against a law of another State.

2.2.4.1 *Ownership of a licensed animal*

Opinions of submitters varied about whether a financial or proprietary interest in a licensed animal should exclude a person from eligibility for panel membership (proposed s 252BD(2)(c)).

Mr Daniel Bowden submitted that 'horse ownership should be not allowed for the sake of public confidence in our product'.[64]

Conversely, the QLS queried this provision and stated that 'our advice is that many, if not most of the persons who have a genuine knowledge and interest in the racing industry have ownership, be it wholly or in part, of racing animals'.[65]

In addition, the QLS suggested that concerns about independence and integrity are adequately dealt with by both proposed ss 252BA *Independence of panel and members*, and 252AE *Disclosure of conflicting interest*, so that all or part of proposed s 252BD is unnecessary.[66]

2.2.4.2 *Employees of QRIC*

As noted above, the Bill excludes a member or an employee of a control body from appointment as a member of the Panel. Racing Queensland noted that under the RI Act, Racing Queensland is the 'control body', which would mean that proposed s 252BD(2)(a) would only prevent a current or recent employee of Racing Queensland from being a member of the panel, but place no restriction on employees of the QRIC. Similarly, proposed s 252BD(2)(b) refers only to persons registered or licensed by Racing Queensland as being ineligible for appointment to the Panel.[67]

Racing Queensland recommended that proposed ss 252BD(2)(a) and 252BD(2)(b) should refer to both Racing Queensland and the QRIC, rather than the 'control body', given the intention is for the Panel to be independent.[68]

2.2.4.3 *Racing club boards as well as committees*

The Bill excludes a committee member or employee of a licensed club from appointment as a member of the Panel.

Racing Queensland noted that some larger licensed clubs, such as the Brisbane Racing Club, are structured as companies limited by guarantee and will have a board of directors, rather than a 'committee' (a term which applies to an Incorporated Association). Racing Queensland recommended

64 Submission 2, p 2.

65 Submission 6, p 2.

66 Submission 6, p 2.

67 Submission 3, p 2.

68 Submission 3, p 2.

that the wording of proposed s 252BD(2)(d) be revised from 'member of a committee, or an employee' to 'member of a committee, director of a board, or an employee'.[69]

Daniel Bowden suggested that the exclusion of race club committee members from appointment to the Panel would reduce the pool of eligible persons and could result in an erosion of public confidence.[70]

2.2.4.4 *Ineligibility because of unresolved criminal charges*

The Bill excludes a person who has a conviction, other than a spent conviction, for an offence against the RI Act or the *Racing Act 2002*, or an indictable offence against any Act or against a law in another state, from being appointed to the Panel.

Racing Queensland noted that licensees can be suspended under Australian Rules of Racing AR.23 if they have been charged with committing an indictable criminal offence, and recommended that a person should be ineligible for appointment to the Panel if they are facing unresolved criminal charges, as well as for a conviction for an indictable offence.[71]

This issue is discussed further in section 3.1.1.1 of this report.

2.2.4.5 *Department's advice*

The department provided the following responses in relation to submitters' concerns with the Bill's provisions with respect to eligibility for appointment to the Panel:

- The department acknowledged that making a person ineligible for appointment to the Panel if they have a financial or proprietary interest in a licensed animal will reduce the pool of persons with relevant expertise who are eligible for appointment.[72] The department further advised that the approach to eligibility for a person with a financial or proprietary interest in a licensed animal differs between jurisdictions.

  As an alternative approach to that proposed in the Bill, the department suggested that Panel appointments could require the Minister 'to have regard to the nature and extent of the person's financial or proprietary interest in a licensed animal and the potential for a perceived or actual conflict of interest in Panel hearings that could undermine public confidence in the impartiality of the Panel'. Potential conflicts of interest could be 'managed using the safeguards already contained in the Bill' as well as additional safeguards, such as a requirement to advise the Minister/Chairperson if there was a change in the Panel member's interest in a licensed animal, or providing additional grounds for the Minister to recommend a person's removal from office as a Panel member because of an increased potential for a conflict of interest as a result of ownership of a licensed animal.[73]
- The department advised that it 'would have no concerns with excluding QRIC employees, persons registered or licensed by QRIC, and board directors of licensed clubs from eligibility for appointment to the Panel'.[74]
- The department stated that while the public may have concerns about the suitability of a person who has been charged with an indictable offence as a Panel member, the proposal to make ineligible all persons with unresolved criminal charges is potentially inconsistent with s 32 of the HRA. The department noted that dismissal of a Panel member for inappropriate conduct

69 Submission 3, p 2.

70 Submission 2, p 2.

71 Submission 2, p 2.

72 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 15.

73 Department of Agriculture and Fisheries, correspondence dated 28 March 2022, pp 2-3.

74 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 6.

would be possible under proposed s 252BI and that under proposed s 252AD the Panel Chairperson 'may choose not to select a person with unresolved criminal charges, given the potential for their selection to undermine public confidence in the Panel's decisions' when constituting the Panel for a review application.[75]

Committee comment

The committee notes the concerns about the effect on the pool of suitable Panel members as a result of the Bill's exclusion of a person who has a financial or proprietary interest in a licensed animal from being eligible for appointment to the Panel. However the committee considers that, on balance, this provision supports the independence of the Panel and racing integrity.

The committee recommends that the Minister in her second reading speech clarify the eligibility for appointment to the Panel for employees of the QRIC, persons registered or licensed by the QRIC, and board directors of licensed clubs under proposed s 252BD *Eligibility for appointment* in cl 24 of the Bill.

Recommendation 5

The committee recommends that the Minister in her second reading speech clarify the eligibility for appointment to the Panel for employees of the Queensland Racing Integrity Commission, persons registered or licensed by the Queensland Racing Integrity Commission, and board directors of licensed clubs under proposed s 252BD Eligibility for appointment in clause 24 of the Bill.

2.2.5 Resourcing the Panel

The QLS suggested that there will be a significant volume of review work redirected towards the newly formed panel and that the estimated $607,000 per annum to be transferred from QRIC's existing budget for reviews[76] 'appears to be significantly inadequate'.[77] The QLS also noted that amendments contained in the Bill still allow for appeal of some matters to QCAT, and submitted that the answer to delays in consideration of reviews of racing decisions by QCAT 'cannot simply be the creation of an alternative body'.[78]

The QLS told the committee that 'QCAT needs to be appropriately funded to perform its functions. It has not been and the result is unacceptable delays across many of its jurisdictions' and that 'as one of the main objectives of the bill is to ensure reviews are finalised within a reasonable time, an appropriately funded panel, including appropriate administrative resources, is critical'.[79]

The department explained the basis for the estimate provided:

> The estimated cost of the Panel is dominated (almost 80%) by the cost of remuneration of the Chairperson, part-time members and registrar and support staff. In estimating the remuneration costs for the Panel, the department has assumed remuneration rates for the Chairperson and the Panel members which are yet to be approved by the Government. It has also had to make assumptions about the amount of time required to decide applications of different types. The assumed number of review applications of each type is broadly based on applications for internal review in 2020-21. The estimate includes provision for premises and equipment.[80]

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75 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, pp 7-8.

76 Explanatory notes, p 9.

77 Submission 6, p 3.

78 Public hearing transcript, Brisbane, 21 March 2022, p 4.

79 Andrew Forbes, Deputy Chair, Occupational Discipline Law Committee, Queensland Law Society, public hearing transcript, Brisbane, 21 March 2022, p 4.

80 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, pp 15-16.

The department also advised that the actual costs may vary from the estimate, and that 'while the department is reasonably confident in the estimates, should additional funding become necessary there are existing mechanisms to address a shortfall, which could include seeking Government consideration of options for additional funding'.[81]

2.2.6 Deferment of suspensions imposed by stewards

The Queensland Jockeys Association's (QJA) primary concern with the review of stewards' racing decisions was the timeframe of the deferment period available for suspensions.

The rules of thoroughbred racing in Queensland allow stewards to defer the commencement of a suspension which they have imposed on a rider for a period of no longer than 9 days.[82] The deferment is allowed under the *Local Rules (Thoroughbred Racing)* made by Racing Queensland. The rules of racing are not affected by the Bill.

The QJA submitted that the usual period of 9 days that a suspension may be deferred needs to be extended to 15 days. The QJA noted that the majority of jockeys are booked a minimum of 14 days in advance, and a leading jockey is engaged and betting on races commences well in advance. The QJA stated that the usual period granted for deferral of a suspension (9 days) is insufficient because if a jockey has a hearing on day 5 or 6 of a 9 day stay and the suspension is imposed and the jockey needs to be replaced, then owners, trainers, jockeys and the punting public may be disadvantaged.

The Bill provides for an application for a review of a steward's racing decision to:

(a) take disciplinary action relating to the person's approval or licence; or
(b) take exclusion action against the person; or
(c) otherwise impose a penalty, whether monetary or non-monetary, on the person.[83]

The Bill would enable the Panel to consider applications for stays of stewards' racing decisions under proposed s 252AT *Staying operation of racing decision* which provides:

(1) The applicant for a panel review application may apply to the panel for a stay of the operation of the racing decision to which the application relates.
(2) The panel may stay the operation of the racing decision to secure the effectiveness of the review of the decision by the panel.
(3) The panel may stay the operation of the racing decision on the conditions, and for the period, decided by the panel.
(4) However, the period of the stay must not extend past the time when the panel decides the panel review application.[84]

Although the Panel would be able to consider stay applications under proposed s 252AT, the stay period must not extend past the time when the Panel decides on the Panel review application (ie within 7 business days after the application is made, or within 20 days after the application is made if it relates to a disqualification action). This would mean most reviews of racing decisions would be decided within the deferment period granted.

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81 Department of Agriculture and Fisheries, correspondence dated 17 March 2022, p 16.

82 Racing Queensland, *The Rules of Racing of Racing Queensland* - Constituted by: Australian Rules of Racing and the Local Rules (Thoroughbred Racing) both as made by Racing Queensland as at 1 August 2021, https://www.racingqueensland.com.au/getmedia/134d3962-a152-47b7-89f5-1655f5b318ea/Rules-of-Racing-of-Racing-Queensland-20210801.pdf.aspx

83 Bill, proposed s 252AB.

84 Bill, cl 24.

On this issue the explanatory notes state:

> The 7-day timeframe recognises the relevance of the industry practice of booking jockeys 10–14 calendar days in advance of most races. The shorter period for the finalisation of most matters will mean that riding offences, which constitute the majority of stewards' decisions, will generally be decided by the Panel within the 9 day deferment of penalty given by a steward under the rules of thoroughbred racing and, although the Panel may consider stay applications, there will be little incentive to apply for a stay in these cases.

The department advised:

> With regard to some of the conversation around stays, we need to be aware that there is a slight differentiation between the deferment of a penalty and the application of a stay. When a racing participant is charged with an offence they can request the steward defer the starting of that penalty, which is at nine days within the bill. I note that it is nine days across other jurisdictions, including New South Wales and Victoria. In Victoria for the Victoria Derby and Melbourne Cup week it is three days. You can only defer a penalty for three days after which you must commence your penalty.
>
> You can also apply for a stay. In Queensland, under the bill as proposed stays will be permitted, but it is interesting to note that with the deferment of the nine-day period under the bill we are going to be setting hearings at least once a week. They can be held more often if required due to workload. By the time you have a deferment of nine days you generally will have all the matters. For the more serious matters that require 20 business days you will have had all those matters heard already. A longer deferment period probably will not add a great deal of value.[85]
>
> … The additional point about the deferment versus the stays is that the deferment is under the Rules of Racing; it is not in the bill. In terms of the Rules of Racing, as you know there are national rules and then there are local rules. Together they are made by Racing Queensland and they become the rules of racing for that code. The deferment is a local rule. It is for thoroughbreds only and it is basically for offences under the Rules of Racing for jockeys.[86]

The department also advised that under proposed s 252AH,[87] the Panel could overturn a steward's decision and provide a new decision that imposes a penalty which commences at a later time, but that 'careful consideration would be needed of whether delaying the commencement of a penalty is in the interests of justice because it could undermine the intended behaviour modification outcomes of imposing riding penalties'.[88]

Committee comment

The committee notes the concerns of the Queensland Jockeys Association and the department's advice that this issue falls outside the scope of the Bill. The committee considers that it may be a policy matter that racing bodies in all jurisdictions could address to determine a consistent national approach.

[85] Graeme Bolton, Deputy Director-General, Fisheries and Forestry, Department of Agriculture and Fisheries, public briefing transcript, Brisbane 21 March 2022, p 1.

[86] Marguerite Clarke, Director, Legislation and Regulation, Department of Agriculture and Fisheries, public briefing transcript, Brisbane 21 March 2022, p 1.

[87] Bill, cl 24.

[88] Department of Agriculture and Fisheries, correspondence dated 17 March 2022, pp 10-11.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that fundamental legislative principles are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

3.1.1.1 *Right to privacy regarding personal information – disclosure of criminal history*

Summary of provisions

Under proposed s 252BD(2)(f), a person is ineligible for appointment to the Panel if the person has a conviction, other than a spent conviction, for certain offences. (The prescribed offences are an offence under the RI Act or the *Racing Act 2002*, or an indictable offence under any Queensland Act or under a law of another state.)

Proposed s 252BN provides that the Minister may ask the commissioner of the police service for a written report about the criminal history of a person being considered for appointment to the Panel, provided that the person has given their written consent.[89] The section also enables the Minister to obtain (without consent) a report on the criminal history of a person who has been recommended for removal from office as a member of the Panel.[90]

Proposed s 252BO requires an appointed member, unless they have a reasonable excuse, to immediately give notice to the Minister if charged with or convicted of an offence specified in s 252BD(2)(f).

Issue of fundamental legislative principle

These provisions raise issues of fundamental legislative principle relating to the rights and liberties of individuals, particularly regarding an individual's right to privacy including with respect to their personal information.[91]

The right to privacy, and the disclosure of private or confidential information, are relevant to whether legislation has sufficient regard to the rights and liberties of the individual.

The requirement that an appointed member disclose personal information and the Minister's power to obtain the criminal history of a member impact on a person's right to privacy and confidentiality of personal information.

In considering similar provisions in Bills relating to a person's criminal history, committees have considered whether adequate safeguards are included in the Bill, such as whether:

- the criminal history can only be obtained with consent

89 Bill, proposed ss 252BN(1)(a) and 252BN(3).

90 Bill, proposed s 252BN(1)(b).

91 *Legislative Standards Act 1992* (LSA), s 4(2)(a).

- there are strict limits on further disclosure of that information
- the criminal history information must be destroyed when it is no longer required for the purpose for which it was obtained.[92]

Consideration has also been given in the past to the extent of information covered by the term 'criminal history', including for example, whether the term extends to charges that do not result in convictions, and to 'spent' convictions, convictions that are quashed or set aside, and convictions which are 'not recorded'.

The committee notes:

- Under proposed ss 252BN(1)(a) a person's criminal history can only be obtained with their consent.[93]
- There is no requirement for consent under proposed s 252BN(1)(b).
- There are limits on disclosure, and an existing offence for unauthorised disclosure.[94]
- For the purposes of determining a person's eligibility for appointment to the Panel, the convictions included in a criminal history do not extend to spent convictions.[95]
- The criminal history information must be destroyed when it is no longer needed for the purpose for which it was obtained.[96]

A Panel member is required to immediately give notice to the Minister that they have been convicted of specified offences, unless the person has a reasonable excuse. Consent here is irrelevant.

Existing s 212 of the RI Act goes some way to addressing confidentiality issues regarding criminal history information. Under that section, it is an offence for a person engaged in the administration of the RI Act to, without reasonable excuse, disclose confidential information, including criminal history,[97] to anyone else. It is a reasonable excuse where the disclosure is:

- made with consent of the person to whom the information relates
- authorised under the RI Act or another Act
- in compliance with lawful process requiring production of documents or giving evidence before a court.

The maximum penalty for an unauthorised disclosure is 100 penalty units ($13,785).[98]

The explanatory notes provide the following justification for the criminal history requirements:

> These provisions are considered necessary to ensure the integrity of the Panel by ensuring that persons appointed to the Panel are suitable and impartial, and to provide confidence to the community that the reviews are being conducted appropriately.[99]

It could be argued that any person who does not want to disclose their criminal history can decline to provide consent or the information and withdraw their application (or vacate their position). At the

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92 See for example, Transportation and Utilities Committee, Report No. 13, 55th Parliament – *Plumbing and Drainage and Other Legislation Amendment Bill 2015*, March 2016, p 24.

93 Bill, proposed s 252BN(3).

94 See s 212 of the RI Act.

95 Bill, proposed s 252BD(2)(f).

96 Bill, proposed s 252BN(7).

97 See s 211 of the RI Act.

98 A penalty unit is $137.85 – Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

99 Explanatory notes, p 13.

same time, this effectively prevents a person from becoming a member of the Panel, since a person is disqualified from becoming a member if the person does not give consent. Further, as noted above, where eligibility to continue as a member is in issue, consent is not required in any event.[100]

Committee comment

The committee concludes that it is satisfied that proposed ss 252BD(2)(f), 252BN and 252BO in cl 24 of the Bill have sufficient regard to an individual's right to privacy.

3.1.1.2 *Right to privacy regarding personal information*

Summary of provisions

Proposed s 252AJ(1) provides that the Panel must decide a review application in public.

Proposed s 252AS(2) provides that a person may inspect or copy a record produced for deciding a review application.

Proposed s 252BM requires the registrar to publish to a website a copy of the register, which includes a brief description of each Panel review application that has been made, and ancillary information.

Proposed s 256A authorises the publication of stewards' race day reports and stewards' inquiry reports on the QRIC website.

Proposed s 256C authorises the publication of an 'elevated reading' list. The list states the name of a licensed horse, the name of the licence holder, and the date an elevated reading was measured within a 48-hour period before a race for the horse.

Issue of fundamental legislative principle

All these proposed sections raise issues of fundamental legislative principle relating to the rights and liberties of individuals, regarding an individual's right to privacy with respect to their personal information.[101]

The right to privacy, and the disclosure of private or confidential information, are relevant to whether legislation has sufficient regard to the rights and liberties of the individual.

The holding of public hearings and the ability of the public to access registry records both can result in the disclosure of personal information.

Similarly, the provisions in proposed ss 252BM, 256A and 256C requiring the publication of material to websites and of the elevated readings list can result in the disclosure of personal information.

In regard to proposed s 252AJ, the explanatory notes state that the limitation on privacy is justified:

> … to ensure transparency of decision-making, which is essential to the integrity of the Queensland racing industry. It is also justified on the basis of protecting the right to a fair hearing, of which making information on which a decision is based publicly available, is a component.[102]

In regarding to proposed s 252AS, the explanatory notes state that the limitation on privacy 'is justified to promote natural justice'.[103]

The explanatory notes record that the publication of the reports required by proposed ss 252BM, 256A and 256C 'has been a long-standing practice in all Australian jurisdictions' and that industry

[100] Bill, proposed s 252BD(2)(f).

[101] LSA, s 4(2)(a).

[102] Explanatory notes, p 11.

[103] Explanatory notes, p 12.

participants overwhelmingly support such publication 'because they provide the transparency required to promote and retain confidence in the integrity of the racing industry'.[104]

The explanatory notes state that these limitations on privacy are justified:

> … to ensure transparency of decision-making, which is essential to the integrity of the Queensland racing industry. It is also justified on the basis of protecting the right to a fair hearing, of which publishing decisions is a component.[105]

Committee comment

The committee supports transparency of decision-making by the Panel, and is satisfied that proposed ss 252AJ, 252AS, 252BM, 256A and 256C in cl 24 concerning publication of information have sufficient regard to an individual's right to privacy.

3.1.1.3 *Proportionality and relevance of penalties*

Summary of provisions

Clause 4 (amending s 39) and proposed ss 252AL, 252AN, and 252BO (all inserted by cl 24) are all offence provisions. Non-compliance with the new offences in s 39 and proposed ss 252AL and 252BO in each case attracts a maximum penalty of 100 penalty units ($13,785). Non-compliance with the new offence in proposed s 252AN attracts a maximum penalty of 30 penalty units ($4,135).

Improper influence of a witness to an audit or investigation

Clause 4 inserts s 39(1A) which states a person who has been given notice to attend or provide documents to an audit or investigation conducted by the Queensland Racing Integrity Commissioner must not improperly influence, or attempt to improperly influence, someone else who the person knows has been given a notice to attend the same audit or investigation. A maximum penalty of 100 penalty units applies for non-compliance.

Offences regarding witness attendance

Proposed s 252AL creates offences for a person to:

- without a reasonable excuse, not comply with a notice to attend a Panel review application hearing or to produce a stated document or thing
- fail to take an oath or affirmation when required
- fail to answer a question required by the Panel, without a reasonable excuse.

In each case, a maximum penalty of 100 penalty units applies for non-compliance.

Contempt of Panel

Proposed s 252AN creates an offence for a person to:

- insult a Panel member who is participating in a hearing of a Panel review application or is entering or leaving the place where the hearing is being held
- unreasonably or deliberately interrupt a hearing
- create or continue, or join in creating or continuing, a disturbance in or near a place where a hearing is being held.

A maximum penalty of 30 penalty units applies.

[104] Explanatory notes, p 13.

[105] Explanatory notes, p 13.

Failure to disclose criminal history

Proposed s 252BO makes it an offence if a Panel member fails to immediately give notice to the Minister of certain convictions or charges, unless they have a reasonable excuse.[106] Non-compliance incurs a maximum penalty of 100 penalty units ($13,785).

Issue of fundamental legislative principle – Proportion and relevance

The creation of new offences and the imposition of penalties affect the rights and liberties of individuals.

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

> In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.
>
> … Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[107]

Improper influence of a witness to an audit or investigation

In relation to the penalty imposed in proposed s 39(1A), the explanatory notes state the maximum penalty is justified:

> … to ensure public confidence in the proceedings and to uphold the integrity of the audits and investigations. It reflects the seriousness of obstructing the Commissioner in conducting audits and investigations and gathering all the available evidence. The persons required to participate in the Commissioner's audits and investigations must be allowed to do so without any improper influence from anyone else.[108]

Offences related to attendance at Panel hearings

In relation to the penalties for the witness offences in s 252AL, the explanatory notes state the penalties are considered necessary:

> … to ensure public confidence in the proceedings and to uphold the integrity of the Panel's decision-making. The maximum penalty will act as a deterrent. The maximum penalty is consistent with the maximum penalty for similar offences prescribed under the QCAT Act and for offences under section 39 of the RI Act to uphold the integrity of the audits and investigations conducted by the Commissioner.[109]

Contempt of Panel

In relation to the maximum penalty of 30 penalty units for contempt under s 252AN, the explanatory notes state 'the penalty is considered necessary to discourage behaviour that could obstruct the Panel.'[110]

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106 The relevant offences requiring disclosure are prescribed in proposed s 252BD(2)(f), being an offence under the RI Act or the *Racing Act 2002*, or an indictable offence under any Queensland Act or a law of another State.

107 Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

108 Explanatory notes, pp 9-10.

109 Explanatory notes, p 10. See Queensland Civil and Administrative Tribunal Act 2009, s 214, and s 39 of the RI Act.

110 Explanatory notes, p 10.

Failure to disclose criminal history information

In relation to the penalty imposed in proposed s 252BO the explanatory notes state:

> The penalty is considered necessary to encourage disclosure of a change in criminal history information. The operation and standing of a Panel may be jeopardised because of a member's conviction, which may negatively affect public confidence in the integrity of the Queensland racing industry.[111]

Similar provisions requiring a person to disclose if they are convicted of an indictable offence are found in other Queensland legislation including the *Health and Wellbeing Queensland Act 2019,* the *Hospital Foundations Act 2018*, the *Jobs Queensland Act 2015*, and the *Cross River Rail Delivery Authority Act 2016*.[112] The penalty in proposed s 252BO is consistent with the maximum penalty of 100 penalty units in all of those provisions.

Committee comment

The committee considers that, in relation to the requirement to disclose criminal history information, there is a consistency across a range of Acts containing similar provisions with a penalty of a maximum 100 penalty units. The committee is satisfied that the penalties imposed are proportionate to penalties in other similar situations where a person fails to disclose information relevant to an appointment to a panel (or similar) position.

In relation to the other offences above, the committee is also satisfied that the creation of the offences is warranted and the penalties are proportionate.

3.1.1.4 *General rights and liberties – ordinary activities should not be unduly restricted*

Summary of provisions

Restrictions relating to bookmakers' agents

Clause 11 amends s 142 of the RI Act to restrict the time a racing bookmaker's clerk can act as the agent for a racing bookmaker, who is temporarily incapacitated for reasons of illness or accident, to a maximum of 12 weeks in any year.

Issue of fundamental legislative principle

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. The imposition of the time could be seen as limiting a person's right to carry out business as a bookmaker.

The explanatory notes state:

> This period aligns with the time limit placed on the other prescribed grounds upon which QRIC may authorise a person to act as an agent.
>
> Approving a racing bookmaker's clerk to act as agent for the reasons of illness or accident has been problematic because, unlike the other grounds in s 142 of the RI Act, there hasn't been a maximum time limit. This means that a person could potentially act as agent for extended periods of time by providing QRIC with successive medical certificates. This jeopardises the integrity of the process of licensing bookmakers and effectively allows persons, who may not be approved for a bookmaker's licence, to operate as a bookmaker.
>
> A maximum time limit of 12 weeks is consistent with the approach taken by the Fair Work Commission in relation to temporary absences for illness or injury.[113]

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111 Explanatory notes, p 10.

112 Similar provisions, with the same penalty, can also be found in the *University of Queensland Act 1998*, the *Queensland Civil and Administrative Tribunal Act 2009*, and the *Personalised Transport Ombudsman Act 2019*.

113 Explanatory notes, p 14.

Committee comment

The committee is satisfied that any restriction on a person's ability to carry out a business as a consequence of cl 11 of the Bill is relatively minor and, noting the purpose of the time limit, the breach of fundamental legislative principle is reasonable and justified.

3.1.2 Rights and liberties of individuals – natural justice

Section 4(3)(b) of the LSA requires that legislation is consistent with the principles of natural justice.

3.1.2.1 *Is the Bill consistent with the principles of natural justice?*

Summary of provisions

A number of provisions contained in cl 24 of the Bill could be seen as raising issues of natural justice and of general rights and liberties regarding legal proceedings, including the right to a fair and public process. Four aspects of the Bill are considered below.

Right to be heard

Proposed s 252AF(1) enables the Panel to consider review applications in any way it considers appropriate, including on the basis of documents, without holding a hearing.

Proposed s 252AJ(2) enables the Panel to consider review applications in a private hearing, where the Panel considers (under proposed s 252AJ(3)), that information proposed to be disclosed at the hearing should not be made publicly available, based on a non-disclosure ground.

Non-publication orders

Proposed s 252AF(4) allows the Panel to decide that any information considered by it should not be publicly available, on a 'non-disclosure ground'. This covers information the disclosure of which would:

- endanger or be reasonably likely to endanger the physical or mental health or safety of a person
- release sensitive information within the meaning of the *Information Privacy Act 2009*, schedule 5
- release information that would be likely to damage the commercial activities of a person to whom the information relates, or
- not otherwise be in the interests of justice.[114]

Limited right of appeal

Proposed s 252AU limits the matters on which a party can appeal a decision of the Panel on a review application to the QCAT appeal tribunal. Appeals are limited to Panel decisions which include disqualification action[115] and only on a question of law relating to the disqualification action.

Limit on right to seek a stay

Proposed s 252AV provides that, where a person is appealing a Panel decision, the person can ask the appeal tribunal to stay the operation of the decision. However, a person cannot seek a stay if the review Panel has stated that its decision includes a disqualification action against the person because

[114] See the definition of *non-disclosure ground* inserted (inserted by cl 28) in the dictionary at schedule 1 of the RI Act.

[115] See the definition of *disqualification action* (inserted by cls 24 and 28, the former of which inserts definitions in proposed s 252AA), which defines *disqualification action* against a person, as meaning action that is disciplinary action relating to the person's approval or licence or exclusion action against the person that prevents the person from betting, bookmaking, racing an animal or attending a race meeting for 3 months or longer.

of a serious risk caused to the welfare or health of an animal, the safety of any person, or the integrity of the Queensland racing industry.[116]

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice.

These principles have been developed by the common law and include the following:

- Nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker (a right to be heard).
- The decision maker must be unbiased.
- Procedural fairness should be afforded to the person, including fair procedures that are appropriate and adapted to the circumstances of the particular case.

Right to be heard

Proposed s 252AF(1) might be regarded as inconsistent with the principle that a person whose interests, rights or legitimate expectations may be affected by decision has a right to be heard before the decision is made.

The explanatory notes support this approach on the grounds of a need for flexibility and efficiency, and that procedural fairness will still be afforded, stating:

> … a decision to conduct a review on the basis of documents or in some other way would not excuse the Panel from its obligation under the rules of procedural fairness to ensure that adequate notice of an application and reasonable time for a party to make written submissions is given. It is essential for the Panel to be able to operate flexibly to ensure that matters are reviewed in a quick and cost-effective manner. If the Panel were required to conduct an oral hearing in every matter, including in circumstances where no further information is required other than what would be provided in the filed documents and submissions, it would delay decisions which would undermine a key objective of the reforms.[117]

Committee comment

The committee notes that the right to be heard provisions do not excuse the Panel from its obligation under the rules of procedural fairness to ensure that adequate notice of an application and reasonable time for a party to make written submissions is given. The committee is satisfied that the potential breach of fundamental legislative principles imposed by the proposed ss 252AF(1), 252AF(4) 252AJ(2), 252AJ(3), 252AU, and 252AV which are inserted by cl 24 of the Bill, are reasonable and justified.

Non-publication orders

The explanatory notes observe that the circumstances in which the Panel may exclude information from publication are restricted and state:

> Although it is generally desirable for hearings to be held in public and for all the information to be made available to the public, the potential breach of the principles of natural justice is justified because of the serious nature of the circumstances in which the Panel considers it necessary.[118]

Committee comment

Noting the restricted circumstances in which the Panel may exclude information from publication, and the general intent that hearings be held in public and for all the information to be made available to

[116] For example, a 'serious risk' may arise from the inappropriate use of equipment, or the use of prohibitive substances, or activities involving wagering (explanatory notes, p 16).

[117] Explanatory notes, p 15.

[118] Explanatory notes, p 16.

the public, the committee is satisfied the potential breach of fundamental legislative principles in relation to proposed s 252AF(1) in cl 24 of the Bill is justified.

Appeals

The explanatory notes suggest that proposed s 252AU is considered potentially inconsistent with principles of natural justice, and state the Bill's approach is justified because:

> … an objective of establishing an independent review panel is to finalise review applications in a shorter timeframe. Limiting appeals to the QCAT appeal tribunal is consistent with the approach taken in New South Wales and Victoria which allows matters to be finalised quickly. Any errors of law or procedural fairness will still be subject to judicial review under the *Judicial Review Act 1991*.[119]

Committee comment

Noting that any errors of law or procedural fairness will remain subject to judicial review, and that the Panel's decision will be appealable to the QCAT appeal tribunal in restricted circumstances, the committee is satisfied the potential breach of fundamental legislative principles in relation to proposed s 252AU is justified.

Stays

Proposed s 252AV is potentially inconsistent with the principle that nothing should be done to a person that will deprive them of a right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker.

This could particularly arise where there is an immediate suspension of a person's licence or other authority without receiving and considering submissions from the person, even if the suspension were subject to subsequent review and appeal processes.

The explanatory notes state that the exclusion of the right to apply for a stay order would only apply in relation to appeals to the appeal tribunal of QCAT after the matter had already been reviewed by the Panel, and then only where there was a serious risk caused to the welfare or health of an animal, or the safety of any person, or the integrity of the Queensland racing industry:

> It should also be noted that appeals to appeal tribunal of QCAT would only be permitted on the extent of the disqualification action. The decision of the Panel about whether the offence occurred, and whether there was a serious risk caused to the welfare or health of an animal, or the safety of any person, or the integrity of the Queensland racing industry, would not be subject to the appeal proceedings.
>
> Excluding stay orders for breaches involving such serious risks beyond the point of the Panel hearing is justified because of the concerns raised by industry stakeholders that 'stays' of decisions granted by QCAT may enable industry participants to continue operating, pending an appeal, even though it has been established that there was a serious breach of the rules of racing. There would also be the potential for very serious outcomes if the offending behaviour continues while the stay is in place.[120]

Committee comment

Noting that the exclusion from stay orders would only apply in relation to appeals to the QCAT appeal tribunal after the matter had already been reviewed by the Panel, and then only in limited circumstances, the committee is satisfied the potential breach of fundamental legislative principles in relation to proposed s 252AV is justified.

3.1.3 Rights and liberties of individuals – onus of proof

Section 4(3)(d) of the LSA requires that legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

[119] Explanatory notes, p 16.

[120] Explanatory notes, p 17.

3.1.3.1 *Does the Bill reverse the onus of proof in criminal proceedings without adequate justification?*

Summary of provisions

Two proposed offence provisions are relevant to this fundamental legislative principle.

First, proposed s 252AL (inserted by cl 24) requires a person who is given notice (under proposed s 252AK) to attend a hearing to give evidence or produce a stated document or other thing, to comply with the notice, *unless they have a reasonable excuse*. (Proposed s 252AL(3) provides that it is a reasonable excuse not to answer a question or produce a document or thing if doing so might tend to incriminate the person or expose them to a penalty.) As noted earlier, there is a maximum penalty of 100 penalty units for non-compliance.

Second, proposed s 252BO (also inserted by cl 24) requires a Panel member who is charged with, or convicted of, certain offences,[121] to immediately give notice to the Minister, *unless the person has a reasonable excuse*. Again as noted earlier, there is a maximum penalty of 100 penalty units for non-compliance.

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not reverse the onus of proof in criminal proceedings without adequate justification.[122]

Legislation should not reverse the onus of proof in criminal matters, and it should not provide that it is the responsibility of an alleged offender in court proceedings to prove innocence:

> For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.[123]

Generally, in criminal proceedings:

- the legal onus of proof lies with the prosecution to prove the elements of the relevant offence beyond reasonable doubt, and
- the accused person must satisfy the evidential onus of proof for any defence or excuse he or she raises and, if the accused person does satisfy the evidential onus, the prosecution then bears the onus of negativing the excuse or defence beyond reasonable doubt.[124]

Such 'reasonable excuse' provisions, and their effect on the onus of proof, are discussed in some detail in the Office of the Queensland Parliamentary Counsel (OQPC), *Principles of good legislation: Reversal of onus of proof*. That discussion starts with the following:

> If legislation prohibits a person from doing something 'without reasonable excuse' it would seem in many cases appropriate for the accused person to provide the necessary evidence of the reasonable excuse. While there is no Queensland case law directly on point, the Northern Territory Supreme Court has held that the onus of proving the existence of a reasonable excuse rested with the defendant on the basis that the reasonable excuse was a statutory exception that existed as a separate matter to the general prohibition … That approach is consistent with the principles used to determine whether a provision contains an exception to the offence or whether negativing the existence of the reasonable excuse is a matter to be proved by the prosecution once the excuse has been properly raised …

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121 Being an offence under the RI Act or the *Racing Act 2002*, an indictable offence under any Queensland Act or under a law of another state (see proposed s 252BD(2)(f)).

122 LSA, s 4(3)(d).

123 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 36.

124 See OQPC, *Principles of good legislation: Reversal of onus of* proof, p 3, at oqpc.qld.gov.au/file/Leg_Info_publications_FLP_Reversal_of_Onus1.pdf.

> … [It] is understood that in Queensland, 'reasonable excuse provisions' are drafted on the assumption that the Justices Act 1886, section 76 will apply and place both the evidential and legal onus on the defendant to raise and prove the existence of a reasonable excuse. On the other hand, … departments have often taken the view in their Explanatory Notes that a provision containing an exemption where a reasonable excuse exists is an excuse for which only the evidential onus lies with the accused.[125]

The OQPC discussion concludes:

> It seems likely that in most cases a reasonable excuse will constitute a statutory exception to be proved by the defendant. However, in the absence of an express statement as to the allocation of the onus, the question will ultimately need to be determined by a court having regard to the established rules of statutory interpretation.[126]

Elsewhere, the OQPC has noted:

> Generally, for a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt.
>
> For example, if legislation prohibits a person from doing something 'without reasonable excuse', it is generally appropriate for a defendant to provide the necessary evidence of the reasonable excuse if evidence of the reasonable excuse does not appear in the case for the prosecution.[127]

The explanatory notes state the reversal of the onus of proof regarding these matters is justified:

> … because the offences involve matters which would be within the defendant's knowledge and/or on which evidence would be available to them. These provisions support the Panel to collect all relevant information to their decision-making whilst protecting persons involved in the review from self-incrimination.[128]

Whilst the second sentence can only relate to the provision relating to an offence by a witness (proposed s 252AL), it can be accepted that, in relation to both offences, the matters or evidence constituting the reasonable excuse would involve matters within the defendant's own knowledge.

Committee comment

The committee is satisfied that any breach of fundamental legislative principle in the offence provisions at proposed ss 252AL and 252BO contained in cl 24 of the Bill is sufficiently justified.

3.1.4 Rights and liberties of individuals – immunity from proceedings

Section 4(3)(h) of the LSA requires that legislation does not confer immunity from proceeding or prosecution without adequate justification.

3.1.4.1 *Does the Bill confer immunity from proceeding or prosecution without adequate justification?*

Summary of provisions

Clause 26 amends s 259 of the RI Act to extend the current immunity in that section to members of the Panel, and the registrar. The immunity provides protection from civil liability for those persons for an act or omission made honestly and without negligence in the performance of their functions. Any

[125] See OQPC, *Principles of good legislation: Reversal of onus of proof*, p 25.

[126] OQPC, *Principles of good legislation: Reversal of onus of proof*, p 26. There follows some examples where departments have disagreed with the view (expressed by the former Scrutiny of Legislation Committee) that reasonable excuse provisions involve a reversal of the onus of proof.

[127] See OQPC, *Fundamental Legislative Principles: the OQPC Notebook*, p 36.

[128] Explanatory notes, pp 17-18.

liability instead shifts to the State.[129] The State can recover from those persons if the conduct was engaged other than in good faith and with gross negligence.[130]

Issue of fundamental legislative principle

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not confer immunity from proceeding or prosecution without adequate justification.[131]

> A person who commits a wrong when acting without authority should not be granted immunity. Generally a provision attempting to protect an entity from liability should not extend to liability for dishonesty or negligence. The entity should remain liable for damage caused by the dishonesty or negligence of itself, its officers and employees. The preferred provision provides immunity for action done honestly and without negligence … and if liability is removed it is usually shifted to the State.[132]

One of the fundamental principles of law is that everyone is equal before the law, and each person should therefore be fully liable for their acts or omissions. Notwithstanding that, the conferral of immunity is appropriate in certain situations.[133]

The explanatory notes justify the grant of immunity:

> It is appropriate that Panel members should be free from personal attack when performing the Panel's functions. The immunity will ensure that these persons can act with appropriate confidence in carrying out their roles in the community interest. Such roles would be difficult to carry out if the office holders, or others involved in the proceeding, were subject to litigation taken against them personally for their actions in the office or proceeding.[134]

Immunity clauses such as the above are quite common in legislation. They generally serve to allow public servants, officials, statutory officers and the like, to make decisions and exercise powers and functions without being unduly concerned that they may be held personally liable for acts done or omissions made in the course of carrying out their duties, providing that those actions or omissions are made honestly and without negligence or malice.

Where such clauses shift liability to the State for actions or omissions of officials, aggrieved persons are able to make a claim for loss or damage suffered as a result of actions taken by officials.

Committee comment

Noting the requirements for officials to be acting honestly and without negligence, and particularly noting any liability is shifted to the State, the committee is satisfied the breach of fundamental legislative principle in relation to proposed amendments to s 259 of the RI Act at cl 26 is justified.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's objectives.

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129 RI Act, s 259(3).

130 RI Act, s 259(4).

131 LSA, s 4(3)(h).

132 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64.

133 OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 64; Scrutiny of Legislation Committee, Alert Digest 1 of 1998, p 5, para 1.25.

134 Explanatory notes, p 18.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[135]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or

(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in Human rights compatibility.[136]

4.1 Human rights compatibility

The committee has examined the Bill for human rights compatibility.

The committee is satisfied that the Bill's provisions are consistent with the HRA.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The statement provides a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

[135] HRA, s 39.

[136] HRA, s 8. The HRA protects fundamental human rights drawn from international human rights law.129 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.

Appendix A – Submitters

Sub #	Submitter
1	Australian Jockeys Association
2	Mr Daniel Bowden
3	Racing Queensland
4	Queensland Jockeys Association
5	Coalition for the Protection of Greyhounds
6	Queensland Law Society

Appendix B – Witnesses at public hearing and public briefings

7 March 2022 – Public briefing

Department of Agriculture and Fisheries

- Mr Graeme Bolton, Deputy Director-General, Fisheries and Forestry
- Ms Marguerite Clarke, Director, Legislation and Regulation

21 March 2022 – Public hearing

Australian Jockeys Association

- Mr Kevin Ring, Director and National WHS Officer

Queensland Law Society

- Ms Kate Brodnik, Senior Policy Solicitor
- Mr Andrew Forbes, Deputy Chair of the QLS Occupational Discipline Law Committee

Coalition for the Protection of Greyhounds

- Ms Fiona Chisholm, Director

Queensland Jockeys Association

- Mr Glen Prentice, President
- Mr Larry Cassidy, Vice President

Racing Queensland

- Mr Dan Gosewisch, EGM Legal and Policy/Board Secretary

21 March 2022 – Public briefing

Department of Agriculture and Fisheries

- Mr Graeme Bolton, Deputy Director-General, Fisheries and Forestry
- Ms Marguerite Clarke, Director, Legislation and Regulation