

Community Support and Services Committee

Report No. 10, 57th Parliament

Subordinate legislation tabled between 24 February 2021 and 25 May 2021

1 Aim of this report

This report summarises the Community Support and Services Committee's (committee) findings following its examination of the subordinate legislation within its portfolio areas tabled between 24 February 2021 and 25 May 2021.

It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs) and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).¹ The report also outlines the committee's consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificate tabled with the subordinate legislation.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
25	Proclamation— <i>Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020</i> (commencing remaining provisions)	20 April 2021	1 September 2021
38	Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021	7 May 2021	14 September 2021
43	Youth Justice (Monitoring Device Conditions) Amendment Regulation 2021	25 May 2021	13 October 2021

* 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 issues regarding the policy, consistency with FLPs or the lawfulness of the examined subordinate legislation. The committee considers that the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

The committee considers that the subordinate legislation is compatible with human rights. The human rights certificates tabled with the subordinate legislation, in accordance with section 41 of the HRA, provide a sufficient level of information to facilitate understanding of the pieces of subordinate legislation in relation to its compatibility with human rights.

¹ LSA, Part 4.

² HRA, s 41.

4 Proclamation—*Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020 (commencing remaining provisions) (SL 25)*

The proclamation fixes commencement dates for provisions of the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, as follows:

- 1 April 2021 for:
 - part 1, to the extent it is not in force
 - parts 2 and 3, sections 102 and 103
 - part 11, sections 108 to 112
 - part 13, divisions 10, 13 and 14, and
 - schedule 1, and
- 1 July 2021 for all provisions not in force and not otherwise commenced under the proclamation.

4.1 Fundamental legislative principles issues and explanatory notes

The committee identified no issues in relation to FLPs with the proclamation. The explanatory notes tabled with the proclamation comply with part 4 of the LSA.

4.2 Human rights considerations and certificate

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

A human rights certificate was tabled with the subordinate legislation, in accordance with section 41 of the HRA. The committee considers that the certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021 (SL 38)

The Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2021 (Amendment Regulation) amends the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020 (2020 Regulation) to:

- repeal adjustments to entry rights and repair obligations, and
- clarify the ‘misuse of notice to leave’ offence.

The 2020 Regulation introduced measures to support the residential rental sector during the COVID-19 emergency, including restrictions on a lessor, or lessor’s agent, from entering residential tenancies (for reasons such as routine inspections and property valuations) if, for example, a person at the premises was subject to a quarantine direction or considered a vulnerable person. Instead, virtual inspections or photographs were used as a substitute measure.³ The 2020 Regulation introduced similar measures with respect to rooming accommodation.⁴

The 2020 Regulation also provided that lessors were released from obligations to carry out routine repairs and maintenance, if these obligations were inconsistent with a public health direction or social distancing, or if a tradesperson or supplies were unavailable.⁵ Similar measures applied to rooming accommodation.⁶

³ 2020 Regulation, part 2, division 5.

⁴ 2020 Regulation, part 3, division 5.

⁵ 2020 Regulation, part 2, division 6.

⁶ 2020 Regulation, part 3, division 6.

The Amendment Regulation repeals these measures. As a result, the residential tenancy and rooming accommodation sectors return to being subject to the standard processes, rights and protections under the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act).⁷ The explanatory notes state these changes are:

... required to ensure the COVID-19 response for residential tenancies continues to appropriately target and respond to current COVID-19 risks whilst taking into consideration the needs of the residential rental sector in Queensland now and into the future.⁸

The Amendment Regulation also makes technical amendments to clarify the operation of the 'misuse of notice to leave' offence. Under the 2020 Regulation, lessors could only issue a 'notice to leave' to tenants on the grounds the property owners or their immediate family needed to move into the property. If a lessor (without reasonable excuse) included false or misleading information in a notice, or let the premises to a person under another agreement, the lessor would commit an offence - maximum penalty of 50 penalty units.⁹

According to the explanatory notes, there is a risk this offence could be misinterpreted as preventing lessors from re-letting a property under another agreement indefinitely if they do not have a reasonable excuse.¹⁰ The Amendment Regulation, therefore, makes amendments to clarify that lessors are prevented from re-letting the property until 30 April 2021. The Amendment Regulation also amends the offence provision to include examples of reasonable excuse to assist with the interpretation of the provision.¹¹ Similar amendments are made with respect to the equivalent rooming accommodation provisions.¹²

It is noted that the Amendment Regulation is made in reliance, in part, on section 24 of the *COVID-19 Emergency Response Act 2020* (Emergency Response Act).¹³

The Emergency Response Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency. The Emergency Response Act applies despite any other Act or law other than the HRA.¹⁴

In broad terms, section 24 of the Emergency Response Act provides a regulation-making power for matters relating to residential tenancies and rooming accommodation necessary to respond to the COVID-19 public health 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, and
- support the Queensland residential rental sector during the COVID-19 emergency period.¹⁵

Any regulation made in reliance on section 24 of the Emergency Response Act:

- must declare it is made under section 24 of the Emergency Response Act

⁷ Amendment Regulation, explanatory notes, p 2. See also ss 4 and 6 of the Amendment Regulation which repeal the provisions set out above.

⁸ Amendment Regulation, explanatory notes, p 1.

⁹ 2020 Regulation, s 40.

¹⁰ Amendment Regulation, explanatory notes, p 2.

¹¹ Amendment Regulation, s 5.

¹² Amendment Regulation, s 7.

¹³ Amendment Regulation, explanatory notes, p 1 state the authorising law as being s 520 of the RTRA Act and s 24 of the Emergency Response Act.

¹⁴ Emergency Response Act, s 4(1).

¹⁵ Emergency Response Act, s 24(1).

- may be inconsistent with an Act or law, other than the HRA, to the extent necessary to achieve a purpose of the regulation and the Emergency Response Act
- may have retrospective operation to a day not earlier than 19 March 2020
- will expire on the COVID-19 legislation expiry day (currently 30 September 2021)
- may impose a penalty of not more than 100 penalty units for a contravention of the regulation, and
- must be tabled within 14 days of notification (rather than the usual 14 sitting days).¹⁶

The Amendment Regulation was notified on 30 April 2021 and tabled on 7 May 2021, in compliance with the Emergency Response Act.

Additionally, the Emergency Response Act provides that:

- section 24 does not limit the regulation-making power conferred under the RTRA Act, and
- 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.¹⁷

As noted above, any regulation made in reliance on section 24 must declare it is made under section 24.¹⁸ The committee notes that the Amendment Regulation does not contain the required declaration.

It is noted that the 2020 Regulation, which the Amendment Regulation amends, contained a declaration under the Emergency Response Act.¹⁹ However, it is clear that the terms of section 24(5) of the Emergency Response Act extends to any regulation made in reliance on section 24, and an amendment regulation itself requires its own declaration.

The committee notes that the examination of a number of recent amendment regulations relying on the Emergency Response Act shows a consistent approach of not including declarations in such regulations. The committee notes that there is nothing in either the wording of the statutory requirement, or in the nature of the various regulations to support the non-inclusion of a declaration.²⁰

The committee brings the failure to include a declaration in the Amendment Regulation, as required by section 24 of the Emergency Response Act, to the attention of the House.

5.1 Fundamental legislative principles issues and explanatory notes

The committee identified no issues in relation to FLPs with the Amendment Regulation. The explanatory notes tabled with the Amendment Regulation comply with part 4 of the LSA.

5.2 Human rights considerations and certificate

The committee considers that 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 HRA. The committee considers that it provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 Youth Justice (Monitoring Device Conditions) Amendment Regulation 2021 (SL 43)

The Youth Justice (Monitoring Device Conditions) Amendment Regulation (Amendment Regulation) prescribes the geographical areas in which courts may impose a monitoring (tracking) device

¹⁶ Emergency Response Act, s 24, and contrast s 49(1) of the *Statutory Instruments Act 1992*.

¹⁷ Emergency Response Act, s 24.

¹⁸ Emergency Response Act, s 24(5).

¹⁹ 2020 Regulation, s 3.

²⁰ See, for example, Community Support and Services Committee, Report No. 4, 57th Parliament – Subordinate legislation tabled between 8 September 2020 and 2 December 2020.

condition, as part of a grant of bail to a child, and the geographical areas in which a child must live in order to have such a condition imposed.

The Amendment Regulation facilitates the 12-month trial for imposing such conditions, established by recent amendments to the *Youth Justice Act 1992*.²¹

6.1 Fundamental legislative principles issues and explanatory notes

The committee identified no issues in relation to FLPs with the Amendment Regulation. The explanatory notes tabled with the Amendment Regulation comply with part 4 of the LSA.

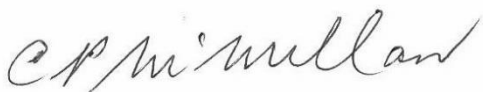
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The committee considers that the subordinate legislation is compatible with human rights.

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA. The committee considers that it provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

7 Recommendation

The committee recommends that the House notes this report.



Corrine McMillan MP

Chair

August 2021

Community Support and Services Committee

Chair	Ms Corrine McMillan, Member for Mansfield
Deputy Chair	Mr Stephen Bennett, Member for Burnett
Members	Mr Michael Berkman, Member for Maiwar
	Mr Jon Krause, Member for Scenic Rim
	Ms Cynthia Lui, Member for Cook
	Mr Robert Skelton, Member for Nicklin

²¹ See s 52AA of the *Youth Justice Act 1992*, inserted by the *Youth Justice and Other Legislation Amendment Act 2021*. This provision expires two years after commencement.