

# State Development and Public Works Organisation (Construction and Commissioning of Toowoomba to Warwick Water Pipeline) Amendment Regulation 2024

## 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* (HR Act), I, Grace Grace, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing provide this human rights certificate with respect to the *State Development and Public Works Organisation (Construction and Commissioning of Toowoomba to Warwick Water Pipeline) Amendment Regulation 2024* (Amendment Regulation) made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

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

## Overview of the Subordinate Legislation

### Background

In June 2022, the Queensland Government committed more than \$300 million funding for the construction of the Toowoomba to Warwick Water Pipeline project (the Project).

Queensland Bulk Water Supply Authority trading as Seqwater (Seqwater) is responsible for delivery of the Project, which will provide long-term water security in the Toowoomba and Southern Downs regions.

Delivery of the Project will involve approximately 112 kilometres of pipeline, that will carry water from Wivenhoe Dam and connect with Toowoomba Regional Council's existing water infrastructure, to deliver water to Warwick and two of Toowoomba's satellite communities along the way.

The pipeline will run along existing road reserves and easements for most of its route and it is estimated the Project will be completed in early 2027, weather and construction conditions permitting.

### Purpose

The purpose of the Amendment Regulation is to assist Seqwater with the efficient delivery of the Project through the utilisation of the Coordinator-General powers under the SDPWO Act.

This is done through the creation of a new division within the *State Development and Public Works Organisation Regulation 2020* that directs Seqwater, a local body as defined under the SDPWO Act, to undertake works in accordance with sections 99 and 100 of the SDPWO Act and directs the Coordinator-General to undertake reserved works in accordance with sections 108 and 109 of the SDPWO Act.

The making of a regulation directing the construction and commissioning of the Project works would mean that development the subject of the direction cannot be made assessable development under a local categorising instrument and the Coordinator-General can undertake reserved works to support the delivery of the Project where necessary in respect of roads, securing tenure and access to land.

The intent is that Seqwater will construct the pipeline and the Coordinator-General will assist facilitation of works to support construction and commissioning of the Project through utilisation of the Coordinator-General's functions and powers. These powers include, but are not limited to, access to land, acquisition of tenure interests and the opening or closure or otherwise rearrangement of roads.

## **Human Rights Issues**

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

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- section 19 – freedom of movement
- section 21 – freedom of expression
- section 24 – property rights
- section 25 – privacy and reputation
- section 28 – cultural rights - Aboriginal peoples and Torres Strait Islander peoples
- section 31 – fair hearing

### *Human rights potentially limited by the Amendment Regulation*

The decision will potentially limit (or interfere with) the identified human rights:

- section 21 – freedom of expression
- section 24 – property rights
- section 28 – cultural rights - Aboriginal peoples and Torres Strait Islander peoples
- section 31 – right to a fair hearing

## Consideration of reasonable limitations on human rights (section 13 of the HR Act)

### *Freedom of expression (section 21)*

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

Section 21 of the HR Act provides that every person has the right to freedom of expression, which includes the freedom to seek, receive and impart information of all kinds. It protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas (including verbal and non-verbal communication).

The Amendment Regulation if made would direct Seqwater and the Coordinator-General to undertake works. It may be argued that the right to freedom of expression may be restricted, as the regulation being made has the effect of prohibiting a local categorising instrument from stating the development is assessable development as per Schedule 6 of the *Planning Regulation 2017* (Planning Regulation), causing the works to be classed as accepted development pursuant to the *Planning Act 2016* (Planning Act). If elements of the Project were otherwise classed as impact assessable development by a relevant local planning instrument, they would be subject to public notification requirements.

#### (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 removal of the requirement for a statutory public notification process is a consequence of the statutory framework under the Planning Act and Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis. The Amendment Regulation enlivens this existing pathway.

Given existing statutory pathways are utilised, and the on-time delivery of the Project is necessary to provide long term and sustainable water security to the Toowoomba and Southern Downs regions, the purpose of the potential limitation is considered consistent with a democratic society based on human dignity, equality, and freedom.

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

The potential limitation on freedom of expression, which may occur as a consequence of the Amendment Regulation, will allow for timely construction and ensure that this necessary Project is delivered.

The need for construction of the Project, is in line with community expectations and broader government objectives regarding timely delivery of long term, sustainable water security.

Seqwater has engaged and will continue to engage with State agencies and local governments (Toowoomba Regional Council and Southern Downs Regional Council), private landowners and other key stakeholders in relation to construction and commissioning of the Project.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. Sections 100 and 109 of the SDPWO Act require directions to be made by regulation. Administrative arrangements would not provide the streamlining benefits that can be provided through the Amendment Regulation or enliven the Coordinator-General's powers.

(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 Amendment Regulation enlivens an existing statutory pathway in the Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis.

The Amendment Regulation will facilitate construction and commissioning of the pipeline, which will ensure the delivery of the Project and long term sustainable water security for the region.

When balancing the right to freedom of expression in relation to delivery of the Project, with the urgent necessity to facilitate the commencement of works for the Project, the Amendment Regulation is considered to be in line with community expectations.

*Property Rights (section 24)*

(a) the nature of the right

Section 24 of the HR Act protects the right of all persons to own property alone or in association with others, and to not be arbitrarily deprived of property.

It may be argued that property rights may be restricted by the Amendment Regulation as it enlivens the Coordinator-General's powers in relation to compulsory acquisition and rearrangement of roads.

(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 purposes for which the Coordinator-General may exercise powers under the SDPWO Act are limited to works to support the construction and commissioning works for the Project.

The Amendment Regulation enables the Coordinator-General to open, close or otherwise rearrange roads. Any potential acquisition of land for road, would only occur if necessary to facilitate access or road rearrangements necessary to support the Project.

Potential land acquisition would require further consideration by the Coordinator-General, as well as consultation with affected landowners and interest holders. The exercise of powers is in accordance with the SDPWO Act and utilising the process under the *Acquisition of Land Act 1967* (ALA), including payment of compensation.

The process and compensation provisions are outlined within the SDPWO Act and ALA and provides 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 right.

The need for construction of the Project, is in line with community expectations and broader government objectives regarding timely delivery of long term, sustainable water security. The purpose of the potential limitation is considered consistent with a democratic society based on human dignity, equality, and freedom.

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

Any potential limitation on property rights which may occur as a consequence of the Amendment Regulation, are only to ensure the timely delivery of the Project.

The need for construction of the Project, is in line with community expectations and broader government objectives regarding timely delivery of long term, sustainable water security.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. Construction and commissioning works for the Project may not be able to be delivered within required timeframes without the use of the Coordinator-General's functions and powers under the SDPWO Act. Sections 100 and 109 of the SDPWO Act require directions to be made by regulation.

(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 Amendment Regulation enlivens an existing statutory pathway in the SDPWO Act that enables significant projects to proceed on a streamlined and urgent basis.

The Amendment Regulation will facilitate construction and commissioning of the pipeline, which will ensure the delivery of the Project and long term sustainable water security for the region.

When balancing property rights with the urgent necessity to facilitate the commencement of construction works for the Project, the Amendment Regulation is considered to be in line with community expectations.

*Cultural Rights – Aboriginal and Torres Strait Islander peoples (section 28)*

(a) the nature of the right

Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right, with other members of the community, to main 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

The purposes for which the Coordinator-General may exercise powers under the SDPWO Act are limited to works to support the construction and commissioning works for the Project.

The Amendment Regulation enables the Coordinator-General to open, close or otherwise rearrange roads. Any potential acquisition of land for road, would only occur if necessary to facilitate access or road rearrangements necessary to support the Project.

If the Coordinator-General exercises powers under the SDPWO Act to acquire land (including easements) or rearrange roads, these would be done in accordance with the SDPWO Act utilising the processes under the ALA and are therefore limited by the statutes' provisions, which provide a safeguard to limit impacts on a person's human right.

In deciding whether to exercise powers under the SDPWO Act, the Coordinator-General must give proper consideration to human rights, including identifying relevant cultural rights under section 28 of the HR Act that may be affected. If a proposed action would limit cultural rights, the limit must be reasonably and demonstrably justified pursuant to section 13 of the HR Act.

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

The purposes for which the Coordinator-General may exercise powers under the SDPWO Act are limited to works to support the construction and commissioning works for the Project.

Any potential limitation of the right is to allow 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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. Construction and commissioning works for the Project may not be able to be delivered within required timeframes without the use of the Coordinator-General's functions and powers under the SDPWO Act. Sections 100 and 109 of the SDPWO Act require directions to be made by regulation.

(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 Amendment Regulation enlivens an existing statutory pathway in the SDPWO Act that enables significant projects to proceed on a streamlined and urgent basis.

The Amendment Regulation will facilitate construction and commissioning of the water pipeline, which will ensure the delivery of the Project and long term sustainable water security for the region.

When balancing cultural rights with the urgent necessity to facilitate the commencement of construction works for the Project, the Amendment Regulation is considered to be in line with community expectations.

*Fair Hearing (section 31)*

(a) the nature of the right

Section 31 of the HR Act is directed at the procedure of trials for criminal offences and civil proceedings. It protects the right to a fair and public hearing by an impartial decision maker. Section 31 provides that a person has the right to have criminal charges or civil proceedings decided by a competent, independent, and impartial court or tribunal after a fair and public hearing.

The Amendment Regulation if made would direct Seqwater and the Coordinator-General to undertake works. It may be argued that the right to a fair hearing may be restricted, as the regulation being made has the effect of prohibiting a local categorising instrument from stating the development is assessable development as per Schedule 6 of the Planning Regulation, causing the works to be classed as accepted development pursuant to the Planning Act. If elements of the Project were otherwise classed as impact assessable development by a relevant local planning instrument, they would be subject to public notification requirements.

(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 removal of the requirement for a statutory public notification process is a consequence of the statutory framework under the Planning Act and Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis. The Amendment Regulation enlivens this existing pathway.

Given existing statutory pathways are utilised, and the on-time delivery of the Project is necessary to provide long term and sustainable water security to the Toowoomba and Southern Downs regions, the purpose of the potential limitation is considered consistent with a democratic society based on human dignity, equality, and freedom.

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

The potential limitation on the right to a fair hearing, which may occur as a consequence of the proposed amendment, will allow for timely construction and ensure that this necessary Project is delivered.

The need for construction of the Project, is in line with community expectations and broader government objectives regarding timely delivery of long term, sustainable water security.

Seqwater has engaged and will continue to engage with State agencies and local governments (Toowoomba Regional Council and Southern Downs Regional Council), private landowners and other key stakeholders in relation to construction and commissioning of the Project.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. Construction works for the Project may not be able to be delivered within required timeframes without the use of the Coordinator-General's functions and powers under the SDPWO Act. Sections 100 and 109 of the SDPWO Act require directions to be made by regulation.

(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 Amendment Regulation enlivens an existing statutory pathway in the SDPWO Act that enables significant projects to proceed on a streamlined and urgent basis.

The Amendment Regulation will facilitate construction and commissioning of the water pipeline, which will ensure the delivery of the Project and long term sustainable water security for the region.

When balancing property rights with the urgent necessity to facilitate the commencement of works for the Project, the Amendment Regulation is considered to be in line with community expectations.

(f) any other relevant factors

The Amendment Regulation is not replacing any previous legislation and does not provide any changes to existing safeguards that protect the human rights within the *Human Rights Act 2019*.

*Human rights potentially limited by the Amendment Regulation*

The Amendment Regulation is relevant to, but will not potentially limit (or interfere with), the identified human rights in the sections outlined below:

- section 19 – freedom of movement

Section 19 of the HR provides that every person has the right to move freely within Queensland and the freedom to choose where to live.

- section 25 – privacy and reputation

Section 25 of the HR Act provides that a person has the right not to have their privacy, family, home, or correspondence unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked.

The Amendment Regulation itself does not limit these rights but they may be a proper consideration for the Coordinator-General in the exercise of any powers under the SDPWO Act to facilitate the construction and commissioning of the Project depending on the factual circumstances.

## Conclusion

I consider that the *State Development and Public Works Organisation (Construction and Commissioning of Toowoomba to Warwick Water Pipeline) Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* 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.

**GRACE GRACE MP**  
Minister for State Development and Infrastructure  
Minister for Industrial Relations and  
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