

Electoral 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* (HR Act), I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, provide this human rights certificate with respect to the *Electoral Regulation 2024* (the Regulation 2024) made under the *Electoral Act 1992* (the Electoral Act).

In my opinion, the Regulation 2024, as tabled in the Legislative Assembly, is compatible with the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

Overview of the Subordinate Legislation

The Electoral Act governs the conduct of parliamentary elections in Queensland. It regulates various matters including electoral rolls, registration of political parties, elections, preselection ballots, election funding and financial disclosure.

Section 392 of the Electoral Act provides that the Governor in Council may make regulations under the Act. The *Electoral Regulation 2013* (the Regulation 2013) will automatically expire on 31 August 2024 under the *Statutory Instruments Act 1992*. The objective of the Regulation 2024 is to remake the Regulation 2013.

Consistent with the Electoral Act and the Regulation 2013, the Regulation 2024:

- prescribes matters relating to the electoral roll including the date on which a person is enrolled on the electoral roll as information that must be included on the electoral roll, the government entities that the Electoral Commission of Queensland (the ECQ) may ask for information about a person on the electoral roll, the price for giving information about electoral rolls to local government and the information that does not form part of the publicly available part of the electoral roll;
- prescribes the classes of electors who may utilise Electronically Assisted Voting (EAV);
- authorises procedures for EAV at elections for section 121B of the Electoral Act, electronic lodgement of returns for section 315A of the Electoral Act and counting of absentee votes for section 130A of the Electoral Act;
- prescribes various matters relating to election funding and financial disclosure including the qualifications or experience for auditors, the amount of the policy development payment and the period for giving certain returns required by the Electoral Act;
- prescribes the information to be included in particular records required to be kept under the Electoral Act to enable an election participant to demonstrate compliance with various provisions in part 11 of the Electoral Act;
- prescribe the documents that must accompany an application for registration of a political party for section 71 of the Electoral Act; and
- prescribe the model procedures for the conduct of a pre-selection ballot for section 166 of the Electoral Act.

The Regulation 2024 is in substantially the same form as the Regulation 2013, other than changes to:

- provide that all of the periods for giving returns about gifts or loans are calculated using ‘business days’ to ensure that the disclosure requirements are aligned for giving returns in the seven business days before the polling day of an election and the general requirement to give a return within seven business days of when the gift or loan is received—this approach is consistent with the equivalent obligations in the *Local Government Electoral Regulation 2023* and ensures that gifts or loans received on the eighth or ninth day before polling day are disclosed before polling day;
- provide that voters who are overseas or interstate during an election may vote using EAV, which is a vote saving measure given postal voting services for these electors are not always reliable, and will also allow votes to be counted more expediently;
- approve new procedures for counting of absentee votes made by the ECQ under section 130A of the Electoral Act;
- modernise the model procedures for the conduct of a preselection ballot, in particular to provide for electronic processes; and
- minor changes to reflect current drafting practices and clarify existing provisions.

Human Rights Issues

I consider the following human rights to be relevant to the Regulation 2024:

- right to take part in public life (section 23 of the HR Act);
- right to privacy and reputation (section 25 of the HR Act); and
- freedom of association (section 22 of the HR Act).

I consider the right to take part in public life is promoted by the provisions in the Regulation 2024 in relation to EAV, disclosure and return requirements and the model procedures for the conduct of a preselection ballot. EAV is a form of assistance offered to certain classes of voters to assist them to cast a vote in an election. As noted above, the Regulation 2024 will further extend EAV to interstate or overseas voters. Although postal voting is an option for these voters, providing EAV as an additional voting method promotes the ability for these voters to accessibly and equitably exercise their right to vote. The disclosure and return requirements, which ensure that voters can access information concerning those providing gifts or loans, and incurring expenditure for, a political purpose, assist voters to form judgements about the potential for improper, corrupting or undue influence in electoral and political processes. The model procedures for the conduct of a preselection ballot ensure that preselection ballots are free and democratic.

I also consider that the right to privacy and reputation is promoted by the provisions in the Regulation 2024 which ensure that certain information does not form part of the publicly available part of the electoral roll.

However, I consider that:

- the right to privacy and reputation is limited by the provision in the Regulation 2024 which allows the ECQ to ask prescribed government entities for information about a person;
- the right to privacy and reputation and freedom of association are limited by the disclosure requirements; and

- the right to privacy and reputation and freedom of association are also limited by the provisions that prescribe information and particulars that must be kept in registers and records.

These provisions are considered in further detail below.

Consideration of reasonable limitations on human rights (section 13 Human Rights Act 2019) – electoral roll information

(a) the nature of the right

The right to privacy and reputation protects the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Part of the concept of privacy is also the right to personal autonomy as a human being, and to not be subjected to unwarranted and unreasonable intrusions on this. People also have the right not to have their reputation unlawfully attacked.

(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 Regulation 2024 prescribes the government entities that the ECQ may ask information about a person including their surname and given names, address, sex, occupation, date of birth and an identifying number.

By requiring disclosure as described, the right to privacy and reputation is limited because it makes personal information held by the prescribed government agencies available to the ECQ.

The purpose of the limitation imposed is to ensure the integrity of the electoral roll. It is compulsory for Australian citizens aged 18 and over to enrol and vote. High levels of participation are the foundation for the integrity of election results. Accordingly, it is essential that the ECQ is able to access information held by other government agencies to ensure the integrity and accuracy of the electoral roll and deliver a secure and trusted election.

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

The limitation on the right helps achieve the purpose. Allowing the ECQ to ask certain government entities for information about a person supports the integrity and accuracy of the electoral roll.

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

There are no less restrictive reasonably available ways 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 balance, taking into account the nature and extent of the limitation on the right to privacy and reputation, I consider that the purpose of ensuring the accuracy and integrity of the electoral roll outweighs the impact that information sharing between the ECQ and prescribed government entities has on the right to privacy and reputation.

Consideration of reasonable limitations on human rights (section 13 Human Rights Act 2019) – disclosure requirements for candidates, third parties, entities, associated entities and registered political parties

(a) the nature of the right

The right to privacy and reputation protects the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Part of the concept of privacy is also the right to personal autonomy as a human being, and to not be subjected to unwarranted and unreasonable intrusions on this. People also have the right not to have their reputation unlawfully attacked.

The right to freedom of association protects the rights of individuals to join together with others to formally pursue a common interest.

(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 Regulation 2024 prescribes the time periods for candidates, third parties, associated entities and registered political parties to provide returns about a gift or loan received, or expenditure incurred, which are required under the Electoral Act. The Regulation 2024 also prescribes the information that must be included in a return, such as the name and address of the person or entity who gave the gift or loan or incurred the expenditure. The return is then published on the ECQ website, with street addresses being deleted, or the entire address being deleted if an individual is a silent elector and the ECQ is informed of this.

By requiring disclosure as described, the right to privacy and reputation is limited because it makes publicly available personal information about those who give gifts or make loans to, or incur expenditure for, political purposes. The right to freedom of association is also limited because information about a person's association, through the provision of a gift or loan to, or incurring expenditure for, a political purpose is made publicly available.

The purpose of the limitations imposed by the disclosure requirements is to provide transparency and inform the public, including voters, about the financial dealings of candidates, third parties, associated entities and registered political parties. This will assist voters to form judgements about the potential for improper, corrupting or undue influence. It will also assist the ECQ in ensuring electoral participants are complying with the donation laws. This purpose is consistent with a free and democratic society as providing transparency for voters provides them with information to form a political judgement prior to casting their vote. Further, maintaining the integrity of the donation laws will increase public confidence in democracy.

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

The limitations on the rights help achieve the purpose as the disclosure arrangements allow voters to be informed through returns about those who provide amounts equal to or above the disclosure threshold where there may be potential for improper, corrupting or undue influence.

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

There are no less restrictive reasonably available ways to achieve the purpose. The Regulation 2024 limits the restrictiveness of the measures by only requiring disclosure where the amount of a gift or loan received, or expenditure incurred, is more than the threshold amount and where there is increased potential for improper, corrupting or undue influence. The impact on the right to privacy and reputation is limited due to safeguards in the Electoral Act which require the ECQ to delete the street address of any individual identified in the return, and the full address of a silent elector where the person giving the return informs the ECQ of the silent elector status. The deletion of street addresses will limit the publicly available address information to the suburb, town, city or other locality and State.

(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 balance, taking into account the nature and extent of the limitation on the right to freedom of association and the right to privacy and reputation, I consider that the purpose of providing transparency and informing the public in exercising their voting choices outweighs the impact that the required disclosure has on freedom of association and the right to privacy and reputation.

(f) any other relevant factors

Not applicable.

Consideration of reasonable limitations on human rights (section 13 Human Rights Act 2019) – prescribing particular information that must be kept as records and in registers

(a) the nature of the right

The right to privacy and reputation protects the right of a person not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. Part of the concept of privacy is also the right to personal autonomy as a human being, and to not be subjected to unwarranted and unreasonable intrusions on this. People also have the right not to have their reputation unlawfully attacked.

The right to freedom of association protects the rights of individuals to join together with others to formally pursue a common interest.

(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 Regulation 2024 prescribes specific information and particulars that must be kept as records and in registers under the Electoral Act. These records may be subject to audit by an appointed auditor or subject to the specific functions and powers of authorised officers for compliance activity, as enabled under the Electoral Act.

By specifying information to be kept as records and in registers, the right to privacy and reputation is limited because it may make personal information contained in those records and registers available to an appointed auditor or authorised officer who is undertaking compliance activity in relation to part 11 of the Electoral Act. The right to freedom of association may also be limited because information contained in those records and registers, which can reveal a political association, may be made available to an appointed auditor or authorised officer who is undertaking compliance activity in relation to part 11 of the Electoral Act.

The purpose of the limitations imposed by the prescribed information that must be kept in records and registers is to ensure that compliance with part 11 of the Electoral Act, concerning funding and disclosure requirements, can be ascertained through audit and compliance activity and to allow for any detected non-compliance to be appropriately prosecuted.

This purpose is consistent with a free and democratic society as ensuring compliance with part 11 of the Electoral Act will reduce the potential for improper, corrupting or undue influence in electoral and political processes. This includes:

- providing transparency to voters in exercising their voting choices through financial disclosure;
- limiting the scope for improper, corrupting or undue influence through donation caps; and
- levelling the playing field for electoral campaigning through electoral expenditure caps, by ensuring that each individual or entity has a reasonable opportunity to communicate to constituents during an election without being ‘drowned out’ by those who have the financial means to spend more on electoral communication.

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

The limitations on the rights help achieve the purpose as prescribing the particular information that must be kept in records and registers ensures that the information necessary to assess compliance is required to be kept, and therefore compliance is able to be ascertained through audit and compliance activity.

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

There are no less restrictive reasonably available ways to achieve the purpose. The prescribed information is limited to that which is necessary to allow audit and compliance activity to occur and is directly related to the particular requirements of part 11 of the Electoral Act. There is a specific safeguard in the Electoral Act which prohibits the ECQ from publishing or otherwise making available for public inspection, information about the membership of a political party. This ensures that right to privacy and reputation and freedom of association cannot be impacted further by making such information publicly available given the sensitivity of this information.

(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 balance, taking into account the nature and extent of the limitation on the right to freedom of association and the right to privacy and reputation, I consider that the purpose of ensuring that compliance with part 11 of the Electoral Act can be ascertained through audit and compliance activity outweighs the impact that the record keeping requirements has on the right to privacy and reputation and freedom of association.

(f) any other relevant factors

Not applicable.

Conclusion

I consider that the Regulation 2024 is compatible with the HR Act because it limits a human right only to the extent that is reasonable and demonstrably justified in accordance with section 13 of the HR Act.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
and Minister for the Prevention of Domestic and Family Violence

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