

Youth Justice (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 (HR Act)*, I, Dianne Farmer MP, Minister for Child Safety, Youth and Women and Minister for the Prevention of Domestic and Family Violence provide this human rights certificate with respect to the *Youth Justice (COVID-19 Emergency Response) Regulation 2020* made under the *COVID-19 Emergency Response Act 2020 (COVID-19 Act)* and the *Youth Justice Act 1992 (the YJ Act)*.

In my opinion, the *Youth Justice (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 Act provides for Ministers and their agencies to make extraordinary regulations and (in very limited circumstances) statutory instruments across a range of categories in response to the COVID-19 public health emergency.

The Act facilitates the making of extraordinary regulations and statutory instruments in the categories of:

- statutory time limits;
- proceedings of courts and tribunals; and
- attendance at places or meetings, making and associated use of documents, and physical presence requirements.

Currently, under Part 3, Division 2 of the YJ Act, participants of restorative justice conferences are required to sign and immediately be given a copy of a conference agreement.

Under social distancing requirements put in place in response to the COVID-19 health emergency, it has not been possible to comply with these provisions for some conference agreements. While restrictions are in place under the health emergency, compliance will remain challenging.

To ensure conference agreements made during the COVID-19 health emergency remain valid, the *Youth Justice (COVID-19 Emergency Response) Regulation 2020* retrospectively and temporarily provides an alternative method to be taken as compliance with the relevant provisions of the YJ Act. Agreement can be noted on the agreement document rather than participants needing to physically sign, and copies of the agreement may be given to relevant people ‘promptly’ rather than ‘immediately’. In practice, copies will be emailed or posted, in accordance with the preference of the recipient.

Section 8 of the *COVID-19 Act* enables a regulation-making power relating to particular meetings to have retrospective operation to a day not earlier than 19 March 2020.

Human Rights Issues

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

Some children who are referred to conferences will have been convicted of the offence(s) to which the conference relates. The subordinate legislation therefore engages the right in section 33(3) of the *Human Rights Act 2019*, which provides that a child who has been convicted of an offence must be treated in a way that is appropriate for the child's age.

However, the subordinate legislation does not limit the right because the alternative method it provides for compliance with the YJ Act is appropriate for children. In practice, the convenor will ensure all child participants in a conference – regardless of whether they have been convicted and regardless of whether they are the offender, the victim, or another participant – fully understand what is happening and are in all other respects treated in a way that is appropriate for the child's age.

As the subordinate legislation does not limit any human rights it is not necessary to consider section 13 of the *Human Rights Act 2019*.

Conclusion

I consider that the *Youth Justice (COVID-19 Emergency Response) Regulation 2020* is compatible with the *Human Rights Act 2019* because it does not limit a human right.

DI FARMER MP
Minister for Child Safety, Youth and Women
Minister for Prevention of Domestic and Family Violence