

# Economic Development (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, Kate Jones, Minister for State Development, Tourism and Innovation provide this human rights certificate with respect to the *Economic Development (COVID-19 Emergency Response) Regulation 2020* made under the *COVID-19 Emergency Response Act 2020* and the *Economic Development Act 2012*.

In my opinion, the *Economic Development (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* (the COVID-19 Act), and its modification framework were introduced into Parliament on 22 April 2020 and assented to on 23 April 2020 to address emerging issues being experienced and expected to continue, during and while recovering from the COVID-19 public health emergency (COVID-19 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 satisfied the regulation is necessary for a purpose of the COVID-19 Act.

One of the main purposes of COVID-19 Act relevant to Queensland's planning framework is to facilitate the continuance of public administration disrupted by the COVID-19 emergency, including by easing regulatory requirements.

Recent events (including social distancing, disruption of many local and regional newspapers and working from home arrangements) have demonstrated that public administration under Queensland's planning framework is impacted during the COVID-19 emergency event. The *Economic Development Act 2012* (the ED Act) represents a significant component of Queensland's planning framework by providing for a streamlined planning and development assessment system that applies to particular parts of the State declared as Priority Development Areas (PDAs).

This system under the ED Act is administered by the Minister for Economic Development Queensland (the MEDQ) and generally parallels the system under the *Planning Act 2016*. For example, PDA development applications are made for PDA development approvals and applications may require public notification involving placing a notice in a newspaper and on the subject land, and giving a notice to adjoining owners.

In light of the disruptions arising from the COVID-19 emergency, the objectives of the *Economic Development (COVID-19 Emergency Response) Regulation 2020* (the ED COVID-19 Regulation) are to protect the health, safety and welfare of persons affected by the COVID-19 emergency, and facilitate the ongoing effective operation of the ED Act component of the planning framework by easing regulatory requirements and allowing for flexible responses in managing disruptions caused by the COVID-19 emergency and social

distancing measures.

The ED COVID-19 Regulation modifies provisions in the ED Act by:

- providing alternative arrangements for the inspection and purchase of hardcopies of documents, in recognition of health and safety restrictions – by providing for inspection at an agreed time and place; and
- providing additional options to placing a notice in a newspaper for notifying PDA development applications and amendment applications, in recognition of closures of local hard-copy newspapers –
  - if a local hard copy newspaper is not circulating in the locality of the land that is the subject of the application, by publishing a notice in an online local newspaper for the locality, and
  - if there is no online local newspaper, by using one of the following options: publishing a notice in a hard copy or online state or national newspaper, giving a notice to the occupier of each lot in the identified area for the application, or publishing a notice on the relevant State or local government website.

These provisions are temporary and apply during the ‘response period’, defined as starting on commencement of the ED COVID-19 Regulation and ending on 31 December 2020.

## 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 under the *Human Rights Act 2019* that are relevant to the ED COVID-19 Regulation are the right to freedom of expression (section 21).

For the reasons outlined below, I am of the view that the ED Regulation is compatible with each of these human rights.

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

#### *Right to freedom of expression (section 21)*

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

Section 21 of the *Human Rights Act 2019* 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 ED COVID-19 Regulation as it provides for alternative options for public notification of PDA development applications to overcome difficulties arising from the closure or change to online-only publication of 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 emergency.

Similarly, the provision in the ED COVID-19 Regulation to make alternative arrangements for viewing of documents by the public at an agreed time and place ensures the freedom to seek and receive information is maintained when health and safety restrictions of the COVID-19 emergency impact on public movement and workforces, and affect opening hours of assessing authorities.

(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

As stated in (a) above, the human right of freedom of expression is furthered by the modifying provisions of the ED COVID-19 Regulation. Some limitation on freedom of expression arises only from the requirement to making prior arrangements to view documents.

The community expectation would be for the planning framework to respond to and not be restrictive during emergency circumstances. The proposal ensures community needs can be practically met during the COVID-19 emergency.

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

The limitation on freedom of expression by making prior arrangements to view documents is justifiable to respond to the impact of the COVID-19 emergency on public movement and workforces, and the opening hours of assessing authorities.

The ED COVID-19 Regulation also provides that the alternative arrangements only apply if the MEDQ is satisfied that they are necessary to protect the health, safety and welfare of the public affected by the COVID-19 emergency or to facilitate the continuance of public administration disrupted by the COVID-19 emergency. This recognises that if social distancing measures end before the ED COVID-19 Regulation expires on 31 December 2020, then the modified requirements are no longer appropriate.

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

Given the purpose of the ED COVID-19 Regulation is to respond to the challenges arising from the COVID-19 emergency, there are no other more reasonable available ways to achieve this 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

The need to provide for good public administration, remove regulatory burden and provide certainty to the planning framework during the COVID-19 emergency, reasonably and demonstrably justifies the negative impact to the human right to freedom of expression.

## Conclusion

I consider that the *Economic Development (COVID-19 Emergency Response) Regulation 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with 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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