

Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021

Explanatory notes for SL 2021 No. 104

made under the

Nature Conservation Act 1992

General Outline

Short title

*Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves)
Amendment Regulation 2021*

Authorising law

Sections 33 and 175 of the *Nature Conservation Act 1992* (NC Act).

Policy objectives and the reasons for them

The objective of the *Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021* (Amendment Regulation) is to amend the *Nature Conservation (Protected Areas) Regulation 1994* (Regulation) by redescribing Heathlands Resources Reserve and removing the Jardine River Resources Reserve (the resources reserves).

Prior to dedication of the resources reserves in 1994 by applying the NC Act, the reserves were Departmental and Official Purposes (D&OP) Reserves under the former *Land Act 1962* (former Land Act). According to the NC Act, before being dedicated as resources reserve, they first must have been “Crown Land”. To qualify as “Crown Land” in the 1994 version of the NC Act and to become eligible for dedication as a protected area, firstly the D&OP Reserve tenure should have been cancelled or revoked as a public purpose under the former Land Act. There is no evidence that this action was undertaken; therefore, dedication of the resources reserves under the NC Act in 1994 is invalid and beyond power. An exception is a valid road closure in 2017 which resulted in two small lots being dedicated as Heathlands Resources Reserve.

The reason for the amendment is to correct the public record by amending Schedule 3A of the Regulation to redescribe Heathlands Resources Reserve and remove Jardine River Resources Reserve to enable the State to commence actions to correct the Queensland Land Titles Registry.

Achievement of policy objectives

To achieve its objective, the Amendment Regulation will amend Schedule 3A of the Regulation to redescribe Heathlands Resources Reserve and remove Jardine River Resources Reserve.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the NC Act, namely:

- the dedication and declaration of areas representative of the biological diversity, natural features and wilderness of the State as protected areas;
- the recognition of the interest of Aboriginal People and Torres Strait Islanders in the protected areas, landscapes, native flora and wildlife; and
- the Governor in Council may make regulations under the NC Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with any other legislation. It upholds the requirements of the former Land Act and the current *Land Act 1994* (Land Act) which delegate the Minister responsible for the Land Act the authority to revoke a reserve. Correcting the Regulation confirms that a reserve tenure under the Land Act is not land which can be dedicated as a protected area.

Alternative ways of achieving policy objectives

The Department of Environment and Science (DES) has considered alternative ways in which the two invalidly created resources reserves could be removed from the Regulation and that making the Amendment Regulation is the most appropriate method.

Benefits and costs of implementation

The benefits of the Amendment Regulation are that the Regulation will correctly reflect the protected areas estate. Implementing the Amendment Regulation will amount to administrative costs related to processing Land Title documentation and seeking approvals for tenure actions. This will be met through existing budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles. It complies with relevant requirements of section 4(5) of the *Legislative Standards Act 1992*, namely it:

- a) is within the power that, under an Act or subordinate legislation (the authorising law), allows the subordinate legislation to be made; and
- b) is consistent with the policy objectives of the authorising law; and
- c) contains only matter appropriate to subordinate legislation; and
- d) amends statutory instruments only; and
- e) allows the sub-delegation of a power delegated by an Act only—
 - (i) in appropriate cases and to appropriate persons; and
 - (ii) if authorised by an Act.

Consultation

In accordance with *The Queensland Government Guide to Better Regulation*, the Office of Best Practice Regulation was not consulted in relation to the regulatory proposal. DES applied a self-assessable exclusion from undertaking further regulatory impact analysis (Category g – regulatory proposals that are of a machinery nature).

The Queensland Government has discussed the proposal with the First Nations peoples particularly concerned with this land. The Traditional Owners understand and support that this amendment action is needed to correct the land title.

Balkanu Cape York Development Corporation and the Cape York Land Council Aboriginal Corporation are supporting Traditional Owners who have an interest in this land and have been consulted.

All parties consulted support the proposed amendments. No further changes to the Amendment Regulation were required as a result of the consultation.