

Legal Affairs and Safety Committee

Report No. 26, 57th Parliament

Subordinate legislation tabled between 23 February 2022 and 29 March 2022

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 23 February 2022 and 29 March 2022. 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
14	Weapons Amendment Regulation 2022	15/03/22	23/06/22
21	Proclamation No. 2 - <i>Justice and Other Legislation Amendment Act 2021</i> (commencing remaining provisions)	29/03/22	17/08/22
22	Land Court Rules 2022	29/03/22	17/08/22
23	Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022	29/03/22	17/08/22
24	Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022	29/03/22	17/08/22
25	Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2022	29/03/22	17/08/22

* Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

¹ *Legislative Standards Act 1992* (LSA), Part 4.

² *Human Rights Act 2019* (HRA), s 41.

3 Committee consideration of the subordinate legislation

Unless noted below, the committee did not identify significant issues regarding the 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 their compatibility with the HRA.

A brief overview of the subordinate legislation is provided below.

4 Weapons Amendment Regulation 2022 (SL No. 14 of 2022)

The objective of the subordinate legislation is to amend the Weapons Regulation 2016 (Regulation) to allow the Commissioner of the Police Service (Commissioner) to decide, and publish on the Queensland Police Service (QPS) website, the way a licensed dealer or particular person is to give prescribed information to an authorised officer about the acquisition, sale or disposal of a weapon.³

The requirements for the acquisition, sale and disposal of weapons in Queensland are prescribed in the *Weapons Act 1990* (Act). These requirements include the provision of information to an authorised officer when a person acquires a weapon through a licensed dealer or police officer in accordance with section 35(2) of the Act and when a person sells or disposes of a weapon in accordance with section 36(2) of the Act. The Regulation prescribes the information that must be provided, which includes the dealer's name and licence number, the type and make of the weapon, the details of the person disposing of the weapon and the date of the acquisition or sale of the weapon. The Regulation currently requires the information to be sent to the Commissioner by registered post.⁴

The explanatory notes state that the QPS has identified that the provision of information on the acquisition, sale or disposal of weapons 'could be appropriately managed through an electronic or online method' which would remove the administrative expense of using registered post. The amendment regulation provides for the Commissioner to decide the method to be used to provide information (e.g by submitting information online).⁵

The amendment regulation does not change the nature of the information required to be provided, nor the timeframes for the provision of the information.⁶

4.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

4.2 Compatibility with human rights

The subordinate legislation is compatible with human rights.⁷

³ SL No. 14 explanatory notes, p 2.

⁴ SL No. 14 explanatory notes, pp 1, 2.

⁵ SL No. 14, cl 3.

⁶ SL No. 14 explanatory notes, p 2.

⁷ Section 8 of the HRA relevantly provides that a statutory provision is compatible with human rights if the provision does not limit a human right or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

5 Proclamation No. 2—Justice and Other Legislation Amendment Act 2021 (commencing remaining provisions) (SL No. 21 of 2022)

The proclamation fixed 30 April 2022 as the commencement date for the provisions of the *Justice and Other Legislation Amendment Act 2021* that were not in force, being:

- Parts 3-4 – to permanently implement particular parts of the Domestic and Family Violence Protection (COVID-19 Emergency Response) Regulation 2020 (DFV Regulation) that were due to expire on 30 April 2022
- Parts 6-8 – to permanently implement particular parts of the Justice Legislation (COVID-19 Emergency Response—Documents and Oaths) Regulation 2020 (DO Regulation) that were due to expire on 30 April 2022
- Part 9 – repealing the DFV Regulation and the DO Regulation
- Part 10 and Schedule 1 – containing minor and consequential amendments.⁸

5.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

5.2 Compatibility with human rights

The proclamation is compatible with human rights.⁹

6 Land Court Rules 2022 (SL No. 22 of 2022)

The Land Court Rules 2022 replace the Land Court Rules 2000. The new rules aim to reflect or support the significant amendments to the *Land Court Act 2000* and considerable procedural reform undertaken by the Land Court (Court) since the making of the previous rules.

The explanatory notes state that the new rules provide for modernised procedures and practices of the Court, and that:

The main purposes of the new Rules are to ensure that the Court facilitates the just and quick resolution of the issues in a proceeding and avoids undue delay, expense and technicality, and that parties undertake to participate in a proceeding in an expeditious way and comply with the rules and any order or direction of the Court.¹⁰

The explanatory notes also state that the new rules have been drafted to be broadly consistent with the Uniform Civil Procedure Rules 1999 (UCPR), and that where the new rules do not provide for a matter, the provisions of the UCPR apply, with necessary changes.¹¹

6.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

6.2 Compatibility with human rights

The subordinate legislation is compatible with human rights.

⁸ SL No. 21 explanatory notes, pp 1-2.

⁹ Note: No human rights certificate was required to be tabled with the proclamation (see HRA, s 41(4A)(a)).

¹⁰ SL No. 22 explanatory notes, p 1.

¹¹ SL No. 22 explanatory notes, p 2.

7 Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022 (SL No. 23 of 2022)

The objective of the Uniform Civil Procedure (Expert Evidence) Amendment Rule 2022 (amendment rule) is to align the expert evidence rules¹² of the UCPR with current and best practice.

The explanatory notes state that the amendment rule ‘amends the UCPR to remove the express preference for the use of a single expert due to its disuse in practice’.¹³ The amendment rule provides a direction-making power for the court in matters relating to expert evidence and requirements in relation to expert reports, the appointment of experts, and court orders and directions on the fees and expenses payable to an expert. The amendment rule also prescribes the duties of experts, including compliance with a new code of conduct.¹⁴

The amendments are to apply consistently across the Supreme Court, the District Court and the Magistrates Courts (except for minor civil claims).¹⁵

7.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

7.2 Compatibility with human rights

The subordinate legislation is compatible with human rights.

8 Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022 (SL No. 24 of 2022)

The Uniform Civil Procedure (Access to Exhibits) Amendment Rule 2022 amends the UCPR in relation to access to exhibits, with the objective of addressing a gap in the existing rules, identified as a result of the decision in *Brose v Baluskas & Ors (No.8)* [2020] QDC 98.¹⁶ The subordinate legislation inserts new rules providing for how a party or non-party can apply for access to exhibits tendered during a proceeding (for the purposes of inspecting, copying or photographing).¹⁷

8.1 Consistency with fundamental legislative principles

No issues of fundamental legislative principle were identified.

8.2 Compatibility with human rights

The subordinate legislation is compatible with human rights.

9 Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2022 (SL No. 25 of 2022)

The objective of the regulation is to further extend the period of the disaster situation declared for the whole of Queensland on 22 March 2020.¹⁸ The declaration of a disaster situation for the state was

¹² Uniform Civil Procedure Rules 1999, chapter 11, part 5 (Expert Evidence).

¹³ SL No. 23 explanatory notes, p 1.

¹⁴ SL No. 23, cl 4, Schedule 1C Code of conduct for experts.

¹⁵ SL No. 23 explanatory notes, p 2.

¹⁶ The decision in *Brose v Baluskas & Ors (No.8)* [2020] QDC 98, in relation to an application by a journalist for access to, and copies of, various exhibits tendered during a defamation trial, held that the court did not have power to make orders relating to the inspection and copying of exhibits in civil proceedings. Further, rule 981 of the UCPR permits the court or registrar to allow a search or inspection of only documents filed, and exhibits tendered during a trial or hearing are not captured by that rule.

¹⁷ SL No. 24 explanatory notes, p 2.

¹⁸ Previously extended by regulation on 2, 16 and 30 April 2020, 14 and 28 May 2020, 27 August 2020, 1 October 2020, 10 December 2020, 18 March 2021, 17 June 2021, 16 September 2021 and 9 December 2021.

made under section 69 of the *Disaster Management Act 2003* (DM Act) in response to the COVID-19 pandemic. The regulation extends the disaster situation for a further 90 days to 24 June 2022.¹⁹

9.1 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 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.²⁰ 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 do not address the issues of fundamental legislative principle that arise.²¹ (This might be on the basis that the powers are contained in the principal Act itself.) The explanatory notes state:

A rapid and flexible response capability is still required to protect the health, safety and welfare of Queenslanders and mitigate the spread of COVID-19 in the community... Extension of the period of the disaster situation is necessary to ensure disaster powers are available to rapidly and appropriately address risk to the health of the Queensland community.²²

Committee comment

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

9.2 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.²³

The regulation limits 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.²⁴

¹⁹ SL No. 25, cl 2; SL No. 25 explanatory notes, p 2. See also the *Disaster Management Act 2003*, Parts 4 and 12A.

²⁰ See Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 133; LSA, s 4.

²¹ SL No. 25 explanatory notes, p 2.

²² SL No. 25 explanatory notes, p 2.

²³ HRA, s 19.

²⁴ SL No. 25 human rights certificate, p 5.

In the human rights certificate, the Minister notes that the restriction on movement also has ancillary impacts on other human rights,²⁵ but 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.²⁶

...

On balance, having regard to the nature and extent of the limitation on the rights ... the importance of protecting the right [to] life outweighs the harm caused by the limitations on the human rights.²⁷

Peaceful assembly and freedom of association

Every person has the right of peaceful assembly and freedom of association.²⁸

The regulation limits 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, such as those engaging in peaceful assemblies.²⁹

The Minister provides the following justification for the limitation:

The purpose of limiting the rights to freedom of movement (and the ancillary impacts flowing from limiting this right), 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.³⁰

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.³¹

The extension of the disaster situation limits 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.³²

With respect to the limitations on the rights to freedom of movement (and the ancillary impacts flowing from this right), peaceful assembly and freedom of association and the right to liberty and security, 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 extending the declared disaster situation for a further 90 days. The extension is necessary to ensure disaster officers have these powers under the DM Act. 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.³³

Property rights

²⁵ SL No. 25 human rights certificate, p 5, specifically the right to equality before law (HRA, s 15), the right to freedom of thought, conscience, religion and belief (HRA, s 20), the right to peaceful assembly and freedom of association (HRA, s 22), the right to take part in public life (HRA, s 23), the right to property (HRA, s 24), the right to privacy and reputation (HRA, s 25), the cultural rights of Aboriginal and Torres Strait Islander persons (HRA, s28) and the right to education (HRA, s 36).

²⁶ SL No. 25 human rights certificate, p 9.

²⁷ SL No. 25 human rights certificate, p 9.

²⁸ HRA, s 22.

²⁹ SL No. 25 human rights certificate, p 6.

³⁰ SL No. 25 human rights certificate, p 7.

³¹ HRA, s 29.

³² SL No. 25 human rights certificate, pp 6-7.

³³ SL No. 25 human rights certificate, p 7.

A person must not be arbitrarily deprived of their property.³⁴

The 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 and observes:

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.³⁵

The Minister also notes:

The declared disaster powers which may impact on property rights have not been required to be used in relation to the COVID-19 disaster and it is not considered to be reasonably foreseeable that these powers will be exercised in future for this purpose.³⁶

This statement can be accepted as accurate. Nonetheless, these powers do remain available for use under the legislation and so 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.³⁷

The further 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 the following 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.³⁸

...

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.³⁹

...

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.⁴⁰

³⁴ HRA, s 24.

³⁵ SL No. 25 human rights certificate, p 4.

³⁶ SL No. 25 human rights certificate, p 4.

³⁷ HRA, s 25.

³⁸ SL No. 25 human rights certificate, p 10.

³⁹ SL No. 25 human rights certificate, p 10.

⁴⁰ SL No. 25 human rights certificate, p 11.

Committee comment

Given the COVID-19 public health emergency and the aim of protecting public health, the committee is satisfied that the subordinate legislation is compatible with human rights.

10 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Peter Russo MP

Chair

May 2022

Legal Affairs and Safety Committee

Chair

Deputy Chair

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Mr Peter Russo MP, Member for Toohey

Mrs Laura Gerber MP, Member for Currumbin

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