

# Water Plan (Fitzroy Basin) Amendment Plan 2021

## 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, Glenn Butcher, Minister for Regional Development and Manufacturing and Minister for Water provide this human rights certificate with respect to the *Water Plan (Fitzroy Basin) Amendment Plan 2021* made under the *Water Act 2000*.

In my opinion, the *Water Plan (Fitzroy Basin) Amendment Plan 2021*, 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 *Water Plan (Fitzroy Basin) Amendment Plan 2021* amends the *Water Plan (Fitzroy Basin) 2011* to establish a water allocation framework for Rookwood Weir, and transition particular provisions from other instruments into the water plan. The amendment plan has been prepared under section 50 of the *Water Act 2000*.

A draft *Water Plan (Fitzroy Basin) Amendment Plan 2021* was released under section 46 of the Act for public consultation and submissions. The submissions received on the Statement of Proposals were considered in making the draft water amendment plan as required under section 45 of the Act. In accordance with section 47 of the Act, the Minister has considered all properly made submissions on the draft water amendment plan in deciding to finalise it.

### 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 *Water Plan (Fitzroy Basin) Amendment Plan 2021* 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 processes and public

governance) is not limited or interfered with by the *Water Plan (Fitzroy Basin) Amendment Plan 2021*.

The development of the draft and final *Water Plan (Fitzroy Basin) Amendment Plan 2021* has included two public consultation phases under sections 44 and 46 of the *Water Act 2000*. Consultation was undertaken and public submissions received as part of the Statement of Proposals in April 2020 and as part of the draft *Water Plan (Fitzroy Basin) Amendment Plan 2020* in August 2020.

The submissions received on the Statement of Proposals under section 44 of the *Water Act 2000* and on the draft *Water Plan (Fitzroy Basin) Amendment Plan 2020* under section 46 of the *Water Act 2000* together with feedback from ongoing discussions have informed the provisions of the final *Water Plan (Fitzroy Basin) Amendment Plan 2021*.

Targeted consultation will continue on the operational statutory instruments associated with Rookwood Weir, such as the water management protocol and operations manuals, through 2021 and 2022.

#### *Property rights*

I consider that property rights (which provides that a person must not be arbitrarily deprived of a person's property) are not limited or interfered with by the *Water Plan (Fitzroy Basin) Amendment Plan 2021*. The property with regards to this right within the *Water Plan (Fitzroy Basin) Amendment Plan 2021* are water allocations, which is a water title separate from land.

Changes being made to the water amendment plan do not impact existing water allocations authorised under the *Water Act 2000* or their existing water management arrangements in the area of the plan subject to the amendment.

Furthermore, the amendment plan does not affect existing statutory rights under the *Water Act 2000* with regards to the property rights of a water allocation, or the statutory rights with regards to accessing water on property that currently exist.

There will be ongoing consultation with water allocation holders in the ponded area of and downstream of Rookwood Weir during development of other statutory instruments to mitigate any risks arising from the operation and management arrangements for the weir.

#### *Cultural rights – Aboriginal Peoples and Torres Strait Islanders*

I consider that the cultural rights of Aboriginal People and Torres Strait Islanders are not limited or interfered with by the *Water Plan (Fitzroy Basin) Amendment Plan 2021*. Two public consultation phases under sections 44 and 46 of the *Water Act 2000* invited Aboriginal groups in the area of the plan subject to the amendment to be involved. Meetings were held onsite with one group whose lands encompass the area within proximity to Rookwood Weir to discuss the intent of the draft *Water Plan (Fitzroy Basin) Amendment Plan 2020*, understand the local Aboriginal People's cultural connections to the Fitzroy River and provide information about how submissions can be made.

Two Aboriginal groups provided submissions on the draft plan that have been considered by the Minister in the finalisation of the plan. The department has committed to ongoing consultation with interested Aboriginal groups throughout the planning process.

The construction and operation of Rookwood Weir will need to meet plan outcomes and all existing water allocations security objectives and environmental flow objectives. The water plan includes two general outcomes related to cultural rights that will continue to be met under the *Water Plan (Fitzroy Basin) Amendment Plan 2021*, and also be met as part of future approvals of other operational and statutory instruments for the management and operation of Rookwood Weir:

- To support water-related cultural values including the values of the traditional owners in the plan area; and
- To provide mechanisms that support water being made available for Indigenous communities dependent on water resources in the plan area to achieve their economic and social aspirations.

The *Mineral, Water and Other Legislation Amendment Act 2018* made it a requirement for a water plan to state cultural outcomes. However, there was no underlying intention in this act that in the event that a water plan is amended, it must be amended to be consistent with the requirement to state cultural outcomes. This is because the consultation requirements during a targeted amendment process are too narrow to enable water plan outcomes to be amended where the outcome may be relevant to other parts of the plan area. Cultural outcomes will be developed and included in the plan as part of the next water plan review.

The *Water Plan (Fitzroy Basin) Amendment Plan 2021* maintains the current context of cultural rights and values of Aboriginal and Torres Strait Islander communities in the Rookwood Weir area. In terms of other ongoing processes, Sunwater as the project proponent is considering the limits on human rights of Aboriginal People and Torres Strait Islanders as part of the construction and operation of the weir. In addition, the department has entered negotiations with the Native Title holder in the Rookwood Weir area for a potential Indigenous Land Use Agreement.

## Conclusion

I consider that the *Water Plan (Fitzroy Basin) Amendment Plan 2021* is compatible with the *Human Rights Act 2019* because it raises human rights issues but does not limit human rights.

**Glenn Butcher**  
Minister for Regional Development  
and Manufacturing and Minister for Water