

## Legal Affairs and Safety Committee

### Report No. 55, 57th Parliament

#### Subordinate legislation tabled between 24 May 2023 and 13 June 2023

#### 1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 24 May 2023 and 13 June 2023. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).<sup>1</sup>

The report also notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

| No. | Subordinate legislation   | Date tabled  | Disallowance date |
|-----|---|--------------|-------------------|
| 42  | <i>Public Trustee (Interest Rate) Amendment Regulation (No. 5) 2023</i> | 13 June 2023 | 25 October 2023   |

\*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 fundamental legislative principles, human rights compatibility or lawfulness of the subordinate legislation.

The committee considers that:

- the explanatory notes tabled with the subordinate legislation noted in this report comply with the requirements of s 24 of the LSA
- the human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

The following section provides a brief overview of the subordinate legislation considerations of fundamental legislative principles and human rights.

<sup>1</sup> LSA, Part 4.

<sup>2</sup> HRA, s 41.

## 4 Public Trustee (Interest Rate) Amendment Regulation (No. 5) 2023

### 4.1 Policy objective

The objective of the Public Trustee (Interest Rate) Amendment Regulation (No. 5) 2023 (SL No. 42) is to amend the *Public Trustee Regulation 2012* (PT Regulation) to increase the interest rates payable on amounts held in the Public Trustee's common fund from 1 June 2023, as follows:<sup>3</sup>

| Funds held for  | Interest Rate prior to 1 June 2023 | Interest Rate post 1 June 2023 |
|---|------------------------------------|--------------------------------|
| <b>Class 1 and Class 5 amounts:</b> General Trusts, Minor Beneficiaries, Life Interest Estates, Trusts and Deceased Estates | 0.20%                              | 0.21%                          |
| <b>Class 2(c) and Class 3 amounts:</b> Financial Management Customers and Enduring Powers of Attorney Accounts              | 0.99%                              | 1.23%                          |
| <b>Term Deposit amounts:</b> Term Investment Accounts   | 1.34%                              | 1.35%                          |

The interest rates are determined by the Public Trustee through an analysis of 'the market return of a comparative set of competitive financial products and prevailing economic conditions'.<sup>4</sup> In the review of the interest rates payable under the PT Regulation, the Public Trustee applied the methodology endorsed by the Public Trust Office Investment Board.<sup>5</sup>

### 4.2 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights.<sup>6</sup> Property rights are discussed further in the section below.

#### 4.2.1 Property rights

All persons have the right to own property alone or in association with others. A person must not be arbitrarily deprived of the person's property.<sup>7</sup>

The human rights certificate notes that property could include a person's interest in trust funds held by the Public Trustee and that although SL No. 42 'restrains the ability of a person beneficially interested in the money in the common fund to derive profits from their property, the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions'.<sup>8</sup>

In the view expressed in the human rights certificate, although SL No. 42 limits property rights, that limitation is reasonable and demonstrably justified:

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

<sup>3</sup> SL No. 42, s 4; SL No. 42, explanatory notes, p 1.

<sup>4</sup> SL No. 42, explanatory notes, p 1.

<sup>5</sup> SL No. 42, explanatory notes, p 2.

<sup>6</sup> S 8 of the HRA relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. S 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

<sup>7</sup> HRA, s 24.

<sup>8</sup> SL No. 42, human rights certificate, p 2.

common fund are not free to invest the monies as they choose, they receive a comparable market rate of return.<sup>9</sup>

## 5 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

**Chair**

**August 2023**

### **Legal Affairs and Safety Committee**

**Chair**

**Deputy Chair**

**Members**

Mr Peter Russo MP, Member for Toohey

Mrs Laura Gerber MP, Member for Currumbin

Ms Sandy Bolton MP, Member for Noosa

Ms Jonty Bush MP, Member for Cooper

Mr Jason Hunt MP, Member for Caloundra

Mr Jon Krause MP, Member for Scenic Rim

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<sup>9</sup> SL No. 42, human rights certificate, p 3.