

Electoral Amendment 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, Yvette D'Ath, Attorney-General and Minister for Justice, Leader of the House, provide this human rights certificate with respect to the *Electoral Amendment Regulation 2020* (the Amendment Regulation) made under the *Electoral Act 1992* (the Electoral Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (the HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 30 June 2020, the *Electoral and Other Legislation (Accountability, Integrity and Other Matters) Amendment Act 2020* (the Amendment Act) received assent.

The Amendment Regulation amends the *Electoral Regulation 2013* (the Electoral Regulation), as a consequence of the Amendment Act, to:

- make consequential amendments in relation to policy development payments to accurately refer to the relevant formula and persons entitled in the Electoral Act;
- omit a redundant provision specifying the day for entities to give returns about large gifts to registered political parties under section 266B of the Electoral Act (repealed from 1 August 2020);
- expand the existing requirement in section 10A of the Electoral Regulation for an associated entity of a registered political party to provide a return about a gift received within the timeframes prescribed, so that it also applies to loans received, and also applies to an associated entity of a candidate in an election;
- update a reference from the Institute of Chartered Accountants in Australia to Chartered Accountants Australia and New Zealand; and
- prescribe information and particulars that must be included in:
 - an election participant's register of non-monetary gifts under section 305F of the Electoral Act;
 - a registered political party's register of subscribed members and affiliates under section 305G of the Electoral Act; and
 - records under section 305AB in relation to prescribed matters relevant to part 11 of the Electoral Act.

Human Rights Issues

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

I consider the following human rights to be relevant to the Amendment Regulation:

- right to take part in public life (section 23 of the HR Act);
- right to privacy and reputation (section 25 of the HR Act); and
- freedom of association (section 22 of the HR Act).

I consider the right to take part in public life is promoted by the expansion of disclosure requirements to associated entities of candidates in an election, and to cover both gifts and loans received. This is because the transparency to voters concerning those providing such loans to associated entities is improved and therefore voters are able to access this information and be better informed in exercising their franchise. However, I consider that the right to privacy and reputation and freedom of association are limited by the expansion of disclosure requirements. These amendments are discussed in further detail below.

I consider that the right to privacy and reputation and freedom of association are also limited by the amendments that prescribe information and particulars that must be kept in registers and records. These amendments are also discussed in further detail below.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*) – expansion of disclosure requirements for associated entities

(a) the nature of the right

The Electoral Regulation currently requires the associated entity of a registered political party to provide a return about a gift received within the timeframes prescribed. The Amendment Regulation will expand this so returns must also be provided about loans received (other than those from a financial institution), and must also be provided by an associated entity of a candidate in an election (in relation to both gifts and loans). A gift or loan must meet the threshold of \$1,000 or more for a return to be required. The return must state the amount and relevant particulars, including the name and address of the person or entity who gave the gift or loan. For a loan, the terms and conditions must also be included in the return. The return is then published on the Electoral Commission of Queensland (ECQ) website, with street addresses being deleted, or the entire address being deleted if an individual is a silent elector and the ECQ is informed of this.

An associated entity of a registered political party is an entity that is:

- controlled by a party or group of endorsed candidates of the party;
- operates wholly, or to a significant extent, for the benefit of the party or a group of endorsed candidates of the party; or
- operates for the dominant purpose of promoting the party or group of endorsed candidates in elections.

An associated entity of a candidate in an election is an entity that is:

- controlled by a candidate in relation to the election;
- operates wholly, or to a significant extent, for the benefit of the candidate in relation to the election; or
- operates for the dominant purpose of promoting the candidate in the election.

The right to privacy and reputation protects the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Part of the concept of privacy is also the right to personal autonomy as a human being, and to not be subjected to unwarranted and unreasonable intrusions on this. People also have the right not to have their reputation unlawfully attacked.

By expanding disclosure as described, the right to privacy and reputation is limited because it makes publicly available personal information about those who give gifts or make loans to an associated entity of a registered political party or candidate.

The right to freedom of association protects the rights of individuals to join together with others to formally pursue a common interest.

By expanding disclosure as described, freedom of association is limited because information about a person's association, through the provision of a gift or loan to an associated entity of a registered political party or candidate in an election is made publicly available.

(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 the limitation imposed by the expansion of disclosure requirements for associated entities is to provide transparency and inform the public, including voters, about the financial dealings of associated entities of registered political parties and candidates in an election. This will assist voters to form judgements about registered political parties and candidates with a defined relationship with their associated entities, as the financial dealings of those associated entities may involve potential for improper, corrupting or undue influence. It will also assist the ECQ in ensuring electoral participants are complying with the donation caps.

This purpose is consistent with a free and democratic society as providing transparency for voters provides them with information in order to form their political judgements prior to casting their votes. Further, maintaining the integrity of the donation caps will increase public confidence in democracy.

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

The limitations on the rights help achieve the purpose. The expanded disclosure arrangements will allow voters to be informed through returns about those who provide amounts equal to or above the disclosure threshold to associated entities of registered political parties and

candidates in an election where there may be potential for improper, corrupting or undue influence.

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

There are no less restrictive reasonably available ways to achieve the purpose. The Amendment Regulations limit the restrictiveness of the measures so that that disclosure is only required where the amount of a gift or loan received by an associated entity is \$1,000 or more and where there is increased potential for improper, corrupting or undue influence.

The impact on the right to privacy and reputation is limited due to safeguards in the Electoral Act which require the ECQ to delete the street address of any individual identified in the return, and the full address of a silent elector where the person giving the return informs the ECQ of the silent elector status. The deletion of street addresses will limit the publicly available address information to the suburb, town, city or other locality and State.

(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, taking into account the nature and extent of the limitation on the right to freedom of association and the right to privacy and reputation, I consider that the purpose of providing transparency and informing the public in exercising their voting choices outweighs the negative impact that the disclosure required has on freedom of association and the right to privacy and reputation.

(f) any other relevant factors

Not applicable.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*) – prescribing particular information that must be kept as records and in registers

(a) the nature of the right

The Amendment Regulation will prescribe specific information and particulars that must be kept as records and in registers under the Electoral Act. These records may be subject to audit by an appointed auditor or subject to the specific functions and powers of authorised officers for compliance activity, as enabled under the Electoral Act.

The right to privacy and reputation protects the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Part of the concept of privacy is also the right to personal autonomy as a human being, and to not be subjected to unwarranted and unreasonable intrusions on this. People also have the right not to have their reputation unlawfully attacked.

By specifying information to be kept as records and in registers, the right to privacy and reputation is limited because it may make personal information contained in those records and registers available to an appointed auditor or authorised officer who is undertaking compliance activity in relation to part 11.

The right to freedom of association protects the rights of individuals to join together with others to formally pursue a common interest.

By specifying information to be kept as records and in registers, freedom of association may be limited because information contained in those records and registers, which can reveal a political association, may be made available to an appointed auditor or authorised officer who is undertaking compliance activity in relation to part 11.

(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 the limitation imposed by the prescribed information that must be kept in records and registers is to allow compliance with part 11 of the Electoral Act concerning funding and disclosure arrangements, including financial disclosure, caps on political donations and electoral expenditure and related State campaign account requirements, to be ascertained through audit and compliance activity and detected non-compliance can be appropriately prosecuted.

This purpose is consistent with a free and democratic society as ensuring compliance with part 11 of the Electoral Act supports its underlying objectives. These include providing transparency to voters in exercising their voting choices through financial disclosure, limiting scope for improper, corrupting or undue influence through donations caps, and levelling the playing field for electoral campaigning and ensuring that an individual or entity has a reasonable opportunity to communicate to influence voting in an election without ‘drowning out’ the communication of others through electoral expenditure caps.

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

The limitations on the rights help achieve the purpose. Prescribing the particular information that must be kept in records and registers ensures that the information necessary to assess compliance is required to be kept, and therefore compliance is able to be ascertained through audit and compliance activity.

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

There are no less restrictive reasonably available ways to achieve the purpose. The prescribed information is limited to that which is necessary to allow audit and compliance activity to occur and is directly related to particular requirements of part 11 of the Electoral Act.

No modifications to existing privacy safeguards are provided for by the Amendment Regulation. There is also a specific additional safeguard in the Electoral Act which prohibits the ECQ from publishing or otherwise making available for public inspection, information about the membership of a political party. This ensures that right to privacy and reputation and freedom of association cannot be impacted further by making such information publicly available given the sensitivity of this information.

- (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, taking into account the nature and extent of the limitation on the right to freedom of association and the right to privacy and reputation, I consider that the purpose of allowing compliance with part 11 of the Electoral Act to be ascertained through audit and compliance activity outweighs the negative impact that the requirements to be kept as records and in registers has on freedom of association and the right to privacy and reputation.

- (f) any other relevant factors

Not applicable.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it does limit, restrict or interfere with human rights, but those limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Leader of the House