

## Transport and Public Works Committee

### Report No. 40, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 18 March 2020 and 19 May 2020

#### 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 18 March 2020 and 19 May 2020. 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*.<sup>1</sup>

The report notes any issues identified by the committee in its consideration of the human rights certificates tabled with the subordinate legislation.<sup>2</sup>

#### 2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
N/A	Rail Safety National Law National Regulations (Application of Law) Variation Regulations 2019	30/3/20	8/9/20
40	Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation 2020	22/4/20	9/9/20
51	Transport Legislation (COVID-19 Emergency Response) Regulation 2020	22/4/20	9/9/20
55	Transport Operations (Passenger Transport) Amendment Regulation 2020	19/5/20	10/09/20
57	Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020	19/5/20	10/09/20

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

#### 3 Rail Safety National Law National Regulations (Application of Law) Variation Regulations 2019<sup>3</sup>

The objective of the regulations is to apply in Queensland certain changes, made under the Rail Safety National Law, which remove seven Victorian tourist and heritage railways, as well as other Victorian tramway or light railways, from the Rail Safety National Law.

<sup>1</sup> *Legislative Standards Act 1992*, Part 4.

<sup>2</sup> *Human Rights Act 2019*, s 41.

<sup>3</sup> Note: This item does not form part of the usual numbered subordinate legislation (SL) series.

The *Rail Safety National Law (Queensland) Act 2017* adopted national rail safety regulation and investigation reforms by applying the Rail Safety National Law as a law of Queensland. (The Rail Safety National Law is set out in the schedule to the *Rail Safety National Law (South Australia) Act 2012*.) Amendments to the Rail Safety National Law are made by the Parliament of South Australia and are automatically applied as part of the law in Queensland. Section 264 of the Rail Safety National Law (Queensland) allows the Governor of the State of South Australia to make national regulations.

Section 14 of the *Rail Safety National Law (Queensland) Act 2017* provides that sections 49 to 51 of the *Statutory Instruments Act 1992* apply to a national regulation as if a reference in those sections to subordinate legislation were a reference to a national regulation. By virtue of section 14, this item:

- must be tabled within 14 sitting days of being notified<sup>4</sup>
- is subject to disallowance,<sup>5</sup> and
- is able to be considered and reported on by a committee.

### **3.1 Comment on issues of fundamental legislative principle and explanatory notes**

No fundamental legislative principles (FLP) issues were detected, and the explanatory notes tabled with the regulations comply with part 4 of the *Legislative Standards Act 1992*.

## **4 Queensland Building and Construction Commission (Minimum Financial Requirements) Amendment Regulation 2020 (SL 40 of 2020)**

The objective of the amendment regulation is to provide transitional provisions for changes to accounting standards that can impact on the Minimum Financial Requirements (MFR). The *Queensland Building and Construction Commission (Minimum Financial Requirements) Regulation 2018* outlines the MFR for licensing in the building and construction industry. Holders of a Queensland Building and Construction Commission (QBCC) contractor grade of licence must, at all times, comply with the MFR. This includes a requirement that financial reports and documents must be prepared in accordance with the 'prescribed accounting standards'.

Such standards include Australian Accounting Standards and other relevant documents published by the Australian Accounting Standards Board (AASB). These standards and documents are regularly amended by the AASB. However, certain new or amended accounting standards can result in licensees facing difficulties in immediately complying with their MFR obligations.<sup>6</sup>

The amendment regulation clarifies that, where an existing prescribed accounting standard is amended or a new prescribed accounting standard is introduced, a QBCC licensee can comply with a previous standard for a reasonable transitional period (up to 12 months from when the new or amended standard came into effect and started applying to accounts).

### **4.1 Comment on issues of fundamental legislative principle and explanatory notes**

No FLP issues were detected and the explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

### **4.2 Comment on Human Rights Act compliance**

The subordinate legislation is compatible with human rights. A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>4</sup> *Statutory Instruments Act 1992*, section 49.

<sup>5</sup> *Statutory Instruments Act 1992*, section 50.

<sup>6</sup> See the explanatory notes, pp 2-3.

## 5 Transport Legislation (COVID-19 Emergency Response) Regulation 2020 (SL 51 of 2020)

The objectives of the regulation are to provide exemptions from, or otherwise modify the application of, particular transport requirements to:

- minimise the risks to the health and safety of people caused by the COVID-19 emergency
- alleviate the financial burden on people caused by the emergency, and
- ensure the effective and efficient regulation and administration of land transport activities during the emergency, and for a period after the emergency ends.<sup>7</sup>

Some of the main features of this regulation include:

- providing the chief executive of the Department of Transport and Main Roads (TMR) with the power to extend the time for a customer to comply with motor vehicle certificate of inspection requirements by up to six months without the customer first having to apply
- allowing the chief executive of TMR to issue disability parking permits, without application, to existing permit holders whose permit will expire during the COVID-19 emergency or within six months after the emergency ends
- providing the chief executive of TMR with the ability to issue fee relief from certain fees under transport regulations to help alleviate the financial impacts of the COVID-19 emergency on individuals and businesses
- extending the validity of medical certificates required to be held by drivers aged 75 years and older, and
- removing the requirement for older drivers to carry a medical certificate if they do not have one and cannot reasonably obtain one due to the emergency, during the COVID-19 emergency and for a further six months.<sup>8</sup>

### 5.1 Comment on issues of fundamental legislative principle and explanatory notes

*Section 4(4)(b) Legislative Standards Act 1992 – whether legislation has sufficient regard to the institution of Parliament*

Legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. The provisions which allow the chief executive to publish a notice that allows exemptions from requirements and grants extensions of time to comply with requirements may be seen to breach this fundamental legislative principle.

The explanatory notes provide the following justification:

*The chief executive's powers to modify the application of the specified legislative requirements are limited:*

- *to circumstances arising from the current COVID-19 public health emergency*
- *to circumstances generally where requiring compliance with the requirement would not be practicable or reasonable due to the COVID-19 emergency or may risk the spread of COVID-19 within the community or where modifying the requirement may alleviate the financial burden on people; and*
- *by the modification powers only applying to provisions which are specifically listed in Schedules to the Regulation.*

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<sup>7</sup> Explanatory notes, p 2.

<sup>8</sup> Explanatory notes, p 2.

*Additionally, the Regulation will automatically expire six months after the day the COVID-19 emergency ends.<sup>9</sup>*

As stated in the explanatory notes<sup>10</sup>, the amendments are aimed to be beneficial to individuals. While the fundamental legislative principle involved here is an issue of regard for the institution of Parliament, rather than an issue of regard for rights and liberties of the individual, this could nonetheless, on one view, be seen as ameliorating the breach of fundamental legislative principle.

In this regard, the committee is satisfied that any breach of fundamental legislative principle is sufficiently justified.

## **5.2 Comment on explanatory notes**

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

## **5.3 Comment on Human Rights Act compliance**

The subordinate legislation is compatible with human rights. As noted in the human rights certificate, the impacts of the regulation on rights are entirely beneficial, as the changes provide exemptions from requirements that are normally in place, extend approvals, and provide fee relief.<sup>11</sup>

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

# **6 Transport Operations (Passenger Transport) Amendment Regulation 2020 (SL 55)**

The objective of the amendment regulation is to remove the requirement to provide a direct reimbursement for concession fares for an Integrated Regional Transport Agreement (IRTA), as revenues and costs are otherwise accounted for within the payment mechanism.<sup>12</sup> According to the explanatory notes, an IRTA is a:

*proposed new type of standard service contract, which aims to streamline the administration of service contracts by consolidating multiple service contracts into an IRTA for particular service contract areas or routes across Queensland.*

*Reimbursing the holder of an IRTA for a concession fare is inconsistent with the IRTA payment model because the holder estimates their revenue as part of the bidding process and the revenue estimate includes an estimate of persons travelling on concession fares.<sup>13</sup>*

The regulation will prescribe the class of persons stated in the 'IRTA Bus Fares and Concessions Policy' for an IRTA. The amendment has no effect on standard service contracts that are not IRTAs.

## **6.1 Consultation**

The development of IRTAs was 'in response to industry concerns about the current contractual framework being too burdensome'.<sup>14</sup> The explanatory notes advises the following in relation to the consultation undertaken:

*Throughout 2018 and 2019, extensive consultation on IRTAs occurred with the affected operators. Consultation included industry forums, in-person meetings, written feedback on commercial principles, and invitation to offer and contract departure briefings. No issues have been raised regarding the proposed regulatory change. The relevant operators support the*

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<sup>9</sup> Explanatory notes, p 7.

<sup>10</sup> Explanatory notes, p 7.

<sup>11</sup> Human rights certificate, p 2.

<sup>12</sup> Explanatory notes, p 1.

<sup>13</sup> Explanatory notes, p 1.

<sup>14</sup> Explanatory notes, p 2.

*simplification of contracts, including a single payment mechanism without direct concessional reimbursements.*<sup>15</sup>

## **6.2 Comment on issues of fundamental legislative principle**

The explanatory notes state that references to the 'IRTA Bus Fares and Concession Policy' may breach the fundamental legislative principle about the delegation of legislative power only in appropriate cases and to appropriate persons under section 4(4)(a) of the *Legislative Standards Act 1992*.

Where there is, incorporated into the legislative framework of the State, an extrinsic document that is not reproduced in full in subordinate legislation, and where changes to that document can be made without the content of those changes coming to the attention of the House, it may be argued that the document (and the process by which it is incorporated into the legislative framework) has insufficient regard to the institution of Parliament. The Policy is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House.

Part of the rationale for this issue is to ensure sufficient parliamentary scrutiny of a delegated legislative power.<sup>16</sup>

The significance of dealing with such matters other than by subordinate legislation is that, since the relevant document is not 'subordinate legislation', it is not subject to the tabling and disallowance provisions in Part 6 of the *Statutory Instruments Act 1992*.

The IRTA policy is not contained in the subordinate legislation in its entirety, and as such its content does not come to the attention of the House.

The explanatory notes state that the provision is justified because:

*... it is limited in its effect to IRTAs only and the proposed IRTA framework will be entered into by existing service contract holders voluntarily.*<sup>17</sup>

Given the above advice in the explanatory notes, that stakeholders raised no issues during consultation, and that the relevant operators supported the simplification of contracts, the committee is satisfied that any FLP breach is sufficiently justified.

## **6.3 Comment on explanatory notes**

The explanatory notes tabled with the amendment regulation comply with part 4 of the *Legislative Standards Act 1992*.

## **6.4 Comment on Human Rights Act compliance**

The subordinate legislation is compatible with human rights.

### **Comment on Human rights certificate**

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

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<sup>15</sup> Explanatory notes, pp 2-3.

<sup>16</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: the OQPC Notebook*, p170.

<sup>17</sup> Explanatory notes, p 2.

## **7 Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020 (SL 57)**

### **7.1 Regulations made in reliance on the *COVID-19 Emergency Response Act 2020***

This regulation is made in reliance on section 24 of the *COVID-19 Emergency Response Act 2020* (Emergency Response Act), as well as on the general regulation-making power in section 520 of the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA ACT).<sup>18</sup>

The Emergency Response Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency. That Act applies despite any other Act or law other than the *Human Rights Act 2019*.<sup>19</sup> The Act expires on 31 December 2020.<sup>20</sup>

In broad terms, section 24 provides a regulation-making power for matters relating to residential tenancies and rooming accommodation necessary to respond to that emergency, including to:

- ensure rights, obligations and processes under the RTRA Act operate appropriately having regard to COVID-19 response measures
- assist in achieving the objectives of COVID-19 response measures
- support the Queensland residential rental sector during the COVID-19 emergency period.<sup>21</sup>

Any regulation made in reliance on section 24:

- must declare it is made under section 24.<sup>22</sup> (This regulation includes such a declaration at section 3.)
- may be inconsistent with an Act or law, other than the *Human Rights Act 2019*, to the extent necessary to achieve a purpose of the regulation and the Emergency Response Act.<sup>23</sup>
- may have retrospective operation to a day not earlier than 19 March 2020.<sup>24</sup> (Section 2 of this regulation deems certain provisions to have commenced on 29 March 2020.)
- will expire on 31 December 2020.<sup>25</sup>
- may impose a penalty of not more than 100 penalty units for a contravention of the regulation.<sup>26</sup> (By contrast, section 520 of the RTRA Act allows for regulations to impose a penalty of no more than 20 units.)
- must be tabled within 14 days of notification (rather than the usual 14 sitting days).<sup>27</sup>

Additionally:

- Section 24 does not limit the regulation-making power conferred under the *Residential Tenancies and Rooming Accommodation Act 2008*.<sup>28</sup>
- To the extent a person's act or omission complies with a regulation made section 24, the person does not incur civil or criminal liability under the RTRA Act for the act or omission.<sup>29</sup>

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<sup>18</sup> See section 2.

<sup>19</sup> *COVID-19 Emergency Response Act 2020*, s 4(1).

<sup>20</sup> *COVID-19 Emergency Response Act 2020*, s 25.

<sup>21</sup> *COVID-19 Emergency Response Act 2020*, s 24(1).

<sup>22</sup> *COVID-19 Emergency Response Act 2020*, s 24(5).

<sup>23</sup> *COVID-19 Emergency Response Act 2020*, s 24(3)(a).

<sup>24</sup> *COVID-19 Emergency Response Act 2020*, s 24(3)(b).

<sup>25</sup> *COVID-19 Emergency Response Act 2020*, s 24(8).

<sup>26</sup> *COVID-19 Emergency Response Act 2020*, s 24(3)(c).

<sup>27</sup> *COVID-19 Emergency Response Act 2020*, s 24(9), and contrast s 49(1) of the *Statutory Instruments Act 1992*.

<sup>28</sup> *COVID-19 Emergency Response Act 2020*, s 24(6).

<sup>29</sup> *COVID-19 Emergency Response Act 2020*, s 24(4).

## 7.2 Tabling of the regulation

As noted above, any regulation in reliance on section 24 must be tabled within 14 days of notification.

This regulation was notified on 24 April 2020 and tabled on 19 May 2020, outside the 14 day requirement. This raises for consideration the operation of sections 49 and 51 of the *Statutory Instruments Act 1992*.

Section 49 of that Act states:

*(1) Subordinate legislation must be tabled in the Legislative Assembly within 14 sitting days after it is notified under section 47.*

*(2) If subordinate legislation is not tabled under subsection (1), it ceases to have effect.*

It is noted that the responsible Minister tabled a draft regulation during the debate on the COVID-19 Emergency Response Bill on 22 April 2020, saying at the time:

*Upon passage of the bill, I will be seeking to make the regulation to give retrospective effect to the moratorium on evictions announced by the Prime Minister on 29 March 2020.*

.....

*I advise the House that this morning I spoke with His Excellency the Governor about the regulation and sought his permission to table a draft copy in this parliament for the benefit of members. Since Australia's economy has started to go into hibernation, millions of Australians have lost their jobs or significant amounts of income. The regulation will have a retrospective effect. His Excellency agreed there was a need to provide clarity to members and to Queenslanders by enabling the draft regulation to be visible sooner rather than later. I table, ... for the benefit of the House, the draft regulation.<sup>30</sup>*

This action by the Minister can be seen as commendable, as aiding transparency and informing Members and the public about the regulation in a timely manner.<sup>31</sup> However, it is highly doubtful that the tabling of the draft copy at that time can amount to compliance with section 49. In particular, at the time of the tabling of the draft, no regulation had been notified. Moreover, at that time, the legislation enabling the regulation had not been passed. As noted above, the regulation itself was tabled on 19 May 2020.

## 7.3 Comment regarding date of tabling

In short, the position appears to be:

- The regulation has not been tabled as required by section 49(1) (as modified by section 24(9) of the Emergency Response Act).
- The regulation has therefore ceased to have effect.

Section 51 of the *Statutory Instruments Act 1992* applies if subordinate legislation ceases to have effect because it is not tabled or is disallowed. Section 51(2) provides for the 'limited saving of operation of subordinate legislation that ceases to have effect' in these terms:

*(2) The subordinate legislation is taken never to have been made or approved and any law or provision of a law repealed or amended by the legislation is revived.*

*(3) However, subsection (2) does not affect anything done or suffered under the legislation before it ceased to have effect.*

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<sup>30</sup> Record of Proceedings, 22 April 2020, p 811.

<sup>31</sup> Note that it is assumed here, in light of the Minister's statement to the Legislative Assembly, that the draft regulation is identical with the regulation itself. No detailed comparison of the content has been undertaken.

The committee wishes to bring to the attention of the Legislative Assembly that it does not consider the Regulation has been tabled in accordance with the relevant legislation and therefore ceases to have effect.

#### **7.4 Background – effect of the regulation**

The objectives of the regulation are to:

- implement an moratorium on evictions for tenants under residential tenancy agreements and residents under rooming accommodation agreements in which the tenant or resident suffers excessive hardship because of the COVID-19 pandemic and fail to pay rent under the respective agreements
- require that lessors and rooming accommodation providers must, before the term of the agreement ends, extend fixed term residential tenancy agreements and rooming accommodation agreements to 30 September 2020 or an earlier date requested by the resident or tenant
- provide that where a fixed term tenancy agreement or rooming accommodation agreement includes a term requiring the tenant or resident to pay reletting costs, then the reletting costs are limited
- release lessors and providers from particular obligations in relation to routine repairs and inspections if the obligation is inconsistent with public health direction or social distancing
- restrict lessors, lessor agents, providers and provider agents from entering premises where a tenant or resident refuses because the person or another person staying at the premises is subject to quarantine or is a vulnerable person
- prevent a person who has been informed that a tenant suffers excessive hardship because of COVID-19 or is complying with a public health direction, from listing personal information on a tenancy database about the tenant's failure to pay rent or end tenancy agreement during the COVID-19 emergency period
- enable tenants and residents experiencing domestic violence to leave a tenancy and cap their liability for end of lease costs to enact plans to end the violence
- extend notice periods of timeframes within which to exercise or enforce a right under the Act
- to allow a tenant to terminate an agreement within seven days after occupying the premises, on the grounds that the premises are not in good repair or do not meet a prescribed minimum housing standard
- provide additional reasons for lessors/providers and tenants/residents to end a tenancy during the COVID-19 emergency period, including to allow a lessor or their immediate family member to occupy the property or end a fixed term tenancy if the premises are being sold with vacant possession or to prepare the property for sale; and
- provide that parties are required to undertake conciliation to resolve disputes about COVID-19 impacted tenancies before applying to the Queensland Civil and Administrative Tribunal.<sup>32</sup>

#### **7.5 Comment on issues of fundamental legislative principle**

The regulation raises a number of issues of fundamental legislative principle.

##### Section 4(3)(a) *Legislative Standards Act 1992* - retrospectivity

Legislation should not adversely affect rights or liberties, or impose obligations, retrospectively. The six month moratorium on evictions takes effect retrospectively from when the National Cabinet's decision on the moratorium was announced on 29 March 2020.

The explanatory notes provide the following justification:

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<sup>32</sup> Explanatory notes, p 2.



*The rapid development of the COVID-19 emergency and response meant that moratorium was decided and announced before changes to laws to provide for the moratorium could be introduced.*<sup>33</sup>

The Legislative Assembly considered the matter of retrospectivity during debate and subsequent passing of the COVID-19 Emergency Response Bill 2020 on 22 April 2020.

The committee is satisfied that the breach of fundamental legislative principle is justified.

Section 4(2)(a) Legislative Standards Act 1992 – rights and liberties of individuals

A penalty should be proportionate to the offence. The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

*Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*<sup>34</sup>

Former committees accepted that the legislative power to create offences and prescribe penalties may be delegated in limited circumstances, provided certain safeguards were observed. This included that maximum penalties in regulations should be limited, generally, to 20 penalty units. The OQPC Notebook states:

*The principal means of creating offences should always be through the Acts of Parliament rather than delegated legislation.*<sup>35</sup>

New penalties have been introduced for several offences, including evicting the tenant for failure to pay rent during the moratorium period, failing to extend a fixed term agreement and providing false or misleading documents. The penalties may be up to 100 penalty units.<sup>36</sup>

The explanatory notes provide this justification:

*The new penalty provisions are considered proportionate and appropriate responses to encourage parties to comply with the regulations or avoid misusing protections and safeguards.*<sup>37</sup>

The committees notes that clause 24 of the COVID-19 Emergency Response Bill 2020, which was introduced and passed in the Legislative Assembly on 22 April 2020 provided for ‘a regulation-making power for residential tenancies and rooming accommodation and clarifies that a regulation under this Act or the *Residential Tenancies and Rooming Accommodation Act 2008* may make provision for any matter necessary for responding to the COVID-19 emergency.’<sup>38</sup> The Act provides for a regulation to impose a penalty of not more than 100 penalty units for a contravention of specific parts of the regulation.

The committee notes that the Legislative Assembly has considered the imposition of up to 100 penalty units by regulation is reasonable.

Section 4(2)(a) Legislative Standards Act 1992 – rights and liberties of individuals

This regulation will have some impact on the rights and liberties of lessors and tenants and providers and residents by adjusting their respective rights and obligations relating to rental properties.

The explanatory notes provide the following justification:

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<sup>33</sup> Explanatory notes, p 5.

<sup>34</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>35</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, pp 150-151.

<sup>36</sup> The penalty unit value in Queensland is \$133.45.

<sup>37</sup> Explanatory notes, p 6.

<sup>38</sup> COVID-19 Emergency Response Bill 2020, explanatory notes, p 26.

*The criteria for some provisions to apply do not include excessive hardship. These provisions allow a tenant or resident to end the agreement or their interest in it for domestic violence or if within 7 days after a tenant or residence occupies premises, on the grounds that the premises are not in good repair or do not meet a prescribed minimum housing standard. They also allow a lessor to end a periodic or fixed term tenancy if they are being sold or if the owner or their family needs to occupy the premises. These provisions do not include the excessive hardship criteria but are introduced as part of the COVID-19 emergency response and will cease to apply under the regulation on its expiry on 31 December 2020.<sup>39</sup>*

Given the objective of the regulation and that these provisions will expire on 31 December 2020, the committee considers the impact on a person's rights and liberties is sufficiently justified.

#### Section 4(2)(a) Legislative Standard Act 1992 – rights and liberties of individuals – privacy

The regulation provides that the lessor or provider may require evidence from the tenant or resident to support their claim that they are suffering excessive hardship because of the COVID-19 emergency. Further, a person experiencing domestic and family violence could be required to disclose potentially sensitive information to an agent or lessor. This would affect a person's rights and liberties by impacting on their right to privacy.

The explanatory notes give this justification:

*This is considered a reasonable and necessary requirement to safeguard rental property owners from abuse or misuse of the protections for tenants and residents. Penalties are proposed to apply to any party that inappropriately discloses or stores the potentially sensitive evidence provided by persons experiencing domestic and family violence.<sup>40</sup>*

Given that the purpose is to benefit the tenant or resident and that penalties are proposed to apply to anyone who inappropriately discloses or stores potentially sensitive information, the committee is satisfied that the breach of a person's rights and liberties is sufficiently justified.

### **7.6 Comment on explanatory notes**

The explanatory notes comply with part 4 of the *Legislative Standards Act 1992*.

### **7.7 Comment on Human Rights Act compliance**

In the human rights certificate accompanying the amendment regulation, the minister states his opinion that the amendment regulation is compatible:

- with the human rights protected by the Human Rights Act, and
- with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee considered the following issues.

#### Property rights – section 24 Human Rights Act

A person has the right to own property and must not be arbitrarily deprived of their property.

Here, the limitations on a person's property include:

- a limit on the recovery by the lessor of reletting costs
- releases of the lessor from repair obligations

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<sup>39</sup> Explanatory notes, p 6.

<sup>40</sup> Explanatory notes, p 6.

- a lessor or provider may end a periodic or fixed term tenancy if they are preparing to sell the premises and the preparation requires the rental premises to be vacant or if they have entered into a contract to sell the premises with vacant possession
- the lessor having the ability to give notice to the tenant to leave the premises if the lessor, or a member of the lessor's immediate family, needs to occupy the premises

The Minister provides this justification:

*The COVID-19 pandemic has been declared a public health emergency. The benefits of applying a moratorium on pandemic related evictions will be significant in that it will reduce dislocation and homelessness.<sup>41</sup>*

Given the overall objective of the regulation, the committee is satisfied that the limit on human rights is reasonable and demonstrably justified.

#### Freedom of expression – section 21 Human Rights Act

Every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

The regulation impacts the freedom of expression in the following ways:

- restricting a person from listing another person on a tenancy database that applies where the failure to pay rent or ending of the agreement was due to excessive hardship due to COVID-19
- making it an offence to provide false or misleading documents about excessive hardship because of COVID-19 emergency.

In relation to the limitation on listing a person on a tenancy database, the Minister states:

*Restricting inclusion on a tenancy database is intended to ensure that the tenant's excessive hardship or restriction under a direction is not worsened. Where a breach of a residential tenancy agreement or rooming accommodation agreement is a consequence of COVID-19 rather than the tenant's own fault, it is fair and consistent with human dignity that the tenant should not be listed in a database, with potential ongoing adverse consequences for the tenant.<sup>42</sup>*

Regarding the restriction on false or misleading documents, the Minister states:

*Restricting the provision of false or misleading documents is to ensure that a tenant or resident may only fairly claim the benefit of protections under the Regulation and this is consistent with dignity, equality and freedom.<sup>43</sup>*

Given the objective of the regulation to a) ensure that the tenant's hardship is not worsened by being listed in a database and b) ensure that a tenant or resident may only fairly claim the benefit of protections under the regulation, the committee considers the impact on human rights is reasonable and demonstrably justified.

#### Privacy and reputation – section 25 Human Rights Act

A person has the right not to have their privacy, family or home unlawfully or arbitrarily interfered with.

The regulation impacts on a person's privacy in the following ways:

- A tenant or resident is required to provide evidence supporting their notice to leave, where they are experiencing domestic and family violence.

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<sup>41</sup> Human rights certificate, p 5.

<sup>42</sup> Human rights certificate, p 6.

<sup>43</sup> Human rights certificate, p 6.

- Information can be provided to conciliators where conciliation of disputes is required.
- A lessor or provider is required to provide evidence supporting a notice to leave if the premises are being sold.
- The provision of evidence to the lessor or provider from the tenant or resident to support their claim that they are suffering excessive hardship

The Minister states:

*The purposes of the limitations on the right to privacy are to ensure that the tenants and residents and lessors and providers provide evidence supporting their exercise of rights under the Regulation. This is a measure to ensure fair access to the protections under the Regulation and prevent improper access to those protections. This assists in ensuring that limits to rights to property under the Regulation are no more than is justified. Ensuring the fair application of the protections is an inherent part of reducing the impacts of the COVID 19 pandemic and protections of the right to life and the protection of families and children.<sup>44</sup>*

Given the objective of the provisions is to ensure that tenants, residents, and lessors have fair access to the protections under the regulation and prevent improper access to those protections, the committee considers the impact on human rights is reasonable and demonstrably justified.

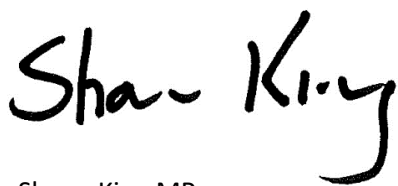
### **7.8 Comment on human rights certificate**

A human rights certificate was tabled with the subordinate legislation (as required by section 41 of the *Human Rights Act 2019*). It provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

## **8 Recommendations**

In relation to the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020, the committee considers that the Regulation has not been tabled in accordance with the relevant legislation and therefore ceases to have effect. The committee recommends that the Minister for Housing and Public Works; Minister for Digital Technology; and Minister for Sport take action to rectify this issue as a matter of urgency.

In relation to the other subordinate legislation considered in this report, the committee recommends that the Legislative Assembly notes this report.



Shane King MP

**Chair**

**June 2020**

### **Transport and Public Works Committee**

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Ted Sorensen MP, Member for Hervey Bay
Members	Mr Colin Boyce MP, Member for Callide
	Mr Don Brown MP, Member for Capalaba
	Mr Robbie Katter MP, Member for Traeger
	Mr Bart Mellish MP, Member for Aspley

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<sup>44</sup> Human rights certificate, p 8.