

State Development and Public Works Organisation 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, Steven Miles MP, Deputy Premier and Minister for State Development, Infrastructure, Local Government and Planning provide this human rights certificate with respect to the *State Development and Public Works Organisation Amendment Regulation 2021* made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

In my opinion, the *State Development and Public Works Organisation Amendment Regulation 2021*, 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

The objective of the *State Development and Public Works Organisation Amendment Regulation 2021* is to create a new section that directs the Cairns and Hinterland Hospital and Health Service, the Minister for Economic Development Queensland and Queensland Bulk Water Supply Authority to undertake the project works in accordance with sections 99 and 100 of the SDPWO Act and also directs the Coordinator-General to undertake the reserved works, in accordance with sections 108 and 109 of the SDPWO Act. The intent is that the Coordinator-General will be able to exercise functions and powers to facilitate the Far North Queensland Health and Innovation Precinct project, the Currumbin Eco Parkland project and the Toowoomba to Warwick Water Pipeline project. Those functions and powers may include access to land, acquisition of land and the rearrangement and closure of roads.

Section 173(1) of the SDPWO Act provides for the Governor in Council to make regulations not inconsistent with the SDPWO Act in respect of a range of matters, including the manner and detail in which the Coordinator-General, and any body, corporate or unincorporate, shall perform a function or exercise a power imposed or conferred upon the Coordinator-General.

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 Amendment Regulation 2021* (2021 Regulation) are:

- Property rights (section 24); and
- Cultural rights - Aboriginal peoples and Torres Strait Islander peoples (section 28).

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

(a) the nature of the right

Section 24 – Property Rights

All persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property.

Section 28 – Cultural Rights - Aboriginal peoples and Torres Strait Islander peoples

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right, with other members of their community, to maintain their distinctive spiritual practices, material or economic relationship with the land or water to which they have a connection.

(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 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 payment of compensation for any economic losses.

Section 28 – Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

If any rearrangement of roads is required that may affect native title interests (native title parties are required to be afforded same procedural fairness as though they held freehold title), it is expected that the parties may continue to exercise and enjoy native title rights, except during any construction, for health and safety reasons.

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

The purpose of the 2021 Regulation is to provide the Coordinator-General with the functions and powers to facilitate:

- the Far North Queensland Health and Innovation Precinct, which would provide better health care for Far North Queensland and assist to transition Cairns Hospital to a university hospital;
- the Currumbin Eco Parkland, which would see the creation of one of the largest parks in Australia and could feature recreational facilities for families, sporting clubs and

- schools, protections for local koala habitats (including fodder eucalypt plantation), eco-tourism facilities to support more tourism jobs and nature based recreational trails;
- the Toowoomba to Warwick Water Pipeline, which would allow a new raw water pipeline connecting water supply to Warwick from the Wivenhoe Dam via Toowoomba, to ensure the long-term water security for the Southern Downs region.

The potential limitation of property rights is only to the extent in which the SDPWO Act allows. The potential limitation of the right allows the Coordinator-General to facilitate significant economic and infrastructure projects to benefit both the region, state and residents within.

In Queensland the rights of Aboriginal people and Torres Strait Islander peoples are lawfully established through a range of legislative mechanisms. In the context of planning and development, these rights are primarily achieved through the *Native Title Act 1993 (Cth)*, *Native Title (Queensland) Act 1993*, *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*, but also enabled via other legislative and statutory mechanisms.

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

The development of the Far North Queensland Health and Innovation Precinct, the Currumbin Eco Parkland and the Toowoomba to Warwick Water Pipeline may require the use of the Coordinator-General's functions and powers to expedite the project, however does not provide any further limitations to Human Rights than any other method of land access, land acquisition, road rearrangement or road closure and is considered to be a practical avenue to achieving the purpose.

The Coordinator-General has functions and powers to facilitate large-scale and complex projects, while ensuring their environmental and social impacts are properly managed. Compulsory acquisition powers can be used to facilitate the timely establishment of significant projects which are of benefit to the state and its residents.

The process and compensation provisions are outlined within the SDPWO Act and ALA and provide a framework for the implementation of compulsory acquisition. The compulsory acquisition powers are therefore limited by the statutes' provisions, which provide a safeguard to limit 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

The current Cairns Hospital site is constrained, land-locked and vertically restricted, and additional space to expand the range and intensity of services must be sought offsite.

The proposed Precinct will assist Cairns and Hinterland Hospital and Health Service to progress towards the Cairns Hospital becoming a university hospital and bring together clinical services with research and education.

The proposed Precinct will assist the creation of skilled jobs and grow the local knowledge economy, improve health outcomes for Aboriginal and Torres Strait Islanders and across Far North Queensland, foster and grow innovation in models of care/service.

The proposed Far North Queensland Health and Innovation Precinct supports the Queensland Government initiatives to support local innovation, regional economies and the health of communities and therefore outweighs the possible limitations placed on human rights.

The proposed Currumbin Eco Parkland would see the creation of one of the largest parks in Australia and could feature recreational facilities for families, sporting clubs and schools, protection for local koala habitats (including fodder eucalypt plantation), eco-tourism facilities to support more tourism jobs and nature based recreational trails.

The proposed parkland is of social significance to the Gold Coast. It will provide lifestyle and environmental benefits to the public and ensure the identified site remains outside of the urban footprint for the benefit of the Gold Coast for generations to come and therefore outweighs the possible limitations placed on human rights.

The Southern Downs Drought Resilience Package dated 19 April 2021 has identified that Leslie Dam is expected to run dry between Quarter 1 and Quarter 3 of 2023, with the proposed pipeline having an expected construction timeframe of 18 months. Delivery of the pipeline ensures long-term water security for the Southern Downs region.

Delivering infrastructure that will meet the needs for water supply in the Southern Downs region outweighs the possible temporary limitation placed on human rights.

(f) any other relevant factors

The 2021 Regulation is not replacing any previous legislation and does not provide any changes to existing safeguards that protect Human Rights.

Conclusion

I consider that the *State Development and Public Works Organisation Amendment Regulation 2021* 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.

STEVEN MILES MP
Deputy Premier and Minister for State Development,
Infrastructure, Local Government and Planning