



## Education, Employment and Training Committee

### Report No. 38, 57<sup>th</sup> Parliament

#### Subordinate legislation tabled between 9 June and 22 August 2023

### 1 Aim of this report

This report summarises the findings of the Education, Employment and Training Committee (the committee) following its examination of subordinate legislation within its portfolio areas.

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
- its compatibility with human rights
- its lawfulness.

It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA), and the human rights certificates with the *Human Rights Act 2019* (HRA).

### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
52	Youth Justice (Monitoring Device Conditions) Amendment Regulation 2023	22 August 2023	16 November 2023
54	Workers' Compensation and Rehabilitation (QOTE) Notice 2023	22 August 2023	16 November 2023
65	Youth Justice (Contact with Children) Amendment Regulation 2023	22 August 2023	16 November 2023
93	Racing Regulation 2023	22 August 2023	16 November 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 Racing Regulation 2023 raises an issue regarding the institution of Parliament. However, the committee is satisfied that the regulation gives sufficient regard to this fundamental legislative principle.

The committee did not identify any other issues regarding the policy, consistency with fundamental legislative principles, human rights compatibility, or lawfulness of the subordinate legislation covered by this report.

The explanatory notes tabled with the legislation complied with Part 4 of the LSA.

The human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of its compatibility with human rights.

The following sections provide a brief overview of the subordinate legislation and discuss the issue raised by the Racing Regulation 2023 regarding the institution of parliament (see section 7.1).

#### 4 Youth Justice (Monitoring Device Conditions) Amendment Regulation 2023

In 2023, the Legislative Assembly amended the *Youth Justice Act 1992* to extend the duration of the trial of electronic monitoring of children as a condition of bail and expand the number of children eligible for that trial by lowering the minimum-age for inclusion.<sup>1</sup> The Youth Justice (Monitoring Device Conditions) Amendment Regulation 2023 (SL No. 52) further expands this trial by extending its geographical scope to include areas in and around Cairns, Mount Isa and Toowoomba.

SL No. 52 extends the scope of the trial by amending the Youth Justice Regulation 2016 to prescribe:

- three new geographical areas in which a court must be based in order to impose an electronic monitoring device on a child as a condition of bail.<sup>2</sup>
- three new geographical areas in which a child must live in order to have an electronic monitoring device imposed as a condition of bail.<sup>3</sup>

With respect to the residency of a child, SL No. 52 defines these areas in a different manner to the existing areas in which a child must live in order to have an electronic monitoring device imposed as a condition of bail. The existing areas – which are in and around Townsville, north Brisbane, Moreton, Logan and the Gold Coast – are defined solely by reference to postcodes.<sup>4</sup> In contrast, the new areas are defined by reference to postcodes and the name of a suburb, town, or other locality.<sup>5</sup>

This difference in drafting is due to the large size of some postcodes in Cairns, Mount Isa and Toowoomba. Their size means that references to postcodes alone would not adequately define the locations of the electronic monitoring trial.<sup>6</sup>

#### 5 Workers' Compensation and Rehabilitation (QOTE) Notice 2023

The Workers' Compensation and Rehabilitation (QOTE) Notice 2023 (SL No. 54) notifies Queensland Ordinary Time Earnings (QOTE) for the financial year, and the percentage difference in QOTE for this financial year compared to last financial year. It states that QOTE for 2023-24 is \$1,760.70, which is an increase of 5.34 per cent from 2022-23.<sup>7</sup>



QOTE is used to calculate the compensation amounts payable to injured workers under the *Workers' Compensation and Rehabilitation Act 2003*.<sup>8</sup> Affected payments include lump sum compensation, weekly payments of compensation and compensation paid to a worker's dependants.<sup>9</sup>

Under the *Workers' Compensation and Rehabilitation Act 2003*, QOTE is the amount of Queensland full-time adult persons' ordinary earnings declared by the Australian Statistician in the original series

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<sup>1</sup> *Strengthening Community Safety Act 2023*, s 14.

<sup>2</sup> SL No. 52, s 4

<sup>3</sup> SL No. 52, ss 5 and 6.

<sup>4</sup> Youth Justice Regulation 2016, sch 1AA.

<sup>5</sup> SL No. 52, s 6(3).

<sup>6</sup> SL No. 52, explanatory notes, p 3.

<sup>7</sup> SL No. 54, s 3.

<sup>8</sup> *Workers' Compensation and Rehabilitation Act 2003*, ss 10A and 205-207.

<sup>9</sup> Queensland Government, WorkSafe, *What is QOTE?*, <https://www.worksafe.qld.gov.au/laws-and-compliance/workers-compensation-laws/guidance-materials/workers-compensation-benefits-including-qote/what-is-qote>.

of the publication 'Average Weekly Earnings, Australia', most recently published before the start of the financial year.<sup>10</sup>

## 6 Youth Justice (Contact with Children) Amendment Regulation 2023

The objective of the Youth Justice (Contact with Children) Amendment Regulation 2023 (SL No. 65) is to protect communications between child detainees and the Inspector of Detention Services (Inspector) and the Queensland Ombudsman (Ombudsman) in a similar manner to protections provided for adult detainees in the Corrective Services Regulation 2017.<sup>11</sup>

SL No. 65 achieves this objective by amending the Youth Justice Regulation 2016 to allow children detained in youth detention centres to communicate via mail or telephone with the Inspector or the Ombudsman, in their separate capacities, confidentially and without interference.<sup>12</sup> Prior to these changes, the relevant provisions of the regulation only protected communications between a detained child and the public guardian, a community visitor (child), a child advocacy officer, or a legal practitioner representing the child.

According to the explanatory notes, SL No. 65 will facilitate 'full and frank disclosure of information' to the Inspector and the Ombudsman, to support their functions of carrying out inspections of places of detention and investigating administrative actions of public sector agencies, respectively.<sup>13</sup>

## 7 Racing Regulation 2023

The Racing Regulation 2023 (SL No. 93) repeals and replaces the Racing Regulation 2013, which automatically expired on 1 September 2023.<sup>14</sup>

SL No. 93 prescribes:

- the minimum amount the Board of Racing Queensland must provide to fund country thoroughbred race meetings (\$20.4 million)<sup>15</sup>
- requirements for operational plans and matters about which control bodies must make policies
- matters relating to race information authority
- laws of other states about racing, betting, or animal welfare
- matters relating to fees payable under the *Racing Act 2002*.<sup>16</sup>

According to the explanatory notes, SL No. 93 is 'largely consistent' with the previous regulation. However, it includes minor amendments to:

- reflect changes in the legislation of other jurisdictions listed in the regulation
- clarify the matters that must be taking into account when a control body decides an application for race information authority.<sup>17</sup>

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<sup>10</sup> *Workers' Compensation and Rehabilitation Act 2003*, s 10A.

<sup>11</sup> SL No. 65, explanatory notes, p 2.

<sup>12</sup> SL No. 65, ss 4 and 5.

<sup>13</sup> SL No. 65, explanatory notes, p 2.

<sup>14</sup> SL No. 93, ss 2, 17; SL No. 93, explanatory notes, p 1.

<sup>15</sup> And the percentage by which the prescribed amount is increased each financial year. SL No. 93, ss 3, 4.

<sup>16</sup> SL No. 93, explanatory notes, p 1.

<sup>17</sup> SL No. 93, explanatory notes, p 2.

## 7.1 Subdelegation of power to racing control bodies

The *Racing Act 2002* provides that an application for race information authority must be made in the way prescribed by regulation and accompanied by the documents prescribed by regulation.<sup>18</sup> SL No. 93 subdelegates this legislative power to ‘control bodies’ by providing that the application for race information authority must be in a control body form and the documents are the documents identified in the form.<sup>19</sup>



The *Racing Act 2002* defines a ‘control body’ as ‘an approved control body’ or the Racing Queensland Board. An ‘approved control body’ means ‘a corporation given a Minister’s approval’.<sup>20</sup>

The Racing Queensland Board is currently the only control body because the Minister has not approved any others.<sup>21</sup>

As part of its examination of SL No. 93, the committee obtained – and considered – a copy of the form currently used by the Racing Queensland Board for applications for race information authority.

The subdelegation of power to control bodies raises issues of fundamental legislative principles, which require that legislation has sufficient regard to the institution of Parliament.<sup>22</sup> Whether subordinate legislation has sufficient regard to the institution of Parliament depends on whether, for example, the subordinate legislation allows the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons, and if authorised by an Act.<sup>23</sup>

The explanatory notes state that the subdelegation of power to a control body is justified because it is the decision maker authorised to issue a race information authority under the *Racing Act 2002* and ‘is therefore best placed to determine the form of the application for race information authority made to the control body, and accompanying documents to the application’.<sup>24</sup>

The power of the control power to issue a race information authority is subject to limits. SL No. 93 prescribes a number of matters that the control body must, and must not, take into account in exercising this power.<sup>25</sup> SL No. 93 also prescribes the types of conditions that a control body may impose on a race information authority, and matters that must not be taken into account in imposing such conditions.<sup>26</sup>



In light of the explanation given in the explanatory notes, and the limits on the decision-making power of the control body set out in SL No. 93, the committee is satisfied that this regulation gives sufficient regard to the institution of Parliament.

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<sup>18</sup> *Racing Act 2002*, s 134(2).

<sup>19</sup> SL No. 93, s 7.

<sup>20</sup> *Racing Act 2002*, Sch 1.

<sup>21</sup> Department of Education, correspondence, 27 September 2023.

<sup>22</sup> LSA, s 4(2)(b).

<sup>23</sup> LSA, s 4(5)(e).

<sup>24</sup> SL No. 93, explanatory notes, p 3.

<sup>25</sup> SL No. 93, ss 8 and 9.

<sup>26</sup> SL No. 93, ss 10 and 11.

## 8 Recommendations

The committee recommends that the Legislative Assembly notes this report.



Kim Richards MP  
**Chair**

**October 2023**

### **Education, Employment and Training Committee**

<b>Chair</b>	Ms Kim Richards MP, Member for Redlands
<b>Deputy Chair</b>	Mr James Lister MP, Member for Southern Downs
<b>Members</b>	Mr Mark Boothman MP, Member for Theodore
	Mr Nick Dametto MP, Member for Hinchinbrook
	Mr Barry O'Rourke MP, Member for Rockhampton
	Mr Jimmy Sullivan MP, Member for Stafford