

# Queensland Reconstruction Authority Regulation 2022

## 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, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympics Infrastructure provide this human rights certificate with respect to the *Queensland Reconstruction Authority Regulation 2022* made under the *Queensland Reconstruction Authority Act 2011*.

In my opinion, the *Queensland Reconstruction Authority Regulation 2022*, 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 *Queensland Reconstruction Authority Regulation 2022* (Regulation) is to:

- authorise the Queensland Reconstruction Authority (QRA) to undertake, pursuant to the powers provided for under the *Queensland Reconstruction Authority Act 2011* (QRA Act), initial stabilisation and removal of the Drift Restaurant Pontoon structure from the Bicentennial Bikeway, and any other works that are considered necessary to effectively and efficiently protect the safety of the public
- ensure the protection, rebuilding and recovery of affected communities is effectively and efficiently carried out and is appropriate having regard to the nature of the relevant disaster (Section 10(1)(g) QRA Act).

## Human Rights Issues

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

An assessment by the QRA has found that the decision will potentially limit (or interfere with) the identified human rights in section 24 (property rights), based on the following consideration.

#### *Section 24 – property rights*

- Section 24 is concerned about decisions that include restricting the use of private property, including under planning laws.
- The Regulation responds to the documented concerns of the QRA, the Department of Transport and Main Roads (as Maritime Safety Queensland MSQ)), and the Queensland Police Service about the structural integrity of the Drift Restaurant Pontoon which was displaced from some of its supporting steel piles during the record rainfall and flooding

in South East Queensland from 22 February to 7 March 2022, and is now currently blocking the bikeway.

- The Drift Restaurant Pontoon also currently poses a risk to users of the Brisbane River, and MSQ has established a relevant exclusion zone on the Brisbane River. Preliminary Structural Engineering assessments have concluded that the Drift Restaurant Pontoon is at risk of immediate and sudden collapse and recommends that immediate action be taken to remove energy in the structural system in an attempt to stabilise the Drift Restaurant Pontoon structure.
- The Regulation may potentially impact on the use of an existing lease area, as a result of the required stabilisation works that will be directed to be undertaken by the provisions in the Regulation. These works are urgently required and necessary as the lessee appears to be unwilling to take any measures to mitigate any of the risks that are currently posed by the damaged and dislocated Drift Restaurant Pontoon.

The actions to be undertaken enabled by the direction contained in the Regulation may impact this human right in the following ways:

- the Regulation will enable the relevant authorities (under delegation from the QRA) to enter and undertake works on the structures within the lease area, without requiring consent of the lessee.
- as part of the proposed stabilisation works, the pontoon, marine support system, wall framing, roof framing and other connected materials may be altered, modified, moved, or removed from the lease area if those works are considered necessary to effectively and efficiently protect the safety of the Public, any users of the bikeway, any users of the Coronation Drive road parcel, any users of the Brisbane River, or any infrastructure or vessel on or adjacent to the Brisbane River.

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

The reasons why the limit is reasonable and justifiable is based on the following:

#### ***Section 24 – property rights***

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

- The QRA’s assessment has found that the decision will potentially limit (or interfere with) the identified human rights in section 24 (property rights). This is because the Amendment Regulation may potentially impact on the use of an existing lease area, as a result of the required stabilisation works that will be directed to be undertaken by the provisions in the Regulation.

##### (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 QRA contends that the Regulation is necessary to urgently enable the identified stabilisation works, because the lessee appears to be unwilling to take any measures to mitigate the risks currently posed by the damaged and dislocated Drift Restaurant Pontoon.
- This urgency has been reported in a preliminary Structural Engineering Report (the Report) prepared by FSA Consulting Engineers (dated 10 March 2022) that identifies

that the Drift Restaurant Pontoon is not adequately supported in its current dislocated position and is at risk of immediate and sudden collapse based on the identified dislocated support locations. The report recommends that immediate action be taken to stabilise the Drift Restaurant Pontoon structure.

- The representative of the Lessee, Mr Kenneth Allsop, was provided with a copy of the Report that was prepared by FSA Consulting Engineers on 11 March 2022. A letter was then sent a letter via email on the afternoon of 11 March 2022, requesting that Mr Allsop as the representative of the Lessee provide to the CEO of the QRA by 4.00pm on Monday 14 March 2022 details of any steps and/or solutions that he had taken, or would immediately be taking, to address the concerns and recommendations set out in the Report. The letter also advised Mr Allsop that if a satisfactory response was not received from the Lessee by 4:00 pm on Monday, 14 March 2022, that responsible State agencies may decide to take emergency action to address the risks outlined in the Report. The QRA did not receive any written submission from Mr Allsop or the Lessee.
- (c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose and whether there are any less restrictive and reasonably available ways to achieve the purpose; AND
- (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
- Noting the expected significant cost to urgently undertake the stabilisation works identified in the Report, the lessee's apparent unwillingness to take any measures to mitigate the risks currently posed by the damaged and dislocated Pontoon, and the identified urgency and risk that exists from the unstable structure, the provisions contained in the Regulation are considered necessary to urgently provide the QRA required to undertake the preliminary and project works proposed.
  - Having regard to the above considerations, the Regulation is considered appropriate despite the potential limitation on the property rights of the lease holders of the subject site.
  - It is considered that there is no other less urgent and indirect way to achieve the purpose, given the urgency and identified clear and present risk that the damaged and unstable structure presents to the safety of the Public, any users of the bikeway, any users of the Coronation Drive road parcel, any users of the Brisbane River, or any infrastructure or vessel on or adjacent to the Brisbane River if it is not urgently stabilised and the site remedied to remove these identified risks.
  - In conclusion it is considered that the limitation of property rights is reasonable and justifiable in accordance with section 13 of the *Human Rights Act 2019*.

## Conclusion

I consider that the *Queensland Reconstruction Authority Regulation 2022* is compatible with the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

**STEVEN MILES MP**  
Deputy Premier, Minister for State Development,  
Infrastructure, Local Government and Planning  
and Minister Assisting the Premier on Olympics Infrastructure

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