Planning (Social Impact and Community Benefit) and Other Legislation Amendment Regulation 2025

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, Jarrod Bleijie, Deputy Premier and Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations provide this human rights certificate with respect to the *Planning (Social Impact and Community Benefit) and Other Legislation Amendment Regulation 2025* made under the *City of Brisbane Act 2010*, *Economic Development Act 2012*, *Local Government Act 2009*, and the *Planning Act 2016*.

In my opinion, the *Planning (Social Impact and Community Benefit) and Other Legislation Amendment Regulation 2025*, 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 *Planning (Social Impact and Community Benefit) and Other Legislation Amendment Regulation 2025* (subordinate legislation) is made under the *City of Brisbane Act 2010* (City of Brisbane Act), *Economic Development Act 2012 (*Economic Development Act), *Local Government Act 2009 (Local Government Act), and the Planning Act 2016* (Planning Act) and proposes to amend the *City of Brisbane Regulation 2012* (City of Brisbane Regulation), *Economic Development Regulation 2023* (Economic Development Regulation), *Local Government Regulation 2012* (Local Government Regulation), and the *Planning Regulation 2017* (Planning Regulation).

The primary objectives of the subordinate legislation are to:

- impose reporting requirements on local government about the total amount of financial contributions made to, and spent by, local government in a financial year in relation to a community benefit agreement, development condition or other agreement under the Planning Act.

- Make all solar farm development impact assessable development.

- Prescribe the chief executive as the assessment manager for solar farm that has a maximum instantaneous electricity output of 1MW or more (large scale solar farm) or development in a Priority Development Area (PDA).

- make a material change of use of premises for a solar farm, or a wind farm, PDA accepted development under the Economic Development Act.

- prescribe development for which social impact assessment is required under the Planning Act as material change of use of premises for a large scale solar farm or material change of use of premises for a wind farm.

- specify how the requirements for social impact assessment apply to pre-existing applications for wind farm and large scale solar farm development.

- Give effect to the amended DA Rules and State Development Assessment Provisions.

- make other incidental amendments to reflect the implementation of social impact assessments and community benefit agreements for prescribed development, including changes to the dictionary in the Planning Regulation and making particular documents available for inspection and purchase.

Human Rights Issues

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

I have considered each of the rights protected by Part 2 of the HR Act. In my opinion, the human rights that are relevant to the subordinate legislation are:
- recognition and equality before the law (section 15)
- property rights (section 24)

Clause 12 of the subordinate legislation inserts new Part 5B (Development requiring social impact assessment) into the Planning Regulation (new sections 51F to 51I). The new Part 5B comprises:
Division 1 – Preliminary (new section 51F)
Division 2 – Pre-existing applications (new section 51G to 51I)
Division 3 – Social impact assessment reports and community benefit agreements (new sections 51J and 51K)
Division 4 – Notices given by chief executive (new sections 51L and 51M)

Section 51F provides for development requiring social impact assessment under section 106T of the Planning Act, to be a material change of use of premises for a solar farm with a capacity to generate over 1MW of electricity or a wind farm.

For section 106U of the Planning Act, a material change of use of premises for a large scale solar farm or a material change of use of premises for a windfarm are prescribed as development requiring social impact assessment (section 51F).

Pre-existing development or change applications (other than an application subject to a Ministerial call in or direction) for a large scale solar farm or wind farm, made but not decided before the commencement of section 51F, are taken to be not properly made under the Planning Act (sections 51G-51H).

For a pre-existing development application subject to a Ministerial call in or direction before the commencement of section 51F, the process for administering the pre-existing application stops on the commencement of this section and restarts once the applicant gives the decision maker for the application a social impact report and each community benefit agreement for the application (section 51(I)(2)).

If the process for administering the application stops during the period under the Act, chapter 3 or the development assessment rules for deciding the application, the process restarts from the start of that period.

Sections 51L and 51M prescribe the process that must be followed (and the matters that must be considered) in relation to giving notices by the chief executive under section 106ZE(1) of the Planning Act in relation to a development application or change application for prescribed development. Section 106ZE of the Planning Act allows an applicant to make a request to the chief executive who has the reserve power to allow an application for prescribed development to be lodged without a social impact assessment or community benefit agreement.

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

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

- recognition and equality before the law (section 15)
- property rights (section 24)

Equal protection before the law

The rights to equal protection of the law without discrimination and to equal and effective protection against discrimination in section 15 of the HR Act embody the notion that all laws and policies should be applied equally and must not result in discriminatory treatment or effects. It is about human dignity.

Clause 12 of the subordinate legislation is relevant to the right.

A development or change application (other than an application subject to a Ministerial call in or direction) for a solar farm with a capacity to generate over 1MW of electricity or wind farm, made or lodged (but not decided) by applicants prior to the commencement of section 51F (pre-existing application), are taken to be not properly made under the Planning Act.

Therefore, proponents for a pre-existing application for a large scale solar farm or wind farm will be treated differently from proponents for the same type of development that was made and decided prior to the commencement of section 51F. They will need to take additional steps to make their application compliant, namely, undertaking the social impact assessment and community benefit agreement requirements in the Planning Act.

Section 15 of the HR Act is concerned with 'discrimination' (direct or indirect) on the basis of a relevant attribute as defined in the *Anti-Discrimination Act 1991* (Anti-Discrimination Act).

In this case, the subordinate legislation will apply equally to all proponents for development subject to social impact assessment that has not been decided prior to the commencement of section 51F.

There is no direct or indirect discrimination in relation to proponents for a pre-existing application based on a protected attribute under the Anti-Discrimination Act (or any additional characteristic). Applicants of pre-existing applications are also afforded the right to seek from the chief executive, a notice under section 106ZE(1) of the Planning Act. to allow an application to be lodged without a social impact assessment or community benefit agreement.

Therefore, the right is not limited.

Property rights

(a) the nature of the right

Section 24(2) of the HR Act provides that a person must not be arbitrarily deprived of the person's property. Limitations on section 24(2) property rights must not be 'arbitrary'; they must be proportionate and not capricious, unpredictable, unjust, or unreasonable.

Property includes real and personal property (for example, interests in land, chattels, and money), including contractual rights, leases, shares, patents, and debts. Property can also include statutory rights and non-traditional or informal rights and other economic interests. The term 'deprived' is not defined by the HR Act. However, the term is considered to include the substantial reduction of a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

Under the proposed subordinate legislation, a pre-existing application for development requiring a social impact assessment or community benefit agreement is taken to be not properly made under the Planning Act. This means a proponent's statutory entitlement under the Planning Act to have their development application considered and determined by the relevant decision maker (by virtue of making a 'properly made' application) has been removed until the social impact assessment and community benefit agreement requirements are complied with, likely at additional cost to proponent. I consider this may amount to a 'deprivation' of property for the purposes of section 24(2) of the HR Act as it encompasses the proponents' economic interests in terms of developing their real property.

However, whether the deprivation is arbitrary will depend on whether making a pre-existing application subject to social impact assessment under the Planning Act is capricious, unjust, or unreasonable in the sense of being disproportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether any deprivation of property is arbitrary will be addressed below when considering the factors in section 13.

(b) the nature of the purpose of the limitation to be imposed by the subordinate legislation if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of making all applications (new or pre-existing) for large scale solar farm or wind farm subject to consistent regulation through a social impact and community benefit framework is a proper purpose and compatible with a free and democratic society. Renewable energy projects can have significant social impacts (immediate and cumulative) on the communities in the locality. Ensuring that renewable energy projects are subject to a social impact and community benefit framework allows for the identification, management, and mitigation of social impacts and for the community to derive tangible benefits from such development.

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

By making pre-existing applications not properly made under the Planning Act, the subordinate legislation achieves the purpose of all large scale solar farm or wind farms being subject to the community benefit scheme.

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

The amendments to the Planning Regulation proposed by the subordinate legislation are the most effective way of achieving the purpose of renewable energy projects being subject to a consistent social impact and community benefit framework. Legislative amendment is the only way to establish a mandatory minimum requirement to comply with an identified community benefit system for prescribed development. I am therefore satisfied there are no less restrictive ways reasonably available to achieve the purposes.

(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

I acknowledge that subordinate legislation has impacts on the property rights of proponents that have pre-existing applications for prescribed development. Such pre-existing applications are no longer properly made, and proponents will have to take extra steps to make their application compliant with the social impact and community benefit framework before it can be decided. This will likely result in extra costs being incurred by the proponent (in terms of the direct costs of complying the social impact and community benefit requirements). However, applicants of pre-existing applications are also afforded the right to seek from the chief executive, a notice under section 106ZE(1) of the Planning Act to allow an application to be lodged without a social impact assessment or community benefit agreement once they are not properly made.

On the other hand, having a consistently applied social impact and community benefit framework is of considerable public importance. As I noted above, renewable energy projects can have significant social impacts (immediate and cumulative) on the communities in the locality. Ensuring that all renewable energy projects are subject to a social impact and community benefit framework allows for the identification, management, and mitigation of social impacts and for the community to derive tangible benefits from such development.

Therefore, on balance, I consider the impacts on the property rights of proponents is outweighed by benefits of having a consistent social impact and community benefit framework.

As any interference with property would be proportionate, it would not be arbitrary. That means that the right to property in section 24(2) of the HR Act would be engaged but not limited.

(f) any other relevant factors

N/A

Conclusion

I consider that the *Planning (Social Impact and Community Benefit) and Other Legislation Amendment Regulation 2025* is compatible with the HR Act because it does not limit human rights.

JARROD BLEIJIE MP
DEPUTY PREMIER, MINISTER FOR STATE DEVELOPMENT, INFRASTRUCTURE AND PLANNING AND MINISTER FOR INDUSTRIAL RELATIONS