

Water Plan (Barron) 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 Plan (Barron) 2023* (the 2023 water plan) made under the *Water Act 2000*.

In my opinion, the 2023 water plan, 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 2023 water plan replaces the *Water Plan (Barron) 2002*. The 2023 water plan has been prepared under section 42 of the *Water Act 2000* (the Act). Water plans provide the principal mechanism for achieving the requirements of the Act, setting out detailed strategies and outcomes for water to be shared between water users, including the environment.

The *Water Plan (Barron) 2002* has been implemented, monitored and assessed. Information gathered from these processes has been important in developing the 2023 water plan which:

- incorporates an additional 20 years of climate data;
- considers changing land use and population increases;
- provides recognition of the interests of Aboriginal people and Torres Strait Islanders in relation to the water resources for the plan area; and
- proposes new and more relevant environmental, social, cultural, and economic outcomes, strategies and performance indicators which build on new and improved science that has been gathered over the life of the existing water plan.

Public consultation has been undertaken under section 46 of the Act and all properly made submissions have been considered in finalising the 2023 water plan. Targeted consultation with First Nations Peoples and other key stakeholders has also been undertaken and considered.

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 2023 water plan are:

- Right to recognition and equality before the law (section 15)

- Right to life (section 16)
- Right to take part in public life (section 23)
- Property rights (section 24)
- Cultural rights (section 27)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)

Right to recognition and equality before the law

I consider that the right to recognition and equality before the law is potentially limited by the finalisation of the 2023 water plan. I consider that any limitation of this right is reasonable and demonstrably justifiable under section 13 of the *Human Rights Act 2019*, as addressed in below sections (see - ‘consideration of reasonable limitation on human rights’).

Right to life

I consider that the right to life, which provides that every person has the right to life and not to be arbitrarily deprived of life, is not limited by the finalisation of the 2023 water plan.

The 2023 water plan contains provisions which support access to domestic water and town water supply during critical water supply periods. These provisions are in addition to the statutory authorisations provided for under Part 3 of the Act which cannot be limited by a water plan (for example, the take of water for riparian stock and domestic, emergency situations and fighting a fire purposes). Additional provisions provided for in the 2023 water plan include:

- authorisation to take non-riparian domestic water from a watercourse
- ‘town water supply’ as a valid entitlement purpose to facilitate any future amendments to water sharing rules in the Water Management Protocol if circumstances change
- strategic unallocated water reserves for town water supply

The plan is consistent with the *Atherton regional water supply security assessment* for Tablelands Regional Council. A regional water security assessment is not available for other local government areas within the plan area; however, all local government have been engaged with throughout the water plan development and any feedback provided has been considered in the finalisation of the 2023 water plan.

Right to take part in public life

I consider that the right to take part in public life (which provides that every person has the right and opportunity to take part in public life) is not limited by the finalisation of the 2023 water plan.

Public consultation has been undertaken in accordance with the provisions of the Act, including preliminary public consultation and draft plan consultation. All properly made submissions have been considered in the development of the draft water plan and the finalisation of the 2023 water plan. Additional targeted engagement has also been undertaken with key stakeholder representatives.

Property rights

I consider that property rights (which provides that every person has the right to own property and not be arbitrarily deprived of their property) are potentially limited by the finalisation of the 2023 water plan. I consider that any limitation of this right is reasonable and demonstrably justifiable under section 13 of the *Human Rights Act 2019*, as addressed in below sections (see ‘consideration of reasonable limitation on human rights’).

Cultural rights

I consider that general cultural rights (which provides that every person has a right to culture, religion, racial background and language) are not limited by the finalisation of the 2023 water plan. Public consultation was undertaken prior to and following the release of the draft water plan. No submissions regarding the use of water resources in the plan area for general cultural rights were received (Note that *Cultural rights – Aboriginal people and Torres Strait Islanders* are addressed below). No concerns were identified in the Socio-economic assessment report which was used to inform the draft water plan development. In the absence of general cultural values being raised through consultation or in submission, the plan contains provisions to maintain flow for environmental purposes. It is considered the maintenance of these environmental flows provide a safeguard for any unknown general cultural rights.

Cultural rights – Aboriginal people and Torres Strait Islanders

I consider that cultural rights of Aboriginal people and Torres Strait Islanders (which provides, recognises and protects the cultural rights of Aboriginal people and Torres Strait Islanders) are potentially limited by the finalisation of the 2023 water plan. One submission was received in relation to Cultural rights – Aboriginal people and Torres Strait Islanders and my department held multiple meetings with First Nations Peoples connected to the Barron plan area. I consider that any limitation of this right is reasonable and demonstrably justifiable under section 13 of the *Human Rights Act 2019*, as addressed in below sections (see ‘consideration of reasonable limitation on human rights’).

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

Right to 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
- is entitled to equal and effective protection against discrimination

The 2023 water plan contains provisions which recognise the interests of Aboriginal people and Torres Strait Islander people in relation to the water resources for the plan area. These provisions are exclusive of non-Aboriginal people and non-Torres Strait Islanders and may potentially limit non-Indigenous peoples right to recognition and equality before the law.

Provision which may potentially impact the rights to recognition and equality before the law include:

- economic, social and cultural outcomes to support the aspirations of Aboriginal people and Torres Strait Islander people
 - unallocated water reserved for Indigenous purposes
- (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

Section 45 of the Act requires that I, as the Minister, must consider the interests of Aboriginal parties and Torres Strait Islander parties when making a draft water plan. This is consistent with the purposes of the Act which is to provide a framework for the sustainable management of water resources, including recognising the interests of Aboriginal people and Torres Strait Islanders and their connection with water resources.

The potential limitations, as described above, are required to:

- ensure that the water plan is compatible with the purpose and provisions of the Act
- ensure the water plan is compatible with the cultural rights of Aboriginal people and Torres Strait Islanders under the *Human Rights Act 2019*
- take effective steps to diminish or eliminate conditions that have resulted in Aboriginal people and Torres Strait Islanders being disadvantaged.

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

The potential limitation to the right to recognition and equality before the law helps achieve the overall balance of human rights interests in the Barron water plan area.

The establishment of plan outcomes ensures the interest of Aboriginal people and Torres Strait Islander people are considered in the ongoing management and use of water resources in the Barron water plan area. This provides a legislative pathway to ensure the purpose of the limitation is achieved.

The establishment of unallocated water reserves for Indigenous purpose takes effective steps to work towards Aboriginal people and Torres Strait Islanders having rights to shares of water resources.

(d) whether there are any less restrictive 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 removal of the limitations from the 2023 water plan, as described above, would impact on the cultural rights of Aboriginal people and Torres Strait Islanders. The 2023 water plan limits the rights only to the extent necessary to achieve the purpose.

Additional provisions in the 2023 water plan, including other plan outcomes and strategic and general reserves, have been included to provide for the rights and interests of the broader community.

(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 maintaining provisions relating to the interests of Aboriginal people and Torres Strait Islanders in the 2023 water plan outweighs any potential adverse impact on the human rights of other individuals. The removal of these provisions would have an unacceptable impact on the cultural rights of Aboriginal people and Torres Strait Islanders. Mitigating provisions which provide for the rights of the broader community are sufficient to achieve a fair balance.

(f) any other relevant factors

The subordinate legislation will replace the existing *Water Plan (Barron) 2002* and provide a higher level of safeguard for the protection of rights.

Property Rights

(a) the nature of the right

The right to property rights protects the right of all persons to own property (alone or with others) and provides that people have a right not be arbitrarily deprived of their property.

Under the 2023 water plan, the following water entitlements are likely to be considered property for the purposes of the *Human Rights Act 2019*:

- a water allocation
- a water licence
- a seasonal water assignment
- statutory authorisations

Various provisions of the water plan regulate a person's ability to hold and exercise use of water related property rights. Property rights may potentially be impacted where the 2023 water plan:

- limits or terminates a water entitlement (e.g. restricts the volume of water which may be taken for prescribed activities under section 101 of the Act; or, limits the volume of water which may be interfered with; or, requires a volumetric limit or other condition to be imposed; specifies areas and zones which may be subject to further regulation under the Barron Water Management Plan (the Barron Water Management Protocol is a statutory instrument to implement the water plan)
- restricts or impacts another person's water entitlement (e.g. the grant of a water entitlement or water dealing; or, limits the future use of unallocated water for a specified purpose).

(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 2023 water plan manages the interests of over 3,000 existing water entitlements. The interaction between each of these entitlements is complex, and without regulation, the unlimited take or interference with water in the plan area would result in significant impacts to other water users ability to exercise their own property rights. Additionally, the unlimited take or interference with water represents a significant risk to non-consumptive water needs

including that of the environment and Aboriginal people and Torres Strait Islanders cultural rights.

The 2023 water plan implements a sustainable management framework to ensure any limitation of property rights is applied in a consistent, transparent and fair basis.

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

The 2023 water plan recognises the property rights of existing entitlements and builds on the strengths and learnings from the existing *Water Plan (Barron) 2002*. The 2023 water plan will provide certainty, security and flexibility for water users as well as provide for the environment and human rights of other individuals.

(d) whether there are any less restrictive 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 2023 water plan limits the rights only to the extent necessary to achieve the purpose.

Additional provisions in the 2023 water plan, such as Water Allocation Security Objectives and chief executive assessment criteria for decision making, ensure the impact of decisions 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 2023 water plan implements a sustainable management framework that ensures any limitation of property rights is applied in a consistent, transparent and fair basis. The removal of these provisions would have an unacceptable impact on the property rights of individuals. Mitigating provisions which provide for other interest and human rights are sufficient to achieve a fair balance.

(f) any other relevant factors

The subordinate legislation will replace the existing *Water Plan (Barron) 2002* and provide a higher level of safeguard for the protection of rights than the existing water plan.

Cultural rights – Aboriginal people and Torres Strait Islanders

(a) the nature of the right

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

The 2023 water plan contains provisions which may potentially impact the cultural rights of Aboriginal people and Torres Strait Islanders, for example:

- economic outcomes which provide for the continued use of existing water entitlements and authorisations and the maintenance of flow for industries dependant on water resources.
- social outcomes which maintain water availability and flow for town water supply and domestic purposes may also impact the cultural rights
- provisions which allocate and maintain flow for existing entitlements
- provisions which allow additional water rights to be granted, for example strategic and general unallocated water reserves and licence to take water applications in the Cairns Northern Beaches underground water management area

It is noted that these provisions are complex and have the potential to provide both benefit and negative impact on the human rights of Aboriginal people and Torres Strait Islanders.

(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 potential limitations, as described above, are required to achieve the purpose and objectives of the overarching Act and the 2023 water plan which is to provide for the sustainable management of water resources by providing a balance of cultural, social, environmental, and economic outcomes. The potential limitation to the cultural rights of Aboriginal people and Torres Strait Islanders helps achieve the overall balance of human rights interests of all individuals in the Barron water plan area.

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

The potential limitations, as described above, provide a legislative framework to balance the interests of the cultural, social, environmental and economic interests in the allocation and management of water resources in the Barron water plan area.

(d) whether there are any less restrictive 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 2023 water plan limits the rights only to the extent necessary to achieve the purpose.

Additional provisions in the 2023 water plan, such as cultural objective, unallocated water reserved for Indigenous purpose and chief executive assessment criteria for decision, ensure decision makers consider the impact of decisions on the cultural rights of Aboriginal people and Torres Strait Islanders. The provisions which may impact the cultural rights of Aboriginal people and Torres Strait Islanders, may also protect these rights where Indigenous owned water entitlements for industry and domestic or town water supply is achieved.

(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 2023 water plan implements a sustainable management framework that ensures any limitation of property rights is applied in a consistent, transparent and fair basis. The removal of these provisions would have an unacceptable impact on the human rights of other individuals. Mitigating provisions which provide for the cultural rights of Aboriginal people and Torres Strait Islanders are sufficient to achieve a fair balance.

(f) any other relevant factors

The subordinate legislation will replace the existing *Water Plan (Barron) 2002* and provide a higher level of safeguard for the protection of rights.

Conclusion

I consider that the 2023 water plan 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.

Glenn Butcher

Minister for Regional Development and Manufacturing and Minister for Water

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