

Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020

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, Leeanne Enoch, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts provide this human rights certificate with respect to the amendments contained within the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* made under the *Environmental Offsets Act 2014* and the *Nature Conservation Act 1992*.

In accordance with section 41 of the *Human Rights Act 2019*, I, Cameron Dick, Minister for State Development, Manufacturing, Infrastructure and Planning provide this human rights certificate with respect to the amendments contained within the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* made under the *Planning Act 2016*.

In accordance with section 41 of the *Human Rights Act 2019*, I, Anthony Lynham, Minister for Natural Resources, Mines and Energy provide this human rights certificate with respect to the amendments contained within the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* made under the *Vegetation Management Act 1999*.

In our opinion, the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. We base this opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The purpose of the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* (Amendment Regulation) is to provide increased protection to identified koala habitat areas in South East Queensland (SEQ). The Amendment Regulation amends four pieces of subordinate legislation:

- *Environmental Offsets Regulation 2014* to modify the existing offset framework with consequential amendments as a result of the Amendment Regulation. These changes include the addition of koala habitat areas as an offset-able value, reflecting the new planning controls as activities that an offset can be required for and new arrangements for assessing and managing offsets with the State as administering agency;
- *Nature Conservation (Koala) Conservation Plan 2017* to establish a framework for amended and new definitions related to koala habitat areas and koala priority areas (KPAs); to create koala habitat and KPA maps; and to establish a process for amending these maps;
- *Planning Regulation 2017* to replace existing planning controls relating to koala habitat and include new controls for koala habitat areas and KPAs. These controls include regulating

- where koala habitat may be impacted by development (including a prohibition on clearing in a KPA); assessment roles and criteria; and listing any exemptions that may apply; and
- *Vegetation Management Regulation 2012* to remake relevant accepted development vegetation clearing codes (ADVCC) to align with the policy intent of the amendments to the *Nature Conservation (Koala) Conservation Plan 2017* and *Planning Regulation 2017*. The remake codes will also correct minor errors, introduce a streamlining measure and clarify the circumstances in which vegetation clearing is within the scope of the codes.

Authorising law

Section 93 of the *Environmental Offsets Act 2014*

Section 120H of the *Nature Conservation Act 1992*

Section 284 of the *Planning Act 2016*

Section 72 of the *Vegetation Management Act 1999*

Human Rights Issues

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

The following rights may be engaged by the Amendment Regulation.

Property Rights: The right of all persons to own property alone or in association with others. A person must not be arbitrarily deprived of the person's property.

Cultural Rights: The right of Aboriginal peoples and Torres Strait Islander peoples to practice their culture including through their spiritual material and economic relationship with land, territories, coastal seas and other resources.

The relevant clauses of the Amendment Regulation that will engage these rights are:

Nature Conservation (Koala) Conservation Plan 2017

Section 2(4) – enables the chief executive to determine KPAs and koala habitat areas.

Section 7A - sets out that the purpose and consideration that the chief executive may make to determine if an area is a KPA.

Section 7B - sets out that the purpose and consideration that the chief executive may make to determine if an area is a koala habitat area.

Section 7C – provides for an owner of land to request that the chief executive make, amend or revoke a determination made under Section 7B.

Planning Regulation 2017

Section 16A – prohibits carrying out development that is or involves operational work that is the clearing of native vegetation in an area that is both a KPA and a koala habitat area. This will not apply to areas that are exempted development.

Section 16B – makes development that is or involves the clearing of a koala habitat area that is not in a KPA assessable development. This will not apply to areas that are exempted development.

With respect to the property rights, the Amendment Regulation does not restrict the right to own property. Rather the Amendment Regulation prohibits the clearing of koala habitat areas in a KPA. The Amendment Regulation also makes clearing of koala habitat outside of a KPA assessable development and requires that clearing is first avoided then mitigated and if necessary offset.

This may restrict a land owner’s ability to undertake certain development activities that involve clearing of koala habitat areas but it will not restrict ownership of the property. Further, the Amendment Regulation allows landholders to request the koala habitat map is amended if the area is not correctly mapped. Therefore, this right is unaffected by the Amendment Regulation.

With respect to cultural rights, the Amendment Regulation does not restrict the right for Aboriginal and Torres Strait Islander people to hold distinct cultural rights. There are specific exemptions in the *Planning Regulation 2017* to ensure that the clearing of koala habitat is allowed, if it is necessary for Aboriginal and Torres Strait Islanders to exercise their cultural rights. These same exemptions are the same as those that currently apply for clearing under the vegetation management framework as set out in Schedule 21 of the *Planning Regulation 2017*.

The exemptions apply to development that is the clearing of koala habitat areas both inside and outside the KPAs. These exemptions apply if the clearing is on Indigenous land (other than land on which the State owns the trees, and is for a forest practice). The exemption also applies for clearing that is on Indigenous land and is for gathering, digging or removing forest products for use under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 62.

Given that these exemptions are specifically designed to ensure that the cultural rights of Aboriginal and Torres Strait Islander people are not affected, it is considered that this right is unaffected by the Amendment Regulation.

As no other human rights are considered affected by the Amendment Regulation, it is considered compatible with the *Human Rights Act 2019*.

Conclusion

We consider that the *Nature Conservation and Other Legislation (Koala Protection) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it does not raise a human rights issue.

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