

# Disaster Management (Further Extension of Disaster Situation–COVID-19) 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, Craig Crawford, Minister for Fire and Emergency Services provide this human rights certificate with respect to the Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation 2020 made under the *Disaster Management Act 2003* (the DM Act).

In my opinion, the Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

On 12 March 2020, the World Health Organisation declared COVID-19 a global pandemic. On 22 March 2020, a disaster situation was declared under section 69 of the Act for the whole State of Queensland.

On 2 April 2020, pursuant to section 72 of the Act, the disaster situation declared for COVID-19 was extended by regulation. Unless further extended by regulation pursuant to section 72, or declaration pursuant to section 72A, of the Act, the disaster situation ends on 16 April 2020, 14 days after the day it was extended.

Given the longer-term nature of the COVID-19 pandemic and its potential impacts it is proposed to further extend the period of the declared disaster situation by regulation under section 72 of the Act.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the human rights that are relevant to this subordinate legislation include:

- Freedom of movement (section 19)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Right to liberty and security (section 29)

### Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

## **Freedom of movement (section 19)**

### (a) the nature of the right

The part of section 19 of the HR Act relevant under the Regulation is the statement: “Every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it...”

The right to freedom of movement is based upon Article 12 of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states in part that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect public health. The United Nations Human Rights Committee (UNHRC) considers that the right for individuals to move freely should not be unnecessarily affected by legal and bureaucratic barriers.

Section 112(3)(f) of the DM Act relates to a direction to another person to leave, or not to enter, an area in or near the place if the person considers the direction is necessary to protect a person’s life or health, and is relevant to this human right.

### (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

The purpose of limiting freedom of movement relates to a person or persons suspected of having COVID-19, or preventing movement of other persons for the protection, health and safety of the public in order to reduce public health exposure and risk of the spread of the virus such as through human to human contact.

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

The limitation helps achieve the purpose by limiting the exposure of the community to COVID-19 by preventing movement of persons for the protection, health and safety of the public in order to reduce public health exposure and risk of the spread of the virus such as through human to human contact. The limitation of human rights is necessary to ensure that officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.

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

Due to the human to human transfer of the virus, there are no less restrictive and reasonably available ways to achieve the purpose.

### (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 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.

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 and life outweighs the harm caused to person's freedom of movement.

### **Peaceful assembly and freedom of association (section 22)**

#### (a) the nature of the right

The Regulation would limit the right of peaceful assembly (section 22(1) of the HR Act).

The nature of this right would allow for persons to assemble in large groups in public places.

This right would be limited by exercising powers provided under section 76(2)(b) of the DM Act, in particular: (i) ensure public safety or public order; and (ii) prevent or minimise loss of human life, or illness or injury to humans or animals.

#### (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

The purpose of limiting the right to assemble peacefully is to 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.

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

The limitation helps achieve the purpose by reducing the risk of human to human transmission of COVID-19 by limiting the right to peaceful assembly in line with multi-tier government requirements relating to mass gatherings.

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

Due to the human to human transfer of this virus, there are no less restrictive or reasonably available ways to achieve the purpose.

#### (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, 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 and life outweighs the harm caused to person's right to peaceful assembly and freedom of association.

### **Property rights (section 24)**

(a) the nature of the right

Under the Regulation, the right described in the HR Act section 24(2) would be limited: A person must not be arbitrarily deprived of the person's property.

This right would be limited by exercising powers provided under section 76(2)(b) of the DM Act, in particular: (i) ensure public safety or public order; and (iii) prevent or minimise property loss or damage, or damage to the environment. In particular, section 112 of the DM Act applies if a person enters a place and may: (c) remove any thing from the place; (d) destroy or damage premises, a vehicle, container or other thing; and (f) direct another person to leave, or not to enter, an area in or near the place if the person considers the direction is necessary to protect a person's life or health.

(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

The purpose of limiting the right by depriving a person of property (or access to) under the relevant powers is to minimise the risk of transmission of COVID-19 to vulnerable persons.

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

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 to have the virus.

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

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.

(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, 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 and life outweighs the harm caused to person's right to be deprived of property under these circumstances.

### **Privacy and reputation (section 25)**

(a) the nature of the right

Under the Regulation, the right described in the HR Act section 25(a) would be limited: A person has the right - not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

This right would be limited by exercising powers provided under section 76(2)(b) of the DM Act, in particular: (i) ensure public safety or public order; (ii) prevent or minimise loss of human life, or illness or injury to humans or animals; and (iii) prevent or minimise property loss or damage, or damage to the environment. In particular, section 112 of the DM Act applies if a person enters a place and may: (c) remove any thing from the place; (d) destroy or damage premises, a vehicle, container or other thing; and (f) direct another person to leave, or not to enter, an area in or near the place if the person considers the direction is necessary to protect a person's life or health.

(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

The purpose of limiting the right to a person's privacy is to mitigate against the risk of transmission of COVID-19.

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

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 to have the virus.

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

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.

(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, 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 and life outweighs the harm caused to person's right to privacy under these circumstances.

### **Right to liberty and security (section 29)**

(a) the nature of the right

The part of section 29 of the HR Act relevant under the Regulation is the statement: "A person must not be subjected to arbitrary arrest or detention."

Under the Regulation, this right would be limited by exercising powers provided under section 76(2)(b) of the DM Act, in particular: (i) ensure public safety or public order; and (iii) prevent or minimise property loss or damage, or damage to the environment. In particular, section 112(2) of the DM Act applies to provide for a person to take reasonable steps to avoid imminent risk of death or injury of a person and (3)(f) direct another person to leave, or not to enter, an area in or near the place if the person considers the direction is necessary to protect a person's life or health.

- (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

The purpose of limiting persons identified with or suspected of having COVID-19 from circulating freely amongst the general public is to address the increased risks to vulnerable persons in relation to transmission of the virus.

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

The limitation of human rights is necessary to ensure that officials can implement effective containment and mitigation measures in response to the COVID-19 pandemic. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons who may develop complications or otherwise require emergency or life-sustaining treatment.

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

Due to the transmission risks of this virus, there are no less restrictive and reasonably available ways to achieve the purpose.

- (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, 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 and life outweighs the harm caused to person's liberty in these circumstances.

## Conclusion

I consider that the Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation 2020 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.

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MINISTER FOR FIRE AND EMERGENCY SERVICES