

State Development and Public Works Organisation (Bribie Island Breakthrough Emergency Works) 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, the Honourable Jarrod Bleijie MP, Deputy Premier, Minister for State Development, Infrastructure and Planning and Minister for Industrial Relations, provide this human rights certificate with respect to the *State Development and Public Works Organisation (Bribie Island Breakthrough Emergency Works) Amendment Regulation 2025* made under the *State Development and Public Works Organisation Act 1971*.

In my opinion, the *State Development and Public Works Organisation (Bribie Island Breakthrough Emergency Works) Amendment Regulation 2025* 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 Bribie Island Breakthroughs are a series of recently emerged structural breaches occurring at Bribie Island. Since 2022, two clear breakthroughs have emerged and grown, with a third currently emerging. The breakthroughs have brought significant changes to Bribie Island itself, Pumicestone Passage (which runs between the Island and the mainland), and the environment contained therein.

The Queensland Government has funded and publicly committed to the rapid deployment of immediate and urgent works to remediate erosion impacts caused by the breakthroughs, and undertake resilience works to reinstate features that can mitigate against further degradation.

The works must be commenced as soon as practically possible if resilience measures are to be in place and effective before the onset of potential severe weather, such as summer storms. To ensure the works can be carried out rapidly and efficiently, the Coordinator-General is directed to carry out the works by way of regulation.

The *State Development and Public Works Organisation (Bribie Island Breakthrough Emergency Works) Amendment Regulation 2025* (Amendment Regulation) amends the State Development and Public Works Organisation Regulation 2020 to direct the Coordinator-General, pursuant to sections 108, 109 and 140 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act), to undertake the Bribie Island Breakthrough Emergency Works.

Human Rights Issues

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

In my opinion the human rights under the *Human Rights Act 2019* (HR Act) relevant to the Amendment Regulation are:

- Section 19 – freedom of movement
- Section 21 – freedom of expression
- Section 24 – property rights
- Section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples

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 and Torres Strait Islander peoples

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Freedom of movement (section 19)

(a) the nature of the right

Section 19 of the HR Act provides that every person has the right to move freely within Queensland enter or leave Queensland and the freedom to choose where to live. The right includes the ability of people to be in public spaces and restrictions on people's movement based on national security considerations or in emergencies.

The Amendment Regulation envisages to enable the Coordinator-General powers for the purpose of opening and closing of roads and temporarily restricting access to public areas for emergency works that enables public safety. Where the Coordinator-General's functions and powers are exercised to support the project works for access road upgrades or closures, temporary access restriction may be necessary to ensure public safety.

(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 restriction of people's movement within the ordinarily open national park due to emergency works is necessary to undertake the necessary works to restore and protect environmental, social and cultural values within the Northern Bribie Island region. The limitations are temporary, supporting the protection of life and affect each member of the community equally. Therefore, the limitation is consistent with a free and 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 movement, which may occur as a consequence of the Amendment Regulation, will ensure public safety and be limited to the most immediate surroundings of the project works. By limiting public movement within the works area, threats to life and property are limited.

The need to provide emergency works is in line with community expectations and broader government objectives regarding safety and protection from coastal erosion.

(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. Section 109 of the SDPWO Act requires directions to be made by regulation. Administrative arrangements would not provide the streamlining benefits that can be provided through the Amendment Regulation of 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 the existing Coordinator-General's powers that enables significant projects to proceed on a streamlined and urgent basis.

The amendment will facilitate the emergency works required to protect the Bribie Island breakthrough.

When balancing the right to freedom of movement in relation to the urgent need to facilitate emergency works to protect the Bribie Island breakthrough the Amendment Regulation, is considered to be in line with community expectations.

(f) any other relevant factors

Not Applicable.

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).

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) are removed for the emergency works.

The Amendment Regulation is a direction to utilise existing statutory pathways, and the on-time delivery of the emergency works is critical to reduce risks caused by recent erosion and breakthrough events prior to the next storm season, being 1 November 2025. The *Planning Act 2016* does not bind the Coordinator-General in the exercise of their function. The emergency works will therefore progress without a requirement for local and State government

development approvals, which may have otherwise been 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 statutory public notification process is a consequence of the statutory framework under the Planning Act and Planning Regulation 2017 that enables significant projects to proceed on a streamlined and urgent basis. The Amendment Regulation enlivens this existing statutory pathway.

Given the Amendment Regulation is instrumental in providing emergency works for the purpose for the safety of Bribie Island residents and protection from coastal erosion, 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 timely emergency works are undertaken within the timeframe leading up to the next storm season. That is, before 1 November 2025, when Queensland's traditional severe weather season begins (typically concluding on 30 April). Delaying action until the next storm season could result in major negative impacts, particularly if further high-energy events coincide with the already-altered coastal system.

The need to provide emergency works is in line with community expectations and broader government objectives regarding safety and protection from coastal erosion.

(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. Section 109 of the SDPWO Act requires directions to be made by regulation. Administrative arrangements would not provide the streamlining benefits that can be provided through the Amendment Regulation of 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 will facilitate the emergency works required to protect the Bribie Island breakthrough.

When balancing the right to freedom of movement in relation to the urgent need to facilitate emergency works to protect the Bribie Island breakthrough the Amendment Regulation, is considered to be in line with community expectations.

(f) any other relevant factors

Not Applicable.

Property Rights (Section 24)

(a) the nature of the right

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

It may be argued that property rights may be restricted by the Amendment Regulation as it enlivens the Coordinator-General's powers including in relation to access to land, potential acquisition of land if required, rearrangement of roads, and temporary opening and closing of local 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 Amendment Regulation enlivens powers that may be utilised by the Coordinator-General under the SDPWO Act, limited to project works necessary to close Bribie Island Breakthroughs and restore the island with dune systems and barriers that will absorb wave energy.

The Coordinator-General's power to occupy land, rather than acquire, is expected to be sufficient for conducting the works. Planned work is anticipated to be limited to public lands, with impacts on private land not expected.

Property acquisition is therefore not envisaged for the 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* (ALA) and payment of compensation. The process and compensation provisions are outlined within the SDPWO Act and ALA and provide a framework for the implementation of compulsory access and acquisition. The compulsory access and acquisition powers are therefore limited by the statute's provisions, which provide a safeguard to limit impacts on a person's human rights.

The need for timely provision of the emergency works is in line with community expectations and broader government objectives regarding a response to the challenge of the Bribie Island Breakthrough. The codification of systems for taking of land and the right to appropriate compensation is a well-established method of managing the impacts on the rights of individuals to property. The requirement for the Coordinator-General to be consistent with the SDPWO Act and ALA when taking, occupying or otherwise dealing with land, ensures that purpose of the limitation is consistent with a democratic society based on human dignity, equality and freedom. consistent with a free and democratic.

(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.

The need to provide emergency works is in line with community expectations and broader government objectives regarding safety of people, property and protection from coastal erosion.

(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. Section 109 of the SDPWO Act requires 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 SDPWO Act that enables significant projects to proceed on a streamlined and urgent basis. The amendment will facilitate the emergency works required to protect the Bribie Island breakthrough.

When balancing the right to freedom of movement in relation to the urgent need to facilitate emergency works to protect the Bribie Island breakthrough the Amendment Regulation, is considered to be in line with community expectations.

(f) any other relevant factors

Not Applicable.

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

(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 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 land and waters identified as relevant to the emergency works. The determination recognised rights of possession, occupation use and enjoyment over land and waters.

The emergency works area occurs in an area with recognised Native Title. The Coordinator-General must comply with the existing legal and regulatory framework governing the Aboriginal and Torres Strait Islander people's rights to land. Where native title exists in the area of the works, it is expected that the parties may continue to exercise and enjoy native title rights, except during construction works where access may be restricted for health and safety reasons. The relevant native title party will be notified prior to the commencement of construction activities. Authorisation for the works will be obtained pursuant to the *Native Title Act 1993* as necessary.

(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 urgent Bribie Island Breakwater emergency works. 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.

The need to undertake the works is in line with community expectations and broader government objectives regarding public safety and protection from coastal erosion.

(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. Section 109 of the SDPWO Act requires directions to be made by regulation. Administrative arrangements would not provide the streamlining benefits that can be provided through the Amendment Regulation of enlivening 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 SDPWO Act that enables significant projects to proceed on a streamlined and urgent basis. The amendment will facilitate the emergency works required to protect the Bribie Island breakthrough.

When balancing the right to freedom of movement in relation to the urgent need to facilitate emergency works to protect the Bribie Island breakthrough the Amendment Regulation, is considered to be in line with community expectations.

(f) any other relevant factors

Not Applicable.

Conclusion

I consider that the *State Development and Public Works Organisation (Bribie Island Breakthrough Emergency Works) Amendment Regulation 2025* 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.

JARROD BLEIJIE MP

Deputy Premier, Minister for State Development, Infrastructure and Planning
and Minister for Industrial Relations

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