

Legal Affairs and Safety Committee Report No. 60, 57th Parliament Subordinate legislation tabled between 13 September 2023 and 10 October 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 13 September 2023 and 10 October 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).¹

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.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
133	<i>Criminal Practice Amendment Rule (No. 2) 2023</i>	10 October 2023	15 February 2024
138	<i>Proclamation—Police Powers and Responsibilities and Other Legislation Amendment Act (No. 1) 2023</i>	10 October 2023	15 February 2024
139	<i>Liquor (Mornington) Amendment Regulation 2023</i>	10 October 2023	15 February 2024

*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 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.

¹ LSA, Part 4.

² HRA, s 41.

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

4 Criminal Practice Amendment Rule (No. 2) 2023

4.1 Policy objective

The rules of practice and procedure relating to the courts' criminal jurisdiction are contained in the *Criminal Practice Rules 1999* (CP Rules).³ These are made by the Governor in Council, with the consent of the rules committee.⁴

The CP Rules prescribe forms for proceedings (including for an indictment, an information or complaint)⁵ and contain a list of approved forms in Schedules 2 to 5. The approved forms in Schedule 3 include prescribed wording for a statement of offence under the Criminal Code.

The Criminal Practice Amendment Rule (No. 2) 2023 (SL No. 133) amends the CP Rules by:

- updating the prescribed wording of Form 240 in Schedule 3 to reflect the creation of a new circumstance of aggravation under section 408A of the Criminal Code⁶
- replacing references to 'The Queen' in Schedule 2 to references to 'The King'.⁷

5 Proclamation—Police Powers and Responsibilities and Other Legislation Amendment Act (No. 1) 2023

5.1 Policy objective

The Proclamation made under the *Police Powers and Responsibilities and Other Legislation Amendment Act (No. 1) 2023* (Amendment Act) fixes a commencement date of 1 October 2023 for Part 2 of the Amendment Act, which contains amendments to the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

The amendments:

- adjust reporting periods for reportable offenders to 10 years, 20 years and life⁸
- adjust reporting periods for child offenders to 2.5 years, 4 years and a maximum of 7.5 years.⁹

According to the explanatory notes, the additional reporting periods 'aim to ensure that offenders who commit sexual or other serious offences against children continue to be monitored by police to reduce the likelihood that they will reoffend'.¹⁰

³ SL No. 133, explanatory notes, p 1.

⁴ *Supreme Court of Queensland Act 1991*, s 85.

⁵ CP Rules, chapter 2.

⁶ The new circumstance of aggravation was introduced by the *Strengthening Community Safety Act 2023* (s 8) and relates to the offence of 'Unlawful use or possession of motor vehicles, aircraft or vessels', with the aggravating circumstances being publication of particular material on social media to advertise the offence; or committing the offence in the night, or if the offender uses violence, is armed, in the company of another, or damages any property. See SL No. 133, s 4.

⁷ SL No. 133, s 3.

⁸ Note this does not apply to post *Dangerous Prisoners (Sexual Offenders) Act 2003* reportable offenders, who are currently subject to life reporting obligations. These amendments make no changes to their existing reporting obligations. SL No. 138, explanatory notes, p 1.

⁹ With the exception of the new 4 year reporting period for child offenders, the amendments do not change how reporting periods are calculated for child or adult offenders. SL No. 138, explanatory notes, p 1.

¹⁰ SL No. 138, explanatory notes, p 2.

Further, the amendments are not retrospective and will only apply to offenders who are convicted of a prescribed offence or have an offender reporting order made in relation to their offending, after the commencement of the amendments.¹¹

No human rights certificate was required to be tabled with the proclamation.¹²

6 Liquor (Morningson) Amendment Regulation 2023

6.1 Policy objective

The Liquor (Morningson) Amendment Regulation 2023 (SL No. 139) amends the Liquor Regulation 2002¹³ to increase the alcohol carriage limit for the Morningson Shire and surrounding foreshores (Morningson Shire) from 4.5L to 11.25L of low to mid-strength beer or pre-mixed spirits (or any combination of both).¹⁴

SL No. 139 is intended to implement the request from the Morningson Shire Council, in consultation with the Community Justice Group for the Morningson Shire,¹⁵ to increase the limit,¹⁶ and to provide 'a lawful and convenient alternative to illicit home brew consumption causing significant harm in the community'.¹⁷

6.2 Compatibility with human rights

6.2.1 Recognition and equality before the law

Every person is equal before the law and is entitled to the equal protection of the law without discrimination.¹⁸ SL No. 139 potentially limits an individual's right to equality before the law because prescribing permissible quantities and types of liquor product for individual possession in Morningson Shire provides for restrictions that will affect persons located within the area, but do not apply to persons located outside the area.¹⁹

According to the human rights certificate:

In 2013, the High Court of Australia determined that alcohol restrictions contained in the Liquor Act [Liquor Act 1992] and in the Liquor Regulation 2002 were a 'special measure' under the *Racial Discrimination Act 1975* (Cth), as they impose constraints on individual liberties in favour of promoting safety for the broader community (*Maloney v the Queen* [2013] HCA 28).²⁰

The human rights certificate contends that increasing the alcohol carriage limit is a lessening of restrictions and increases individual liberty, and that, on balance, increasing the alcohol carriage limit is regulating only to the extent required to promote community safety and is based on the High Court precedent.²¹

¹¹ SL No. 138, explanatory notes, p 2.

¹² See HRA, s 41(4A).

¹³ SL No. 139 amends Liquor Regulation 2002, sch 11.

¹⁴ SL No. 139, explanatory notes, p 1.

¹⁵ Junkuri Laka Wellesley Islands Aboriginal Law, Justice and Governance Association Inc.

¹⁶ SL No. 139, explanatory notes, p 1.

¹⁷ SL No. 139, explanatory notes, p 2.

¹⁸ HRA, s 15(3).

¹⁹ SL No. 139, human rights certificate, p 2.

²⁰ SL No. 139, human rights certificate, p 2.

²¹ SL No. 139, human rights certificate, p 3.

Committee Comment

The committee is satisfied that the subordinate legislation is compatible with human rights.²²

7 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

November 2023

Legal Affairs and Safety Committee

Chair

Mr Peter Russo MP, Member for Toohey

Deputy Chair

Mrs Laura Gerber MP, Member for Currumbin

Members

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

²² 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.