

Racing Integrity Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Grace MP, Minister for Education, Minister for Industrial Relations and Minister for Racing, make this statement of compatibility with respect to the Racing Integrity Amendment Bill 2022 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (the HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Reform of review processes

The Bill primarily amends the *Racing Integrity Act 2016* (the RI Act) to reform the review processes for decisions made by stewards under the rules of racing. It establishes the Racing Appeals Panel (the Panel), as a statutory authority independent of the Queensland Racing Integrity Commission (QRIC). Review by the Panel will replace the current internal and external review processes. Establishing the Panel will ensure reviews are finalised within a reasonable timeframe.

Matters are generally to be finalised by the Panel and appeals to the Queensland Civil and Administrative Tribunal Appeals Tribunal (QCATA) will only be permitted on a question of law relating to the extent of the penalty for penalties that are ‘disqualification actions’ of three months or more. Stays will not be permitted where the disqualification action has been taken because of a serious risk to animal welfare, human safety or the integrity of racing.

The Bill includes provisions supporting the establishment and administration of the Panel. These provisions set out eligibility requirements for Panel members, Panel structure and functions, appointment terms, Panel membership conditions, ending membership and performance reporting. The Bill also establishes the positions of a registrar and other staff to support the work of the Panel.

Also prescribed are the requirements and procedures for the Panel’s review process. These provisions include how an application is to be made, the constitution of the Panel for a particular matter, conflicts of interest, deciding applications, hearings and Panel procedures, witness offences, contempt of Panel, costs, withdrawal and appeals. Transitional provisions have also been included.

Publication of reports

Amendments in the Bill formalise QRIC’s long-standing practice of publishing stewards’ reports and certain other reports online by inserting express powers authorising publication of the reports.

Technical or minor amendments

The Bill also makes several other technical or minor amendments to the RI Act. These include:

- removing the provisions relating to the collection of fingerprints as part of the licencing process for racing bookmakers;
- limiting the time for which a racing bookmaker’s clerk can act as an agent for a racing bookmaker to 12 weeks in any year;
- clarifying that a telecommunications system which is used for making bets must be approved by QRIC, and removing the requirement for the Minister to approve an independent entity used by QRIC to assess a bookmaker’s telecommunications system;
- allowing for variation of off-course approvals;
- clarifying that the power to determine an application relating to off-course approvals may be delegated by the Minister to the Racing Integrity Commissioner (the Commissioner);
- preventing a person from influencing another person, including a witness or expert, who is participating in an audit or investigation; and
- amending several existing sections of the RI Act that have been identified as being incompatible with the HR Act.

Human Rights Issues

Reform of review process

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The reforms of review processes engage the following human rights:

- right to freedom of movement (HR Act, section 19);
- right to freedom of expression (HR Act, section 21);
- right to take part in public life (HR Act, section 23);
- property rights (HR Act, section 24);
- right to privacy and reputation (HR Act, section 25); and
- right to a fair hearing (HR Act, section 31).

Freedom of movement

Clause 24 inserts new section 252AK (Requiring witness to attend or produce document or thing), which provides that the Panel may require a witness to attend a hearing to give evidence. The Panel must reasonably believe the reasonably believe the person has information, or the document or thing contains information, required for consideration of the Panel review application (see clause 252AK(2)). The Panel must give a witness notice as soon as practicable, and at least a reasonable period before the hearing, and witnesses who have a reasonable excuse for not attending will not commit an offence (see new section 252AK (1)). Under section 19 of the HR Act, “every person lawfully within Queensland has the right to move freely within [the State]”. Compelling witnesses to appear before the Panel limits their freedom of movement.

Freedom of expression

Clause 24 inserts new section 252AP (Evidence before Panel), which provides that the Panel may require a person to give evidence on oath or by a written statement. However, a failure by a witness to answer a question from the Panel will not be an offence if the witness has a reasonable excuse for the failure (see new section 252AL(2)). Under new section 252AN (Contempt of Panel at hearing), a person must not insult a Panel, interrupt proceedings or cause a disturbance that affects a hearing of the Panel. Section 21 of the HR Act provides that “every person has the right to hold an opinion without interference” as well as the freedom to “impart information and ideas of all kinds”. Requiring witnesses to provide statements to the Panel and curtailing people’s rights to criticise or disrupt the Panel limits the affected people’s freedom of expression.

Taking part in public life

New section 252BD (Eligibility for appointment) provides that a person will not be eligible for appointment to the Panel if they have conviction (other than a spent conviction) of an offence against the *Racing Act 2002*, the RI Act or an indictable offence against any Act or a law of another State (see section 252BD(2)(f)). A person already appointed will no longer be eligible for Panel membership if they are convicted of any of the offences listed in section 252BD(2)(f); in this circumstance, the Minister may recommend that person’s removal from the Panel (see section 252BI(2)(a)). Section 23(2)(b) of the HR Act provides that “every person in Queensland has the right, and is to have the opportunity, without discrimination to... have access, on general terms of equality, to the public service and to public office”. Restricting people’s eligibility for the Panel, or removing them from the Panel, on the basis of their criminal history inhibits their freedom to participate in public life.

Property rights

New section 252AK (Requiring witness to attend or produce document or thing) provides that the Panel may require a person to produce a document or other thing to the Panel for a hearing (see section 252AK(1)(b)). To affect this compulsion, the Panel must give the person notice as soon as practicable, and at least a reasonable period before the hearing. A person who has a reasonable excuse for not producing a document or thing will not commit an offence (see new section 252AL(3)). Section 24(2) of the HR Act provides that a person must not be arbitrarily deprived of their property. The Panel’s power to compel production of a document or thing is limited to situations in which the Panel reasonably believes the document or thing contains information that is relevant to the Panel’s deliberations (see section 252AK(3)).

Privacy and reputation

Clause 24 inserts new sections 252BN (Criminal history report) and 252BO (Changes in criminal history must be disclosed). New section 252BN applies to a person who is eligible for appointment as a Panel member, or who is to be considered for removal from office. Under the section, the Minister may request a criminal history report about a person from the police commissioner. New section 252BN(6) stipulates that a person is to be given the opportunity to make representations to the Minister about the information contained in the report before any decision is made based upon that information. Under new section 252BO, a Panel member who is charged and convicted of an offence must (unless the member has a reasonable excuse) immediately give notice of this to the Minister.

Clause 24 also inserts new section 252AE (Disclosure of conflicting interests) which requires Panel members to declare a conflicting interest to the Chairperson where a member of the Panel for a Panel review application has or acquires a conflicting interest in relation to the application.

Requiring people to disclose their criminal history or conflicting interest infringes their right to privacy.

New section 252AP (Evidence before Panel) provides that the Panel may require a person to give evidence on oath or by a written statement. As mentioned above, New section 252AK provides that the Panel may require a person to produce a document or other thing to the Panel for a hearing (see section 252AK(1)(b)). It is foreseeable that these requirements could compel a person to provide personal information, or to provide a document or thing that contains private information, in a public hearing.

Clause 24 also inserts new section 252AU (Appealing disqualification action to appeal tribunal), which provides that a person who is a party to the application may appeal to QCATA about a Panel decision only on a question of law relating to the extent of a disqualification action (a decision that prevents the person from betting, bookmaking, racing an animal or attending a race meeting for a period of 3 months or longer). QCATA cannot grant a stay of a disqualification action pending appeal where the relevant breach involved a serious risk to animal welfare, human safety or the integrity of the Queensland racing industry (e.g., inappropriate use of equipment, use of prohibited substances or activities involving wagering) (see new section 252AV(2)). These provisions allow a disqualification action to be imposed upon a person whilst waiting for the outcome of an appeal of a Panel decision to QCATA, which may negatively affect that person's reputation. However, the potential impact on a person's reputation is very limited because QCATA can only consider the extent of the penalty; it cannot re-examine whether the person has committed an offence under the rules of racing.

Further, new section 252BM (Register of decisions) provides that the registrar must keep a register (which is to be available to the public on the Panel's website) that briefly describes the particulars of each Panel review application. As with the requirement to publish inquiry reports, this duty to publish is also restricted by the non-disclosure grounds detailed above. Publishing details of private information disclosed in a hearing will restrict an affected person's right to privacy. It would also limit a person's right to reputation because a witness could make intentional and untrue allegations in a hearing that became public (although it would be an offence under the Criminal Code, section 123, to provide false or misleading information).

New section 252AS (Record of review) requires the registrar to keep a record of each document filed in the registry for a Panel review application or any evidence given in a Panel hearing. Any person may inspect or copy a record. Allowing access to details of private information related to a Panel review application will restrict an affected person's right to privacy (see new section 252AF). It would also limit a person's right to reputation because a witness could make intentional and untrue allegations in a hearing that became public (although it would be an offence under the Criminal Code, section 123, to provide false or misleading information). However, as with the publication of the register of decisions, the information that can be accessed would exclude information prohibited by a Panel decision on non-disclosure grounds.

Fair hearing

Section 31(1) of the HR Act provides that a person charged with an offence has the right to have the charge "decided by a competent, independent and impartial court or tribunal after a

fair and public hearing”. The section further provides that “all judgements or decisions made by a court or tribunal in a proceeding must be publicly available” (see section 31(3)).

There are many features of the Bill designed to promote the right to a fair hearing, such as the independence of the Panel, requirements for the Chairperson and members including to declare conflicts of interest, and procedural requirements designed to ensure a fair and public hearing. Among the procedural requirements, for example, are the requirements under new section 252AK (Requiring witness to attend or produce document or thing) that help to ensure the Panel is equipped with all the necessary information to make a fair and independent decision. New section 252BM (Register of decisions), which requires the registrar to publish a copy of a register (describing each Panel review application and the Panel’s decisions) on the Panel’s website, helps to ensure the transparency of the operation of the Panel. Further, new section 252BA (Independence of Panel and members) provides that the Panel must act “independently, impartially and fairly” and free from direction or control from any external entities.

Nevertheless, there are some aspects of the Bill that limit the right to a fair hearing. Clause 24 of the Bill inserts new sections 252BO (Changes in criminal history must be disclosed) and 252AL (Offences for witnesses). which establish offences for failure to report criminal charges or convictions, failure to attend a hearing, and failure to take an oath, answer a question or to produce a document or thing at a hearing. A person will not commit an offence where they are able to show that there was a reasonable excuse for the relevant failure (with the exception of failure to take an oath, for which there is no defence). The offence provisions place the onus of proof on the defendant to establish they had a reasonable excuse which limits their right to a fair hearing.

Clause 24 inserts new section 252AU (Appealing disqualification action to appeal tribunal) which is discussed in ‘Privacy and reputation’, above. The provision engages a person’s right to a fair hearing because it limits their options to appeal Panel decisions.

Clause 24 also inserts new section 252AB which limits the right to fair hearing by reducing the timeframe for lodgement of an initial application for review of a stewards’ decision to three business days for an application to the Panel compared to 14 calendar days for an application for internal review under the current arrangements.

Clause 24 also inserts new section 252AF (Way application decided), which provides that the Panel may consider review applications on the basis of documents only (without a hearing) or in another way the Panel considers appropriate. This limits the right to a fair hearing, as it is foreseeable that a person could be denied the option of a an in-person, public hearing.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Freedom of movement

(a) the nature of the right

The HR Act protects the right of every person within Queensland to move freely within the State. The right to move freely means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place and includes procedural as well as physical restraints. This right is based on Article 12 of the International Covenant on Civil and Political Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Witnesses must attend Panel hearings to ensure the Panel is able to collect the necessary information to allow it to make an informed decision. This, in turn, ensures the Panel's decisions are based upon the best-available evidence and, as such, will safeguard people's access to a fair hearing. This purpose promotes a human right which is consistent with a free and democratic society based on dignity, equality and freedom. The notice requirements—(giving a witness notice as soon as practicable, and at least a reasonable period before the hearing) and allowing for non-attendance by witnesses who have a reasonable excuse—help to mitigate the restriction on a person's freedom of movement.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to freedom of movement by requiring them to attend a Panel hearing will directly contribute to the objective of ensuring that the Panel can collect all the relevant information available to inform its decision-making by ensuring that witnesses are available to provide relevant evidence in a hearing.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The Panel has the discretion to decide a matter on the basis of documents without a hearing, or to decide a matter in any other way it considers appropriate. These options are less restrictive of the right of freedom of movement than the requirement for a witness to attend a hearing. However, these less-restrictive options may not always provide the most effective means of obtaining the relevant information. For example, witnesses giving oral testimony may be cross-examined, while a document may not be challenged or asked to provide further details.

The restriction on freedom of movement is further mitigated by the availability of testifying by way of remote conferencing where this is considered appropriate by the Panel (see new sections 252AF (Way application decided) and 252AJ (Public hearing)). These provisions allow the Panel to hear an application by remote conferencing, with the discretion left to the Panel as to whether this is appropriate in any given circumstance. In some cases, the nature of the available videoconferencing facilities may be such that it would be ineffective or inefficient to conduct the hearing via video link. In those cases, it will be necessary for the Panel to require a person to attend a hearing in person (thereby restricting their freedom of movement). Giving the Panel discretion to allow hearings by remote conferencing gives the body sufficient flexibility to ensure hearings are conducted in the most appropriate way for each case but also ensures that the Panel can adjust its operations to have the least impact on freedom of movement as the situation allows.

Consequently, there are no alternative means of obtaining witness information that are as effective as requiring witness attendance for ensuring the Panel has the necessary information to allow it to make an informed decision.

- (e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill limits the right to freedom of movement to the narrow extent that the Panel may require a witness to attend a hearing in order to provide information. This limitation must be balanced against the need to ensure the Panel is empowered to collect all the relevant information available to inform its decision-making which promotes the right to a fair hearing. The quality of the information upon which the Panel bases its decisions helps to maintain public confidence in the Panel's work, which in turn helps ensure the integrity of the Queensland racing industry and safeguard racing animals' welfare and hence maintains public confidence in racing of animals in Queensland. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

Freedom of expression

- (a) the nature of the right

The HR Act protects the right to freedom of expression, including the right to hold and express an opinion. Freedom of expression has intrinsic value to individual self-fulfilment. It also has instrumental importance for society as a whole. There cannot be democracy or the rule of law without freedom of expression.

This right is based on Article 19 of the International Covenant on Civil and Political Rights.

- (b) the nature of the of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Compelling a person to give evidence by oath or by a written statement allows the Panel to collect the necessary information to allow it to make an informed decision. This, in turn, ensures the Panel's decisions are based upon the best-available evidence and, as such, will safeguard people's access to a fair hearing – in other words, the right to a fair hearing which is a human right. Thus, collecting the necessary information to allow it to make an informed decision is a purpose consistent with a free and democratic society based on dignity, equality and freedom.

Preventing a person from insulting a Panel member, interrupting proceedings or causing a disturbance that affects a Panel hearing allows the business of the Panel to run efficiently and safely. This restriction will help to bolster public esteem for the Panel and will allow for swifter and more cost-effective access to justice by reducing the length (and, subsequently, the cost) of proceedings. Regulating disruptive communications to maintain public confidence in the Panel's authority and ensure swifter and more cost-effective access to justice is consistent with a free and democratic society based on dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Restricting a person's freedom of expression, by compelling them to give evidence on oath or by a written statement, is necessary to ensure the Panel has the power to obtain the best possible information to inform its decisions.

Restricting a person's freedom of expression by establishing an offence that penalises abusive and disruptive conduct enhances the gravity of the Panel's proceedings and prevents costly and unprofessional delays which in turn maintains public confidence in the Panel's authority and ensures swifter and more cost-effective access to justice.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purposes of these amendments cannot be achieved through any reasonably available and less restrictive means.

If witnesses could not be compelled to provide evidence, the Panel would be forced to make decisions based upon incomplete facts. This would not support the purpose of ensuring the Panel's decisions are based upon the best-available evidence, thus ensuring people have access to a fair hearing.

If the Panel did not have the power to restrict deliberate disruptions of its proceedings, the potential for costly delays and disruptions that diminished the dignity of the proceedings would be greatly increased. This would not support the purpose of maintaining public confidence in the Panel's authority and ensuring swifter and more cost-effective access to justice.

(e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Furnishing the Panel with the power to compel witnesses to provide certain information allows it to collect the best available information to guide its decision-making, which ensures people are able to access a fair hearing (see HR Act, section 31). The powers contemplated in the Bill are limited to the narrow range of communications that are relevant to the Panel's decisions on racing matters and they are designed to benefit the community by providing the Panel with the ability to make well-informed, reliable and just decisions. The benefits of compelling a person to provide information in these limited situations—thus supporting the right to a fair hearing in matters that may have serious consequences for those affected by a decision, as well as for animal welfare, human safety and the integrity of racing—outweigh the importance of maintaining the person's freedom of expression.

The proposed restrictions on a person's freedom of expression are limited to preventing the person from insulting a Panel member, interrupting proceedings or causing a disturbance that prevents a hearing from running efficiently and safely. Regulating disruptive communications to maintain public confidence in the Panel's authority and provide for swifter and more cost-effective access to justice will benefit the community, particularly people who are directly affected by Panel decisions, and will also support the human right to a fair trial. While freedom of expression is critically important, the importance of the minor extent to which it is limited - to restrict abusive and antisocial behaviour towards the Panel - is outweighed by the significant advantages of the restrictions.

Taking part in public life

(a) the nature of the right

Section 23 of the HR Act protects the right to participate in the conduct of public affairs and to have access, on general terms of equality, to the public service and public office. The HR Act limits the right to have access to the public service to ‘eligible people’. This reflects the limitations attached to the right to hold office, such as residence, age and imprisonment.

Like all rights in the HR Act, the right to participate in public life can be limited where it is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

This right is based on Article 25 of the International Covenant on Civil and Political Rights.

(b) the nature of the of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The effect of the criminal history provisions is to restrict Panel membership. A person with a criminal history for offences against racing legislation, or who has been convicted of serious (indictable) offences against other laws, will not be eligible for membership on the Panel. Restricting Panel membership to exclude people with a history of disregard for racing laws, or who have committed serious offences, ensures that the Panel will have a reputable image and that its members may be presumed to act within, and with a respect for, the legal framework of the industry. Allowing a convicted criminal, especially one with a history of disregard for racing laws, to sit on the Panel would weaken public confidence in its decisions. Providing for the moral character of members of a judicial body, not only to uphold the body’s public credibility but also to ensure those tasked with decision-making respect the law, is consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person’s right to engage in public life by excluding them from Panel membership if they have a relevant criminal history directly contributes to the objective of maintaining the Panel’s public reputation and ensuring that Panel members respect the legal framework within which they make their decisions.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purposes of these amendments cannot be achieved through any reasonably available and less restrictive means.

If a person was able to sit on the Panel, despite a proven disregard for the law, this would diminish the authority of the Panel in the public eye and call the Panel’s decisions into question. Allowing a person with a relevant criminal history to sit on the Panel would not support the purpose of maintaining the Panel’s public reputation and ensuring that Panel members can be presumed to respect the legal framework within which they make their decisions.

- (e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

For the Panel to operate effectively its decisions need to be respected and above reproach. Appeals on Panel decisions to QCATA are restricted to questions of law relating to the extent of a disqualification action (see new section 252AT(2)); as such, a person will not be able to appeal a decision that appears untrustworthy due to a Panel member's dubious moral character. It is therefore vital that the Panel is composed of fair-minded, law-abiding people. The infringement of this right is restricted to those who have recently demonstrated a disregard for the law (spent convictions will not make a person ineligible for appointment). Such people have arguably demonstrated that they are not currently suitable for membership of a body tasked with upholding the legal framework surrounding racing decisions. The benefits of protecting the Panel's reputation and decisions from the taint of illegal activity outweigh the importance of the interests of convicted people who may wish to apply for membership.

Property rights

- (a) the nature of the right

Section 24 of the HR Act protects people from having their property unlawfully removed. This right protects the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

- (b) nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of requiring a person to provide the Panel with a document or thing is to ensure the Panel is equipped with the evidence it requires to come to a fair decision. Ensuring that the Panel's decision-making is fully informed and based upon all available evidence will promote the right to a fair hearing, which is a human right and hence consistent with a free and democratic society based on dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

To ensure the Panel is given all relevant information to allow it to reach a fair decision, it is vital that all relevant materials should be at the Panel's disposal. On one view, the requirement for people to provide evidence (which is their property) to the Panel is not an arbitrary acquisition of that property as the acquisition is justified and procedurally fair. For this analysis, however, it is assumed that the requirement to provide materials to the Panel is an arbitrary deprivation of property, and this limitation is necessary to achieve the purpose of ensuring the Panel's decision making is fully informed so that applicants will be able to receive a fair hearing from the Panel.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purposes of these amendments cannot be achieved through any reasonably available and less restrictive means.

If the Panel does not have access to all the relevant evidence, it will be unable to reach fully informed decisions. This, in turn, would deprive applicants of their right to a fair hearing.

- (e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The limitation on a person's property rights is limited to the narrow scope of materials that are relevant to the Panel's deliberations. This narrow (and often temporary restriction) must be balanced against the benefit to be gained from ensuring the Panel's decision is informed by the best available evidence. The quality of the information upon which the Panel bases its decisions helps to ensure an applicant receives a fair hearing which also promotes the quality of those decisions and helps maintain public confidence in the Panel's deliberative process. As such, the limitation on property rights is adequately justified in this circumstance.

Privacy and reputation

- (a) the nature of the right

The HR Act protects the right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

These rights are based on Article 17 of the International Covenant on Civil and Political Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of requiring disclosure of criminal history is to check eligibility for Panel membership. A person with a criminal history of offences against racing legislation, or who has been convicted of serious (indictable) offences against other laws, will not be eligible for membership of the Panel. Restricting Panel membership to exclude people with a history of disregard for racing laws, or who have committed serious offences, ensures that the Panel will have a reputable image and that its members may be presumed to act within, and with a respect for, the legal framework of the industry. Allowing a convicted criminal, especially one with a history of disregard for racing laws, to sit on the Panel would weaken public confidence in its

decisions. Providing for the moral character of members of a judicial body, not only to uphold the body's public credibility but also to ensure those tasked with decision-making respect the law, is consistent with a free and democratic society based on dignity, equality and freedom.

Similarly, the purpose of requiring Panel members to declare conflicting interests in relation to a review application is to ensure that the Chairperson is able to select members to comprise a Panel that will be suitably impartial to the matter at hand. This promotes the right to a fair hearing which is a human right and hence is consistent with a free and democratic society based on dignity, equality and freedom.

Compelling a person to give evidence by oath or by a written statement allows the Panel to collect the necessary information to allow it to make an informed decision. The requirements for people to give certain evidence to the Panel also facilitates the Panel to collect the necessary information to allow it to make an informed decision based on the best-available evidence. This promotes the right to a fair hearing which is a human right and hence is consistent with a free and democratic society based on dignity, equality and freedom.

New section 252AU(2) provides that a person may not apply for a stay of a decision (pending appeal) if the decision includes disqualification action against the person because of a serious risk caused to the welfare or health of an animal, the safety of any person or the integrity of Queensland's racing industry (serious risk behaviour). The purpose of this restriction is to ensure that animals, people and the industry are adequately protected from harmful actions by such persons.

The requirement for the registrar to keep records and allow any person to inspect and copy registry records of a Panel review application or any evidence given in a Panel hearing and publish Panel decisions online in the form of a register, ensures transparency of the Panel's decision-making. This promotes the right to a fair hearing and will maintain community confidence in the Panel's decisions, thereby potentially increasing compliance with the RI Act. Safeguarding an applicant's access to a fair, impartial and independent hearing, and fostering public confidence in decision-making bodies is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to privacy and reputation by requiring them to disclose their criminal history, in the first instance for applicants and in an ongoing manner for Panel members, is necessary to ensure they can be excluded from Panel membership if they have a relevant criminal history which directly contributes to the objective of maintaining the Panel's public reputation and ensuring that Panel members respect the legal framework within which they make their decisions.

Requiring Panel members to declare a conflicting interest in a particular review application directly contributes to the objective of ensuring that the Chairperson is able to select members to comprise a Panel that will be suitably impartial to the matter at hand.

Limiting a person's right to privacy and reputation by holding public hearings and compelling them to give evidence by oath or by a written statement, or by requiring them to give certain evidence to the Panel, protects the right to a fair hearing by ensuring that all relevant information is available to the Panel to allow it to make an informed and impartial decision.

Limiting a person's right to reputation by excluding stay orders for cases involving serious risk behaviour ensures industry participants cannot continue operating even though it has been established that there was a serious breach of the rules of racing involving a risk to animal welfare, human safety or the integrity of racing. There would be the potential for very serious impacts on animal welfare, human safety or the integrity incidents if the offending behaviour was allowed to continue while a stay was in place.

Requiring the registrar to keep records of, and allow a person to inspect or copy records of, documents filed or evidence given for a Panel review application, and publish Panel decisions online in the form of a register, ensures transparency in the Panel's decision-making. This will not only safeguard the right to a fair hearing but will maintain community confidence in the Panel's decisions.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purposes of these amendments cannot be achieved through any reasonably available and less restrictive means.

If applicants could not be compelled to disclose their criminal history, the Governor in Council would be forced to make appointments based upon incomplete information about the moral standing of an applicant. Similarly, if Panel members were not required to make ongoing disclosures about their criminal history, they could potentially continue to serve as a member without the appropriate moral standing to do so.

In addition, the drafting of new section 252BN (Criminal history report) contains several provisions that lessen the impact on a person's right to privacy and reputation. Subsection (3) provides that the Minister can only request a criminal history report about an applicant or a member who is recommended for removal from office if that person has given written consent for this to occur. Subsection (6) requires the Minister, before the information in a criminal history report is used, to disclose that information and allow the person to respond. Further, subsection (7) requires criminal history reports to be promptly destroyed.

If Panel members were not required to declare conflicting interests in a particular review application, the Chairperson would be forced to select members to comprise the Panel for a particular review without an understanding of the personal interests of those members that could compromise the integrity of the review. The impost of the limit on the right to privacy is limited by subsection 252AE(2) which only requires the interest to be declared to the Chairperson.

If witnesses could not be compelled to give evidence by oath or by a written statement, or by requiring them to give certain evidence to the Panel, the Panel would be forced to make decisions based upon incomplete facts. This would not support the purpose of ensuring the Panel's decisions are based upon the best-available evidence, thus ensuring people have access to a fair hearing.

The exclusion from stay orders would only apply in relation to appeal to QCATA after the matter had already been reviewed by the independent Panel, and then only where the Panel found the applicant had engaged in serious risk behaviour. It should also be noted that appeals to QCATA would only be permitted on questions of law relating to the extent of disqualification action; decisions of fact 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 review. If people were able to continue harmful practices while awaiting the outcome of an appeal, the Panel would be powerless to prevent any further damage caused between their original hearing and their appeal date. There is no reasonably available alternative to the prohibition on stay orders for serious risk issues that would provide adequate protection to racing animals, people and the State's racing industry.

A person's access to registry records of a Panel review application is restricted to records that are not prohibited by a Panel decision that has been made on non-disclosure grounds. The prescribed non-disclosure grounds generally reflect exceptions to a public hearing and public judgements outlined in Article 14.1 of the International Convention on Civil and Political Rights. If the registrar was not required to keep records of, and allow a person to inspect or copy records of, documents filed or evidence given for a Panel review application, and make Panel review application decisions publicly available online, or was not required to provide this information in full, the objective of ensuring transparent decision-making to support the right to a fair hearing, and foster public confidence in decision-making bodies could not be achieved.

(e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill limits the right to privacy and reputation of applicants and Panel members to the narrow extent of requiring them to disclose their criminal history, in the first instance for applicants and in an ongoing manner for Panel members. The restrictions on the rights are necessary to ensure that the person can be excluded from Panel membership if they have a relevant criminal history and are necessary to achieve the objective of maintaining the Panel's public reputation and ensuring that Panel members respect the legal framework within which they make their decisions. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

The amendments which require Panel members to declare conflicting interests in a particular review application limit the right to privacy to the narrow extent of communicating this information to the Panel Chairperson. This restriction is required to ensure that the Panel chair can select members to comprise the Panel for a particular review application that are impartial to the matter at hand.

Compelling persons to give evidence by oath or by a written statement, or requiring them to give certain evidence to the Panel through the format of a public hearing, is necessary to protect the right to a fair hearing through ensuring that all relevant information is available to the Panel to allow it to make an informed and impartial decision. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

The limitation on a racing participant's right to privacy and reputation by allowing for their reputation to be potentially damaged by the operation of a penalty when a stay is unavailable is only to the extent that the operation of the penalty may affect their reputation. For example, the operation of a disqualification action may affect their reputation for reliability as a service provider in the industry. QCATA may only vary the extent of the penalty. This limitation is

modest when balanced against the importance of preventing behaviour that poses a serious risk to animal welfare, human safety or the integrity of the Queensland racing industry.

The amendments which require the registrar to keep records of, and allow a person to inspect or copy records of, documents filed or evidence given for a Panel review application and publish Panel decisions online in the form of a register, limit the right to privacy and reputation through making details of private information disclosed in a hearing and potentially also untrue allegations publicly available. However, the limitation is generally within exceptions to the right to privacy and is necessary to ensure transparency of the Panel's decision making, and reasonable and demonstrably justified in the circumstances.

Fair hearing

(a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It provides a right for parties to be heard and to respond to allegations made against them, and requires courts be unbiased and independent. What constitutes a 'fair' hearing will depend on the facts of the case and will require a number of public interest factors to be weighed.

The right applies to both criminal and civil proceedings and guarantees that such matters must be heard and decided by a competent, impartial and independent court or tribunal.

The right to a fair hearing is based on Article 14 of the International Covenant on Civil and Political Rights.

(b) The nature of the of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

New section 252BO(2) requires a Panel member who is charged with or convicted of a relevant offence to immediately give notice of the charge or conviction to the Minister. New section 252AL(1) requires a person who is given notice to attend a Panel hearing to attend as requested. New section 252AL(2) provides that a person attending at a Panel hearing must not fail to take an oath, answer a question or produce a document or thing when required. In all these instances, a person will not have committed an offence if they have a reasonable excuse for failing to take the requested action in order to reduce undue administrative delays and costs in court proceedings. The onus of proving the reasonable excuse will fall on the person to establish, thereby reversing the burden of proof and removing the presumption of innocence. It is practical and reasonable to require a person alleging a reasonable excuse to provide sufficient details of the excuse (which will initially be known only to them) to the court. By placing the burden of showing a reasonable excuse on the person alleging it, the business of the court will proceed more efficiently, reducing waiting times and allowing greater access to justice. This is consistent with a society based on dignity, equality and freedom.

New section 252AU(2) provides that a person may not apply for a stay of a decision (pending appeal) if the decision includes disqualification action against the person because of a serious risk caused to the welfare or health of an animal, the safety of any person or the integrity of Queensland's racing industry (serious risk behaviour). The purpose of this restriction is to

ensure that animals, people and the industry are adequately protected from harmful actions by such persons, which is necessary to ensure public safety and the rule of law.

Appeals to QCATA of the Panel's decisions have been restricted to questions of law relating to the extent of the penalty and only where the penalty was a 'disqualification action' of three months or more (new section 252AU(2)). The main purpose of the restriction is to allow for swifter access to justice by limiting the potential for the postponement of justice by a person seeking to have a second arbiter of fact for their case. A further purpose of this restriction is to reduce the administrative burden on QCATA, which has a significant caseload, that would be caused by people seeking to have a second arbiter of fact for their case.

Reducing the timeframe for lodgement of an application for review of a stewards' decision under new section 252AB reduces the overall timeframe for review decisions to be decided is to allow for swifter access to justice in a manner uniquely appropriate to the stewards' decisions under the rules of racing. Under the local rules of thoroughbred racing, stewards can defer suspensions imposed on riders for up to nine calendar days. Hence, the shorter period to finalise most matters would mean many riding offences, which constitute most stewards' decisions, would be decided by the Panel within the deferment period without any need to apply for a stay.

The Panel's discretion to review applications on the basis of documents only provides the Panel with the flexibility to decide cases in this manner where appropriate. A documents-only review is a faster and less-expensive way of determining an application and it is preferable for the Panel to proceed in this manner when it is satisfied it can effectively do so without having to engage in a physical hearing. This measure is intended to allow for swifter access to justice and reduce the financial and administrative burden associated with the Panel the Panel deciding applications for review in a manner uniquely appropriate to the stewards' decisions under the rules of racing. Enacting measures that will improve community access to justice and reduce the financial and administrative burden on the Panel are objects that are consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Reversing the onus of proof for a person to demonstrate a reasonable excuse for their failure to act as required is justified because the offences involve matters that are within the defendant's knowledge and for which the evidence would be most-easily accessed by the defendant. These provisions support the court to collect all relevant information for their decision-making while protecting persons involved in the review from self-incrimination. The restriction directly supports the purpose of reducing undue administrative delays and costs in court proceedings.

Excluding stay orders for cases involving serious risk behaviour ensures industry participants cannot continue operating even though it has been established that there was a breach of the rules of racing involving a serious risk to animal welfare, human safety or the integrity of racing. There would be the potential for very serious impacts on animal welfare, human safety or the integrity of the industry if the offending behaviour was allowed to continue because the stay was in place.

Limiting appeals to QCATA ensures most decisions are finalised in a shorter timeframe. Matters will already have been heard by the Panel which is independent and is chaired by a person with legal standing - there is no deficiency in the competence of the Panel to provide a

fair hearing. Allowing a limited number of matters to be appealed to QCATA simply provides an additional opportunity for a case to be heard by QCATA on those limited grounds. All errors of law will still be subject to judicial review under the *Judicial Review Act 1991*.

Reducing the timeframe for lodgement of an application directly allows for swifter access to justice in a manner uniquely appropriate to the stewards' decisions under the rules of racing.

Allowing the Panel to conduct a review on the basis of documents or in some other way also reduces the financial and administrative burden associated with the Panel deciding applications for review in a manner uniquely appropriate to the stewards' decisions under the rules of racing.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The reasonable excuse a person may have for their failure to act as required by sections 252BO and 252AL is a circumstance that is peculiarly within the knowledge of that person; as such, the reversal is the only reasonably available option for ensuring the proceedings are not unnecessarily delayed by inadequate attempts to provide information that is readily within the knowledge of the person the subject of the hearing.

The exclusion from stay orders would only apply in relation to appeal to QCATA after the matter had already been reviewed by the independent Panel, and then only where the Panel found the applicant had engaged in serious risk behaviour. It should also be noted that appeals to QCATA would only be permitted on questions of law relating to the extent of disqualification action; decisions of fact 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 review. If people were able to continue harmful practices while awaiting the outcome of an appeal, the Panel would be powerless to prevent any damage those people caused between their original hearing and their appeal date. There is no reasonably available alternative to the prohibition on stay orders for serious risk issues that would provide adequate protection to racing animals, people and the State's racing industry.

The restriction of appeals to QCATA on questions of law related to the extent of a disqualification action is necessary to prevent people from trying to have their case re-tried on the facts. If people were permitted to have the facts of their case examined again purely because they did not agree with the Panel's findings, unsuccessful defendants would automatically appeal to QCATA to see if that tribunal viewed the facts differently. For a similar reason, restricting appeals to questions of law is the preferred approach within Queensland's court system and it is the only reasonable option for preventing an unwarranted and uncontrollable appeals burden on the State's judicial bodies.

Giving the Panel the discretion to decide a case based on a 'documents only' review allows it to choose this faster and less-expensive review option when it is appropriate to do so. This discretion provides the necessary balance between ensuring the Panel has the power to require an in-person hearing, where that will support the Panel in its decision making, and the ability to conduct a more streamlined review where the Panel is satisfied that documents only will provide sufficient information for it to reach an informed decision. Removing the discretion to complete a documents-only review would force the Panel to engage in lengthy and costly physical hearings where there is no need to do so.

An alternative option to the reduction of the lodgement timeframe to three days is to increase the number of days in the timeframe. However, the purpose of the amendment is to reduce the overall maximum timeframe for most review decisions to allow for swifter access to justice in a manner uniquely appropriate to the stewards' decisions under the rules of racing. Any increase to the time allowed would also increase the overall maximum time periods which would be more disruptive for applicants and the industry. It is considered that three business days provide adequate time for a person to apply to the Panel for a review of a racing decision.

(e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The reversal of onus provisions in new sections 252BO and 252AL place the burden of showing a reasonable excuse for a person's failure to act upon the person alleging the reasonable excuse. As the relevant facts and evidence are best known to the person alleging an excuse, it is not a significant burden to require them to provide such information to the Panel. For corresponding reasons, the general requirement in criminal proceedings is for an accused person to satisfy the evidential onus of proof for any defence or excuse they raise. This restriction upon the right to a fair trial is reasonable in the circumstances and limited to those instances in which it is easier, quicker and cheaper for an applicant to provide the necessary evidence to the court.

The amendment relating to stays will only limit the right to a fair hearing to the narrow extent of offences involving serious risks that have already been reviewed by the Panel. The safety of racing animals, human health and the integrity of the State's racing industry, are sufficiently important to justify the restriction on stays.

By restricting appeals to QCATA to questions of law relating to the extent of the penalty only, the Tribunal will not be burdened by unmeritorious appeals from Panel decisions. The advantage of this not just to industry participants (who will benefit from the increased certainty of Panel decisions if they are not subject to further appeal) but to members of the general public awaiting hearing on other matters in QCAT outweighs any restrictions on a person's right to a fair hearing (insofar as that right can be interpreted as providing for unlimited options for appeal).

A person's right to be heard before the Panel and, subsequently, their right to a fair hearing will be restricted in circumstances where the Panel considers that a documents-only review is adequate to inform its decision. Allowing the Panel 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 are given. The reduction in cost and administrative burden (and subsequent increase in access to justice for people waiting for Panel decisions) must be balanced against a person's right to appear before the Panel in person. Significantly, a person will only lose their right to an in-person hearing if the Panel is satisfied that the documents will suffice. This discretion has been provided to provide the Panel with the option of conducting an in-person hearing if there is any uncertainty as to whether a decision could be made using only documentary evidence. The flexibility provided by this review option is essential for the Panel to be able to ensure that matters are reviewed quickly and in a 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 will be provided in the filed documents and submissions, it would delay decisions and undermine a key objective of the

reforms. In light of the administrative benefits of a document-only hearing—and the fact that a person who disagrees with an assessment that the information contained in the documents is sufficient may seek judicial review if they can establish there was a breach of natural justice—the restriction of the right is necessary and justifiable.

Reducing the timeframe for lodgement of an application for review of a stewards' decision (from 14 days to 3 days) reduces the overall maximum timeframe for review decisions. The reduced review timeframe will provide greater access to justice as reviews will be conducted more swiftly. Further, rapid decision-making provides greater certainty for industry participants and supports the integrity of the racing industry. The shortened timeframe may also reduce the requirement for stay applications. The importance of these benefits must be weighed against the importance of preserving the right to a fair hearing. The proposed amendment does not remove the right to a review, it merely shortens the lodgement timeframe. As 3 business days is considered to be sufficient time to lodge an application for review, the restriction on the right to a fair hearing is minimal and justified in light of the benefits shorter review timeframes will provide.

(f) any other relevant factors

The reduced review timeframes (compared to current processes) for review of most decisions by the Panel will accord with industry practice of booking jockeys and drivers 10–14 calendar days in advance of most races which in turn will avert the need for stays.

For more serious breaches where the penalty imposed is a suspension or other disqualification of three months or more, the Panel would have up to 20 business days to review the decision. This aligns with the current maximum period for internal review and will ensure sufficient time for gathering information and calling for witnesses if needed.

These reduced timeframes also remain lengthy in comparison with the disciplinary processes of other professional sports.

Publication of reports

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The human rights engaged or limited by this aspect of the Bill are the right to privacy and reputation (HR Act, section 25) and the right to a fair hearing (HR Act, section 31).

Clause 25 inserts new section 256A (Publication of stewards' reports) which authorises the publication of race day reports and inquiry reports on QRIC's website. It also inserts new section 256C (Publication of elevated readings for licensed horses) which authorises the publication of a list which states the name of a licensed horse, the name of the licence holder and the date an elevated reading of carbon dioxide or a prohibited substance was measured for the horse (within a 48-hour period before a race).

The amendments limit the right to privacy because the reports may include personal information. The right to reputation is also limited because the reports may contain information about conduct that goes to the reputation of a person involved in the matters to which the report refers. This may include, for example, the identity of individuals by name in connection with an investigated incident.

These amendments also engage but do not limit the right to a fair hearing as allowing reports to be published positively impacts the right to the extent that publishing decisions and their reasons is prescribed in that right.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation

(a) the nature of the right

The HR Act protects right to privacy and reputation.

The scope of the right to privacy is very broad. It protects personal information and data collection, for example. It also extends to a person's private life more generally, so protects the individual against interference with their physical and mental integrity, including appearance, clothing and gender, sexuality and home. This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. Arbitrary interference includes when something is lawful, but also unreasonable, unnecessary or disproportionate.

The protection against an attack on someone's reputation is limited to unlawful attacks. This means attacks that are intentional and based on untrue allegations.

The right is based on Article 17 of the International Covenant on Civil and Political Rights.

(b) The nature of the of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Race day reports, inquiry reports and elevated carbon dioxide and prohibited substance readings may be published to allow for transparency around the conduct of racing.

Making the information collected and the reasoning behind decisions publicly available ensures transparency which helps to maintain public confidence in racing decision-making and hence the integrity of the Queensland racing industry. For stewards' inquiry reports, ensuring transparency by publishing the basis of stewards' decisions is also consistent with the right to a fair hearing. Transparency is therefore consistent with a free and democratic society based on dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to privacy and reputation by publishing race day reports, inquiry reports and elevated readings will directly contribute to the objective of ensuring transparency around the conduct of racing by ensuring that the information and reasoning contained in these documents is openly available to the public.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The restriction on the right to privacy and reputation is mitigated by the possibility of non-publication of certain reports and information on the basis of non-disclosure grounds. New s256A(4) requires QRIC to remove any information published in race day report or inquiry report on the day the effect of a disqualification action ends (if the information relates to a disqualification action), or otherwise 6 months after the day the information is published. New section 256B (Request for commission not to publish personal information contained in steward's report) permits a person identified in the report to ask QRIC, in writing, not to publish on the website any personal information about the person contained in the report or if the information has been published on the website—to remove the information from the website. For considering such a request, QRIC must not publish personal information on the website if it is reasonably satisfied the information should not be made publicly available based on a non-disclosure ground (see section 256B(5)). ***Non-disclosure ground*** is defined in the Bill to include: where the physical or mental health or safety of a person is or is reasonably likely to be endangered by the publication, the publication would release sensitive information within the meaning of the *Information Privacy Act 2009*, the publication would release information that would be likely to damage the commercial activities of a person to whom the information relates, or the publication is not otherwise in the interests of justice. Section 256B also provides that a person must be told of the opportunity to make that request (see section 256B(2)) and if they advise they intend to make a request must be given 7 days in which to request in writing that their personal information not to be published in a report(see section 256B(3)).

There are no less restrictive means of ensuring transparency around the conduct of racing that are as effective as publishing relevant reports.

(e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill limits the right to privacy and reputation to the narrow extent of publishing personal information and information about a person's conduct relevant to matter that is the subject of a race day report, inquiry report, elevated carbon dioxide or prohibited substance reading. There are appropriate safeguards on the publication to reduce the impact on privacy and reputation. The restrictions on the right to privacy and reputation are necessary to ensure transparency which helps to maintain public confidence in racing decision-making and hence the integrity of the Queensland racing industry. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

(f) any other relevant factors

QRIC will retain discretion as to whether or not to publish race day and inquiry reports as publication is not a mandatory requirement.

The new provisions will ensure that publication of the prescribed information will not conflict with the *Information Privacy Act 2009*.

Technical or minor amendments

Collection of fingerprints

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendments which remove the provisions relating to the collection of fingerprints as part of the licencing process for racing bookmakers engage the right to privacy (HR Act, section 25).

Clauses 6, 7 and 8 amend existing sections 79, 84 and 112 to remove the requirements for an application for a racing bookmaker's licence to be accompanied by consent for the applicant's fingerprints to be taken, for QRIC to cause the fingerprints of an applicant to be taken and for QRIC to destroy taken fingerprints after an application is refused or a racing bookmaker's licence is surrendered or cancelled. Clause 17 removes fingerprints from the definition of 'background document' in existing section 211, causing the offence provision for disclosure of confidential information, copying or providing access to a background document in existing section 212 to no longer apply to fingerprints.

The collective effect of these amendments is to remove the redundant requirements for QRIC to collect and manage fingerprints as part of the racing bookmaker licencing process. As fingerprints no longer serve a purpose in this process, requiring their collection is an arbitrary interference with personal information. The amendments promote the right to privacy by removing this interference.

Racing bookmakers' agents

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Clause 11 amends existing section 142 (Racing bookmaker's agent during particular periods) to limit the amount of time a racing bookmaker's clerk can act as agent for the reason of illness or accident by providing that 'temporarily incapacitated' means no more than 12 weeks in any year. Where a racing bookmaker is temporarily incapacitated for longer than the 12-week period in which an agent can act as the bookmaker, the racing bookmaker could be prevented from continuing bookmaking which would restrict the use of their property, such as the equipment used for bookmaking, until they were personally able to resume bookmaking. Accordingly, their property rights would be limited. However, the impact would be temporary: while the bookmaker may be unable to use their equipment to carry out bookmaking due to illness or accident, they would continue to possess the right to do so in future under their racing bookmaker's licence (see existing section 94).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The HR Act protects people from having their property unlawfully removed. This right protects the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. This extends to restricting the use of their property.

This right is based on Article 17 of the Universal Declaration of Human Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the amendment is to ensure the integrity of the bookmaker licencing system by restricting how long a person who is not a licenced bookmaker can carry on bookmaking.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation ensures that a racing bookmaker's clerk, acting as an agent, cannot carry out the work of a racing bookmaker indefinitely or for an extended period of time which would undermine the requirement to be licenced to undertake bookmaking.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purpose of this amendment cannot be achieved through any reasonably available and less restrictive means. To not restrict the timeframe at all would not achieve the purpose.

Whilst allowing an agent to act as a racing bookmaker for a longer period of time would be less restrictive, this would result in the maximum permitted timeframe for the reason of temporary incapacitation due to illness or accident being inconsistent with the other reasons for which an agent may act as a racing bookmaker, which may be unfair.

- (e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill limits the property rights of a racing bookmaker to the narrow extent that, when a bookmaker is incapacitated through illness or accident for more than 12 weeks in any year, they will be unable to have their agent carry on their business beyond that period so would not be able to have their equipment used for that purpose. This limitation must be balanced against the need to ensure the integrity of the bookmaker licencing system. The minor restriction on property rights is necessary to ensure that bookmakers are suitably licenced. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

Telecommunications systems

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendment to clarify the existing requirement that a telecommunications system used for making bets must be approved by QRIC and remove the requirement for the Minister to approve an independent entity used by QRIC to assess a bookmaker's telecommunications system does not engage human rights because it does not change the approval requirement in a substantive way (clause 12).

Amendments of off-course approvals

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Clause 9 inserts new chapter 4, part 3, division 1A, within which new section 123A permits a racing bookmaker who holds an off-course approval to apply to the Minister for an amendment of that approval. The amendment seeks to allow a racing bookmaker to apply for an amendment of the approval in order to continue to conduct bookmaking using a telecommunications system without the inconvenience of being required to apply for a new approval, for example, where the bookmaking is to be conducted from a different place. The amendment positively impacts the right to freedom of movement by affording a racing bookmaker who holds an off-course approval a less onerous pathway to seeking approval to conduct bookmaking under an amended approval. However, requiring an amendment to their existing approval to carry out bookmaking from a different place continues to limit their right to freedom of movement.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The HR Act protects the right of every person within Queensland to move freely within the State. The right to move freely means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place and includes procedural as well as physical restraints. This right is based on Article 12 of the International Covenant on Civil and Political Rights.

(b) the nature of the of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Requiring a racing bookmaker to apply to amend an off-course approval ensures that the bookmaker only carries out off-course bookmaking from an approved place at which they are permitted to do so. Off-course approvals are granted on the basis of the mandatory condition (existing section 121) that an approved place for the off-course approval must not be open to, or available for use by, the public. This is to ensure that a commercial agreement between the Queensland Government and UBET QLD Limited for retail exclusivity in Queensland is upheld.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a racing bookmaker's right to freedom of movement by requiring them to apply and receive approval to amend an existing off-course approval will directly contribute to the objective of ensuring that bookmaking is carried out from an approved place.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purpose of this amendment cannot be achieved through any reasonably available and less restrictive means. To not require racing bookmakers to apply and receive approval to amend an existing off-course approval would remove oversight of the places where bookmaking is

carried out and potentially allow for off-course bookmaking to be carried out from a place that is not an approved place.

- (e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The Bill limits the freedom of movement to the narrow extent that a racing bookmaker who holds an off-course approval will be required to apply to amend that approval, including to allow them to carry out bookmaking from a place different to that which was originally approved. The restriction on the freedom of movement is necessary to ensure that off-course bookmaking is carried out from an approved place. As such, the limitation on human rights is reasonable and demonstrably justified in this circumstance.

Minister's delegation

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendment of existing section 258 to clarify that the Minister may delegate their power to determine an application relating to off-course approvals to the Racing Integrity Commissioner does not engage human rights because it does not change the delegation power in a substantive way (clause 19).

Influencing witnesses or experts

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendments which prevent a person from influencing another person, including a witness or expert, participating in an audit or investigation engage the right to freedom of expression (HR Act, section 21).

Clause 4(2) inserts new section 39(1A) which requires a person who has been given a notice to attend an audit or investigation (under section 37) to not improperly influence, or attempt to improperly influence, someone who the person knows has been given a notice to attend the same audit or investigation. Restricting how and to whom a person may seek, receive and impart information about an audit or investigation limits their freedom of expression.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

- (a) the nature of the right

The HR Act protects the right to freedom of expression. This includes the right to hold and express an opinion and to seek out and receive the expression of others' opinions. Ideas and opinions can be expressed orally, in writing, in print, by way of art or in another way chosen by the person. It also allows people to seek and receive other people's opinion.

This right is based on Article 19 of the International Covenant on Civil and Political Rights.

- (b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Preventing a person from improperly influencing someone attending the same audit or investigation allows the Racing Integrity Commissioner to collect the necessary information to make an informed decision in that audit or investigation. This, in turn, ensures the Commissioner's decisions are based upon the best-available information, safeguards people's access to a fair, impartial and independent audit or investigation, which helps maintain public confidence in racing decision making and ensures the integrity of the racing industry. This purpose is consistent with a free and democratic society based on dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

Limiting a person's right to freedom of expression by requiring them to not improperly influence another person attending the same audit or investigation is necessary to ensure that Racing Integrity Commissioner can collect all the relevant information available to inform their audits and investigations, particularly through ensuring that incorrect or incomplete information is not provided as a result of improper influence.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose

The purpose of these amendments cannot be achieved through any reasonably available and less restrictive means. If a person could not be prevented from improperly influencing another person attending the same audit or investigation, the Racing Integrity Commissioner may be forced to complete their audit or investigation on the basis of incorrect or incomplete information. This would not support the purpose of ensuring that the Commissioner's audits and investigations are based upon the best-available evidence, thus ensuring people have access to a fair, impartial and independent hearing.

- (e) the balance between the importance of the purpose, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments are limited to the narrow extent of communication that would be considered improper influence – communications that are designed to influence the witness to provide incomplete or incorrect information – which stifle the Racing Integrity Commissioner's ability to collect the best-available evidence. Legislating to prevent undue influence allows the Commissioner to collect the best-available evidence, which provides the Commissioner with the ability to make well-informed, reliable and just decisions. The benefits of restricting a person to not communicate in these limited situations outweigh the detriments of restricting the person's right to communicate.

- (f) any other relevant factors

Existing section 39 of the RI Act (Offences by witnesses) requires a person appearing as a witness or a person given a notice under section 38, to not provide information or a document they know is false or misleading in a material particular. This aligns with and is supported by the amendments preventing improper influence.

Compatibility with Human Rights

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The amendments which enhance the compatibility of several existing sections of the RI Act with the HR Act engage the rights in criminal proceedings (HR Act, section 32).

Self-incrimination

Clauses 13, 14 and 15 amend sections 177, 200 and 201 of the RI Act to permit a person not to comply with a help requirement, document production requirement or document certification requirement on the basis of the reasonable excuse that to comply might tend incriminate the person or expose them to a penalty. Clause 16 similarly amends existing section 210 (Evidential immunity for individuals complying with particular requirements) to omit section 210(3), which excluded false or misleading information from the immunity provided in section 210(2) on the same basis. The collective effect of these amendments is to allow a person to not comply with the specified requirements in circumstances where to do so would incriminate the person or expose them to a penalty.

Under section 32(2)(k) of the HR Act, a person charged with a criminal offence is entitled, without discrimination, not to be compelled to testify against themselves or to confess guilt. Existing sections 177, 200, 201 and 210 effectively require self-incrimination. Amending these sections to allow for a reasonable excuse for non-compliance will end this requirement, and therefore positively impact the right.

Presumption of innocence

Clause 18 amends section 231 (Other evidentiary provisions) of the RI Act to omit section 231(3). This omission removes the presumption that where a place is opened, kept or used wholly or partly for a purpose specified in section 223 (Prohibition on opening, keeping, using or promoting an illegal betting place), it is evidence that the place in question is opened, kept or used with the permission of an occupier of the place. The existing section reverses the onus of proof onto the occupier of the place to prove that the place is opened, kept or used without that person's permission. Section 32(1) of the HR Act provides that "a person charged with a criminal offence has the right to be presumed innocent until proved guilty according to law." Removing the reverse onus of proof, and therefore the existing limitation on the right, positively impacts this right.

Conclusion

In my opinion, the Racing Integrity Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE GRACE GRACE MP
MINISTER FOR EDUCATION
MINISTER FOR INDUSTRIAL RELATIONS
MINISTER FOR RACING

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