

Legal Affairs and Community Safety Committee

Report No. 68, 56th Parliament

Subordinate legislation tabled between 18 March 2020 and 22 April 2020

1 Aim of this report

This report summarises the Legal Affairs and Community Safety Committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 18 March 2020 and 22 April 2020. 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*.¹

The report identifies any issues identified by the committee in its consideration of the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

The committee examined the subordinate legislation listed in the table.

No.	Subordinate legislation (SL)	Date tabled	Disallowance date*
30	Guardianship and Administration and Other Legislation Amendment (Postponement) Regulation 2020	22 April 2020	9 September 2020
35	Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020	22 April 2020	9 September 2020
43	Electoral (By-elections Before Next General Election) Regulation 2020	22 April 2020	9 September 2020
44	Disaster Management (Local Disaster Management Group Interim Chairperson) Amendment Regulation 2020	22 April 2020	9 September 2020
47	Professional Standards (New South Wales Bar Association Professional Standards Scheme) Notice 2020	22 April 2020	9 September 2020
49	Disaster Management (Extension of Disaster Situation—COVID-19) Regulation 2020	22 April 2020	9 September 2020
50	Supreme Court (Admission) Amendment Rule 2020	22 April 2020	9 September 2020
53	Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2020	22 April 2020	9 September 2020

*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*, Part 4.

² *Human Rights Act 2019*, s 41.

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with fundamental legislative principles or the lawfulness of the subordinate legislation were identified, with the exception of the matters outlined in Parts 4 to 7 of this report in relation to SL 35, SL 43, SL 49 and SL 53. The committee is of the view that the explanatory notes tabled with all the pieces of subordinate legislation comply with the requirements of section 24 of the *Legislative Standards Act 1992*.

The committee considers that SL 30, SL 44, SL 47 and SL 50 do not raise issues of human rights. Human rights issues arising in SL 35, SL 43, SL 49 and SL 53 are outlined in Parts 4 to 7 of this report. The human rights certificate tabled with each of the pieces of subordinate legislation provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.³

3.1 Human rights considerations

Section 8 of the *Human Rights Act 2019* (HR Act) 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.

Section 13 of the HR Act 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 sets out a range of factors that may be relevant in deciding whether a limit on a human right is reasonable and justifiable.

4 Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020 (SL 35)

The objective of the Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020 (the amendment regulation) is 'to amend the *Police Service Administration Regulation 2016* ... to include Queensland Corrective Services (QCS) as an approved agency for the purposes of information sharing'.⁴

The explanatory notes advise that the amendment regulation supports the implementation of recommendation 32 of the Crime and Corruption Commission's report titled *Taskforce Flaxton: an examination of corruption risks and corruption in Queensland prisons*.⁵

According to the explanatory notes:

*The amendment will provide for greater information sharing and collaboration between QPS [Queensland Police Service] and QCS in relation to the appropriate supervision and management of offenders, including those with a heightened risk of serious sexual offending, domestic and family violence, terrorism, violent extremism or participation in organised crime.*⁶

The explanatory notes state that the amendment 'aims to create safer communities by disrupting recidivist criminal activities and supporting victims'.⁷

4.1 Fundamental legislative principle issues

³ See *Human Rights Act 2019*, s 41.

⁴ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, explanatory notes, p 1.

⁵ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, explanatory notes, p 1.

⁶ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, explanatory notes, p 2.

⁷ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, explanatory notes, p 2.

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

The sharing of an individual’s personal information is a breach of their rights and liberties, specifically the right to privacy.

The explanatory notes contain this justification:

While it may be inferred that the amendment has the capacity to infringe on an offender’s right to privacy, the information disclosure provisions are appropriately safeguarded to minimise any potential impacts. Specifically, the authorised information can only be used for a purpose the agency is authorised to use the information for and the QPS Commissioner can impose conditions on the information that can be accessed by QCS under section 10.2M. Furthermore, section 10.2P (Misuse of information given under this Division) imposes a maximum penalty of 100 penalty units if a person uses information given by the QPS for a purpose other than for which it was given or authorised under an Act or contrary to a condition that is imposed under another Act.

Sections 339 and 341 of the Corrective Services Act 2006 also impose maximum penalties of 100 penalty units or 2 years imprisonment where a person unlawfully discloses information that has been acquired during their employment within QCS or as a selection panel member.⁸

Committee comment

Given the overall aim to create safer communities, and noting the safeguards in place, the committee is satisfied that any breach of fundamental legislative principle has been sufficiently justified.

4.2 Human rights issues

In the human rights certificate accompanying the amendment regulation, Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services, states his opinion that the amendment regulation is compatible with the HR Act because ‘it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom’.⁹

4.2.1 Privacy and reputation – *Human Rights Act 2019*, section 25

A person has the right not to have their privacy unlawfully or arbitrarily interfered with. A person’s right to privacy is impacted by allowing the QPS to share information with QCS.

The Minister provides this justification:

On balance, the importance of enabling QCS to appropriately manage offenders and support safer correctional environments and communities that is facilitated by the Amendment Regulation outweighs negative impacts on the right to privacy and reputation.¹⁰

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

5 Electoral (By-elections Before Next General Election) Regulation 2020 (SL 43)

The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* inserted a new provision in the *Electoral Act 1992* (Electoral Act) to allow for a regulation to make provision about a matter for which it is necessary to make provision to allow or facilitate the holding of a by-

⁸ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, explanatory notes, p 3.

⁹ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, human rights certificate, p 4.

¹⁰ Police Service Administration (Queensland Corrective Services) Amendment Regulation 2020, human rights certificate, p 4.

election in the way that helps minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.¹¹

The measures introduced by the Electoral (By-elections Before Next General Election) Regulation 2020 (by-elections regulation) are temporary measures and only apply in relation to by-elections held before the next general election.¹²

The by-elections regulation provides for the following matters about such by-elections:

- *allowing the Electoral Commission of Queensland (ECQ) to give a direction about the number of scrutineers each candidate may have at a polling booth or other place at which a scrutineer is entitled to be present under the Electoral Act, or prohibiting a scrutineer from being present at a polling booth or other place at which a scrutineer is otherwise entitled to be present under the Electoral Act, with an offence applying to a contravention;*
- *allowing a returning officer or member of the ECQ's staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth for the election, and areas where they may be, with an offence applying to a contravention;*
- *allowing procedures about how an elector may make an electronically assisted vote for a by-election, without the need for the procedures to be approved by a regulation and tabled in the Legislative Assembly;*
- *allowing a returning officer to arrange for the counting of votes to be filmed by a member of the ECQ's staff;*
- *allowing a returning officer to direct a member of the ECQ's staff to carry out the counting of votes at a by-election at a stated place; and*
- *creating an offence for the display of an election sign or setting up other items to be used for a purpose related to an election before 5am within 100 metres of a building to be used as an ordinary polling booth, the grounds in which a polling booth is located or within 100 metres of any entrance to the grounds.¹³*

5.1 Fundamental legislative principle issues

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

The by-elections regulation can affect an individual's rights and liberties in a number of ways.

Where the ECQ gives a direction about the number of scrutineers entitled to be present, this affects the freedom and movement of individuals.

The explanatory notes provide the following justification:

The impacts on human rights [the explanatory notes also mention human rights, which are not relevant to this discussion, although this justification is relevant to the issue of fundamental legislative principles] are justified on the basis that the flexibility to modify the presence or movement of scrutineers is necessary to minimise risks to health and safety caused by the public health emergency involving COVID-19, including limiting situations and public events which may result in contagion through person to person contact. These measures are temporary and will only apply to by-elections held before the next general election.¹⁴

¹¹ See *Electoral Act 1992*, s 392J.

¹² Section 392 J of the *Electoral Act 1992* provides that the regulation expires 1 year after the commencement of s 392J.

¹³ Electoral (By-elections Before Next General Election) Regulation 2020, explanatory notes, p 2.

¹⁴ Electoral (By-elections Before Next General Election) Regulation 2020, explanatory notes, p 3.

Further, new offences are introduced with a maximum penalty of up to 20 penalty units. The explanatory notes to the by-elections regulation state that the penalties for these offences 'are commensurate with the penalties applying for similar offences in the Electoral Act'.¹⁵

Committee comment

Given the overall aim of minimising risks of COVID-19, the committee is satisfied that any breaches of fundamental legislative principle are sufficiently justified.

5.2 Human rights issues

In the human rights certificate accompanying the by-elections regulation, Hon Yvette D'Ath MP, Attorney-General and Minister for Justice, states her opinion that the amendment regulation is compatible with the HR Act because:

*... while it does limit, restrict or interfere with a human right, that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom due to public health considerations in the public health emergency involving COVID-19.*¹⁶

The following human rights are impacted:

- right to freedom of movement – HR Act, section 19
- freedom of expression – HR Act, section 21
- right to take part in public life – HR Act, section 23
- property rights – HR Act, section 24
- right to privacy and reputation – HR Act, section 25
- right to liberty and security of the person – HR Act, section 29
- right to a fair hearing – HR Act, section 31
- rights in criminal proceedings – HR Act, section 32.¹⁷

5.2.1 Scrutineering

The ECQ may give a direction about the number of scrutineers each candidate may have at a polling booth or other place that scrutineers are otherwise entitled to be present, or by allowing the returning officer or member of ECQ staff in charge of a polling booth to give a direction about the movement of candidates or scrutineers at the polling booth. This may limit the right to take part in public life and freedom of movement by limiting the involvement of scrutineers.

In general, every person in Queensland has the right to participate in the conduct of public affairs and every person lawfully within Queensland has the right to move freely within Queensland.

The Attorney-General gives this justification:

*On balance, taking into account the nature and extent of the limitation and having regard to the information and analysis detailed above [in the human rights certificate], I consider that the importance of helping to minimise the serious risks to the health and safety of persons caused by the public health emergency involving COVID-19 outweighs any potential limitations on taking part in public life, freedom of movement and the right to privacy and reputation.*¹⁸

Committee comment

¹⁵ Electoral (By-elections Before Next General Election) Regulation 2020, explanatory notes, p 3.

¹⁶ Electoral (By-elections Before Next General Election) Regulation 2020, human rights certificate, p 9.

¹⁷ Electoral (By-elections Before Next General Election) Regulation 2020, human rights certificate, p 2.

¹⁸ Electoral (By-elections Before Next General Election) Regulation 2020, human rights certificate, p 4.

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

5.2.2 Signage restrictions

The by-election regulation restricts the setting up of election signage before 5am on polling day within 100 metres of the building in which the voting compartments for an election are to be located, the grounds, a boundary fence or structure or within 100 metres of any entrance to the grounds, with an offence of 10 penalty units for contravention.

This provision affects a person's right to freedom of expression and the right to take part in public life. Under section 21 of the HR Act, every person has the right to hold an opinion without interference.

The Attorney-General states:

*The signage restrictions will prevent any potential for person-to-person contact to occur at and around locations to be used as an ordinary polling booth. In particular, this will limit the scope for person-to-person contact to occur at a time where such locations may be in use for another purposes (for example, a school or community facility). This will help to achieve the purpose of minimising risks to health and public safety by reducing the scope for such contact, and limiting it occurring before 5am on polling day.*¹⁹

Committee comment

The committee is satisfied that any impact on human rights is reasonable and demonstrably justified.

5.2.3 Penalties

The introduction of penalties affects a person's property rights. Any failure to pay the penalties may result in imprisonment.

A person must not be arbitrarily deprived of their property nor be subjected to arbitrary arrest or detention.

A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceedings decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

In relation to the imposition of penalties for failing to comply, the Attorney-General states:

*Ensuring an appropriate and timely enforcement mechanism is available to the ECQ for individuals who disregard and fail to comply with these directions or the signage restrictions supports the protection of the health and the safety of the public, including more vulnerable persons, which is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.*²⁰

The Attorney-General provides the following justification in relation to a fair hearing:

*Once an infringement notice has been issued to an individual, there are various protections built into the enforcement system under the SPE Act [State Penalties Enforcement Act 1999], including the ability for persons to elect to have the matter heard in court at various stages of the process. ...*²¹

Committee comment

The committee considers that any impact on human rights is reasonable and demonstrably justified.

¹⁹ Electoral (By-elections Before Next General Election) Regulation 2020, human rights certificate, p 5.

²⁰ Electoral (By-elections Before Next General Election) Regulation 2020, human rights certificate, p 7.

²¹ Electoral (By-elections Before Next General Election) Regulation 2020, human rights certificate, p 7.

6 Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020 (SL 49)

The objective of the Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020 (the extension regulation) is to extend the period of a disaster situation declared for the whole of the State of Queensland for a period of not more than 14 days (to 16 April 2020).²²

6.1 Fundamental legislative principle issues

The extension of the declaration extends the availability of a number of powers under the *Disaster Management Act 2003* (Disaster Management 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.

6.1.1 Rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(2)(a)

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 use of powers under the Disaster Management Act impacts significantly on a person's rights and liberties.

The explanatory notes state:

*Given 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 the risk to the health of the Queensland community.*²³

Committee comment

The committee is satisfied that the impacts on a person's rights and liberties are sufficiently justified given the public health emergency.

6.2 Human rights issues

In the human rights certificate accompanying the extension regulation, Hon Craig Crawford MP, then Minister for Fire and Emergency Services, states his opinion that the extension regulation:

*... is compatible with the HR Act 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 HR Act.*²⁴

6.2.1 Peaceful assembly and freedom of association – *Human Rights Act 2019*, section 22

The declaration and the powers under the Disaster Management Act limit the peaceful assembly of people. Under the HR Act, every person has the right of peaceful assembly.

²² The disaster situation was declared on 22 March for the whole of the State: Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, s 2. See also, *Queensland Government Gazette*, Extraordinary, vol 383, no. 57, 22 March 2020. The Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020 was made on 3 April 2020. Under section 72 of the *Disaster Management Act 2003*, the regulation commences on the day it is made and it expires at the end of the extended period unless it is sooner repealed or it expires under section 73(4) of the Act: Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, s 2.

²³ Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, explanatory notes, p 1.

²⁴ Disaster Management (Extension of Disaster Situation—COVID-19) Regulation 2020, human rights certificate, p 4.

The Minister provides this justification:

*Limiting the right to assemble peacefully would reduce the risk of human to human transmission of COVID-19 and be in line with multi-tier government requirements relating to mass gatherings during COVID-19 response.*²⁵

Committee comment

The committee is satisfied that the limits on human rights are reasonable and demonstrably justified, given the public health emergency and the overall objective of the regulation.

6.2.2 Property rights – Human Rights Act 2019, section 24

The Disaster Management Act provides powers which, among other things, allow entry into a place, removal of things from a place, and directing a person to leave or not enter an area. The exercise of the powers is triggered by the declaration.

Under the HR Act, a person must not be arbitrarily deprived of their property. With respect to this, the Minister states, ‘Limiting the right by depriving a person of property (or access to) under the relevant powers may be necessary to minimise the risk of transmission of COVID-19 to vulnerable persons’.²⁶

Committee comment

The committee is satisfied that the limits on human rights are reasonable and demonstrably justified, given the public health emergency and the overall objective of the regulation.

6.2.3 Privacy and reputation – Human Rights Act 2019, section 25

The Disaster Management Act provides for the entry into places and other powers related to the entry, including the removal of things and directing a person to leave or not to enter a place.

Under the HR Act, a person must not have their privacy, family or home unlawfully or arbitrarily interfered with.

The Minister provides the following justification:

Due to the concerns relating to contact and proximity of persons identified with or suspected of having COVID-19, there are no any less restrictive or reasonably available ways to achieve the purpose.

*On balance, having regard to the nature and extent of the limitation on the right and the information detailed above [in the statement of compatibility], the importance of achieving the protection of a person’s or the public’s health and life outweighs the harm caused to [a] person’s right to privacy under the circumstances.*²⁷

Committee comment

The committee is satisfied that the limits on human rights are reasonable and demonstrably justified, given the public health emergency and the overall objective of the regulation.

6.2.4 Liberty and security – Human Rights Act 2019, section 29

The Disaster Management Act provides a power to direct a person to leave, or not to enter, an area in or near a place.

²⁵ Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, human rights certificate, p 2.

²⁶ Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, human rights certificate, p 3.

²⁷ Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, human rights certificate, pp 3- 4.

Under the HR Act a person has the right not to be subjected to arbitrary arrest or detention or to be deprived of their liberty.

The Minister states:

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.²⁸

Committee comment

The committee is satisfied that the limits on human rights are reasonable and demonstrably justified, given the public health emergency and the overall objective of the regulation.

7 Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2020 (SL 53)

The objective of the Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2020 (the further extension regulation) 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 the extension regulation on 2 April 2020. The period is extended until 30 April 2020.

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.²⁹

7.1 Fundamental legislative principle issues

The further extension regulation raises the same issues regarding impacts on rights and liberties of individuals as the extension regulation (SL 49). The analysis regarding SL 49, set out above, applies here.

7.2 Human rights issues

The further extension regulation raises the same issues regarding impacts on human rights as the extension regulation (SL 49). The analysis regarding SL 49, set out above, applies here.

8 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

June 2020

Legal Affairs and Community Safety Committee

Chair

Mr Peter Russo MP, Member for Toohey, Chair

Deputy Chair

Mr James Lister MP, Member for Southern Downs, Deputy Chair

²⁸ Disaster Management (Extension of Disaster Situation—COVID-19) Amendment Regulation 2020, human rights certificate, p 4.

²⁹ Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2020, explanatory notes, p 1.

Members

Mr Stephen Andrew MP, Member for Mirani
Ms Laura Gerber MP, Member for Currumbin
Mrs Melissa McMahon MP, Member for Macalister
Ms Corrine McMillan MP, Member for Mansfield