

Local Government Electoral (2020 Quadrennial Election) Regulation 2020

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, Minister for Local Government, Minister for Racing and Minister for Multicultural Affairs provide this human rights certificate with respect to the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* made under the *Local Government Electoral Act 2011*, the *Local Government Act 2009*, the *City of Brisbane Act 2010* and the *State Penalties Enforcement Act 1999*.

In my opinion, the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 29 January 2020, the Minister for Health and Minister for Ambulance Services declared a public health emergency under section 319 of the *Public Health Act 2005* due to the outbreak of a new coronavirus, COVID-19, and the public health implications for Queensland.

On 15 March 2020 the National Cabinet, comprising the Prime Minister, State Premiers and Territory Chief Ministers, asked all States and Territories to ensure they had appropriate legislative provisions in place to implement and monitor social distancing measures

2020 quadrennial Local Government election

The *Public Health and Other Legislation (Public Health Emergency) Amendment Act 2020* (the Act) was passed by the Legislative Assembly on 18 March 2020 in response to the unprecedented health crisis facing Queensland posed by COVID-19. The Act received assent on 19 March 2020.

The Act amends the *City of Brisbane Act 2010*, the *Local Government Act 2009*, the *Local Government (Dissolution of Ipswich City Council) Act 2018*, the *Local Government Electoral Act 2011* (LGEA) and the *Local Government Regulation 2012* to provide flexibility, if required, for the election date for the 2020 quadrennial Local Government election and the statutory processes for the conduct of the election to help minimise serious risks to the health and safety of persons caused by the COVID-19 pandemic.

The measures are temporary and will only apply to the 2020 quadrennial Local Government election in order to maximise public safety and minimise the public health risks associated with the COVID-19 pandemic.

Section 21 of the Act inserts new Part 9A (Provisions for quadrennial election for 2020) into the LGEA. Section 200A of the LGEA provides the purpose of Part 9A is to facilitate the holding of the quadrennial election for 2020 in a timely way that minimises serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

Section 200L of the LGEA provides a regulation may make provision about a matter to allow or facilitate the holding of the quadrennial election for 2020 and for which the LGEA does not make provision or sufficient provision. The regulation may have retrospective operation to a day not earlier than the day of commencement and be inconsistent with the LGEA to the extent necessary to achieve the purpose of Part 9A. Section 200L and the regulation expire one year after the day of commencement.

The *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* (the Regulation) makes provision for matters about the quadrennial election for 2020.

The Regulation provides for offences relating to signage at polling booths. During the period that starts on the commencement and ends at 5a.m. on the polling day for the election a person must not do any of the following in the area around an ordinary polling booth:

- display an election sign
- set up a table, chair, umbrella, portable shade structure or other thing to be used for a purpose related to the election.

A maximum penalty of 10 penalty units applies. If a member of the electoral commission's staff considers a sign is displayed, or another thing is situated in contravention of this provisions, the staff member may remove the sign or other thing.

The Regulation provides that for the purpose of part 9A of the LGEA, the electoral commission may give directions about candidates or scrutineers at particular places. The electoral commission may give a direction:

- regulating the number of scrutineers each candidate may have at a polling booth or other place where a scrutineer is entitled to be present under the LGEA
- prohibiting a candidate or scrutineer from being present at a polling booth or other place where the candidate or scrutineer would otherwise be entitled to be present under the LGEA (for example a direction may prohibit a scrutineer from accompanying an issuing officer under section 76 of the LGEA).

The direction must be published on the electoral commission's website. The Regulation provides for a maximum penalty of 20 penalty units for contravention of the direction without a reasonable excuse.

The direction applies despite section 59 of the LGEA (Scrutineers) or another provision of the LGEA that allows a candidate or scrutineer to be present at a polling booth or other place. section 174(b) of the LGEA (Obstructing electoral officers etc.) does not apply to the extent a scrutineer is prevented from entering a polling booth under the direction.

The Regulation also provides for directions about movement of candidates or scrutineers. For the purpose of part 9A of the LGEA, any of the following persons may give a direction under section 8 of the Regulation:

- the returning officer
- a presiding officer for a polling booth

- a member of the electoral commission's staff who has been given a direction under section 96A of the LGEA (Re-counting of votes).

The direction may be given to a candidate or scrutineer at a place (a *relevant place*) that is a polling booth or other place at which the candidate or scrutineer is entitled to be present under the LGEA.

The direction may be about:

- the movement of a candidate or scrutineer at a relevant place
- an area within a relevant place at which the candidate or scrutineer may or may not be
- the maximum number of scrutineers who may be in a particular area of a relevant place.

A candidate or scrutineer must comply with the direction unless the candidate or scrutineer has a reasonable excuse. The Regulation provides for a maximum penalty of 20 penalty units for non-compliance with the direction. A candidate or scrutineer does not commit an offence unless the person giving the direction has warned the candidate or scrutineer that it is an offence not to comply with the direction unless the candidate or scrutineer has a reasonable excuse.

The Regulation provides that the electoral commission may make procedures under section 75A of the LGEA (Prescribed procedures for electronically assisted voting) about how an elector may cast an electronically assisted vote for the election. The procedures must state that they are made under section 9. The requirements under the LGEA section 75A(3)(a) and (b) that procedures do not take effect until approved by a regulation and must be tabled in the Legislative Assembly do not apply. The procedures take effect when they are published on the electoral commission's website.

The Regulation provides that the returning officer may arrange for the counting of votes to be filmed by a member of the electoral commission's staff. The provision authorises filming as this may be necessary to facilitate the scrutineering of the counting of votes if candidates and scrutineers are restricted in accessing areas they would otherwise be able to access.

Under section 200L(3) of the LGEA, the Regulation expires on 19 March 2021.

Enforcement through the State Penalties Enforcement Regulation

Part 5 of the Regulation amends the *State Penalties Enforcement Regulation 2014* to make certain offences under the Regulation offences for which a penalty infringement notice (PIN) may be issued under the *State Penalties Enforcement Act 1999*.

The relevant offences relate to:

- setting up to display election signs at ordinary polling booths prior to 5am on polling day for the election
- failure to comply, without a reasonable excuse, with a direction of the electoral commission about candidates or scrutineers at certain places
- failure to comply, without a reasonable excuse, with a direction about movement of a candidate of a presiding officer at a polling booth, the returning officer or a member of the electoral commission's staff conducting a recount of ballot papers

PIN offences are an alternative to prosecution through the court system. A person who is issued a PIN for an offence may discharge their liability by payment of a financial penalty. There is

no requirement for the offence to be prosecuted through the court system, although a person may elect to go to court to challenge the offence or the penalty imposed by the PIN.

Local Government Meetings

The policy objective of the Regulation is also to provide for additional matters for meetings of a Local Government or a committee of the Local Government to minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

Section 257(3) of the *Local Government Regulation 2012* (LGR) provides that all meetings of a Local Government are to be held at one of the Local Government's public offices; or, for a particular meeting, at another place fixed by the Local Government, by resolution, for the meeting. Section 245(3) of the *City of Brisbane Regulation 2012* (CBR) provides for similar requirements.

Section 274 of the LGR provides that a meeting is open to the public unless the Local Government or committee has resolved that the meeting is to be closed under section 275. Section 249 of the CBR provides for a similar requirement.

Section 276 of the LGR provides that a Local Government may allow a person to take part in a meeting by teleconferencing. A Councillor taking part in a meeting by teleconferencing is taken to have attended the meeting if the Councillor was simultaneously in audio contact with each other person at the meeting; and the Local Government approved the teleconferencing arrangement.

The policy objective of the Regulation is achieved by providing in the LGR for additional provisions for meetings of a Local Government or a committee of a Local Government to minimise serious risks to the health and safety of persons caused by the public health emergency involving COVID-19. Similar amendments are proposed to the CBR, however these apply only to Brisbane City Council meetings and not to committee meetings.

The Regulation provides for the following measures to be in force until 30 June 2021:

- a Local Government or a committee of a Local Government may hold a meeting by teleconference, despite section 257(3) of the LGR/section 245(4) of the CBR. A Councillor taking part is taken to be present at the meeting.
- the chairperson of a Local Government or committee meeting may allow a person to take part in a meeting by teleconferencing. A Councillor taking part in a meeting is taken to be present at the meeting.
- where a meeting of a Local Government or committee of a Local Government is held by teleconferencing or a person takes part in a meeting of a Local Government or committee of a Local Government by teleconferencing, the Local Government must ensure the meeting is available for real-time viewing or listening by the public at one of the Local Government's public offices or on the Local Government's website (unless the meeting is to be closed under section 275 or 277E of the LGR /section 255 or 255F CBR).
- the chairperson of a meeting of a Local Government or committee of a Local Government may decide, by notice published on the Local Government's website, that a meeting be closed to the public if the chairperson is satisfied it is not practicable for the public to attend the meeting because of health and safety reasons associated with the public health emergency involving COVID-19. The section applies despite section 274 of the LGR /

section 249 of the CBR (Meetings in public unless otherwise resolved), section 275 of the LGR / section 255 of the CBR (Closed meetings).

Human Rights Issues

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

The regulation engages the following human rights protected by the HR Act:

- Right to life (section 14 of the HR Act)
- Freedom of movement (section 19 of the HR Act)
- Freedom of expression (section 21 of the HR Act)
- Right to take part in public life (section 23 of the HR Act)
- Property rights (section 24 of the HR Act)
- Right to privacy and reputation (section 25 of the HR Act)
- Right to liberty and security of person (section 29 of the HR Act)
- Fair hearing (section 31 of the HR Act)
- Rights in criminal proceedings (section 32 of the HR Act).

2020 Quadrennial Local Government Elections

Right to life (section 14 of the HR Act)

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual whose life is put at risk by another's criminal activity.

The right to life is promoted by enabling the ECQ, presiding officers, returning officers and another member of the ECQ staff to give directions to manage the number and movement of people participating in the electoral process. This will assist with conducting the Local Government election in a way consistent with the direction given by the CHO to encourage social distancing of 1.5 metres to prevent and minimise the spread of COVID-19, especially in enclosed areas where votes are scrutinised and counted by groups of people.

Freedom of movement (section 19 of the HR Act)

The right to freedom of movement protects a person's right to move freely within Queensland and to enter and leave it and choice of residence, if they are lawfully within Queensland. The right is based upon Article 12 of the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states in part that the right shall not be subject to any restrictions except those which are provided by law and are necessary to protect public health. However, the United Nations Human Rights Committee (UNHRC) considers that the right for individuals to move freely should not be unnecessarily affected by legal and bureaucratic barriers.

Freedom of expression (section 21 of the HR Act)

The right to freedom of expression 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 forms of protected expression are broad,

and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

Right to take part in public life (section 23 of the HR Act)

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

Right to privacy and reputation (section 25 of the HR Act)

The right to privacy and reputation protects a person's right to not have their privacy and reputation unlawfully or arbitrarily interfered with. The nature of the right to privacy and reputation is very broad but contains internal limitations. The protection against interference with privacy is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate.

Enforcement through the State Penalties Enforcement Regulation

Property rights (section 24 of the HR Act)

A person's right to own property is protected in Queensland and a person must not be arbitrarily deprived of their property. The right to property is subject to an internal limitation because the deprivation of property must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

Right to liberty and security of person (section 29 of the HR Act)

Every person in Queensland has the right to liberty and security and must not be subjected to arbitrary arrest or detention or deprived of their liberty except on grounds, and in accordance with procedures, established by law. This right is subject to a number of internal limitations and qualifications. Relevantly, the arrest or detention must not be arbitrary in the sense that it must not be capricious, unpredictable or unjust or otherwise disproportionate to the legitimate aim that is sought.

Fair hearing (section 31 of the HR Act)

In Queensland a person charged with a criminal offence has the right to have the charge decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This right affirms the right of all individuals to procedural fairness and protects natural justice.

Rights in criminal proceedings (section 32 of the HR Act)

The rights of people charged with criminal offences in Queensland are protected under the Human Rights Act. Rights in criminal proceedings include the right to be presumed innocent until proven guilty, the right to be tried in person and the right to examine witnesses. This imposes on the prosecution the onus of proving the offence and guarantees that guilt cannot be determined until the offence has been proved beyond reasonable doubt.

Local Government Meetings

Right to life (section 14 of the HR Act)

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life. The protective obligation extends to requiring authorities to put in place measures that would protect an individual whose life is put at risk by another's criminal activity.

The amendments promote the right to life for Councillors, committee members and the public as conducting meetings through teleconferencing and broadcasting the teleconferenced meetings in real-time or closing the meeting to the public minimises the risk of spreading COVID-19 by reducing the contact between Councillors, committee members and members of the public.

Right to take part in public life (section 23 of the HR Act)

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

The amendments also promote the right to take part in public life for Councillors, committee members and the public as it enables Councillors and committee members to continue the work for which they are elected or appointed to do in Local Government. The public is given alternative options to observe Local Government and committee meetings to maintain the opportunity for the public to take part in public life.

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

2020 Quadrennial Local Government Elections

(a) the nature of the right

The amendments relating to the conduct of the 2020 quadrennial Local Government elections limit the rights to freedom of movement, freedom of expression, take part in public life and privacy.

The right to freedom of movement is limited to the extent that the ECQ may give a direction prohibiting a candidate or scrutineer from being present at a polling booth or other place where

they would otherwise be entitled to be present or that a presiding officer, returning officer or another member of the ECQ staff may give a direction to limit the movement of a scrutineer or candidate in a polling booth or other place.

The right to freedom of expression is limited to the extent that the time period in which elections signs may be set up at a polling booth is limited to after 5am on the day of the Local Government election.

The right to take part in public life may be limited if the ECQ or officer's direction diminishes the ability of candidates and scrutineers to view and scrutinise the electoral process.

The right to privacy may also be limited if filming the counting of votes also captures the people present at the counting of the votes.

(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

Protecting the health and safety of the public is a fundamental responsibility of Government and is consistent with a free and democratic society based on human dignity, equality and freedom. The spread of COVID-19 presents a clear danger to the health and wellbeing of Queenslanders as a result there is strong public interest in implementing effective measures to prevent or minimise the spread of COVID-19 in Queensland.

The Local Government election presents a heightened risk for spreading the COVID-19, not just for the electors voting at a polling booth but also for the groups of people present in enclosed premises for the electoral process, such as scrutinising the counting of the votes. However, it is in the public interest to ensure the Local Government election can proceed so that the democratic will of the electors can be expressed and to provide continuity and stability in the provision of essential services of Local Governments.

The purpose of the amendments relating to the 2020 quadrennial election is to make provisions to facilitate the holding of the quadrennial election for 2020 in a timely way that minimises serious risks to the health and safety of persons caused by the public health emergency involving COVID-19.

It is in this respect that the ECQ may give a direction to limit the number of scrutineers each candidate is entitled to have and prohibit candidates and scrutineers from accessing certain places where they are usually entitled to be present. For scrutineers this may include being present at a place to inspect the ballot box, visit visitor electors and electors in hospitals, observe processing of declaration envelopes and counting of votes, while candidates are entitled to be present during preliminary counting and official counting of the votes.

The presiding officer, returning officer and another member of the ECQ staff who is conducting a re-count of votes are also able to give a direction to limit the movement of candidates and scrutineers a polling booth or other place the candidate or scrutineer is entitled to be present under the LGEA.

The returning officer may arrange the counting of the votes to be filmed so that candidates and scrutineers to scrutinise the process from a distance to assist with complying with public health directions.

As the premises which are used as polling booths are often used for public functions other than Local Government elections, such as schools, the purpose of the amendments is to ensure persons are not present at these premises before polling day at times when other members of the public may be using the premises.

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

As the Local Government elections requires people to gather to manage the electoral process and to scrutinise the counting of the votes, the limitations are necessary to enable the ECQ, and certain electoral officers to manage the number of people allowed at polling booths and other places, and to direct the movement of those people to minimise the risk of spreading COVID-19.

Providing the option to film the counting of the votes so that the counting process can be viewed from a distance is also necessary to provide an appropriate balance between the restriction of movement of candidates and scrutineers and their role in maintaining the integrity of the counting process.

The amendments to prohibit the setting up of signage at a polling booth prior to 5 am on polling day achieves the purpose of ensuring the safety of the public, including vulnerable persons, who may be at the premises.

The amendments apply only to the conduct of the 2020 quadrennial election.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments proposed for the 2020 quadrennial Local Government elections. Despite efforts of the Queensland and Commonwealth Governments to minimise the spread of COVID-19, the rates of infection are quickly and steadily rising in Queensland.

To ensure the ECQ and electoral officers are able to prevent and minimise the spread of COVID-19 while conducting the Local Government election, it is necessary that they are given the necessary powers and flexibility to manage the numbers and movement of people during the electoral process, while maintaining the integrity of the scrutineering process. The amendments also provide a reasonable excuse exculpation for candidates or scrutineers who do not comply with a direction.

Enabling the counting of the votes to be filmed assists with mitigating the limitation on the right to take part in public life for candidates and scrutineers in participating in the scrutineering process as it allows the counting process to be viewed unobstructed and scrutinised from a distance where their movement is restricted.

(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 limitations on the rights identified and having regard to the justification above, it is considered that the benefits and purpose of promoting life by preventing and minimising the risk of the spread of COVID-19 during the

2020 quadrennial Local Government election outweighs any potential limitations imposed on the human rights that are limited.

Enforcement through the State Penalties Enforcement Regulation

(a) the nature of the right

Property rights may be limited, if a person fails to pay the penalty imposed in a PIN and does not successfully challenge the offence or penalty in court, enforcement action may be taken against the person which may include issuing a warrant for the sale and seizure of the person's property under the *State Penalties Enforcement Act 1999* (SPE Act).

Any deprivation of property arising from a PIN is not arbitrary as it is governed by the provisions of the SPE Act. The SPE Act contains detailed provisions on when enforcement action may be taken. There is scope for enforcement action to be appealed to the courts and for an individual's circumstances to be taken into account and alternate means of satisfying the debt agreed through the work and development order provisions. Accordingly, issuing a PIN will not lead to the deprivation of property on an arbitrary basis and is unlikely to limit a person's right not to be arbitrarily deprived of their property.

The right to liberty and security of person may be limited, if a person fails to pay the penalty imposed in the PIN and does not successfully challenge the offence or penalty in court, a warrant for that person's arrest and detention may be issued under the SPE Act.

Any arrest or detention arising from issuing a PIN is not arbitrary as it is governed by the provisions of the SPE Act. The SPE Act contains detailed provisions on when enforcement action, including issuing a warrant for arrest and detention, may be taken. There is scope for enforcement action to be appealed to the courts and for an individual's circumstances to be taken into account and alternate means of satisfying the debt agreed through the work and development order provisions. Arrest and detention is also a last resort for addressing unpaid fines as section 9 of the SPE Act, includes reducing the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms. Accordingly, issuing a PIN will not lead to arrest or detention on an arbitrary basis and is unlikely to limit a person's right to liberty and security of person.

The right to fair hearing may be limited because a person issued with a PIN is issued a penalty for committing an offence without having a court or tribunal decide the charge. However, a person may choose to challenge the offence or penalty imposed in a PIN in court where they will receive the benefit of a fair hearing. As such, any limitation on this right is minor in nature.

The rights in criminal proceedings may be limited because a person issued with a PIN becomes liable for a penalty for committing an offence without a trial and the rights that accompany a criminal proceeding. However, a person may choose to challenge the offence or penalty imposed in a PIN in court where they will receive the benefit of a trial and the rights that accompany a criminal proceeding. Further, when a PIN is issued for an offence no finding of guilt is made in respect to the alleged offence. As such, any limitation on this right is minor in nature.

(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 option to issue a PIN is provided to increase the effectiveness of a direction and the prohibition on setting up election signs at polling booths as it will allow for the imposition of an immediate pecuniary penalty to deter non-compliance. Effective enforcement will discourage offending behaviour and support compliance with the directions.

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

The imposition of a penalty through a PIN increases the effectiveness of enforcement of a direction to a candidate or scrutineer or the prohibition on setting up election signs as it allows a pecuniary penalty to be imposed at the time of non-compliance instead of waiting for the non-compliance to be dealt with in court.

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

In relation to the penalties and associated PINs, the only alternative is to enforce each offence through the court system. This approach would impose a significant additional burden on the courts and may discourage effective enforcement as minor failures to comply with a direction may not be pursued due to competing prosecution priorities and resource considerations. A lack of enforcement may result in people subject to the to view minor failures to comply as insignificant even though such failures could contribute further to the public health emergency and promote the spread of COVID-19.

(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

The benefits of increasing the effectiveness of measures to contain or respond to the spread of COVID-19 significantly outweigh the potential limitations imposed on human rights by issuing PINs to enforce directions of the ECQ, presiding officers, returning officers or other ECQ employees and the prohibition on setting up to display election signs at polling booths. Part 5 of the Regulation will ensure there is an administratively convenient way to enforce directions to take measures to contain or respond to the spread of COVID-19, which will support enforcement action and discourage people from breaching directions.

The nature and extent of the limitations on human rights are minor and are adequately addressed through existing safeguards in the SPE Act including the ability to elect to challenge a PIN in court, the ability to appeal enforcement orders and mechanisms that allow individual circumstances to be taken into account and alternate methods of satisfying the debt to be agreed including instalment plans and work and development orders. These measures ensure that any restrictions on human rights are reasonable, justifiable and no more restrictive than necessary to encourage compliance with the directions and allow the 2020 quadrennial Local Government election to proceed while containing the spread of COVID-19.

Local Government Meetings

(a) the nature of the right

The amendments relating to closing Local Government and committee meetings to public access enable the chairperson of a Local Government or committee to restrict access to a

meeting if they are satisfied that it is in the interest of the public to restrict access to minimise the serious risks to the health and safety of persons associated with COVID-19.

The amendments limit the right to take part in public life to the extent that these meetings will not be open to the public to observe or listen to discussions and decisions that would usually be conducted in the open.

(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

Protecting the health and safety of the public is a fundamental responsibility of Government and is consistent with a free and democratic society based on human dignity, equality and freedom. The spread of COVID-19 presents a clear danger to the health and wellbeing of Queenslanders as a result there is strong public interest in implementing effective measures to prevent or minimise the spread of COVID-19 in Queensland.

Gatherings of people present a heightened risk for spreading COVID-19, and the purpose of the limitation is to enable the chairperson of a Local Government or a committee to make responsive decisions about public access to a meeting to mitigate the health risks posed by COVID-19.

It is in this respect that limiting the public's right to take part in public life is justified by the promotion of the right to life for the people who participate or observe these meetings in the context of the health risks posed by the spread of COVID-19.

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

The limitation imposed on the public's right to take part in public life by enabling restricted access to Local Government and committee meetings achieves the purpose. While, opening Local Government and committee meetings to the public provides those who are interested the opportunity to physically observe the meetings, it also increases the risk for the spread of COVID-19 due to the gathering of people in enclosed spaces.

The amendments will enable the chairperson of a Local Government and committee meeting to respond to the health risks of COVID-19 by restricting access to the meeting where appropriate to discourage the gathering of people in enclosed spaces. This promotes the right to life for Councillors, committee members and the public as it prevents or minimises the risk of spreading COVID-19 and is consistent with the Queensland and Commonwealth Government's measures to promote social distancing and discourage gatherings of people to help contain COVID-19.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments proposed in this regulation. Despite efforts of the Queensland and Commonwealth Governments to minimise the spread of COVID-19, the rates of infection are quickly and steadily rising in Queensland.

The amendments minimise the impact on the limitation by imposing existing meeting requirements on meetings that have been closed to the public, other than requirements about

meetings being open to the public and closing a meeting, including requirements for taking minutes and making the minutes available for inspection by the public at a Local Government's public office and on the Local Government's website. This will allow the public to be informed about the discussions and decisions made in restricted access meetings. The amendments also operate for a limited time and expire on 30 June 2021.

(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 take part in public life and having regard to analysis and justification above, it is considered that the benefits and purpose of promoting life by enabling the chairperson of a Local Government or committee to restrict access to a meeting in response to health risks of COVID-19 outweighs any potential limitations imposed on the human rights that are limited.

Conclusion

In my opinion, the *Local Government Electoral (2020 Quadrennial Election) Regulation 2020* is compatible with the HR Act because it limits the identified human rights only to the extent that is reasonably and demonstrably justifiable in accordance with section 13 of the HR Act.

STIRLING HINCHLIFFE MP
Minister for Local Government,
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