

Legal Affairs and Safety Committee

Report No. 8, 57th Parliament

Subordinate legislation tabled between 27 November 2020 and 13 April 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 27 November 2020 and 13 April 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 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
256	Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 7) 2020	23 February 2021	13 May 2021
262	Liquor (Kowanyama) Amendment Regulation 2020	23 February 2021	13 May 2021
263	Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2020	23 February 2021	13 May 2021
266	Gaming Tax Amendment Notice 2020	17 December 2020	12 May 2021
Other	Takeaway liquor authority notices numbers 8, 9, 10 and 11	13 January 2021	12 May 2021
Other	Takeaway liquor authority notice number 12	22 January 2021	12 May 2021
1	Public Trustee (Interest Rate) Amendment Regulation 2021	23 February 2021	13 May 2021
4	State Penalties Enforcement (Public Health) Amendment Regulation 2021	23 February 2021	13 May 2021
7	Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021	19 February 2021	12 May 2021

¹ LSA, Part 4.

² HRA, s 41.

Subordinate legislation tabled between 27 November 2020 and 13 April 2021

11	Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021	23 February 2021	13 May 2021
13	Body Corporate and Community Management Legislation Amendment Regulation 2021	9 March 2021	27 May 2021
14	Electoral (Provision of Information on Electoral Rolls) Amendment Regulation 2021	9 March 2021	27 May 2021
15	Proclamation No. 2—Corrective Services and Other Legislation Amendment Act 2020 (commencing certain provisions)	23 March 2021	17 June 2021
16	Community Based Sentences (Interstate Transfer) Regulation 2021	23 March 2021	17 June 2021
20	Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2021	23 March 2021	17 June 2021
Other	Takeaway liquor authority notice number 13	13 April 2021	31 August 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

Other than as outlined 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.

Unless otherwise noted below, the committee considers the explanatory notes tabled with the subordinate legislation comply with the requirements of section 24 of the LSA.

Unless otherwise noted below, the committee 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

4 Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 7) 2020 (SL 256)

4.1 Overview of the regulation

The objective of the Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 7) 2020 is to further extend the period of the disaster situation declared for the whole of the State of Queensland on 22 March 2020 (and extended by regulation on 2, 16 and 30 April, 14 and 28 May, 27 August and 1 October 2020).⁴

Unless extended by regulation under section 72 of the *Disaster Management Act 2003* (the DM Act), or by declaration pursuant to section 72A of the DM Act, a disaster situation ends 14 days after the day it was declared. This regulation extends the period of the disaster situation to 31 March 2021.⁵

³ HRA, s 41.

⁴ The committee has also reported on an earlier extension regulation (SL 245 of 2020) in its Report No. 6, 57th Parliament – *Subordinate legislation tabled between 3 October 2020 and 26 November 2020*, February 2021.

⁵ Section 2.

The further extension of the declaration extends the duration of the availability of a number of powers under the 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, demolishing or destroying a vehicle, building or other structure in the declared area.

4.2 Fundamental legislative principle issues

4.2.1 *Legislative Standards Act 1992, section 4(2)(a) – rights and liberties of individuals*

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. 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 this regulation is consistent with fundamental legislative principles, and the notes do not address the issues of fundamental legislative principle that arise, which may be because the powers are contained in the principal Act itself. The explanatory notes 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 appropriately address risk to the health of the Queensland community.⁶

Committee comment

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

4.3 Human rights issues

In the human rights certificate accompanying this regulation, the Minister for Police and Corrective Services and Minister for Fire and Emergency Services, Hon Mark Ryan MP (Minister) states his opinion that this regulation is compatible:

- with the human rights protected by the HRA⁷
- with the HRA because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁸

The committee considered the following human rights issues.

4.3.1 *Human Rights Act 2019, section 19 – freedom of movement*

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

This regulation 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

⁶ Explanatory notes, p 1.

⁷ Human rights certificate, p 1.

⁸ Human rights certificate, p 9.

⁹ Human rights certificate, p 2.

The Minister provides the following justification:

On the basis of the nature of the health emergency, limiting persons identified with, or suspected of having, COVID-19 from circulating freely amongst the general public is considered reasonable and justifiable due to increased risks to vulnerable persons.

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 to a person's freedom of movement.¹⁰

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning the freedom of movement are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

4.3.2 Human Rights Act 2019, section 22 – peaceful assembly and freedom of association

Under section 22 of the HRA, every person has the right of peaceful assembly.

This regulation 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.¹¹

The Minister provides this justification:

The purpose of limiting the right to assemble peacefully is to reduce the risk of human to human transmission of COVID-19, consistent with multi-tier government requirements relating to mass gatherings during the COVID-19 response.¹²

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning peaceful assembly and freedom of association are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

4.3.3 Human Rights Act 2019, section 24 – property rights

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

This regulation extends the duration of the availability of various powers, including powers to enter a place, remove things from a place, and direct a person to leave or not enter an area.

The human rights certificate for this extension regulation does not consider property rights. It is noted, however, that this issue has been raised in the human rights certificates accompanying previous extension regulations. For example, in the human rights certificate for the prior extension regulation (SL 245), the Minister states:

The regulation to extend the disaster situation may limit a person's property rights because it allows for the control of movement of persons, animals or vehicles within, into, out of or around the declared area for the disaster situation...¹³

¹⁰ Human rights certificate, p 4.

¹¹ Human rights certificate, p 4.

¹² Human rights certificate, p 4.

¹³ Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation (No. 6) 2020, human rights certificate, p 6.

In that instance, the Minister provided this justification for any limitation on property rights:

The purpose of any deprivation of a person of their property under the relevant powers is to minimise the risk of transmission of COVID-19 to vulnerable persons.¹⁴

...

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 [a] person's right not to be deprived of property.¹⁵

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning property rights that arise are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

4.3.4 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person must not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

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.¹⁶

The Minister provides this justification:

The purpose of limiting the right to a person's privacy is to mitigate against the risk of transmission of COVID-19 by ensuring appropriate social distancing.¹⁷

...

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 to [a] person's right to privacy under these circumstances.¹⁸

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning the right to privacy and reputation are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

4.3.5 Human Rights Act 2019, section 29 – right to liberty and security

Under section 29 of the HRA a person has the right not to be subjected to arbitrary arrest or detention or to be deprived of their liberty.

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.¹⁹

¹⁴ Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation (No. 6) 2020, human rights certificate, p 6.

¹⁵ Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation (No. 6) 2020, human rights certificate, p 7.

¹⁶ Human rights certificate, p 6.

¹⁷ Human rights certificate, p 6.

¹⁸ Human rights certificate, p 7.

¹⁹ Human rights certificate, p 8.

The Minister states:

Due to the human to human transfer of the virus, restrictions need to be imposed on the movement of persons to reduce the risks of transmission of the virus. In particular, the movement of persons who are identified with or suspected of having COVID-19 needs to be limited in order to prevent them from circulating freely amongst the general public and spreading the virus.²⁰

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning the right to liberty and security are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

4.3.6 Human rights certificate

A human rights certificate was tabled with the subordinate legislation, as required by section 41 of the HRA.

As noted above, the human rights certificate for this extension regulation does not consider property rights, even though the issue has been raised in the human rights certificates accompanying previous extension regulations.

In other respects, the human rights certificate provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2020 (SL 263)

5.1 Overview of the regulation

The Public Trustee (Interest Rate) Amendment Regulation (No. 3) 2020 amends the interest rates payable under the Public Trustee Regulation 2012 on term deposit amounts held in the Public Trustee's common fund.

This regulation amends the interest rate from the previous rate of 0.40% to 0.30% from 1 January 2021.²¹

5.2 Human rights issues

5.2.1 Human Rights Act 2019, section 24 – property rights

Section 24 of the HRA provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

The effect of this regulation is to set the amount of profit (0.30%) that a person beneficially interested in the money in the common fund can derive from their property. Arguably, this could be considered a limitation on the person's use or enjoyment of that property.

The Attorney-General and Minister for Justice, Minister for Woman and Minister for the Prevention of Domestic and Family Violence, Hon Shannon Fentiman MP (Attorney-General) states:

The purpose of the Regulation is to set a rate of interest payable on moneys held in the common fund that reflect the market rate of return of a comparative set of competitive financial products and prevailing economic conditions. This is consistent with a free and democratic society based on human dignity, equality and freedom.²²

In assessing the balance between the purpose of the limitation and the human right, the Attorney-General states:

The Regulation strikes the appropriate balance between management of the common fund, on the one hand, and limiting certain human rights on the other. Although people with an interest in moneys in the

²⁰ Human rights certificate, p 8.

²¹ Explanatory notes, p 1.

²² Human rights certificate, p 2.

common fund are not free to invest the moneys as they choose, they receive a comparable market rate of return.²³

Committee comment

The committee notes the advice in the human rights certificate:

... the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.²⁴

The committee is satisfied that any limitation on human rights in this regulation in relation to property rights is reasonable and demonstrably justified in the circumstances.

6 Public Trustee (Interest Rate) Amendment Regulation 2021 (SL 1)

6.1 Overview of the regulation

The Public Trustee (Interest Rate) Amendment Regulation 2021 amends the interest rates payable under the Public Trustee Regulation 2012 on term deposit amounts held in the Public Trustee's common fund.

This regulation amends the interest rate on Class 2(c) and Class 3 amounts (financial management customers and enduring powers of attorney accounts) from the previous rate of 0.30% to 0.25% from 1 February 2021.²⁵

6.2 Human rights issues

6.2.1 Human Rights Act 2019, section 24 – property rights

Section 24 of the HRA provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

The effect of this regulation is to set the amount of profit (0.25%) that a person beneficially interested in the money in the common fund can derive from their property.

As noted above in relation to SL 263, arguably this could be considered a limitation on a person's use or enjoyment of their property. The analysis set out above for SL 263 is equally applicable here, with the Attorney-General providing essentially the same justification for any limitation on human rights in the human rights certificate.²⁶

Committee comment

The committee again considered the advice in the human rights certificate:

... the interest rate that is set reflects the market rate of return of a comparative set of competitive financial products and prevailing economic conditions.²⁷

The committee is satisfied that any limitation on human rights in relation to this regulation concerning property rights is reasonable and demonstrably justified in the circumstances.

7 State Penalties Enforcement (Public Health) Amendment Regulation 2021 (SL 4)

7.1 Overview of the regulation

The State Penalties Enforcement (Public Health) Amendment Regulation 2021 amends the State Penalties Enforcement Regulation 2014 to provide a specific infringement notice fine for a failure to

²³ Human rights certificate, p 3.

²⁴ Human rights certificate, p 2.

²⁵ Explanatory notes, p 1.

²⁶ See human rights certificate, pp 2-3.

²⁷ Human rights certificate, p 2.

wear or carry a face mask as required under any public health direction.²⁸ The fine is 1.5 penalty units (approx. \$200).²⁹

Prior to this regulation, a person who failed to comply with a public health direction (which could have included a requirement to wear or carry a face mask, amongst other requirements) without a reasonable excuse committed an offence with a maximum penalty of 100 penalty units (approx. \$1,334) or six months imprisonment.³⁰ Under this regulation, failure to comply with a public health direction that specifically requires a person to wear or carry a mask will result in a fine of \$200 as opposed to a fine of up to \$1,334.

This regulation does not prescribe any new offences, as breaching a public health direction is already an offence for which an infringement notice can be issued.³¹ Rather, this regulation arguably makes the penalty for a failure to comply with a public health direction that specifically requires a person to wear or carry a mask more proportionate to the conduct to which it relates.

The explanatory notes state:

The penalty aligns with the penalty for failing to wear a face mask in certain settings in Victoria and New South Wales, which also attracts a fine of \$200.

Inserting a specific infringement notice fine for failing to carry or wear a face mask will ensure the penalty aligns more closely with community standards and that there is a proportionate and effective enforcement response to the failure to comply with a requirement in a public health direction to wear or carry a face mask.³²

7.2 Human rights issues

In the human rights certificate accompanying this regulation, the Attorney-General states her opinion that this regulation is compatible:

- with the human rights protected by the HRA³³
- with the HRA because it limits, restricts or interferes with a human right, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.³⁴

The committee considered the following human rights issues.

7.2.1 Human Rights Act 2019, section 19 – property rights

Section 24 of the HRA provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

Not every denial of property infringes the right in section 24. The section provides that a person has the right not to be 'arbitrarily' deprived of their property. There is no definition of 'arbitrary' in the HRA. Applying a human rights meaning to the term means that it will be construed to mean an unreasonable, unjust or disproportionate interference.³⁵

²⁸ Explanatory notes, p 2.

²⁹ A penalty unit is \$133.45. See section 5A of the *Penalties and Sentences Act 1992* and section 3 of the *Penalties and Sentences Regulation 2015*.

³⁰ *Public Health Act 2005*, s 362D.

³¹ Explanatory notes, p 3. See also *Public Health Act 2005*, s 362D.

³² Explanatory notes, p 2.

³³ Human rights certificate, p 1.

³⁴ Human rights certificate, p 6.

³⁵ There is no case law yet from Queensland on the meaning of 'arbitrary' in the HRA. There have been conflicting views as to the meaning of 'arbitrary' in the Victorian Charter of Human Rights and Responsibilities. See Pound and Evans, *Annotated Charter of Rights*, LawBook Co, 2019.

This regulation specifies a penalty infringement fine that is to apply in circumstances where a person fails to comply with a public health direction requiring them to wear or carry a face mask.³⁶ This may engage the right to property in the sense that a person will be deprived of their financial property should they be issued an infringement notice fine.³⁷ The human rights certificate also contemplates that failure to pay an infringement notice fine could impact further on a person's property rights if enforcement action is taken under the *State Penalties Enforcement Act 1999*.³⁸

The Attorney-General states:

The Amendment Regulation provides a specific penalty for the failure to wear or carry a face mask as required under any public health direction, which will encourage individuals to comply with the law by wearing or carrying a mask and thus help achieve the overall purpose of combatting the spread of COVID-19 in the community.³⁹

...

I consider that the benefit of the preservation of an effective health care response to widespread community transmission of COVID-19 in achieving the objective of providing a specific penalty for the failure to wear or carry a face mask justifies any limitation on the right to property.⁴⁰

In assessing the balance between the purpose of the limitation and the human right, the Attorney-General states:

I consider the balance between the importance of protecting the State's ability to respond to widespread community transmission of COVID-19 and ensuring an effective enforcement system for the failure to comply with a public health direction, in particular, the requirement to wear or carry a face mask, outweighs the limitation on a person's right to property.⁴¹

Committee comment

It is difficult to see how any 'arbitrary' deprivation of property would arise here. This regulation sets a specific infringement notice fine amount (\$200) for failing to wear or carry a mask under a public health direction, compared to the previous situation whereby a person could face a fine of up to \$1,334 for the same behaviour. Further, as noted in the human rights certificate:

Providing a specific infringement notice fine will ensure the penalty aligns more closely with community standards and that there continues to be a proportionate and effective enforcement response to the failure to comply with a requirement in a public health direction to wear or carry a face mask.⁴²

The committee is satisfied that any impact on property rights from the operation of this regulation is reasonable and demonstrably justified in the circumstances.

8 Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021 (SL 7)

8.1 Overview of the regulation

The objective of the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021 is to amend the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (CERA regulation) to ensure that the SME

³⁶ Human rights certificate, p 3.

³⁷ Human rights certificate, p 3.

³⁸ Human rights certificate, p 4. For example, enforcement action in relation to an unpaid fine may include the suspension of an individual's driver licence, vehicle immobilisation or seizure and sale of property (for example, a vehicle owned by the individual).

³⁹ Human rights certificate, p 4.

⁴⁰ Human rights certificate, p 5.

⁴¹ Human rights certificate, p 6.

⁴² Human rights certificate, p 4.

(Small and Medium Enterprises) entity turnover of less than \$50 million will apply for affected leases, as it did at the time this regulation was made. It will prevent entities with a turnover of \$50 million or more from being able to satisfy the definition of SME entity under this regulation.⁴³ For a period between November and December 2020, entities with a turnover of up to \$120 million would have come under this regulation, due to a change in definition made to the Commonwealth SME rules. This regulation ensures the original intent of the CERA regulation is met by ensuring that the CERA regulation applies only to entities with a turnover of less than \$50 million.

The CERA regulation gave effect to the National Cabinet's agreement to a moratorium on evictions for the non-payment of rent for commercial tenancies. The CERA regulation applied to affected leases in Queensland for SME enterprise tenants with up to \$50 million in annual turnover who are eligible for the Commonwealth Government's JobKeeper scheme.⁴⁴

The threshold for SME entities turnover was set at less than \$50 million based on the Commonwealth SME Rules. However, following a change in these rules, the threshold was increased to \$120 million. This regulation restores the threshold to less than \$50 million.

8.1.1 Background - regulations made in reliance on the *COVID-19 Emergency Response Act 2020*

The CERA regulation is made in reliance, in part, on section 23 of the *COVID-19 Emergency Response Act 2020* (Emergency Response Act).⁴⁵

Under the CERA regulation, which applies to an 'affected lease', a lessor:

- cannot take prescribed action (eg eviction of the lessee, recovery of possession, termination of the lease) for a lessee's failure to pay rent or outgoings or trade for specified hours during the 'response period'
- must not increase rent during the response period
- must make an offer of rent relief that:
 - relates to any or all of the rent payable under the lease during the response period
 - has regard to stated factors such as reduction in turnover
 - provides for at least 50% of the rent reduction offered to be in the form of a waiver of rent
- subject to some exceptions, must offer the lessee an extension of the lease for the period that the rent has been waived or deferred.⁴⁶

An 'affected lease' is a retail shop lease or a lease where the premises are wholly or predominantly used for carrying on a business, where:

- the lease or an agreement to enter into the lease is binding on the lessee
- the lessee is a small and medium enterprise with up to \$50 million in annual turnover
- the lessee is eligible for the Commonwealth Government's JobKeeper assistance.⁴⁷

⁴³ CERA regulation, explanatory notes, p 1.

⁴⁴ Explanatory notes, p 1.

⁴⁵ The explanatory notes state the authorising law as being the *Retail Shop Leases Act 1994* and s 23 of the Emergency Response Act, p 1.

⁴⁶ CERA regulation, explanatory notes, pp 1-2.

⁴⁷ CERA regulation, explanatory notes, p 2.

8.1.2 A note regarding regulations made in reliance on the *COVID-19 Emergency Response Act 2020*

The CERA regulation, and this regulation, are made in reliance on section 23 of the Emergency Response Act, as well as on the general regulation-making power in section 121 of the *Retail Shop Leases Act 1994* (Retail Shop Leases Act).⁴⁸

The Emergency Response Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency. That Act applies despite any other Act or law other than the HRA.⁴⁹

Any regulation made in reliance on section 23:

- must declare it is made under section 23⁵⁰
- 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 Act⁵¹
- may have retrospective operation to a day not earlier than 23 April 2020⁵²
- will expire on 30 April 2021⁵³
- may impose a penalty of not more than 20 penalty units for a contravention of the regulation.⁵⁴ (By contrast, section 121 of the Retail Shop Leases Act allows for regulations to impose a penalty of no more than 50 units.)
- must be tabled within 14 days of notification (rather than the usual 14 sitting days).⁵⁵

Relevantly, this amendment regulation was notified on 5 February 2021 and tabled on 19 February 2021.

Additionally:

- Section 23 does not limit the regulation-making power conferred under the Retail Shop Leases Act⁵⁶
- To the extent a person's act or omission complies with a regulation made section 23, the person does not incur civil or criminal liability under the Retail Shop Leases Act for the act or omission.⁵⁷

8.1.3 Issue of non-compliance with the *COVID-19 Emergency Response Act 2020*

As mentioned above, any regulation made in reliance on section 23 of the Emergency Response Act must declare it is made under that section.⁵⁸ This regulation does *not* contain the required declaration.

The committee noted that a declaration was included in the initial regulation itself, and that here it is considering an amendment regulation.⁵⁹ Nonetheless, it is clear that the terms of section 23(4) extend to *any* regulation made in reliance on section 23, and this regulation itself requires its own declaration.

⁴⁸ Explanatory notes, p 1.

⁴⁹ Emergency Response Act, s 4(1).

⁵⁰ Emergency Response Act, s 23(4).

⁵¹ Emergency Response Act, s 23(2)(a).

⁵² Emergency Response Act, s 23(2)(b).

⁵³ Emergency Response Act, s 23(6).

⁵⁴ Emergency Response Act, s 23(2)(c).

⁵⁵ Emergency Response Act, s 23(7), and contrast s 49(1) of the *Statutory Instruments Act 1992*.

⁵⁶ Emergency Response Act, s 23(5).

⁵⁷ Emergency Response Act, s 23(3).

⁵⁸ As required by Emergency Response Act, s 23(4).

⁵⁹ CERA regulation, s 2.

Committee comment

An 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. However, the committee notes that a declaration is required. There is nothing in either the wording of the statutory requirement in section 23 or in the nature of the various regulations to support the non-inclusion of a declaration, and there appears to be no basis for drawing any distinction between a ‘regulation’ and an ‘amendment regulation’.

The committee also notes however that there are no apparent consequences arising from non-compliance with this statutory requirement.

8.2 Issues of fundamental legislative principle

8.2.1 *Legislative Standards Act 1992, section 4(2)* – rights and liberties of individuals

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals:

Legislation should be reasonable and fair in its treatment of individuals. It should not be discriminatory.⁶⁰

This regulation will prevent SME entities from exercising any rights under the CERA regulation in respect of the period from 14 November 2020 to 31 December 2020 if the entity had annual turnover of \$50 million or more. These individuals’ rights and liberties are affected as the provisions have the effect that they will not be able to access the protections afforded by the CERA regulation that would have been available to them had these amendments not been made.

The explanatory notes provide the following justification:

The Regulation was made to implement that National Code [National Cabinet’s Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19] and reflect a fair sharing of the rights of lessors and SME lessees with a turnover of less than \$50 million.⁶¹

Committee comment

The committee is satisfied that any breach of fundamental legal principles in this regulation relating to the rights and liberties of individuals is reasonable and demonstrably justified in the circumstances.

8.2.2 *Legislative Standards Act 1992, section 4(3)(g)* – retrospectivity

Under section 4(3)(g) of the LSA, whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

Clause 6 introduces a number of transitional provisions and provides that the less than \$50 million threshold applies, and is taken to have always applied, for working out whether or not a lease of premises is an affected lease. For a six week period between November and December 2020, commercial leases between \$50 million and \$120 million may have been able to satisfy the definition of an affected lease.

These transitional provisions will affect SME entities that have a turnover between \$50 million and \$120 million as they were entitled to these benefits for a period between November and December 2020. The retrospective effect of these provisions means that these entities are treated as if they were never entitled to those benefits. This retrospective action is a breach of fundamental legislative principles.

The explanatory notes set out that the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 implemented the fair leasing principles set out in National

⁶⁰ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 133.

⁶¹ Explanatory notes, p 4.

Cabinet's *Mandatory Code of Conduct – SME Commercial Leasing Principles During COVID-19* (National Code), for 'affected leases' in Queensland for SME tenants with up to \$50 million in annual turnover who are eligible for the Commonwealth Government's JobKeeper scheme.⁶²

In relation to the breach of fundamental legislative principles, the explanatory notes state:

This is justified in that it restores the intended position under the National Code.⁶³

Although the explanatory notes do not provide any detailed justification, in the human rights certificate the Attorney-General relevantly states:

... the importance of restoring the intended balance of rights between lessors and lessees by preventing any future exercise of rights under the Regulation in respect of ineligible leases and limiting, to the greatest extent possible, the unintended impact on ordinary property rights of lessors is to remove rights from lessees under ineligible leases that arose only from the effect of the increased threshold and to end any processes under the Regulation in respect of ineligible leases that are incomplete or unresolved on the commencement.⁶⁴

Committee comment

The committee is satisfied that any breach of fundamental legislative principles in respect of the retrospectivity connected with this regulation is justified in the circumstances.

8.3 Explanatory notes comment

Explanatory notes must include a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.⁶⁵ As noted above, the treatment of inconsistencies with fundamental legislative principles was somewhat cursory. Some more detail would have assisted readers of the explanatory notes understand and assess the issues involved.

The explanatory notes otherwise comply with part 4 of the LSA.

8.4 Human rights issues

In the human rights certificate accompanying this regulation, the Attorney-General states her opinion that this regulation is compatible:

- with the human rights protected by the HRA⁶⁶
- with the HRA because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁶⁷

The committee considered the following human rights issues.

8.4.1 Human Rights Act 2019, section 24 – property rights

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

This regulation will amend the definition of SME entities so that the CERA regulation will apply to SME entities with a maximum annual turnover of less than \$50 million. The effect of the amendments will mean that a lessee with an annual turnover above \$50 million will be unable to take advantage of the rights or protections under the CERA regulation.

⁶² Explanatory notes, p 1.

⁶³ Explanatory notes, p 4.

⁶⁴ Human rights certificate, p 5.

⁶⁵ LSA, s 23(1)(f).

⁶⁶ Human rights certificate, p 1.

⁶⁷ Human rights certificate, p 5.

The Attorney-General provides the following justification:

The Amendment Regulation responds to the unintended impact of the increased threshold to restore, to the greatest extent [sic] possible, the balance between a justifiable response to the COVID-19 emergency as intended by National Cabinet and the impact on the right to property.⁶⁸

The Attorney-General further states:

Clauses 4 and 6 of the Amendment Regulation have the effect of removing property rights from lessees under ineligible leases and restoring property rights to lessors. Limiting rights of one group to mitigate a greater than anticipated negative impact on the rights of another group is a legitimate objective and proper purpose for limiting human rights.⁶⁹

8.4.2 Human Rights Act 2019, section 31 – fair hearing

Under section 31 of the HRA, a person who is party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Clause 6 introduces transitional provisions for the CERA regulation. The provisions set out, in relation to an ineligible lease, that section 12 (which prohibits the lessor from taking a prescribed action such as eviction of the lessee, recovery of possession, termination of the lease) is taken to have never applied. This means that the lessor is permitted to take an action which, but for the transitional provisions, would be a prescribed action under the lease.⁷⁰

The Attorney-General provides this justification:

The purpose of the limitation on the right to a fair hearing is also to re-balance the relationship between the property rights of lessors and lessees in accordance with the National Code. Limiting rights of one group to mitigate a greater than anticipated negative impact on the rights of another group is a legitimate objective and proper purpose for limiting human rights.⁷¹

Committee comment

The committee is satisfied that any limits on human rights in relation to this regulation concerning property rights and a fair hearing are reasonable and demonstrably justified in the circumstances particularly given the COVID-19 public health emergency and the overall objectives of this regulation.

9 Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021 (SL 11)

9.1 Overview of the regulation

9.1.1 Amendments to the Uniform Civil Procedure Rules 1999

The first objective of the Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021 is to amend the Uniform Civil Procedure Rules 1999 (UCPR) to remove duplication in provisions relating to amendment of pleadings following a request for a trial date.⁷²

Rule 470 provides that, after filing a request for a trial date, a party may do the following only with the court's leave:

- amend a pleading
- request particulars

⁶⁸ Human rights certificate, p 3.

⁶⁹ Human rights certificate, p 4.

⁷⁰ Human rights certificate, p 3.

⁷¹ Human rights certificate, p 4.

⁷² Explanatory notes, p 1.

- make an application in the proceeding.⁷³

Rule 380 provides that an amendment after filing the request for a trial date may only be made with the leave of the court. Rules 465 and 378 also relate to amendment of pleadings following a request for a trial date. To address the overlap, this regulation omits rules 380 and 465 of the UCPR and inserts a note in rule 378 which refers to rule 470.

9.1.2 Amendments to the Uniform Civil Procedure (Fees) Regulation 2019

The second objective of this regulation is to amend section 9(2) of the Uniform Civil Procedure (Fees) Regulation 2019 (Fees Regulation) to address an issue in relation to applications for reduced fees.

Currently, a party may apply for an order to pay reduced court fees on the grounds of financial hardship. In considering the application, the registrar must have regard to the party's income, day to day expenses, bank balances and cash on hand.⁷⁴ This regulation adds a requirement that any information or documents included in support of the party's application must be verified by statutory declaration.⁷⁵

9.1.3 Amendments to the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020

The third objective is to clarify the transitional provisions in Part 5, Division 2 of the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation 2020 (Leases Regulation). These transitional provisions operate to prevent SME entities from exercising any rights under the Leases Regulation in respect of the period from 14 November 2020 to 31 December 2020 if the entity had annual turnover of \$50 million or more.

This regulation makes a number of minor changes to sections 50 and 51 of the Leases Regulation to:

- remove ambiguity in references to the commencement of provisions
- clarify that section 51(3) does not limit section 51(2)
- clarify that for section 51(3)(a) the relevant time for which the lessor refrained from taking a prescribed action is during, or after, the extension period under the Leases Regulation.⁷⁶

9.1.4 A note regarding regulations made in reliance on the COVID-19 Emergency Response Act 2020

The amendments to the Leases Regulation were made, in part, in reliance on section 23 of the Emergency Response Act, as well as on the general regulation-making power in section 121 of the Retail Shop Leases Act.⁷⁷

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.⁷⁸

As noted above, any regulation made in reliance on section 23:

- must declare it is made under section 23⁷⁹

⁷³ Explanatory notes, p 1.

⁷⁴ Uniform Civil Procedure (Fees) Regulation 2019, s 9.

⁷⁵ Section 6.

⁷⁶ Explanatory notes, p 2.

⁷⁷ Explanatory notes, p 1.

⁷⁸ Emergency Response Act, s 4(1).

⁷⁹ Emergency Response Act, s 23(4).

- 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 Act⁸⁰
- may have retrospective operation to a day not earlier than 23 April 2020⁸¹
- will expire on 30 April 2021⁸²
- may impose a penalty of not more than 20 penalty units for a contravention of the regulation⁸³
- must be tabled within 14 days of notification (rather than the usual 14 sitting days).⁸⁴

Additionally:

- Section 23 does not limit the regulation-making power conferred under the Retail Shop Leases Act.⁸⁵
- To the extent a person's act or omission complies with a regulation made s 23, the person does not incur civil or criminal liability under the Retail Shop Leases Act for the act or omission.⁸⁶

9.1.5 Issue of non-compliance with the *COVID-19 Emergency Response Act 2020*

As mentioned above, any regulation made in reliance on section 23 of the Emergency Response Act must declare it is made under that section.⁸⁷ This regulation does *not* contain the required declaration.

The committee noted that a declaration was included in the initial regulation itself, and that here it is considering an amendment regulation which makes only minor changes in reliance on section 23.⁸⁸ Nonetheless, it is clear that the terms of section 23(4) extend to *any* regulation made in reliance on section 23, and the amendment regulation itself requires its own declaration.

Committee comment

An 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. However, the committee notes that a declaration is required. There is nothing in either the wording of the statutory requirement in section 23 or in the nature of the various regulations to support the non-inclusion of a declaration, and there appears to be no basis for drawing any distinction between a 'regulation' and an 'amendment regulation'.

The committee also notes however that there are no apparent consequences arising from non-compliance with this statutory requirement.

9.2 Human rights issues

In the human rights certificate accompanying this regulation, the Attorney-General states her opinion that this regulation is compatible:

- with the human rights protected by the HRA⁸⁹

⁸⁰ Emergency Response Act, s 23(2)(a).

⁸¹ Emergency Response Act, s 23(2)(b).

⁸² Emergency Response Act, s 23(6).

⁸³ Emergency Response Act, s 23(2)(c). By contrast, section 121 of the Retail Shop Leases Act allows for regulations to impose a penalty of no more than 50 units.

⁸⁴ Emergency Response Act, s 23(7), and contrast s 49(1) of the *Statutory Instruments Act 1992*. This regulation was notified on 18 February 2021 and tabled on 23 February 2021, within the 14 period.

⁸⁵ Emergency Response Act, s 23(5).

⁸⁶ Emergency Response Act, s 23(3).

⁸⁷ As required by Emergency Response Act, s 23(4).

⁸⁸ Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Amendment Regulation 2021.

⁸⁹ Human rights certificate, p 1.

- with the HRA because to the extent that it limits, restricts or interferes with human rights, the limitations are reasonable and demonstrably justifiable in accordance with section 13 of the HRA.⁹⁰

The amendments which require a party applying for reduced fees on the basis of financial hardship to provide a statutory declaration to verify the truth of the information provided in their application may limit human rights.⁹¹

The committee considered the following human rights issues.

9.2.1 Human Rights Act 2019, section 15 – right to recognition and equality before the law

Under section 15 of the HRA, every person is equal before the law and is entitled to the equal protection of the law without discrimination.

The requirement to find a suitable person to witness a statutory declaration may disproportionality impact vulnerable groups, for example, where language and communication barriers exist. It is also possible that individuals, for example, persons whose first language is not English, may not appreciate the gravity of making a declaration or the consequences of making a false statement.⁹²

9.2.2 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person must not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

Providing a statutory declaration may increase the risk of confidential information contained in the application being made available to a person through that person witnessing the declaration.⁹³

9.2.3 Human Rights Act 2019, section 31 – right to a fair hearing

Under section 31 of the HRA, a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

An applicant's right to a fair hearing may be limited if they are unable to commence proceedings because they are unable to provide, or find a suitable person to witness, a supporting statutory declaration.⁹⁴

The Attorney-General states the purpose of these amendments is to 'strengthen the integrity of court fee reduction applications'.⁹⁵ The Attorney-General also notes that this regulation 'is likely to only result in a minor inconvenience for most affected persons' and that there 'are various services available at Queensland Courts to assist potentially affected applicants'.⁹⁶

In assessing the balance between the purpose of the limitation and the human rights, the Attorney-General states:

On balance, the need to strengthen the integrity of court fee reduction applications is considered to outweigh any impact on a person's human rights, taking into account the safeguards provided in the form of available services to assist potentially affected applicants and requirements applicable to Justices of the Peace.⁹⁷

⁹⁰ Human rights certificate, p 4.

⁹¹ These are the amendments contained in section 6 of the Uniform Civil Procedure (Fees) and Other Legislation Amendment Regulation 2021.

⁹² Human rights certificate, p 2.

⁹³ Human rights certificate, p 2.

⁹⁴ Human rights certificate, p 3.

⁹⁵ Human rights certificate, p 3.

⁹⁶ Human rights certificate, p 3.

⁹⁷ Human rights certificate, p 3.

Committee comment

The committee is satisfied that any limits on human rights in this regulation are reasonable and justified, given the overall objective of this regulation and the circumstances.

10 Electoral (Provision of Information on Electoral Rolls) Amendment Regulation 2021 (SL 14)

10.1 Overview of the regulation

The Electoral (Provision of Information on Electoral Rolls) Amendment Regulation 2021 amends the Electoral Regulation 2013 to prescribe Queensland Health as an entity to which the Electoral Commission Queensland (ECQ) may give a copy of the whole or part of the electoral roll for any electoral district for a 'prescribed purpose'. In this instance, the prescribed purpose is:

... the purpose of contacting persons in Queensland in relation to the Australian COVID-19 vaccination arrangements⁹⁸

The Australian COVID-19 vaccination arrangements are defined in the Health (Drugs and Poisons) Regulation 1996 as meaning:

... the arrangements made under the Australian COVID-19 vaccination policy to provide COVID-19 vaccines for vaccinating members of the public.⁹⁹

The Australian COVID-19 Vaccination Policy is published by the Australian Government and is available at www.health.gov.au/resources/publications/covid-19-vaccination-australian-covid-19-vaccination-policy.

10.2 Issues of fundamental legislative principle

10.2.1 *Legislative Standards Act 1992*, section 4(2)(a) – rights and liberties of individuals – privacy and confidentiality

The right to privacy and the disclosure of private or confidential information are relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.

This regulation allows the ECQ to disclose part or the entire electoral roll for any electoral district to Queensland Health for the prescribed purpose. The information disclosed may include personal information, including the elector's name, address, sex, occupation and date of birth.¹⁰⁰

The disclosure of this personal information will infringe a person's right to privacy and confidentiality and is a breach of fundamental legislative principles.

The explanatory notes discuss the purpose of the breach of privacy, with this justification:

The purpose of the limitation of the right to privacy and reputation, by allowing electoral roll information to be provided by the ECQ to Queensland Health for the prescribed purpose, is to enable persons in Queensland to be contacted in relation to COVID-19 vaccination arrangements. Identifying and communicating with persons to invite them to receive a COVID-19 vaccine, based on phases of the vaccine rollout strategy, will support the efficient administration of the vaccination program in a manner consistent with its rollout phases and increase the awareness of those contacted about the vaccination program. This will in turn support the COVID-19 vaccination program, which is intended to assist in keeping members of the community safe.¹⁰¹

⁹⁸ New s 3A of the Electoral Regulation 2013; explanatory notes, p 2.

⁹⁹ Definition inserted in appendix 9 (dictionary) of the Health (Drugs and Poisons) Regulation 1996, by s 7(2)) of the Health (Drugs and Poisons) (COVID-19 Vaccination Services) Amendment Regulation 2021, SL 5 of 2021, notified on 29 January 2021.

¹⁰⁰ Explanatory notes, p 3.

¹⁰¹ Explanatory notes, p 3.

The explanatory notes also discuss safeguards provided for in this regulation.¹⁰² New section 3A(1)(a) specifically excludes information relating to a silent elector and the date a person was enrolled on the electoral roll, from being disclosed for the purposes of this regulation. Section 58(5) of the *Electoral Act 1992* is relied upon for the purposes of determining who is a silent elector on the electoral roll. It provides that, if the ECQ is satisfied that the inclusion on a roll of a person's address would place at risk the personal safety of the person or another person, the person's address must not be set out in the publicly available part of the roll.

The explanatory notes also explain that information about an elector's date of enrolment will not be disclosed as it is not considered relevant to the purpose.¹⁰³

Queensland Health must also comply with the National Privacy Principles contained in the *Information Privacy Act 2009*, which would include requirements not to use or disclose information about an individual for a purpose other than the primary purpose or collection unless stated circumstances apply, and to take reasonable steps to protect personal information held from misuse, loss and unauthorised access, modification or disclosure.¹⁰⁴

The explanatory notes do not specifically address why a person's occupation and date of birth is information relevant to the stated purpose of contacting persons regarding the rollout, although the explanatory notes do state that persons will be identified and communicated with to invite them to receive a COVID-19 vaccination based on phases of the vaccine strategy.¹⁰⁵

Presumably the reasons are based on the staged nature of the rollout strategy, with certain members of the community being targeted at different stages, such as frontline or health workers or people of a certain age. This would be consistent with the Australian COVID-19 vaccination policy which sets out a policy of directing limited supplies towards priority groups. The three priority groups identified are:

- those at increased risk of exposure which includes health and aged care workers and people in other settings where the risk of virus transmission is increased, which may include quarantine workers
- those with an increased risk, relative to others, of developing severe disease or outcomes from COVID-19 including Aboriginal and Torres Strait Islander people, older people and people with underlying select medical conditions
- those working in services critical to societal functioning.¹⁰⁶

One allied question that arises is whether the information regarding occupation and date of birth is 'matter that is authorised for release', given the words used in the drafting of the authorisation. New section 3A(2)(b) of the Electoral Regulation 2013 (introduced by clause 3) states the circumstances in which the information may be given to Queensland Health as being:

(b) the purpose of contacting persons in Queensland in relation to the Australian COVID-19 vaccination arrangements is prescribed for the circumstances in which the information may be given to Queensland Health. [Italics added.]¹⁰⁷

In one sense, the private information of individuals regarding occupation and date of birth does not assist in making contact with those individuals (unlike names and addresses). Arguably though, *the purpose of contacting persons* in relation to the Australian COVID-19 vaccination arrangements, includes the purpose of classifying of people into the priority groups, provided for in the vaccination

¹⁰² Explanatory notes, p 3.

¹⁰³ Explanatory notes, p 2.

¹⁰⁴ Explanatory notes, p 3.

¹⁰⁵ Explanatory notes, p 3.

¹⁰⁶ Australian Government, *Australian COVID-19 vaccination policy*, p 11.

¹⁰⁷ Proposed s 3A(2)(b)

policy. Here, occupation and date of birth might be relevant for the purpose of classifying people into priority groups, and in turn relevant to the time at which persons are contacted.

The information regarding occupation and date of birth therefore could be seen as falling within the purpose 'of contacting persons in relation the COVID-19 vaccination arrangements'.

The human rights certificate does explain that this information will not be used in isolation, stating:

This means it [electoral roll information] will not be exhaustive in identifying those persons who are eligible to receive COVID-19 vaccination and therefore may be used in combination with other sources of information that are able to be accessed by Queensland Health for the identified purpose.¹⁰⁸

The explanatory notes conclude:

The purpose of enabling persons in Queensland to be contacted in relation to COVID-19 vaccination arrangements outweighs the negative impact that the disclosure required has on the right to privacy and reputation.¹⁰⁹

Committee comment

The committee is satisfied that any breach of fundamental legislative principle in relation to this regulation concerning the rights and liberties of individuals, specifically the right to privacy and the disclosure of private or confidential information, is justified in the circumstances of the COVID-19 public health emergency.

10.2.2 Consultation

Section 24 of the LSA provides that if consultation did not take place on subordinate legislation, the explanatory notes must contain a statement of the reasons for not undertaking consultation.

The explanatory notes advise that consultation did not take place in relation to this regulation, based on perceived urgency:

Due to the urgency involved in the implementation of the vaccine rollout, no consultation with the community was undertaken in relation to the Amendment Regulation.¹¹⁰

Committee comment

The committee is satisfied that the lack of consultation regarding this regulation is justified in the circumstances of the COVID-19 public health emergency.

10.3 Human rights issues

In the human rights certificate accompanying this regulation, the Attorney-General states her opinion that this regulation is compatible:

- with the human rights protected by the HRA¹¹¹
- with the HRA because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.¹¹²

The committee considered the following human rights issues.

10.3.1 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person has the right not to have their privacy unlawfully or arbitrarily interfered with.

¹⁰⁸ Human rights certificate, p 3.

¹⁰⁹ Explanatory notes, p 3.

¹¹⁰ Explanatory notes, p 3.

¹¹¹ Human rights certificate, p 1.

¹¹² Human rights certificate, p 4.

This regulation provides that the ECQ may provide part or the entire electoral roll for an electoral district for the purpose of contacting persons in relation to COVID-19 vaccination arrangements. The information disclosed includes personal information such as an elector's name, address, sex, occupation and date of birth.

The disclosure of this information will impact on a person's right to not have their privacy interfered with.

The Attorney-General sets out the purpose of this limitation on a person's privacy:

Identifying and communicating with persons to invite them to receive a COVID-19 vaccine, based on phases of the vaccine rollout strategy, will support the efficient administration of the vaccination program in a manner consistent with its rollout phases and increase the awareness of those contacted about the vaccination program.¹¹³

The Attorney-General provides this justification for the limitation on human rights:

The limitation on the right to privacy and reputation helps to achieve the purpose by enabling the ECQ to provide electoral roll information to Queensland Health as an information source for contacting persons in Queensland about COVID-19 vaccination arrangements including those in priority groups (such as those cohorts including persons based on age).¹¹⁴

The Attorney-General discusses the balance between the purpose of the limitation and the importance of preserving the human right:

On balance, taking into account the nature and extent of the limitation on the right to privacy and reputation, I consider that the purpose of enabling persons in Queensland to be contacted in relation to COVID-19 vaccination arrangements outweighs the negative impact that the disclosure required has on the right to privacy and reputation.¹¹⁵

Committee comment

The committee is satisfied that the limitation on a person's right to privacy in this regulation is reasonable and demonstrably justified in the circumstances of the COVID-19 public health emergency.

11 Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2021 (SL 20)

11.1 Overview of regulation

The Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2021 further extends the period of the disaster situation declared for the whole of the State of Queensland on 22 March 2020 (and extended by regulation on 2, 16 and 30 April, 14 and 28 May, 27 August, 1 October and 10 December 2020).

Note that to a large degree the below analysis of issues, arising from this further extension regulation, have been set out in section 4 above, in substantially similar terms, in relation to the discussion of SL 256 of 2020, the Disaster Management (Extension of Disaster Situation—COVID-19) Regulation 2020.¹¹⁶

¹¹³ Human rights certificate, p 2.

¹¹⁴ Human rights certificate, p 3.

¹¹⁵ Human rights certificate, p 4.

¹¹⁶ The committee has also reported on an earlier extension regulation (SL 245 of 2020) in its Report No. 6, 57th Parliament – *Subordinate legislation tabled between 3 October 2020 and 26 November 2020*, February 2021.

As noted above, unless extended by regulation under section 72 of the DM Act, or by declaration pursuant to section 72A of the DM Act, a disaster situation ends up to 90 days after the day it was declared. This regulation extends the period of the disaster situation to 29 June 2021.¹¹⁷

The further extension of the declaration extends the duration of the availability of a number of powers under the 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, demolishing or destroying a vehicle, building or other structure in the declared area.

11.2 Issues of fundamental legislative principle

11.2.1 *Legislative Standards Act 1992*, section 4(2)(a) – rights and liberties of individuals

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals. 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 this regulation is consistent with fundamental legislative principles, and do not address the issues of fundamental legislative principle that arise. (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.¹¹⁸

Committee comment

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

11.3 Human rights issues

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

- with the human rights protected by the HRA¹¹⁹
- with the HRA because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HRA.¹²⁰

The committee considered the following human rights issues.

11.3.1 *Human Rights Act 2019*, section 19 – freedom of movement

Under section 19 of the HRA, every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.

The regulation 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

¹¹⁷ Section 2(3).

¹¹⁸ Explanatory notes, p 1.

¹¹⁹ Human rights certificate, p 1.

¹²⁰ Human rights certificate, p 10.

in persons being prevented from entering Queensland from another state or territory, particularly declared COVID-19 hotspots.¹²¹

The 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. ...

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.¹²²

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning the freedom of movement are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

11.3.2 Human Rights Act 2019, section 22 – peaceful assembly and freedom of association

Under section 22 of the HRA, every person has the right of peaceful assembly.

This regulation 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 which may result in the dispersal of groups of persons.¹²³

The Minister provides this justification:

The purpose of limiting the right to assemble peacefully is to reduce the risk of human to human transmission of COVID-19, consistent with multi-tier government requirements relating to mass gatherings during the COVID-19 response.¹²⁴

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning peaceful assembly and freedom of association are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

11.3.3 Human Rights Act 2019, section 24 – property rights

Under section 24 of the HRA, a person must not be arbitrarily deprived of their property.

This regulation 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 the regulation, 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.¹²⁵

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

¹²¹ Human rights certificate, p 7.

¹²² Human rights certificate, p 7.

¹²³ Human rights certificate, p 4.

¹²⁴ Human rights certificate, p 6.

¹²⁵ Human rights certificate, p 4.

remain available for use under the legislation and so as a matter of law there is potential for property rights to be limited.

Committee comment

The committee is satisfied the potential limits on human rights in this regulation concerning property rights that arise are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

11.3.4 Human Rights Act 2019, section 25 – right to privacy and reputation

Under section 25 of the HRA, a person must not have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

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.¹²⁶

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.¹²⁷

...

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.¹²⁸

...

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 [a] person’s right to privacy under these circumstances.¹²⁹

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning the right to privacy and reputation are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

11.3.5 Human Rights Act 2019, section 29 – right to liberty and security

Under section 29 of the HRA a person has the right not to be subjected to arbitrary arrest or detention or to be deprived of their liberty.

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.¹³⁰

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

¹²⁶ Human rights certificate, p 8.

¹²⁷ Human rights certificate, p 8.

¹²⁸ Human rights certificate, p 8.

¹²⁹ Human rights certificate, p 10.

¹³⁰ Human rights certificate, p 5.

effect to the government's obligation to take appropriate steps and adopt positive measures to protect life during the COVID-19 pandemic.¹³¹

Committee comment

The committee is satisfied the limits on human rights in this regulation concerning the right to liberty and security are reasonable and demonstrably justified, given the COVID-19 public health emergency and the overall objective of this regulation.

12 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

May 2021

Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	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

¹³¹ Human rights certificate, p 6.