

Major Events (Pacific Airshow Gold Coast) Regulation 2023

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 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 Events (Pacific Airshow Gold Coast) Regulation 2023* made under the *Major Events Act 2014* (the Act).

In my opinion, the *Major Events (Pacific Airshow Gold Coast) Regulation 2023* (the 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 holding of major events, the safety of visitors and spectators at major events, to allow visiting health practitioners to provide health care services for major events without becoming registered under State law, to protect the rights of event organisers and sponsors at major events and for related purposes.

The Regulation would facilitate the holding of the Pacific Airshow Gold Coast 2023. Consistent with the purpose of the Act, the Regulation would provide for the safety of visitors and spectators at the Pacific Airshow Gold Coast 2023 event and protects the rights of event organisers and sponsors.

Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the Regulation are:

- freedom of movement (section 19 of the *Human Rights Act 2019*)
- freedom of expression (section 21 of the *Human Rights Act 2019*)
- property rights (section 24(a) of the *Human Rights Act 2019*)
- privacy and reputation (section 25(a) of the *Human Rights Act 2019*).

For the reasons outlined below, I am of the view that the Regulation is compatible with each of these human rights.

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

The Regulation would declare the Pacific Airshow Gold Coast as a major event under the Act, and the major event organiser, the major event and controlled areas, the major event periods, and the temporary works periods. As such, the Regulation would enable the use of powers under the Act for the holding of the Pacific Airshow Gold Coast by the major event organiser, Pacific Airshow Pty Ltd.

(a) the nature of the right

Section 19 – Freedom of movement

Every person in Queensland has the right to move freely within Queensland, and within the context of where they may generally lawfully do so, the right means that a person cannot be arbitrarily restricted in their movement, to or from or within a public area.

The Regulation provides the following limitations to movement within the major event areas for the Pacific Airshow Gold Coast 2023:

- a person must not enter or exit the major event area except through an entrance or exit designated by the major event organiser which provides limitations to the ability to move through, remain in, enter or depart from areas of public space
- a direction may be made which requires a person to leave the major event area

Section 21 - Freedom of expression

The nature of the right is that every person in Queensland 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 Regulation may interact with the freedom of expression in certain circumstances, including:

- imposing conditions on individuals' conduct when entering and within a major event area, including preventing individuals from offering services for a fee, soliciting money or distributing a document unless they have written approval of the major event organiser or a 'reasonable excuse'
- the major event cannot be broadcast for profit or gain by an individual
- that the Regulation prevents individuals from unauthorised use of the Pacific Airshow Gold Coast official logo or title (or one that is deceptively similar) for a commercial purpose, to promote a thing or service or to suggest a connection with the official title or otherwise more generally the Pacific Airshow Gold Coast during the major event period
- that the Regulation creates an offence for impersonating an authorised person.

Section 24(a) Property rights

Section 24(a) of the *Human Rights Act 2019* provides that a person must not be arbitrarily deprived of the person's property. The Regulation will interact with section 24(a) of the *Human Rights Act 2019* in the following ways.

The Regulation:

- allow for temporary works to occur on public land for the Pacific Airshow Gold Coast event. This may interact with this human right where a power under the Regulation is used to move unattended vehicles to undertake these works
- requires that a person must not enter or exit the major event area, except through an entrance or exit designated by the major event organiser. This human right may be engaged where a person's property is within the major event area, and they want to enter the major event area to access the property
- imposes conditions on individuals for entering and exiting a major event area, including powers for authorised persons to remove an article of clothing from a person, or to remove an article from a vehicle (for inspection purposes). The Regulation also provides for the inspection of possessions
- provides that a person must not sell or distribute an item in the major event area during the major event period, unless it is allowed under the Regulation, or by written approval of the major event organiser. If under direction, the item is not removed from the event area by the person, the item may be seized by an authorised officer
- provides for expected conduct while entering or within a major event area and also provide for logo/brand protections for the major event organiser. These provisions may interact with the human right, as where an individual's actions may be contrary to the Regulation, application of the Regulation may eventuate in the confiscation or seizure of an individual's property.

Section 25(a) Privacy and reputation

Section 25(a) of the *Human Rights Act 2019* provides that a person has the right to not have the person's privacy, family, home, or correspondence unlawfully or arbitrarily interfered with.

The Regulation may interact with the right to privacy in the following way. A person:

- on entering the major event area may be asked to consent to the following:
 - the use of an electronic detection device, including a metal detector, on the person or the person's possessions
 - inspection of the person's belongings
 - removal of outer garments and inspection of the garments
 - removal of articles from the person's clothing and the inspection of those articles
 - inspection of an article in the person's possession
 - where a person is entering the major event area in a vehicle, inspection of the vehicle, removal of an article from the vehicle and inspection of the article
- within the major event area, may be asked to consent to open and allow the inspection of an item in their possession
- who is being directed to leave the major event area, may have their photo (or other image) taken
- who is found to be committing or is reasonably suspected of having just committed an offence against the Act, may be required to state their name and address, and provide evidence of correctness of their statement.

(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 limitations to sections 19, 21, 24(a), and 35(a) of the *Human Rights Act 2019* under the Act and the Regulation are not arbitrary, and are non-discriminatory in nature, and necessary to meet the objectives of the Act. Their purpose is to ensure the safety and amenity of visitors and spectators, and to provide brand/commercial protections to the event organiser at a major event. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

The Regulation does not propose any additional limitations than those that already available under the Act, the proposed Regulation merely enables the provisions under the Act to allow the safe holding of the Pacific Airshow Gold Coast; for the objectives of the Act to be met.

Provisions under the Regulation are constrained to the major event periods and the temporary works periods outlined in the Regulation and/or to the major event and controlled areas for the Pacific Airshow Gold Coast; minimising potential limitations on these human rights.

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

Section 19 – Freedom of movement

By identifying the major event area, the major event periods and the temporary works periods for the Pacific Airshow Gold Coast 2023, the Regulation has sufficient regard for the rights and liberties of individuals, entering or within the declared event area, and individuals who may otherwise be inconvenienced by altered access to roads, paths, beach areas; and the carrying out of temporary works.

The Act and the Regulation do not limit the movement rights of individuals except within a defined major events area map.

These limitations help achieve the purpose of the Act by limiting the movement of individuals into and within the major event area, ensure appropriate behaviour of visitors and spectators, and are necessary to ensure the major event organisers have sufficient capacity to provide for and manage a safe event space for the Pacific Airshow Gold Coast event.

The provisions under section 26(1) clearly define when directions to leave may be given and are considered reasonable and consistent to limitations of movement applied to individuals attending a major sporting event in a public or private venue, or a ticketed event in a public open space. For example, the Act is consistent with a ticketed private venue and that individuals must enter through the venue's designated gates, have a ticket or other authorisation to be at the venue, and they must abide by conditions of entry and expected conduct.

Section 21 - Freedom of expression

Section 20(7)(a) of the Act provides for an individual to gain written approval of the major event organiser to 'do a thing' in the major event area which would allow both an individual to engage in their freedom of expression while also ensuring the smooth operation of the event, and not detract from the overall purpose/reason why spectators are at the event. Section 20(7)(b) also provides for a person to have a reasonable excuse in engaging in an activity or

possessing a thing, which would allow justifiable actions which an individual might deem a freedom of expression.

The potential limitation on the right to freedom of expression by section 36(1) which might be provided to individuals broadcasting the Pacific Airshow Gold Coast event is justifiable, in that it prevents unauthorised third parties from exploiting the major event for their own gain or affecting the integrity of the event or the exclusive rights of the event's official sponsors. The freedom of expression is not unreasonably limited because an individual may still broadcast or record the major event:

- (i) on a personal electronic device;
- (ii) for personal use; and
- (iii) for a purpose other than for profit or gain.

While there are potential limitations on the right to freedom of expression under section 52 of the Act, the provisions regarding the use of the official logo or title are not intended to limit freedom of expression; rather, they are intended to protect the rights of event organisers and sponsors from unauthorised activities, consistent with the object of the Act. The limitation is justifiable as it prevents unauthorised third parties from exploiting the Pacific Airshow Gold Coast 2023 event for their own gain or affecting the integrity of the event or the exclusive rights of the event's official sponsors. Section 52 also provides that the major event organiser may give a person a written notice authorising the person to use an official logo or official title.

Section 76 of the Act which creates an offence for impersonating an authorised person is reasonable and justifiable because it prevents an individual from assuming the identity of an authorised person, presumably to illegally use the powers of an authorised person. The meaning of 'impersonate' would not include things like satirising an authorised person for the purposes of expressing a thought or belief.

Section 24(a) Property rights

The Regulation through section 16(3) of the Act may limit the right to property in certain circumstances by allowing the movement of an individual's unattended vehicle located in the major event area. This limitation is required in order to meet the objective of the Act, which is to facilitate a major event, and in this case, to allow for temporary works to be carried out for the Pacific Airshow Gold Coast to occur. The potential for a limitation to occur on property rights is managed through provisions under the Act which require details of the temporary works and time periods to be published in advance of the works occurring; to allow individuals time to prepare and remove vehicles which might otherwise need to be moved. There are also restrictions on how vehicles may be moved or removed (outlined in section 65 of the Act), including notification procedures once a vehicle has been moved.

As an inaugural large scale event to be held on the Gold Coast, with significant consultation and engagement by the major event organiser and the City of Gold Coast with the local community and businesses it is unlikely that the exercise of the powers under section 16(3), for the Pacific Airshow Gold Coast, would limit an individual's property rights, in the circumstances that the notice period might be considered too short to be reasonable.

Provisions under *Part 5 Major event provisions Division 2 Subdivision 1 Crowd and safety powers* are necessary to provide for safe major event areas, in managing entry and exit of the major event area and in managing conduct of individuals while in the major event area.

Practical application of provisions under Subdivision 1 will apply some limitations to a person's property right – for example providing property such as a garment or an article in the person's possession to an authorised officer for inspection.

These limitations aren't unduly restrictive and would be minor in effect excluding where this property might be a prohibited item, and otherwise seized or confiscated under the Act or another Act.

Seizure of property/an item is also allowed under the Act where a person does not have written approval from the major event organiser to sell or distribute the property/item (section 30 of the Act). The power to seize an item from a person is also available (under section 54 of the Act) where the person has an item that displays the official logo or official title of the event, and it is reasonably suspected that the person intends to sell the item and does not have the authority to do so.

These limitations are considered reasonable and are aimed at preventing unauthorised persons from seeking to exploit a major event for their own gain. The provisions are intended to protect the rights of event organiser and sponsors from unauthorised street trading, consistent with the object of the Act.

Part 7 Authorised persons for major events Division 4 Powers of authorised persons Subdivision 3 Seizing evidence and other things provides the necessary processes to balance the limitation on an individual's property rights where property may have been seized by the major event organiser.

Section 25(a) Privacy and reputation

The limitations on the right to privacy through the application of sections 18(5) and 25 of the Act are non-arbitrary and required in order to meet the objective of the Act to ensure the safety of visitors and spectators at a major event or to enforce other sections of the Act such as the use of official logo under *Part 6 official logos or titles*. The inspection of property and the search of a person is necessary to ensure prohibited items are not being carried and is similar to a search at an airport or a private ticketed venue. These limitations are balanced by the requirement under the Act that individuals must consent to the search, and authorised persons must be appropriately trained and have a sufficient reason to exercise these powers. These 'entry conditions' are essential to ensure individuals have paid the appropriate fee and are not drunk or affected by drugs, as well as to meet the need to control the safe flow of people into the event area.

These provisions are considered a lawful and non-arbitrary intrusion because they seek to ensure compliance with the Act and are only able to be used for the purposes of the Act.

Where a person is removed from the major event area, the Act provides that an image/photograph of the person may be taken. This limitation is considered reasonable and necessary in circumstances where multiple entry points to the major event area are available and will assist the major event organiser in managing disruptive behaviour and the potential for the reoccurrence of unauthorised or un-ticketed entry by individuals. While the way in which the major event organiser uses an individual's photo might limit a right to privacy if a photo/image is arbitrarily taken or potentially capricious in nature, the Act provides that an

image/photo may only be used “for the purposes of this Act”, as such, a non-excessive, non-capricious use of an image/photo is regulated.

Further the major event organiser has the responsibility under the *Human Rights Act 2019*, insofar as the major event organiser carries out a public function, to act or make a decision in a way that is compatible with human rights - for example, images taken of individuals under the Act should not be unnecessarily publicly displayed.

While the Act provides the power to authorised persons to be able to require the provision of a person’s name and address where they are found to be committing or are reasonably suspected of having just committed an offence, the Regulation would restrict this power to authorised persons who are police officers. The powers provided to authorised persons under the Act (section 25) to inspect a thing in a person’s possession inside the major event would be similarly restricted by the Regulation to only police officers.

The limitations on the right to privacy under the Regulation are considered necessary and appropriate to meet the objective of the Act which is to ensure the safety and enjoyment of visitors and spectators at a major event, and the restrictions to the type of authorised person who may exercise the powers under sections 25 and 63 of the Act helps reduce the potential impact on the right to privacy when applying the powers.

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

The main purposes of the Act are to enable the State to hold major events in Queensland and to facilitate the safe and orderly running of major events and as such, there are no other regulatory measures which would provide for the safe holding of major events in Queensland.

The purpose of the Regulation cannot be achieved through any reasonably available and less restrictive means. The Regulation will prescribe provisions in the Act to provide for the safe holding of the Pacific Airshow Gold Coast 2023 – consistent with the purposes of the Act.

The Regulation ensures provisions contained in the Act are targeted and constrained to ‘the time and place’ of the Pacific Airshow Gold Coast 2023. The restrictions, and the associated limitations on the rights, are limited only to the major event and controlled areas identified in the Regulation and during the period of the major event, and are, therefore, no wider than necessary.

(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

Major events play a vital role in attracting visitors to Queensland and supporting the State's tourism industry. Ensuring major events held in Queensland are a safe experience is a primary concern for Government.

The Regulation will interact with, and in some circumstances, limit the freedom of movement, freedom of expression, property rights and privacy of individuals entering and within the major events and controlled areas associated with the Pacific Airshow Gold Coast 2023.

It is critical to provide sufficient powers for the holding of major events. I consider the importance of ensuring the major event organisers of the Pacific Airshow Gold Coast 2023

have sufficient powers to deliver a safe experience of visitors and spectators at the event and providing protections to the commercial and brand rights to the major event organisers and their sponsors, is essential, on balance of the potential, and temporary nature of limitations on the above human rights.

(f) any other relevant factors

Provisions in the Act require that in recommending to the Governor in Council the prescription of the Pacific Airshow Gold Coast 2023 as a major event, that I must consult with the City of Gold Coast. Consultation of local government when considering the prescription of events under the Act, could assist in lessening the human rights impacts of the Regulation by supporting communication to individuals whose human rights may be limited by an event.

Conclusion

I consider that the *Major Events (Pacific Airshow Gold Coast) Regulation 2023* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but any limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Stirling Hinchliffe MP
Minister for Tourism, Innovation and Sport and
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