

Water Plan (Mary Basin) 2024

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 Plan (Mary Basin) 2024* made under the *Water Act 2000*.

In my opinion, the *Water Plan (Mary Basin) 2024*, 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 Plan (Mary Basin) 2024*:

- replaces the *Water Plan (Mary Basin) 2006*, which was to have expired on 28 May 2024, as provided for in section 50(1)(b) of the *Water Act 2000*; and
- addresses current and emerging issues after:
 - extensive consultation with stakeholders, including traditional owners, in the water plan area to understand their collective water interests in accordance with the consultation and submission process under Chapter 2, Part 2, Division 3 of the *Water Act 2000*; and
 - consideration of hydrologic, socio-economic, environmental, and cultural assessments.

The *Water Plan (Mary Basin) 2024* provides a framework for the sustainable allocation and management of water within the Mary Basin water plan area. The plan has several purposes (section 2), with the general outcome that water, to which the plan applies, is to be allocated and managed in a way that:

- recognises the natural state of watercourses, lakes, springs and aquifers has changed because of the taking of, or interference with, water;
- seeks to achieve a balance between the economic, social, cultural, and environmental outcomes for the plan; and
- promotes improved understanding of the health of ecosystems; water use requirements of traditional owners; water required to deliver social and economic benefits for communities and the impact of climate change on water availability.

Key features of the *Water Plan (Mary Basin) 2024* include:

Defining the availability of water and unallocated water reserve under the plan (Part 8)

A purpose of the *Water Plan (Mary Basin) 2006* is to define the availability of water to which this plan applies. To achieve this purpose, the plan states the volumes of unallocated surface and underground water available for different reserve types.

The *Water Plan (Mary Basin) 2006* currently provides for 150,000 ML of unallocated water to be held as a strategic reserve. This will be reduced to 70,486 ML under the *Water Plan (Mary Basin) 2024* (section 29(2)). Strategic reserve may be released for a state purpose, which is defined as a coordinated project; or a project of regional significance; or a town water supply purpose.

The general reserve volume of unallocated water under the *Water Plan (Mary Basin) 2024* has been maintained from *Water Plan (Mary Basin) 2006* at 2,360ML for surface water and 40ML for underground water. Unallocated water from a general reserve, may be granted for any purpose.

The reservation of unallocated water held as an Indigenous reserve for an Indigenous purpose is new. The *Water Plan (Mary Basin) 2006* does not make provision for such a reserve. Indigenous purpose is defined to mean a use for the purpose of helping traditional owners of the plan area achieve their economic, social, and cultural aspirations. The Indigenous reserve volumes are 7,040ML for surface water and 60ML for underground water.

The reserve volumes were calculated using hydrologic modelling taking into account existing water entitlements and the environment and is based on full utilisation of all existing water entitlements and the reserve volumes of the unallocated water reserves to meet future water needs. Water plan outcomes to be achieved for the plan were also considered when determining the volumes of unallocated water for these reserves.

The reservation of unallocated water under the plan, does not of itself, limit any human rights under *Human Rights Act 2019*. However, the subsequent process of release of unallocated water from a reserve and grant of a water licence in accordance with that process for release may affect a person's human rights.

The process for release of unallocated water held as strategic reserve and general reserve differs from the process for release of unallocated water held as Indigenous reserve.

For unallocated water held as strategic reserve and general reserve, it is a process stated in the *Water Regulation 2016*, Part 2, Division 2, Subdivision 2 (section 31) to be decided by the Chief executive at the time of the release. The process for release of unallocated water held as Indigenous reserve is the process stated in the water management protocol (section 31).

The chief executive may grant a water licence in accordance with the process without the need for an application to be made under section 107 of the *Water Act 2000* (see section 116 of the *Water Act 2000*).

While the process for release of unallocated water is a separate process, as part of the framework for the sustainable management of water to which the plan applies, the following statutory safeguards have been included in the *Water Plan (Mary Basin) 2024*:

The chief executive must:

- ensure cultural values of traditional owners and environmental values of the significant watercourse reach are maintained (section 26) and impose on an authorisation to take surface water from a significant watercourse reach any flow conditions stated in the water management protocol to protect the cultural values of traditional owners and the environmental values of the significant watercourse reach (section 26); and
- consider the impact the proposed taking of, or interfering with, water, may have on existing water users in the plan area and on the cultural values of traditional owners in the plan area

when implementing a process for dealing with unallocated water held as strategic or general reserve (section 32).

Cultural Outcomes (Part 3), Significant Watercourse reaches (Part 1 and Part 6) and Indigenous Unallocated water Reserves (Part 8)

To recognise the interests of Aboriginal people and Torres Strait Islander peoples and their connection with water resources in the water plan (see section 2 of the *Water Act 2000*) and to identify the cultural outcomes to be achieved by the plan (see section 43 of the *Water Act 2000*) extensive consultation with various traditional owner groups within the plan area was undertaken.

The outcome of this consultation is contained in the report entitled Cultural Water (Assessment of freshwater values, uses and aspirations of the Traditional Owners of the Mary Basin water plan area).

As a result of that consultation, the following provisions were inserted into the framework for the sustainable allocation and management of water resources under the *Water Plan (Mary Basin) 2024*:

- A new purpose for the *Water Plan (Mary Basin) 2024* to provide access to water resources to help the traditional owners of the plan area achieve their economic, social and cultural aspirations (see section 2(f));
- A general water plan outcome that water is to be allocated and managed in a way that promotes an improved understanding of the water required for social, spiritual, economic, environmental and cultural uses of water by the traditional owners of the plan area (s 15(c)(iii));
- A social water plan outcome to make water to which this plan applies available to support the social aspirations of the traditional owners of the pan area (section 17(c));
- Cultural outcomes for the water plan (section 18). These cultural outcomes are:
 - (a) to make water to which this plan applies available to support the cultural aspirations of the traditional owners of the plan area; and
 - (b) to maintain flows of water to which this plan applies that support the cultural connection between the traditional owners of the plan area, the cultural values in the plan area and the water resources for the plan area; and
 - (c) to continue to engage with the traditional owners of the plan area to improve understanding of the cultural values, uses and aspirations in relation to water to which this plan applies; and
 - (d) to promote continual involvement of the traditional owners of the plan area in the development, monitoring and implementation of this water plan; and
 - (e) to maintain or provide flows of water to which this plan applies to support sites of cultural significance in the plan area, including, for example, the Wongi Waterholes; and
 - (f) to maintain or provide flows of water to which this plan applies to support species of cultural significance, including, for example, the Mary River cod, the Australian lungfish, the Mary River turtle and the white-throated snapping turtle.
- Creation of significant watercourse reaches to protect environmental and cultural values of traditional owners in an area of high environmental or cultural significance by imposing flow

conditions on new authorisations to take surface water from a significant water course reach (see section 12 and 26); and

- Reserving unallocated water as an Indigenous reserve to be granted for an Indigenous purpose (sections 29(1)(b) and 30(2)).

Seasonal Water Assignments (Section 42)

The *Water Plan (Mary Basin) 2024* provides for seasonal water assignments, which allow for all or part of the water that may be taken under a water licence to be seasonally assigned to another landholder, for all or part of the water year, if permitted under the water management protocol for the plan (section 41).

Metering target (section 20(2))

The *Water Plan (Mary Basin) 2024* also introduces a new target or measure that all water entitlements to take surface water or underground water to which the plan applies are to be measured as directed by the chief executive by 31 December 2034.

This is a general measure that will contribute to achieving water plan outcomes (section 20(2)). However, the timeframe for this measure may be amended (see section 54(e)).

Metering of water entitlements is fundamental to improving how water is managed in the water plan area. Knowledge of metered water use can improve water use efficiency, ensure compliance with licence volumes, and provide community and investment confidence that water is being managed fairly and sustainably.

Currently four of the twenty sub-catchment areas within the plan area are metered. Consideration of future metering of water entitlements in other sub-catchment areas within the plan area is subject to a risk-based approach made in accordance with the state-wide metering implementation plan under the Queensland non-urban water measurement policy.

The target currently signals there is an intention over the next 10 years to require water entitlement holders to install an approved meter. However, until a metering notice is issued by the chief executive to the holder of an authorisation under Part 11, Division 2 of the *Water Regulation 2016* there is no requirement to install an approved meter.

Other key features of the *Water Plan (Mary Basin) 2024* include:

- revised environmental outcomes to better support the Great Barrier reef and Great Sandy Strait declared Ramsar wetland;
- modernisation of the content and conditions, if any, of existing water licences to enable measurement and monitoring of water use, accountability, and equity among entitlement holders to enable the sustainable allocation and management of water to which the plan applies; and
- consideration of climate change effects on future water availability.

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 *Human Rights Act 2019* that are relevant to the *Water Plan (Mary Basin) 2024* are:

- Recognition and equality before the law (section 15 of the *Human Rights Act 2019*);
- Right to life (section 16 of the *Human Rights Act 2019*);
- Freedom of expression (section 21 of the *Human Rights Act 2019*);
- Taking part in public life (section 23 of the *Human Rights Act 2019*);
- Property rights (section 24 of the *Human Rights Act 2019*); and
- Cultural rights—Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*).

Human rights engaged but not limited.

Unallocated Water held as an Indigenous reserve (section 30)

Section 15 Human Rights Act 2019 - Recognition and equality before the law

A purpose of the *Water Plan (Mary Basin) 2024* is to provide access to water resources to help the traditional owners of the plan area achieve their economic, social, and cultural aspirations (see section 2(f)).

The term ‘traditional owners, of an area’ is defined in schedule 8 of the *Water Plan (Mary Basin) 2024* and means ‘the Aboriginal peoples and Torres Strait Islander peoples who have, under Aboriginal tradition or Island custom, a connection with land and waters in the area.’

One of the ways in which the *Water Plan (Mary Basin) 2024* aims to assist traditional owners in the plan area is by reserving unallocated water for an Indigenous reserve that may be granted to traditional owners for an Indigenous purpose (see section 30).

‘Indigenous purpose’ is defined to mean a use for the purpose of helping traditional owners of the plan area achieve their economic, social, and cultural aspirations (see section 30).

The amendment to the *Water Plan (Mary Basin) 2024* to reserve unallocated water for an Indigenous purpose may engage the right to equality and non-discrimination under s 15(3) and (4) of the *Human Rights Act 2019*.

Section 15(2), (3) and (4) of the *Human Rights Act 2019* are concerned with discrimination, which means discrimination based on a relevant attribute identified in the *Anti-Discrimination Act 1991* or an analogous kind of discrimination.

Age, impairment and ethnic or racial origin are protected attributes under the *Anti-Discrimination Act 1991*. Providing benefits to a group of persons based on their race or ethnic origin is consistent with discrimination under the *Anti-Discrimination Act 1991*.

However, section 15(5) of the *Human Rights Act 2019* provides that measures taken for the purpose of assisting or advancing persons or groups of persons disadvantaged because of discrimination do not constitute discrimination.

Reserving unallocated water as an Indigenous reserve that may be granted for an Indigenous purpose to help the traditional owners of the plan area achieve the economic, cultural, and social aspirations, is a measure of the kind described in section 15(5) of the *Human Rights Act 2019* and does not limit the rights in section 15(2), (3) and (4) the *Human Rights Act 2019*.

Section 28 – Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

This initiative also promotes the cultural rights of traditional owners in the plan area under section 28(2)(d) of the *Human Rights Act 2019* to maintain and strengthen their distinctive spiritual, material and economic relationship with the waters reserved under *Water Plan (Mary Basin) 2024*.

Water Plan (Mary Basin) 2024 generally

Right to Life (section 16 of the HR Act)

Water Plan (Mary Basin) 2024 provides a framework to sustainably allocate and manage water resources to meet future water requirements that include protection of natural ecosystems and security of supply for water users. The plan engages the right to life (section 16 of the HR Act) by providing strategies to ensure water security for town water supplies and communities while striking a balance between achieving the social, cultural, economic, and environmental outcomes for the plan.

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

Amendments to Plan that may be made without consultation – Act, s43 (Section 54)

Pursuant to section 43(m) of the *Water Act 2000*, section 54 sets out the amendments that may be made to the *Water Plan (Mary Basin) 2024* without public consultation.

Section 54 potentially limits the following human rights:

- *the right to take part in public life (section 23 of the Human Rights Act 2019); and*
- *the right to freedom of expression (section 21 of the Human Rights Act 2019)*

(a) Nature of the right

Section 23(1) of the *Human Rights Act 2019* recognises the rights of all individuals in Queensland to participate, and to have the opportunity to participate, in the conduct of public affairs, either directly or through representatives.

The *Water Plan (Mary Basin) 2024* engages aspects of the right because the *Water Plan (Mary Basin) 2024* allows certain types of amendments to the plan without public consultation.

Section 21 of the *Human Rights Act 2019* states that every person has the right to hold an opinion without interference and the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

The *Water Plan (Mary Basin) 2024* has the potential to limit this right as it allows certain types of amendments to the plan without public consultation which would potentially limit their right to express their opinion about the changes occurring to the plan.

(b) Nature of the purpose of the limitation

The purpose of section 54 of the *Water Plan (Mary Basin) 2024* is to list the types of amendments that are authorised to occur without public consultation under section 51(2) of the *Water Act*.

These types of amendments, which do not require public consultation, allow for efficient and timely responses to changes occurring in the plan area that may adversely affect the achievement of the plan outcomes. Public resources are also preserved.

(c) The relationship between the limitation and its purpose

The types of amendments listed under section 54 for which public consultation is not required is effective to achieve the purpose of the limitation.

(d) Is there any less restrictive and reasonably available way to achieve the purpose

There is no other less restrictive, reasonably available way to achieve the purpose.

Consistent with the requirements of section 51(2) of the *Water Act 2000*, I reasonably believe the type of amendments listed under section 54 of the *Water Plan (Mary Basin) 2024*, do not adversely affect the rights of the water entitlement holders or natural ecosystems.

This is illustrated by section 54(a) where an amendment or addition of an environmental flow objective or a water allocation security objective, or a performance indicator for an objective, can be amended without public consultation only if the amendment or addition achieves an equivalent or improved environmental flow and water allocation security outcome.

Further, the provision has itself, along with the other provisions of the draft water plan, been the subject of an extensive public consultation required under Chapter 2, Part 2, Division 3 of the *Water Act 2000* for the development of the *Water Plan (Mary Basin) 2024*. This process promotes the right to take part in public life (section 23 of the *Human Rights Act 2019*) and the right to freedom of expression (section 21 of the *Human Rights Act 2019*).

Feedback from submissions received in this process on the draft plan helped in the development of the *Water Plan (Mary Basin) 2024*.

(e) Balance between the importance of the human right and the importance of the purpose

Having regard to the extensive public consultation process for the preparation of the *Water Plan (Mary Basin) 2024* and the safeguard provided by section 51(2) of the *Water Act 2000*, I am satisfied the limitation imposed by section 54 of the *Water Plan (Mary Basin) 2024* strikes a fair balance between the limitation on the right to take part in public life and the right to freedom of expression and the efficient and timely response required by State to amend the plan to achieve its outcomes without the need to conduct an extensive and expensive consultation process.

Required content and conditions of water licence (Part 9, Division 6)

The new provisions under Part 9, Division 6 of the *Water Plan (Mary Basin) 2024* provide that existing water licences to take water must state certain content and conditions, if any, of the water licence.

The mandatory requirements set out under section 44 are:

- the purpose for which water may be taken under the licence;
- the nominal entitlement (annual volume) for the licence;
- the conditions, if any, for the licence; and
- for a water licence to take surface water – the maximum rate at which the water may be taken under the licence.

However, a water licence for a purpose of ‘relief’ does not need to have a nominal entitlement or maximum rate at which the water may be taken (see section 44 (1) and (2)).

Part 9, Division 6 then sets out the methodology to work out the conversion of previous content and conditions on existing water licences to the mandatory content and conditions required on a water licence under the plan.

For example, for an existing water licence that only stated an area (in hectares) that may be irrigated by water under the licence, the conversion to a volumetric entitlement (nominal entitlement) is to be calculated by multiplying the stated area by 6 megalitres (ML) (section 48(3)(b)). This means the existing water licence is required to be amended to state a volumetric limit that caps the take of water instead of stating an area to be irrigated.

The methodology for the conversion has been developed after consideration of various matters including hydrological modelling, water entitlement performance, crop water demands, water use efficiency, existing water entitlement content and conditions, previous conversions in the plan area, data from entitlements already metered within the plan area and extensive consultation with affected water users.

The provisions engage and potentially limit the right to own, and not to be arbitrarily deprived of, property recognised in section 24 of the *Human Rights Act 2019*.

(a) Nature of the right

Section 24 – Property rights

Section 24 of the *Human Rights Act 2019* recognises that people have the right to own property and must not be arbitrarily deprived of their property. The concepts of property and deprivation are interpreted broadly in the human rights context and a limitation or restriction on the enjoyment of property rights can be sufficient to engage the right. A water licence is regarded as property for the purposes of the *Human Rights Act 2019*.

Part 9, Division 6 of the *Water Plan (Mary Basin) 2024* may engage a person’s right not to be arbitrarily deprived of their property on the basis that despite the rigour underpinning the methodology to work out a conversion to a nominal entitlement (volumetric limit) as part of the content of a water licence, it may not be sufficient for the purpose for which the water is required by the existing water licence holder.

(b) Nature of the purpose of the limitation

The process for modernisation of the content and conditions of a water licence under the plan is required to:

- provide equity among existing water entitlement users in the plan area and clearly defined shares of the available water resources;
- enable opportunities for seasonal water assignment of water licences (temporary trading of water entitlements) within a local sub-catchment area;
- enable measurement of the volume of take to monitor water use and enforce compliance to achieve water plan outcomes; and
- provide greater transparency and accountability in water use to support the sustainable allocation and management of water to which the plan applies.

It is in the public interest that water licences have an annual volume (nominal entitlement) to enable the sustainable management of water and efficient use of this valuable resource.

Water licences that have a volumetric entitlement also enable opportunities for a seasonal water assignment which allows for all or part of the water that may be taken under a water licence to be seasonally assigned to another landholder, for all or part of the water year (section 42). This promotes the right to property (section 24 of the *Human Rights Act 2019*).

(c) The relationship between the limitation and its purpose

Modernising and standardising content and conditions, if any, on existing water licences will support the purposes of, and outcomes to be achieved for, the *Water Plan (Mary Basin) 2024*.

(d) Is there any less restrictive and reasonably available way to achieve the purpose

There are no other less restrictive and reasonable available ways to modernise and standardise the content and conditions, if any, on existing water licences in the plan area.

Volumetric water licences (called nominal entitlement) are fundamental to the ability to be able to measure and monitor the take of water to improve water use efficiency and enable compliance that provides confidence of the State's ability to sustainably manage our valuable water resources.

A safeguard introduced into Part 9 Division 6 was to give the chief executive power to make a different decision on the nominal entitlement of a water licence than that described in the conversion methodology provided under the water plan (section 48(2)).

This power was inserted to support the economic outcomes of the plan recognising that some existing water licence holders may feel that the nominal entitlement worked out for their water licence is not sufficient for the purpose for which the water is required. That is, that the water licence volume (nominal entitlement) to be converted to may not meet historic water use for all water users.

Once the chief executive has made a decision to convert the existing water licence in accordance with the requirements under Part 9, Division 6, the process by which the water licence is amended or replaced to implement the water plan is the water entitlement notice (WEN) process set out under Chapter 2, Part 2, Division 6 of the *Water Act 2000*.

The WEN process enables submissions to be made by affected licence holders on the proposed changes to the affected person's water licence outlined in a draft water entitlement notice published by the chief executive.

Under this process, affected water licence holders may make a submission regarding the proposed amendments to their water licence – for example a submission for an additional volume to meet historic water use with information to support historic water use practices.

Under Chapter 2, Part 2, Division 6 of the *Water Act 2000*, the chief executive reviews all properly made submissions on the entitlement conversions and may refer submissions to an independent referral panel under the *Water Act 2000* for consideration, if required. The referral panel reviews the submissions and makes recommendations to the chief executive.

If the submission by an affected licence holder is supported, the chief executive will make a different decision (section 48(2)).

The process for conversion of the content and condition, if any, of a water licence required under Part 9, Division 6 is structured, reasonable, and proportionate to the legitimate aim of providing greater transparency and accountability to support sustainable allocation and management of our valuable water resources. To the extent the rights of an existing water licence holder are reduced as a consequence of the process, the reduction or deprivation is not ‘arbitrary’ in the sense in which the word is used in section 24 of the *Human Rights Act 2019*, namely capricious, unjust or unreasonable.

(e) the balance between the importance of the purpose and the importance of preserving the human rights, taking into account the nature and extent of the limitation.

I am satisfied that any limitation imposed on the property rights of some existing water licence holders by the requirements under Part 9, Division 6 strikes a fair balance with the benefit gained by the public of providing greater transparency and accountability in water use to support the sustainable allocation and management of water resources.

Conclusion

In my opinion, the *Water Plan (Mary Basin) 2024* is compatible with the *Human Rights Act 2019*. To the extent that it imposes any limitation on 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
MINISTER FOR WATER

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