

Economics and Governance Committee

Report No. 9, 57th Parliament

Subordinate legislation tabled between 24 March 2021 and 20 April 2021

1 Aim of this report

This report summarises the findings of the Economic and Governance Committee (committee) following its examination of the subordinate legislation within its portfolio areas tabled between 24 March 2021 and 20 April 2021. 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 (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),⁴ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

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

No.	Subordinate legislation	Date tabled	Disallowance date*
022	Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2021	20 April 2021	1 September 2021

* The disallowance date is 14 sitting days after the tabling date. (See section 50 of the *Statutory Instruments Act 1992*.) Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ LSA, Part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁵ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the policy, consistency with FLPs, or lawfulness of the Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2021 (SL No. 22 of 2021/amendment regulation).

The committee considered that the explanatory notes tabled with the amendment regulation comply with the requirements of part 4 of the LSA. Further, the human rights certificate tabled with SL No. 22 of 2021 provides a sufficient level of information to facilitate understanding of the amendment regulation in relation to its compatibility with the HRA.

A brief overview of the amendment regulation and a comment on matters relating to its compatibility with human rights are set out below.

4 SL No. 22 of 2021 – Motor Accident Insurance and Other Legislation (Administration Fee and Levies) Amendment Regulation 2021

The objectives of SL No. 22 of 2021 are to:

- fix the levies and administration fee to apply to compulsory third party (CTP) insurance premiums from 1 July 2021, in accordance with the *Motor Accident Insurance Act 1994*
- fix the levy for the National Injury Insurance Scheme, Queensland (NIISQ) for the 2021-22 financial year, in accordance with the *National Injury Insurance Scheme (Queensland) Act 2016*.⁶

The explanatory notes outline the levies and fees applicable under the relevant provisions of these two Acts, as follows:

- Statutory Insurance Scheme Levy (SIS levy) – covers the estimated costs of administering the *Motor Accident Insurance Act 1994* and the operation of the Motor Accident Insurance Commission (MAIC), and to provide funds for accident prevention and injury mitigation research.
- Hospital and Emergency services Levy (HES Levy) – covers a reasonable proportion of the estimated cost of providing public hospital services and public emergency services to people injured in motor vehicle accidents who are, or may be, CTP claimants.
- Nominal Defendant Levy (ND levy) – covers the estimated costs of the Nominal Defendant scheme which provides funds to pay for claims relating to uninsured (unregistered) or unidentified motor vehicles.
- Injury Insurance Scheme Levy (NIISQ levy) – covers the estimated costs of the National Injury Insurance Scheme Queensland (NIISQ) which provides necessary and reasonable lifetime treatment, care and support for anyone who sustains an eligible serious personal injury in a motor vehicle accident in Queensland after 1 July 2016.
- Administration Fee – payable to the Department of Transport and Main Roads (DTMR) for delivering administrative support for the CTP scheme.⁷

Under SL No. 22 of 2021, the amount of the SIS levy and the ND levy remain the same for 2021-22 as in the 2020-21 financial year.

For the other levies and administration fee, the amendment regulation provides for the following amendments to apply:

- HES levy to increase by between \$0.05 and \$0.55 across the various motor vehicle classes (increases of between 1.4% and 1.8%)

⁶ Explanatory notes, p 1.

⁷ Explanatory notes, pp 1-2. Bold in original omitted.

- NISQ levy to increase by between \$1.00 and \$98.90 across the various motor vehicle classes (increases of between 10.9% and 14.9%)
- DTMR administration fee to increase by \$0.15 (1.8%).

The explanatory notes advise that the NISQ levy for 2021-22 was determined following consultation with the NISQ chief executive officer (CEO), the NISQ Board (through the NISQ CEO, and with the Board having consulted with Taylor Fry Consulting Actuaries), and the State Actuary's Office.⁸

From 1 July 2021, the total levies and administration fee to apply to CTP insurance premiums for class 1 motor vehicles (ie cars and station wagons) will be \$139.80, a \$13.20 increase from the previous financial year.⁹ This represents a 10.4% increase overall.

The \$139.80 comprises the following:

- SIS levy – \$1.50
- HES levy – \$18.40
- ND levy – \$8.00
- DTMR administration fee – \$8.60
- NISQ levy – \$103.30.

4.1 Compatibility with the *Human Rights Act 2019*

In the human rights certificate accompanying SL No. 22 of 2021, the Treasurer and Minister for Investment, the Hon Cameron Dick MP, states his opinion that the amendment regulation is compatible with the human rights protected by the HRA.¹⁰

In reaching this conclusion, the Minister notes that SL No. 22 of 2021 raises potential human rights issues in relation to the following human rights, but 'does not limit human rights':¹¹

- every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it (HRA, section 19)
- a person must not be arbitrarily deprived of their property (HRA, section 24).

In particular, the Minister acknowledges that a significant increase in the CTP levies and administration fee could potentially affect Queensland motorists, by limiting an individual's property rights to the extent they may be deprived of their property (money) and may no longer be able to afford to register a vehicle, and consequently, may have their freedom of movement limited.¹² This potential limitation would only restrict an individual's freedom of movement, however, 'to the extent of being able to use a motor vehicle on public roads' and not in any other way.¹³

The Minister also further addresses these matters as follows:

The increase in the overall cost of the levies and the administration fee to apply to CTP insurance premiums from 1 July 2021 does not impose a significant adverse impact on individual motor vehicle owners, nor does it result in a significant additional cost to Queensland motorists that will limit their human rights.

The collection of levies and an administration fee on CTP premiums provides an efficient means of funding agencies which provide essential services to the public in delivering different components of the CTP and

⁸ Explanatory notes, p 3.

⁹ Explanatory notes, p 2.

¹⁰ Human rights certificate, p 1.

¹¹ Human rights certificate, p 3.

¹² Human rights certificate, p 3.

¹³ Human rights certificate, p 3.

NIISQ schemes which is consistent with a free and democratic society based on human dignity, equality and freedom.¹⁴

Additionally, the Minister emphasises:

The levies and administration fee have been determined taking into account actuarial assessment and submissions received from relevant agencies involved in CTP insurance administration or delivering road trauma emergency services to Queensland road users.¹⁵

Noting the considerations above, the committee finds it is difficult to see how the increase could be regarded as leading to any *arbitrary* deprivation of property (money).

The committee agrees with the Minister's assessment that the amendment regulation is compatible with human rights.

5 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

June 2021

Economics and Governance Committee

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Deputy Chair	Ray Stevens MP, Member for Mermaid Beach
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¹⁴ Human rights certificate, p 3.

¹⁵ Human rights certificate, p 3.