

Peace and Good Behaviour Regulation 2020

Explanatory notes for SL 2020 No. 166

Made under the

Peace and Good Behaviour Act 1982

General Outline

Short Title

Peace and Good Behaviour Regulation 2020

Authorising law

Section 100 of the *Peace and Good Behaviour Act 1982*

Policy objectives and the reasons for them

Under the *Statutory Instruments Act 1992* (SI Act) subordinate legislation expires on 1 September after the 10th anniversary of its making or such extended period as is permitted under the Act. The *Peace and Good Behaviour Regulation 2010* (the Regulation) is due to expire on 1 September 2020.

The *Peace and Good Behaviour Regulation 2020* (the remade Regulation) seeks to remake the the Regulation to support the main object of the *Peace and Good Behaviour Act 1982* (the Act) to protect the safety, welfare, security, and peace and good order of the community from risks presented by people engaging in antisocial, disorderly or criminal conduct.

The remade Regulation also supports the objects of the Act by protecting the community's enjoyment of safe and secure neighbourhood environments and public spaces.

The Act provides that a Justice of the Peace may, in certain circumstances, issue a summons for a person to appear or a warrant for the person to be apprehended and brought before a Magistrates court. The court may then make a peace and good behaviour order, which is an order requiring the person (the defendant) to 'keep the peace and be of good behaviour' for the period specified in the order. The court may also impose such other conditions as it thinks fit.

The remade Regulation supports the Act by providing operational support and procedural certainty for the Act by proscribing the following with respect to peace and good behaviour orders:

- filing requirements if a summons or warrant is issued;

- requirements if a summons or warrant is not issued;
- filing requirements if mediation is ordered;
- service requirements for complaints and summonses;
- providing discretion to the Justice of the Peace for the time period of a warrant;
- matters to be included in a warrant issued by a Justice of the Peace;
- that complaints and summonses under the Act must be in the approved form; and
- what must be included in an approved form.

Achievement of policy objectives

The purpose of the remade Regulation is to remake the Regulation in its current form with the following amendments:

- remove section 11A as it is now redundant;
- replace the head power for the approval of forms under section 12 of the Regulation, with section 99 of the Act;
- remove section 7 to provide discretion to the Justice of the Peace who makes the order for the time period of a warrant;
- remove transitional provisions for approved forms due to the replacement of the head of power and the operation of section 48A of the *Acts Interpretation Act 1954* (AIA) regarding substantial compliance with approved forms; and
- other minor technical amendments to reflect current drafting practices.

Removal of Section 11A

Section 11A has been removed in the remade Regulation as the prescribed places listed in section 11A are no longer required.

Section 11A of the Regulation commenced via the *Serious and Organised Crime Legislation Amendment Act 2016* (SOCLAA) on 9 December 2016 and operated to facilitate transitional arrangements for the new organised crime regime. Section 11A of the Regulation declares certain places as prescribed places for the purposes of section 41(1) of the Act. Once a 'restricted premises' order has been made, certain limitations are triggered in respect of the premises; for example, it is an offence for 'disorderly activity' to take place on the premises. Section 42 of the Act provides that a prescribed place is taken to be restricted premises for two years starting on commencement; in this case, until 9 December 2018.

Accordingly, the declaration made by section 11A has expired and is no longer in force. The list of properties in section 11A of the Regulation therefore serves no purpose and will have no impact on whether police can or cannot make an application for a restricted premises order, with respect to those properties or any other properties.

Head power for the approval of forms

The definition of 'approved form' has been updated to reflect the SOCLAA amendment, which inserted section 99 into the Act. Section 99 of the Act provides for forms to be approved under the Act by the chief executive (Magistrates Court), the commissioner or the chief executive. Accordingly, the definition of 'approved form' under the remade Regulation will reflect the head of power under section 99 of the Act. Section 12 of the Regulation has also been removed as section 99 of the Act will be relied upon to authorise the making of forms under the Act.

As the head of power for the approval of forms is now contained in section 99 of the Act, forms will be remade under the remade Regulation.

Period of warrant

Section 7 of the current Regulation will be removed under the remade Regulation as there is no head of power under the Act to limit the validity of a warrant to one year. Section 10(f) of the current Regulation will also be amended to remove the one-year limitation. Justices of the Peace will still be required to nominate an end date for the warrant. The amendment will simply remove the mandated one year maximum.

This amendment will also reflect the fact that section 9 of the Act applies the *Justices Act 1886* (Justices Act) to proceedings under the Act as if they were proceedings for a complaint in respect of an offence under the Justices Act. Section 9 of the Act also allows for a regulation to modify the way the Justices Act applies. Section 10 of the remade Regulation is reliant on the power under section 9 of the Act to modify the application of the Justices Act under regulation.

Accordingly, while warrant provisions under the Justices Act apply to complaints under the Act, section 10(f) of the remade Regulation modifies warrant requirements for the purposes of the Act. On this basis, section 10(f) of the remade Regulation is consistent with section 63 of the Justices Act which provides that a warrant need not be returnable at any particular time. Further, section 63 of the Justices Act does not preclude the inclusion of an expiry date for a warrant as it does not state that a warrant must remain in force until executed, but rather, that it may.

Warrants issued under the Act relate to civil proceedings (as opposed to criminal proceedings under the Justices Act) and, therefore, it is appropriate to stipulate an end date.

Transitional provisions

As the head of power for approved forms is in the Act, not the remade Regulation, it will be inappropriate to provide a transitional provision for approved forms made under section 99 of the Act (similar to section 15 of the Regulation).

If a previous approved version of a form is relied upon, section 48A of the AIA will deem the use of the form valid on the basis it will be substantially compliant with the new form.

Consistency with policy objectives of authorising law

The remade Regulation is consistent with the main policy objective of the Act to protect the safety, welfare, security, and peace and good order of the community from risks presented by people engaging in antisocial, disorderly or criminal conduct.

The remade Regulation also supports the objects of the Act by protecting the community's enjoyment of safe and secure neighbourhood environments and public spaces.

Inconsistency with policy objectives of other legislation

The remade Regulation is consistent with policy objectives of other legislation.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives.

Benefits and costs of implementation

This remade Regulation provides benefits by ensuring that:

- the objects of the Act are supported;
- the requirements for complaints and summonses are easily accessible to the general public, which ensures applicants file the correct documents with the correct information; and
- court efficiencies are improved and, the administration of justice is expedited.

There are no expected impacts on the approval of forms under section 99 of the Act due to the operation of section 48A of the AIA, which validates substantial compliance (for example, if a person lodged a form under the previous Regulation). Any costs associated will be met from existing resources.

Consistency with fundamental legislative principles

The Act provides for a Justice of the Peace to issue a summons or warrant and also allows for the delegation of power to approve forms to the chief executive. These provisions engage fundamental legislative principles at sections 4(2)(a), 4(3)(b) and 4(3)(c) of the *Legislative Standards Act 1992* (LSA), which require legislation to have sufficient regard to rights and liberties of individuals by way of ensuring that legislation is consistent with principles of natural justice and allows the delegation of administrative power only in appropriate cases and to appropriate persons. The remade Regulation simply facilitates the efficient and transparent operation of these powers under the Act and, accordingly, does not limit these fundamental legislative principles.

Consultation

Consultation was undertaken with the Chief Magistrate, Queensland Law Society (QLS), Bar Association of Queensland, Legal Aid Queensland, Aboriginal & Torres Strait Islander Legal Service, Community Legal Centres Queensland, LGBTI Legal Service, Queensland Council of Civil Liberties and Queensland Human Rights Commission (QHRC).

The QHRC and Chief Magistrate noted the amendments and did not have any further comment on the remade Regulation.

The QLS raised concern that the removal of the one year validity of a warrant was inappropriate as warrants issued under the Act are for civil matters (unlike warrants issued under the Justices Act for criminal offences) and should not apply to a person for an indeterminate amount of time. It is noted that section 10(f) has been retained in the remade Regulation, which still requires a Justice of the Peace to impose a time limitation on the operation of a warrant but does not stipulate a maximum time period within which the warrant must end.

No further feedback was received from the other external stakeholders that were consulted.

In accordance with the *Queensland Government Guide to Better Regulation*, the Queensland Productivity Commission (QPC) has assessed the sunset review and remake of the current Regulation. The QPC have confirmed that the requirements for a sunset review have been met and no further regulatory impact analysis is required.