

Planning (Assessment Fees and Other Matters) Amendment 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* (HR Act), I, Steven Miles MP, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Planning (Assessment Fees and Other Matters) Amendment Regulation 2023* (the Amendment Regulation) made under the *Planning Act 2016* (the Act).

In my opinion, the Amendment 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 policy objectives of the Amendment Regulation are to amend the *Planning Regulation 2017* (the Regulation) to:

- reflect an update of the Minister's Guidelines and Rules (MGR) to July 2023. In accordance with Section 17 of the Act, changes to the MGR are approved by the Minister. The Amendment Regulation only updates the reference to the date of the MGR. The MGR contains guidelines and rules for making or amending planning instruments.
- make temporary youth detention centres unable to be assessable development under a local categorising instrument. This is to support recent amendments to the *Youth Justice Act 1992* which establishes a process whereby in the event of a disaster, an adversely affected youth detention centre can be declared to be a 'disaster affected detention centre' and consequently declare one or more places as a temporary detention centre. Approvals for detention centres assessable by a local planning instrument can often take a significant period to be decided, depending on the relevant local government. This amendment will make temporary youth detention centres not able to be made assessable development by a local planning scheme in the event of a disaster, providing a faster pathway to secure temporary accommodation for detained young people in the event of an emergency where all or part of a youth detention centre is not able to be safely utilised.
- amend the prescribed fee units to be commensurate with State Assessment and Referral Agency's (SARA) time and effort involved in undertaking the assessment of material change of use applications requiring referral due to proximity to state transport corridors, and the scale of the operational works carried out in tidal waters. Ensuring fees in the Regulation are commensurate of work required for the assessment being undertaken will reduce the administrative burden on both SARA officers processing the refunds and have a positive impact on applicants in development costs.

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 that may be relevant to the decision are:

- section 16 – right to life
- section 19 – freedom of movement
- section 24 – property rights (the right to own property and not be arbitrarily deprived of it)
- section 29 – right to liberty and security of person
- section 30 – humane treatment when deprived of liberty

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

The following table considers the relevant human rights and whether they are limited by the decision.

Human right	Comment
Section 16 – right to life	<p>Section 16 of the HR Act recognises that every person has the right to life and has the right not to be arbitrarily deprived of life.</p> <p>This right may be relevant because the Amendment Regulation provides for the health and safety of young persons in detention centres by providing a faster pathway for the government to take appropriate steps to protect the right to life in the event of a disaster. Accordingly, the rights in section 16 are not limited and the Amendment Regulation promotes the detainees' right to live.</p>
Section 19 – freedom of movement	<p>Section 19 of the HR Act provides that every person has the right to move freely within Queensland and the freedom to choose where to live.</p> <p>The Amendment Regulation does not limit this right in any way; however, it should be noted that persons in detention centres have this right limited already due to the process of the courts. Providing a faster pathway for the government to take appropriate steps to move the youth detained in facilities in the event of a disaster where all or part of the facility has been affected, does not limit the freedom of movement.</p>
Section 24 – property rights (the right to own property and not be arbitrarily deprived of it)	<p>Section 24 of the HR Act recognises that people are protected from having their property taken, unless the law says it can be taken.</p> <p>This right is concerned about decisions that include restricting the use of private property, including under planning laws, and their right to the enjoyment of their property. Planning decisions may have the impact of limiting the use of land.</p> <p>This right may be relevant as the proposed amendment involves restricting the ability for local categorising instruments to make temporary detention centre assessable. This could affect surrounding land uses during the period</p>

	<p>of the operation of the temporary detention centre, however this does not deprive them of their property and is only for a limited time for the purpose of safety and security in the event of an emergency. There is no adverse effect on surrounding landowner's rights to own property or be arbitrarily deprived of their property.</p> <p>Therefore, this right is not limited by the proposed decision.</p>
<p>Section 29 – right to liberty and security of person</p>	<p>Section 29 of the HR Act provides that everyone has the right to freedom and safety and includes that reasonable steps must be taken to ensure the physical safety of people who are in danger of physical harm.</p> <p>The Amendment Regulation supports this right by providing a more streamlined process to secure temporary accommodation for detained young people in the event of a disaster where all or part of a youth detention centre is not able to be safely utilised. Accordingly, the Amendment Regulation promotes the rights in section 29 by ensuring the detained youth are moved to safer facilities in the event without requiring a development application to be made for the use of the temporary centre.</p>
<p>Section 30 – humane treatment when deprived of liberty</p>	<p>Section 30 of the HR Act provides that all persons deprived of liberty must be treated with humanity and with respect for their inherent dignity.</p> <p>The Amendment Regulation supports this right by providing a streamlined approach to secure temporary accommodation for detained young people in the event of a disaster where all or part of a youth detention centre is not able to be safely utilised.</p> <p>The Amendment Regulation provides that youth at risk in detention centres can be moved to safer facilities in a more streamlined process than currently possible under the provision of the existing Regulation. This ensures any young persons needing urgent relocation as a result of a disaster are treated with humanity and with respect for their inherent rights.</p>

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because while it does limit, restrict or interfere with a human right, the limitation 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 Olympic and Paralympic Games Infrastructure