

Major Sports Facilities Amendment Regulation 2024

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, Michael Healy MP, Minister for Tourism and Sport provide this human rights certificate with respect to the Major Sports Facilities Amendment Regulation 2024 (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* (the HR Act). 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 body responsible for operating the major sports facilities declared under section 5 of the Act.

Major sports facilities are declared under section 4 of the Act and section 3 of the Regulation. Schedule 1 of the MSF Regulation provides the non-commercial, regulatory names of the facilities and the corresponding street addresses of those facilities.

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 the 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.

In 2022, the Regulation was amended to allow Brisbane Stadium to temporarily stage up to 12 concerts per year for the 2023 and 2024 calendar years, due to the high demand for stadium size concert venues in Australia and Queensland and following an increase in major artists touring internationally due to the easing of COVID-19 restrictions.

Section 30AL of the Act defines major sports events as national or international sport events that have a crowd size of more than the number prescribed by regulation. Section 4 of the Regulation prescribes 35,000 as the crowd size above which defines a major sport event. Section 30AN of the Act provides for the lawful use of Brisbane Stadium for no more than 24 major sport events.

This means that Brisbane Stadium is currently limited to hosting no more than 24 major sport events with a crowd size greater than 35,000 each calendar year, despite a Brisbane Stadium seating capacity of 52,500.

In 2023, Stadiums Queensland advised the Department of Tourism and Sport that it had become more probable that the cap of 24 events with a crowd size exceeding 35,000 would be reached in 2024 and would be exceeded in 2025 should even a 10 percent increase occur on 2023 attendance figures. Stadiums Queensland modelling indicates that greater than 45,000 is an appropriate major sport event crowd size that takes into account increased demand for major sport events at Brisbane Stadium.

In 2024, the Department of Tourism and Sport identified that street addresses for six of the nine declared major sports facilities under Schedule 1 of the Regulation require amendments to ensure they are contemporary and reflect the most accurate information available on the venues' street locations.

The Amendment Regulation will: permanently increase the number of concerts that can be held at Brisbane Stadium from up to six to up to 12 concerts per calendar year commencing from 2025, prescribe more than 45,000 as the crowd size for a major sport event, and correct the addresses of six declared major sports facilities listed under Schedule 1 of the Major Sports Facilities Regulation 2014.

Human Rights Issues

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

I have considered each of the rights protected by Part 2 of the HR Act.

In my opinion, there are no human rights engaged by the technical correction of the addresses of the six declared major sports facilities.

In my opinion, the human rights relevant to the concert and crowd number sections of the Amendment Regulation are:

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

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

(a) the nature of the right

Right to freedom of movement

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.

Freedom of movement is relevant as the permanent increase in the number of major concerts at Brisbane Stadium will result in additional applications of traffic and parking restrictions, and increased activity around the stadium. The stadium has been hosting an increased number of concerts since 2023, under the temporary cap of up to 12 concerts per calendar year for the years of 2023 and 2024 only. From the eight concerts held in 2023 and a total attendance of 370,433 patrons, there were four traffic complaints from local residents. Eleven complaints in that period were related to noise.

Increasing the major sport event crowd size from greater than 35,000 to greater than 45,000 will not have a substantial impact on the application of traffic restrictions surrounding Brisbane Stadium. The stadium operates under a Traffic Management Plan which considers a range of event factors, including crowd attendance, demographics for the event, ingress time (including curtain raiser events), planned traffic network disruptions, security information and weather. Under the crowd criteria for Brisbane Stadium's Traffic Management Plan, a high stage plan applies for crowds between 28,000 and 45,000, and a major stage plan applies for crowds over 45,000. There are no additional road closures or parking restrictions for events managed under a major stage plan when compared to a high stage plan. There are additional mitigation measures put in place under a major stage plan, for example, additional Queensland Police Service and traffic management resources, to assist with efficient movement of traffic and people, that are designed specifically to address the impacts of crowds greater than 45,000 to manage these impacts more effectively.

Right to property and right to privacy and reputation

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.

The Amendment Regulation engages these rights for residents in the local stadium area because it would provide for a permanent increase in the maximum number of allowable concerts, 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. Increasing the major sports event crowd size definition may enable Brisbane Stadium to host additional national or international sports events. Should this happen, the additional event would involve the same additional impacts as increasing the number of permitted concerts.

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 HR Act. Nonetheless, an impact on property or privacy under section 13 of the HR Act will not be arbitrary. For that reason, arbitrariness will be considered below in the context of justification under section 13.

Right of peaceful assembly and freedom of association

The right of peaceful assembly and freedom of association that every person has the right to peaceful assembly and that every person has the right to form and join trade unions.

The Amendment Regulation will promote the right of peaceful assembly by facilitating more concerts and allowing for more people to attend major sports events at Brisbane Stadium where people can assemble.

(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 permanent maximum of up to 12 concerts rather than up to six concerts per calendar year at Brisbane Stadium, is to meet current and medium-term expected demand for the venue as an urban-based stadium size concert venue (more than 50,000 seat/person capacity).

Allowing for the definition of a major sport event at Brisbane Stadium to be a crowd size greater than 45,000 instead of greater than 35,000, will help to ensure that Brisbane Stadium, as the South-East Queensland region’s premier sporting venue, is enabled to accommodate increasing demand for major sport event attendance.

In this way, the Amendment Regulation also promotes the right of peaceful assembly under section 22 of the HR Act.

The permanent ability to stage up to 12 concerts per calendar year at Brisbane Stadium is expected to deliver significant economic benefits at the local, regional and state level while also supporting the recovery of the arts and entertainment industry post the COVID-19 pandemic.

Using an assessment model provided by the Brisbane Economic Development Agency (BEDA) in 2022, ASM Global, in its capacity as manager of Brisbane Stadium on behalf of Stadiums Queensland, has estimated that the nine concerts held at the venue between November 2022 and December 2023 generated approximately \$171.3 million in economic activity. From the nine concerts with 399,165 patrons in attendance, there were 17 complaints received from locals, with 13 complaints relating to noise and four related to traffic, all of which were resolved with residents. For all concerts, sound engineers confirmed noise was within the required levels set by the Regulation.

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 increased 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

Increasing the permanent concert cap at Brisbane Stadium from up to six to up to 12 concerts per calendar year will help 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.

Increasing the prescribed crowd size for major sport events will not guarantee increases in crowd attendances at major sport events, which is largely based on team, sport and event popularity. However, allowing for the definition of a major sport event at Brisbane Stadium to be a crowd size greater than 45,000 instead of greater than 35,000, will help to satisfy current and projected increases in both the demand for, and patronage of, sporting events at Brisbane Stadium. In so doing, the amendments will provide increased economic, social and community benefits whilst also supporting the long-term commercial viability of Queensland's sporting franchises.

(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 permanently allow for a maximum of up to 12 concerts per calendar year to meet demand for the venue is by making an 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 current and medium-term demand for concerts from significant international artists at Brisbane Stadium, 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 playing three sold out concerts in February 2023 and P!NK playing three concerts in early 2024). Stadiums Queensland has also advised that given existing and ongoing commitments to hosting sport events, there are operational limitations to the number of concerts that Brisbane Stadium can host each calendar year, with the proposed permanent concert cap of up to 12 concerts per calendar year considered appropriate to reflect this limitation under current market conditions.

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 impacts of major concerts 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 concert impacts such as noise levels, light, pedestrian and traffic movement, and crowd behaviour.

Therefore, there is no less restrictive or reasonably available means to achieve the purpose.

As the major sport event crowd size threshold for Brisbane Stadium is set by the Regulation, the only means for achieving the purpose to allow for an increase in the crowd size definition of a major sport event to greater than 45,000 is by making an amendment to the Regulation.

In 2011, the Regulation was amended to increase the major sport event crowd size definition from greater than 25,000 to greater than 35,000. This change was largely in response to increased spectator demand resulting from a combination of population and spectator growth as well as the expansion and success of Brisbane's football franchises. In the years following this amendment, spectator demand for sporting events and the population of South East Queensland have increased. The Amendment Regulation is a response to these increases, as was the case in the *Major Sports Facilities Amendment Regulation (No. 3) 2011*.

The option to preserve the legislative status quo was considered. This option was not recommended as it would not provide the operating conditions required for Brisbane Stadium to meet increasing spectator demand for sport events at the venue. Additionally, this option poses significant reputational and economic risks to both the State and venue operators.

An additional alternative approach to the proposed Amendment Regulation would be to increase the permitted number of major sport events, rather than the crowd size, at Brisbane Stadium. This approach would require amendments to be made to the Act. This approach was not recommended as given existing and ongoing commitments to hosting sport events, as well as a maximum of 12 concerts per year, there are operational limitations to the number of major sports events that can be held at the venue. This approach also would not meet the purpose of meeting increasing spectator demand to attend popular major sport events at the venue. Given that Brisbane Stadium is the confirmed venue of popular showpiece events such as National Rugby Leagues' Magic Round until 2027, State of Origin, grand final events and international sporting matches, it will also need to be able to meet its ticket sale commitments with organisers.

Further, increasing the total number of major sport events permitted at Brisbane Stadium could foreseeably have a greater impact on the human rights of those living or owning/operating businesses within the vicinity of Brisbane Stadium than the proposed approach. Amending the Regulation to lawfully allow for larger crowds at major sport events (rather than increasing the total number of major sport events permitted at the venue) is therefore considered a less restrictive and reasonably available way to achieve the purpose of providing Brisbane Stadium with appropriate operating conditions that will meet spectator demand for sporting events at the venue.

(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 considered reduced by:

- the temporary nature of the impacts, as the impacts are confined to the days that concerts and major sport events are held;
- the detailed requirements of the Regulation for concerts;

- transport and operational plans prepared by Brisbane Stadium operators for major sport events, to minimise impacts on residents and local businesses and ensure public safety; and
- the results of the consultation process which showed that a majority of the local residents and businesses who responded support the increase in the concert cap and prescribed crowd size for a major sport event.

In 2022, community consultation was undertaken on the temporary increase to Brisbane Stadium's concert cap from up to six to up to 12 concerts per year for 2023 and 2024 only. At this time, the consultation process attracted 236 responses with 78.4% of all respondents either strongly agreeing (57.2%) or agreeing (21.2%) to a temporary increase in the cap (with a majority of local residents and business owners who were surveyed also supporting the proposal). Of the respondents living in the Lang Park Local Traffic Area (an area surrounding Brisbane Stadium designated by Brisbane City Council for events), 76.8% either strongly agreed (51.4%) or agreed (25.4%) with the proposal while a minority of local respondents (13%) strongly disagreed.

Following this consultation, the Regulation was amended to temporarily increase the number of major concerts that could be held at Brisbane Stadium from up to six to up to 12 concerts per calendar year for 2023 and 2024. While this interim arrangement has satisfied some demand for the staging of concerts at Brisbane Stadium, the regulatory uncertainty around this temporary solution may be seen as a deterrent to touring artists booking future events at the venue.

On 25 July 2022, government approved consultation on a permanent increase in the Brisbane Stadium concert cap from six to eight concerts per year from 2025 onwards, with this consultation to be informed by a review of the concert cap increase during the 2023 and 2024 calendar years. However, due to ongoing demand for concerts at Brisbane Stadium since that government decision, government sought community views on a range of options for a permanent concert cap into the future namely:

- no change (up to six concerts per year)
- up to eight concerts per year
- up to 10 concerts per year
- up to 12 concerts per year
- more than 12 concerts per year.

Between 16 February and 12 March 2024, state-wide consultation was undertaken through surveys hosted on the *Get Involved* website, including the option to provide a submission, and direct invitation to other stakeholders, including local government. Consistent with the *Queensland Government Better Regulation Policy*, this consultation was promoted through various channels to ensure that interested stakeholders had reasonable opportunity to engage with and respond to the consultation process.

During the consultation period, 442 responses were received comprising 434 online survey responses and eight written submissions.

During the consultation, respondents were asked to reflect on impacts from concerts in 2023 following the temporary increase to the concert cap made for the years 2023 and 2024, with 78.1% of all respondents indicating that positive impacts (such as increased economic activity) had resulted from the temporary increase in concerts in 2023.

Furthermore, a clear majority of responses indicated that they had not experienced any negative impacts from the staging of concerts during this period (despite stronger engagement with this consultation compared to the consultation undertaken in 2022). When respondents living in the Lang Park Traffic Area were asked about impacts from concerts in 2023, 71.3% indicated they had not experienced any negative impacts from noise, 57.3% advised they had not experienced negative impacts from changed traffic conditions, and 77.4% indicated they had not experienced any other impacts from concerts during the period.

However, a minority of respondents from the Lang Park Traffic Area identified they were impacted by concert noise (26.8%), changed traffic conditions (41.5%) and other impacts (19.5%) such as anti-social patron behaviour and impacted street access for residents and their visitors.

A clear majority of respondents (81.3%) either agreed (9.9%) or strongly agreed (71.4%) that Brisbane Stadium should be permitted to hold up to 12 concerts per year on a permanent basis from 2025 onwards. Respondents indicated that concerts were an important part of Brisbane's cultural fabric and international reputation. Most respondents (60.4%) also specified their preference for the cap to be greater than 12. Importantly, 75.6% of respondents living in the Lang Park Traffic Area also supported the proposal that Brisbane Stadium should be permitted to hold up to 12 concerts per calendar year.

Despite this strong support, 19.5% of respondents living within the Lang Park Traffic area either disagreed (6.7%) or strongly disagreed (12.8%) with the proposal. This compares with 13.7% of responses from those who indicated they live outside the Lang Park Traffic Area who either disagreed (2.6%) or strongly disagreed (11.1%), and 15.9% of responses across the total sample who disagreed (4.1%) or strongly disagreed (11.8%). These respondents were mostly concerned about the state of the Brisbane Stadium playing surface should concert numbers increase, as well as the impacts associated with noise and changed traffic conditions caused by concerts.

Consultation responses demonstrated that 84.1% of respondents either agreed (16.4%) or strongly agreed (67.7%) with increasing the current prescribed crowd size for major sport events from greater than 35,000 to greater than 45,000. Importantly, 75.6% of respondents who live within the Lang Park Traffic Area strongly agreed (56.1%) or agreed (19.5%) with the proposal. Many of these respondents indicated that this increase will further support Queensland's already strong sporting culture and will help to meet the increasing demand for sports spectatorship in Queensland's southeast.

Despite this broad support, 15.2% of respondents living within the Lang Park Traffic area either disagreed (3%) or strongly disagreed (12.2%) with the proposal. This compares with 8.5% of responses across the total sample who either disagreed (2.3%) or strongly disagreed (6.2%) with increasing the current prescribed crowd size for major sport events from greater than 35,000 to greater than 45,000 at Brisbane Stadium. These unsupportive responses emphasised more strongly the negative impacts associated with larger crowd sizes such as noise, traffic congestion, and antisocial behaviour from patrons.

While a minority of local resident respondents strongly disagreed with the proposals, 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. Additionally, Brisbane Stadium prepares traffic and operational plans to mitigate impacts on local residents from major sport events.

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 an increase to the permanent concert cap and an increase in the definition of a major sport event crowd size.

The Department of Tourism and Sport shared detailed consultation results with Stadiums Queensland and the stadium operator to consider opportunities to improve operations to further reduce impacts on local residents, where possible.

On the other side of the scales, the benefits of increasing the concert cap and prescribed crowd size for a major sport event include:

- significant economic benefits at local, regional and state levels;
- support for the recovery of the arts and entertainment industry post COVID-19;
- satisfying projected increases in both the demand for, and patronage of, sporting events at Brisbane Stadium; and
- promoting the right to peaceful assembly in section 22 of the HR Act.

On balance, taking into account the nature and extent of the limitation on the right to privacy, I consider that the purpose of meeting ongoing demand for concerts and major sport events 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 and potentially increased crowd sizes for major sport events, with existing regulatory requirements and other practices actively managing and mitigating impacts on local residents from concert and major sport event noise, light, traffic, crowd and pedestrian movement.

Accordingly, the limit on freedom of movement is justified as 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 Amendment Regulation 2024 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.

HON MICHAEL HEALY MP
MINISTER FOR TOURISM AND SPORT