

Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2021

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, Mark Ryan, Minister for Police and Corrective Services and Minister for Fire and Emergency Services provide this human rights certificate with respect to the *Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2021* (the Regulation) made under the *Disaster Management Act 2003* (the DM Act).

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 DM Act provides for the overarching disaster management framework for Queensland and has as its main objects helping communities mitigate the potential adverse effects of an event; prepare for managing the effects of an event; and effectively responding to, and recovering from, a disaster or emergency situation.

Part 4 of the DM Act provides for declarations of a disaster situation. A disaster is defined as a serious disruption in a community, including the loss of human life, or illness or injury to humans, caused by the impact of an event, that requires a significant coordinated response by the State and other entities to help the community recover from the disruption.

On 29 January 2020, a public health emergency was declared for the whole of the State of Queensland under section 319 of the *Public Health Act 2005* (PH Act). On 12 March 2020, the World Health Organisation declared COVID-19 a global pandemic.

Under the DM Act, the Minister and the Premier may declare a disaster situation for the State, if satisfied a disaster is happening or likely to happen, for the purpose of preventing or minimising loss of human life or illness to humans. On 22 March 2020, a disaster situation was declared under section 69 of the DM Act in response to the global pandemic which also applied for the whole of the State of Queensland.

The disaster declaration was extended by regulation on 2 April 2020 and further extended by regulation on 16 April 2020, 30 April 2020, 14 May 2020, 28 May 2020, 27 August 2020, 1 October 2020 and 10 December 2020, pursuant to section 72 and section 138 of the DM Act. Unless further extended by regulation pursuant to section 72, or by declaration pursuant to section 72A, of the DM Act, the current disaster situation will end on 31 March 2021.

The DM Act provides for a range of powers (declared disaster powers) which may be exercised for a disaster situation by persons authorised under the Act, including police officers (disaster

officers). Emergency officers under the PH Act also have a range of emergency powers which may only be used in responding to a public health emergency.

There are many powers under the DM Act and PH Act that are similar in nature with respect to managing disaster situations and public health emergencies, for example both Acts provide a power to control or direct the movement of persons, animals and vehicles into, out of or around a declared area (section 77(1)(a) of the DM Act and section 345(1)(f) of the PH Act).

However, those provided for by section 77 of the DM Act generally relate more to broad area control within a declared disaster area including the power to give a direction to a person to regulate the movement of persons, animals and vehicles within a declared area. The powers under section 345 of the PH Act are aimed at individual emergency officers employing discretion to exercise powers they believe are reasonably necessary to respond to the public health emergency generally with respect to an individual person. In this regard, the powers under the DM Act are particularly useful for rapid response scenarios, for example to control or shut down access to communities or suburbs to control the spread of the virus in the event of an outbreak.

Of note, only the power under section 77(1)(o) of the DM Act enables a road to be closed to traffic. There is no corresponding power under the PH Act. The availability of this power as part of the declared disaster situation for COVID-19 was crucial in the early stages of the pandemic response to quickly implement to the Commonwealth Chief Medical Officer's advice on actions to protect remote communities where residents were more vulnerable to the impacts of COVID-19. In this case, police were able to establish vehicle check points to restrict entry to communities under the DM Act (including hard road closures) to mitigate risks of the virus spreading to these communities where comorbidities were higher and health and medical services were less accessible.

More recently, vehicle checkpoints were reinstated as a State border control strategy in late December 2020 with the CHO's declaration of local government areas in Greater Sydney as COVID-19 hotspots. A combination of static vehicle interception sites, hard road closures and roaming patrols were used to give effect to the State border restrictions imposed under the PH Act. These vehicle checkpoints were removed when Greater Sydney was undeclared as a COVID-19 hotspot on 1 February 2021.

As at 23 February 2021, the World Health Organisation reported that there have been over 110 million cases of COVID-19 and over 2.4 million deaths globally, reflecting an increase of almost 2.5 million cases in the seven days prior to 15 February 2021, with over 66,000 of those cases resulting in death. Within Australia, the Commonwealth Government Department of Health reported 28,930 cases and 909 deaths and Queensland Health has recorded 1,323 cases and 6 deaths as of 22 February 2021.

Despite the relatively low number of cases within Queensland, the potential for community transmission of COVID-19 will remain as long as the virus circulates in Australia and until a vaccine or treatment becomes widely available. Australia's first confirmed case of a more highly contagious strain of COVID-19 was detected in the Brisbane community on 7 January 2021. In response, on 8 January 2021, the CHO imposed public health directions, including

lockdown measures for people in the Brisbane, Moreton Bay, Ipswich, Redlands and Logan local government areas.

Therefore, there is a continuing need to respond rapidly to emerging situations to meet public health objectives while balancing the social and economic needs of the community.

To ensure that declared disaster powers under the DM Act continue to be available to operationalise the Government's response to the COVID-19 emergency, the Regulation extends the disaster declaration for a further 90 days until the end of the day on 29 June 2021.

The DM Act requires the Minister and the Premier to end the disaster situation if they are satisfied that it is no longer necessary for declared disaster powers to be exercised for the disaster situation.

Human Rights Issues

Human rights relevant to the Regulation (Part 2, Division 2 and 3 *HR Act 2019*)

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

- Right to life (section 16)
- Freedom from forced work (section 18)
- Freedom of movement (section 19)
- Peaceful assembly and freedom of association (section 22)
- Property rights (section 24)
- Privacy and reputation (section 25)
- Right to liberty and security (section 29).

I note that extending the total period for which the disaster declaration may continue in force only applies in the context of the COVID-19 pandemic and will not have any broader application.

The powers and provisions under the DM Act are complementary to the relevant powers under the PH Act and have been used to give effect to the public health directions made under the emergency powers given to the CHO under the PH Act. The public health directions have imposed limitations on human rights by, for example, imposing quarantine requirements and requirements for a person to stop using a place for a stated purpose. These limitations are discussed in the Human Rights Certificate relating to the extension of the public health emergency declaration.

Freedom from forced work (section 18)

Section 18 of the HR Act provides that a person must not be held in slavery or servitude and must not be made to perform forced or compulsory labour. The declared disaster powers include a requirement for a person to give a disaster officer reasonable help to exercise the officer's powers.

Because of the need for persons exercising powers for the COVID-19 disaster to be trained in containment of the spread of the virus and to wear appropriate protective equipment, it is not considered reasonably foreseeable that this direction will be given in relation to the

COVID-19 declared disaster. Also, it is noted that the HR Act provides that work or service required because of an emergency threatening the Queensland community or a part of the Queensland community does not constitute forced or compulsory labour.

Property rights (section 24)

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with other and that a person must not be arbitrarily deprived of the person's property.

This right may be engaged by the Regulation as the declared disaster powers under the DM Act include the power to remove, dismantle, demolish or destroy a building or other structure in the declared area; and the power to give a notice to the owner of any property directing the owner to put the property under the control, or at the disposal of a person stated in the notice.

The declared disaster powers are broad, to reflect the fact that they may be used to respond to a range of disaster situations, including natural disasters. The DM Act includes limitations on when the powers can be exercised including that they can only be exercised for the disaster situation and for specific purposes, such as where it is necessary to prevent or minimise loss of human life. It is not considered to be reasonably foreseeable that the powers relating to property will be exercised in relation to the COVID-19 disaster.

Consideration of reasonable limitations on human rights (section 13 *HR Act 2019*)

Freedom of movement (section 19), right to peaceful assembly and freedom of association (section 22) and right to liberty and security (section 29)

(a) the nature of the right

Freedom of movement

Section 19 of the HR Act provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it and has the freedom to choose where to live.

This means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right also includes the freedom to choose where to live, and freedom from physical and procedural barriers, like requiring permission before entering a public park or participating in a public demonstration in a public place. It also protects the rights of individuals to enter and leave Queensland.

Under the declared disaster powers, disaster officers are authorised to limit a person's freedom of movement by controlling the movement of persons in a declared disaster area and closing roads to traffic. The powers have also been used to operationalise border restriction controls to prevent persons from entering Queensland from another State or Territory or moving freely within Queensland, particularly from or to declared COVID-19 hotspots.

Right to peaceful assembly and freedom of association

Section 22 of the HR Act provides that every person has the right of peaceful assembly.

The right to peaceful assembly upholds the rights of individuals to gather together in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The right entitles persons to gather intentionally and temporarily for a specific purpose¹ and is considered essential for the public expression of a person's views and opinions. The protection of the right is limited to peaceful assemblies (and does not protect violent assemblies such as riots).

Under the DM Act, disaster officers are authorised to limit a person's right to peaceful assembly by controlling the movement of persons within, into, out of, or around the declared area for the disaster situation in line with health directions. For the COVID-19 disaster situation, the whole of the State of Queensland is the declared areas, so these powers may be exercised as required within Queensland. The result of the exercise of this power may be dispersal of groups of persons, including, for example, persons engaging in peaceful assemblies or other gatherings.

Right to liberty and security

Section 29 of the HR Act protects the right to liberty and security of the person.

The right to liberty and security of the person protects the personal physical liberty of all persons, including the right not to be arrested or detained except in accordance with the law.

The fundamental value which the right to liberty expresses is freedom, which is acknowledged to be a prerequisite for equal and effective participation in society. The right is directed at all deprivations of liberty including, but not limited to, imprisonment in correctional facilities or detention in hospitals. It may also include where persons are deprived of liberty through supervision, protection, treatment, guardianship or similar orders made under various legislative schemes.

The right also protects against arbitrary arrest and detention. The concept of arbitrariness carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.²

Under the disaster powers of the DM Act, officers are authorised to, limit a person's right to liberty by controlling the movement of persons within, into, out of, or around the declared area for the disaster situation and closing roads to traffic. For the COVID-19 disaster situation, the whole of the State of Queensland is the declared areas, so these powers may be exercised as required within Queensland. The exercise of these powers may result in a person being deprived of their liberty for a period of time, for example, if a person is required to stop at a border checkpoint for the purpose of checking their entry permit, this may constitute detention.

Manfred Nowak (2005) *United Nations Covenant on Civil and Political Rights: CCPR Commentary*, 2nd ed (NP Engel) 484.

WBM v Chief Commissioner of Police (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

(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 limiting the rights to freedom of movement, peaceful assembly and freedom of association and right to liberty and security is to protect the health and safety of the community by preventing or slowing the spread of COVID-19 by controlling the movement of persons.

Protecting the health and safety of the community is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

Section 16 of the HR Act provides that every person has the right to life and has the right not to be arbitrarily deprived of life. The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life.

The Regulation promotes the right to life by extending the declared disaster situation until 29 June 2021. The extension will authorise the use of declared disaster powers as required during this period to operationalise the Government's response to contain the spread of COVID-19.

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

The limitation helps achieve the purpose by limiting the exposure of the community to COVID-19 by controlling the movement and gathering of persons. The continuing authorisation to use the declared disaster powers will minimise instances of human to human contact in order to reduce exposure and the risk of spread of the virus. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons.

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

Due to the human to human transfer of the virus, there are no less restrictive and reasonably available ways to achieve the purpose other than by providing disaster officers with these powers under the DM Act. The powers under the DM Act are a necessary element to give effect to the government's obligation to take appropriate steps and adopt positive measures to protect life during the COVID-19 pandemic. They will be used, together with emergency powers authorised by the declaration of a public health emergency under the PH Act, to ensure that officials can implement effective and comprehensive containment and mitigation measures in response to the COVID-19 pandemic.

The Queensland and Commonwealth Governments are undertaking extensive communication campaigns to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. However, experiences in other countries have shown that voluntary containment measures are inadequate to arrest the spread of COVID-19. It is likely that, without the more prescriptive approach that is being taken in Queensland, a similar result would occur. The extension of the declared disaster situation, along with the extension to the declared public health emergency under the PH Act, are considered to be the least restrictive and reasonably available ways to achieve the purpose. The DM Act contains a number of safeguards to ensure that any potential limitation of human rights is no greater than necessary to respond to the disaster situation. These include:

- the declared disaster powers may only be exercised for the declared disaster situation (section 76(1) DM Act)
- the powers must be exercised only during the period of the disaster situation and for specific purposes, including to prevent or minimise loss of human life or illness or injury to humans and animals (section 76(2) DM Act)
- the declared disaster powers may only be exercised by a district disaster coordinator, a police officer, or another person authorised under the DM Act who is an ambulance officer, a fire officer, a health officer or another person who has the necessary expertise or experience to exercise the powers (section 75(1) and (2) DM Act)
- an authorisation to exercise the powers may be given on conditions or limited to particular groups of ambulance officers, fire officers, health officers or other persons (section 75(3) DM Act)
- a person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying (section 116 DM Act)
- the disaster response operations are coordinated by the State disaster coordinator in accordance with the State disaster management plan and other disaster management plans and guidelines under the DM Act (section 21C and Part 3 DM Act)
- the Premier and Minister must declare the end of the disaster situation if they are satisfied that it is no longer required (section 73 DM Act).

(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 the basis of the nature of the health emergency, protecting the health and safety of the community by preventing or slowing the spread of COVID-19 by controlling the movement of persons, the potential limitations are considered reasonable and justifiable. The declared disaster powers will be exercised in accordance with the safeguards in place under the DM Act to operationalise the public health directions of the CHO under the PH Act. The emergency powers of the CHO are also subject to safeguards in the PH Act, including that they may only be used to assist in containing or responding to the spread of COVID-19 within the community.

The use of the powers to date, including by instituting border control check points, has been a highly effective mechanism to minimise the risk of COVID-19 entering or circulating within Queensland.

If these measures are not implemented and an outbreak of COVID-19 occurs in Queensland which is unable to be contained through Government actions, the State's public health infrastructure could be overwhelmed and serious adverse health impacts, as well as negative economic and social impacts may result.

On balance, having regard to the nature and extent of the limitation on the right and the information detailed above, the importance of achieving the protection of a person's, or the public's, health outweighs the harm caused by the limitations on the human rights.

Privacy and reputation (section 25)

(a) the nature of the right

Section 25 of the HR Act provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation.

The right to privacy under the HR Act protects individuals against unlawful or arbitrary interferences with their privacy. The concept of lawfulness in the context of the right to privacy means that no interference can take place except in cases envisaged by the law. The concept of arbitrariness in the context of the right to privacy carries a human rights meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought’.³

Under the disaster powers of the DM Act, declared officers are authorised to limit a person’s right to privacy by entering people’s homes to ensure compliance with public health directions such as those relating to gatherings or social distancing.

(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 limiting the right to a person’s privacy is to protect the health and safety of the community by preventing or slowing the spread of COVID-19 by ensuring compliance with public health directions such as those relating to social distancing.

Protecting the health and safety of the community is a fundamental responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

Section 16 of the HR Act provides that every person has the right to life and has the right not to be arbitrarily deprived of life. The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life.

The Regulation promotes the right to life by extending the declared disaster situation until 29 June 2021. The extension will authorise the use of declared disaster powers as required during this period to operationalise the Government’s response to contain the spread of COVID-19.

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

The limitation helps achieve the purpose by reducing the risk of transmission of COVID-19, by limiting community contact and proximity to persons identified with, or suspected of having, the virus. This will minimise instances of human to human contact to reduce exposure and the risk of spread of the virus. These measures will protect Queenslanders where possible from exposure to COVID-19 and, in the event of significant community exposure, slow the rate of transmission, particularly to vulnerable persons.

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

Due to the concerns relating to contact and proximity of persons identified with or suspected of having COVID-19, there are no less restrictive or reasonably available ways to achieve the purpose other than by providing emergency officers with these powers under the DM Act.

The powers and disaster management framework under the DM Act are necessary elements to give effect to the Government's obligation to take appropriate steps and adopt positive measures to protect life during the COVID-19 pandemic. They will be used, together with emergency powers authorised by the declaration of a public health emergency under the PH Act, to ensure that officials can implement effective and comprehensive containment and mitigation measures in response to the COVID-19 pandemic.

The Queensland and Commonwealth Governments are undertaking extensive communications campaigns to educate members of the public about the risks of COVID-19 and how to minimise their potential exposure to infection. However, experiences in other countries have shown that voluntary containment measures are inadequate to arrest the spread of COVID-19. It is likely that, without the more prescriptive approach that is being taken in Queensland, a similar result would occur.

The extension of the declared disaster situation, along with the extension to the declared public health emergency under the PH Act, are considered to be the least restrictive and reasonably available ways to achieve the purpose. The DM Act contains a number of safeguards to ensure that any potential limitation of human rights is no greater than necessary to respond to the disaster situation. These include:

- the declared disaster powers may only be exercised for the declared disaster situation (section 76(1) DM Act)
- the powers must be exercised only during the period of the disaster situation and for specific purposes, including to prevent or minimise loss of human life or illness or injury to humans and animals (section 76(2) DM Act)
- the declared disaster powers may only be exercised by a district disaster coordinator, a police officer, or another person authorised under the DM Act who is an ambulance officer, a fire officer, a health officer or another person who has the necessary expertise or experience to exercise the powers (section 75(1) and (2) DM Act)
- an authorisation to exercise the powers may be given on conditions or limited to particular groups of ambulance officers, fire officers, health officers or other persons (section 75(3) DM Act)
- a person who fails to comply with a direction does not commit an offence if they have a reasonable excuse for not complying (section 116 DM Act)
- the disaster response operations are coordinated by the State disaster coordinator in accordance with the State disaster management plan and other disaster management plans and guidelines under the DM Act (section 21C and Part 3 DM Act)
- the Premier and Minister must declare the end of the disaster situation if they are satisfied that it is no longer required (section 73 DM Act).

(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, having regard to the nature and extent of the limitation on the right and the information detailed above, the importance of achieving the protection of a person's, or the public's, health outweighs the harm caused to person's right to privacy under these circumstances.

The declared disaster powers will be exercised in accordance with the safeguards in place under the DM Act to operationalise the public health directions of the CHO under the PH Act. The emergency powers of the CHO are also subject to safeguards in the PH Act, including that they may only be used to assist in containing or responding to the spread of COVID-19 within the community.

Conclusion

I consider that the *Disaster Management (Further Extension of Disaster Situation—COVID-19) Regulation 2021* is compatible with the HR Act because it limits, restricts or interferes with human rights, only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

THE HONOURABLE MARK RYAN MP
MINISTER FOR POLICE AND CORRECTIVE SERVICES AND
MINISTER FOR FIRE AND EMERGENCY SERVICES
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