

Nature Conservation (Protected Areas) (Omission of Lawn Hill Resources Reserves) Amendment Regulation 2024

Explanatory notes for SL 2024 No. 221

made under the

Nature Conservation Act 1992

General Outline

Short title

*Nature Conservation (Protected Areas) (Omission of Lawn Hill Resources Reserves)
Amendment Regulation 2024*

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) (Omission of Lawn Hill Resources Reserves) Amendment Regulation 2024* (Amendment Regulation) is to correct the public record in the Queensland Land Titles Register, effectively recognising eight Lawn Hill Resources Reserves as their original tenures (a combination of Departmental and Official Purposes Reserves and Departmental and Official (Natural Resources) Purposes Reserves (collectively referenced as D&OP Reserves)). The eight Lawn Hill Resources Reserves (the Resources Reserves) are described as follows:

- Lawn Hill (Arthur Creek) Resources Reserve, described as Lot 6 on CP850717;
- Lawn Hill (Gorge Mouth) Resources Reserve, described as lot 8 on CP850717;
- Lawn Hill (Gregory) Resources Reserve, described as Lot 2 on GY805051;
- Lawn Hill (Gregory River Base) Resources Reserve, described as Lot 13 on CP899004;
- Lawn Hill (Lilydale) Resources Reserve, described as Lot 3 on GY805051;
- Lawn Hill (Littles Range) Resources Reserve, described as Lot 9 on CP854027;

- Lawn Hill (Stockyard Creek) Resources Reserve, described as Lot 7 on CP850699; and
- Lawn Hill (Widdallion) Resources Reserve, described as Lot 5 on CP850717.

Once these lands are returned to D&OP Reserve tenure, the State is able to confidently progress delivery of commitments in the Waanyi Registered Native Title Body Corporate (RNTBC) registered Indigenous Land Use Agreement (QI2023/003).

Prior to dedication of the Resources Reserves in 1994 by applying the NC Act, the Resources Reserves were a combination of Departmental and Official (Natural Resources) Purposes Reserves (Arthur Creek, Gorge Mouth, and Widdallion), and Departmental and Official purposes Reserves (Gregory, Gregory River Base, Lilydale, Littles Range, and Stockyard Creek). According to the NC Act, before being dedicated as resources reserves, the land must first have been “Crown Land”. To qualify as “Crown Land” the D&OP Reserve tenures should have been revoked as a public purpose under the former *Land Act 1962*. There is no evidence that this action was undertaken, therefore dedication of the Resources Reserves under the NC Act is invalid and beyond power.

In 2021, an amendment was made to the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) by the *Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021* (the 2021 Amendment Regulation) to omit the majority of these resources reserves. In 2023 the remaining parts of Heathlands Resources Reserve was omitted by the *Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023*. Additionally, in 2024, the Lawn Hill (Creek) Resources Reserve was omitted by the *Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserves) Amendment Regulation 2024*. Heathlands, Jardine River, and Lawn Hill (Creek) Resources Reserves were purportedly dedicated under the same set of circumstances as the remaining eight Lawn Hill Resources Reserves.

Generally, the removal of NC Act lands from the protected area estate requires a decision by the Legislative Assembly. In this case the authorising law (the NC Act) is invalid, and the *Land Act 1994* (the Land Act) applies, so a decision of the Legislative Assembly is not required or is appropriate as the Land Act still applies.

The decision to implement the Amendment Regulation relies on section 24AA of the *Acts Interpretation Act 1954* which provides the power to amend or repeal a decision made about a statutory instrument. In this case, the Governor in Council has this delegation.

Omitting the lands from the Regulation requires the decision of the Governor in Council. From an overarching perspective, though the NC Act is not the correct authorising law, a mechanism must be applied to remove the land from the Regulation which derives its power from the NC Act. In this respect, the Amendment Regulation applies to:

- Section 33 of the NC Act which prescribes that the Governor in Council, by regulation, may change the class of a protected area by dedicating the area as another class of protected area, or, amalgamate protected areas of the same class, and assign a name to the amalgamated area.

- Section 175 of the NC Act prescribes that the Governor in Council may make regulations under this Act.

Achievement of policy objectives

By achieving the policy objectives, the State is able to amend Schedule 3A of the Regulation by omitting the Resources Reserves.

This enables the Department of Environment, Science and Innovation to proceed with future tenure actions knowing that the base tenure is correct. The main action will be to grant land to the Waanyi people as a combination of Aboriginal freehold land under the *Aboriginal Land Act 1991*, and national park (Aboriginal land) under the NC Act, as committed through the Proposed Boodjamulla National Park (Aboriginal Land) Indigenous Land Use Agreement (ILUA) QI2023/003. The whole of Lawn Hill (Stockyard Creek) Resources Reserve and that portion of Lawn Hill (Arthur Creek) Resources Reserve not subject to mining interests will progress to national park (Aboriginal land), and the remainder of the Resources Reserves will progress to Aboriginal freehold land.

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 peoples and Torres Strait Islander peoples 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 Land Act, both former and current, 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, Science and Innovation has considered alternative approaches to correcting the Land Titles Register. The option proposed for this correction is deemed the most suitable and will achieve the result within a timeframe which enables the land transfer to proceed.

Benefits and costs of implementation

The benefits of the Amendment Regulation are that the Regulation will correctly reflect Queensland's protected area estate. Through future actions and agreements, this will enable

cooperative management of lands between First Nations peoples and the Queensland Government.

In accordance with *The Queensland Better Regulation Policy*, a Summary Impact Analysis Statement was prepared in relation to the regulatory proposal identifying the amendment as ‘minor and machinery in nature’. The proposal will not add to the burden of regulation and is unlikely to result in adverse impacts. No further regulatory impact analysis is required.

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

The State has consulted extensively with the Waanyi Native Title Aboriginal Corporation Registered Native Title Bodies Corporate (RNTBC) (Waanyi PBC), the Native Title Holders of this land as well as the company providing their independent legal advice.

The Waanyi PBC support progress of the Amendment Regulation as it is essential for the land to be transferred as a combination of Aboriginal freehold land and national park (Aboriginal land) in accordance with the ILUA commitments.

A public notice was published on the Department of Environment, Science and Innovation’s website on 25 June 2024 regarding consultation on the proposed amendment and seeking views in consideration of the *Human Rights Act 2019*, including Aboriginal peoples’ and Torres Strait Islander peoples’ cultural rights. One written response was received requesting further information about the proposal, but the respondent confirmed they had no concerns to raise in consideration of the *Human Rights Act 2019*. No further responses were received in the 28-day consultation period which ended 5 August 2024, and the proposed amendment was progressed accordingly.

The Office of Best Practice Regulation was notified of the proposal.

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