

Regional Planning Interests (Lake Eyre Basin) Amendment Regulation 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, Meaghan Scanlon, Minister for Housing, Local Government and Planning and Minister for Public Works provide this human rights certificate with respect to the *Regional Planning Interests (Lake Eyre Basin) Amendment Regulation 2024* (Amendment Regulation) made under the *Regional Planning Interests Act 2014* (RPI Act).

In my opinion, the Amendment Regulation, 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 Amendment Regulation is made under the RPI Act.

The authorising law for the Amendment Regulation is as follows:

- Sections 11(1)(a) and (b) and of the RPI Act prescribe that a strategic environmental area is an area that contains 1 (one) or more environmental attributes for the area and is either shown on a map in a regional plan as a strategic environmental area or prescribed under a regulation.
- Section 11(2) of the RPI Act provides that an environmental attribute for an area means an attribute of the environment identified under a regional plan or regulation.
- Section 95(1) of the RPI Act prescribes that the Governor in Council may make regulations under the Act.

The broader purpose of the Amendment Regulation is to protect the rivers and floodplains of Queensland's Lake Eyre Basin (Qld LEB), which flow into Kati Thanda-Lake Eyre in South Australia. In a formal regulatory context, the Qld LEB is referred to as the Channel Country. The Amendment Regulation amends the *Regional Planning Interests Regulation 2014* (the Regulation) and is consistent with the purposes of the RPI Act.

The Amendment Regulation applies to:

- Part 3, section 7 of the RPI Regulation as this is where environmental attributes are provisioned in the Channel Country strategic environmental area.
- A new Part 9 to provide for certain transitional provisions.
- Schedule 2, Part 5, section 15 of the RPI Regulation as this relates to the prescribed solutions designed to implement object of the RPI Act, and also provides definitions relevant to the implementation of the RPI Regulation and the object of the RPI Act.

A new regulatory map, including an indication of the ‘critical minerals reach’ areas in which certain provisions will apply, will be released alongside these amendments. The map is provided under Part 3, section 4(1)(a) of the RPI Regulation, which prescribes the maps for strategic environmental areas in Channel Country. However, no amendment of this provision is required.

A Consultation Regulatory Impact Statement (CRIS) was released on 2 June 2023 for 12 weeks consultation. The results of the consultation process showed unambiguous support for the following options to be adopted by government and enacted through an amended Regulation:

- adding ecologically and culturally sensitive areas in the rivers and floodplains of the region to the mapped SEA and preparing an updated regulatory map under the RPI Regulation.
- ensuring future new gas and oil production occurs away from the sensitive rivers and floodplains (the mapped SEA), with transitional arrangements to be provided for existing and imminent applications.
- better articulating the Environmental Attributes of the rivers and floodplains to recognise and conserve the special ecological features that make the region a global icon, such as braided channel networks, wildlife corridors, and unique species.

The Queensland Government has committed to ongoing dialogue, partnership and work with the Queensland Lake Eyre Basin Traditional Owners Alliance and First Nations people from the region to ensure their Country and cultural values are better protected and to support their priorities and aspirations. The Traditional Owner Alliance will receive funding support for the hiring of up to ten rangers over four years and additional ongoing funding for operating costs and leadership of a biodiscovery research program.

The Queensland Government has also resolved that critical mineral mining in the added SEA areas in the Qld LEB will not be affected by the provisions relating to open cut mining as an unacceptable use for designated precincts that apply to other SEAs. These projects in the new Critical Minerals Reach of the Channel Country SEA will instead remain a matter for site-specific assessment and approval under the RPI Act.

Human Rights Issues

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

The following human rights under the *Human Rights Act 2019* (the HR Act) are engaged by the Amendment Regulation:

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

Regulation of petroleum activities in the current and expanded Channel Country SEA.

The Amendment Regulation in Schedule 2, Part 5, section 15 provides for a staged shift towards no new gas and oil production in the ecologically and culturally sensitive rivers and floodplains. Existing applications for petroleum leases that cover areas in the Channel Country SEA will still be considered for conventional production, and a limited number of potential new petroleum lease applications for conventional production in the amended Channel Country

SEA may still be made by existing holders of Authorities to Prospect (ATPs) tenure or Potential Commercial Areas (PCAs) declarations which include locations within the amended Channel Country SEA, if received before 11.59pm (AEST) on 30 August 2024. Holders of current ATPs can continue with already approved exploration in the SEA. Unconventional production as defined in the Amendment Regulation will not be allowed in the amended Channel Country SEA, but there will be no changes in the regulation of gas or oil exploration or production activities outside of the SEA.

It is recognised that these regulatory changes engage section 28 of the HR Act. Overwhelmingly, the changes have been welcomed by the First Nations custodians of the Qld LEB region. The changes will positively engage with section 28 (2)(a), (d), and (e) by ensuring the rivers and floodplains of the Lake Eyre Basin are protected. The changes contribute to both conserving and protecting tangible and intangible cultural heritage of the Qld LEB by avoiding future risks associated with new gas and oil production activities in the ecologically and culturally sensitive rivers and floodplains. In addition, these changes provide increased opportunities for the region's Aboriginal Peoples' rights to enjoy and develop their identity and to maintain their distinctive relationships with the land and waters.

To provide further opportunity for comment, the Department of Environment, Science, and Innovation undertook a public notification process regarding the regulatory amendments. This was published to invite questions, comments, and concerns regarding impacts of the changes on human rights under the HR Act. The public notification and associated context were also emailed directly to contacts for the Qld LEB Traditional Owners Alliance and other First Nations people from the region.

A submission was received from the Qld LEB Traditional Owners Alliance, which strongly supports the decision to prohibit new gas and oil activities on the rivers and floodplains and to extend the area protected. The submission additionally asserts that existing conventional gas projects operating within the Channel Country SEA should face heightened monitoring, with involvement from Traditional Owners, to ensure compliance with new regulations. Though heightened monitoring is not within the scope of the Amendment Regulation, the Queensland Government's commitment to both ongoing partnership with the Qld LEB Traditional Owner Alliance and First Nations people from the region, and to funding support for rangers and operational costs is intended to ensure that Aboriginal cultural values are better protected into the future. These commitments align with additional matters outlined in the submission, which seeks support with capacity building, employment of a permanent coordinator within the Alliance and an enhanced Indigenous ranger program.

Further, it is acknowledged that some Traditional Owners in the Qld LEB region have economic arrangements with resource companies. An argument could be made that the changes have potential to limit section 28(2)(d), specifically Aboriginal peoples and Torres Strait Islander peoples' right to maintain and strengthen their economic relationship with the land, territories, waters, and resources they have a connection with under Aboriginal tradition. However, there is no reason that such economic arrangements cannot continue for areas both within and outside the Channel Country SEA. At the same time, other economic opportunities, including tourism, land management and biodiscovery have potential to be enhanced by the changes. In their submission, the Qld LEB Traditional Owners Alliance recognise that excluding all gas and oil from the river and floodplain areas will restrict economic opportunities from the petroleum industry. However, the submission asserts that investment in the many

other long-term and sustainable industries available in the Qld LEB is more conducive with the cultural values of Aboriginal peoples in the region than investment in gas oil and mining, which they argue creates negative environmental impacts on cultural landscapes.

Apart from the Traditional Owner Alliance's submission, one additional written response was received from a Traditional Owner in the Qld LEB, which was in support of the changes. Other discussions indicated a level of comfort with the changes. It is therefore concluded that the regulation of gas and oil production in the expanded Channel Country SEA positively engages with section 28 Cultural rights and does not limit such rights.

While not within the scope of the changes made through the Amendment Regulation, for completeness, it is acknowledged that the submission from the Qld LEB Traditional Owners Alliance additionally recommends the Alliance 'hold permanent seats at the decision-making table', that funding is made available to commission a study into environmentally sustainable economic opportunities for Traditional Owners in the Lake Eyre Basin, and for the creation of a First Peoples' Environmental and Cultural Heritage Agency to support the Alliance and Traditional Owner Clan Groups with investigative and prosecution pathways to enforce the *Cultural Heritage Act 2003*.

Regulating open cut critical mineral mining in the Channel Country SEA Critical Minerals Reach site by site.

Schedule 2, Part 5, section 15 of the Amendment Regulation provides that critical mineral extraction will remain a matter for site-specific assessment and approval in the newly mapped Critical Minerals Reach of the Channel Country SEA. The submission received by the Qld LEB Traditional Owner Alliance raised concerns about the risk of harm to the environment and cultural heritage by not prohibiting open cut mining for critical minerals in the amended Channel Country SEA. However, these areas were not captured by the provisions relating to a Regional Interests Development Approval (RIDA) in the existing RPI Regulation and will not be captured by the Amendment Regulation as unacceptable uses but will be subject to site by site assessment.

It is recognised that these regulatory changes also engage section 28 of the HR Act and that the changes have been welcomed by the First Nations custodians of the Qld LEB region. As for petroleum activities described above, the changes will positively engage with section 28 (2)(a), (d), and (e) by ensuring the rivers and floodplains of the Lake Eyre Basin are protected and will provide increased opportunities for the region's Aboriginal Peoples' rights to enjoy and develop their identity and to maintain their distinctive relationships with the land and waters.

Regulating other resource activities in the Channel Country SEA Critical Minerals Reach.

Schedule 2, Part 5, section 15 of the amended Regulation will provide that other resource activities will remain a matter for site-specific assessment and approval in the current Channel Country SEA and that this section will also apply to other resource activities in the new Critical Minerals Reach of the Channel Country SEA.

It is recognised that these regulatory changes also engage Section 28 of the HR Act and that the changes have been welcomed by the First Nations custodians of the Qld LEB region. As for petroleum activities described above, the changes will positively engage with section 28 (2)(a), (d), and (e) by ensuring the rivers and floodplains of the Lake Eyre Basin are protected

and will provide increased opportunities for the region's Aboriginal Peoples' rights to enjoy and develop their identity and to maintain their distinctive relationships with the land and waters.

Regulating regulated activities in the Channel Country SEA Critical Minerals Reach.

Schedule 2, Part 5, section 15 of the amended Regulation will provide that regulated activities (i.e. broadacre cropping and water storage (dams)) will become unacceptable uses in the new Critical Minerals Reach of the Channel Country SEA.

It is recognised that as for the resource activities described above, these regulatory changes also engage section 28 of the HR Act and will positively engage with section 28 (2)(a), (d), and (e) by ensuring the rivers and floodplains of the Lake Eyre Basin are protected and will provide increased opportunities for the region's Aboriginal Peoples' rights to enjoy and develop their identity and to maintain their distinctive relationships with the land and waters.

Broader description of Environmental Attributes.

The results of the initial consultation process demonstrated that more than 85 per cent of respondents, including the Traditional Owners Alliance, supported broadening the Environmental Attributes definitions as is provided for by Part 3 section 7 of the Amendment Regulation. This change ensures that a wider set of criteria will be used in assessing RIDA applications, enacting stronger protections for the ecologically and culturally sensitive areas in the rivers and floodplains of the region.

This change does not impact section 28 rights negatively, but has the potential to positively engage with section 28(2)(a), (d), and (e) of the HR Act through enacting greater protections for Country and cultural heritage.

The submission received by the Qld LEB Traditional Owner Alliance reiterated their previous advocacy for the inclusion of explicit reference to Aboriginal cultural heritage in the enhanced Environmental Attributes. While this change has not been adopted by the Queensland Government and therefore is not a component of the Amendment Regulation, it is intended that Aboriginal cultural heritage values of the region will be included in assessments of relevant Environmental Authorities issued under the *Environmental Protection Act 1994*, either directly under that legislation, or in the context of human rights impacts assessment of approval decisions.

No additional comments were received through the public notification and direct engagement processes offering any other views. In conclusion, it is considered that these changes represent a positive engagement with section 28 of the HR Act overall.

Other rights.

Consideration has been given to whether the proposed regulatory changes engage with section 24 of the HR Act, being the right of all persons to own property and to not be arbitrarily deprived of that property.

While the changes deem certain activities as unacceptable within the Channel Country SEA(DP) and that other activities are to be the subject of site-by-site assessments, all private land remains in private ownership of relevant landholders. Further, these restrictions will likely

apply to corporations, who are not covered by the HR Act. Therefore, section 24 property rights are not engaged by the proposal.

Conclusion

I consider that the *Regional Planning Interests (Lake Eyre Basin) Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* because, while it engages with the HR Act, it does not limit human rights.

MEAGHAN SCANLON MP
MINISTER FOR HOUSING, LOCAL GOVERNMENT AND PLANNING AND
MINISTER FOR PUBLIC WORKS

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