

Water Resource (Whitsunday) Plan (Postponement of Expiry) Notice 2020

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, Dr Anthony Lynham MP, Minister for Natural Resources, Mines and Energy provide this human rights certificate with respect to the Water Resource (Whitsunday) Plan (Postponement of Expiry) Notice 2020 (Postponement of Expiry Notice) made under the *Water Act 2000*.

In my opinion, the Postponement of Expiry Notice, 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 Postponement of Expiry Notice is subordinate legislation. It is published under section 56(1) of the *Water Act 2000* and the new expiry date for the Water Resource (Whitsunday) Plan 2010 (the Plan) is 1 December 2025. This will ensure that sustainable water management arrangements remain in place for the Plan area's water users after the current expiry date of 1 September 2020.

The Postponement of Expiry Notice is made under section 54 of the *Water Act 2000*. Accordingly, a report providing an overview of the implementation and effectiveness of the Plan to date, and a public notice of the intention to postpone the expiry were published by the Minister in order to inform and seek public submissions about the postponement.

The report shows that the Plan is advancing the sustainable management of water in most areas. Where the report identifies some issues (current and emerging) and potential risks that would need addressing over the medium term, it provides an outline of ongoing management measures and future plan review process (to be undertaken by the Department of Natural Resources, Mines and Energy) to adequately address them. The postponement of expiry of the Plan provides sufficient time for this to happen under the contemporary planning framework outlined in the *Water Act 2000*. As part of public consultation process for the Postponement of Expiry Notice adequate information and opportunity were made available to enable any entity or individual to make submissions and provide their views or concerns about the postponement. All properly made submissions have been considered in the process.

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* that are relevant to the Postponement of Expiry Notice are:

- Taking part in public life (section 23);
- Property rights (section 24); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28).

Right to take part in public life

I consider that the right to take part in public life (which ensures that all persons have the opportunity, without discrimination to contribute to the political process and public governance) is not limited by the postponement of expiry of the Plan as public consultation with interested persons and involved parties was undertaken on the subordinate legislation as required under section 54 of the *Water Act 2000*. Similarly, all persons and stakeholders will be able to participate in a public consultation process, and will have the opportunity to have their concerns taken into account as part of the future review of the Plan that will be undertaken under the *Water Act 2000* in order to ensure continued sustainable management of water resources.

Property rights

I consider that the property right (which provides that a person must not be arbitrarily deprived of the person's property) is not limited by the postponement of expiry of the Plan as all existing water entitlements authorised under the *Water Act 2000* will be maintained and all existing water management arrangements in the Plan area will continue until the new expiry date (or until reviewed as part of the future water planning process).

If human rights may be subject to limitation if the Postponement of Expiry Notice is progressed – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

Aboriginal and Torres Strait Islander peoples are recognised as having a rich and diverse culture, and an intimate association with their geographical areas. The distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples are protected under section 28 of the *Human Rights Act 2019*, which ensures that they are not denied the right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom. The right also ensures that Aboriginal peoples and Torres

Strait Islander peoples are not denied the right to conserve and protect the environment and productive capacity of their land, territories, waters and other resources.

The right is potentially limited by the postponement of expiry of the Plan in that Aboriginal and Torres Strait Islander People in the area may not have considered the general public consultation process (under section 54 of the *Water Act 2000*) as a formal opportunity to voice any concern or to be consulted on any potential impacts to the natural environment such as turtle nesting sites, native fish and other wild life habitat. This could possibly limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by limiting their right to conserve and protect the environment and productive capacity of their land and water and other resources.

It is noted that the Plan does provide a specific outcome to support water-related cultural values in the Plan area, including the cultural values of Aboriginal and Torres Strait Islander communities in the Plan area. However, the Minister's report has identified a need for further engagement with Aboriginal peoples and Torres Strait Islander peoples to better understand current and emerging cultural water needs in the Plan area. Addressing their water related interests and identifying cultural outcomes is required as part of future plan review process under the *Water Act 2000*.

(b) the nature of the purpose of the limitation potentially imposed by the Postponement of Expiry Notice, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The overarching purpose of potentially limiting the rights in the way set out above, is to ensure that the existing arrangements continue for sustainable management of water resources in the Plan area. It is imperative that the Plan remains in place to provide certainty for water users and industry, and to meet the needs of the environment. Failure to postpone the expiry of the Plan will result not only in the expiry of the Plan, but also with the lapsing of water allocation and management arrangements for the Proserpine River Water Supply Scheme and consequently no arrangements in place to preserve existing water-related cultural values of Aboriginal and Torres Strait Islander communities in the Plan area.

(c) the relationship between the limitation potentially imposed by the Postponement of Expiry Notice and its purpose, including whether the limitation helps to achieve the purpose

The possible limitation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples helps to achieve the overall purpose of continuation of the Plan, and the postponement of expiry limits the rights only to the extent necessary to achieve the purpose.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Notice

No other less restrictive, reasonably available, ways to achieve the purpose of the non-expiry of the Plan have been identified. Importantly it is noted however the Minister's report has identified a need for further engagement with Aboriginal peoples and Torres Strait Islander peoples to better understand current and emerging cultural water needs in the Plan area. Addressing their water related interests and identifying cultural outcomes through appropriate engagement is required as part of future plan review process under the *Water Act 2000*.

- (e) the balance between the importance of the purpose of the limitation potentially imposed by the Postponement of Expiry Notice and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, it is considered that the importance of postponing the expiry of the Plan to prevent the lapse of the existing water management framework, which in turn protects the existing water entitlements under the *Water Act 2000* and the needs of the environment, and preserves the status-quo of not limiting the existing rights and maintains current context of cultural values of Aboriginal and Torres Strait Islander communities in the Plan area, outweighs any potential adverse impact on the human rights.

Conclusion

I consider that the Water Resource (Whitsunday) Plan (Postponement of Expiry) Notice 2020 is compatible with the *Human Rights Act 2019* because it either does not limit human rights, or in instances where human rights may be limited, any limitation is reasonable and demonstrably justifiable in accordance with the *Human Rights Act 2019*.

DR ANTHONY LYNHAM MP
MINISTER FOR NATURAL RESOURCES, MINES AND ENERGY

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