

# South-East Queensland Water (Distribution and Retail Restructuring) Regulation 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 South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021 made under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

In my opinion, the South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021 (the Regulation), 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 Regulation replaces the *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010*, which applies specific general directors' duties and related provisions derived from the *Corporations Act 2001* (Cth) to board members and officers of distributor-retailers.

The *South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2010* was due to expire on 31 August 2021 and is required to be remade to achieve a simple continuity of primary purpose.

The Regulation continues to provide a regulatory framework applicable to distributor-retailers to mitigate the potential misuse of power by board members and officers within the organisations.

## Human Rights Issues

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

The Regulation engages the following human rights protected by the HR Act:

- Freedom of expression (section 21 of the HR Act)
- Right to take part in public life (section 23 of the HR Act) Freedom of expression (section 21 of the HR Act).

#### Right to freedom of expression (section 21 of the HR Act)

The right to freedom of expression 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). The forms of protected expression are

broad, and include expression that is oral, written, print, art or in any other medium. The right to freedom of expression and the free flow of information and ideas, particularly about public and political issues, is considered to be a touchstone of a democratic society.

Right to take part in public life (section 23 of the HR Act).

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It ensures all persons have the opportunity to contribute to the political process and public governance, directly or through freely chosen representatives. The United Nations Human Rights Committee considers that the right imposes positive obligations on the State regarding the conduct of elections, including to preserve the impartiality of the electoral process and the right of citizens to choose their representatives freely.

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

(a) the nature of the right

The Regulation may limit the rights to freedom of expression and to take part in public life.

The right to freedom of expression is limited to the extent that when the Regulation takes effect it will reduce a board member or officer's ability to express their opinion without interference. For example, the Regulation requires board members and officers to avoid publicly making expressing an opinion and publicly seeking out and receiving the expression of others' opinions that are contrary to the interests of the organisation.

The right to take part in public affairs is limited by the Regulation as it sets out standards of behaviour that restrict how a board member or officer may behave when in office. For example, the Regulation requires that board members or officers must exercise their fiduciary duties for the benefit of their organisation, rather than in their own interest.

In the absence of the Regulation, there is potential for misuse of power by officers within the organisation. First, board members and officers may be tempted to misuse their position for their own benefit, such as from improper use of information. Second, shareholders may be vulnerable, particularly shareholders (local government) who are passive investors and do not follow the company's management on a day-to-day basis.

(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 purpose of the limitations is to set governance standards and promote accountability and integrity in organisations, including the distributor-retailers. The Regulation is intended to serve as a precautionary measure to mitigate risk from potential abuse of power by Board members and officers of these organisations. The limitation also promotes the public's interest by ensuring proper stewardship of resources, which impact the communities day to day life. The limitation also helps to ensure the community's expectations relating to the management of drinking water and sewerage services are met.

This purpose is consistent with a free and democratic society as it promotes public confidence in the governance of the distributor-retailers formed under the *South-East Queensland Water*

*(Distribution and Retail Restructuring) Act 2009*. In particular, the distributor-retailers, Unitywater and Urban Utilities, have Participating Agreements with respective participating local governments. The Agreement requires that Unitywater and Urban Utilities must service the respective local authority areas on behalf of their citizens. Board members and officers of these distributor-retailers are expected to model behaviour consistent with the values of the community.

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

The limitations imposed on board member and officers' rights to freedom of expression and right to take part in public life, as individuals, by approving the Regulation.

Approving the Regulation will continue to ensure that the same standards of behaviour apply to all board member or officers working for distributor-retailers. This promotes integrity and accountability in distributor-retailers by providing a consistent standard of behaviour for all board members and officers.

The limitations on board members and officers' freedom of speech are appropriate as they are intended to ensure that board members and officers behave in a way that is in the best interests of the distributor-retailer and the community. The limitation also intends to ensure that board members and officers treat people respectfully and that their conduct does not reflect adversely on the reputation of the organisation and respective local governments.

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

There are no less restrictive means reasonably available to achieve the purpose of promoting corporate social responsibility and accountability as well as promoting the public interest.

The Regulation was originally established to give board members and officials more certainty and accountability about the nature of the duties and the consequences if they breach their duties. The courts have developed considerable case law about the legal obligations of corporations over time.

There is no other regulatory framework applicable to distributor-retailers to mitigate the potential misuse of power by board members and officers within the organisations.

(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

On balance, taking into account the nature and extent of the limitation on the right to freedom of expression and the right to take part in public life, and having regard to the information and analysis detailed above. I consider that the purpose of promoting corporate social responsibility and accountability while also ensuring the public's interests are meaningfully represented by board members and officers, outweigh the negative impact of the approval of the Regulation have on these individuals' right to freedom of expression and the right to take part in public life.

## Conclusion

I consider that the South-East Queensland Water (Distribution and Retail Restructuring) Regulation 2021 is compatible with the HR Act because although it limits, restricts or interferes with human rights, the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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

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