

State Development and Public Works Organisation (Julia Creek–Richmond Critical Minerals Zone Water Delivery Options) Amendment 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* (HR Act), I, Steven Miles, Deputy Premier, Minister for State Development, Infrastructure, Local Government and Planning and Minister Assisting the Premier on Olympic and Paralympic Games Infrastructure, provide this human rights certificate with respect to the *State Development and Public Works Organisation (Julia Creek–Richmond Critical Minerals Zone Water Delivery Options) Amendment Regulation 2023* (Amendment Regulation) made under the *State Development and Public Works Organisation Act 1971* (SDPWO Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

Background

The Julia Creek/Richmond area has been identified as a Critical Minerals Zone in the Queensland Critical Minerals Strategy. The Julia Creek/Richmond area has significant vanadium resources with the potential to develop an important critical minerals industry for Queensland.

Known barriers to the establishment of a critical minerals industry in the Julia Creek/Richmond area include the costs and length of time spent with undertaking environmental and other survey work to support approval applications, funding project-specific infrastructure, approval and tenure processes and gaining access to secure a reliable water supply which is a highly regulated and scarce resource.

Reliable water is required for use by vanadium and/or other critical minerals project proponents at Julia Creek/Richmond. A strategic assessment will identify and assess interim and permanent common-user infrastructure water supply options for critical minerals proponents.

Sunwater Limited (Sunwater) is a bulk water infrastructure developer and manager, and a statutory Government Owned Corporation under the *Government Owned Corporations Act 1993* (Qld).

The Amendment Regulation is a direction to Sunwater to undertake particular works. The effect of the regulation would be that the Coordinator-General can utilise land access powers under the SDPWO Act for Sunwater to access land for investigations and undertaking investigatory works to expedite the carrying out of the strategic assessment.

The Coordinator-General’s functions and powers under the SDPWO Act are intended to facilitate large-scale and complex projects and the Amendment Regulation enables the Coordinator-General to exercise these powers.

The most expedient and usual method for providing works authorisation, is to amend the *State Development and Public Works Organisation Regulation 2020* (the Regulation), in accordance with sections 99, 100, 102 and 173 of the SDPWO Act. The Regulation has been previously amended for such projects as the Borumba Pumped Hydro Energy Storage Project and the Far North Queensland Health and Innovation Precinct project.

If the Amendment Regulation was not progressed, delayed reliable water supply for critical minerals projects at Julia Creek/Richmond could potentially impact the action identified in the Queensland Critical Minerals Strategy to commence a coordinated approach in Julia Creek/Richmond to achieve time, resource and capital efficiencies.

Purpose

The objective of the Amendment Regulation is to create a new division in the Regulation that directs Sunwater to undertake particular works in accordance with sections 99 and 100 of the SDPWO Act.

The intent is that Sunwater will deliver a strategic assessment for water delivery options to support the critical minerals industry at Julia Creek/Richmond.

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 HR Act that are relevant to the Amendment Regulation are:

- section 25 – privacy and reputation; and
- section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples.

Human rights potentially limited by the Amendment Regulation

The decision will potentially limit (or interfere with) the identified human rights:

- section 28 – cultural rights – Aboriginal and Torres Strait Islander peoples.

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

Cultural rights – Aboriginal and Torres Strait Islander peoples (section 28)

(a) the nature of the right

Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right, with other members of their community, to maintain their distinctive spiritual practices, material or economic relationship with the land or water to which they have a connection.

(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

If access to land for investigatory purposes is required that may affect native title interests (native title parties are required to be afforded same procedural fairness as though they held freehold title), it is expected that the parties may continue to exercise and enjoy native title rights.

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

The purposes for which the Coordinator-General may exercise powers under the SDPWO Act and impact the right under the Amendment Regulation are limited to entry and access to land for investigatory purposes.

The potential limitation of the right allows the Coordinator-General to facilitate significant economic and infrastructure projects to benefit both the region, state and residents within.

In Queensland, the rights of Aboriginal people and Torres Strait Islander peoples are lawfully established through a range of legislative mechanisms. In the context of planning and development, these rights are primarily achieved through the *Native Title Act 1993* (Cth), *Native Title (Queensland) Act 1993*, *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*, but also enabled via other legislative and statutory mechanisms.

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

There are no less restrictive ways to achieve the purpose of the Amendment Regulation. Project works may not be able to be delivered within required timeframes without the use of the Coordinator-General's functions and powers under the SDPWO Act. Sections 100 and 173 of the SDPWO Act require directions to be made by regulation.

(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 enlivens an existing statutory pathway in the SDPWO Act that enables significant projects to proceed on a streamlined and urgent basis. The amendment will facilitate the delivery of a strategic assessment for water delivery options to the Julia Creek/Richmond Critical Minerals Zone, which has been identified in the Queensland Critical Minerals Strategy.

When balancing of cultural rights of Aboriginal peoples and Torres Strait Islander peoples in relation to development of the delivery of the strategic assessment, the Amendment Regulation is considered to be in line with community expectations.

Human rights potentially relevant to the Amendment Regulation but not limited

The Amendment Regulation is relevant to, but will not potentially limit (or interfere with), the identified human rights in the sections outlined below:

- section 25 – privacy and reputation.

Section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with and not to have the person's reputation unlawfully attacked.

The Amendment Regulation itself does not limit these rights but they may be a proper consideration for the Coordinator-General in the exercise of any powers under the SDPWO Act to facilitate access to land.

Conclusion

I consider that the *State Development and Public Works Organisation (Julia Creek–Richmond Critical Minerals Zone Water Delivery Options) Amendment 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.

STEVEN MILES MP
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