

River Improvement Trust Regulation 2023

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 Glenn Butcher MP, Minister for Regional Development and Manufacturing and Minister for Water, provide this Human Rights Certificate with respect to the *River Improvement Trust Regulation 2023* (the 2023 Regulation) made under the *River Improvement Trust Act 1940* (RIT Act).

In my opinion, the 2023 Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The purpose of the RIT Act is to provide for the responsible management of river catchment areas by establishing river improvement trusts to manage those areas. These areas and trusts are specified in the *River Improvement Trust Regulation 2013* (the 2013 Regulation). The River Improvement Trusts (RITs) were originally established in response to severe flooding to undertake works to repair and prevent damage to the bed and banks of rivers and prevent flooding within their river improvement area. In 2014, the RITs' responsibilities under the RIT Act were expanded to encompass responsible management of river catchments more generally, including consideration of river health, water quality, water security and natural resilience.

The 2013 Regulation is subordinate legislation and will expire 1 September 2023, in accordance with section 54 of the *Statutory Instruments Act 1992*. The purpose of the 2013 Regulation is to support the RIT Act by enabling river improvement areas and associated trusts to: be established; be abolished; or have any changes made to them. The first amendment was made on the same day as commencement, we suspect it was a tidy up as opposed to an amendment. Could you please update this sentence to read: Since commencement, the 2013 Regulation has been amended to abolish the Pioneer River Improvement Area and Trust in 2014. It is proposed to remake the 2013 Regulation with removal of part 4 (Abolition of Pioneer River Improvement Area and Trust), and some minor administrative amendments to modernise and correct errors that have no substantive consequences. Omitting part 4 from the 2023 Regulation will not have the effect of reviving the abolished Pioneer River Improvement Area or trust as under section 20 of the *Acts Interpretation Act 1954*, the repeal or amendment of an Act does not affect anything done under that Act. The remaining provisions are still relevant and the circumstances around the requirements remain unchanged.

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 that are relevant to the 2023 Regulation are:

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (sections 28 (2)(d) and (2)(e) of the HR Act); and

- Property rights (section 24 (2) of the HR Act).

The clauses of the HR Act that are relevant to these rights are:

- Clause 9 – Compulsory acquisition of land;
- Clauses 10 and 11 – Powers to enter land and undertake works; and
- Clause 19 – Entry and inspection of land.

These clauses may engage human rights by potentially limiting cultural rights of Aboriginal peoples and Torres Strait Islander peoples, and by potentially limiting property rights.

Clauses 9, 10, 11 and 19 of the RIT Act provide the process to undertake authorised maintenance and management activities within the council areas identified by the trust. The regulation establishes the trusts that may use these powers or undertake these works and therefore the 2023 Regulation may limit:

- the ability of relevant Aboriginal peoples and Torres Strait Islander peoples to enjoy and exercise their cultural rights, as identified in section 28 of the HR Act, by limiting their access to the relevant parts of the river catchment area and by the changes to the physical landscape; and
- the rights of property owners under section 24 of the HR Act, by allowing access to the RITs to enter and alter their land.

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

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples (sections 28 (2)(d) and (2)(e) of the HR Act)

(a) the nature of the right

This right states that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights and must not be denied;

- the right to maintain and strengthen their distinctive spiritual, material and economic relationships with the land, territories, waters, coastal seas and other resources; and
- to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

Cultural rights may be limited by sections 9, 10 and 11 of the RIT Act which allows for a trust to make physical changes to rivers and catchments.

(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 primary purpose of the RIT Act is to enable responsible management of river catchments, including consideration of river health; water quality; water security; and natural resilience. The regulation establishes trusts to carry out these activities in defined areas.

Overall, the intent of the RIT Act is to conserve and protect the rivers and catchments which aligns with Aboriginal peoples and Torres Strait Islander peoples' cultural rights.

There may, however, be unintended limitations on these cultural rights during the carrying out of works.

In relation to section 9, compulsory acquisition, mechanisms exist under the *Land Act 1994* and the *Acquisition of Land Act 1967*, to take Aboriginal and Torres Strait Island peoples' traditions and customs into consideration and must not be inconsistent with the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*. Similarly, in relation to the carrying out of works, the RIT Act does not supersede protections established under the *Native Title Act 1993* (Cwlth) and the *Native Title (Queensland) Act 1993*. These mechanisms that exist under other Acts are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The RIT Act and Regulation allows for trusts to undertake management activities in river catchments. There may be Aboriginal peoples and Torres Strait Islander peoples who have cultural rights under section 28 of the HR Act which may be limited by the activities in the river improvement areas but not to the extent that it would contravene protections established under other acts.

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

Restriction of cultural rights may take place during the process of managing and maintaining river catchments. Alternatives may not achieve the purpose efficiently and effectively and may not achieve the purpose identified above. Safeguards that have been included to ameliorate the impact of the limitation on the human right/s are to ensure that only appropriately-qualified persons are able to make decisions or exercise powers and ensuring proper oversight; accountability; or review mechanisms. Other safeguard mechanisms include protections enshrined in other acts.

- (f) 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 limitations and having regard to the information and analysis detailed above, I consider that the importance of acknowledgement of the cultural rights of Aboriginal peoples and Torres Strait Islander peoples will ensure that the Department of Regional Development, Manufacturing and Water is compliant with their statutory requirements and outweighs any limitations on cultural rights.

- (g) Any other relevant factors

The new regulation replaces the existing regulation with no changes to the powers established under the RIT Act. The regulation establishes who has those powers, and where they may exercise those powers, by establishing river improvement trusts and areas.

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

Property rights (section 24 (2) (of the HR Act))

(a) the nature of the right

This right under Section 24 (2) states that a person must not be arbitrarily deprived of the person's 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.

Property rights may be limited by section 9 of the RIT Act which allows a trust to take land within its river improvement area for the purpose of doing anything it is permitted or required to do under this Act, including undertaking or maintaining works.

Property rights may also be limited by Sections 10, 11 and 19 of the RIT Act which maintains that the trust may enter and stay on any land to inspect; examine; or undertake and maintain works.

(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 primary purpose of the RIT Act is to enable responsible management of river catchments including consideration of river health; water quality; water security and natural resilience. The 2023 Regulation establishes trusts to carry out these activities in defined areas.

The predominant way of achieving the objective of the RIT Act is for trusts to conduct inspections or works by agreement with the landholder; however, the RIT Act allows some mechanisms for trusts to conduct their activities where owners or occupiers fail to cooperate. Ensuring a mechanism to achieve the objectives of the RIT Act supports the protection of the health and the safety of our rivers and catchments, which is a responsibility of government and 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 RIT Act and 2023 Regulation allows for trusts to undertake management activities in river catchments. There may be land under which people who have property rights, under section 24 of the HR Act, may be limited by the activities in the river improvement areas. This limitation helps achieve the objective of the RIT Act.

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

Property rights may be impeded when trusts use the right to enter as standard practice. Many trusts sought to work collaboratively with property owners rather than using their right to enter powers. This process demonstrates an alternative to impeding property rights and the RIT Act also allows for this approach by establishing a trust agreement with any person with an interest in the land.

However, the trusts still require the powers under the RIT Act to take action where agreement with owners or occupiers, cannot be reached. Safeguards that have been included to ameliorate the impact of the limitation on the human right/s include ensuring

that only appropriately qualified persons are able to make decisions or exercise powers and ensuring proper oversight; accountability; or review mechanisms.

- (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 limitations and having regard to the information and analysis detailed above, I consider that the importance of undertaking management activities in river catchments outweighs any potential limitations on property rights.

- (f) Any other relevant factors

The 2023 Regulation replaces the 2013 Regulation with no changes to the powers established under the RIT Act. The 2023 Regulation establishes who has those powers, and where they may exercise those powers, by establishing river improvement trusts and areas.

Conclusion

I consider that the *River Improvement Trust Regulation 2023* 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.

The Honourable Glenn Butcher MP
Minister for Regional Development and Manufacturing and Minister for Water