

# State Development and Public Works Organisation 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, Kate Jones MP, Minister for State Development, Tourism and Innovation provide this human rights certificate with respect to the *State Development and Public Works Organisation Regulation 2020* made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

In my opinion, the *State Development and Public Works Organisation Regulation 2020*, 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

Section 54(1) of the *Statutory Instruments Act 1992* provides for the automatic expiry of subordinate legislation on 1 September, first occurring after the tenth anniversary of the day of its making unless it is sooner repealed or expires, or a regulation is made exempting it from expiry.

The principal objectives of remaking the *State Development and Public Works Organisation Regulation 2010* (Regulation) are to ensure the Regulation remains relevant and efficient. The objectives are to remove redundant provisions relating to a number of completed projects and updating fees to 2020 amounts in line with indexation only. This will make the Regulation more efficient and effective in its delivery of information to project proponents including the matters for which fees are payable and the amount of those fees.

## 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 *State Development and Public Works Organisation Regulation 2020* (2020 Regulation) are:

- freedom of movement (section 19);
- property rights (section 24); and
- privacy and reputation (section 25).

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

#### (a) the nature of the right

- Section 19 – Right to freedom of movement

Every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

- Section 24 – Property rights

This right protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property.

- Section 25 - Privacy and reputation

The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation.

(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

- Section 19 - Freedom of Movement

Approval of the 2020 Regulation will allow the Coordinator-General to undertake other functions and powers as necessary, which could include access to land and the rearrangement and closure of roads for the purpose of facilitating projects outlined in the Regulation. A temporary road closure would place a temporary limitation upon a person's access ability.

- Section 24 – Property rights

The purposes for which the Coordinator-General may exercise its powers are limited. These include purposes in the public interest relating to transportation, environment, educational and cultural facilities, water, natural resources and public works. Any limitations are considered reasonable and justifiable.

The exercise of powers is subject to the process under the SDPWO Act and / or the *Acquisition of Land Act 1967* (ALA) and where applicable, payment of compensation.

- Section 25 - Privacy and reputation

The Coordinator-General must have sufficient information regarding the project including who the proponent is, history of the proponent, financial records and capital expenditure of the proponent and consultation undertaken with the proponent. After reviewing this information, the Minister will be in a position to determine if the project is capable of achieving the purpose of section 76A of the SDPWO Act, to provide for projects of economic, environmental or social significance to the State or region.

Some of the project works will permit access to land, and the opening or closing of other roads, if requested, which could result in a limitation on a person's ability to access existing infrastructure under section 19. Irrespective, the limitation is consistent with a free and democratic society as it seeks to support the growth and development of and accessibility to all persons.

Some of the projects permit the compulsory acquisition of land. Any land acquired would be for a particular purpose and in the public interest by facilitating economic development through the creation of jobs, infrastructure and tax income. The impact on a person's property rights is limited to the application of the SDPWO Act and the process for compensation under the ALA. The compulsory acquisition of land is not an arbitrary process but an established framework with compensation provisions to facilitate certain lawful objectives.

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

The potential limitation of human rights allows the Coordinator-General to facilitate significant economic and infrastructure projects to benefit the region, State and residents within.

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

Temporary road closures may be required for some of the projects. The use of the Coordinator-General's functions and powers does not provide any further limitations to human rights than any other method of road closure and is therefore considered to be a practical avenue to achieve the purpose of projects within construction timeframes.

Compulsory acquisition powers can be used to facilitate the timely establishment of significant projects which are of economic benefit to the State and its residents. While it may be considered a blunt instrument, these powers provide for timely and efficient implementation without the delays of the ordinary acquisition process. The process and compensation provisions outlined within the SDPWO Act and ALA provide a framework for the implementation of compulsory acquisition. The compulsory acquisition powers are therefore limited by the statutes' provisions, which provides a safeguard to the limit of impacts on a person's human rights.

(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

There are significant economic benefits to the community in the facilitation of large projects which provide not only jobs, but a more stable and diversified economy. The positive impact to the broader community must be viewed against the backdrop of both the social and economic impacts to landholders who may be potentially displaced by the exercise of the ability to compulsorily acquire land or the opening and closing of roads.

(f) any other relevant factors

Remaking the Regulation will ensure it remains relevant and efficient and does not provide any changes to existing safeguards that protect human rights.

## Conclusion

I consider the *State Development and Public Works Organisation Regulation 2020* is compatible with the *Human Rights Act 2019* because while it does limit, restrict or interfere with a human right, the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

**Kate Jones MP**  
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