

Planning (Emergency Housing) Amendment Regulation 2022

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, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure provide this human rights certificate with respect to the *Planning (Emergency Housing) Amendment Regulation 2022* made under the *Planning Act 2016*.

In my opinion, the *Planning (Emergency Housing) Amendment Regulation 2022*, 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

Background

In June 2021, the Queensland Government released the *Housing and Homelessness Action Plan 2021-2025* (HHAP) to build on the outcomes of the *Queensland Housing Strategy* by increasing social and affordable homes across the state.

The Department of State Development, Infrastructure, Local Government and Planning (DSDILGP) is responsible for the delivery of *Action 3 Deliver social and affordable housing using state planning and economic development tools* with the support of the Department of Communities, Housing and Digital Economy.

Action 3.4 of the HHAP commits DSDILGP to *Review the planning framework's approach to regulating residential development*. This proposal is being advanced under Action 3.4.

Purpose

The *Planning (Emergency Housing) Amendment Regulation 2022* (the Amendment Regulation) will amend the *Planning Regulation 2017* (Planning Regulation) to provide for the establishment of emergency housing and social and affordable housing. The Amendment Regulation will:

- Provide for State and local government to deliver emergency housing in response to an event without seeking planning approval through the development assessment process. This will allow for State and local government to provide housing for communities affected by events such as flooding or other events as defined under the *Disaster Management Act 2003* for a temporary period without requiring local government planning approval. The provisions will streamline the delivery of on-ground housing outcomes to support communities.

- Provide for the infrastructure designation pathway to be used for the development of social or affordable housing by a community housing provider or under a State government funded program by prescribing this type of development as infrastructure under Schedule 5 (Infrastructure) of the Planning Regulation. This will treat social and affordable housing in a manner that is consistent with other infrastructure under Schedule 5 of the Planning Regulation that then allows this type of housing development to use the infrastructure designation assessment process.

Human Rights Issues

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

In my opinion the Amendment Regulation affects but does not limit the following human rights under the *Human Rights Act 2019*:

- Freedom of movement (section 19)
- Freedom of expression (section 21)
- Property rights (section 24)

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

Freedom of movement (section 19)

(a) the nature of the right

Section 19 of the *Human Rights Act 2019* provides that every person has the right to move freely within Queensland and the freedom to choose where to live.

The Amendment Regulation affects the human right but does not limit the human right.

The inclusion of emergency housing will allow for the provision of temporary accommodation by either the State or local government for people who have lost their home as a result of an event as defined under the *Disaster Management Act 2003*.

The provision of a new infrastructure designation pathway for the delivery of social or affordable housing by a community housing provider or under a State funded program will support the timely delivery of housing.

(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 Amendment Regulation affects but does not limit this human right.

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

The Amendment Regulation affects but does not limit this human right.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

(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 Amendment Regulation affects but does not limit this human right.

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 Amendment Regulation limits the human right in the following ways:

- the removal of the requirement to obtain planning approval for the temporary development of emergency housing may limit the scope of who would otherwise be consulted during a development assessment process to assess these uses.
- prescribing social or affordable housing as infrastructure under Schedule 5 provides that social or affordable housing development is eligible to use the infrastructure designation pathway for which third party appeal rights are not afforded to any person who makes a submission during consultation. This means a person cannot appeal the decision to the Planning and Environment Court.

(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 removal of the requirement to obtain planning approval for emergency housing ensures housing can be delivered quickly by either State or local government for the purpose of responding to an event defined under the *Disaster Management Act 2003*. Given this is likely to be an unexpected event, the need to provide for the urgent delivery of housing and given this use would be of a temporary nature, the purpose of the limitation is consistent with a democratic society based on human dignity.

An infrastructure designation protects land for essential community infrastructure. The types of infrastructure that may be designated are set out in Schedule 5 of the Planning Regulation, including private and public infrastructure, such as hospitals, schools, emergency facilities.

In prescribing social and affordable housing as infrastructure under Schedule 5, this means that social and affordable housing development is essential community infrastructure and eligible to use the infrastructure designation pathway for which third party appeal rights to the Planning and Environment Court are not afforded to people who make submissions during consultation.

Under the *Planning Act 2016* (Planning Act), for a Ministerial infrastructure designation, the Planning Minister must be satisfied that “adequate environmental assessment, including adequate consultation, has been carried out in relation to the development that is the subject of the designation or amendment”. The process for environmental assessment and consultation for making or amending a Ministerial infrastructure designation in accordance with section 36(3) of the Planning Act is set out in the Minister’s Guidelines and Rules, which is a statutory instrument.

While consultation is set at a minimum 15 business days, consultation is typically undertaken for 25 business days with landowners and local government and 20 business days for members of the public.

The Minister’s Guidelines and Rules also prescribes that the Planning Minister will undertake state agency consultation on the application material during the public consultation period. Submissions must be considered and addressed, including making any necessary changes to the infrastructure designation proposal.

Therefore, while there will be no third-party submitter appeal rights for social or affordable housing that use the infrastructure designation process, proponents who choose this pathway will be required to undertake more consultation than would be required if they made a code assessable application to the local government through the development assessment process.

Proponents for social or affordable housing that meet the criteria in Schedule 5 of the Planning Regulation will retain the discretion to choose whether they seek approval under an infrastructure designation or by way of a development approval through the development assessment process.

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

The Amendment Regulation affects but does not limit this human right.

The limitation of freedom of expression for the delivery of emergency housing by not providing for public consultation by proceeding through the development assessment system ensures Queenslanders will have more efficient access to urgent housing following an event such as flooding. It is considered the need to provide urgent housing is in line with community expectations for the need for emergency housing.

The limitation to freedom of expression is through not providing for third parties to appeal an infrastructure designation. This limitation is justifiable when considered against the purpose of infrastructure included in Schedule 5, the purpose for which the infrastructure designation process exists, and the rationale for including social and affordable housing in Schedule 5.

Infrastructure designations may only be made for essential community infrastructure as identified under Schedule 5 of the Planning Regulation. Delivering infrastructure in a timely way is central to the purpose of infrastructure designations.

Public consultation is a mandatory requirement of every infrastructure designation. The State coordinates the assessment process for a Ministerial infrastructure designation, and the Planning Minister (for a Ministerial infrastructure designation) imposes 'requirements necessary to ensure the work for the infrastructure or intended use of the premises is suitable for the site and location in which it is proposed.

While public consultation is mandatory and submissions must be addressed, there are no appeal rights for infrastructure designations. However, the decision may be subject to judicial review. The existing development assessment process will still be available for use by proponents and will retain the ability for third-party appeals to be made where an application is impact assessable against the local planning scheme.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

(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 Amendment Regulation affects but does not limit this human right.

The inclusion of a pathway for the provisions of emergency housing to be delivered by the State or local government without requiring a development application does not provide for consultation with the community. When balancing the right to freedom of expression with the urgent need to provide for temporary housing for Queenslanders affected by an event such as flooding is considered to be in line with community expectations.

Providing an alternative pathway for community housing providers or private entities under a State funded program to provide for social or affordable housing more efficiently supports the delivery of housing for persons on a lower income in a timelier manner while still undergoing a process of consultation through an infrastructure designation process. The process requires the consideration of all submissions including making any necessary changes to the infrastructure designation proposal. The removal of third-party appeal rights gives certainty to a provider following the decision on the infrastructure designation as no subsequent appeals can be made to the Planning and Environment Court.

This purpose is reasonable and demonstrably justifies the minor limitation to human rights.

Property rights (section 24)

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

The Amendment Regulation affects the human right but does not limit the human right.

The inclusion of the provision for emergency housing to not be assessable development where delivered by either the State or local government as a result of an event as defined under the *Disaster Management Act 2003* will not limit a person's right to property. The Amendment Regulation will provide support to communities to have a more efficient means of delivery of emergency housing in the event of a flood or other similar event.

The infrastructure designation pathway for the delivery of social or affordable housing will provide an alternative pathway for proponents to the existing development assessment system to support the effective delivery of social and affordable housing for persons on a lower income. The Amendment Regulation will not impact a person's right to either own property or deprive a person of property.

(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 Amendment Regulation affects but does not limit this human right.

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

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There are no less restrictive ways to achieve the purpose of the Amendment Regulation. The changes remove and do not introduce additional restrictions.

(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 Amendment Regulation affects but does not limit this human right.

Conclusion

I consider that the *Planning (Emergency Housing) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

STEVEN MILES MP
Deputy Premier, Minister for State Development,
Infrastructure, Local Government and Planning
and Minister Assisting the Premier on Olympics Infrastructure

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