

Legal Affairs and Safety Committee

Report No. 20, 57th Parliament

Subordinate legislation tabled between

1 September 2021 and 15 October 2021

1 Aim of this report

This report summarises the committee's findings following its examination of the subordinate legislation within its portfolio areas tabled between 1 September 2021 and 15 October 2021. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles and lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA).¹

In addition, the report notes any issues identified by the committee in its consideration of compliance with the *Human Rights Act 2019* (HRA) and the human rights certificates tabled with the subordinate legislation.²

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
144	Disaster Management (Further Extension of Disaster Situation – COVID-19) Regulation (No. 3) 2021	12 October 2021	24 February 2022
151	Casino Control Amendment Regulation 2021	12 October 2021	24 February 2022
156	Queen's Wharf Brisbane (Relevant Entity) Declaration 2021	15 October 2021	16 March 2022

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

3 Committee consideration of the subordinate legislation

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

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

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

¹ LSA, Part 4.

² HRA, s 41.

Further, the committee examined exempt subordinate legislation³, being the Public Trustee (Fees and Charges Notice) (No. 1) 2021⁴. The committee did not identify any issues from a technical scrutiny or human rights perspective.

The committee also considered several Takeaway Liquor Authority Notices⁵ (No's 23-26)⁶. The committee did not identify any issues from a technical scrutiny perspective. As these notices are not subordinate legislation⁷ there is no requirement to table explanatory notes or a human rights certificate with them.⁸

4 Disaster Management (Further Extension of Disaster Situation – COVID-19) Regulation (No. 3) 2021 (SL No. 144)

The objective of the Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation (No. 3) 2021 (SL No. 144) is to further extend the period of the disaster situation declared for the whole of Queensland on 22 March 2020 and extended by regulation on 2, 16 and 30 April 2020, 14 and 28 May 2020, 27 August 2020, 1 October 2020, 10 December 2020, 18 March 2021 and 17 June 2021. The regulation extends the disaster situation for a further 90 days to 26 December 2021.⁹

4.1 Consistency with fundamental legislative principles

Rights and liberties of individuals

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

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

The reasonableness and fairness of treatment of individuals is relevant in deciding whether legislation has sufficient regard to the rights and liberties of individuals.¹⁰ The exercise of the powers listed above can involve quite significant restrictions on the rights and liberties of an individual.

The explanatory notes state that the regulation is consistent with fundamental legislative principles, and they do not address the issues of fundamental legislative principle that arise.¹¹ This might be on the basis that the powers are contained in the principal Act itself. The explanatory notes state:

³ Exempt subordinate legislation is required to be notified by being published in the Queensland Government Gazette rather than on the website of the Office of Parliamentary Counsel.

⁴ Tabled 30 September 2021, with a disallowance date of 23 February 2022.

⁵ The Notices are issued by the Commissioner for Liquor and Gaming under s 235 of the *Liquor Act 1992*. Although these notices are not subordinate legislation (and do not form part of the usual numbered subordinate legislation series), they are subject to disallowance.

⁶ Tabled 11 October 2021, with a disallowance date of 23 February 2022.

⁷ *Liquor Act 1992*, s 235I(2)

⁸ *Liquor Act 1992*, s 235I(4)

⁹ SL No. 144, explanatory notes, pp 1-2. See also, *Disaster Management Act 2003*, Parts 4 and 12A.

¹⁰ See Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, p 133; LSA, s 4.

¹¹ SL No. 144, explanatory notes, p 2.

A further extension is required due to the longer-term nature of COVID-19 and its potential impacts. Extension of the period of the disaster situation is necessary to ensure powers are available to rapidly and appropriately address risk to the health of the Queensland community.¹²

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

4.2 Compatibility with human rights

The limitations on human rights in SL No. 144 are discussed below.

Freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it.¹³

Subordinate legislation No. 144 may limit a person's right of freedom of movement because it allows for the exercise of powers that support border restriction controls and the closing of roads to traffic, which can result in persons being prevented from entering Queensland from another state or territory, particularly declared COVID-19 hotspots.¹⁴

The Minister for Police and Corrective Services and Minister for Fire and Emergency Services, Hon Mark Ryan MP (Minister), also notes that the restriction on movement has ancillary impacts on other human rights,¹⁵ but provides this 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.¹⁶

...

On balance, having regard to the nature and extent of the limitation on the right ... the importance of achieving the protection of a person's, or the public's, health outweighs the harm caused by the limitations on the human rights.¹⁷

Peaceful assembly and freedom of association

Every person has the right of peaceful assembly and freedom of association.¹⁸

Subordinate legislation No. 144 may limit a person's right to peaceful assembly and freedom of association because it allows for the exercise of powers to control movement of persons (as outlined above) which may result in the dispersal of groups of persons, such as those engaging in peaceful assemblies.¹⁹

¹² SL No. 144, explanatory notes, pp 1-2.

¹³ HRA, s 19.

¹⁴ SL No. 144, human rights certificate, p 5.

¹⁵ SL No. 144, human rights certificate, p 6, 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).

¹⁶ SL No. 144, human rights certificate, p 9.

¹⁷ SL No. 144, human rights certificate, p 9.

¹⁸ HRA, s 22.

¹⁹ SL No. 144, human rights certificate, pp 6-7.

The Minister provides this justification:

The purpose of limiting the rights to freedom of movement, peaceful assembly and freedom of association and right to liberty and security is to protect the health and safety of the community by preventing or slowing the spread of COVID-19 by controlling the movement of persons.²⁰

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.²¹

The extension of the disaster situation may limit a person's right to liberty and security because it allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area. The exercise of these powers may result in a person being deprived of their liberty for a period of time.²²

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.²³

Property rights

A person must not be arbitrarily deprived of their property.²⁴

Subordinate legislation No. 144 extends the duration of the availability of various powers, including powers to enter a place, remove things from a place, and remove, dismantle, demolish or destroy a building in the declared area.

The Minister notes that the right to property is engaged by SL No. 144, and provides the following comment: 'The declared disaster powers are broad, to reflect the fact that they may be used to respond to a range of disaster situations, including natural disasters'.²⁵

The Minister adds, however, that: 'It is not considered to be reasonably foreseeable that the powers relating to property will be exercised in relation to the COVID-19 disaster'.²⁶

The Minister's statement that it is not reasonably foreseeable that the powers related to property will be exercised in relation to COVID-19 can be accepted as accurate. Nonetheless, these powers do remain available for use under the legislation and so 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.²⁷

²⁰ SL No. 144, human rights certificate, p 7.

²¹ HRA, s 29.

²² SL No. 144, human rights certificate, p 7.

²³ SL No. 144, human rights certificate, p 8.

²⁴ HRA, s 24.

²⁵ SL No. 144, human rights certificate, p 5.

²⁶ SL No. 144, human rights certificate, p 5.

²⁷ HRA, s 25.

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

The Minister provides this justification:

The purpose of limiting the right to a person's privacy is to protect the health and safety of the community by preventing or slowing the spread of COVID-19 by ensuring compliance with public health directions such as those relating to social distancing.²⁸

...

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.²⁹

...

On balance, having regard to the nature and extent of the limitation on the right and the information detailed above, the importance of achieving the protection of a person's, or the public's, health outweighs the harm caused to person's right to privacy under these circumstances.³⁰

Human rights certificate

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

Committee comment

Given the health emergency that COVID-19 represents for Queensland, the committee is satisfied that this subordinate legislation is compatible with human rights.³¹

5 Recommendation

The committee recommends that the House notes this report.



Peter Russo MP

Chair

December 2021

Legal Affairs and Safety Committee

Chair	Mr Peter Russo MP, Member for Toohey
Deputy Chair	Mrs Laura Gerber MP, Member for Currumbin
Members	Ms Sandy Bolton MP, Member for Noosa
	Ms Jonty Bush MP, Member for Cooper
	Mr Jason Hunt MP, Member for Caloundra
	Mr Andrew Powell MP, Member for Glass House

²⁸ SL No. 144, human rights certificate, p 10.

²⁹ SL No. 144, human rights certificate, p 10.

³⁰ SL No. 144, human rights certificate, p 12.

³¹ 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 section 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.

