

Local Government Legislation Amendment Regulation (No. 1) 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, the Honourable Stirling Hinchliffe MP, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs provide this human rights certificate with respect to the *Local Government Legislation Amendment Regulation (No. 1) 2020* (the Regulation) made under the *City of Brisbane Act 2010* (COBA) and the *Local Government Act 2009* (LGA).

In my opinion, the Regulation, as tabled in the Legislative Assembly, 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

The Regulation amends the *City of Brisbane Regulation 2012* (CBR) and the *Local Government Regulation 2012* (LGR) to:

- support the financial sustainability of Local Governments during the COVID-19 public health emergency by allowing additional rating decisions to be made during the 2020-2021 financial year
- remove the financial burden on Local Governments to buy land following an unsuccessful auction when recovering overdue rates or charges and instead provide Local Governments with further opportunities to sell the land to recover the overdue rates or charges
- ensure the Minister is able to notify the Auditor-General and Treasurer of notifiable events for controlled entities of Local Governments as required under the *Auditor-General Act 2009*
- ensure the Minister is notified of any changes in the governing documents of controlled entities of Local Governments
- improve transparency and accountability of the audited financial statements of controlled entities of Local Governments
- reduce the overall advertising costs of Local Governments by replacing print newspaper advertising with more appropriate alternatives which will allow for greater public awareness and achieve a wider reach of the intended audience
- improve public accessibility to particulars of a Councillor's current interests on the Local Government's website
- continue the provision and maintenance of amenities that will enhance visitors' experience, enjoyment and environmental understanding of the Kuranda area
- streamline Queensland Rail's administrative obligations in relation to the Kuranda rail line by prescribing consistent payment and reporting timeframes.

Human Rights Issues

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

The below content only addresses the amendments in the Regulation where human rights under the HR Act are considered to be relevant (that is, it does not address all amendments in the Regulation).

In my opinion the human rights relevant to the Regulation are:

- freedom of expression (section 21 of the HR Act)
- property rights (section 24 of the HR Act).

Notice requirements for Local Governments

Freedom of expression (section 21 of the HR Act)

Section 21 of the HR 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 right to freedom of expression is promoted by the amendments to modernise Local Government advertising requirements to reflect contemporary means of communication by replacing print newspaper advertising with more appropriate alternatives, including on-line publication. The amendments will promote greater public awareness about the following matters where a Local Government is required to:

- advertise an auction notice or sales notice for the sale of land by the Local Government to recover overdue rates or charges
- give public notice of a proposed resolution to choose a strategic approach to the Local Government's contracts
- advertise invitations for tenders or expressions of interest for particular contracts, invitations for expressions of interest from persons for inclusion on an approved contractor list, invitations for tenders from suppliers to be on a register of pre-qualified suppliers and invitations for persons to tender for a preferred supplier arrangement
- publish details of a decision about remuneration payable to Brisbane City Council Councillors.

As the readership of print newspapers is declining, providing alternatives to advertising such as on-line publication will allow information about the listed matters to be accessible to more people which will give them the opportunity to engage with the Local Government about those matters.

Consideration of reasonable limitations on human rights (section 13 HR Act)

Local Governments may make additional rating decisions for the 2020-21 financial year

Property rights (section 24 of the HR Act)

(a) the nature of the right

The Regulation amends the CBR and LGR to:

- provide that, for the 2020-2021 financial year, a Local Government may decide, by resolution made other than at the budget meeting for the financial year, what rates and charges are to be levied for the period of the financial year starting on a day not earlier than the day the resolution is made and ending on 30 June 2021
- apply the provisions of the CBR and LGR in relation to an extraordinary decision as if it were made at the budget meeting for the 2020-2021 financial year
- provide that the annual budget must be amended at the meeting at which the extraordinary decision is made and the amended budget must be adopted
- provide that the amended budget must comply with section 160 of the CBR or section 169 of the LGR (Preparation and content of budget) and with the Local Government's extraordinary decision
- provide for minor technical amendments.

The amendments limit the right to property.

The right to property protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes the protection from the deprivation of property. The term 'deprived' is not defined by the HR Act, however deprivation in this sense is considered to include the substantial restriction on a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). The right does not provide a right to compensation.

Property is likely to include all real and personal property interests recognised under general law (for example, interests in land, contractual rights and shares) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude).

The concept of arbitrariness in the context of the right to property carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.

The proposal to permit Local Governments to decide rates and charges outside budget meetings could limit property rights, as Local Governments may acquire land where there are overdue rates and charges on land in a Local Government area that are unpaid for a period of time, under the CBR and LGR. If rates and charges are increased, this may result in additional overdue rates and charges for ratepayers.

(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 amendment and limitation on the identified right is to ensure Local Governments are able to respond quickly to the potential economic impacts on their financial sustainability of the COVID-19 public health emergency.

Local Governments have limited capacity to receive revenue and rely on revenue from either State Government funding or levying rates and charges. It is important that Local Governments have the flexibility to revisit their rates and charges decisions to adapt to changing economic conditions to maintain their financial sustainability.

This is consistent with a free and democratic society as the financial sustainability of Local Governments ensures they are able to provide important community services to their constituents and continue the representation of the will of their electors.

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

The amendments will provide the required flexibility to ensure that Local Governments are able to revisit rates and charges decisions with a view to safeguarding revenue as they respond to the COVID-19 crisis, if it becomes necessary for the 2020-2021 financial year. This will help to achieve the purpose by limiting the period in which rates and charges decisions can be revisited to the current financial year to safeguard revenue.

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

The Regulation is necessary to provide a process for allowing Local Governments to revisit their rates and charges decisions so that they can be responsive to the changing economic conditions caused by COVID-19 and the impact on their operations. There are no reasonable alternatives available that will allow Local Governments to respond effectively to the economic impact on their financial sustainability due to their limited sources of revenue.

The Regulation is confined to the 2020-2021 financial year and will expire on 30 June 2021. A decision made under the Regulation will only apply prospectively from the day the decision is made, to ensure decisions about rates and charges are not applied retrospectively.

(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, the importance of ensuring the financial sustainability of Local Governments in the context of the COVID-19 emergency outweighs the potential limitation on property rights that may occur if Local Governments increase rates and charges during the 2020-2021 financial year.

Sale of land to recover overdue rates or charges

Property rights (section 24 of the HR Act)

(a) the nature of the right

Section 97(2) of the COBA and section 95(2) of the LGA provide that overdue rates and charges are a charge on the land. Chapter 4, part 12 of the CBR and chapter 4, part 12 of the LGR currently provide a Local Government with the power to sell land to recover overdue rates or charges.

The Regulation amends the procedures for sale of land by a Local Government under chapter 4, part 12 of the CBR and chapter 4, part 12 of the LGR, by:

- removing the restriction that the Local Government may only enter into negotiations with the highest bidder at the auction and providing that the Local Government may enter into negotiations with any bidder who attended the auction
- replacing the current requirement that the price for the land under an agreement following an auction must be more than the highest bid for the land at the auction with a requirement that the price must not be less than the reserve price for the land
- remove the provision deeming the land to have been sold to the Local Government if it does not sell at auction or by subsequent negotiation
- providing that, if land fails to sell at the auction, the Local Government may decide to continue to offer the land for sale by a further auction or negotiation
- providing that the procedures for a sale by auction apply to the preparation and conduct of any further sale by auction
- requiring the Local Government to give notification of any further sale by negotiation to interested parties and the public, consistent with requirements for notification of an auction
- providing that the price for land offered for sale by negotiation must be at least the market value of the land or the higher of the amount of the overdue rates or charges or the value of the land, consistent with the reserve price for an auction
- providing that the procedures that currently apply for recording the transfer of the land to the purchaser following an auction also apply if the land is sold by negotiation
- providing that the Local Government must end the sale of land procedures one year after the notice of intention to sell the land was given to the registered owner if the land has not been sold or the overdue rates and charges and the expenses of attempting to sell the land have not been paid earlier
- providing that if the Local Government ends the procedures at the end of the one-year period, it is not prevented from deciding to commence a new sale of land procedure
- providing that if the land is not sold within the one-year period, the expenses incurred by the Local Government in relation to selling the land become overdue rates or charges at the end of that period
- providing that the amended procedures for the sale of land only apply to Local Government decisions to sell land made on or after commencement
- making minor technical amendments.

These amendments limit the right to property.

The nature of the right to property is outlined above under the heading '*Local Governments may make additional rating decisions for the 2020-21 financial year*'.

The right to property is limited to the extent that an owner of land is deprived of the land if they owe overdue rates or charges to a Local Government for a period of time and the Local Government sells the land to recover the overdue rates or charges.

(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 to be imposed on a person's property rights is to facilitate the recovery of overdue rates or charges by a Local Government to minimise the financial burden associated with current requirements that deem the land to have been sold to a Local Government if the land does not sell at auction.

This is consistent with a free and democratic society, as there is a reasonable expectation that money lawfully owed to a party is repaid or recovered. There is also an expectation from the public that rates or charges are paid by land owners to a Local Government to fund public services in the Local Government area (such as maintenance of roads) and for unpaid rates or charges to be recovered without adding to the financial burden of the Local Government so the quality and range of public services can be maintained.

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

The limitation imposed on property rights arises from the power of Local Governments to sell land to recover overdue rates or charges and will help to achieve the purpose of facilitating the recovery of overdue rates or charges by a Local Government.

The amendments minimise the financial burden on Local Governments associated with the current procedures for sale of land by removing the provision that deems land to have been sold to a Local Government if the land does not sell at auction. In addition, the amendments will allow the Local Government to continue to offer the land for sale by a further auction or negotiation for a period of one year after giving the notice of intention to sell the land to the registered owner if the land is not earlier sold or the overdue rates and charges are paid in full.

The amendments also retain the requirement for a Local Government to stop the sale of the land if it is paid the overdue rates or charges and all expenses incurred by it in attempting to sell the land. As a result, enabling a Local Government to continue the procedures for sale of land will mitigate the impacts of the limitation as it will provide the registered owner more time to pay the overdue rates or charges.

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

There are no less restrictive means reasonably available to achieve the purpose of facilitating the recovery of overdue rates or charges by a Local Government to minimise the financial burdens imposed by current requirements.

The limitation on property rights could be lessened by removing the ability of a Local Government to sell land to recover overdue rates or charges. However, this would remove one avenue for a Local Government to recover overdue rates or charges and allow the overdue rates or charges to continue to accrue along with interest. Although a Local Government has the option of initiating court proceedings to recover overdue rates or charges, this option could be

costly considering the time required for a court resolution and payment of associated legal and court fees, which would add to the financial burden of the Local Government and the registered owner of the land.

(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 property rights, and having regard to the information and analysis above, I consider that the purpose of facilitating a Local Government to recover overdue rates or charges by providing more options in how it may sell land outweighs the negative impact of the limitations.

Conclusion

I consider that the Regulation is compatible with the HR Act because although it limits, restricts or interferes with a human right, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

STIRLING HINCHLIFFE MP
Minister for Local Government,
Minister for Racing and
Minister for Multicultural Affairs

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