

Health and Environment Committee

Report No. 23, 57th Parliament

Subordinate legislation tabled between 11 May 2022 and 21 June 2022

1 Aim of this report

This report summarises the Health and Environment Committee’s findings following its examination of subordinate legislation within its portfolio areas tabled between 11 May 2022 and 21 June 2022. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness.³ It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),⁴ and the compliance of the human rights certificates with the *Human Rights Act 2019* (HRA).⁵

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date
-- ⁶	Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021	31 May 2022	11 October 2022
61	Forestry (Use of Side-by-side Vehicles) Amendment Regulation 2022	21 June 2022	12 October 2022
72	Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2022	21 June 2022	12 October 2022

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

¹ Section 4 of the *Legislative Standards Act 1992* states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (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 s 13 of the HRA. 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 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ *Parliament of Queensland Act 2001*, s 93.

⁴ *Legislative Standards Act 1992*, Part 4.

⁵ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state: a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

⁶ Note: The Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021 does not form part of the usual numbered Queensland subordinate legislation series.

3 Committee consideration of the subordinate legislation

No significant issues regarding policy, consistency with FLPs or the lawfulness of the subordinate legislation were identified in the subordinate legislation. Matters considered by the committee in relation to FLPs are outlined in this report. The committee considers explanatory notes tabled with SL No. 61 and SL No. 72 comply with the requirements of s 24 of the LSA.

The committee considers that Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021 and SL No. 61 raise no human rights issues. However SL No. 72 raises human rights issues which are detailed in this report. 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 human rights.

4 Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021

4.1 Legislative background

The Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021 (Professional Indemnity Insurance Regulation) was made by the Health Council (a Ministerial Council) on 6 December 2021 under the Health Practitioner Regulation National Law (National Law), as enacted in each state and territory.⁷ For Queensland, the relevant Act is the *Health Practitioner Regulation National Law (Queensland)*.

The National Law established a national scheme for registration and accreditation of health practitioners, as agreed by the Council of Australian Governments in March 2008. The national scheme came into effect on 1 July 2010.

Section 245 of the National Law empowers the Ministerial Council to make regulations for any matters to support the National Law and provides that national regulations must be published by the Victorian Government Printer.⁸ Section 246 requires that a regulation made under the National Law be tabled in the Parliament of each participating jurisdiction, with the usual disallowance procedures as apply in each jurisdiction.⁹

The Professional Indemnity Insurance Regulation was tabled in the Queensland Parliament on 31 May 2022 by the Minister for Health and Ambulance Services, Hon Yvette D’Ath MP. The Minister also tabled an associated General Outline (including the policy objectives of the legislation and its consistency with FLPs) and a human rights certificate, at that time.

4.2 Objective

The objective of the Professional Indemnity Insurance Regulation is to provide an extension to the current exemption for privately practising midwives (PPMs) who attend homebirths to comply with the requirement to hold professional indemnity insurance (PII).

Under the National Law, registered health practitioners cannot practice unless they hold appropriate PII. Since the National Law was introduced, there has not been a suitable PII product that covers PPMs

⁷ See *Health Practitioner Regulation National Law (Queensland)*, ss 245-246; Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021.

⁸ See <https://content.legislation.vic.gov.au/sites/default/files/2021-12/21-157sr.pdf>.

⁹ The regulation does not cease to have effect unless it is disallowed in a majority of participating jurisdictions, in which case it ceases to have effect in all participating jurisdictions (from the date of the disallowance in the jurisdictions forming the majority (see *Health Practitioner Regulation National Law (Queensland)*, ss 246-247). In Queensland, tabling and disallowance procedures are set out in the *Statutory Instruments Act 1992*, Part 6.

attending homebirths. A transition period has been extended a number of times to address this gap in the market (the initial expiration date was 30 June 2012).¹⁰

As there is still no affordable commercial product available, the Professional Indemnity Insurance Regulation amends the Health Practitioner Regulation National Law Regulation 2018 to provide a further two-year extension (until 31 December 2023).¹¹

The explanatory notes expand on the reason for the further extension to the transitional period:

There is still no suitable PII product in Australia that will cover PPMs providing home birth services. A number of policy options have been explored in an effort to identify a permanent solution that upholds the intent of the National Law that practitioners hold PII while also continuing to provide choice to women. However, due to the urgent need to prioritise and divert public health resources to the COVID-19 pandemic response, work to fully consider a permanent solution has been significantly delayed and will not be completed before the expiry of the current transition period on 31 December 2021.

Extending the exemption until 31 December 2023 will enable further work to be undertaken on a permanent solution and will provide registration certainty for PPMs under the National Law. It will also provide continuity of care for families who have engaged a PPM for a home birth.

If the exemption lapsed before a permanent solution is implemented, PPMs providing homebirth services would be unable to obtain the PII required under the National Law to maintain their registration. Women and families seeking a homebirth may be adversely impacted if they are unable to access registered PPMs.¹²

4.3 Consistency with fundamental legislative principles

The committee considered the following issues in regard to the subordinate legislation's consistency with FLPs.

4.3.1 Institution of Parliament – Amendment of an Act only by another Act

The National Law allows the end date of the transition period to be set by regulation.¹³ The initial exemption started on 1 July 2010 and was set to end on 30 June 2012.¹⁴ Through numerous extensions, including the Professional Indemnity Insurance Regulation, the transition period now ends on 31 December 2023.

It could be argued that the Professional Indemnity Insurance Regulation does not have sufficient regard to the institution of Parliament because it extends the period in which PPMs do not have to comply with the PII requirements for registered health practitioners under the National Law. That is, the subordinate legislation effectively amends the National Law.¹⁵

In addition, while regulations made under the National Law may be disallowed by the Parliament of a participating jurisdiction, they do not cease to have effect unless they are disallowed in a majority of participating jurisdictions.¹⁶

The explanatory notes provide the following justification for the Professional Indemnity Insurance Regulation possibly not having sufficient regard to the institution of Parliament:

¹⁰ Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 1.

¹¹ Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 1.

¹² Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 2.

¹³ See *Health Practitioner Regulation National Law (Queensland)*, s 284.

¹⁴ Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 1.

¹⁵ See *Legislative Standards Act 1992*, s 4(4)(c).

¹⁶ See *Health Practitioner Regulation National Law (Queensland)*, ss 246-247.

The potential departure from the fundamental legislative principle is justified by the need to maintain national consistency with respect to PII requirements for registered health practitioners under the National Law; the unique policy challenges involved with permanently resolving the PII issue for PPMs; and the limited nature of the regulation-making power. Extensive policy work has been undertaken over several years to identify a permanent solution that provides coverage for homebirth services, upholds the intent of the National Law and protects the rights of women, children and families.

If the extension lapsed before a permanent solution is implemented, PPMs could not provide the intrapartum component of homebirth services as they would be unable to obtain the PII coverage required under the National Law for registration. While most States and Territories offer public home birth services, this is not available in Queensland and Tasmania. In the jurisdictions where it is an option, eligibility requirements may preclude some women from accessing these services. For example, women may need to live within a certain distance of the relevant hospital to access the homebirth program.¹⁷

As noted above, it is intended that further work to find a permanent solution will be undertaken between the commencement of the Professional Indemnity Insurance Regulation and its expiry in 2023.¹⁸

In regard to the disallowance procedures in the National Law, the explanatory notes state:

The special procedures for scrutinising the regulations are ... justified by the limited scope of the regulation-making power and the need to promote consistency and predictability in the way that national scheme legislation is applied in participating jurisdictions.¹⁹

Committee comment

Taking into account the extended transition period and noting the efforts to develop a permanent solution to the issue, the committee is satisfied that the Professional Indemnity Insurance Regulation has sufficient regard for the institution of Parliament.

4.4 Explanatory notes

The Professional Indemnity Insurance Regulation does not form part of the usual numbered subordinate legislation series in Queensland and as such, explanatory notes were not required to accompany the regulation. As noted above however, the Minister tabled a General Outline along with the Professional Indemnity Insurance Regulation, which documented the policy objectives of the legislation and its consistency with FLPs and other matters. The General Outline is consistent with the requirements for the content of explanatory notes in part 4 of the LSA.

4.5 Human rights considerations

The committee considers that the Professional Indemnity Insurance Regulation raises no human rights issues.

4.6 Human rights certificate

The human rights certificate tabled with the Professional Indemnity Insurance Regulation provides a sufficient level of information to facilitate understanding of the Professional Indemnity Insurance Regulation in relation to its compatibility with human rights.

¹⁷ Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 3.

¹⁸ See Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 2.

¹⁹ Health Practitioner Regulation National Law Amendment (Professional Indemnity Insurance) Regulation 2021, General Outline, p 3.

5 SL No. 61 Forestry (Use of Side-by-side Vehicles) Amendment Regulation 2022

5.1 Objectives

The objective of the Forestry (Use of Side-by-side Vehicles) Amendment Regulation 2022 (SL No. 61) is to amend the Forestry Regulation 2015 (Forestry Regulation) to grant the chief executive of the Department of Environment and Science the power to approve the recreational use of side-by-side vehicles on roads in state forests, under an organised event permit.²⁰ SL No. 61 also seeks to minimise the risk to side-by-side vehicle riders by extending the safety requirements relating to the safe operation of a vehicle that currently apply to other users, such as motorcyclists, to riders and passengers of side-by-side vehicles.²¹

Side-by-side vehicles are ‘small two, or four-wheel drive vehicles designed for non-road use with seating for two to six occupants’.²² Because side-by-side vehicles are classified as non-road vehicles, they cannot be registered for standard on-road use. The Department of Transport and Main Roads can provide for conditional registration for these vehicles to be used on public roads in certain circumstances. However, prior to SL No. 61, there was no legislative framework in place that permitted the recreational use of side-by-side vehicles on public roads in state forests.²³

5.2 Consistency with fundamental legislative principles

The explanatory notes did not identify any FLP issues. However, the committee identified and considered the following issue.

5.2.1 General rights and liberties of individuals – Penalties

FLPs include requiring that legislation has sufficient regard to rights and liberties of individuals.²⁴ The creation of new offences, with their consequent penalties, affects the rights and liberties of individuals. A penalty should be proportionate to the offence, and penalties within legislation should be consistent with each other.²⁵

SL No. 61 amends offences in s 30 of the Forestry Regulation relating to the use of particular vehicles in a state forest or timber reserve to include side-by-side vehicles. The maximum penalty for these offences is 20 penalty units.²⁶

The human rights certificate explains the aim of the relevant amendments:

The Department of Environment and Science, as land managers, has a duty of care to road users, including side-by-side riders. To minimise risk to riders of side-by-sides, the safety requirements relating to safe operation of the vehicle that currently apply to other users such as motorcyclists under section 30 of the Forestry Regulation will be extended to include riders and passengers of side-by-side vehicles.²⁷

The maximum penalty of 20 penalty units (\$2,875.00)²⁸ is consistent with all the other maximum penalties in the Forestry Regulation.

²⁰ SL No. 61, explanatory notes, pp 1, 4.

²¹ SL No. 61, cl 4 (amendment to Forestry Regulation 2015, s 30).

²² SL No. 61, explanatory notes, p 1.

²³ SL No. 61, explanatory notes, p 1.

²⁴ *Legislative Standards Act 1992*, s 4(2)(a).

²⁵ Office of the Queensland Parliamentary Counsel (OQPC), *Fundamental legislative principles: the OQPC notebook*, 2008, p 120.

²⁶ SL No. 61, cl 4 (amendment to Forestry Regulation 2015, s 30).

²⁷ SL No. 61, human rights certificate, p 1. See also SL No. 61, explanatory notes, p 2.

²⁸ The value of a penalty unit as at 1 July 2022 is \$143.75: Penalties and Sentences (Penalty Unit Value) Amendment Regulation 2022; Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, s 5A.

Committee comment

Given the intention of the new offences and that the maximum penalties are consistent with others in the subordinate legislation, the committee is satisfied that SL No. 61 is compatible with FLPs.

5.3 Explanatory notes

The explanatory notes mostly comply with part 4 of the LSA. However, as noted above, the explanatory notes did not address the inclusion of side-by-side cars in offences in s 30 of the Forestry Regulation, which is relevant to the assessment of whether the subordinate legislation is consistent with FLPs.

5.4 Human rights considerations

The committee considers that SL No. 61 raises no human rights issues.

5.5 Human rights certificate

The human rights certificate tabled with SL No. 61 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

6 SL No. 72 Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2022

6.1 Objectives

The Public Health (Further Extension of Declared Public Health Emergency—COVID-19) Regulation (No. 2) 2022 (SL No. 72) further extends the period of the declared public health emergency to allow for emergency powers to be used to prevent or minimise serious adverse effects on human health and manage the impacts of COVID-19 in Queensland.²⁹ The regulation extends the declared public health emergency for a further period of 90 days (until the end of the day on 22 September 2022).³⁰

The declaration of the public health emergency was made by the then Minister for Health and Minister for Ambulance Services, Hon Steven Miles MP, on 29 January 2020, and notified in the *Queensland Government Gazette* on 31 January 2020. The declared public health emergency has since been extended multiple times.³¹

As stated in the explanatory notes, a declared public health emergency enlivens various powers and functions according to the *Public Health Act 2005* (Public Health Act):

A declared public health emergency activates a range of powers and functions under chapter 8 of the Public Health Act. For example, emergency officers have wide ranging powers under chapter 8 to assist in responding to a public health emergency, including powers of entry and a range of powers to compel persons to do or refrain from certain activities. Emergency officers (medical) have additional powers relating to the detention of persons. Under chapter 8 of the Public Health Act, the Chief Health Officer has the power to make public health directions to assist in containing, or responding to, the spread of COVID-19 within the community. The Chief Health Officer may give any direction which is considered necessary to protect public health, including directions to restrict the movement of persons; require persons to stay at or in a stated place, or not to enter or stay in a stated place; or restrict contact between persons.³²

6.2 Consistency with fundamental legislative principles

The committee identified potential FLP issues relating to SL No. 72, noting that the subordinate legislation raises the same FLPs and human rights issues as the first extension regulation (SL No. 7 of

²⁹ SL No. 72, explanatory notes, p 3.

³⁰ SL No. 72, s 2.

³¹ See SL No 7 of 2020, and the further extension regulations set out in schedule 1 of SL No. 72.

³² SL No. 72, explanatory notes, p 1.

2020) and each of the further extension regulations since. The committee's consideration of these issues is set out in the following sections 6.2.1 and 6.2.2.

6.2.1 Rights and liberties of individuals – emergency powers - powers to require a person to leave or remain or not enter, and power of entry

The effect of declaring (and also of extending) a public health emergency is that a number of powers in the Public Health Act are vested in an 'emergency officer' who is responding to the declared public health emergency. These powers include the power to require a person to:

- not enter, or not remain within, a place
- stop using a place for a stated purpose
- go to, or stay in, a stated place
- answer questions.³³

An emergency officer also has the power to enter a place to save a human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Reasonable force is permitted to be used to enter a place.³⁴ The emergency officer must make a reasonable attempt to seek consent for entry, but need not do so if the officer believes on reasonable grounds that immediate entry is required.³⁵

The right to personal liberty is the most elemental and important of all common law rights.³⁶ Entry without consent into any place where a person lives requires the highest justification.³⁷ Any removal of an individual's right to freedom of movement must be fully justified.³⁸

The explanatory notes provide the following advice regarding protections to limit the exercise of the powers of emergency officers:

The powers of emergency officers are discretionary and are only expected to be exercised if there are significant risks to public health. Additionally, the Public Health Act includes protections to limit the exercise of emergency officers' powers. For example:

- emergency officers can only enter places to save human life, prevent or minimise serious adverse effects on human health, or do anything else to relieve suffering or distress. Emergency officers are also required to make a reasonable attempt to seek an occupier's consent to the entry (section 344);
- certain powers can only be exercised with the written approval of the chief executive (section 345(2));
- a person must be given the opportunity to voluntarily comply with a detention order before it is enforced against them (section 353); and
- a person who is detained must be given the opportunity of receiving medical treatment including by a doctor chosen by the person (section 354(4)).³⁹

The explanatory notes offer this justification for impacts on the rights and liberties of individuals:

... it is considered that any potential impact the Regulation has on the rights and liberties of individuals in this context is justified, given the need to protect the health of the public by managing the impact of COVID-19.⁴⁰

³³ *Public Health Act 2005*, s 345.

³⁴ *Public Health Act 2005*, s 343.

³⁵ *Public Health Act 2005*, s 344.

³⁶ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 96.

³⁷ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 45.

³⁸ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 99.

³⁹ SL No. 72, explanatory notes, p 5.

⁴⁰ SL No. 72, explanatory notes, p 5.

Committee comment

Given the public health imperative to continue to respond to the transmission of COVID-19 in Queensland, the committee is satisfied that any potential breaches of FLP are sufficiently justified.

6.2.2 Institution of Parliament - matters appropriate to subordinate legislation

Subordinate legislation should contain only matters appropriate to that level of legislation. This issue is the corollary of the issue that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons.⁴¹ Generally, the greater the level of potential interference with individual rights and liberties, or the institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.⁴²

The explanatory notes acknowledge that there is a potential breach of the FLP that legislation has sufficient regard to the institution of Parliament, given the extensive powers enlivened when a public health emergency is declared or extended.⁴³

The explanatory notes offer the following justification:

The potential breach is considered justified given the need to protect the health of the Queensland community by being able to respond swiftly to manage the ongoing evolving public health risk from COVID-19. The power to extend by Regulation rather than an Act of Parliament allows the Government to discharge its key responsibility of protecting the health and safety of the public.

A Regulation extending the declared public health emergency may be made only if the Minister is satisfied it is necessary for a purpose of the Public Health Act. Having the ability to respond at short notice to an evolving epidemiological situation will continue to help ensure the public health objectives of the Public Health Act can be met.

In addition, if the Minister becomes satisfied it is no longer necessary to exercise powers to respond to COVID-19 to prevent or minimise serious adverse effects on human health, the Minister must end the declared public health emergency in accordance with section 324 of the Public Health Act.⁴⁴

The explanatory notes also highlight that the amendments made to the Public Health Act by the *Public Health and Other Legislation (Extension of Expiring Provisions) Amendment Act 2021* and the *Public Health and Other Legislation (Further Extension of Expiring Provisions) Amendment Act 2021* are also time limited, as the power to make a regulation to extend the public health emergency by up to 90 days will expire on 31 October 2022.⁴⁵

Committee comment

The committee is satisfied that in the circumstances, the subordinate legislation has sufficient regard to the institution of Parliament.

6.3 Explanatory notes

The explanatory notes comply with part 4 of the LSA.

6.4 Compatibility with human rights

The committee identified potential human rights issues relating to SL No. 72. The committee's consideration of these issues is outlined in sections 6.4.1 – 6.4.12 below.

⁴¹ OQPC, *Fundamental legislative principles: the OQPC notebook*, p 165.

⁴² OQPC, *Fundamental legislative principles: the OQPC notebook*, p 145.

⁴³ SL No. 72, explanatory notes, p 6.

⁴⁴ SL No. 72, explanatory notes, p 6.

⁴⁵ SL No. 72, explanatory notes, p 2.

6.4.1 Human Rights Act 2019, section 19 – Freedom of movement

Every person has the right to move freely within Queensland and to enter and leave it.⁴⁶

Under chapter 8 of the Public Health Act, emergency officers have the power to restrict the movement of persons including:

- requiring a person to not enter, or not remain within, a place
- requiring persons to stay in a stated place
- restricting contact between persons.⁴⁷

This impacts a person's right to freedom of movement.

6.4.2 Human Rights Act 2019, section 20 – Freedom of thought, conscience, religion and belief

Every person has the right to freedom of thought, conscience, religion and belief.⁴⁸

Under chapter 8 of the Public Health Act, emergency officers have the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs.

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

Every person has the right to peaceful assembly.⁴⁹

Restrictions on a person's movements may limit their ability to assemble peacefully.

6.4.4 Human Rights Act 2019, section 27 – Cultural rights – generally Human Rights Act 2019, section 28 – Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

Persons with a particular cultural, religious, racial or linguistic background must not be denied the right to enjoy their culture and to practise their religion.⁵⁰

The HRA recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.⁵¹

As noted above, chapter 8 of the Public Health Act provides emergency officers with the power to order a person to self-isolate or to otherwise restrict a person's or group's movements. This may limit the ability of people to publicly demonstrate and practise their religion or beliefs.

The restrictions on a person's movement could limit a person's cultural rights to engage with community and their traditionally owned or otherwise occupied lands and waters.

6.4.5 Human Rights Act 2019, section 23 – Taking part in public life

Every person has the right to participate in the conduct of public affairs.⁵²

The restrictions on a person's movement or ability to interact with other persons may impact on a person's right to take part in public life.

6.4.6 Human Rights Act 2019, section 24 – Property rights

A person must not be arbitrarily deprived of their property.⁵³

⁴⁶ HRA, s 19.

⁴⁷ SL No. 72, human rights certificate, p 6.

⁴⁸ HRA, s 20.

⁴⁹ HRA, s 22.

⁵⁰ HRA, s 27.

⁵¹ HRA, s 28.

⁵² HRA, s 23.

⁵³ HRA, s 24.

Under chapter 8 of the Public Health Act, emergency officers have the power to:

- demolish structures or other property
- remove an animal, substance or thing from a place
- dispose of an animal, substance or thing at a place
- destroy animals at a place or remove animals for destruction at another place
- take action in relation to property, including, for example, to allow the officer to take control of a building for the purposes of the emergency.⁵⁴

All these actions will impact on a person's property rights and will deprive them of their property.

6.4.7 Human Rights Act 2019, section 25 – Right to privacy

A person has the right not to have their privacy unlawfully or arbitrarily interfered with.⁵⁵

Being compelled to provide a name and address and to answer questions limits a person's human right to privacy.

6.4.8 Human Rights Act 2019, section 29 – Right to liberty and security of person

A person must not be subject to arbitrary arrest or detention.⁵⁶

SL No. 72 provides powers to emergency officers to restrict people's movements, including requiring a person to self-isolate at home or another premises. This may limit the right to liberty and security because preventing people from leaving their homes or other premises may constitute detention.

6.4.9 Human Rights Act 2019, section 26 – Protection of families and children

Every child has the right to protection that is in their best interests as a child.⁵⁷

The power to restrict a person's movement may impact children through restricting movement, contact with other people, or access to facilities (e.g. schools and events).

6.4.10 Human Rights Act 2019, section 30 – Humane treatment when deprived of liberty

A person deprived of liberty must be treated with humanity and respect.⁵⁸

Emergency officers (medical) have the power to order the detention of a person if that person has or may have a serious disease or illness. The use of force to enforce self-isolation or other directions could limit the right to humane treatment when deprived of liberty.⁵⁹

6.4.11 Human Rights Act 2019, section 36 – Right to education

A child has the right to access primary and secondary education appropriate to their needs.⁶⁰

A child's educational activities may be limited due to restrictions on movement.

6.4.12 Minister's justification for the limitations on human rights

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

- with the human rights protected by the HRA⁶¹

⁵⁴ SL No. 72, human rights certificate, p 6.

⁵⁵ HRA, s 25.

⁵⁶ HRA, s 29.

⁵⁷ HRA, s 26.

⁵⁸ HRA, s 30.

⁵⁹ SL No. 72, human rights certificate, p 8.

⁶⁰ HRA, s 36.

⁶¹ SL No. 72, human rights certificate, p 1.

- with the HRA because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.⁶²

The Minister provides the following collective justification for the limitations on human rights:

The purpose of the limitations on human rights to be imposed by the Regulation, if enacted, is to protect the Queensland public from serious risks to health and safety, including the potential for loss of life that could occur without an effective public health response to the COVID-19 pandemic.

...despite reaching high levels of vaccination in the community, flexibility to deliver ongoing public health responses is an important safeguard to ensure the pandemic can continue to be managed safely and effectively. There are a number of ongoing uncertainties about how the pandemic will continue to develop, including risks of reinfection, the potential emergence of new variants of concern, vaccine effectiveness over time and possible increased transmission during the winter months. A further extension of the declared public health emergency enables operation of key public health powers under the Public Health Act to continue to provide the flexibility to continue to respond to ongoing community transmission and to adapt the public health response to new variants which may be more infectious or vaccine resistant or other unforeseen circumstances that emerge.⁶³

The Minister further states:

The limitation of human rights is necessary to ensure that public health officials can implement effective ongoing measures to respond to the COVID-19 pandemic. These measures will help to minimise transmission of COVID-19 and respond to developments in the pandemic, including new variants of concern or particular outbreaks.⁶⁴

...

The benefits of significantly reducing Queenslanders' exposure to disease and preserving access to emergency and life-sustaining treatment for persons who develop serious health complications as a result of a COVID-19 outbreak substantially outweigh the limitations on human rights.⁶⁵

The Minister also notes a safeguard:

If the need for the declaration of the public health emergency is no longer considered necessary, the Public Health Act also provides for the Minister for Health to declare that the public health emergency has ended, which immediately extinguishes the emergency powers given to the Chief Health Officer and emergency officers under the Public Health Act. This safeguard requires the Queensland Government to assess the need for the public health emergency, not just prior to the expiry of the declaration period, but on a continual basis.⁶⁶

Committee comment

The committee appreciates the importance of the further extension of the declared public health emergency in protecting the health of all Queenslanders by limiting and responding to the potential spread of COVID-19 in Queensland. The committee is satisfied that any limitation to human rights in the regulation is reasonable and justifiable.

6.5 Human rights certificate

The human rights certificate tabled with SL No. 72 provides a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

⁶² SL No. 72, human rights certificate, p 11.

⁶³ SL No. 72, human rights certificate, p 9.

⁶⁴ SL No. 72, human rights certificate, p 10.

⁶⁵ SL No. 72, human rights certificate, p 10.

⁶⁶ SL No. 72, human rights certificate, p 11.

7 Recommendation

The committee recommends that the Legislative Assembly notes this report.



Aaron Harper MP

Chair

August 2022

Health and Environment Committee

Chair	Mr Aaron Harper MP, Member for Thuringowa
Deputy Chair	Mr Robert (Rob) Molhoek MP, Member for Southport
Members	Mr Stephen (Steve) Andrew MP, Member for Mirani
	Ms Ali King MP, Member for Pumicestone
	Mr Samuel (Sam) O'Connor MP, Member for Bonney
	Ms Joan Pease MP, Member for Lytton