

Water Legislation Amendment Bill 2022

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Glenn Butcher, Minister for Regional Development and Manufacturing and Minister for Water make this statement of compatibility with respect to the Water Legislation Amendment Bill 2022.

In my opinion, the Water Legislation Amendment Bill 2022 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 Bill

The Water Legislation Amendment Bill 2022 (the Bill) amends three Acts across the Regional Development, Manufacturing and Water portfolio to deliver:

- a regulatory framework for implementing Queensland's strengthened non-urban water measurement policy;
- improvements to the operational efficiency and effectiveness of the *Water Act 2000*, the *Water Supply (Safety and Reliability) Act 2008*, and the *South East Queensland Water (Distribution and Retail Restructuring Act) 2009*; and
- improvements to the operation of the underground water framework of Chapter 3 of the *Water Act 2000* as part of the Environment and Science portfolio.

The Department of Regional Development, Manufacturing and Water (DRDMW) has developed a strengthened non-urban water measurement policy to improve the way water take is measured and reported in Queensland. The strengthened measurement policy delivers on the Queensland Government's commitments in response to recommendations of the 2018 Independent Audit of Queensland Non-urban Water Measurement and Compliance and in the Murray Darling Basin Compliance Compact, which includes that water take in the Queensland Murray-Darling Basin (QMDB) is accurately measured by 2025, including overland flow take.

In May 2022, Government approved the Queensland non-urban water measurement policy and the preparation of the Water Legislation Amendment Bill 2022 to bring forward amendments to the *Water Act 2000* to establish the regulatory framework to support policy implementation.

The Bill amends the *Water Act 2000* to enhance existing powers and introduce new heads of power to enable the chief executive to require water users to implement strengthened measurement requirements to improve the way they measure, record and report water take data. Most of these chief executive powers will be delivered through regulation-making powers that will require particular water entitlement holders to install measurement devices and meet certain measurement requirements and standards for measuring, recording and reporting the volume of water they take under their entitlement.

The Bill also includes several non-measurement related amendments to improve administration of the *Water Act 2000*. These include amendments to align the administration of water authority boards with arrangements for other government boards with similar scale governance responsibilities; and to ensure the chief executive can apply appropriate discretion in deciding particular water licence applications that may impact other water users and the public interest.

Other proposed legislative amendments to the *Water Act 2000*, the *Water Supply (Safety and Reliability) Act 2008*, and the *South East Queensland Water (Distribution and Retail Restructuring Act) 2009* are generally minor, technical or operational in nature. They are intended to clarify existing provisions or requirements, make consequential amendments and otherwise improve the operational efficiency of water legislation. The proposed amendments will:

- enhance the operation of water markets in temporary trade by clarifying provisions relating to the administration of seasonal water assignment notices in the *Water Act 2000*;
- validate postponement of delayed water resource plans under the *Water Act 2000*;
- make minor operational changes and technical amendments to Chapter 3 (underground water framework) of the *Water Act 2000*, which is administered by the Department of Environment and Science, at the request of the Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs;
- enhance wet season preparedness and better respond to unforeseen circumstances by enabling the chief executive to request a referable dam owner to review their emergency action plan by a particular date, other than 1 October, under the *Water Supply (Safety and Reliability) Act 2008*;
- address identified inconsistencies and provide additional clarity to drinking and recycled water provisions so the regulators can perform its function more effectively and efficiently in the *Water Supply (Safety and Reliability) Act 2008*;
- modernise notification arrangements, public inspection and publishing provisions, including alignment with the *Financial Accountability Act 2009* and online publication requirements; and
- clarify terms and correct cross-references and other errors.

Human Rights Issues

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

I consider the following human rights are engaged by the Water Legislation Amendment Bill 2022:

- Taking part in public life (section 23 of the *Human Rights Act 2019* (HR Act))—in relation to modernising notification, public inspection and publishing provisions.

- Property rights (section 24 of the HR Act)—in relation to new measurement requirements for taking water under specific water authorisations under the *Water Act 2000*.

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

Taking part in public life

(a) the nature of the right

Every person in Queensland has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs, directly or through freely chosen representatives.

Every eligible person has the right, and is to have the opportunity, without discrimination—

1. to vote and be elected at periodic State and local government elections that guarantee the free expression of the will of the electors; and
2. to have access, on general terms of equality, to the public service and to public office.

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It includes protection for all persons to make contributions to the political process and public governance, which embraces both the opportunity to participate in the formulation and implementation of public policy.

It also relates to the right to freedom of expression. This right further protects a person's right to hold an opinion, and the right to seek, receive, and express information and ideas without interference.

It is foreseeable that limiting some individuals' access to online government publications and advertising may limit their ability to participate in policy formulation and implementation either directly, or through their elected representatives. Further, it may limit some individuals' ability to access government information and services.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

As a cost reduction initiative amendment to the *Financial Accountability Act 2009* made in June 2021, mandating that legal requirements for print advertising or publication by all government agencies are to be satisfied by online advertising or publication where appropriate.

Publishing requirements of the following legislation are to be amended to prescribe online publication as the preferred method.

- a. *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*
- b. *Water Act 2000*
- c. *Water Supply (Safety and Reliability) Act 2008*

It should be noted, discretion for the chief executive to publish by other means has been retained. This would be in a way likely to bring the document to the attention of each person to whom it is to be published.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The proposed amendments will achieve the purpose. Preferencing online publication is reasonable as it aims to reflect contemporary practices and supports cost reductions and business efficiencies for government.

Print advertising and publication has an inherently higher associated cost compared with online advertising and publication. The proposed amendment supports greater use of online advertising and publication, and in doing so, aligns with the *Financial Accountability Act 2009* objectives of reducing cost and improving business efficiencies for government.

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

There are no less restrictive reasonable ways to reduce the cost of publication requirements on government agencies. Online publication is significantly cheaper than traditional print media publication. The proposal includes appropriate exemptions, supporting fit for purpose publication requirement.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Limiting some individuals' access to online government publications and advertising might limit their ability to participate in policy formulation and implementation or limit their ability to access government information and services. However, the number of individuals that will be affected is limited by the high rate of internet penetration in Australian households, and the fact that online compliance with advertising and publication requirements is balanced by an ability to provide for exemptions/ alternatives as appropriate.

The purpose of the proposed amendments is legitimate and there are no less restrictive ways to achieve the identified purpose.

Property rights

(a) the nature of the right

The *Human Rights Act 2019* (HR Act) provides that the right to own property alone or in association with others must not be arbitrarily deprived. Property includes all real and personal property interests recognised under the general law and may include statutory rights. The *Water Act 2000* provides a framework for the sustainable management of Queensland's water resources by establishing a system for the planning, allocation and use of water. Under this framework the State may issue water entitlements to authorise a person to take water. A water entitlement is considered property for the purposes of the HR Act. Deprivation in this sense is considered to include the substantial restriction on a person's ability to use or enjoy their property or part of their property.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

In March 2018, the Independent Audit of Queensland Non-Urban Water Measurement and Compliance (the Independent Audit) made a range of recommendations to the Queensland Government in relation to making significant improvements to Queensland's measurement and metering framework, its approach to water compliance, and the availability and transparency of water data. These recommendations included a review and strengthening of Queensland's measurement and metering policy and that stronger measuring and recording requirements be adopted, including data loggers and remote read technology (telemetry).

The Queensland Government has reviewed its existing metering policy and developed a strengthened policy to improve the way non-urban water take is metered and measured across Queensland. The strengthened policy builds on the existing metering framework and expands its scope to achieve the following objectives:

- increase the coverage and standard of metering for the direct measurement of non-urban water take
- provide for farm scale measurement of overland flow water take
- receive timely and accurate data on water take
- ensure fit for purpose compliance and enforcement for measurement of water take.

To support implementation of the strengthened policy, the Bill proposes amendments to the *Water Act 2000* to provide the necessary heads of power to expand the scope of the current measurement framework to include the strengthened measurement requirements provided for in the policy. As the detailed measurement requirements will be stated in the Water Regulation 2016, the Bill will establish the necessary heads of power by amending current regulation-making powers in the Water Act to ensure the Water Regulation can stipulate these strengthened measurement requirements.

These measurement requirements will apply to surface water and underground water entitlements that are subject to limit on the volume that may be taken. Some of these entitlements already have measurement requirements applied to them as 'metered entitlements' under the Water Act such as maintaining a meter and providing meter read data to the government. For example, existing holders of entitlements to take overland flow water are currently required to provide information about how much water they take under these entitlements. Similarly with the proposed amendment to require telemetry devices on water meters, the requirement builds on existing responsibilities to supply meter reads either once or twice a year. Furthermore, the intent to move to the use of telemetry has already been stated in the existing metering policy since 2016 and the current interim meter standard require meters to have an electronic output, so that meters are logger and telemetry capable.

The proposed amendments will: expand the scope of entitlements that must be metered and the standard of this metering; require some of these entitlements to be measured more accurately using a measurement system approach (e.g., entitlements to take overland flow water); and require other entitlements to automatically transmit water take data directly to the government

via telemetry devices. Offence provisions will also be strengthened to ensure compliance action can be taken if water is taken without properly installed and maintained measurement devices.

The proposed amendments will ensure that Queensland's strengthened non-urban water measurement policy can be implemented to achieve its objectives, delivering the Queensland's Government's commitments under the Independent Audit to improve its metering and measurement framework. These proposed amendments will also ensure that the Government meets its commitment under the Murray-Darling Basin Compliance Compact to ensure that measurement of take in the QMDB (including the take of overland flow) is more accurately measured by 2025.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The Queensland Government publicly committed to reviewing its non-urban water measurement policy in response to the following findings by the Independent Audit in relation to the existing non-urban water measurement policy and standards in place since 2014:

- a significant number of meters do not meet national standards
- existing meter validation and maintenance processes are flawed
- meter reading is infrequent, resulting in a lack of available information; and
- metering is implemented inconsistently across the state.

A strengthened non-urban water measurement policy was completed in May 2022 to address these issues.

Successful implementation of the strengthened measurement policy requires several measurement and metering related legislative amendments. These include a new head of power and framework for measuring overland flow water, and a number of amendments to existing metering provisions to enable the use of telemetry and to enhance compliance. A number of matters will also need to be dealt with in subordinate legislation through regulation-making powers to support the administration and implementation of both overland flow measurement and telemetry requirements.

Currently there is no statutory or technically certified (for example, by a registered professional engineer of Queensland (RPEQ)) method that provides an accurate, transparent and repeatable process of measuring the take of overland flow water. Holders of overland flow water entitlements currently provide ad hoc information to DRDMW about their annual take of overland flow water, using highly variable methods with varying degrees of accuracy. The proposed amendments will establish a framework for measuring the take of overland flow water to address this shortfall and provides a systematic process for robust and transparent measurement of the take of overland flow water.

Enabling telemetry devices to be installed on non-urban water meters allows for the near real-time transmission of meter read information such as the time, date and volume of water taken. The availability of higher frequency meter read information will provide a range of benefits to the DRDMW, water users and the environment. Telemetry is widely used on farm across the state for water users to gather information from rain gauges, soil moisture probes and to operate pumps. The addition of telemetry to water meters will benefit water users by allowing them to better manage self-compliance with their water entitlements and to make better on-farm water

management decisions about water use. It also means that water entitlement holders would not need to provide manual meter reads to the department.

For DRDMW, telemetry will allow significant enhancements to water management and compliance as the higher frequency of data will enable DRDMW to monitor compliance more effectively and act early where compliance issues arise or where such a risk is identified. This information will also improve the data used for water planning and management decisions, leading to increased confidence that water is being managed in a sustainable way, which also benefits the environment. Improved frequency of meter read data will also improve the information about available water which could be traded through water markets, which also benefits water users when they wish to buy or sell water.

As such, the proposed amendments will achieve the purpose of strengthened measurement of non-urban water in Queensland and will enable the Queensland Government to meet its MDB Compliance Compact commitments.

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

There is no less restrictive means available to ensure the accurate measurement of water taken under a water entitlement.

These measurement requirements directly relate to the management and protection of the property right (right to access water) and do not represent a restriction to a person's ability to use and enjoy their property. Similar measurement requirements are an existing feature of Queensland's water management framework and are considered reasonable and necessary in the context of ensuring all water users can access their fair share the water (property right).

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The proposed amendments are considered a reasonable and balanced approach to strengthening the measurement of non-urban water take across Queensland.

Knowing how much water is being taken is essential for effective water resource management. It is critical that the take of water is accurately measured so that take from water resources is sustainable, and to ensure all water users receive their fair share in accordance with entitlement conditions and legislative requirements. Accurate and timely measuring, recording, and reporting of water taken also provides transparency and assurance that water is being managed sustainably for the benefit of all Queenslanders.

Conclusion

In my opinion, the Water Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it does not limit a human right 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

© The State of Queensland 2022