

Water Amendment Regulation (No. 2) 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 Amendment Regulation (No. 2) 2021* made under the *Water Act 2000*.

In my opinion, the *Water Amendment Regulation (No. 2) 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 Amendment Regulation (No. 2) 2021* (the Amendment Regulation) is made under authority of the *Water Act 2000* (the Water Act).

The authorising law for the Amendment Regulation includes:

- Section 691 of the Water Act, which provides that a regulation may dissolve a category 2 water authority for the purpose of converting to an alternative institutional structure.
- Section 691A of the Water Act, which provides that a regulation must identify a document that sets out the distribution arrangements for a dissolving water authority that is the holder of a distribution operations licence.
- Section 1014 and schedule 4 of the Water Act, which provide that a regulation may set out matters relating to metering and identify metered entitlements.

The general purpose of the Amendment Regulation is to amend the *Water Regulation 2016* to:

- dissolve the Yambocully Water Board, a category 2 water authority, and provide for its conversion to Yambocully Water Proprietary Limited,
- include new metered entitlement areas in the Burdekin Basin water plan area, and
- make minor amendments for clarity.

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 right under the *Human Rights Act 2019* that may be relevant to the Amendment Regulation is – Property rights (section 24 of the *Human Rights Act 2019*), which provides that a person must not be arbitrarily deprived of the person's property. The holders of water authorisations that are prescribed as metered entitlements by the Amendment Regulation will have additional regulatory requirements, which may limit property rights. These additional regulatory requirements are subject to compliance provisions. Consideration given to the reasonableness of this is detailed below.

Only individuals have property rights. Non-human legal entities, such as the Yambocully Water Board, do not have human rights. The amendment to provide for the dissolution and conversion of Yambocully Water Board is administrative in nature. The conversion has been driven by the board and ratepayers within the authority area have been balloted and voted in favour. It is my opinion that this matter does not raise any human rights issues.

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

(a) the nature of the right

Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

Property is likely to include all real and personal property interests recognised under the general law and may include statutory rights. The Water Act provides a framework for the sustainable management of Queensland's water resources by establishing a system for the planning, allocation and use of water. Under this framework the state may authorise a person to take water via various authorisations issued under the Water Act, including through water licences and water allocations. An authorisation is considered property for the purposes of the *Human Rights Act 2019*.

The property right includes the protection from the deprivation of property. Deprivation in this sense is considered to include the substantial restriction on a person's ability to use or enjoy their property or part of their property. The Amendment Regulation will prescribe particular authorisations to take water as metered entitlements. Metered entitlements have additional regulatory responsibilities, such as maintaining and reading an approved meter. Non-compliance with these responsibilities can attract a penalty. In addition, it becomes an offence to access water under an authorisation other than through an approved meter. These responsibilities directly relate to management and protection of the property right (right to access water) and do not represent a substantial restriction on a person's ability to use and enjoy their property.

The Amendment Regulation does not arbitrarily deprive a person of their property as metering obligations are considered reasonable and necessary in the context of accessing the water (property) right. Metered entitlements are not new and exist in many areas across Queensland. The requirement for metering is consistent with current water planning processes and policies for the sustainable management of water resources.

(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 Water Act allows a regulation to prescribe authorisations to take water as metered entitlements (requiring the take of water to be through an approved meter) and state a range of matters related to metering, including when a meter must be installed and arrangements for maintaining and reading the meter.

The proposed amendment will prescribe particular water entitlements in the Upper Burdekin, Cape Campaspe and Belyando Suttor sub-catchments of the Burdekin Basin water plan as metered entitlements.

Metered entitlements are generally prescribed in areas where there is an identified need for improved water user information, measurement and monitoring, such as:

- water systems at or approaching a full allocation;
- water authorisations with area allocations, volumetric limits or rates of take;
- taking of floodwater or overland flow water;
- a need to ensure the equitable distribution of water or reduce the risk of environmental damage or water depletion; and
- water plans or water management protocols requiring metering.

Measurement of water take is a critical measure used to evaluate compliance of individual entitlements, overall compliance with water plan outcomes and objectives and understanding the performance or sustainability of the water resource.

The requirement for metering was discussed with water users during the development of the *Water Amendment Plan (Burdekin Basin) 2019* and was generally accepted and supported. Meter notices were sent to these water users in accordance with section 107 of the *Water Regulation 2016*, giving a minimum of 12 months' notice of the metering obligation.

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

The requirement for a water entitlement holder to take water via an approved meter has a direct relationship with objectives of the proposed limitation. The installation of meters and the supply of water usage information support the sustainable management of water resources ensuring the objectives of the Burdekin Basin water plan are being met and water users are compliant with their authorisation.

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

There is no less restrictive way to ensure the accurate measurement of water taken under a water authorisation. The proposed amendments are simply implementing the existing framework for metering water use in new areas of the state where a need has been identified through the water planning process.

(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 strikes the appropriate balance between providing for sustainable management of water resources and limiting property rights through metering obligations. While prescribing metered entitlements does introduce additional obligations on water users, the limitation is not a substantial restriction on a person's ability to use or enjoy their property. The purpose of the limitation (metering obligations) is to support the sustainable management of water resources by ensuring the objectives of the *Water Plan (Burdekin Basin) 2007* are being met. Supporting the objectives and outcomes of the water plan will ultimately benefit all

individual's property rights (water rights) by continuing to provide long-term protection and sustainability of water entitlements.

The responsibility of complying with metering obligations is balanced with benefit of maintaining security of water rights and equitable access to water, including for other water authorisation holders.

Therefore, the impact on the human right caused by the Amendment Regulation is reasonable and justifiable in the circumstances.

Conclusion

I consider that the *Water Amendment Regulation (No.2) 2021* is compatible with the *Human Rights Act 2019* because while it does limit, restrict or interfere with a human right, that limitation is 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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