

## Legal Affairs and Safety Committee

### Report No. 59, 57th Parliament

## Subordinate legislation tabled between 23 August 2023 and 12 September 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 23 August 2023 and 12 September 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*
112	<i>Civil Partnerships Regulation 2023</i>	12 September 2023	30 November 2023
113	<i>Criminal Proceeds Confiscation Regulation 2023</i>	12 September 2023	30 November 2023
114	<i>Queensland Civil and Administrative Tribunal Amendment Regulation 2023</i>	12 September 2023	30 November 2023
115	<i>Public Trustee Regulation 2023</i>	12 September 2023	30 November 2023

\*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

#### 2.1 Forms notified in the Queensland Government Gazette examined

The committee considered a number of forms approved for use under the *Corrective Services Act 2006*, *Working with Children (Risk Management and Screening) Act 2000*, *Legal Profession (Society Rules) Act 2007* and *Victims of Crime Assistance Act 2009*.

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

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

### 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 section 24 of the LSA
- the human rights certificates tabled with the subordinate legislation, where relevant, provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to their compatibility with the HRA.

The following sections provide a brief overview of the subordinate legislation and any relevant considerations of fundamental legislative principles and human rights.

### 4 Civil Partnerships Regulation 2023 (SL No. 112)

#### 4.1 Policy objective

The Civil Partnerships Regulation 2023 (SL No. 112) replaces the Civil Partnerships Regulation 2012 (2012 Regulation),<sup>3</sup> and provides for substantially the same matters.<sup>4</sup> Its objective is to ‘support the effective operation of the civil partnership scheme’.<sup>5</sup>

SL No. 112 prescribes:

- the documents required to be provided to the registrar to register or terminate a civil partnership
- the corresponding laws and relationships that are taken to be registered as civil partnerships under the *Civil Partnerships Act 2011*
- matters relating to fees and annual returns.<sup>6</sup>

### 5 Criminal Proceeds Confiscation Regulation 2023 (SL No. 113)

#### 5.1 Policy objective

The Criminal Proceeds Confiscation Regulation 2023 (SL No. 113) replaces the Criminal Proceeds Confiscation Regulation 2013 (2013 Regulation).<sup>7</sup>

Similar to the expired 2013 Regulation, SL No. 113 prescribes:

- offences that are serious criminal offences for section 17(1)(b) in chapter 2 of the *Criminal Proceeds Confiscation Act 2002* (CPC Act)<sup>8</sup>
- offences that are confiscation offences for section 99(e) in chapter 3 of the CPC Act<sup>9</sup>
- when a Magistrates Court may make a forfeiture order for real property

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<sup>3</sup> The 2012 Regulation expired on 31 August 2023.

<sup>4</sup> SL No. 112, explanatory notes, p 2.

<sup>5</sup> SL No. 112, explanatory notes, p 1.

<sup>6</sup> SL No. 112, explanatory notes, pp 1-2.

<sup>7</sup> The 2013 Regulation expired on 1 September 2023: SL No. 113, explanatory notes, p 1.

<sup>8</sup> Chapter 2 of the CPC Act provides for a non-conviction-based confiscation scheme.

<sup>9</sup> Chapter 3 of the CPC Act provides for a conviction-based confiscation scheme.

- the laws of other States that are corresponding laws.<sup>10</sup>

SL No. 113 updates the 2013 Regulation to:

- include additional orders from other Australian jurisdictions that Queensland recognises as corresponding interstate proceeds of crime orders
- omit out-of-date references
- specify the relevant Victorian provisions relating to pecuniary penalty orders and a related forfeiture order.<sup>11</sup>

## **5.2 Consistency with fundamental legislative principles**

### **5.2.1 Compulsory acquisition of property**

Legislation should provide for the compulsory acquisition of property only with fair compensation.<sup>12</sup>

The interstate orders prescribed by SL No. 118 enable the enforcement in Queensland of orders of other states restraining or forfeiting property.<sup>13</sup> The explanatory notes consider the compulsory acquisition of property without compensation that results from this is justified:

... by the policy against unjust enrichment and because the addition of these orders furthers the main objective of the [CPC] Act to remove the financial gain and increase the financial loss associated with illegal activity by ensuring orders of other States restraining or forfeiting property under corresponding laws may be enforced in Queensland.<sup>14</sup>

The prescription in SL No. 113 of serious criminal offences and confiscation offences enable the confiscation and compulsory acquisition of property without compensation.

The explanatory notes consider the inconsistency with fundamental legislative principles is justified because the forfeiture relates to property and assets obtained through illegal activity, and it is necessary to achieve the main object of the CPC Act.<sup>15</sup>

Confiscation proceedings under the CPC Act may affect parties additional to the respondent, such as their dependents and third parties. The explanatory notes consider this is justified because it deters criminal activity, removes financial gain, and increases the financial loss associated with illegal activity.<sup>16</sup> The explanatory notes add that the CPC Act contains safeguards for these parties:

... the strong confiscation powers in the [CPC] Act are balanced by a range of appropriate safeguards designed to protect the individual rights of persons who may be subject to the scheme. For example, the requirement for notice to be given to any person who may have an interest in the relevant property or, who may be affected by an order under the [CPC] Act. Any person given notice may appear at the hearing of the application. The court also has power to make an order excluding property from confiscation (including a dependant's principal place of residence) or a hardship order requiring payment of an amount necessary to prevent hardship to any dependant of the respondent.<sup>17</sup>

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<sup>10</sup> SL No. 113, explanatory notes, p 2.

<sup>11</sup> SL No. 113, explanatory notes, pp 2-3.

<sup>12</sup> LSA, s 4(3)(i).

<sup>13</sup> SL No. 113, explanatory notes, p 4.

<sup>14</sup> SL No. 113, explanatory notes, p 4.

<sup>15</sup> The main object of the CPC Act is to remove the financial gain and increase the financial loss associated with illegal activity.

<sup>16</sup> SL No. 113, explanatory notes, p 3.

<sup>17</sup> SL No. 113, explanatory notes, pp 3-4.

### **Committee comment**

Noting that safeguards are provided to certain parties, the committee is satisfied that the compulsory acquisition of property without compensation that is facilitated by SL No. 113 is justified because the property was obtained through illegal activity.

#### **5.2.2 Reversal of the onus of proof**

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification.<sup>18</sup>

SL No. 113 prescribes serious criminal offences which enable confiscation under the non-conviction-based scheme of the CPC Act and may subject a person to the reverse onus of proof.<sup>19</sup> That is, ‘the respondent, their dependants, or a third party [may be required] to satisfy the court that property was lawfully acquired or, that they had no knowledge of the relevant illegal activity’.<sup>20</sup>

The explanatory notes provide the following justification:

The reversal of the burden of proof, requiring the respondent to satisfy the court that property was not unlawfully acquired, is a key element of effective confiscation regimes. The reversal is appropriate as information about the lawful source of an asset is peculiarly within the knowledge of the respondent. Accordingly, it would be significantly more difficult and costly for the State to establish this information. The importance of depriving persons of illegally acquired property and deterring future criminal activity by removing the incentive to engage in criminal activity, justifies the imposition of a burden on the respondent, their dependants or a third party to prove that the property was lawfully acquired.<sup>21</sup>

### **Committee comment**

The committee is satisfied that the reversal of the onus of proof is adequately justified given the importance of depriving persons of illegally acquired property and deterring future criminal activity by removing the incentive to engage in criminal activity.

#### **5.3 Compatibility with human rights**

##### **5.3.1 Property rights and rights to privacy, protection of families and children, and fair hearing**

SL No. 113 limits property rights by prescribing serious criminal offences and confiscation offences. This enables property to be restrained, forfeited or confiscated. It also limits property rights by prescribing interstate orders which allow Queensland courts to recognise and enforce certain interstate orders requiring the restraint or forfeiture of property in Queensland.<sup>22</sup>

The right to privacy, which protects against interferences with a person’s home, may be limited by SL No. 113. This is because SL No. 113 enables the confiscation of property, which may include a person’s home, even when a person has not been charged with or convicted of a prescribed offence.<sup>23</sup>

The right to protection of families and children may be limited if confiscation of the family home or other property impacts on the respondent’s partner or children.<sup>24</sup>

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<sup>18</sup> LSA, s 4(3)(d).

<sup>19</sup> See chapter 2 of the CPC Act. SL No. 113, explanatory notes, p 4.

<sup>20</sup> SL No. 113, explanatory notes, p 4.

<sup>21</sup> SL No. 113, explanatory notes, p 4.

<sup>22</sup> SL No. 113, human rights certificate, pp 2-3.

<sup>23</sup> SL No. 113, human rights certificate, p 3.

<sup>24</sup> SL No. 113, human rights certificate, p 3.

SL No. 113 limits the right to a fair hearing because it prescribes offences for which a respondent is subject to a reversal of the onus of proof. That is, the respondent<sup>25</sup> must show that they lawfully acquired the property or that they had no knowledge of the relevant illegal activity.<sup>26</sup>

The human rights certificate provides that SL No. 113 ‘supports the objects of the Act to disrupt, deter and reduce crime by undermining the profitability of criminal enterprises, depriving persons of the benefits derived from crime, and preventing reinvestment of the proceeds in further criminal activity’.<sup>27</sup>

Regarding the purpose of prescribing equivalent interstate provisions, the human rights certificate states that it ‘ensures mutual recognition and cooperation between jurisdictions can work effectively and achieve its purpose’.<sup>28</sup>

The human rights certificate concludes that the limitations on human rights are ‘outweighed by the importance of deterring criminal activity and removing the financial gain and increasing the financial loss associated with illegal activity’.<sup>29</sup>

### **Committee comment**

The committee is satisfied that the subordinate legislation is compatible with human rights.<sup>30</sup>

## **6 Queensland Civil and Administrative Tribunal Amendment Regulation 2023 (SL No. 114)**

### **6.1 Policy objective**

The Queensland Civil and Administrative Tribunal Amendment Regulation 2023 (SL No. 114) exempts voluntary assisted dying matters from Queensland Civil and Administrative Tribunal (QCAT) application and copying fees. The explanatory notes advise this is in line with the position in Victoria and Western Australia, and it will increase access to QCAT services.<sup>31</sup>

## **7 Public Trustee Regulation 2023 (SL No. 115)**

### **7.1 Policy objective**

The Public Trustee Regulation 2023 (SL No. 115) replaces the Public Trustee Regulation 2012 (expired regulation), which expired on 31 August 2023.

The explanatory notes state that SL No. 115 is in ‘substantially the same form’ as the expired regulation, except for a revision of the interest rates payable on amounts held in the Public Trustee’s common fund.<sup>32</sup>

Like the expired regulation, SL No. 115 provides for:

- interest payable on amounts held in the common fund

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<sup>25</sup> And other parties.

<sup>26</sup> SL No. 113, human rights certificate, p 4.

<sup>27</sup> SL No. 113, human rights certificate, p 4.

<sup>28</sup> SL No. 113, human rights certificate, p 4.

<sup>29</sup> SL No. 113, human rights certificate, p 7.

<sup>30</sup> Section 8 of the *Human Rights Act 2019* (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 section 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

<sup>31</sup> SL No. 114, explanatory notes, p 2.

<sup>32</sup> SL No. 115, explanatory notes, p 1.

- the investment of monies credited to the unclaimed moneys fund
- the remuneration of advisory trustees appointed to advise the public trustee about the administration of estates under administration
- the application of the Act, part 8, to unclaimed superannuation benefits connected with the State
- the preparation and provision of accounts
- the fixing of fees of the official solicitor
- the remission of fees for services provided under the Act
- the conduct of the Public Trust Office's business
- the provision of aid in legal proceedings.<sup>33</sup>

SL No. 115 increases the Class 2(c) and Class 3 amounts (Agency Deposit at Call Accounts, Financial Management Customers and Enduring Powers of Attorney Accounts) and Term Deposit amounts (Term Investment Accounts) as follows:

Funds held for	Current Interest Rate	Proposed Interest Rate from 1 Aug 2023
<b>Class 2(c) and Class 3 amounts:</b> (Agency Deposit at Call Accounts, Financial Management Customers and Enduring Powers of Attorney Accounts)	1.48%	1.68%
<b>Term Deposit amounts:</b> Term Investment Accounts	1.48%	1.68%

According to the explanatory notes, the change to the interest rates is 'to ensure a fair and appropriate rate of return for persons whose moneys are held in the common fund'.<sup>34</sup>

## 8 Committee consideration of the Forms notified in the Queensland Government Gazette



The committee did not identify any significant issues with the forms examined and is satisfied they comply with section 48 of the *Acts Interpretation Act 1954*.

The committee considered the following forms published in the Queensland Government Gazette:

Form No.	Version	Form heading	Authorising Law	Date published
7	5	Maximum Security Order	<i>Corrective Services Act 2006</i>	23 June 2023
18	4	Interstate Leave Permit	<i>Corrective Services Act 2006</i>	23 June 2023
22	3	Warrant by Authorised Person for Arrest of Prisoner Unlawfully at Large or Absent	<i>Corrective Services Act 2006</i>	23 June 2023
28	5	Application by Prisoner for Exceptional Circumstances Parole Order	<i>Corrective Services Act 2006</i>	23 June 2023
29	6	Application by Prisoner for Parole Order	<i>Corrective Services Act 2006</i>	23 June 2023

<sup>33</sup> SL No. 115, human rights certificate, pp 1-2.

<sup>34</sup> SL No. 115, explanatory notes, p 1.

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DJAG 001.V9 2023	9	Volunteer or student blue card application or renewal (V)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 002.V9 2023	9	Blue card business application (B)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 003.V9 2023	9	Exemption card application (E)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 004.V9 2023	9	Exemption card business application (EB)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 006.V9 2023	9	Volunteer to paid employment transfer	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 008.V8 2023	8	Link a person to your organisation	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 012.V9 2023	9	Volunteer to business transfer	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 017.V9 2023	9	Change of name	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 018.V6 2023	6	Notification of change for self-employed persons	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 019.V9 2023	9	Volunteer foster/kinship carer or adult member blue/exemption card application (VC)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 021.V9 2023	9	Eligibility declaration application (ELG)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 023.V9 2023	9	Nominee or director of a licensed care service blue/exemption card application (LCS/B/E)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 026.V5 2023	5	Cease business/self-employed child-related activity	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 027.V9 2023	9	Change in police information notification (CH)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 028.V9 2023	9	Adult resident/occupant blue card application (AO)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 031.V9 2023	9	Family day care educator/assistant blue card application (FDC)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 035.V5 2023	5	No longer with organisation (for applicants/cardholders)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023

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DJAG 037.V7 2023	7	Link to the department for nominees & directors of a licensed care service	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 040.V5 2023	5	Update applicant/cardholder contact details	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 044.V9 2023	9	Application to cancel a negative notice	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 069.V4 2023	4	Replacement blue/exemption card	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 070.V4 2023	4	Paid employee or job seeker blue card application or renewal (P)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 071.V4 2023	4	Blue card application or renewal for disability service workers (DWS)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
DJAG 072.V4 2023	4	Exemption card application or renewal for disability service workers (DWS/E)	<i>Working with Children (Risk Management and Screening) Act 2000</i>	30 June 2023
29	07	Application by Prisoner for Parole Order	<i>Corrective Services Act 2006</i>	14 July 2023
49	09	Victims Register – Application Form	<i>Corrective Services Act 2006</i>	14 July 2023
QLS Form 3 (SR)	10	Nomination Form	<i>Legal Profession (Society) Rules 2007</i>	8 September 2023
1	5	Financial Assistance Application – Primary Victim	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023
2	6	Funeral Assistance Application	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023
7	4	Financial Assistance Application – Related Victim	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023
8	3	Financial Assistance Application – Parent Secondary Victim	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023
9	4	Financial Assistance Application - Witness	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023
13A	1	Financial Assistance Application – Online Form Part A	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023
13B	1	Financial Assistance Application – Online Form Part B	<i>Victims of Crime Assistance Act 2009</i>	15 September 2023

The committee did not identify any issues from a technical perspective. As these forms are not subordinate legislation, there is no requirement to table explanatory notes or a human rights certificate with them.



## 9 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

**Chair**

**October 2023**

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

**Chair**

**Deputy Chair**

**Members**

Mr Peter Russo MP, Member for Toohey

Mrs Laura Gerber MP, Member for Currumbin

Mr Stephen Andrew MP, Member for Mirani

Ms Jonty Bush MP, Member for Cooper

Mr Jason Hunt MP, Member for Caloundra

Mr Jon Krause MP, Member for Scenic Rim