

# Economic Development and Other Legislation Amendment Regulation 2023

## 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 Olympic and Paralympic Games Infrastructure provide this human rights certificate with respect to the *Economic Development and Other Legislation Amendment Regulation 2023* (Amendment Regulation) made under the *Economic Development Act 2012* (ED Act) and the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

In my opinion, the Amendment Regulation is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The Amendment Regulation:

- amends the *Economic Development Regulation 2023* by revoking the Woolloongabba Cross River Rail (CRR) Priority Development Area (PDA);
- amends the *Economic Development Regulation 2023* by declaring a new Woolloongabba PDA; and
- amends the *State Development and Public Works Organisation (State Development Areas) Regulation 2019* by revoking the Queensland Children's Hospital State Development Area (QCHSDA).

## Human Rights Issues

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

In my opinion, the human rights relevant to the Amendment Regulation are:

- Section 15 – Recognition and equality before the law
- Section 16 – Right to life
- Section 19 – Freedom of movement
- Section 21 – Freedom of expression
- Section 23 – Taking part in public life
- Section 24 – Property rights
- Section 25 – Privacy and reputation

- Section 26 – Protection of families and children
- Section 27 – Cultural rights—generally
- Section 28 – Cultural rights—Aboriginal peoples and Torres Strait Islander peoples
- Section 31 – Fair hearing

**1. *Revocation of the Woolloongabba CRRPDA and declaration of the Woolloongabba PDA***

Section 4(1) of the Amendment Regulation removes the Woolloongabba CRRPDA from the list of PDAs declared under the ED Act.

Section 4(3) of the Amendment Regulation declares a new Woolloongabba PDA.

Declaring an area as a PDA establishes a framework to facilitate economic development and development for community purposes. The framework includes streamlined planning and development processes, which create certainty for businesses and therefore encourage investment in development projects. Economic prosperity and planning for the provision of important community infrastructure such as health, transport and education facilities are purposes consistent with a free and democratic society based on human dignity equality and freedom.

More particularly, development in the PDA is regulated under the ED Act and not the *Planning Act 2016* (Planning Act).

The revocation of a PDA would ordinarily have the effect that the PDA ceases to exist and that the land within the PDA is no longer subject to the planning and development processes under the ED Act. Instead, the development of the land would be regulated by the local government's planning scheme.

However, the land within the Woolloongabba CRRPDA will be included in the new Woolloongabba PDA. So, the effect is that the land still be subject to the streamlined planning and development processes under the ED Act.

**2. *Revocation of the QCHSDA***

Section 6 of the Amendment Regulation amends the *State Development and Public Works Organisation (State Development Areas) Regulation 2018* by revoking the declaration of the QCHSDA.

The effect of the declaration of a State Development Area (SDA) is that a material change of use of land in the SDA is regulated by the development scheme for the SDA prepared by the Coordinator-General and approved by the Governor in Council under the SDPWO Act. Other aspects of development (such as operational works and the reconfiguration of land) are regulated by the Planning Act and the relevant local government's planning scheme.

The effect of the revocation of the declaration of an SDA is that the SDA ceases to exist. Material changes of use of land will cease to be regulated by the development scheme for the SDA, but rather will be regulated by the Planning Act and the relevant local government's planning scheme.

The purpose for which the QCHSDA was declared was to consolidate health services for children and young people by providing one world-class tertiary and quaternary hospital for

children and young people in Queensland. The Queensland Children's Hospital was opened in 2014. The QCHSDA has therefore fulfilled its purpose, and this is the reason for its revocation.

Approximately 3.75 hectares of the land currently within the QCHSDA will be included in the Woolloongabba PDA. The inclusion of this land in a PDA will ensure that there is a streamlined development approval framework for the land.

Approximately 11.95 hectares of the land currently within the QCHSDA will not be included in the new Woolloongabba PDA. Consequently, development on that land will be regulated by the Planning Act and Brisbane City Council's City Plan 2014.

### **3. Identification of relevant human rights**

In my opinion the revocation of the Woolloongabba Cross River Rail PDA, the revocation of the QCHSDA and the creation of the Woolloongabba PDA will engage each of the human rights identified above.

- *Section 15—Recognition and equality before the law*

Urban development contributes to climate change through removal of vegetation and more intensive and emissions-producing land use. The impact of climate change is not distributed equally among the population. It disproportionately affects the very young, the very old, individuals with significant health issues and, given its effect on the environment, Aboriginal peoples and Torres Strait Islander peoples because of their traditional or customary connection to affected lands and waters.

Section 15(2), (3) and (4) of the Human Rights Act are concerned with discrimination, which means discrimination because of a relevant attribute identified in the *Anti-Discrimination Act 1991* (the Anti-Discrimination Act) or an analogous kind of discrimination. Age, impairment and racial and ethnic origin are all protected attributes for the Anti-Discrimination Act.

- *Section 16 – Right to life*

As with section 15, the creation of a PDA engages the right to life stated in section 16 of the Human Rights Act because urban development contributes to climate change, which poses an existential threat to humanity.

- *Section 19 – Freedom of movement*

The right to freedom of movement includes the freedom to choose where to live. The creation of a PDA and the revocation of an SDA bring with them planning and land use implications that engage and potentially limit the ability of individuals to choose where to live.

- *Section 21 – Freedom of expression*

Section 21 of the Human Rights Act states that every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

The creation of a PDA has the potential to limit this right because a consequence of an area being declared as a PDA is that there are limited rights of review and appeal against decisions about development applications in PDAs.

The revocation of a SDA does not have the potential to limit this right, because development of the land which is not included the new Woolloongabba PDA will be regulated by the Planning Act and Brisbane City Council's City Plan 2014, which include rights of review and appeal about development applications.

- *Section 23 – Taking part in public life*

The effect of declaring an area as a PDA is, in broad and general terms, that the planning scheme of the local government for the area within which the PDA is located ceases to apply to the PDA and therefore limits the right stated in s 23(1) of the Human Rights Act to have the opportunity to participate in the conduct of public affairs through freely chosen representatives (i.e., local councillors).

The revocation of a SDA does not have the potential to limit this right, because development of the land which is not included the new Woolloongabba PDA will be regulated by the Planning Act and Brisbane City Council's City Plan 2014, which include rights of review and appeal about development applications.

- *Section 24 – Property rights*

Section 24(2) of the Human Rights Act states that a person must not be arbitrarily deprived of the person's property. The creation of a PDA engages this rights because the land use planning applying in PDAs limits the ways in which land within the PDA can be used. Although this does not amount to a total deprivation of property, it is sufficient to engage the human right because human rights jurisprudence recognises that limitations or restrictions on use and enjoyment of property can constitute limitations on the right.

The revocation of a SDA where the land is not included in the new Woolloongabba PDA similarly engages this right, because development on that land will now be regulated by the Planning Act and Brisbane City Council's City Plan 2014.

I consider below whether the deprivation in both instances is arbitrary.

- *Section 25 – Privacy and reputation*

Section 25(a) of the Human Rights Act states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The creation of a PDA limits this right by restricting the ways in which landowners and occupiers can build and enjoy their homes and conduct their family life within their homes.

The revocation of a SDA where the land is not included in the new Woolloongabba PDA similarly engages this right, because development on that land (including the ways in which landowners and occupiers can build and enjoy their homes and conduct their family life within their homes) will now be regulated by the Planning Act and Brisbane City Council's City Plan 2014.

I consider below whether the limitation on this right in both instances is unlawful or arbitrary.

- *Section 26 – Protection of families and children*

Like the right to equality before the law and the right to life, the human right stated in section 26 of the Human Rights Act is engaged by the creation of PDAs because of the role urban development plays in climate change.

- *Section 27 – Cultural rights—generally*

Facilitating urban development has the potential to disrupt established communities, thereby potentially limiting the rights of individuals with a particular cultural, religious, racial or linguistic background the right to enjoy their culture, practise their religion or use their language, in community with other persons of that background.

- *Section 28 – Cultural rights—Aboriginal peoples and Torres Strait Islander peoples*

As stated above in relation to the right to recognition and equality before the law, climate change disproportionately affects the rights of Aboriginal peoples and Torres Strait Islander peoples because of its impact on the lands and waters to which they have a connection under Aboriginal tradition or Island custom.

In addition, facilitating urban development has the potential to disrupt established communities, thereby limiting the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy, maintain, control, protect and develop their identity and cultural heritage, their language and their kinship ties.

- *Section 31 – Fair hearing*

Section 31 of the Human Rights Act states that a person who is charged with a criminal offence or is a party to a civil proceeding has the right to have the matter decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The creation of a PDA has the potential to limit this right because a consequence of an area being declared as a PDA is that there are limited rights of review and appeal against decisions about development applications in PDAs.

The revocation of a SDA, where the land is not to be included in a new PDA, does not have the potential to limit this right because the Planning Act includes rights of review and appeal about development applications.

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

(a) the nature of the rights

Each of the human rights engaged by the revocation of the Woolloongabba Cross River Rail PDA, the revocation of the QCHSDA and the creation of the Woolloongabba PDA is of fundamental importance to the successful functioning of a free and democratic society based on human dignity, equality and freedom.

(b) the nature of the purpose of the limitation

The purpose of limiting these rights by creating the Woolloongabba PDA is explained above.

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

The creation of the Woolloongabba PDA is essential to capitalise on the opportunities created by Brisbane 2032 for precinct revitalisation and urban renewal, and the State's investment in major infrastructure, including Cross River Rail, Brisbane Metro, the Gabba Stadium and active transport upgrades to key connections including Brisbane city and other suburbs, and enable more diverse living options (including social and affordable housing) and more employment opportunities within the Woolloongabba PDA.

The creation of the Woolloongabba PDA does this by providing a streamlined land use planning and development framework that will reduce regulatory burden and complexity on landowners.

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

For the reasons stated under the preceding heading, I am satisfied there is no less restrictive and reasonably available ways to achieve the outcomes for which the Woolloongabba PDA will be created.

(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

Urban development is unavoidable. PDAs are chosen because they are located in areas with high development potential or because they have features that make them suitable for particular kinds of development. Identifying these areas and applying tailored planning ensures that development proceeds in an orderly manner, balancing environmental sustainability with community needs.

In relation to the limitations to the rights stated in sections 15, 16, 26 27 and 28 of the Human Rights Act associated with potential contribution to climate change, it is likely that the contribution made by urban development within the Woolloongabba PDA to global climate change will be small. Further, the contribution will be managed and mitigated by considered decision making relating to development applications which takes into account relevant State Interests including environmental interests of the State or the south east Queensland region.

The limitation on right of individuals to freely choose where to live is small and very unlikely to be any greater than would apply under any other planning regime. The benefits that accrue to individuals through considered land use planning, such as the ability to identify where community services and infrastructure should be located, are considerable. I therefore consider the Amendment Regulation strikes a fair balance between protecting the right stated in section 19 of the Human Rights Act and achieving the purpose of creating the Woolloongabba PDA.

The same considerations apply to the revocation of the QCHSDA.

I also consider the Amendment Regulation strikes a fair balance between protecting the right of persons who live or own property in the Woolloongabba PDA to participate in public life through democratically elected local councillors and the objectives sought to be achieved by establishing the Woolloongabba PDA. PDAs serve broader economic and community considerations within the State which cannot be appropriately managed by local planning schemes.

In relation to the limitation on property rights, the right stated in section 24(2) of the Human Rights Act protects against *arbitrary* deprivation of property. In the context of human rights jurisprudence, arbitrary means capricious, unpredictable or unjust or disproportionate to a legitimate aim sought. In my opinion, any deprivation of property rights resulting from the making of the Amendment Regulation is not ‘arbitrary’ in this sense. The purpose of establishing the Woolloongabba PDA is to achieve the outcomes detailed in paragraph (c) above.

Similarly, the revocation of the QCHSDA where the land will not be included in the Woolloongabba PDA is not arbitrary, in the sense that development of that land will be regulated by the Planning Act and Brisbane City Council’s City Plan 2014, and is therefore not arbitrary.

Accordingly, I consider that if the right is limited, the limitation is reasonable and demonstrably justifiable in accordance with section 13(2) of the Human Rights Act.

To the extent that the creation of the Woolloongabba PDA limits the right to privacy, it must be noted that like section 24(2) of the Human Rights Act, the right stated in section 25(a) is subject to internal limitation, namely that any interference cannot be unlawful or arbitrary. The limitation in this case is lawful (being made under the authority of the ED Act) and, for the reasons stated above, is not arbitrary. I am therefore satisfied that either the right is not limited at all or is limited only to the extent reasonable and demonstrably justifiable in accordance with section 13 of the Human Rights Act.

Similarly, to the extent that the revocation of the QCHSDA where the land is not included in the Woolloongabba PDA limits the right to privacy, the limitation is lawful, because the Planning Act will regulate development on that land.

Finally, the limitations on the rights to freedom of expression and fair hearing are reasonable and demonstrably justifiable. The Minister for Economic Development Queensland (MEDQ) may require public consultation to take place in relation to PDA development applications and must consider any submission made during that process. Further, even though there is limited opportunity for merits review of MEDQ’s decisions regarding PDA development applications, persons aggrieved by those decisions will, in most cases, have the ability to seek review under the *Judicial Review Act 1991*. In my opinion, the Amendment Regulation therefore strikes a fair balance between protection the rights stated in sections 21 and 31 of the Human Rights Act and achieving the purposes for which PDAs are declared.

## Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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