

Economics and Governance Committee

Report No. 23, 57th Parliament

Subordinate legislation tabled between 17 November 2021 and 22 February 2022

1 Aim of this report

This report summarises the Economics and Governance Committee’s (committee) findings following its examination of the subordinate legislation within its portfolio areas tabled between 17 November 2021 and 22 February 2022.

It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA)⁴ and on the committee’s consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificate tabled with the subordinate legislation.⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
179	Superannuation (State Public Sector) Amendment of Deed Regulation 2021	22 February 2022	26 May 2022
191	Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021	22 February 2022	26 May 2022
002	Gaming Legislation Amendment Regulation 2022	22 February 2022	26 May 2022

*The disallowance date is 14 sitting days after the tabling date. (See section 50 of the *Statutory Instruments Act 1992*.) Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Committee consideration of the subordinate legislation

The committee did not identify any significant issues regarding the policy, consistency with FLPs, lawfulness, or compatibility with human rights of the Superannuation (State Public Sector) Amendment of Deed Regulation 2021 (SL No. 179 of 2021) or the Gaming Legislation Amendment Regulation 2022 (SL No. 2 of 2022).

The committee considered two human rights issues in respect of the Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021 (SL No. 191), but was ultimately satisfied that

¹ *Legislative Standards Act 1992* (LSA) s 4.

² *Human Rights Act 2019* (HRA) s 8.

³ *Parliament of Queensland Act 2001* (POQA) s 93.

⁴ LSA, Part 4.

⁵ HRA, s 41.

the provisions in question were appropriate and reasonably and demonstrably justifiable in the circumstances.

The committee considered that the explanatory notes tabled with the subordinate legislation comply with the requirements of part 4 of the LSA. Further, the human rights certificate tabled with the subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

A brief overview of the subordinate legislation is set out below.

4 Superannuation (State Public Sector) Amendment of Deed Regulation 2021

Currently, the QSuper Board can indemnify itself from the fund's assets for liabilities incurred by acting as a superannuation trustee, except where it fails to act honestly or intentionally and recklessly fails to exercise its duty of care.⁶

From 1 January 2022, changes to Commonwealth legislation will prevent trustees, including the QSuper Board, from using fund assets to pay a penalty in relation to a contravention of a Commonwealth law, including where the trustee has acted honestly and exercised its duty of care. The QSuper Board does not have access to capital or other assets to meet these potential liabilities.⁷

The objective of the regulation is to amend the relevant deed to enable the QSuper Board to be paid remuneration from the QSuper assets for the services it provides in administering QSuper. The remuneration will be charged as a fee for service and will ensure the QSuper Board has sufficient capital from 1 January 2022 to meet liabilities that are otherwise unable to be met from the assets of the Fund.⁸

4.1 Human Rights Act 2019 considerations

In the human rights certificate that accompanies SL No. 179 of 2021, the Treasurer and Minister for Trade and Investment (Treasurer) stated in his opinion the human rights that are potentially relevant to the subordinate legislation are:

- recognition and equality before the law (section 15 of the HRA)
- property rights (section 24 of the HRA).

However, the Treasurer also stated the subordinate legislation does not limit either of these human rights and is compatible with the human rights protected by the HRA.

4.1.1 Recognition and equality before the law

Under section 15 of the HRA, the right to recognition and equality before the law encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right reflects the essence of human rights; that every person holds the same rights by virtue of being human and not because of some particular characteristic or membership of a particular social group.

The proposed new subsection 14A(3) of the deed provides that the board may charge a member or a class of members a different fee, or a different amount of a fee, based on criteria the board considers fair and reasonable as part of the provision to remunerate the board. The QSuper Board is required by Commonwealth law to exercise its powers in the best financial interests of members. According to the human rights certificate:

In this context, in determining what is fair and reasonable, the QSuper Board would, for example have regard to the cost of administering a product, not personal characteristics or membership of a particular social group.⁹

⁶ SL No. 179, explanatory notes, p 1.

⁷ SL No. 179, explanatory notes, p 1.

⁸ SL No. 179, explanatory notes, p 1.

⁹ SL No. 179, human rights certificate, p 2.

The human rights certificate concludes that the regulation does not limit this human right.

Committee comment

The committee is satisfied the subordinate legislation does not limit a person's right to recognition and equality before the law and is compatible with human rights.

4.1.2 Property rights

All persons have a right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.¹⁰

The human rights certificate raises property rights in the following context:

As noted above, the QSuper Board is required by Commonwealth law to exercise its powers in the best financial interests of the members.

The capital accumulated by the QSuper Board in exercising the remuneration power will only be used to meet liabilities the Board can no longer satisfy out of QSuper's assets, mitigating the financial and disruptive impact if the Board were to become insolvent.

The remuneration will be paid from QSuper's reserves and not from members' accounts, with the Board to regularly review its target capital adequacy reserve to ensure it remains in members' best financial interests. The Australian Prudential Regulation Authority (APRA) will have oversight of the remuneration power.¹¹

The human rights certificate concludes that the regulation does not limit this human right.

Committee comment

The committee is satisfied the subordinate legislation does not limit a person's property rights and the subordinate legislation is compatible with human rights.

5 Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021

Stage 1 of the public sector reforms arising from recommendations of the review by Mr Peter Bridgman into Queensland's public sector employment laws were implemented on 14 September 2020.¹² In October 2020, the Public Service Regulation 2018 was amended to apply provisions of the *Public Service Act 2008* (PS Act) and the associated Public Service Commission Chief Executive (CCE) directives, to most declared public service offices (DPSOs) and their employees, with the exception of TAFE and WorkCover.

The Public Service (Public Service Offices and Other Matters) Amendment Regulation 2021 applies these reforms to TAFE and WorkCover employees, through the application of provisions of the PS Act and associated CCE directives.¹³

The relevant provisions of the PS Act are:

- section 25A (positive performance management)
- chapter 1, part 4 (the merit principle)
- chapter 3, part 3 (rulings by the CCE)
- chapter 3, part 6 (functions of the PSC in work performance matters)
- sections 137 and 137A (suspension)
- chapter 5, part 5 (general, fixed term temporary and casual employees)
- chapter 5, part 6, divisions 1, 2, 4 and 5 (assessing suitability for employment)

¹⁰ Section 24 of the HR Act.

¹¹ SL No. 179, human rights certificate, p 2.

¹² SL No. 191, explanatory notes, p 1.

¹³ SL No. 191, explanatory notes, p 2.

- chapter 5, part 7 (mental or physical incapacity)
- chapter 6 (discipline)
- chapter 7 (appeals and reviews)

The relevant CCE directives are:

- appeals
- appointing a public service employee to a higher classification level
- casual employment
- discipline
- fixed term temporary employment
- independent medical examinations
- individual employee grievances
- positive performance management
- recruitment and selection
- suspension
- workforce profile and work performance information
- workplace investigations
- workforce profile and work performance information.¹⁴

The Amendment Regulation also amends Schedule 14 (Prescribed State Employees) to clarify that a member of the Legal Aid Board is a prescribed state employee for the purpose of civil liability protections under section 26C of the PS Act.¹⁵

5.1 Human Rights Act 2019 considerations

In the human rights certificate that accompanies SL No. 191 of 2021, the Premier and Minister for the Olympics (Premier), stated in her opinion the human rights that are potentially relevant to the subordinate legislation are:

- taking part in public life (section 23 of the HRA)
- privacy and reputation (section 25 of the HRA).

However, the Premier stated her belief the subordinate legislation limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

5.1.1 Right to take part in public life

Every person has the right to participate in the conduct of public affairs.¹⁶

The human rights certificate states that the regulation limits this right by applying provisions of the PS Act and directives relating to:

- employment screening
- suspension

¹⁴ SL No. 191, explanatory notes, pp 2-3.

¹⁵ SL No. 191, explanatory notes, p 3.

¹⁶ HRA, s 23.

- discipline
- independent medical examinations
- investigations.¹⁷

The human rights certificate provides this justification for this limitation on human rights:

The purpose of these amendments is to protect general public interest considerations by extending the priority stage one public sector reforms and the high standards of employment in the public service.

...

Limiting the right to take part in public life by potentially imposing restrictions on a person's ability to access the public service (for example due to a relevant criminal history, inappropriate workplace conduct or performance or a significant health issue) is necessary to ensure that public service employees are suitable for and able to perform the inherent requirements of their role. This is particularly relevant for roles involving public monies, positions of influence and public accountability.

...

Safeguards are present, both in the PS Act and the directives ... to ensure that natural justice is provided to employees in relation to disciplinary matters, workplace investigations, suspensions without pay and decisions relating to independent medical examinations ... These safeguards ensure that any discretion to limit human rights under the provisions of the Amendment Regulation is consistent with a free and democratic society.¹⁸

Committee comment

The committee is satisfied that the subordinate legislation limits human rights only to the extent that is reasonable and demonstrably justified the subordinate legislation is compatible with human rights.

5.1.2 Right to privacy and reputation

A person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have their reputation unlawfully attacked.¹⁹

The human rights certificate states that the regulation 'limits this right by applying provisions of the PS Act relating to employment screening and independent medical examinations to TAFE Queensland and WorkCover Queensland. These sections require the provision of personal information relating to potential or existing public service employees.'²⁰

The human rights certificate provides this justification for the limitation on human rights:

The applied provisions and directive that relate to employment screening and requiring notification of certain charges or convictions require the disclosure of personal information to assess the person's suitability for engagement to perform particular duties. Consent is obtained prior to obtaining a person's criminal history.²¹

Additionally, the human rights certificate provides the following collective justification for the limitations on the right to take part in public life and the right to privacy:

On balance, it is considered the importance of the purpose of the high standards of employment in the public service to ensure effective and efficient management of DPSOs outweighs the potential limitations to the right to take part in public life and the right to privacy.

...

¹⁷ SL No. 191, human rights certificate, pp 2-3.

¹⁸ SL No. 191, human rights certificate, p 4.

¹⁹ HRA, s 25.

²⁰ SL No. 191, human rights certificate, p 3.

²¹ SL No. 191, human rights certificate, p 4.

The applied provisions and rulings are not incompatible with human rights and generally do not directly limit human rights. Rather, decisions made by chief executives under these provisions or directives have the potential to limit a person's human rights.²²

Committee comment

The committee is satisfied that the subordinate legislation limits human rights only to the extent that is reasonable and demonstrably justified and the subordinate legislation is compatible with human rights.

6 Gaming Legislation Amendment Regulation 2022

The regulation amends various regulations (collectively 'Gaming Regulations')²³ to replace redundant references to the Office of State Revenue (OSR) with references to the Commissioner of State Revenue (CSR).²⁴ As a result, the CSR becomes a prescribed entity for the purposes of disclosure of confidential information under the Gaming Regulations (and associated Gaming Acts²⁵).

Following an operational integration of the OSR and the State Penalties Enforcement Registry functions, the OSR has changed its name to the Queensland Revenue Office.²⁶ According to the explanatory notes, the new references to the role of the CSR are less likely to be impacted by any future organisational operating structure changes, as that role is established under the *Taxation Administration Act 2001*.²⁷

6.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

The explanatory notes did raise the fundamental legislative principle regarding privacy, relating to the disclosure of confidential information.

However, the regulation does not expand the circumstances in which confidential information can be shared, rather it changes the relevant prescribed entity from the OSR to the CSR to reflect an operational change.

Further, it is expected that the information disclosed under the relevant provisions would mostly relate to non-individuals and therefore the rights and liberties of individuals would not be impacted.

6.2 Human rights considerations

In the human rights certificate that accompanies SL No. 2 of 2022, the Treasurer stated in his opinion the human right under the HRA that is relevant to the subordinate legislation is the right to privacy and reputation (section 25 of the HRA).

The Treasurer stated his view that the subordinate legislation is compatible with this human right.

6.2.1 Right to privacy and reputation

Whilst the human rights certificate raises the right to privacy in the context of the disclosure of confidential information, the certificate also acknowledges that the regulation does not alter or expand in any way the circumstances under which information can be disclosed to the CSR as a prescribed entity (that is, approval is still required under the relevant Gaming Act). The amendments merely reflect an organisation structure change.

²² SL No. 191, human rights certificate, p 4.

²³ Casino Control Regulation 1999, Charitable and Non-Profit Gaming Regulation 1999, Gaming Machine Regulation 2002, Interactive Gambling (Player Protection) Regulation 1998, Keno Regulation 2007, Lotteries Regulation 2007 and Wagering Regulation 1999.

²⁴ SL No. 2, explanatory notes, p 1.

²⁵ *Casino Control Act 1982, Charitable and Non-Profit Gaming Act 1999, Gaming Machine Act 1991, Interactive Gambling (Player Protection) Act 1998, Keno Act 1996, Lotteries Act 1997 and Wagering Act 1998.*

²⁶ SL No. 2, explanatory notes, p 2.

²⁷ SL No. 2, explanatory notes, p 2.


Further, as highlighted by the human rights certificate, if any disclosure of confidential information to the CSR as a prescribed entity were to be approved, it is expected that the information would largely relate to non-individuals (corporations and businesses undertaking gaming operations) which do not have human rights.

Committee comment

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

7 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

April 2022

Economics and Governance Committee

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