

Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Stirling Hinchliffe MP, Minister for Tourism Industry Development and Innovation and Minister for Sport provide this human rights certificate with respect to the *Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021* made under the *Major Events Act 2014* (the ME Act).

In my opinion, the *Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021* (Amendment Regulation), as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

On 1 January 2015, the *Motor Racing Events Act 1990* was repealed and replaced by the ME Act and the *Major Events (Motor Racing Events) Regulation 2015* (the Motor Racing Regulation). The ME Act provides for the holding of major events, the safety of visitors and spectators at major events, to allow visiting health practitioners to provide health care services for major events without becoming registered under State law, to protect the rights of event organisers and sponsors at major events and for related purposes.

The Motor Racing Regulation provides for the holding of motor racing events in Queensland – in particular the Gold Coast 600 and the Townsville 500 (previously known as the Townsville 400). Consistent with the purpose of the ME Act, the Motor Racing Regulation provides for the safety of visitors and spectators at major motor racing events and protects the rights of event organisers and sponsors.

The 2021 Townsville 500 V8 motor racing event will be held from 9 to 11 July 2021. The purpose of the Amendment Regulation is to prescribe the 2021 Townsville 500 racing event as a major event, the major event period, the temporary works periods for the event and the official title of the event. The Amendment Regulation enables provisions under the ME Act and the Motor Racing Regulation for the holding for the 2021 Townsville 500; consistent with the policy intent of both the ME Act and Motor Racing Regulation.

Human Rights Issues

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

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

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

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

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

The Amendment Regulation amends the Motor Racing Regulation to declare the 2021 Townsville 500 as a major event and prescribes the major event organiser, the major event area, the major event periods, and the temporary works periods. As such, the Amendment Regulation enables the use of powers under the ME Act and the Motor Racing Regulation for the holding of the 2021 Townsville 500 by V8 Supercars Australia (the major event organiser).

(a) the nature of the right

Section 19 – Freedom of movement

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

The Motor Racing Regulation and the Amendment Regulation (the Regulations) provide the following limitations to movement within the major event area for the Townsville 500:

- a person must not enter or exit the major event area except through an entrance or exit designated by the major event organiser which provides limitations to the ability to move through, remain in, enter or depart from areas of public space;
- a direction may be made which requires a person to leave the major event area;
- the major event organiser may close a road to use by a person or vehicle; and
- the Regulations restrict vehicles in the major event area, unless on an open public road or in a parking space, or they are an authorised vehicle.

Section 21 - Freedom of expression

The nature of the right is that every person in Queensland has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The Regulations may interact with the freedom of expression in certain circumstances, including:

- imposing conditions on individuals' conduct when entering and within a major event area, including preventing individuals from offering services for a fee, soliciting money

or distributing a document unless they have written approval of the major event organiser or a ‘reasonable excuse’;

- the major event cannot be broadcast for profit or gain by an individual;
- the Regulations prevents individuals from unauthorised use of the Townsville 500 official logo or title (or one that is deceptively similar) for a commercial purpose, to promote a thing or service or to suggest a connection with the official title or otherwise more generally the 2021 Townsville 500 during the major event period; and
- the Regulations create an offence for impersonating an authorised person.

Section 24(a) Property rights

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

The Regulations:

- allow for temporary works to occur on public land for the Townsville 500 major event, and to close a road. This may interact with this human right where a power under the Regulations is used to move unattended vehicles to undertake these works;
- a person must not enter or exit the major event area, except through an entrance or exit designated by the major event organiser. This human right may be engaged where a person’s property is within the major event area, and they want to enter the major event area to access the property;
- impose conditions on individuals for entering and exiting a major event area, including powers for authorised persons to remove an article of clothing from a person, or to remove an article from a vehicle (for inspection purposes). The Regulations also provide for the inspection of possessions;
- provide that a person must not sell or distribute an item in the major event area during the major event period, unless it is allowed under the Regulation, or by written approval of the major event organiser. If under direction, the item is not removed from the event area by the person, the item may be seized by an authorised officer; and
- provide for expected conduct while entering or within a major event area and also provide for logo/brand protections for the major event organiser. These provisions may interact with the human right, as where an individual’s actions may be contrary to the Regulations, application of the Regulations may eventuate in the confiscation or seizure of an individual’s property.

Section 25(a) Privacy and reputation

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

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

- on entering the major event area may be asked to consent to the following:
 - the use of an electronic detection device, including a metal detector, on the person or the person’s possessions;
 - inspection of the person’s belongings;
 - removal of outer garments and inspection of the garments;
 - removal of articles from the person’s clothing and the inspection of those articles;
 - inspection of an article in the person’s possession; and

- where a person is entering the major event area in a vehicle, inspection of the vehicle, removal of an article from the vehicle and inspection of the article;
- within the major event area may be asked to consent to open and allow the inspection of an item in their possession;
- who is being directed to leave the major event area may have their photo (or other image) taken; and
- who is found to be committing, or is reasonably suspected of having just committed an offence against the ME Act, the person may be required to state their name and address, and provide evidence of correctness of their statement.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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

The Amendment Regulation does not propose any additional limitations than those that already exist in the Motor Racing Regulation. The proposed amendments under the Amendment Regulation will facilitate the provisions under the Motor Racing Regulation to allow the safe holding of the 2021 Townsville 500; for the objectives of ME Act to be met.

Provisions under the Regulations are constrained to the major event periods and the temporary works periods outlined in the Amendment Regulation and/or to the major event area for 2021 Townsville 500 (identified in Schedule 1 of the Motor Racing Regulation); minimising potential limitations on these human rights.

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

Section 19 – Freedom of movement

By identifying a major event area, major event periods and temporary works periods for the 2021 Townsville 500, the Regulations have sufficient regard for the rights and liberties of individuals, entering or within the declared event area, and individuals who may otherwise be inconvenienced by altered access to roads and paths and the carrying out of temporary works.

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

The limitations help achieve the purpose by limiting the movement of individuals into and within the major event area, ensure appropriate behaviour of visitors and spectators, and are necessary to ensure the major event organisers have sufficient capacity to provide for and manage a safe event space for the Townsville 500 event.

The provisions under section 26(1) clearly define when directions to leave may be given, and are considered reasonable and consistent to limitations of movement applied to individuals

attending a major sporting event in a public or private venue, or a ticketed event in a public open space. For example, the ME Act is consistent with a ticketed private venue and that individuals must enter through the venue's designated gates, have a ticket or other authorisation to be at the venue, and they must abide by conditions of entry and expected conduct.

Similarly, management of vehicles entering and within the major event area is essential to the safety of visitors and spectators, but also as a road event, it is critical for the safety of the event's drivers.

While these limitations on movement are necessary to provide for a safe major event area, to ensure these limitations aren't unduly restrictive, Section 19 of the ME Act provides for the granting of an *occupant's pass* to individuals who live, work or have a business within a major event area. The occupant's pass authorises a person to enter and remain in the major event area during the major event period.

Section 21 - Freedom of expression

Section 20(6) of the ME Act limits behaviours of individuals entering and within the major event area, and limitations on activities such as busking, distributing a document, touting for business are reasonable as this prevents persons from seeking to exploit a major event for their own gain, and engaging in activities which may conflict with the commercial purposes or otherwise of the event, and additionally impact on the amenity and enjoyment of the event by other visitors and spectators.

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

The potential limitation on the right to freedom of expression by section 36(1) which might be provided to individuals by broadcasting the 2021 Townsville 500 event is justifiable, in that it prevents unauthorised third parties from exploiting the major event for their own gain or affecting the integrity of the event or the exclusive rights of the event's official sponsors. The freedom of expressions is not unreasonably limited because an individual may still broadcast or record the major event:

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

While there are potential limitations on the right to freedom of expression under section 52 of the ME Act, the provisions regarding the use of the official logo or title are not intended to limit freedom of expression; rather, they are intended to protect the rights of event organisers and sponsors from unauthorised activities, consistent with the object of the ME Act. The limitation is justifiable as it prevents unauthorised third parties from exploiting the 2021 Townsville 500 event for their own gain or affecting the integrity of the event or the exclusive rights of the event's official sponsors. Section 52 also provides that the major event organiser may give a person a written notice authorising the person to use an official logo or official title.

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

Section 24(a) Property rights

The Amendment Regulation through section 16(3) of the ME Act may limit the right to property in certain circumstances by allowing the movement of an individual’s unattended vehicle located in the major event area. This limitation is required in order to meet the objective of the ME Act, which is to facilitate a major event, and in this case, to allow for temporary works to be carried out for the 2021 Townsville 500 to occur. The potential for a limitation to occur on property rights is managed through provisions under the ME Act which require details of the temporary works and time periods to be published in advance of the works occurring; to allow individuals time to prepare and remove vehicles which might otherwise need to be moved. There are also restrictions on how vehicles may be moved or removed (outlined in section 65 of the ME Act), including notification procedures once a vehicle has been moved. As a large scale annual and broadly communicated event held in the Townsville CBD area, it is unlikely that the exercise of the powers under section 16(3), for the 2021 Townsville 500, would limit an individual’s property rights, in the circumstances that the notice period might be considered too short to be reasonable.

Provisions under *Part 5 Major event provisions Division 2 Subdivision 1 Crowd and safety powers* are necessary to provide for a safe major event area for the 2021 Townsville 500, in managing entry and exit of the major event area and in managing conduct of individuals while in the major event area. Practical application of provisions under Subdivision 1 will apply some limitations to a person’s property right – for example providing property such as a garment or an article in the person’s possession to an authorised officer for inspection, or removing a thing from a vehicle for a similar purpose. These limitations aren’t unduly restrictive and would be minor in effect excluding where this property might be a prohibited item, and otherwise seized or confiscated under the ME Act (such as liquor under section 23), or another Act.

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

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

Part 5 Authorised persons for major events Division 4 Powers of authorised persons Subdivision 3 Seizing evidence and other things provides the necessary processes to balance the limitation on an individual’s property rights where property may have been seized by the major event organiser.

Section 25(a) Privacy and reputation

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

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

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

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

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

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

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

With the repeal of the *Motor Racing Events Act 1990* and its legislative replacement by the ME Act and the Motor Racing Regulation there are no other regulatory measures which would provide for the safe holding of major events or motor racing events in Queensland.

The purpose of the Amendment Regulation cannot be achieved through any reasonably available and less restrictive means. The Amendment Regulation seeks to amend the existing provisions in the Motor Racing Regulation to provide for the safe holding of the 2021 Townsville 500 – consistent with the purposes of the ME Act.

The amendments ensure provisions contained in the ME Act and the Motor Racing Regulation are targeted and constrained to ‘the time and place’ of the 2021 Townsville 500. The restrictions, and the associated limitations on the rights, are limited only to the major event area identified in the Amendment Regulation and during the period of the major event, and are, therefore, no wider than necessary.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

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

The Amendment Regulation will interact with, and in some circumstances, limit the freedom of movement, freedom of expression, property rights and privacy of individuals entering and within the major events area of the 2021 Townsville 500, during the time of the event.

It is critical to provide sufficient powers for the holding of major events. I consider the importance of ensuring the major event organisers of the 2021 Townsville 500 have sufficient powers to deliver a safe experience of visitors and spectators at the event, and providing protections to the commercial and brand rights to the major event organisers and their sponsors, is essential, on balance of the potential, and temporary nature of limitations on the above human rights.

(f) any other relevant factors

Amendments to the Motor Racing Regulation are machinery in nature, in that amendments to the Motor Racing Regulation are required on an annual basis for the holding of the Gold Coast 600 and the Townsville 500 events. In this case, the Amendment Regulation will provide for the 2021 Townsville 500 to be declared a major event under the ME Act and defines the major event organiser, major event area, and the major event and temporary work periods for 2021.

Provisions in the ME Act require that in recommending to the Governor in Council the prescription of the 2021 Townsville 500 as a major event, that I must consult with Townsville Council. Consultation of local government when considering the prescription of events under the ME Act, could assist in lessening the human rights impacts of the Amendment Regulation by supporting communication to individuals whose human rights may be limited by an event.

Conclusion

I consider that the *Major Events (Motor Racing Events) (Townsville 500) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Stirling Hinchliffe MP
Minister for Tourism Industry Development
and Innovation and Minister for Sport

© The State of Queensland 2021