

Cross River Rail Delivery Authority (Gold Coast Infill Stations Project) 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* (HRA), I, Mark Bailey MP, Minister for Transport and Main Roads provide this human rights certificate with respect to the *Cross River Rail Delivery Authority (Gold Coast Infill Stations Project) Amendment Regulation 2021* (Amendment Regulation) made under the *Cross River Rail Delivery Authority Act 2016* (CRRDA Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HRA. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Amendment Regulation amends the *Cross River Rail Delivery Authority Regulation 2019* (CRRDA Regulation) to prescribe the Gold Coast Infill Stations Project (GCIS Project) as a transport-related project, and as a transport-related project for which land may be taken.

The CRRDA Act establishes the Cross River Rail Delivery Authority (Delivery Authority) to:

- plan, carry out, promote or coordinate activities to facilitate economic development, and development for community purposes, in a Cross River Rail Project Development Area; and
- facilitate the efficient delivery of the cross river rail project and transport-related projects.

The amendments to the CRRDA Regulation will provide clarity for the Delivery Authority to lead and deliver the GCIS Project under the CRRDA Act.

Human Rights Issues

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

Section 24

Section 24 of the HRA protects the rights of all people to own property and provides the person must not be arbitrarily deprived of their property.

The amendment to section 4 of the CRRDA Regulation is relevant to section 20 of the CRRDA Act.

Section 20 of the CRRDA Act provides a power to the Delivery Authority to acquire land by compulsory acquisition if the land is required for a cross river rail purpose in relation to a transport-related project prescribed by regulation.

The Amendment Regulation will designate the GCIS Project as a transport-related project which will provide the Delivery Authority with the power to compulsorily acquire land under the CRRDA Act.

Section 28

Section 28 of the HRA protects the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Section 19 of the CRRDA Act provides the power to deal in land and other property for the purpose of performing its functions under section 12(1) of the CRRDA Act, which includes to facilitate the efficient delivery of transport-related projects.

The Amendment Regulation will designate the GCIS Project as a ‘transport-related project’ which will provide the Delivery Authority with the power to deal in land generally, which in turn, has the potential to limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples

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

Section 24

(a) the nature of the right

The right to property protects the right of all persons to own property and provides that people have a right not be arbitrarily deprived of their property.

Property is likely to include all real and personal property interests recognised under general law (such as interests in land) and may include some statutory rights (especially if the right includes traditional aspects of property rights, such as to use, transfer, dispose and exclude). The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

The right includes the protection from the deprivation of property. The term ‘deprived’ is not defined by the HRA, however deprivation is considered to include the acquisition of interests in land to the extent it substantially deprives a property owner of the ability to use his or her property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it or deriving profits from it). In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

The amendments, which will provide the Delivery Authority a power to compulsorily acquire land, limit the right to property.

(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 Delivery Authority was established under the CRRDA Act to facilitate the efficient delivery of the cross river rail project and transport-related projects like the GCIS Project.

The projects being delivered by the Delivery Authority will improve public transport services for the South East Queensland community, including more frequent and accessible services, and stimulate economic development, including development for community purposes in Cross River Rail Project Development Areas. These improved services and developments for the community and associated indirect benefits to the environment (for example associated with reduction of car usage), are consistent with a free and democratic society based on human dignity, equality and freedom.

The power to compulsorily acquire interests in land is proposed to support the delivery of the above public transport projects and developments. The power is consistent with the existing and longstanding power of constructing authorities under the *Acquisition of Land Act 1967*

(ALA) to acquire land for the purposes of transportation, subject to pre- and post-acquisition processes designed to provide reasonable notice and compensation to property owners.

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

The amendments will allow the Delivery Authority to deal with land (for example, purchase land by agreement from property owners) for the GCIS Project, in addition to the power to compulsorily acquire land if necessary. These powers are provided for in sections 19 and 25 of the CRRDA Act.

In this sense, the Delivery Authority will have other ways available to acquire land as a result of the amendments, with the power to compulsorily acquire also available to the extent necessary (for example, if needed to facilitate the efficient delivery of the GCIS Project).

Notably, the power to compulsorily acquire land is subject to the existing statutory regime in the ALA. That regime provides property owners with:

- notice of any proposed acquisition and avenues to negotiate the voluntary purchase of their land; and
- the right to claim compensation from constructing authorities who compulsorily acquire their land for recognised purposes (with compensation assessments to consider factors beyond the value of the land taken).

The compulsory acquisition of land under the CRRDA Act and the ALA, including by the Delivery Authority for the GCIS Project if necessary, as a result of the amendments, is therefore not considered an arbitrary deprivation of a person's property and compatible with section 24 of the HRA.

(d) 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 power to take land for recognised purposes is subject to the ALA, which provides a pre-acquisition process requiring notice and an avenue from real property owners who have their land taken to claim compensation from the relevant constructing authority. The amendments clarify that the Delivery Authority can take land for the GCIS Project if necessary, but do not seek to change any aspect of the current statutory regime in the ALA, and any acquisition of land would be subject to the current statutory regime and its protections.

Given the pre-acquisition and compensation regime under the ALA, I am of the view that the property right under the HRA is not limited by the proposed amendment because it does not allow for the arbitrary deprivation of property. If there were an alternative view that the right was limited then I consider any limitation to be reasonable and demonstrably justified because of the community benefits that will result from the GCIS Project and any person that has real property interests compulsorily acquired for the project will be able to claim reasonable compensation.

(e) any other relevant factors

There are no other relevant factors.

Section 28

(a) the nature of the right

Aboriginal and Torres Strait Islander peoples are recognised as having a rich and diverse culture, and an intimate association with their geographical areas. The distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples are protected under section 28 of the

HRA, which ensures that they are not denied the right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Islander custom. The right also ensure that Aboriginal peoples and Torres Strait Islander peoples are not denied the right to conserve and protect the environment and productive capacity of their land, territories, waters and other resources.

The Amendment Regulation will provide the Delivery Authority with the power to deal in land generally and as a consequence, may limit cultural rights of Aboriginal peoples and Torres Strait Islander peoples to maintain their relationship with any land.

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

The potential limitation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples is proposed to support the delivery of the project.

Notably, in delivering the project, the Delivery Authority will be subject to other statutory processes aimed at protecting the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples and is therefore not incompatible with section 28 the HRA. These processes include compliance with the Queensland Government's *Duty of Care Guidelines* (DOCG) gazetted under section 28 of the *Aboriginal Cultural Heritage Act 2003* (ACHA).

The DOCG includes the recommendation to consult with Aboriginal Parties in the area to assess and manage any activity to excavate, relocate, remove or harm possible Aboriginal cultural heritage prior to construction activities. A cultural heritage study or a cultural heritage survey should be carried out if necessary.

In delivering the GCIS Project, should a limitation of Aboriginal and Torres Strait Islander cultural rights occur, this limitation will be managed in accordance with existing guidelines and legislation. This includes the requirement under the ACHA to take all reasonable and practical measures to ensure the activity does not harm Aboriginal cultural heritage including, where necessary, recording and documenting any agreement with a relevant Aboriginal Party, or through the development of a Cultural Heritage Management Plan. This process is required irrespective of whether an amendment to the CRRDA Regulation is made.

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

There are no other less restrictive, reasonably available ways to achieve the purpose of delivering the GCIS Project due to the requirement to access and utilise additional land outside of the existing rail corridor for delivery of the project. Other location alternatives would have similar limitations on human rights, including similar possible impacts under section 24 and section 28 of the HRA.

(d) 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

All development that the Delivery Authority undertakes in relation to the GCIS Project is carried out in accordance with the existing Qld Government's DOCG ensuring the effective recognition, protection and conservation of Aboriginal cultural heritage.

I am of the view that the cultural rights of Aboriginal peoples and Torres Strait Islander peoples under the HRA is not limited by the proposed amendment because there is existing legislation and guidelines under the ACHA that does not allow for the arbitrary deprivation of cultural interests. If there were an alternative view that the right was limited then I consider any limitation to be reasonable and demonstrably justified because of the community benefits that

will result from the GCIS Project and for the requirement for extensive consultation with any relevant Aboriginal peoples and Torres Strait Islander peoples to be undertaken prior to the commencement of construction works.

(e) any other relevant factors

There are no other relevant factors.

Conclusion

I consider that the *Cross River Rail Delivery Authority (Gold Coast Infill Stations Project) Amendment Regulation 2021* is compatible with the *Human Rights Act 2019* because it does not 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.

Honourable Mark Bailey MP
Minister for Transport and Main Roads

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