

Major Sports Facilities (Prescribed Events-North Queensland Stadium) Amendment Regulation 2020

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, Mick de Brenni, Minister for Housing and Public Works, Minister for Digital Technology and Minister for Sport provide this human rights certificate with respect to the *Major Sports Facilities (Prescribed Events-North Queensland Stadium) Amendment Regulation 2020* (Amendment Regulation) made under the *Major Sports Facilities Act 2001* (MSF Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Stadiums Queensland is responsible for the management, operation, use and promotion of major sports facilities and must perform its functions in a way that is consistent with sound commercial principles and having regard to the requirements of tenants of the facilities (section 7 of the MSF Act).

Stadiums Queensland currently owns and operates ten major sports facilities listed in Schedule 1 of the *Major Sports Facilities Regulation 2014* (MSF Regulation). This includes the North Queensland Stadium which was declared a ‘major sports facility’ in December 2019.

The MSF Act provides a mechanism to protect event sponsors, which have usually paid to sponsor the event, from unauthorised (‘ambush’) advertising by rival businesses that have not contributed to the event. This protection is an important consideration for event organisers who hire Stadiums Queensland facilities.

Under the MSF Act, there are two processes for designating restricted advertising events at a major sports facility, these are ‘declaring an event’ or ‘prescribing an event’. Both processes result in the same restrictions on advertising within sight of the major sports facility.

The process for a ‘declared event’ involves the Governor in Council declaring an event and event period through publication in the Queensland Government Gazette which must occur at least 28 days prior to the commencement of the event period. This declaration and gazettal process has an eight week lead time which can be impractical when late scheduling or rescheduling of events is required and can result in events not being protected from unauthorised advertising.

The process of prescribing an event by regulation streamlines the regulation of advertising for regular venue hirers, as it allows for minor rescheduling of events by event organisers whilst reducing the potential regulatory burden on other advertisers who are required to ensure that their advertisements do not appear within sight of the major sports facility at the relevant times. Further, it removes the Governor in Council and gazettal requirement and associated lead times.

Prescribed events are ticketed events which are organised, scheduled or endorsed by the bodies listed in schedule 3 of the MSF Regulation and held at the corresponding facilities listed against that body (section 5A of the MSF Regulation). Section 30D of the MSF Act provides that the period for prescribed events starts at 6am and ends at midnight on the day of the event.

Stadiums Queensland has requested that the MSF Regulation be amended to include the North Queensland Stadium as a facility for the Australian Rugby League Commission Limited, Australian Rugby Union Limited and Football Federation Australia Limited (relevant national bodies).

The Amendment Regulation amends the MSF Regulation in accordance with Stadium Queensland's request. The amendment removes the requirement to 'declare events' for ticketed events held by the relevant national bodies at North Queensland Stadium thus reducing the regulatory burden because there is no longer the need for the Governor in Council and gazettal requirement and associated lead times. Further, prescribing the events by regulation is more practical for advertisers as they can simply schedule advertisements to avoid display within sight of the major sports facilities between 6am and midnight on each relevant national body sports event day, which are widely known and published, rather than having to try to search the Queensland Government Gazette to identify a specific declaration for each event.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 of the HR Act)

In my opinion, the following human right is relevant to the Amendment Regulation:

- Freedom of expression (section 21 of the HR Act)

Consideration of reasonable limitations on human rights (section 13 of the HR Act)

(a) The nature of the right

Section 21 of the HR Act provides that every person has the right to freedom of expression, which includes the right to hold an opinion without interference and the right to seek, receive and impart information and ideas of all kinds, whether verbally, in writing, in print, by way of art or in another medium. The right to freedom of expression is central to the fulfilment of other rights such as cultural rights and freedom of thought, conscience and religion.

As the advertising restriction will impact the ability of persons to both impart and receive information which may have been contained in prohibited advertising this Amendment Regulation could limit a person's right to freedom of expression.

(b) The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

In 2006 and 2016, the MSF Act enacted provisions imposing restrictions on advertising during events at major sports facilities to protect event sponsors from unauthorised advertising including making it an offence to advertise in breach of relevant restrictions. The legislative amendments were introduced in response to concerns about increasing instances of unauthorised advertising at major sports facilities, for example, where unauthorised corporate advertisers fly airships over venues.

As described above, events may be subject to restricted advertising through two different processes: declaring an event (by Governor in Council) or prescribing an event (by Regulation). If events held at the North Queensland Stadium are declared through the Governor in Council process, this can be time-consuming and can be impractical in the event of late scheduling or rescheduling of events.

The purpose of limiting the right to freedom of expression by prescribing all future events held by the relevant national bodies at the North Queensland Stadium is to protect the commercial arrangements between Stadiums Queensland and its stakeholders by preventing businesses who are not event sponsors from advertising within sight of the stadium, which makes the venue more attractive to event organisers. The protection of these commercial arrangements is necessary because of the extent to which major events are dependent on these revenues for their viability. Prescribing all future events by the relevant national bodies at the North Queensland Stadium, ensures that those events are protected from unauthorised advertising under the MSF Act, even if the dates of the events change.

(c) The relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

By providing for the North Queensland Stadium to be prescribed for all events held by the relevant national bodies, this Amendment Regulation will ensure event sponsors are protected from unauthorised advertising without requiring each event to be separately declared, and thereby avoids the risk that the declaration cannot be made in time for the first event or if the date of the event changes.

The limitation on the right to freedom of expression achieves the purpose of preventing unauthorised advertising at prescribed events at North Queensland Stadium, and ensures the stadium is an attractive venue for event organisers and sponsors. The regulation serves to better protect the rights of sponsors, who have paid to advertise.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose

The same restrictions on advertising within the vicinity of the event apply whether an event is declared or prescribed. The MSF Act details the relevant restrictions on advertising which applies in such cases, making it an offence to display advertising in airspace, or on a building or other structure, within sight of a major sports facility during a restricted advertising period for the facility without appropriate authorisation. However, the restriction does not apply to an advertisement that is a logo, symbol or similar matter displayed on a building or other

structure on more than a temporary basis, or an advertisement displayed on an aircraft within sight of a major sports facility if the aircraft is in transit as part of a scheduled commercial flight (section 30F of MSF Act). Advertising is defined in section 30D of the MSF Act and includes skywriting, banners and signs.

During the legislative amendment process of the MSF Act in 2006 and 2016, numerous options were considered to protect event sponsors from unauthorised advertising. The restricted advertising provisions enacted were considered proportionate to the legitimate aim of protecting event sponsors.

Events held at the North Queensland Stadium could be brought within the restricted advertising provisions of the MSF Act by the process for declaring an event. It could be considered that declaring an event through the existing Governor in Council process is a less restrictive option to achieve the purpose because it is less permanent and allows events to be declared on a case by case basis. However, the declaration process is not considered reasonable because of the lengthy process for declaring an event means that it may not be possible to proceed through this process in the event of late scheduling or rescheduling of events. In some cases, this has resulted in events missing out on the advertising protections under the MSF Act.

Therefore, no less restrictive reasonably available way to achieve the purpose has been identified.

(e) The balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, it is considered that the importance of protecting event sponsors at the North Queensland Stadium from unauthorised advertising at major sports events held by relevant national bodies and the viability and continuation of these events outweighs the negative impact of the temporary limitation on a person's right to freedom of expression as a result of the Amendment Regulation.

Conclusion

I consider that the *Major Sports Facilities (Prescribed Events–North Queensland Stadium) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it limits a human right but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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