

Legal Affairs and Safety Committee

Report No. 14, 57th Parliament

Subordinate legislation tabled between 14 July 2021 and 31 August 2021

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 14 July 2021 and 31 August 2021. 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

In addition, the report notes any issues identified by the committee (LASC) 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
Other	Takeaway Liquor Notices 20, 21, 22	13 August 2021	17 November 2021
66	Weapons (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
67	Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 2) 2021	31 August 2021	18 November 2021
68	Disaster Management (Disaster Districts) Amendment Regulation 2021	31 August 2021	18 November 2021
80	Fire and Emergency Services Legislation (Fees) Amendment Regulation 2021	31 August 2021	18 November 2021
84	Justice Legislation (Fees, Allowances and Other Amounts) Amendment Regulation 2021	31 August 2021	18 November 2021
95	Proclamation – Corporations (Commonwealth) Powers Act 2001	31 August 2021	18 November 2021
96	State Penalties Enforcement (Electoral) Amendment Regulation 2021	31 August 2021	18 November 2021
97	Corrective Services Amendment Regulation 2021	31 August 2021	18 November 2021

¹ LSA, Part 4.

² HRA, s 41.

Subordinate legislation tabled between 14 July 2021 and 31 August 2021

98	Corrective Services and Other Legislation Amendment (Postponement) Regulation 2021	31 August 2021	18 November 2021
100	Legal Profession (Society Rules) Amendment Notice (No. 2) 2021	31 August 2021	18 November 2021
115	Attorney-General Regulation 2021	31 August 2021	18 November 2021
116	Proclamation No. 2—Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021 (commencing remaining provisions)	31 August 2021	18 November 2021
117	Land Court Regulation 2021	31 August 2021	18 November 2021
118	State Buildings Protective Security Amendment Regulation 2021	31 August 2021	18 November 2021
127	Criminal Practice (Fees and Allowances) Regulation 2021	31 August 2021	18 November 2021
128	Witness Protection Regulation 2021	31 August 2021	18 November 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

Unless noted below, the committee did not identify any significant issues regarding policy, consistency with fundamental legislative principles, the lawfulness of the subordinate legislation or non-compliance with the HRA.

The committee considers the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

The committee also considers the human rights certificates tabled with the subordinate legislation provide a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

The committee notes that the takeaway liquor notices 20, 21 and 22 are issued in accordance with section 235D of the *Liquor Act 1992*. The committee has considered and reported on a number of previously granted takeaway liquor authorities. As with those previous authorities, these notices raise no concerns from a technical scrutiny perspective. Although these notices are not subordinate legislation (and do not form part of the usual numbered subordinate legislation series), they are subject to disallowance.

4 Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 2) 2021 (SL No. 67 for 2021)

The objective of the Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 2) 2021 (SL No. 67) is to further extend the period of the disaster situation declared for the whole of Queensland on 22 March 2020 and extended by regulation on 2, 16 and 30 April 2020,

³ HRA, s 41. NB: a human rights certificate was not tabled with subordinate legislation 116, Proclamation No. 2—Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021 (commencing remaining provisions), as it was not required.

14 and 28 May 2020, 27 August 2020, 1 October 2020, 10 December 2020 and 18 March 2021. The regulation extended the disaster situation for a further 90 days to 27 September 2021.⁴

4.1 Consistency with fundamental legislative principles

Rights and liberties of individuals

The further extension of the declaration extends the duration of the availability of a number of powers under the *Disaster Management Act 2003* (DM Act). Some of these powers include:

- the control and movement of persons, animals or vehicles within the declared area
- giving a direction to a person to regulate the movement of a person, animal or vehicle into or out of a declared area
- entering a place or area
- removing, dismantling or demolishing or destroying a vehicle, or a building or other structure in the declared area.

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.⁵ The exercise of the powers listed above can involve quite significant restrictions on the rights and liberties of an individual.

The explanatory notes state that the regulation is consistent with fundamental legislative principles, and they do not address the issues of fundamental legislative principle that arise.⁶ (This might be on the basis that the powers are contained in the principal Act itself.) The explanatory notes do state:

A further extension is required due to the longer-term nature of COVID-19 and its potential impacts. Extension of the period of the disaster situation is necessary to ensure powers are available to rapidly and appropriately address risk to the health of the Queensland community.⁷

The committee considers the breaches of fundamental legislative principle which arise from the restrictions on a person's rights and liberties are justified, given the COVID-19 public health emergency.

4.2 Compatibility with human rights

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.⁸

Subordinate legislation No. 67 may limit a person's right of freedom of movement because it allows for the exercise of powers that support border restriction controls and the closing of roads to traffic, which can result in persons being prevented from entering Queensland from another state or territory, particularly declared COVID-19 hotspots.⁹

The Minister for Police and Corrective Services and Minister for Fire and Emergency Services, Hon Mark Ryan MP (Minister), provides the following justification:

On the basis of the nature of the health emergency, protecting the health and safety of the community by preventing or slowing the spread of COVID-19 by controlling the movement of persons, the potential limitations are considered reasonable and justifiable. ...

⁴ SL No. 67, explanatory notes, pp 1-2. See also, *Disaster Management Act 2003*, Parts 4 and 12A.

⁵ See Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 133; LSA, s 4.

⁶ SL No. 67, explanatory notes, p 2.

⁷ SL No. 67, explanatory notes, pp 1-2.

⁸ HRA, s 19.

⁹ SL No. 67, human rights certificate, p 5.

On balance, having regard to the nature and extent of the limitation on the right ... the importance of achieving the protection of a person's, or the public's, health outweighs the harm caused by the limitations on the human rights.¹⁰

Peaceful assembly and freedom of association

Every person has the right of peaceful assembly and freedom of association.¹¹

Subordinate legislation No. 67 may limit a person's right to peaceful assembly and freedom of association because it allows for the exercise of powers to control movement of persons (as outlined above) which may result in the dispersal of groups of persons.¹²

The Minister provides this justification:

The purpose of limiting the rights to freedom of movement, peaceful assembly and freedom of association and right to liberty and security is to protect the health and safety of the community by preventing or slowing the spread of COVID-19 by controlling the movement of persons.¹³

Property rights

A person must not be arbitrarily deprived of their property.¹⁴

Subordinate legislation No. 67 extends the duration of the availability of various powers, including powers to enter a place, remove things from a place, and remove, dismantle, demolish or destroy a building in the declared area.

The Minister notes that the right to property is engaged by SL No. 67 and provides the following comment:

The declared disaster powers are broad, to reflect the fact that they may be used to respond to a range of disaster situations, including natural disasters. ... It is not considered to be reasonably foreseeable that the powers relating to property will be exercised in relation to the COVID-19 disaster.¹⁵

The Minister's statement that it is not reasonably foreseeable that the powers related to property will be exercised in relation to COVID-19 can be accepted as accurate. Nonetheless, these powers do remain available for use under the legislation and so as a matter of law there is potential for property rights to be limited.

Right to privacy and reputation

A person must not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.¹⁶

The extension of the disaster situation may limit a person's right to privacy, as it allows for powers to be exercised that include entering a place in the declared area. The exercise of this power may interfere with a person's home or privacy.

The Minister provides this justification:

The purpose of limiting the right to a person's privacy is to protect the health and safety of the community by preventing or slowing the spread of COVID-19 by ensuring compliance with public health directions such as those relating to social distancing.¹⁷

¹⁰ SL No. 67, human rights certificate, p 7.

¹¹ HRA, s 22.

¹² SL No. 67, human rights certificate, p 5.

¹³ SL No. 67, human rights certificate, p 6.

¹⁴ HRA, s 24.

¹⁵ SL No. 67, human rights certificate, p 4.

¹⁶ HRA, s 25.

¹⁷ SL No. 67, human rights certificate, p 8.

...

The limitation helps achieve the purpose by reducing the risk of transmission of COVID-19, by limiting community contact and proximity to persons identified with, or suspected of having, the virus. This will minimise instances of human to human contact to reduce exposure and the risk of spread of the virus.¹⁸

...

On balance, having regard to the nature and extent of the limitation on the right and the information detailed above, the importance of achieving the protection of a person's, or the public's, health outweighs the harm caused to person's right to privacy under these circumstances.¹⁹

Right to liberty and security

A person has the right not to be subjected to arbitrary arrest or detention or to be deprived of their liberty.²⁰

The extension of the disaster situation may limit a person's right to liberty and security because it allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area. The exercise of these powers may result in a person being deprived of their liberty for a period of time.²¹

The Minister states:

Due to the human to human transfer of the virus, there are no less restrictive and reasonably available ways to achieve the purpose other than by providing disaster officers with these powers under the DM Act [*Disaster Management Act 2003*]. The powers under the DM Act are a necessary element to give effect to the government's obligation to take appropriate steps and adopt positive measures to protect life during the COVID-19 pandemic.²²

Given the health emergency that COVID-19 represents for Queensland, the committee is satisfied that the subordinate legislation is compatible with human rights.

5 Fire and Emergency Services Legislation (Fees) Amendment Regulation 2021 (SL No. 80)

The objective of the Fire and Emergency Services Legislation (Fees) Amendment Regulation 2021 (SL No. 80) is to increase fees in the following regulations, by the government indexation amount for 2021-22 of 1.7%:

- Building Fire Safety Regulation 2008
- Fire and Emergency Services Regulation 2011 (FES Regulation).²³

Further, SL No. 80 updates the levy district map in the FES Regulation to reflect the levy districts and geographical boundaries for the current year. These changes result from matters such as the opening of new Fire and Rescue stations and staff increases.²⁴ According to the explanatory notes, consultation was undertaken with community representatives in the affected districts, and owners of properties affected by the changes were sent information on the changes.²⁵

All of the fee increases are within the government indexation amount of 1.7%.

¹⁸ SL No. 67, human rights certificate, p 9.

¹⁹ SL No. 67, human rights certificate, p 10.

²⁰ HRA, s 29.

²¹ SL No. 67, human rights certificate, p 5.

²² SL No. 67, human rights certificate, pp 6-7.

²³ SL No. 80, explanatory notes, p 1.

²⁴ SL No. 80, explanatory notes, pp 1-2; human rights certificate, pp 2-3.

²⁵ SL No. 80, explanatory notes, p 3.

5.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).

Limitations on the right to property are discussed below.

Property rights

A person must not be arbitrarily deprived of their property.²⁶

As part of the changes to the levy district maps and classes, some property owners will have to pay higher levies than they paid previously. This may impact their property rights, insofar as property rights include economic interests (ie money).

The Minister states the purpose of this limitation on property rights as follows:

The increase in the levy for property owners in particular levy districts reflects additional services available at Fire and Rescue Stations in those districts. In this way, the limitation on the right to property promotes the right to life and property rights under the HR Act through the provision of comprehensive fire and emergency services.

The provision of these services in a fiscally responsible way to protect lives and property is a proper purpose consistent with a free and democratic society.²⁷

The increase in levies is not arbitrary because it reflects the additional services available to those properties and the levies are applied consistently throughout Queensland.²⁸

6 Justice Legislation (Fees, Allowances and Other Amounts) Amendment Regulation 2021 (SL No. 84)

The Justice Legislation (Fees, Allowances and Other Amounts) Amendment Regulation 2021 (SL No. 84) amends subordinate legislation administered by the Department of Justice and Attorney-General to apply the 2021-22 government indexation rate of 1.7% to regulated fees and charges.²⁹ These fees and charges relate to:

- applications, licences, permits and registrations
- filing, lodging, issuing and serving documents
- accessing, inspecting and copying registers, documents, records, exhibits and other things
- commercial services such as mediation.³⁰

The offender levy under the Penalties and Sentences Regulation 2015 is also indexed in line with the government indexation rate of 1.7%.

According to the explanatory notes, Queensland Treasury has approved amounts for allowances and remuneration to also be increased by 1.7%. This increase will apply to allowances and remuneration including those applying to jurors, witnesses, interpreters, Queensland Civil and Administrative Tribunal justices of the peace and animal valuers. The regulation amends relevant subordinate legislation to apply such increases.³¹

²⁶ HRA, s 24.

²⁷ SL No. 80, human rights certificate, p 4.

²⁸ Section 8 of the Fire and Emergency Services Regulation 2011 sets the levy classes for levy districts. See also *Fire and Emergency Services Act 1990*, s 108.

²⁹ See SL No. 84, explanatory notes, pp 1-2 for the full list of relevant legislation.

³⁰ SL No. 80, human rights certificate, p 1.

³¹ SL No. 80, explanatory notes, p 3.

Finally, the regulation makes minor technical amendments, including to clarify intent or to align with current drafting conventions.³²

All fee, allowance and remuneration increases come within the 1.7% increase, except for a few that are slightly higher due to rounding.³³

6.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on the right to equality before the law are discussed below.³⁴

Equality before the law

Everyone has the right to equality before the law.³⁵ This includes the right to enjoy human rights without discrimination.

This right to equality is potentially limited by SL No. 84 because it increases fees for access to particular public services. This may restrict access to some services and employment and business opportunities to sectors of the community of a lower socio-economic status.

For example, as contemplated in the human rights certificate:

.. a person may not be able to obtain a copy of a register or document because they cannot afford the access fees or may not be able to obtain a licence to deliver certain services because they cannot afford the application or licence fees. Similarly, the application fee to be appointed to office as a justice of the peace or commissioner for declarations under the Justices of the Peace and Commissioners for Declarations Regulation 2017 may impede unemployed persons from applying.³⁶

However, the overall purpose of increasing fees is said to ensure that such services can continue for the entire population:

The increase in fees and charges will ensure that the provision of these government services is appropriately resourced and budgeted to reflect the cost of their delivery, which in turn ensures that services can continue to be delivered to Queensland individuals.³⁷

Further, the human rights certificate provides the following examples of exemptions that are intended to lessen the impact on the human right to equality before the law in this context:

Where the increase in the fees and charges may impact access to justice (in respect of the limitation on the right to recognition and equality before the law), these are mitigated by a range of exemptions from the payment of fees and charges where it is in the interests of justice. For example, fees to obtain access to documents, exhibits and other items relevant to a criminal proceeding are exempt for defendants in the proceeding. Similarly, fees payable under the Appeal Costs Fund Regulation 2010 may be exempt if it is in the interests of justice to do so. These exemptions are intended to ameliorate the impact on the

³² SL No. 80, explanatory notes, p 4.

³³ See, for example, SL No. 80, s 6 (item (b) issue of document commencing proceeding in District Court increases from \$22.45 to \$22.85 - 1.8% increase), s 8 (item 8 fee for certified copy of certificate of incorporation increases from \$24.45 to \$25.00 – 1.8% increase) and s 8 (item 9 inspecting the register for a particular association increases from \$7.80 to \$7.95 – 1.9% increase).

³⁴ The human rights certificate also considers the limitation on the right to property (ie the increases in the fees and charges have the effect of depriving people of additional money). Given that all the fee, allowance and remuneration increases come within the government indexation rate for 2021-2022 of 1.7%, except for a few that are slightly higher due to rounding, this brief does not discuss the increases in the context of the right to property.

³⁵ HRA, s 15.

³⁶ SL No. 84, human rights certificate, p 2.

³⁷ SL No. 84, human rights certificate, p 3.

right to recognition and equality before the law for sectors of the community of a lower socio-economic status.³⁸

7 Proclamation – Corporations (Commonwealth) Powers Act 2001 (SL No. 95)

The existing national system of corporations law exists through formal cooperation between the Commonwealth and the States and through the States referring to the Commonwealth their powers with respect to corporations.

In Queensland, this is achieved through the *Corporations (Commonwealth Powers) Act 2001* (CCP Act).

Under the CCP Act, the Queensland Parliament referred to the Commonwealth Parliament the powers:

- to enact the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* as Commonwealth legislation (the initial reference)
- to enact laws in relation to the formation of corporations, corporate regulation and the regulation of financial products and services by express amendment to the corporations legislation.³⁹

The reference of these powers to the Commonwealth terminates five years after the initial reference, or a later day fixed by proclamation under section 6.⁴⁰

By proclamation dated 27 May 2016, the Governor fixed 15 July 2021 as the new termination date.⁴¹

This proclamation fixes 15 July 2031 as the new termination date.

According to the explanatory notes, the ‘further extension is necessary for Queensland’s continued participation in the current national corporations regulatory scheme.’⁴²

7.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on human rights are discussed below.

Limits on human rights

In the human rights certificate, the Attorney-General raises property rights, the right to privacy, the right to a fair hearing and rights in criminal proceedings as being potentially relevant to the compatibility of the proclamation with human rights, as the effect of continuing existing corporations legislation may continue existing limits on these rights.⁴³

However, this was balanced with the need for ‘appropriate regulation (including enforcement) of corporate and commercial activity in Australia’.⁴⁴ The human rights certificate states:

The operation of appropriate corporate regulation consistently across Australia is critical to Australia’s and Queensland’s economic wellbeing. This includes providing for consistent law across Australia

³⁸ SL No. 84, human rights certificate, p 3.

³⁹ Proclamation – *Corporations (Commonwealth) Powers Act 2001* (SL No. 95), explanatory notes, p 1.

⁴⁰ CCP Act, s 5.

⁴¹ SL No. 95, explanatory notes, p 1.

⁴² SL No. 95, explanatory notes, p 1.

⁴³ SL No. 95, human rights certificate, p 2.

⁴⁴ SL No. 95, human rights certificate, p 3.

regarding: the formation of corporations; corporate regulation and the regulation of financial products and services; and the enforcement of these regulatory schemes.⁴⁵

Overall, the human rights certificate concludes:

The extension of the termination date for referral of powers is the only way to provide for Queensland's continued participation in the national corporations scheme and for Queensland companies to operate and conduct their business with certainty.⁴⁶

8 State Penalties Enforcement (Electoral) Amendment Regulation 2021 (SL No. 96)

The State Penalties Enforcement (Electoral) Amendment Regulation 2021 (SL No. 96) prescribes the following *Electoral Act 1992* (Electoral Act) offences as penalty infringement notice (PIN) offences:

- contravening a direction by the Electoral Commission of Queensland (ECQ) about the distribution or display of how-to-vote cards or other election material at a polling booth and canvassing for votes in or near a polling booth⁴⁷ (maximum penalty of 10 penalty units, PIN amount of one penalty unit)
- contravening a direction by the ECQ about the number of scrutineers each candidate may have at a polling booth or other place where a scrutineer is entitled to be present, or prohibiting a candidate or scrutineer from being present at a polling booth or other place they would otherwise be entitled to be present⁴⁸ (maximum penalty of 20 penalty units, PIN amount of two penalty units)
- contravening a direction by a returning officer or member of the electoral commissioner's staff in charge of a polling booth about the movement of candidates or scrutineers at the polling booth or other place where they may be present⁴⁹ (maximum penalty of 20 penalty units, PIN amount of two penalty units).

These offences were introduced by the *COVID-19 Emergency Response and Other Legislation Amendment Act 2020* to facilitate the holding of state by-elections in a way that helps minimise serious risks to the health and safety of the public during the COVID-19 public health emergency.⁵⁰

Prescribing these offences as PIN offences means that PINs may be issued in lieu of instituting prosecution action. The relevant administering authority is the ECQ.⁵¹

8.1 Consistency with fundamental legislative principles

Penalties

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.

⁴⁵ SL No. 95, human rights certificate, p 3.

⁴⁶ SL No. 95, human rights certificate, p 5.

⁴⁷ See *Electoral Act 1992*, s 392ZL, and SL No. 96, s 3.

⁴⁸ See *Electoral Act 1992*, s 392ZM, and SL No. 96, s 3.

⁴⁹ See *Electoral Act 1992*, s 392ZN, and SL No. 96, s 3.

⁵⁰ SL No. 96, explanatory notes, p 1.

⁵¹ State Penalties Enforcement Regulation 2014, schedule 1.

... 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.⁵²

While SL No. 96 is not 'introducing' new offences, the committee considered the appropriateness of penalties/PIN amounts imposed by these offences in the context of fundamental legislative principles. This is particularly important as the COVID-19 Emergency Response and Other Legislation Amendment Bill 2020, which did introduce these offences, was declared urgent and not referred to a committee for scrutiny.

As a general rule, infringement notice fines (or PIN amounts) should not be more than one-tenth of the penalty prescribed in the Act or the subordinate legislation to which the infringement notice fine relates.⁵³ The PIN amounts of 1 and 2 penalty units are one-tenth of the corresponding maximum penalties (of 10 and 20 penalty units) prescribed in the above Electoral Act offences.

Further, the explanatory notes advise: 'The PIN amounts... are commensurate with the PIN amounts prescribed for similar offences in the Electoral Act.'⁵⁴

The committee is satisfied that there is no breach of fundamental legislative principle in these circumstances.

8.2 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on human rights are discussed below.

Property rights

Everyone has the right to own property and a person should not be arbitrarily deprived of their property.⁵⁵

According to the human rights certificate, property rights are potentially relevant to SL No. 96:

Prescribing the offences as PIN offences under the SPE Regulation will mean that if, an individual fails to pay the amount specified in the PIN, they will be subject to the enforcement powers under the SPE Act. Enforcement action under the SPE Act in relation to an unpaid fine may include, among other things, the suspension of an individual's driver licence, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual). Such enforcement action limits the right to property.⁵⁶

While potentially impacting a person's right to property if they fail to pay an infringement notice, the human rights certificate sets out the protections built into the system to assist those experiencing hardship:

The State Penalties Enforcement Registry (SPER) enforcement system also includes a number of protections to ensure that there are supports and options available to assist persons who are experiencing hardship and unable to pay their fines (such as through paying by instalments, or through a

⁵² OQPC, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

⁵³ Queensland Government, Department of Premier and Cabinet, *Legislation Handbook*, 13 November 2013, <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/subord-legislation/infringement.aspx>. See also State Penalties Enforcement Regulation 2014, explanatory notes, p 2.

⁵⁴ SL No. 96, explanatory notes, p 2. See also Schedule 1 of the State Penalties Enforcement Regulation 2014 which contains infringement notice offences for the Electoral Act, with PINs ranging from 1 to 10 penalty units for individuals.

⁵⁵ HRA, s 24.

⁵⁶ SL No. 96, human rights certificate, p 2.

work and development order which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).⁵⁷

The human rights certificate also highlights the overall purpose of SL No. 96 is to provide the ECQ with an efficient enforcement mechanism to ensure compliance with their directions at by-elections.⁵⁸

Fair hearing and rights in criminal proceedings

The right to a fair hearing provides individuals with the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.⁵⁹

Further, rights in criminal proceedings include the right to be presumed innocent until proven guilty and the right to minimum guarantees for an accused person in criminal proceedings (for example, to be tried without unreasonable delay).⁶⁰

According to the human rights certificate, these rights are relevant to SL No. 96 because:

Prescribing the offences under the SPE Regulation enables a fine of a fixed amount to be issued to an individual by the ECQ without a charge being decided by an independent court after a fair and public hearing, and without the person having the opportunity to exercise their rights in criminal proceedings.⁶¹

However, as noted above, the purpose of this limitation is to provide ECQ with an efficient enforcement mechanism to address offending behaviour:

.. the broader purpose of these directions is to protect the Queensland public from risks to health and safety caused by the public health emergency involving COVID-19, including limiting situations which may result in contagion through person-to-person contact.

Ensuring this enforcement mechanism is available to the ECQ for individuals who disregard and fail to comply with these directions supports the protection of the health and the safety of the public, including more vulnerable persons, which is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.⁶²

The human rights certificate advises that prosecuting the offences through the courts 'would involve delays and would be less efficient as an enforcement response, taking into account the nature of the offending'.⁶³

Further, the human rights certificate states that there are protections built into the enforcement system that include the ability for a person to elect to have their matter heard in court at various stages of the process:

In particular, section 15 of the SPE Act requires that all PINs must indicate that the individual may elect to have the matter of the offence decided by a court. This promotes awareness that persons may elect for the matter of the offence to be heard by a court at the time the person is issued with the PIN.⁶⁴

9 Corrective Services and Other Legislation Amendment (Postponement) Regulation 2021 (SL No. 98)

The Corrective Services and Other Legislation Amendment (Postponement) Regulation 2021 (SL No. 98) postpones to 21 July 2022 the automatic commencement of section 50 and schedule 1, part 2 (to the extent it amends the CSA) of the Amendment Act.

⁵⁷ SL No. 96, human rights certificate, p 4.

⁵⁸ SL No. 96, human rights certificate, p 4.

⁵⁹ See HRA, s 31.

⁶⁰ See HRA, s 32.

⁶¹ SL No. 96, human rights certificate, p 3.

⁶² SL No. 96, human rights certificate, p 3.

⁶³ SL No. 96, human rights certificate, p 3.

⁶⁴ SL No. 96, human rights certificate, p 3.

Section 50 omits section 319F (Complaint to official visitor required first) from the CSA. Schedule 1, part 2 contains minor consequential amendments resulting from the omission.

Section 319F provides that an offender who is detained in a corrective services facility cannot complain to the human rights commissioner about an alleged contravention of the *Anti-Discrimination Act 1991* committed by a protected defendant (eg the State, an engaged service provider, a community service supervisor⁶⁵) against the offender until at least one month after the offender makes a written complaint under the CSA to an official visitor about the alleged contravention, unless the official visitor has notified the offender that the official visitor has finished dealing with the offender's complaint.

The explanatory notes advise that an independent inspectorate is to be established before the commencement of section 50 of the Amendment Act:

The omission of section 319F of the CSA anticipated the establishment of an independent inspectorate for Queensland. Consistent with recommendations from various reviews, including the QPSR and Taskforce Flaxton, the Queensland Government committed to establishing an independent inspectorate for Queensland in the 2019-20 State Budget. It is anticipated that oversight of the Official Visitor Scheme, currently administered under the CSA will transfer to the independent inspectorate, once established.⁶⁶

Background to automatic postponement

The Amendment Act, which received assent on 21 July 2020, provides that certain provisions commence on a day to be fixed by proclamation.⁶⁷

If a provision of an Act has not commenced within one year of the assent day, it automatically commences on the next day. However, a regulation may postpone the commencement day by up to 2 years after the assent day.⁶⁸

Subordinate legislation No. 98, which postpones the automatic commencement of certain provisions of the Amendment Act, was notified on 9 July 2021, which is within one year of the assent day of the Amendment Act.

9.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitation on the right to equal and effective protection against discrimination is discussed below.

Right to equal and effective protection against discrimination

Every person has the right to equal and effective protection against discrimination.⁶⁹

The Legal Affairs and Community Safety Committee (former committee) received evidence from the Queensland Human Rights Commission (QHRC) in relation to the proposed omission of section 319F during the former committee's inquiry into the Corrective Services and Other Legislation Amendment Bill 2020. The QHRC welcomed the proposed repeal of section 319F, submitting:

... In our 2019 *Women in Prisons* report the Commission noted an area where prisoners are denied the same human rights as other people in Queensland is their ability to make a complaint of discrimination under the *Anti-Discrimination Act 1991*. Prisoners must currently satisfy a series of pre-conditions before they are entitled to make a discrimination complaint against correctional centre staff or the State. This is a significant hurdle for prisoners, and inhibits and delays the independent oversight of such complaints.

...

⁶⁵ *Corrective Services Act 2006*, s 319A.

⁶⁶ SL No. 98, explanatory notes, p 2.

⁶⁷ Amendment Act, s 2(3).

⁶⁸ *Acts Interpretation Act 1954*, s 15DA; SL No. 98, explanatory notes, p 1.

⁶⁹ HRA, s 15(4).

In our report, the Commission recommended Queensland Corrective Services and the Queensland Government review Part 12A of the *Corrective Services Act 2006* with a view to repealing those sections. While ideally both s 319E and s 319F would be repealed, any simplification of the current system is welcome.⁷⁰

The delay in omitting section 50 means that prisoners continue to have to make a complaint to an official visitor before being able to make a complaint to the human rights commissioner under section 134 of the Anti-Discrimination Act.

The explanatory notes advise, however, that continuation of the current system provides an appropriate avenue to resolve prisoners' complaints.

... By maintaining a head of power requiring detained offenders to make a complaint to an official visitor before making a complaint to the human rights commissioner – the rights and liberties of individuals remain unchanged. Official visitors are appointed to investigate prisoner complaints under the CSA and are empowered to enter prisons, interview prisoners and access certain documents. Accordingly, it is appropriate to continue to provide an opportunity for complaints to be resolved quickly and internally through official visitors prior to the establishment of an independent inspectorate in Queensland.⁷¹

10 Attorney-General Regulation 2021 (SL No. 115)

The Attorney-General Regulation 2021 (SL No. 115) repeals and remakes the Attorney-General Regulation 2010, which would have automatically expired on 31 August 2021.⁷²

The purpose of SL No. 115 is:

... to provide the Attorney-General with sufficient information to make a decision about the merits of an application for a fiat, and to ensure the Attorney-General is fully indemnified for any costs incurred in relation to the proceeding if the fiat is granted.⁷³

The explanatory notes summarise the regulation:

It prescribes the information and documents that must accompany an application for the Attorney-General's fiat. For example, the application must contain the applicant's contact details and the reasons why the fiat is being sought, and be accompanied by documents such as an opinion from counsel as to the likelihood of success of the proceeding, and an undertaking by the applicant or their solicitor to indemnify the Attorney-General and to pay all of the Attorney-General's costs of the proceeding.⁷⁴

The explanatory notes set out the differences between SL No. 115 and the Attorney-General Regulation 2010:

While the *Attorney-General Regulation 2010* prescribes the requirements for an application for the Attorney-General's fiat for proceedings to enforce and protect public rights, [SL No. 115] also prescribes the same requirements for an application for the Attorney-General's fiat to enforce charitable and public trusts.

[Subordinate legislation No. 115] also omits the application of the prescribed requirements to an application to continue proceedings in the Attorney-General's name as this has been identified as beyond the regulation-making power under the Act. The requirements for such applications will be managed administratively.⁷⁵

⁷⁰ Corrective Services and Other Legislation Amendment Bill 2020 inquiry, submission 9, p 2.

⁷¹ SL No. 98, explanatory notes, pp 2-3.

⁷² SL No. 115, explanatory notes, p 1.

⁷³ SL No. 115, explanatory notes, p 1. The Attorney-General has the power to grant 'fiats' to enable entities that would not otherwise have standing, to start proceedings in the Attorney-General's name to enforce charitable and public trusts and to enforce and protect public rights.

⁷⁴ SL No. 115, explanatory notes, p 1.

⁷⁵ SL No. 115, explanatory notes, p 2.

10.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on property rights and the right to recognition and equality before the law are discussed below.

Property rights and right to recognition and equality before the law

The human rights certificate considers the right to recognition and equality before the law⁷⁶ and property rights⁷⁷ and concludes that the limitations on those rights are justified.

The right to recognition and equality before the law is limited where the right to apply for a fiat to start proceedings in the Attorney-General's name is restricted to those who can afford to pay for legal services and indemnify the Attorney-General and to pay all of the Attorney-General's costs of the proceeding. ...

The right to property may be limited by the Regulation as a person who wishes to apply for the Attorney-General's fiat must pay for the services of a solicitor and counsel to provide the necessary documents in support of their application. The person must also undertake to indemnify the Attorney-General and to pay all of the Attorney-General's costs of the proceeding.

...

On balance, the importance of ensuring that fiats are only granted for proceedings which are appropriate to be started in the Attorney-General's name and of ensuring that the State is not liable for any costs incurred in relation to the proceeding if a fiat is granted, outweigh any limitation on the right to recognition and equality before the law and the right to property.⁷⁸

11 Land Court Regulation 2021 (SL No. 117)

The Land Court Regulation 2021 (SL No. 117) repeals and remakes the Land Court Regulation 2010, which would have automatically expired on 1 September 2021.⁷⁹

The policy objectives of SL No. 117 are to:

- allow for the continued collection of fees for the provision of registry and related services provided by the Land Court and the Land Appeal Court
- remove a provision which preserved the rights and entitlements of an acting member of the Land Court and is now redundant where the previously acting member is now permanently appointed.⁸⁰

The fee amounts in schedule 1 remain unaltered from the previous regulation.

11.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on human rights are discussed below.

⁷⁶ See HRA, s 15.

⁷⁷ See HRA, s 24.

⁷⁸ SL No. 115, human rights certificate, pp 2-3.

⁷⁹ SL No. 117, explanatory notes, p 1.

⁸⁰ SL No. 117, explanatory notes, p 1.

Property rights and right to recognition and equality before the law

The human rights certificate considers the right to recognition and equality before the law⁸¹ and property rights⁸² and concludes that the limitation on those rights is justified:

The limitation on the right to recognition and equality before the law and the right to property is for the purpose of providing for the continued collection of fees to contribute to the provision of registry and related services provided by the Land Court and the Land Appeal Court. The cost of providing these services is subsidised by the government, as fees resulting in full cost recovery would be prohibitive. The fees provide a contribution to the delivery of services while operating to encourage appropriate use of the court by members of the public. The provision of important government services in a fiscally responsible way is a proper purpose consistent with a free and democratic society.

...

The imposition of fees for the provision of the Land Court and the Land Appeal Court services ensures the provision of these services contribute to their resourcing while operating to encourage appropriate use of the courts by members of the public.

...

On balance, the importance of the courts' services being provided in a fiscally responsible way outweighs negative impacts on the right to recognition and equality before the law and the right to property.⁸³

12 State Buildings Protective Security Amendment Regulation 2021 (SL No. 118)

Protective Services security officers appointed under the *State Buildings Protective Security Act 1983* (Act) provide security services for state buildings.⁸⁴

State buildings are defined in the Act to include a building and its precincts declared in a regulation to be a state building.⁸⁵

A regulation may only declare a building and its precincts, or a part of a building and its precincts, to be a state building if the building or part of the building is to be used for an activity with which the State is directly concerned and the regulation provides for its expiry at a stated time.⁸⁶

The State Buildings Protective Security Regulation 2008 declares the Queensland Cultural Centre and certain Legal Aid Queensland offices to be state buildings.⁸⁷ Protective Services within the Queensland Police Service therefore meet the security needs for the Queensland Cultural Centre and Legal Aid Queensland offices in the Brisbane central business district.⁸⁸

The State Buildings Protective Security Amendment Regulation 2021 (SL No. 118) amends the State Buildings Protective Security Regulation 2008 to extend to 31 August 2022 the declarations of the Queensland Cultural Centre and Legal Aid Queensland offices as state buildings.⁸⁹

Subordinate legislation No. 2018 also modifies the boundaries of the Queensland Cultural Centre land to exclude the Cultural Centre Pontoon. It does this by omitting the pontoon land from the land listed

⁸¹ See HRA, s 15.

⁸² See HRA, s 24.

⁸³ SL No. 117, human rights certificate, p 2.

⁸⁴ *State Buildings Protective Security Act 1983*; SL No. 118, explanatory notes, p 1.

⁸⁵ *State Buildings Protective Security Act 1983*, s 4.

⁸⁶ *State Buildings Protective Security Act 1983*, s 4.

⁸⁷ State Buildings Protective Security Regulation 2008, ss 3, 3A.

⁸⁸ SL No. 118, explanatory notes, p 1.

⁸⁹ SL No. 118, explanatory notes, pp 1-2.

in schedule 1 (Land on which state buildings are located) of the State Buildings Protective Security Regulation 2008.⁹⁰

This amendment is made because ownership of the pontoon has been transferred from Arts Queensland to the Department of State Development, Infrastructure, Local Government and Planning. From the commencement of the regulation, the pontoon will be managed by City Parklands Services and Protective Services will no longer be responsible for security services in this area.⁹¹

12.1 Consistency with fundamental legislative principles

The extension of the declaration of the Queensland Cultural Centre and Legal Aid Queensland offices as state buildings means that Protective Services security officers are authorised to exercise certain powers in those buildings and precincts. These powers are described and discussed in the human rights certificate, and are considered briefly below with respect to fundamental legislative principles, and under the heading *Compatibility with human rights*.

Common law rights

Legislation should not abrogate common law rights without sufficient justification.⁹² These rights include the rights to privacy and liberty.

Right to liberty and right to freedom of movement

The right to personal liberty has been described as ‘the most elementary and important of all common law rights’.⁹³ The power to detain a person infringes on the right to freedom of movement and must be fully justified.⁹⁴

A senior protective security officer is authorised to detain a person if the senior protective security officer suspects on reasonable grounds that a person has committed an offence against:

- the *State Buildings Protective Security Act 1983*, or
- any other law by reason of having done anything or having had anything in the person’s possession in a state building.

As soon as practicable after a senior protective security officer detains the person, the senior protective security officer must surrender the person to a police officer.⁹⁵

This ability to detain a person is inconsistent with the rights to liberty and freedom of movement.

The human rights certificate contends that the power to detain a person ‘is an appropriate security measure that provides due process while ensuring good order can be maintained within the Queensland Cultural Centre and all Legal Aid Queensland offices located in the Brisbane CBD’.⁹⁶

The safeguards that apply to the power include that to be a senior protective security officer, a person must meet certain standards of propriety and undertake a training course.⁹⁷ Also that a senior security officer who is not wearing a uniform may exercise a power in relation to a person only if the officer first produces the officer’s identity card for inspection by the person.⁹⁸

⁹⁰ SL No. 118, s 4.

⁹¹ SL No. 118, explanatory notes, pp 1-2.

⁹² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 95.

⁹³ *Trowbridge v Hardy* (955) 94 CLR 147 at 152.

⁹⁴ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 99.

⁹⁵ *State Buildings Protective Security Act 1983*, s 24.

⁹⁶ SL No. 118, human rights certificate, p 9.

⁹⁷ See *State Buildings Protective Security Act 1983*, ss 8, 9.

⁹⁸ *State Buildings Protective Security Act 1983*, s 10B. If, for any reason, it is not practicable to comply before exercising the power, the senior protective security officer must comply with the subsection at the first reasonable opportunity.

Given the safeguards that apply and that it is in the public interest to provide safe government precincts, the committee is satisfied that any inconsistency with fundamental legislative principles in this regard is justified.

Right to privacy

Subordinate legislation No. 118 enables a senior protective security officer to demand a person's name and reason for attending the Queensland Cultural Centre or Legal Aid Queensland offices. It also enables the officer to require a person to undertake certain actions, such as pass the person's belongings through an x-ray machine. A senior protective security officer may touch garments worn by the person to the extent reasonably necessary to detect articles carried by the person.

Given that these powers assist Protective Services to protect staff, visitors and the public who attend the Queensland Cultural Centre and Legal Aid Queensland offices from risks such as explosives and firearms,⁹⁹ the committee is satisfied that any inconsistency with fundamental legislative principles in this regard is justified.

12.2 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on human rights are discussed below.

Property rights

A person must not be arbitrarily deprived of their property.¹⁰⁰

The declaration of the Queensland Cultural Centre and Queensland Legal Aid offices as state buildings enables senior protective security officers at those sites to seize and detain explosive substances, firearms, noxious or offensive substances and offensive weapons (proscribed matter) at these locations, unless the person is lawfully in possession of it in the course of the person's trade, business or calling.¹⁰¹

The *Police Powers and Responsibilities Act 2000* provides for the return of proscribed matter provided certain criteria are met.¹⁰²

The human rights certificate states that the power to seize property is not arbitrary,¹⁰³ and is justified 'given the paramount importance of ensuring the safety of visitors and employees at the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD'.¹⁰⁴

The human rights certificate adds that there are safeguards in place:

Concerns about this power's impact upon a person's property rights are mitigated through the restriction of this power to a clearly defined area, the limitation of the application of this power to property that is inherently dangerous if inappropriately used and the existence of an avenue for the return of seized property.¹⁰⁵

⁹⁹ See SL No. 118, human rights certificate, pp 5, 7.

¹⁰⁰ HRA, s 24.

¹⁰¹ *State Buildings Protective Security Act 1983*, ss 3, 22; SL No. 118, human rights certificate, p 9. Proscribed matter is that which would present a security threat to a place: SL No. 118, human rights certificate, p 9.

¹⁰² SL No. 118, human rights certificate, pp 9-10.

¹⁰³ SL No. 118, human rights certificate, p 9.

¹⁰⁴ SL No. 118, human rights certificate, p 10.

¹⁰⁵ SL No. 118, human rights certificate, p 10.

Privacy and reputation

A person has the right not to have the person's privacy unlawfully or arbitrarily interfered with.¹⁰⁶

Senior protective security officers at state buildings have powers which limit a person's right to privacy. These include the power to:

- demand a person's name and address and reason for entry to the building
- ask a person to pass through a walk-through detector and/or submit to scan by a security officer using a hand held scanner and/or pass their belongings through an x-ray machine
- examine an outer garment removed by a person
- inspect a vehicle
- remove and inspect a detected article.¹⁰⁷

The human rights certificate advises that the purpose of SL No. 118 is 'to ensure that appropriate security measures are applied to the Queensland Cultural Centre and Legal Aid Queensland offices located in the Brisbane CBD'.¹⁰⁸

Regarding the authority of senior protective security officers and police officers to demand a person's name and reason for entering the building, the human rights certificate states:

... This power is required to ensure that entrants into state buildings may be identified and are at this location for a lawful purpose. This is a security measure that has been universally adopted for state buildings by all Australian jurisdictions.

The impact of the exercise of this power on the right to privacy is minimal as the only information sought is the entrant's name and address details and the reason why the person is at a specific location. The amount of information sought is not overly intrusive and is the minimum needed to identify a person and to determine that the person has a legitimate reason for being present.¹⁰⁹

With respect to inspections of a person's belongings, the human rights certificate states:

The amendment Regulation also affects a person's right to privacy by permitting inspections of the entrant's belongings and outer garments. The purpose of these inspections is to detect proscribed matter. These inspections are designed to be sufficient for this purpose while not being excessively intrusive.¹¹⁰

Freedom of movement

In certain circumstances, a senior protective security officer may direct a person to leave the Queensland Cultural Centre or Legal Aid Queensland offices.¹¹¹ If the person fails to leave, the senior protective security officer can remove the person from the building, using such force as is necessary.¹¹²

While these powers limit a person's right to move freely within Queensland, they may only be exercised 'if the person fails to comply with a direction such as a requirement to allow their belongings to be inspected or fails to satisfy a senior protective security officer or police officer that they have a lawful reason for being in the area'.¹¹³ The human rights certificate explains that the power 'is appropriate and necessary as it allows the senior protective security officer or police officer to resolve

¹⁰⁶ HRA, s 25.

¹⁰⁷ *State Buildings Protective Security Act 1983*, part 3.

¹⁰⁸ SL No. 118, human rights certificate, p 6.

¹⁰⁹ SL No. 118, human rights certificate, p 6.

¹¹⁰ SL No. 118, human rights certificate, p 6.

¹¹¹ *State Buildings Protective Security Act 1983*, s 21D; SL No. 118, human rights certificate, p 7.

¹¹² *State Buildings Protective Security Act 1983*, s 23; SL No. 118, human rights certificate, p 7.

¹¹³ SL No. 118, human rights certificate, p 7.

a potential risk to the security and safety of the area and no other reasonable security measures would be effective'.¹¹⁴

Right to liberty and security

A person must not be subjected to arbitrary arrest or detention.¹¹⁵

If a senior protective security officer suspects on reasonable grounds that a person has committed an offence, the senior protective security officer may detain a person, using such force as is reasonably necessary for the purpose, until the person can be surrendered to a police officer.¹¹⁶

The human rights certificate justifies the limitation:

The power to detain a person under the circumstances outlined in the amendment Regulation is an appropriate security measure that provides due process while ensuring good order can be maintained within the Queensland Cultural Centre and all Legal Aid Queensland offices located in the Brisbane CBD.¹¹⁷

13 Criminal Practice (Fees and Allowances) Regulation 2021 (SL No 127)

The objective of the Criminal Practice (Fees and Allowances) Regulation 2021 (SL No. 127) is to replace the Criminal Practice (Fees) Regulation 2010 (2010 Regulation).¹¹⁸

Subordinate legislation No. 127 provides for fees payable in relation to a criminal proceeding (eg inspecting a document or thing under rule 29(8A)(a) - \$19.50) and for allowances for particular prosecution witnesses. These are the same matters as the 2010 Regulation, with some minor and clarifying amendments.¹¹⁹ There is no difference between the 2 regulations in the amount of fees and allowances.

13.1 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitations on property rights and the right to recognition and equality before the law are discussed below.

Property rights and right to recognition and equality before the law

The human rights certificate states that property rights and the right to recognition and equality before the law may be limited by SL No. 127 because the subordinate legislation imposes fees to access court exhibits, documents and other things which has the effect of depriving a person of money and may restrict access to services to sectors of the community of a lower socio-economic status.¹²⁰

The human rights certificate explains that the purpose of imposing these fees is to recognise the need for government to recover costs associated with providing services.¹²¹ The human rights certificate adds:

¹¹⁴ SL No. 118, human rights certificate, p 8.

¹¹⁵ HRA, s 29.

¹¹⁶ *State Buildings Protective Security Act 1983*, s 24; SL No. 118, human rights certificate, p 8.

¹¹⁷ SL No. 118, human rights certificate, p 9.

¹¹⁸ Under section 56A of the *Statutory Instruments Act 1992*, the Criminal Practice (Fees) Regulation 2010 expired on 31 August 2021. SL No. 127 commenced on 1 September 2021: SL No. 127, s 2.

¹¹⁹ SL No. 127, explanatory notes, p 2.

¹²⁰ SL No. 127, human rights certificate, p 2.

¹²¹ SL No. 127, human rights certificate, p 2.

The imposition of fees for the provision of government services ensures the provision of these services is appropriately resourced and budgeted to reflect the cost of their delivery, which in turn ensures that services can continue to be delivered.¹²²

With respect to the level of the fees, the human rights certificate advises:

... The fees are subsidised by government to reduce the potential impacts on community members of a lower socio-economic status. Further, where the imposition of fees may impact access to justice, these are mitigated by a range of exemptions where it is in the interests of justice. For example, fees to access documents, exhibits and other items relevant to a criminal proceeding are exempt for defendants in the proceeding. Exemptions are intended to ameliorate the impact on human rights for sectors of the community of a lower socio-economic status.¹²³

The human rights certificate concludes:

On balance, the importance of government services being provided in a fiscally responsible way outweighs negative impacts on the right to recognition and equality before the law and the right to property.¹²⁴

14 Witness Protection Regulation 2021 (SL No. 128)

The objective of the Witness Protection Regulation 2021 (SL No. 128) is to repeal and remake the Witness Protection Regulation 2011 (2011 Regulation).¹²⁵

The differences between SL No. 128 and the 2011 Regulation include:

- the prescription of approved authorities, complementary witness protection laws and law enforcement agencies for the Northern Territory and the Australian Capital Territory
- changes to the names of various approved authorities since the making of the 2011 Regulation
- corresponding changes to associated definitions.¹²⁶

14.1 Consistency with fundamental legislative principles

Right to privacy

The right to privacy is relevant to determining whether legislation has sufficient regard to the rights and liberties of individuals.¹²⁷

Subordinate legislation No. 128 impacts on the right to privacy because the subordinate legislation prescribes entities (eg Australian Crime Commission, Corruption and Crime Commission and Integrity Commissioner)¹²⁸ to which certain information about a person in the witness protection program can be released.¹²⁹

Taking into account the public benefit in ensuring that persons in the witness protection program cannot use their new identity or location to avoid detection from interstate law enforcement, and that law enforcement is able to properly investigate potential criminal conduct by witness protection

¹²² SL No. 127, human rights certificate, p 3.

¹²³ SL No. 127, human rights certificate, p 3.

¹²⁴ SL No. 127, human rights certificate, p 3.

¹²⁵ Under section 54 of the *Statutory Instruments Act 1992*, the Witness Protection Regulation was due to expire on 1 September 2021. See also, SL No. 128, explanatory notes, p 1.

¹²⁶ SL No. 128, explanatory notes, p 2.

¹²⁷ See OQPC, *Fundamental legislative principles: the OQPC notebook*, p 95

¹²⁸ See SL No. 128, s 4.

¹²⁹ Further detail about the right to privacy is available in the *Compatibility with human rights* section of this briefing.

program participants, the committee is satisfied that any limitation on the right to privacy is justified in the circumstances.

14.2 Compatibility with human rights

The committee is satisfied that the subordinate legislation is compatible with human rights because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.

Limitation on the right to privacy is discussed below.

Right to privacy

The right to privacy is limited by SL No. 128 because the subordinate legislation prescribes entities to which the chairperson of the Crime and Corruption Commission may release information about a person in the witness protection program.

According to the human rights certificate, the purpose of the limitation on the right to privacy is to ensure community safety.¹³⁰

The reason that the *Witness Protection Act 2000* (WP Act) provides for the release of information is to:

... prevent persons who have been given a new identity or relocated under the Witness Protection Program from using their new identity or location to avoid detection from interstate law enforcement. It also enables law enforcement to properly investigate potential criminal conduct by participants within the Witness Protection Program.¹³¹

The safeguards in place with regard to the right to privacy include: limiting the release of information to the prescribed entities, the commissioner of the police service and the senior executive officer (crime) under the *Crime and Corruption Act 2001*; and only releasing information if the person in the witness protection program is under investigation for, has been arrested for, or has been charged with, an offence against a law of Queensland, the Commonwealth, or another State, that is punishable by imprisonment of at least 1 year.¹³² In addition, the WP Act makes it an offence to disclose certain information about particular persons or the witness protection program.¹³³

15 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

October 2021

Legal Affairs and Safety Committee

Chair

Deputy Chair

Members

Mr Peter Russo MP, Member for Toohey

Mrs Laura Gerber MP, Member for Currumbin

Ms Sandy Bolton MP, Member for Noosa

Ms Jonty Bush MP, Member for Cooper

Mr Jason Hunt MP, Member for Caloundra

Mr Andrew Powell MP, Member for Glass House

¹³⁰ SL No. 128, human rights certificate, p 3.

¹³¹ SL No. 128, human rights certificate, p 2.

¹³² See WP Act, s 43.

¹³³ See WP Act, ss 36, 37.

