

# Planning (COVID-19 Emergency Response) 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*, I, Cameron Dick, Treasurer, Minister for Infrastructure and Planning, provide this human rights certificate with respect to the Planning (COVID-19 Emergency Response) Regulation 2020 made under the following legislation

- *COVID-19 Emergency Response Act 2020*; and
- *Planning Act 2016*

In my opinion, the *Planning (COVID-19 Emergency Response) Regulation 2020*, 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

The *COVID-19 Emergency Response Act 2020* (COVID-19 Act) and its modification framework was introduced to Parliament on 22 April 2020 and assented on 23 April 2020 (and further amended on 25 May 2020) to address emerging issues being experienced as result of the COVID-19 public health emergency.

Section 5(4) of the COVID-19 Act allows a Minister to recommend to the Governor in Council the making of an extraordinary regulation under the Act only if are satisfied the regulation is necessary for a purpose of the Act.

Of importance to the planning framework, a key purpose of COVID-19 Act is to facilitate the continuance of public administration, disrupted by the COVID-19 emergency including by easing regulatory requirements.

The recent announcement that several regional and community newspaper publications will become digital-only publication or close as a result of COVID-19 will make it difficult for statutory requirements in relation to public notifying development applications and change applications to be met.

Additionally, as a result of social distancing requirements, work from home arrangements and reduced staff resourcing and capacity, local governments and other entities key to the successful operation of the planning framework cannot meet statutory obligations to make available certain planning and development related documents for inspection and purchase, or inspection only, by those who wish to comment on proposed planning and development related matters.

In light of these disruptions, the objective of the *Planning (COVID-19 Emergency Response) Regulation 2020* (extraordinary regulation) is to grant necessary relief from the statutory

requirements under the *Planning Act 2016* (Planning Act) that are impacted upon by the COVID-19 public health emergency.

The extraordinary regulation modifies provisions in the Planning Act and its associated statutory instruments until 31 December 2020, to:

- provide alternative arrangements for public notification of development applications and change applications under the Planning Act, to recognise social distancing measures and the closures of local newspapers (particularly in rural areas) to ensure continued public involvement in the development assessment process; and
- provide for alternative arrangements to existing Planning Act requirements for planning authorities to keep and make documents physically available for inspection and purchase, or inspection only, in recognition of the health and safety restrictions in place.

These provisions are temporary and only apply for the duration of the COVID-19 Act (currently expires 31 December 2020).

## **Human Rights Issues**

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

Section 21 of the Human Rights Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The human right of freedom of expression is furthered by the extraordinary regulation as alternative public notification arrangements provided by the extraordinary regulation are designed to overcome difficulties arising from social distancing and workforce disruption and disruption to local and regional newspapers. It is considered these provisions will allow for greater public awareness and the ability to make a submission on planning and development related matters during the COVID-19 public health emergency.

Public notification gives a person an opportunity to make submissions about a development application and secures for that person the right of appeal to the court about the assessment manager's decision. Public involvement in the planning and development assessment system is an essential component of the system.

The regulation also provides modified requirements for physical access to documents that ensure planning and development assessment documents and information remains publicly accessible despite any health and safety restrictions in place.

Overall, the modified public notification arrangements promote and increase public awareness of planning and development related matters.

## Conclusion

I consider that the *Planning (COVID-19 Emergency Response) Regulation 2020* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

**THE HONOURABLE CAMERON DICK MP**  
TREASURER, MINISTER FOR INFRASTRUCTURE AND PLANNING

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