

Water 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*, 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 2023* (2023 Regulation) made under section 39, 104, 360C and section 1014 of the *Water Act 2000* (Water 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 objective of the 2023 Regulation is to amend the *Water Regulation 2016* (2016 Regulation) to:

- establish two unallocated water reserves for the benefit of the Quandamooka people on North Stradbroke Island (Minjerribah) totalling 61,190 megalitres;
- enable the supply of bulk water from Seqwater as the Queensland Bulk Water Supply Authority to the Southern Downs Regional Council through the appropriate declaration of the Southern Downs Regional Council as a bulk water customer;
- correct the entries related to the *Water Plan (Barron) 2002* in Schedules 9 and 11 to align with the current water plan; the *Water Plan (Barron) 2023*;
- include the Nobby Basalts Underground Water Sub-Area under the *Water Plan (Condamine and Balonne) 2019*, Cunningham Alluvium Water Underground Water Sub-Area under the *Water Plan (Condamine and Balonne) 2019* and Stanthorpe Water Management Area under the *Water Plan (Border Rivers and Moonie) 2019*, with relevant exemptions and measurement requirements, in Schedule 11;
- list the Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC) as a prescribed entity to be eligible to hold a water licence that does not attach to land; and
- update and introduce new definitions for particular words to align with the Queensland non-urban water measurement policy 2022.

Human Rights Issues

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

The proposed legislation engages the following human rights under the HR Act:

In relation to establishing two unallocated water reserves for the benefit of the Quandamooka people on North Stradbroke Island (Minjerribah) totalling 61,190 megalitres—

- recognition and equality before the law (section 15);
- property rights (section 24); and
- cultural rights (section 28).

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

Recognition and equality before the law

(a) the nature of the right

The right to recognition and equality before the law includes that every person:

- has the right to recognition as a person before the law and the right to enjoy their human rights without discrimination;
- is equal before the law and is entitled to equal protection of the law without discrimination; and
- is entitled to equal and effective protection against discrimination.

The 2023 Regulation establishes unallocated water reserves to recognise the interests of the Aboriginal peoples, being the Quandamooka people on North Stradbroke Island (Minjerribah), and their connection to water resources. These provisions are exclusive of non-First Nations peoples and may potentially limit non-Indigenous peoples' right to recognition and equality before the law.

(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

Recognising the interests of First Nations peoples and their connection with water resources is required under the Water Act. The limitation, as described above, is required in order to diminish or eliminate conditions that have resulted in Aboriginal people and Torres Strait Islanders being disadvantaged. This limitation affects the rights of Quandamooka people, the traditional owners of North Stradbroke Island (Minjerribah) and is consistent with the special measures provided under section 15(4) of the HR Act which recognises positive measures to redress historical or entrenched disadvantage do not constitute discrimination.

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

The limitation to the right to recognition and equality before the law helps achieve the purpose of recognising the interests of the Quandamooka people on North Stradbroke Island (Minjerrabah). The establishment of unallocated water reserves under section 39 of the Water Act and section 14 of the 2016 Regulation provides a legislative pathway to ensure the purpose of the limitation is achieved. The establishment of unallocated water reserves is an effective step toward First Nations peoples having rights to shares of water resources on North Stradbroke Island (Minjerrabah).

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

There are no less restrictive ways to achieve the purpose. Establishing unallocated water reserves does not deleteriously affect the right to equality before the law enjoyed by non-Indigenous people. The proposed unallocated water reserves will not impact existing water entitlements and any other authorised uses under the Water Act, including licenses associated with drinking water supply, commercial operations or temporary water permits.

- (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, it is considered that the importance of recognising the interests of the Quandamooka peoples on North Stradbroke Island (Minjerrabah) outweighs any potential adverse impact on the human rights of other individuals.

Property rights

- (a) the nature of the right

Every person in Queensland has the right to own property alone or in association with others and must not be arbitrarily deprived of that property. The creation of the unallocated water reserves is for social and economic benefit and to conserve and protect water-related cultural, spiritual and environmental values of the Quandamooka people on North Stradbroke Island (Minjerrabah).

Establishing these unallocated water reserves may potentially limit a person's future use and access to unallocated water on North Stradbroke Island (Minjerrabah) and may impact a person's water entitlement.

The QYAC is the Registered Native Title Bodies Corporate for the Quandamooka people on North Stradbroke Island (Minjerrabah) who will be involved in the management of unallocated water in the proposed reserves. This will be managed in accordance with the requirements of the Water Act with any water entitlements granted to QYAC under a release process being subject to dealing provisions and any rules developed to sustainably manage water under the Water Act.

- (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 Quandamooka people are the traditional owners of North Stradbroke Island (Minjerribah) (as determined by the Federal Court in Quandamooka#1 and Quandamooka #2 Native Title determinations). The Quandamooka people are entitled to the exclusive and non-exclusive use of land and waters on North Stradbroke Island (Minjerribah) and the unallocated water reserves will further enhance their access to water and will not have any impact on existing water users and their water entitlements. This extends to any other authorised uses under the Water Act, including licenses associated with drinking water supply, commercial operations or temporary water permits.

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

Establishing two unallocated water reserves for the Quandamooka people on North Stradbroke Island (Minjerribah) provides security for the Quandamooka people and enhances their water-related cultural, spiritual and environmental values.

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

No other less restrictive, reasonably-available ways to achieve the purpose of the potential limitation have been identified. Establishing two unallocated water reserves is unlikely to impact other water entitlement holders' property rights on North Stradbroke Island (Minjerribah). Any further decisions in relation to the unallocated water reserves will ensure the impact on existing water entitlement holders property rights are considered.

- (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, the establishment of two unallocated water reserves ensures any limitation of property rights will be applied on a consistent, transparent and fair basis. Any future decisions relating to the water in these unallocated water reserves, and their impacts on property rights of individuals on North Stradbroke Island (Minjerribah) will be considered, and where possible, balanced against other human rights to ensure a fair balance.

Cultural rights

- (a) the nature of the right

First Nations peoples are recognised as having a rich and diverse culture, and an intimate association with their geographical areas. The distinct cultural rights of First Nations peoples are protected under section 28 of the HR Act. First Nations peoples must not be denied the right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom. They must also not be denied the right to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

Establishing two unallocated water reserves has a positive impact on the cultural rights of Aboriginal people on North Stradbroke Island (Minjerrabah), more specifically the Quandamooka people. It is noted that individuals who identify as Quandamooka people will benefit from the unallocated water reserves, but there may be a potential impact on any First Nations peoples who are not part of this group.

- (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

To the extent that the establishment of the unallocated water reserves explicitly recognises the water interests of the Quandamooka people and their uses of water on North Stradbroke Island (Minjerrabah), the cultural rights of Aboriginal peoples on North Stradbroke Island (Minjerrabah) are promoted under section 28 of the HR Act. The potential limitation on the cultural rights of non-Quandamooka First Nations peoples is required to achieve the objective of enhancing the Quandamooka people's access to water on North Stradbroke Island (Minjerrabah) and to recognise their water-related cultural, spiritual, and environmental values.

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

The establishment of the unallocated water reserves on North Stradbroke Island (Minjerrabah) recognises the cultural rights of the Quandamooka people on North Stradbroke Island (Minjerrabah) and helps balance the interests of the cultural, social, environmental and economic interests in the allocation of water resources on North Stradbroke Island (Minjerrabah).

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

No other less restrictive, reasonably-available ways to achieve the purpose of the potential limitation have been identified. The establishment of the unallocated water reserves limits the rights only to the extent necessary to achieve the purpose.

- (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, the establishment of two unallocated water reserves on North Stradbroke Island (Minjerrabah) is compatible with human rights because it recognises the interests of the Quandamooka people and their connection to the water resources. It does not affect existing water licenses or rights to take water from the island (including stock and domestic use, drinking water supply or commercial operations), nor does it affect the take of water by First Nations peoples for cultural purposes.

Conclusion

I consider that the 2023 Regulation 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 dignity, equality and freedom.

Honourable Glenn Butcher MP
MINISTER FOR REGIONAL DEVELOPMENT AND MANUFACTURING AND
MINISTER FOR WATER

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