

Water Plan (Mary Basin) (Postponement of Expiry) Notice 2021

Human Rights Certificate for SL 2021 No 49

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mr 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) (Postponement of Expiry) Notice 2021 (the Postponement of Expiry Notice) made under the *Water Act 2000*.

In my opinion, the Postponement of Expiry Notice, 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 Postponement of Expiry Notice is subordinate legislation. It is published under section 56(1) of the *Water Act 2000* and the new expiry date for the Water Plan (Mary Basin) 2006 (the Plan) is 28 May 2024. This will ensure that sustainable water management arrangements remain in place for the Plan area's water users after the current expiry date of 1 September 2021.

The Postponement of Expiry Notice is made under section 55 of the *Water Act 2000* where the expiry date of a water plan can be postponed while the water plan is being replaced. The process to replace the Plan commenced on 27 May 2021 with the publishing of the Preliminary Public Consultation notice made under section 44 of the *Water Act 2000*.

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 Postponement of Expiry Notice are:

- Property rights (section 24); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28).

Property rights

I consider that the property right (which provides that a person must not be arbitrarily deprived of the person's property) is not limited by the postponement of expiry of the Plan as all existing

water entitlements authorised under the *Water Act 2000* will be maintained and all existing water management arrangements in the Plan area will continue until the new expiry date (or until the plan is replaced as part of the water planning process commenced on 27 May 2021).

If human rights may be subject to limitation if the Postponement of Expiry Notice is progressed – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples

Aboriginal peoples and Torres Strait Islander peoples are recognised as having a rich and diverse culture, and an intimate association with their geographical areas. The distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples are protected under section 28 of the *Human Rights Act 2019*, which ensures that they are not 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. The right also ensures that Aboriginal peoples and Torres Strait Islander peoples are not denied the right to conserve and protect the environment and productive capacity of their land, territories, waters and other resources.

I consider that the nature of the right is not limited by the postponement of expiry of the Plan as the replacement of the Plan that was commenced on 27 May 2021 has commenced formal engagement with Aboriginal peoples and Torres Strait Islander peoples to better understand current and emerging cultural water needs in the Plan area. Addressing their water related interests and identifying cultural outcomes is required as part of replacement plan process under the *Water Act 2000*.

(b) the nature of the purpose of the limitation potentially imposed by the Postponement of Expiry Notice, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The overarching purpose of potentially limiting the rights in the way set out above, is to ensure that the existing arrangements continue for sustainable management of water resources in the Plan area. It is imperative that the Plan remains in place to provide certainty for water users and industry, and to meet the needs of the environment. Failure to postpone the expiry of the Plan will result not only in the expiry of the Plan, but also with the lapsing of water allocation and management arrangements for the Water Supply Schemes within the plan area and consequently no arrangements in place to preserve existing water-related cultural values of Aboriginal peoples and Torres Strait Islander peoples in the Plan area.

(c) the relationship between the limitation potentially imposed by the Postponement of Expiry Notice and its purpose, including whether the limitation helps to achieve the purpose

The possible limitation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples helps to achieve the overall purpose of continuation of the Plan, and the postponement of expiry limits the rights only to the extent necessary to achieve the purpose.

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

No other less restrictive, reasonably available, ways to achieve the purpose of the non-expiry of the Plan have been identified. Importantly it is noted however the Minister's report has identified a need for further engagement with Aboriginal peoples and Torres Strait Islander peoples to better understand current and emerging cultural water needs in the Plan area. Addressing their water related interests and identifying cultural outcomes through appropriate engagement is required as part of the replacement plan process under the *Water Act 2000*.

(e) the balance between the importance of the purpose of the limitation potentially imposed by the Postponement of Expiry Notice 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 postponing the expiry of the Plan to prevent the lapse of the existing water management framework, which in turn protects the existing water entitlements under the *Water Act 2000* and the needs of the environment, and preserves the status-quo of not limiting the existing rights and maintains current context of cultural values of Aboriginal peoples and Torres Strait Islander peoples in the Plan area, outweighs any potential adverse impact on the human rights.

Conclusion

I consider that the Postponement of Expiry Notice is compatible with the *Human Rights Act 2019* because it either does not limit human rights, or in instances where human rights may be limited, any limitation is reasonable and demonstrably justifiable in accordance with the *Human Rights Act 2019*.

MR GLENN BUTCHER MP
MINISTER FOR REGIONAL DEVELOPMENT AND MANUFACTURING AND
MINISTER FOR WATER

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