

State Development and Public Works Organisation (Borumba Pumped Hydro Energy Storage Project Exploratory Works) 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*, 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 (*Borumba Pumped Hydro Energy Storage Project Exploratory Works Amendment Regulation 2024* (the 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 *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Background

The Borumba Pumped Hydro Energy Storage (PHES) Project at Lake Borumba is proposed as a key contributor to Queensland's transition to renewable energy under the Queensland Energy and Jobs Plan (QEJP) and to Queensland's legislated renewable energy targets of 70 per cent by 2032 and 80 per cent by 2035, under the *Energy (Renewable Transformation and Jobs) Act 2024*.

Queensland Hydro Pty Ltd (Queensland Hydro), a publicly owned proprietary company, is the project proponent.

The Borumba PHES project Main Works have been declared a coordinated project requiring an environmental impact statement (EIS) under the SDPWO Act. The exploratory works the subject of this Amendment Regulation are essential to inform the design development and constructability of the Borumba PHES Project Main Works and aid data capture to inform the EIS. The exploratory works are scheduled for completion by late 2026 and the main works by late 2030, subject to the evaluation of the EIS.

Purpose

The objective of the Amendment Regulation is to direct Queensland Hydro to undertake exploratory works in accordance with sections 99 and 100 of the SDPWO Act and to direct the Coordinator-General to undertake facilitation works in accordance with sections 108 and 109 of the SDPWO Act.

The SDPWO Act contains provisions to facilitate large-scale and complex projects such as the Borumba PHES Project Exploratory Works. The Amendment Regulation will support the timely delivery of the exploratory works, which will support the delivery of the Borumba PHES Project and the meeting of Queensland's legislated renewable energy targets.

The intent is that Queensland Hydro will undertake exploratory works and the Coordinator-General may assist facilitation of the exploratory works by using various functions and powers under the SDPWO Act.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *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 23 – taking part in public life
- section 24 – property rights
- section 25 – privacy and reputation
- section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples
- section 31 – fair hearing.

Human rights potentially limited by the Amendment Regulation

The Amendment Regulation will potentially limit (or interfere with) the following:

- section 21 – freedom of expression
- section 23 – taking part in public life
- section 24 – property rights
- section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples
- section 31 – fair hearing.

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

Section 21 - Freedom of expression

(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).

It may be argued that the right to freedom of expression may be restricted because a consequence of the Amendment Regulation is that third party consultation and appeal rights under the *Planning Act 2016* (Planning Act) would be removed if the exploratory works require an impact assessable development application under the relevant local planning schemes for Gympie Regional Council and Somerset Regional Council.

The Amendment Regulation is a direction to Queensland Hydro and the Coordinator-General to undertake exploratory works. Local categorising instruments will be prohibited from stating the exploratory works are assessable development by operation of Schedule 6 of the *Planning Regulation 2017* (Planning Regulation).

The exploratory works will therefore progress without the requirement for Queensland Hydro, as the local body, to seek development approvals from the respective local councils, which may have otherwise been subject to public notification requirements.

The Amendment Regulation does not impact on the requirements for Queensland Hydro to obtain relevant State or Commonwealth approvals.

(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 the Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis. The Amendment Regulation employs this existing statutory pathway.

Given the Amendment Regulation utilises existing statutory pathways, and the on-time delivery of the Borumba PHES Project is instrumental for provision of a reliable renewable energy system under the QEJP, 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 ensure the timely commencement of the exploratory works which are essential to inform project design development and constructability of the Borumba PHES Project Main Works, and aid data capture to inform the EIS and then evaluated under the SDPWO Act.

The need for the exploratory works to support the wider Borumba PHES Project Main Works is in line with community expectations and broader government objectives regarding timely delivery of the transition to a renewable energy system.

(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 employs 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 the exploratory works for the purpose of environmental and geotechnical studies, to inform project design development and constructability of the Borumba PHES Project Main Works, and aid data capture to inform the EIS. The Borumba PHES Project is an important renewable energy project intended to assist the State transition to clean, reliable and affordable energy and achieve its renewable energy targets.

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

On 12 October 2023, the Coordinator-General declared the Borumba PHES Project Main Works a coordinated project, requiring an EIS. The EIS will be evaluated by the Coordinator-General under the SDPWO Act and further public consultation will be undertaken through the coordinated project process.

(f) any other relevant factors

Not applicable.

Section 23 – Taking part in public life

(a) the nature of the right

Section 23 of the HR Act provides that every person has the right to take part in public life. It protects the right of all persons to have the opportunity, without discrimination to participate in the conduct of public affairs.

It may be argued that the right to take part in public life may be restricted because a consequence of the Amendment Regulation is that third party consultation and appeal rights under the *Planning Act 2016* would be removed if development of the exploratory works requires an impact assessable development application under a local categorising instrument.

The Amendment Regulation is a direction to Queensland Hydro and the Coordinator-General to undertake exploratory works. Local categorising instruments will be prohibited from stating the exploratory works are assessable development by operation of Schedule 6 of the Planning Regulation. The exploratory works would therefore progress without a requirement for Queensland Hydro, as the local body, to seek development approvals from the respective local councils, which would have otherwise been subject to 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 statutory public notification process required if an impact assessable development application is triggered under the local categorising instrument, is a consequence of the Amendment Regulation. The Amendment Regulation enlivens an existing statutory pathway in the Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis.

Given the Amendment Regulation utilises existing statutory pathways, and the on-time delivery of the Borumba PHES Project is a key contributor of the QEJP, the purpose of the

potential limitation is 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 taking part in public life, which may be perceived as a consequence of the Amendment Regulation, will ensure the timely commencement of the exploratory works. These works are essential to the design development and constructability of the Borumba PHES Project Main Works and aid data capture to inform the EIS which will be evaluated by the Coordinator-General.

The need to provide the exploratory works for the Borumba PHES Project is in line with community expectations and the broader Queensland Government objectives regarding the timely delivery to achieve the objectives of the QEJP and the renewable energy targets legislated under the *Energy (Renewable Transformation and Jobs) Act 2024*.

(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 the exploratory works for the purpose of environmental and geotechnical studies, to inform project design development and constructability of the Borumba PHES Project Main Works, and aid data capture to inform the EIS.

When balancing the extent of the limitation on the right to take part in public life in relation to the urgent need to facilitate the commencement of exploratory works for the Borumba PHES Project the Amendment Regulation is considered to be in line with community expectations.

(f) any other relevant factors

Not applicable.

Section 24 – Property rights

(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.

The right includes protection from the deprivation of property. Deprivation includes the substantial restriction on a person's use or enjoyment of their property including under planning laws.

(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 Amendment Regulation enlivens powers that may be utilised by the Coordinator-General under the SDPWO Act limited to works to support the exploratory works and does not extend to the Borumba PHES project Main Works.

The Amendment Regulation enlivens the functions and powers of the Coordinator-General including, but not limited to, the opening, closing or otherwise rearranging roads. It may be argued that property rights may be restricted by the Amendment Regulation as it enables the Coordinator-General to exercise compulsory access and acquisition powers under the SDPWO Act that impact on property rights.

The exploratory works are located on land owned by Queensland Hydro, either as freehold or reserve tenure for electrical works. Other properties include land owned by the State (through the Department of Regional Development, Manufacturing and Water), local and state - controlled roads, watercourse tenure, land held in trust by Seqwater (reserve tenure for strategic land management), and within Conondale Resources Reserve and Imbil State Forest.

Queensland Hydro has indicated it has, or will have, established tenure agreements with landholders and rights to access the properties on which all components of exploratory works are located. Property acquisition is therefore not envisaged for the exploratory works.

Any potential land acquisition would require further consultation with, and consideration by, the Coordinator-General, as well consultation with affected landowners. The exercise of powers is subject to the process under the SDPWO Act and / or the *Acquisition of Land Act 1967* and payment of compensation. The process and compensation provisions are outlined within the SDPWO Act and *Acquisition of Land Act 1967* and provide a framework for the implementation of compulsory access and acquisition. The compulsory access and acquisition powers are therefore limited by the statutes' provisions, which provide a safeguard to limit impacts on a person's human rights.

The need for timely provision of the exploratory works for the project is in line with community expectations and broader government objectives regarding timely delivery of the transition to a renewable energy system. The purpose of the 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 purposes for which the Coordinator-General may exercise its powers are limited. The potential limitation of property rights is only to the extent on which the SDPWO Act allows. Any potential limitation on property rights may arise to ensure the timely delivery of the exploratory works.

The need for the Borumba PHES Project exploratory works is in line with community expectations and broader government objectives regarding timely delivery of the transition to a renewable energy system.

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

There are no less restrictive and reasonably available ways to achieve the purpose of the Amendment Regulation. Exploratory works 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 Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis. The amendment will facilitate the exploratory works for the purpose of environmental and geotechnical studies, to inform project design development and constructability of the Borumba PHES Project Main Works, and aid data capture to inform the EIS. The Borumba PHES Project is an important renewable energy project intended to assist the State transition to clean, reliable and affordable energy and achieve its renewable energy targets.

When balancing the extent of the limitation to property rights, in relation to the purpose of streamlining approvals, I consider the Amendment Regulation to be considered to be in line with community expectations.

- (f) any other relevant factors

Not applicable.

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

- (a) the nature of the right

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

In Queensland, the rights of Aboriginal 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.

The Kabi Kabi First Nation Traditional Owners Native Title Claim Group (Federal Court number: QUD20/2019) (Kabi Kabi People) received acknowledgment of their native title rights in June 2024, which includes some land identified for exploratory works. The determination recognised rights of possession, occupation use and enjoyment over land and waters.

An Indigenous Land Use Agreement (ILUA) was reached between the Kabi Kabi People and Queensland Hydro for the exploratory works. The National Native Title Tribunal registered the ILUA on 21 June 2024 (Tribunal file number: Q12024/003).

Queensland Hydro must comply with the existing legal and regulatory framework governing Aboriginal and Torres Strait Islander peoples' rights to land. Exploratory works must not be inconsistent with the *Native Title Act 1993*. 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 purposes for which the Coordinator-General may exercise powers under the SDPWO Act and impact the right under the Amendment Regulation are limited to the exploratory works, and does not extend to the wider Borumba PHES Project. 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. The Amendment Regulation does not remove the requirement for Queensland Hydro to comply with existing legislative mechanisms relating to the rights of Aboriginal and Torres Strait Islander peoples.

(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. Exploratory works 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 exploratory works that will provide essential data to determine inform the design development and constructability for the Borumba PHES Project, which is an important renewable energy project intended to assist the State transition to clean, reliable and affordable energy and achieve its renewable energy targets.

An ILUA between the Kabi Kabi People and Queensland Hydro is in place that allows the exploratory works to be carried out in areas mutually agreed upon in the ILUA. Locations outside the ILUA area must comply with existing legislative mechanisms that protect the rights of Aboriginal peoples and Torres Strait Islander peoples.

When balancing of cultural rights of Aboriginal peoples and Torres Strait Islander peoples in relation to the urgent need to facilitate the commencement of exploratory works for the Borumba PHES, the Amendment Regulation is considered to be in line with community expectations.

(f) any other relevant factors

Not applicable.

Section 31 – Fair hearing

(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.

It may be argued that the right to a fair hearing may be restricted by the Amendment Regulation as the potential for third party consultation and appeal rights would be removed for the exploratory works.

The Amendment Regulation is a direction to Queensland Hydro and the Coordinator-General to undertake exploratory works. Local categorising instruments will be prohibited from stating the exploratory works are assessable development by operation of Schedule 6 of the Planning Regulation.

The exploratory works will therefore progress without a requirement for Queensland Hydro, as the local body, to seek development approvals from the respective local councils, which would have otherwise been subject to public notification requirements. The Amendment Regulation would also enliven certain Coordinator-General powers and functions to facilitate the exploratory works.

(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 and the ability to make a submission that then enlivens appeal rights is a consequence of the statutory framework under the Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis. The Amendment Regulation employs this existing statutory pathway.

Given the Amendment Regulation utilises existing statutory pathways, and the on-time delivery of the Borumba PHES Project is instrumental for provision of a reliable renewable energy system under the QEJP, 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 effect of the Amendment Regulation, will ensure the timely establishment of the exploratory works.

The exploratory works are essential to inform the design development and constructability of the Borumba PHES Project Main Works and aid data capture to inform the EIS. The need for the timely delivery of the Borumba PHES Project Exploratory Works, aligns with community

expectations and broader government objectives regarding timely delivery of the transition to a renewable energy system.

(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 utilises an existing statutory pathway in the Planning Regulation that enables significant projects to proceed on a streamlined and urgent basis. The Borumba PHES Project is an important renewable energy project intended to assist the State transition to clean, reliable and affordable energy and achieve its renewable energy targets. The Amendment Regulation will facilitate exploratory works for the purpose of environmental and geotechnical studies, to inform project design development and constructability of the Borumba PHES Project Main Works, and aid data capture to inform the EIS.

When balancing the right to a fair hearing in relation to the exploratory works with the urgent need to facilitate the commencement of exploratory works for the Borumba PHES Project, the Amendment Regulation is considered to align with community expectations.

(f) any other relevant factors

Not applicable.

Human rights potentially relevant to the Amendment Regulation but not limited

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 Act 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 the person's 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 and any future decisions made by the Coordinator-General in the exercise of any powers under the SDPWO Act to facilitate the exploratory works will consider any limitations to these rights.

Conclusion

I consider that the *State Development and Public Works Organisation (Borumba Pumped Hydro Energy Storage Project Exploratory Works) 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
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Minister for Racing

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