

## Legal Affairs and Community Safety Committee

### Report No. 27, 56<sup>th</sup> Parliament

#### Subordinate legislation tabled between 5 September 2018 and 16 October 2018

#### 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 5 September 2018 and 16 October 2018. It reports on any issues identified by the committee relating to the policy to be given effect by the subordinate legislation, the application of fundamental legislative principles to the subordinate legislation, and its lawfulness. The report also comments on whether the explanatory notes comply with the *Legislative Standards Act 1992*.

#### 2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table below.

No.	Subordinate legislation	Date tabled	Disallowance date
152	Justices (Recording of Pleas and Decisions) Amendment Regulation 2018	16 October 2018	28 February 2019

#### 3 Committee consideration of the subordinate legislation

In respect of subordinate legislation No 152, the committee identified a potential fundamental legislative principle issue.

##### **SL No 152 Justices (Recording of Pleas and Decisions) Amendment Regulation 2018**

The objective of the Justices (Recording of Pleas and Decisions) Amendment Regulation 2018 is to amend the Justices Regulation 2014 to provide for the court to record bulk pleas and decisions on a lead bench charge sheet or lead bench cover sheet.

The Regulation includes a transitional provision to apply the bulk recording process retrospectively.

The fundamental legislative principle regarding retrospectivity raises concerns if a provision operates to 'adversely affect rights and liberties, or impose obligations, retrospectively'.<sup>1</sup> The retrospective operation in this Regulation does not have any adverse impact on the rights and liberties of individuals. The explanatory notes observe:<sup>2</sup>

*... the 'obligation' imposed through retrospective application of the Amendment Regulation applies solely to the court and validates the current practice of some courts to record decisions*

<sup>1</sup> *Legislative Standards Act 1992*, section 4(3)(g).

<sup>2</sup> Explanatory notes, p 3.

*in bulk. On this basis, the obligation is not significant and is supported by section 34 of the Statutory Instruments Act 1992 which allows for the retrospective application of a beneficial provision of a statutory instrument.*

The committee considers that the transitional provision to apply the bulk recording process retrospectively does not raise any significant issues of fundamental legislative principle.

In addition, no significant issues regarding policy or the lawfulness of the subordinate legislation were identified.

#### **4 Explanatory notes**

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

#### **5 Recommendation**

The committee recommends that the House notes this report.



Peter Russo MP  
**Chair**  
**February 2019**

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

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