

# Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) 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, Stirling Hinchliffe MP, Minister for Minister for Tourism, Innovation and Sport and Minister Assisting the Premier on Olympics and Paralympics Sport and Engagement, provide this human rights certificate with respect to the *Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) Amendment Regulation 2022* (the Amendment Regulation) made under the *Major Sports Facilities Act 2001* (the 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*. I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The Act provides for the management, operation, use, development and promotion of facilities in Queensland for staging national or international sports, recreational or entertainment events, special events and for other purposes. The Act establishes Stadiums Queensland as the statutory authority responsible for operating major sports facilities declared under section 4 of the Act.

A major sports facility is a facility that has capacity to stage national or international sports, recreational or entertainment events, or special events. Special events are defined under Schedule 2 of the Act as meaning major concerts, public assemblies or religious events.

The subordinate legislation for the Act, the *Major Sports Facilities Regulation 2014* (the Regulation), restricts the allowable number of major concerts held at Brisbane Stadium (also known as Lang Park or Suncorp Stadium) to no more than six concerts per calendar year.

The regulatory cap of six concerts per calendar year at Brisbane Stadium will be reached in March 2023, with Ministerial approval already provided for six concert events of major international artists to be held from January to March 2023. A further four concert events with major international artists have already been sought by promoters in 2023, however, due to the limit on concerts per year, Brisbane Stadium is unable to secure these events at this stage.

The purpose of the Amendment Regulation is to allow Brisbane Stadium to temporarily stage up to 12 concerts per year for the 2023 and 2024 calendar years only, due to the current high demand for stadium size concert venues in Australia and Queensland, following an increase in major artists touring internationally due to the easing of COVID-19 restrictions.

## Human Rights Issues

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

The Amendment Regulation engages:

- freedom of movement (section 19 of the *Human Rights Act*);
- the right of peaceful assembly (section 22(1) of the *Human Rights Act*);
- the right not to be arbitrarily deprived of property (section 24(2) of the *Human Rights Act*); and
- the right not to have one's privacy, family and home unlawfully or arbitrarily interfered with (section 25(a) of the *Human Rights Act*).

Freedom of movement is relevant because an increased number of concert events at Brisbane Stadium will result in increased traffic and parking restrictions, and increased activity around the stadium.

The right to property is relevant wherever there are impacts on amenity and the quiet enjoyment of one's property. Similarly, the right to non-interference with privacy and home will be relevant wherever there is interference with the quiet enjoyment of one's home such as noise. The Amendment Regulation engages these rights for residents in the local stadium area because it would provide for a temporary increase in the maximum number of allowable concerts in the 2023 and 2024 calendar years, which may involve additional impacts in relation to noise, lighting, traffic congestion and parking issues, crowd and pedestrian movements. These impacts may, therefore, affect a person's property and privacy in relation to quiet enjoyment of their home in the stadium local area.

However, the right to property will only be limited if the deprivation of amenity is 'arbitrary' and the right to privacy and home will only be limited if the interference is either 'unlawful' or 'arbitrary'. In this context, arbitrary means, capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought. The standard of proportionality for the purposes of arbitrariness is different from the standard of proportionality for justification under section 13 of the *Human Rights Act 2019*. Nonetheless, an impact on property or privacy which is proportionate under s 13 of the *Human Rights Act 2019* will not be arbitrary. For that reason arbitrariness will be considered below in the context of justification under section 13.

On the other hand, the Amendment Regulation will promote the right of peaceful assembly by facilitating more concerts where people can assemble.

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

#### (a) the nature of the right

The right to freedom of movement is directed to restrictions on movements which fall short of physical detention coming within the right to liberty. The fundamental value which the right expresses is freedom, which is regarded as an indispensable condition for the free development of the person and society.

The right to property includes real and personal property of any description, including amenity and quiet enjoyment of one's property. The value underlying the right to property is the dignity in possessing 'things'.

The scope of the right to not have a person's privacy unlawfully or arbitrarily interfered with has been recognised as very broad, ranging from the protection of personal information and data collection as well as protection of a person's private life more generally, such as protecting against interference with a person's mental or physical integrity, including their family or home. The purpose of the right to privacy is to protect and enhance the liberty of the person – the existence, autonomy, security and well-being of every individual in their own private sphere. Privacy ensures people can develop individually, socially and spiritually in that sphere, which provides the civil foundation for their effective participation in democratic society.

(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 of these human rights, by allowing for a maximum of 12 rather than six concerts per calendar year at Brisbane Stadium for the years of 2023 and 2024 only, is to meet heightened current and short-term future demand for Brisbane Stadium as a stadium size concert venue (more than 50,000 seat/person capacity) in the Brisbane central business district. In this way, the Amendment Regulation also promotes the right of peaceful assembly in section 22 of the *Human Rights Act 2019*.

The staging of additional concerts at Brisbane Stadium is expected to deliver significant economic benefits at local, regional and state level while also supporting the recovery of the arts and entertainment industry post COVID-19. The Brisbane Economic Development Agency has estimated that a large concert event selling 50,000 tickets (which is the estimated attendance for each of the first three concerts booked for Brisbane Stadium in 2023) generates \$21.2 million dollars of economic activity, supports approximately 650 full-time equivalent jobs and brings an estimated 30,000 out of region visitors to Brisbane, including intrastate, interstate and international visitors.

The nature of the purpose of the limitation also aligns with the objectives of the Act to support venues that have the capacity to stage national and international sporting, recreational and special events such as concerts and through heightened use of Brisbane Stadium that will maximise return on significant public investment in the venue.

These purposes are consistent with a free and democratic society based on human dignity, equality and freedom.

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

Temporarily increasing the cap from six to 12 concerts per calendar year will help to achieve these purposes. Doing so will provide local, regional and state-level economic and social benefits, including supporting the recovery of the arts and entertainment industry following the impacts of COVID-19 restrictions on large gatherings and travel.

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

As the maximum number of concerts that can be held at Brisbane Stadium is set by the Regulation, the only means for achieving the purpose to allow for a maximum of 12 concerts per calendar year in 2023 and 2024 to meet heightened demand for the venue is by making a time-limited amendment to the regulation.

Consideration was given to increasing the cap to a lower maximum than 12 concerts. However, 12 concerts per calendar year was identified as the best estimate of the maximum required to meet the extra demand for concerts from significant international artists at Brisbane Stadium in the years of 2023 and 2024, particularly when taking into account some highly popular artists booking two or more concerts at the venue to meet public demand e.g Ed Sheeran will play three sold out concerts in February 2023.

There are also a number of safeguards to ensure this option represents the least restrictive impact on freedom of movement, property and privacy. In particular:

- the increase in the cap is time-limited, applying only to the 2023 and 2024 calendar years; and
- the impacts of major events are mitigated by the requirements of the Regulation, such as the requirement for an operational management plan and a transport management plan to manage and mitigate impacts from noise levels, light, pedestrian and traffic movement, and crowd behaviour.

There is, therefore, no less restrictive or reasonably available means to achieve the purpose.

(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 one side of the scales, the extent of the impact on freedom of movement, property and privacy is reduced by:

- the temporary nature of the impacts, both because the increase in the cap applies only to 2023 and 2024, and because the impacts are confined to the days that concerts are held;
- the detailed requirements of the Regulation; and
- the results of the consultation process which showed that a majority of the local residents and businesses who responded support the temporary increase in the cap.

Consultation on the proposal with the Queensland community, including local residents and business owners within the Lang Park Traffic Area surrounding the stadium, occurred via a publicly accessible survey on the Queensland Government *Get Involved* website for a six-week period between 12 September to 24 October 2022. The survey was actively promoted to local residents and local business owners in the Lang Park Traffic area to ensure local views on the proposal and perceptions of its potential impacts could be ascertained.

Survey results showed most respondents were in support of a temporary increase in the number concerts from six to 12 per calendar year for the two years of 2023 and 2024 only, with a majority of local residents and business owners who were surveyed also supporting the proposal.

While a small proportion of local resident respondents strongly disagreed with the proposal, with concerns raised about traffic and noise impacts and nuisance public behaviour, Schedule 2 of the Regulation requires that extensive mitigation strategies be implemented by Stadiums Queensland and/or the stadium operator to moderate the impact of special events such as concerts at the stadium on the surrounding community in relation to noise, lights, traffic and parking, crowd and pedestrian movements.

The Suncorp Stadium Management Advisory Committee, comprising representatives from the local community, including businesses and residents, the Brisbane Central District Queensland Police Service, Queensland Ambulance Services Operations in Metro North, Translink, Queensland Fire and Emergency Services Area Command – Roma Street, the Ward of Paddington and the Member for Cooper, has also provided support for a temporary concert cap increase for 2023 and 2024.

On the other side of the scales, the benefits of temporarily increasing the cap include:

- significant economic benefits at local, regional and state level;
- support for the recovery of the arts and entertainment industry post COVID-19; and
- promotion of the right to peaceful assembly in section 22 of the *Human Rights Act 2019*.

On balance, taking into account the nature and extent of the limitation on the right to privacy, I consider that the purpose of meeting heightened demand for concerts in the calendar years of 2023 and 2024 only, will provide local, regional and state economic and social benefits which outweigh the potential negative impacts on the right to privacy for local residents from those extra concerts, with existing regulatory requirements and other practices actively managing and mitigating impacts on local residents from concert noise, light, traffic, crowd and pedestrian movement.

Accordingly, the limit on freedom of movement is justified. Because the impacts are proportionate, any deprivation of property is not arbitrary and any interference with privacy and home is not arbitrary. This means that the rights to property and privacy are not limited.

## Conclusion

I consider that the *Major Sports Facilities (Major Concerts at Brisbane Stadium (Lang Park)) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it does engage or limit human rights, but those impacts are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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