

Community Support and Services Committee

Report No. 4, 57th Parliament

Subordinate legislation tabled between 8 September 2020 and 2 December 2020

1 Aim of this report

This report summarises the Community Support and Services Committee's (committee) findings following its examination of the subordinate legislation within its portfolio areas tabled between 8 September 2020 and 2 December 2020.

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

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
187	Youth Justice Amendment Regulation 2020	8 September 2020	10 March 2021
222	Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020	1 October 2020	23 March 2021
235	Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020	1 October 2020	23 March 2021
246	Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020	2 October 2020	23 March 2021
254	Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020	2 December 2020	22 April 2021

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

¹ LSA, Part 4.

² HRA, section 41.

3 Committee consideration of the subordinate legislation

The committee identified no significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation.

The committee considered potential FLP issues and human rights implications in relation to:

- the Youth Justice Amendment Regulation 2020
- the Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020
- the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, and
- the Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020.

However, in each instance, the committee is satisfied that the relevant provisions have sufficient regard to the rights and liberties of individuals, in the circumstances, and that any associated human rights limitations are reasonable and demonstrably justifiable.

The committee considers that the explanatory notes tabled with the subordinate legislation generally comply with the requirements of section 24 of the LSA. However, the committee brings to the attention of the House issues in relation to the content of the explanatory notes tabled with the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020 and Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020.

The committee considers that 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 Youth Justice Amendment Regulation 2020 (SL 187)

The Youth Justice Amendment Regulation 2020 amends the Youth Justice Regulation 2016 to:

- establish the West Moreton Youth Detention Centre as a detention centre for the purposes of the *Youth Justice Act 1992*, and
- allow an executive director for a detention centre to delegate the power to approve a separation of a child in a locked room at a youth detention centre for more than two hours to an appropriately qualified public sector employee.⁴

The Youth Justice Regulation 2016 allows a detention centre employee to separate a child in the following specified circumstances:

- if the child is ill
- at the child's request
- for routine security purposes under a direction issued by the chief executive
- for the child's protection or the protection of another person or property, or
- to restore order in the detention centre.⁵

³ HRA, s 41.

⁴ Youth Justice Amendment Regulation 2020, sections 3 and 4 and explanatory notes, p 1.

⁵ Youth Justice Regulation 2016, s 21(1).

Prior to the amendment regulation, a child could not be separated for more than two hours without the approval of the executive director for the detention centre.⁶

4.1 Fundamental legislative principle issues - rights and liberties of individuals – delegation of administrative power

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, it allows the delegation of administrative power only in appropriate cases and to appropriate persons.⁷ The Office of the Queensland Parliamentary Counsel (OQPC) Notebook states:

Generally, powers should be delegated only to appropriately qualified officers or employees of the administering department.

...

The appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.⁸

The committee notes that the power to approve the separation of a child affects the rights and liberties of the child. While this power is not changed by the amendment regulation, the impact on the rights of a child is relevant in considering the appropriateness of the new power to delegate this function.

The explanatory notes provide the following justification for any potential FLP issues:

A decision to maintain a separation for longer than two hours must be made within a short window of time. Detention centre executive directors are on call 24 hours a day, seven days a week, but there are times when they are uncontactable, for example due to lack of mobile phone reception or for personal reasons. The incidence of executive directors being uncontactable is low, but there is a risk of adverse outcomes if a separation is ended before it is safe to do so.⁹

The committee notes that a delegation of a function or power does not relieve the delegator of the obligation to ensure that the function or power is properly performed or exercised.¹⁰

Committee comment

The committee considers that, on balance, the amendment regulation has sufficient regard to the rights and liberties of individuals. In reaching this view, the committee had regard to the risk of adverse outcomes if an executive director was not available to approve the separation of a child, where necessary, and the fact that, notwithstanding the delegation of the function, the executive director remains responsible for the exercise of the function.

4.2 Explanatory notes comment

The committee considers that the explanatory notes tabled with the amendment regulation comply with part 4 of the LSA.

4.3 Human rights considerations

Section 8 of the HRA provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of that Act.

⁶ Youth Justice Regulation 2016, s 21(2)(a).

⁷ LSA, s 4(3)(c).

⁸ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 33.

⁹ Youth Justice Amendment Regulation 2020, explanatory notes, p 1.

¹⁰ Youth Justice Amendment Regulation 2020, explanatory notes, p 2. See *Acts Interpretation Act 1954*, s 27A(10A).

Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 of the HRA sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

The committee considers that the power to approve the separation of a child may affect the following human rights of the child:

- a person must not be subjected to torture, or treated or punished in a cruel, inhuman or degrading way (section 17 of the HRA)
- every child has the right to the protection that is needed by the child and is in the child's best interests (section 26 of the HRA)
- all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person (section 30 of the HRA), and
- a child who has been convicted of an offence must be treated in a way that is appropriate for the child's age (section 33 of the HRA).

The committee notes that the power to separate a child already exists in the Youth Justice Regulation 2016 and is not changed by the amendment regulation. However, the impacts on the human rights of a child are relevant in considering the appropriateness of the new power for the executive director to delegate this function to an appropriately qualified public sector employee, who may be less experienced than the executive director.

In relation to the potential human rights implications outlined above, the Minister stated:

... The delegation may only be to an appropriately qualified public service employee, and the executive director retains the obligation to ensure that the power is properly exercised (*Acts Interpretation Act 1954*, s.27A). Executive directors will ensure they only delegate to persons having the qualifications, experience or standing appropriate to perform the function or exercise the power.¹¹

The Minister also provided the following assurances about managing the risk of delegating the power:

To mitigate this risk, the policy and procedure that informs decision making about separation will be adjusted to strengthen human rights considerations and limit the circumstances in which a delegate may exercise the power.¹²

Committee comment

In light of the Minister's explanation and assurances, the committee is satisfied that any limitation on human rights by the delegation of the power to an appropriately qualified public service employee is reasonably and demonstrably justified in the circumstances.

4.4 Human rights certificate

The committee considers that the human rights certificate tabled with the regulation contained a sufficient level of information to facilitate understanding of the legislation in relation to its compatibility with human rights.

¹¹ Youth Justice Amendment Regulation 2020, human rights certificate, pp 3-4.

¹² Youth Justice Amendment Regulation 2020, human rights certificate, p 3.

5 Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020 (SL 222)

The Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020 is made in reliance, in part, on section 8 of the *COVID-19 Emergency Response Act 2020* (Emergency Response Act).

The Emergency Response Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency. In broad terms, section 8 imports into any Act dealing with attending a place or meeting for a particular purpose or particular matter, or calling such meeting, a power to make a regulation that modifies attendance or procedural requirements.

Such a regulation is an ‘extraordinary regulation’ and an Act to which an extraordinary regulation applies is deemed to be an ‘affected Act’.

In relation to an extraordinary regulation:

- a Minister administering an affected Act may recommend to the Governor in Council the making of an extraordinary regulation only if the Minister is satisfied the regulation is necessary for a purpose of the Emergency Response Act
- an extraordinary regulation may be inconsistent with the affected Act, and any other Act (other than the HRA), to the extent necessary to achieve a purpose of the Emergency Response Act
- to the extent a person’s act or omission complies with an extraordinary regulation made under an affected Act, the person does not incur civil or criminal liability under the affected Act for the act or omission
- a regulation must declare it is made under the relevant additional regulation-making provision
- an additional regulation-making provision does not limit any other regulation-making power conferred under an affected Act, and
- an extraordinary regulation must be tabled within 14 days of notification (rather than the usual 14 sitting days).

Section 3 declares that the regulation is made, in part, under section 8 of the Emergency Response Act. The regulation was notified on 25 September 2020 and tabled on 1 October 2020 in compliance with the provisions of the Emergency Response Act.

The regulation amends the market review processes for increasing site rent in residential parks to address problems faced by manufactured home owners during the COVID-19 pandemic.

In residential parks, site rent increases can only occur in accordance with the *Manufactured Homes (Residential Parks) Act 2003* (MHRP Act) and individual site agreements. Under the MHRP Act rent can be increased by park owners by a market review, provided appropriate notice is given to manufactured home owners that allows them time to negotiate collectively, participate in the market valuation process and potentially dispute the increase.¹³

The explanatory notes provide the following background to this regulation:

Manufactured home owners who have faced a ‘market review of site rent’ during COVID-19 have complained that these rent reviews have caused them significant difficulties including limits on the conduct of proper consultation processes for a market valuation of site rent and concerns about the availability for home owners to dispute site rent increases during COVID-19.¹⁴

¹³ MHRP Act, Part 11.

¹⁴ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, explanatory notes, p 2.

To address these issues, the regulation alters the market review processes according to when a market review increase was imposed. The time periods contained in the regulation are based around the commencement on 25 May 2020 of the *Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020* (Justice Amendment Act), which amended the MHRP Act to create temporary COVID-19 emergency regulation-making powers. The regulation makes the following changes to market review processes:

- **Market review increases imposed after COVID-19 and before the Justice Amendment Act** - home owners who had a market review between 19 March and 24 May 2020 will have enhanced dispute resolution rights that take into account the disruption caused by COVID-19. These home owners had until 20 November 2020 to initiate a dispute on the basis that the market review was excessive. If the dispute has reached the Queensland Civil and Administrative Tribunal, the tribunal is empowered to consider the circumstances of COVID-19 when determining if the market review of site rent was excessive.¹⁵
- **Market review increases imposed within two weeks of the Justice Amendment Act** - if a park owner concluded a market review between 25 May 2020 and commencement of the regulation (on 25 September 2020) and gave the 'general increase notice' to home owners before 8 June 2020 the market review stands and the increase is payable so long as the park owner provides to home owners within 14 days formal notice (a 'site rent increase continuation notice') that the market review stands and refunds to home owners the increase amount (being the amount already paid and that would be paid until 31 December 2020) by 6 November 2020.¹⁶

These home owners will also have access to the enhanced COVID-19 related dispute resolution considerations described above and may dispute the increase within 56 days of the site rent increase continuation notice being given. If the park owner does not provide a site rent increase continuation notice within 14 days, the increase is suspended.¹⁷

- **Market review increases imposed after the Justice Amendment Act and before the regulation commenced** - market rent review increases which occurred between 25 May 2020 and 25 September 2020 which are not the subject of a site rent increase continuation notice are suspended and replaced by a Consumer Price Index (CPI) increase. Any increase amounts paid by home owners over this CPI increase amount must be refunded to home owners by 6 November 2020.¹⁸
- **Market reviews between commencement of the regulation and 31 December 2020 are prohibited** - park owners who have had their market review during this period can impose a CPI increase by providing a notice to home owners.¹⁹
- **Market reviews undertaken in 2021** - where a market review has been suspended or prohibited in 2020 it can be undertaken in 2021, despite the schedule for the timing of increases that may be provided for in individual site agreements.

The regulation also provides that meetings required under the MHRP Act which ordinarily require a physical meeting of home owners may be held using audio or audio-visual links.²⁰

¹⁵ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, ss 5-8.

¹⁶ This has the effect of deferring the market rent increase for these home owners until 1 January 2021.

¹⁷ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, ss 9-13.

¹⁸ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, ss 14-15.

¹⁹ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, ss 16-17.

²⁰ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, s 18.

5.1 Fundamental legislative principle issues - rights and liberties of individuals – retrospectivity and penalties

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, it does not adversely affect rights or liberties, or impose obligations, retrospectively.²¹

Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

As outlined above, the regulation alters the market review processes according to when a market review increase was imposed. This means that a number of these changes will operate retrospectively.

Essentially, the regulation creates a moratorium on market reviews of site rent effective from 25 May 2020 (even though the regulation itself was notified on 25 September 2020). Additionally, the enhanced dispute resolution provisions in the regulation take effect from 19 March 2020.

Separately, the provision for meetings by audio or audio-visual links is taken to have commenced on 19 March 2020.²²

The explanatory notes provide the following broad justification for the retrospective operation of the regulation:

... the retrospective operation of these provisions is justified by the circumstances of COVID-19 which could not have been predicted but requires rapid intervention to ensure fairness for Queenslanders living in residential parks. The regulation seeks to reflect community expectations in achieving a fair balance between the rights of home owners and park owners in the circumstances arising from the COVID-19 Emergency.

Retrospective application of these provisions reflects the established and broadly communicated policy at the time the Act was passed by the Parliament, and is necessary to ensure fairness for home owners while enabling consultation to take place according to the commitment made to Parliament during the debate of the Justice Amendment Act.²³

Specifically, the explanatory notes state:

Sections of the regulation apply retrospectively to 25 May 2020, reflecting the date industry and home owners were given notice of the Government's intentions to implement a moratorium on market reviews of site rent with the passing of the Justice and Other Legislation (COVID-19 Emergency Response) Act 2020.

Section 18 of the regulation is retrospective to 19 March 2020 to ensure any meetings which were held by audio or audio-visual links are considered valid meetings in accordance with the MHRP Act.

The regulation will apply retrospectively between 19 March 2020 and 25 May 2020, to ensure recourse is available to home owners who experienced a market review prior to the passing of the Justice Amendment Act, while limiting the impact on park owners who had acted before that date.²⁴

Additionally, whether legislation has sufficient regard to rights and liberties of individuals depends on whether a penalty should be proportionate to the offence. The OQPC Notebook states:

Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.²⁵

²¹ LSA, s 4(3)(g).

²² Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, s 2.

²³ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, explanatory notes, p 7.

²⁴ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, explanatory notes, p 5.

²⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

The committee notes that three penalty provisions have been introduced by this regulation. The penalties relate to a failure of a park owner to refund increase amounts to home owners by 6 November 2020 and failures to follow particular notice requirements regarding a replacement CPI increase. All of the offence provisions have a maximum penalty of 20 penalty units.²⁶

Committee comment

The committee is satisfied that the retrospective operation of the regulation is justified in the circumstances of the COVID-19 pandemic. The committee is also satisfied that the penalties imposed are reasonable and proportionate in the circumstances.

5.2 Explanatory notes comment

The committee considers that the explanatory notes tabled with the regulation comply with part 4 of the LSA.

5.3 Human rights considerations

Under section 24 of the HRA, a person has the right to own property and must not be arbitrarily deprived of their property. The committee considers that the regulation may limit a park owner's right to property, by temporarily limiting their capacity to derive market-based profit from the contractual arrangements for the use of their land.

The Minister explained the purpose of the limitation in the human rights certificate, as follows:

The purpose of temporarily limiting a park owner's right to property (namely to derive profit from it) by replacing market reviews of site rent with a CPI increase (which is likely to be a lesser amount) is to protect home owners from unfair, unreasonable or unjustifiable increases in site rent which they have not been able to, or may feel unable to, have input into or dispute through the ordinary processes in the MHRP Act [*Manufactured Homes (Residential Parks) Act 2003*] during the COVID-19 health emergency.²⁷

In assessing the balance between the limitation and the human right, the Minister stated:

The extraordinary circumstances of the COVID-19 public health emergency necessitates measures to protect vulnerable home owners living in residential parks. The temporary limitations imposed on park owners' ability to derive increased profit from their property by the measures in this Regulation are appropriately balanced against the need to ensure the property rights of home owners are preserved and protected from unfair market reviews of site rent during the pandemic.

This is achieved, in part, by allowing for alternative increases based on CPI, which reflects inflation during the relevant period, meaning that the right to derive profit from their land is maintained against increased costs, and by limiting the time period of the moratorium to the date from which park owners had notice of the proposed moratorium following Parliament's consideration of and passage of the Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020.²⁸

Committee comment

The committee is satisfied that the limit on property rights is reasonable and demonstrably justified in the circumstances.

5.4 Human rights certificate

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

²⁶ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, ss 9(3), 14(8) and (9). Note that none of the offences will operate retrospectively, applying only to conduct after the regulation was notified on 25 September 2020.

²⁷ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, human rights certificate, p 4.

²⁸ Manufactured Homes (Residential Parks) (COVID-19 Emergency Response) Regulation 2020, human rights certificate, p 5.

6 Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020 (SL 235)

The Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020 is made in reliance on section 24 of the Emergency Response Act, as well as on the general regulation-making power in section 520 of the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act).²⁹

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 and expired on 31 December 2020.³⁰

In broad terms, section 24 of the Emergency Response Act provides a regulation-making power for matters relating to residential tenancies and rooming accommodation necessary to respond to the COVID-19 public health emergency, including to:

- ensure rights, obligations and processes under the RTRA Act operate appropriately having regard to COVID-19 response measures
- assist in achieving the objectives of COVID-19 response measures, and
- support the Queensland residential rental sector during the COVID-19 emergency period.³¹

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

- must declare it is made under section 24 of the Emergency Response Act
- may be inconsistent with an Act or law, other than the HRA, to the extent necessary to achieve a purpose of the regulation and the Emergency Response Act
- may have retrospective operation to a day not earlier than 19 March 2020
- expires on 31 December 2020
- may impose a penalty of not more than 100 penalty units for a contravention of the regulation, and
- must be tabled within 14 days of notification (rather than the usual 14 sitting days).

The amendment regulation was notified on 29 September 2020 and tabled on 1 October 2020, in compliance with the Emergency Response Act.

Additionally, the Emergency Response Act provides that:

- section 24 does not limit the regulation-making power conferred under the RTRA Act³², and
- to the extent a person's act or omission complies with a regulation made section 24, the person does not incur civil or criminal liability under the RTRA Act for the act or omission.³³

As noted above, a regulation made in reliance on section 24 of the Emergency Response Act must declare it is made under section 24.³⁴ The committee notes that the amendment regulation does not contain a declaration as required.

²⁹ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, explanatory notes, p 1.

³⁰ Emergency Response Act, ss 4(1) and 25.

³¹ Emergency Response Act, s 24(1).

³² Emergency Response Act, s 24(6).

³³ Emergency Response Act, s 24(4).

³⁴ Emergency Response Act, s 24(5).

It is noted that the regulation which the amendment regulation amends contains a declaration under the Emergency Response Act.³⁵ However, it is clear that the terms of section 24(5) of the Emergency Response Act extend to *any* regulation made in reliance on section 24, and the amendment regulation itself requires its own declaration.

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

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

The amendment regulation amends the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020 to provide for the end of certain temporary COVID-19 emergency response processes that applied to residential tenancies and rooming accommodation during the 'eviction moratorium'.³⁶ The amendment regulation also provides for transitional arrangements for ongoing matters. The amendment regulation removes:

- the limitation on terminating tenancy and rooming agreements under the eviction moratorium
- related processes for managing COVID-19 rent arrears during the eviction moratorium³⁷
- provisions that adjust rent increase restrictions and maximum rental bond requirements,³⁸ and
- the additional grounds for lessors/providers and tenants/residents to end tenancy agreements.³⁹

6.1 Fundamental legislative principle issues - rights and liberties of individuals

The committee notes that the amendment regulation impacts on the rights and liberties of lessors and tenants, and providers and residents, by adjusting their respective rights and obligations relating to rental properties. In particular, the amendment regulation will remove certain processes that, during the eviction moratorium, have provided for security of rental and rooming accommodation for tenants and residents facing financial hardship due to COVID-19.

In relation to consistency with FLPs, the explanatory notes state:

The Amendment Regulation seeks to reflect community expectations in achieving a fair balance between the rights of the parties in the circumstances arising from the COVID-19 emergency. Where measures in the regulation are inconsistent with principles, this has been done to balance the interests of different individuals or to match individuals' rights and obligations with community expectations in the circumstances arising from the COVID-19 emergency.

³⁵ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, s 3.

³⁶ The relevant period for determining the eviction moratorium is set out in ss 8 and 47 of the Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Regulation 2020, as the period starting 29 March 2020 and ending on the earlier of 29 September 2020, or the last day of the COVID-19 emergency period.

³⁷ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, ss 4 and 11.

³⁸ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, ss 4 and 11.

³⁹ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, ss 5, 6, 8, 9, 12, 13, 15 and 16.

Interference with property rights: The Amendment Regulation removes temporary COVID-19 regulatory measures and restores the respective property rights of lessors/providers and tenants/residents to the rental property under the RTRA Act.⁴⁰

As mentioned in the explanatory notes, the regulation removes temporary COVID-19 regulatory measures and restores the respective property rights of lessors and tenants and providers and residents to the rental property under the RTRA Act.⁴¹

Committee comment

The committee is satisfied that the amendment regulation has sufficient regard to the rights and liberties of individuals.

6.2 Explanatory notes comment

The LSA provides that explanatory notes should include:

... a brief assessment of the consistency of the legislation with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency.⁴²

The committee notes that the explanatory notes, under the heading *Consistency with fundamental legislative principles*, state:

The fundamental legislative principles that are potentially engaged by the Amendment Regulation are set out below.⁴³

This statement is followed by the broad comment:

Where measures in the regulation are inconsistent with principles, this has been done to balance the interests of different individuals or to match individuals' rights and obligations with community expectations in the circumstances arising from the COVID-19 emergency.⁴⁴

Bearing in mind the desirable outcome of better informing the community about legislation, best practice is for explanatory notes to:

- clearly identify each specific issue of FLP that arises
- set out the reasons for any inconsistency with the FLPs, and
- provide any justification for that inconsistency.

The committee brings this matter to the attention of the House. The committee considers that, other than the issue raised above, the explanatory notes comply with part 4 of the LSA.

6.3 Human rights considerations

Under section 19 of the HRA, a person has the right to move freely within Queensland and choose where they live.

The human rights certificate accompanying the amendment regulation suggests that it 'may impose some minor and indirect limitations' on the freedom of movement of tenants and residents, by allowing a property owner to take steps to end rental agreements where the tenant or resident is in arrears, now that the eviction moratorium has ceased.

⁴⁰ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, explanatory notes, p 4.

⁴¹ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, explanatory notes, p 4.

⁴² See s 24(1)(i) of the LSA.

⁴³ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, explanatory notes, p 4.

⁴⁴ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, explanatory notes, p 4.

The committee considers that this right may also be limited by the removal of the temporary new grounds for a tenant or resident to end agreements within seven days of occupation due to the poor condition of the property.⁴⁵

Under section 24 of the HRA, a person has the right to own property and must not be arbitrarily deprived of their property.

In the human rights certificate, it is stated that this regulation may limit a property owner's right to property by removing the temporary ground for property owners to end tenancy agreements on the basis of a sale of the property, owner occupation or use for a State Government program.⁴⁶

In relation to all of these rights, the Minister provided the following justification:

The amendment Regulation restores the respective rights and obligations of property owners or providers and tenants or residents in respect of the rental property to those under the RTRA Act and removes temporary adjustments to these rights implemented in response to the COVID-19 emergency through the Regulation. The adjustments may have benefited one party over the other during the COVID-19 emergency. The adjustments were only intended to be temporary and is considered appropriate to reinstate the usual operation of the RTRA Act as the impact of the pandemic has been curtailed.⁴⁷

Further, the Minister highlighted:

The Residential Tenancies Authority's free dispute resolution services will continue to be available to lessors/providers and tenants/residents on a voluntary basis to provide additional support where needed.⁴⁸

Committee comment

The committee is satisfied that any limits on human rights are minor and reasonable and demonstrably justified, noting the temporary nature of the measures being removed by the amendment regulation.

6.4 Human rights certificate

The committee considered that the human rights certificate tabled with the amendment regulation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁴⁵ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, human rights certificate, pp 3-4.

⁴⁶ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, human rights certificate, p 4.

⁴⁷ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, human rights certificate, p 4.

⁴⁸ Residential Tenancies and Rooming Accommodation (COVID-19 Emergency Response) Amendment Regulation 2020, human rights certificate, p 5.

7 Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020 (SL 246)

The Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020 is made in reliance, in part, on sections 8 and 17 of the Emergency Response Act, and also in reliance on various provisions in the *Family Responsibilities Commission Act 2008* (FRC Act).

The Emergency Response Act contains a range of regulation-making powers to deal with matters arising from the COVID-19 public health emergency.

In broad terms, section 8 provides an additional regulation-making power in relation to requirements, or permissions under an Act, for a person to physically attend a place or meeting, or for an entity to call or hold a meeting, for a particular purpose or a particular matter, including by allowing a meeting to be conducted using communication technology. Such a regulation can have retrospective effect to not earlier than 19 March 2020.

Section 17 of the Emergency Response Act provides an additional regulation-making power for regulations to be made under an enabling Act making provision for (amongst other matters):

- altering the constitution of the relevant entity for conducting the proceeding
- an alternative method of service to satisfy a requirement about personal service of a document in the proceeding
- videorecording of a witness's evidence to be viewed and heard in the proceeding instead of direct testimony
- the proceeding to be conducted in an alternative location, and
- other procedural arrangements in relation to the proceeding.

A regulation made in reliance on those sections is an 'extraordinary regulation' and an Act to which an extraordinary regulation applies is an 'affected Act'.

In relation to an extraordinary regulation:

- a Minister administering an affected Act may recommend to the Governor in Council the making of an extraordinary regulation only if the Minister is satisfied the regulation is necessary for a purpose of the Emergency Response Act
- an extraordinary regulation may be inconsistent with the affected Act, and any other Act (other than the HRA), to the extent necessary to achieve a purpose of the Emergency Response Act
- to the extent a person's act or omission complies with an extraordinary regulation made under an affected Act, the person does not incur civil or criminal liability under the affected Act for the act or omission
- an additional regulation-making provision does not limit any other regulation-making power conferred under an affected Act, and
- a regulation must declare it is made under the relevant additional regulation-making provision.

The regulation contains a declaration that it is made under sections 8 and 17 of the Emergency Response Act. An extraordinary regulation must be tabled within 14 days of notification (rather than the usual 14 sitting days). The regulation was both notified and tabled on 2 October 2020 and expired on 31 December 2020.

The regulation is aimed at enabling the continued operation of the Family Responsibilities Commission (FRC) and the Family Responsibilities Board (FRB) during the COVID-19 public health emergency.

The FRC Act provides that conferences may be conducted using remote technology, but only in 'appropriate cases'.⁴⁹ Similarly, in a show cause process, the FRC may allow a person to make oral representations using such technology, but again only in 'appropriate cases'.⁵⁰ The regulation modifies the relevant provisions in the FRC Act to enable, during the COVID-19 emergency, conferences and oral representations using technology, without a requirement to justify in each instance whether it is 'appropriate'.

The FRC Act provides that a conference is to be constituted by the commissioner and two local commissioners appointed for the relevant welfare reform community.⁵¹ Further, in nominating or appointing local commissioners for a conference, one of the local commissioners must be female, if practicable and appropriate.⁵²

The regulation modifies the relevant provisions in the FRC Act, to allow FRC conferences to be conducted, and lawfully binding decisions to be made, by the family responsibilities commissioner (or deputy commissioner) and one local commissioner for the relevant community (under sections 50, 85 and 98 of the FRC Act).

Thus, to deal with an unavailable single local commissioner for a conference, the regulation provides that if the commission is constituted by only one local commissioner and that local commissioner stops being a constituting member or is unavailable for the conference, the commissioner may direct that the commission for the conference be constituted by the commissioner (or deputy commissioner) and another local commissioner appointed by the commissioner.

Further, if the commission is constituted by only one local commissioner, the FRC Act is taken to provide that the local registry coordinator and commissioner must ensure the local commissioner is female, if practicable and appropriate in the circumstances.

The FRC Act provides that the FRB must meet every six months.⁵³ A meeting may be held by using any technology available which will allow for 'reasonably contemporaneous and continuous communication'.⁵⁴ However, currently, the FRB members must meet in person at least once a year.⁵⁵ As this may not be possible during the COVID-19 emergency, due to travel restrictions and social distancing requirements, section 13 of the regulation removes this requirement to meet in person.

7.1 Fundamental legislative principle issues - rights and liberties of individuals

The committee considers that the provisions allowing conferences, oral representations, and application hearings (sections 7, 8 and 12 of the regulation, respectively) to proceed by audio link or audio visual link may not be seen as having sufficient regard for the rights and liberties of individuals, in relation to the right to procedural fairness and a fair hearing, to the extent that such provisions might have a disproportionate impact on disadvantaged members of the community who have limited access to, or less familiarity with, information technology.

The explanatory notes, though not identifying any specific issue of FLP, state generally:

The COVID-19 emergency is an extraordinary, unprecedented situation that, in turn, requires a commensurate response.

The provisions in the [Emergency Response Act] are considered justified to allow Ministers ultimate discretion to take immediate executive action, including the making of regulations such as this Regulation to make the necessary interventions to mitigate the spread of COVID-19 in the community; facilitate continued functioning of institutions and economy to the extent possible in the pandemic; and to allow

⁴⁹ FRC Act, s 56(2).

⁵⁰ FRC Act, s 83(4).

⁵¹ FRC Act, s 50(1).

⁵² FRC Act, s 51(3)(c).

⁵³ FRC Act, s 123.

⁵⁴ FRC Act, s 123(4).

⁵⁵ FRC Act, s 123(5).

for timely, targeted and flexible responses caused by COVID-19 and public health restrictions, such as social distancing measures.

The [Emergency Response Act] applies general safeguards in relation to each of the modification framework provisions. In particular, the [Emergency Response Act] makes clear that any extraordinary regulations or statutory instruments may only be made if the Minister or responsible entity is satisfied that the regulation or instrument is necessary for a purpose of the [Emergency Response Act]. Extraordinary regulations are also strictly time limited providing that upon commencement, the Act and all regulations made under the Act expire on 31 December 2020.

A further safeguard is provided in the [Emergency Response Act] to ensure that no extraordinary regulations are able to be exercised so as to amend or override the Human Rights Act 2019, or any particular provision of the Human Rights Act 2019, thus preserving its important human rights protections.

Further, the broad regulation-making powers under the [Emergency Response Act] are considered justified given the scope of Acts affected by the COVID-19 emergency, as it is not practical given the nature of the changes that may be required to make specific amendments across the statute book.

Having regard to the purpose and intention of the [Emergency Response Act] the Queensland Government considers that the provisions are consistent with the FLPs, and have sufficient regard for the rights and liberties of individuals and the institution of Parliament.⁵⁶

Committee comment

The committee is satisfied that the regulation has sufficient regard to the rights and liberties of individuals in the circumstances of the COVID-19 pandemic.

7.2 Explanatory notes comment

The committee notes that the explanatory notes contain the following general statement:

The Regulation is considered consistent with the fundamental legislative principles (FLPs) as set out in the *Legislative Standards Act 1992*.⁵⁷

The explanatory notes include a number of paragraphs which appear to have been copied, with only minor modification, from the explanatory notes for COVID-19 Emergency Response Bill 2020 – the Bill that became the Emergency Response Act.⁵⁸ The committee notes that much of that material, directed as it is to provisions in the Bill, is irrelevant to the provisions in the regulation, and does not assist a consideration of issues of FLP in the regulation itself.

Bearing in mind the desirable outcome of better informing the community about legislation, best practice is for explanatory notes to clearly identify the potential FLPs that arise, any provisions that breach those principles and how the breach arises, and then set out how any breach is justified. The committee brings this matter to the attention of the House.

The committee considers that, other than the issue raised above, the explanatory notes comply with part 4 of the LSA.

7.3 Human rights considerations and certificate

The committee considers that the regulation is compatible with human rights. The human rights certificate tabled with the legislation provides a sufficient level information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁵⁶ Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020, explanatory notes, p 5.

⁵⁷ Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020, explanatory notes, p 5.

⁵⁸ Family Responsibilities Commission (COVID-19 Emergency Response) Regulation 2020 Explanatory notes, p 5.

8 Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020 (SL 254)

The Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020 amends the Disability Services Regulation 2017 to provide that relevant residential aged care providers will continue to be exempt from screening requirements.

The committee notes that this reflects the National Disability Insurance Scheme (NDIS) worker screening transitional arrangements previously agreed to, and implemented by the Commonwealth Government, under which particular pre-existing employment checks are recognised as acceptable checks for registered NDIS providers until NDIS worker screening commences. A previously existing exemption lapsed on 30 November 2020.

8.1 Fundamental legislative principle issues and explanatory notes

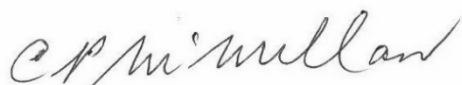
The committee identified no issues of FLP with the amendment regulation. The explanatory notes comply with part 4 of the LSA.

8.2 Human rights considerations and certificate

The committee considers that the amendment regulation is compatible with human rights. The human rights certificate tabled with the legislation provides a sufficient level information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

9 Recommendation

The committee recommends that the House notes this report.



Corrine McMillan MP

Chair

February 2021

Community Support and Services Committee

Chair	Ms Corrine McMillan, Member for Mansfield
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