

# Building and Other Legislation (Public Cyclone Shelters) 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* (HR Act), I, the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, provide this human rights certificate in relation to the *Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023* (Amendment Regulation), which amends the:

- *Building Regulation 2021* (Building Regulation) made under the *Building Act 1975*; and
- *State Penalties Enforcement Regulation 2014* (SPE Regulation) made under the *State Penalties Enforcement Act 1999*.

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

### Amendment to Building Regulation

Currently, 13 buildings in Queensland are recognised as public cyclone shelters, each of which is owned by the State or a local government.

Each government-owned building was designed and constructed in accordance with design guidelines issued by the State and is maintained in accordance with maintenance guidelines issued by the State.

It is proposed that this non-regulatory framework be retained for government-owned buildings used and referred to as public cyclone shelters, and a new regulatory framework be introduced for privately-owned buildings that are intended to be used and referred to as public cyclone shelters in the future.

The Amendment Regulation will introduce a new part of the Queensland Development Code (QDC) that is intended to be mandatory for privately-owned buildings, by referencing the new part. The new part of the QDC is to be known as MP 3.8 - Public Cyclone Shelters. MP 3.8 will set minimum standards for the location, design, construction, and operation of new privately-owned buildings that are intended to be used to accommodate members of the public in the event of a cyclone and described as public cyclone shelters.

State and local government-owned buildings used, or to be used, as public cyclone shelters will be exempt from the requirement to comply with MP 3.8. Those buildings will only be required to comply with the design and maintenance guidelines issued by the State, and their owners will be responsible for ensuring, at the beginning of each cyclone season, that the buildings are suitable for occupation by the public during a cyclone.

Amendments to the Building Regulation will introduce an offence provision prohibiting the owner or occupier of a building describing the building as a ‘public cyclone shelter’ in a broadcast or publication unless:

- the building is activated for use as a public cyclone shelter under the local disaster management plan (LDMP) for the local government area where the shelter is located; and
- if the building is not owned by the State or a local government - the owner of the building has, in the previous 12 months, obtained a public cyclone shelter compliance statement indicating that the building complies with MP 3.8 and is suitable for occupation by the public during a cyclone.

The purpose of the offence provision is to prevent confusion around the identification of public cyclone shelters and to ensure that shelters are operated by the local disaster management group.

### **Amendment to SPE Regulation**

The Amendment Regulation will prescribe new section 78D of the Building Regulation as an infringement notice offence. This will ensure relevant authorities can issue an infringement notice to the owner or occupier of a building if the owner or occupier has committed an offence against section 78D.

An infringement notice imposes a fine for a breach of an infringement notice offence. Prescribing section 78D as an infringement notice offence will provide administrators with a swift and inexpensive means of addressing breaches of section 78D that would otherwise be required to be dealt with by means of costly and time-consuming prosecutions. Offenders will benefit from a fixed and discounted penalty for the offence, avoidance of court proceedings, and no finding of guilt in relation to the offence.

## **Human Rights Issues**

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

The offence provision in the Amendment Regulation limits the right to freedom of expression mentioned in the HR Act, section 21. The offence provision does this by prohibiting the owner or occupier of a building, without reasonable excuse, from using the words ‘public cyclone shelter’ in a broadcast or publication to indicate that the building is a public cyclone shelter, unless the building meets the definition of the term ‘public cyclone shelter’ in the Amendment Regulation.

It is considered reasonable to limit the right to freedom of expression in this case because doing so will reduce potential for confusion around the identification of public cyclone shelters.

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

The Amendment Regulation, if enacted, will be consistent with the statement in the HR Act, section 13, that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

### **Conclusion**

I consider that the *Building and Other Legislation (Public Cyclone Shelters) Amendment Regulation 2023* 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.

**MICK DE BRENNI MP**  
MINISTER FOR ENERGY, RENEWABLES AND HYDROGEN  
AND MINISTER FOR PUBLIC WORKS AND PROCUREMENT

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