

Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation (No. 3) 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 (No. 3) 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 (No. 3) 2020, 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 DM Act for the whole of the State of Queensland.

The disaster declaration was extended by regulation on 2 April 2020 and further extended by regulation on 16 April 2020 and 30 April 2020, pursuant to section 72 of the DM Act. Unless further extended by regulation pursuant to section 72, or declaration pursuant to section 72A, of the DM Act, the disaster situation ends on 14 May 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 DM 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

Section 19 of the HR Act provides that 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.

The regulation to extend the disaster situation may limit a person's right to freedom of movement because it allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area for the disaster situation (s77(1)(a) of the DM Act).

(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 is to protect the health and safety of the community by preventing or slowing the spread of COVID-19. Reducing the movement of persons, and thus instances of human to human contact, reduces exposure and the risk of spread of the virus.

(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. 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.

(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 outweighs the harm caused to a person's freedom of movement.

Peaceful assembly and freedom of association (section 22)

(a) the nature of the right

Section 22 of the HR Act provides that every person has the right of peaceful assembly. The nature of this right would allow for persons to assemble in large groups in public places.

The regulation to extend the disaster situation may limit a person's right to peaceful assembly and freedom of association because it allows for powers to be exercised that include controlling the movement of persons into, out of, or around the declared area for the disaster situation (s77(1)(a) of the DM Act). The result of the exercise of this power may be dispersal of groups of persons.

(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, consistent with multi-tier government requirements relating to mass gatherings during the 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 of reducing the risk of human to human transmission of COVID-19 by providing for dispersal of groups of persons that may accelerate transmission.

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

Property rights (section 24)

(a) the nature of the right

Section 24(2) of the HR Act provides that a person must not be arbitrarily deprived of the person's property. This clause is based upon Article 17 of the Universal Declaration of Human rights (UDHR), which states in part that no one shall be arbitrarily deprived of their property.

The regulation to extend the disaster situation may limit a person's property rights because it allows for powers to be exercised that include removing, dismantling, demolishing or destroying a vehicle, building or other structure in the declared area or removing or destroying an animal, vegetation or substance within the declared area (s77(1)(g) and (h) of the DM Act).

(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 any deprivation of a person of their property 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 mitigating against any means of transmission.

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

Due to the concerns relating to transmission of COVID-19, 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 outweighs the harm caused to person's right not to be deprived of property.

Privacy and reputation (section 25)

(a) the nature of the right

Section 25 of the Human Rights Act 2019 provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. A person also has the right not to have their reputation unlawfully attacked.

The regulation to extend the disaster situation may limit a person's right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with as it allows for powers to be exercised that include entering a place in the declared area (s77(1)(d) of the DM Act). The result of the exercise of this power may be to interfere with a person's home or privacy.

(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 by ensuring appropriate social distancing.

(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 of having, 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 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 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

Section 29 of the *Human Rights Act 2019* provides that a person must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law.

The regulation to extend 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 for the disaster situation (s77(1)(a) of the DM Act). The exercise of these powers may result in a person being deprived of their liberty for a period of time.

(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 depriving a person of their liberty is to limit persons identified with or suspected of having COVID-19 from circulating freely amongst the general public, in order to reduce the risks of 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 from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons.

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

Due to the transmission risks 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 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 a person's liberty in these circumstances.

Conclusion

I consider that the Disaster Management (Further Extension of Disaster Situation–COVID-19) Regulation (No. 3) 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.

CRAIG CRAWFORD
MINISTER FOR FIRE AND EMERGENCY SERVICES

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