

# Land 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, Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy provide this human rights certificate with respect to the Land Regulation 2020 (Land Regulation) made under the *Land Act 1994* (Land Act).

In my opinion, the Land Regulation, 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 Land Act sets out the legislative framework for state land administration (that is, non-freehold land) in Queensland. Under the Land Act, unallocated state land can be made available for leases, licences and permits to occupy. Other types of state-owned land include reserves (or trust land) and roads.

The Land Regulation 2009 (existing regulation) is subordinate legislation to the Land Act and provides process and operational requirements for administering state land. This includes, for example, the rental arrangements for leasehold land, methods for calculating purchase price of state land, requirements for trust land and for registering documents and dealings, and the setting of fees and charges.

In accordance with section 54(1) of the *Statutory Instruments Act 1992*, the existing regulation has been reviewed and re-made with amendments. The remade Land Regulation 2020 remains substantially the same as the existing regulation, although a number of updates and amendments have been made to improve the efficiency and effectiveness of its operation. It has also been updated to align with more modern drafting practices and conventions.

## Human Rights Issues

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

I consider that the following human rights may be engaged, or of relevance, to the Land Regulation:

- Recognition and equality before the law (sections 11 and 18)
- Property rights (section 67(2)(b))
- Freedom of movement (sections 80 to 85)
- Cultural rights of Aboriginal peoples and Torres Strait Islander peoples (sections 80 to 85)

## **Recognition and equality before the law**

### Sections 11 and 18: Purchase price of particular land determined in a way the Minister considers appropriate

The right to recognition and equality before the law is engaged with respect to the discretionary decision making powers under these sections. Under the Land Act, purchase price is generally set at market value. For certain operational reserves and the granting of some unallocated state land, the purchase price is decided in the way the Minister considers appropriate. No method or criteria is stated in the Land Regulation for making this decision in a transparent way.

## **Property rights**

### Section 67(2)(b): Action for non-payment of rent or penalty interest – cancellation of licence or permit

This section may be considered to arbitrarily deprive someone of their property right to access state land where they have an interest in that land. Section 67(2) allows the cancellation of a licence or permit to occupy (PTO) over state-owned land where the rent or penalty interest on the rent has not been paid by the required time.

## **Freedom of movement and Cultural rights of Aboriginal and Torres Strait Islander peoples**

### Sections 80-85 Conditions of use for declared beach areas

The right to freedom of movement and cultural rights of Aboriginal and Torres Strait Islanders peoples are engaged with respect to accessing and using declared beach areas. The Land Act provides for the Land Regulation to declare an area of seashore to be a declared beach area, which may be freely used by the public subject to any conditions of use stated in the Land Regulation. Sections 80 to 85 place restrictions on camping, lighting fires, littering, taking a dog without a leash, and accessing temporarily closed areas.

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

### **Recognition and equality before the law**

#### Sections 11 and 18: Purchase price of particular land determined in a way the Minister considers appropriate

##### *(a) Nature or aspect of the right that is limited*

Sections 11 and 18 of the Land Regulation engages section 15(3) of the *Human Rights Act 2019*, in particular the right that everyone is equal before the law. This includes administrative decisions that may be arbitrary and lead to inequitable treatment under the law.

These sections engage this right by allowing discretionary decision making by the Minister about the purchase price for certain state land, which can lead to inequitable disposal of state land as market value may not always be applied.

*(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 limit on this right is the discretion given to the Minister when deciding the purchase price of certain operational reserves and the granting of some unallocated state land. This discretion only applies to State Government and local government constructing authorities for operational reserves, and these constructing authorities and Economic Development Queensland for unallocated state land.

The purpose of limiting this human right through the application of ministerial discretion is required, although practically will only be applied in limited situations and with approval from the Treasurer, to allow consideration of community and state interests specific to the proposal by the state and local government entity and the land in question.

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

The discretionary decision relating to purchase price may limit the human right of equality before the law as not all purchase prices may be set at market value. The limitation however, means that these decisions can consider issues relevant to the proposal that are in the community and state's interest.

*(d) whether there are any less restrictive and reasonably available ways to achieve the purpose*

Decisions on purchase price for operational reserves and unallocated state land are made within the constraints of the objects of the Act. In addition, departmental operational policy guides this decision making, stipulating market value purchase prices where appropriate. The discretionary power, which allows the Minister to take into account issues of community or state interest, is exercised only in limited circumstances (stated under the Land Act sections 34IA and 122) and with the prior approval of the Treasurer.

*(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*

The need to include Ministerial discretion when deciding the purchase price for certain state land outweighs any potential impact on the right of equality before the law. The purpose of the limitation is to allow for the consideration of community and state interests specific to the existing/proposed use of the operational reserve or unallocated state land.

Given this, and that the discretion is considered within the constraints of the Land Act objectives, and guidance provided in the form of operational policy, the discretionary powers are reasonable, and justified, and are unlikely to lead to any significant adverse outcomes.

## **Property rights**

Section 67(2)(b): Action for non-payment of rent or penalty interest – cancellation of licence or permit to occupy

*(a) Nature or aspect of the right that is limited*

The cancellation of a licence or permit to occupy following non-payment of rent or penalty interest engages property rights under section 24(2) of the *Human Rights Act 2019*. Section 24(2) outlines that a person must not be arbitrarily deprived of their property. This right is engaged through depriving a licensee or permit holder the right to use state land to generate profits by cancelling a licence or permit to occupy.

*(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*

A licence or a permit to occupy does not create ownership in the land to which it applies, and must co-exist with the identified purpose of the land. These tenures however, allow use of state land by the licensee or permit holder for economic gain, for example through temporary grazing of cattle.

Section 67(2)(b) of the Land Regulation allows a designated officer to cancel a licence or permit to occupy where non-payment of rent or penalty interest has not been paid by the required date. The designated officer must issue a notice outlining the action that is being undertaken.

Although this approach engages property rights, the purpose of limiting property rights by depriving tenure holders' access to state land is to ensure a key objective of the Land Act is achieved. This key objective is to take a market approach to land dealings, adjusted when appropriate for community benefits. This is achieved through fair rental return derived from use and occupation, including the recovery of outstanding rent.

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

This provision, although limiting property rights by depriving an existing licensee or permit holder access to state land, achieves the purpose of ensuring a fair rental return is derived on state-owned land, through the ability to take effective compliance action where rent is not paid.

*(d) whether there are any less restrictive and reasonably available ways to achieve the purpose*

The cancellation of a licence or permit to occupy would not be the first course of action taken where rent has not been paid on time, as a number of other options are also available and would be followed first. These include extending the period for paying rent, and taking action to recover the rent or penalty interest owing in a court.

*(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*

This power is considered reasonable and balanced, placing public interest considerations, and the objectives of the Land Act, as the purpose for limiting property rights.

While the cancellation of a licence or permit to occupy does engage individual property rights, the execution of such a power would not be applied initially following non-payment. It would be a final option following the application of other approaches to assist the licensee or permit holder make payment.

Further, as licences and permits to occupy are not considered to create ownership in land under the Land Act, the limitation on property rights is considered reasonable when compared to the broader public interest in achieving a return on the use and occupation of state land.

### **Freedom of movement**

#### Sections 80-85: Conditions of use for declared beach areas

##### *a) the nature or aspect of the right that is limited*

Section 19 of the *Human Rights Act 2019* outlines that persons lawfully in Queensland have the right to move freely within this State. Conditions of use for declared beach areas, which are public spaces, do limit the ability of people to move through, remain in, or enter areas of public space.

##### *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 Land Regulation declares certain areas of seashore to be a declared beach area and applies suitable conditions of use. Such declared beach areas may be freely used by the public subject to any conditions of use. Sections 80 to 85 place use conditions, or restrictions, for declared beach areas generally. These include:

- No camping on declared beach area
- No lighting, keeping, or using a fire (unless authorised under an Act)
- No littering
- Restrain a dog by a lead or leash (other than particular prescribed dogs such as guide or assistance dogs)
- Providing for access to a declared beach area that has been temporarily closed to protect the health and safety of a person or property.

The purpose of restricting some uses and some access to declared beach areas is the safety of the public using these areas. The state government has a duty of care to ensure that public spaces are safe to use, and while this may place some restrictions on an individual's rights to move freely through these areas, public safety is of priority concern. This purpose does limit this human right as a result.

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

These limitations are considered an effective means of ensuring public safety within these publicly used areas. Therefore the limitation achieves the purpose of these provisions.

##### *d) whether there are any less restrictive and reasonably available ways to achieve the purpose*

As the State has a duty of care to the public accessing these areas, limiting access and use in the listed circumstances is considered the most reasonable approach to address public safety. These conditions relate to matters that are considered to cause the greatest amount of risk to the public. Alternative approaches such as voluntary compliance would be unlikely to be effective in achieving the desired outcome of ensuring public safety.

*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*

Given the overarching objective of ensuring public safety, the prescribed restrictions are considered reasonable, and necessary, despite limiting individual rights to move through, remain in or enter these public spaces.

### **Cultural rights of Aboriginal and Torres Strait Islander peoples**

#### Sections 80-85: Conditions of use for declared beach areas

*(a) Nature or aspect of the right that is limited*

This human right protects the right of people to live life as an Aboriginal person or Torres Strait Islander who is free to practice their culture. Aboriginal peoples and Torres Strait Islanders must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

Particular restrictions on the use of declared beach areas (e.g. lighting campfires or staying overnight in these areas) could have the effect of interfering with the cultural right of Aboriginal peoples and Torres Strait Islanders to practice their culture.

*(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*

As outlined under the freedom of movement right, the Land Regulation declares certain areas of seashore to be a declared beach area and applies conditions of use. Such declared beach areas may be freely used by the public subject to any conditions of use. Sections 80 to 85 place use conditions, or restrictions, for declared beach areas generally. These include:

- No camping on declared beach area
- No lighting, keeping, or using a fire (unless authorised under an Act)
- No littering
- Restrain a dog by a lead or leash (other than particular prescribed dogs such as guide or assistance dogs)
- Providing for access to a declared beach area that has been temporarily closed to protect the health and safety of a person or property.

The restrictive nature of these provisions does limit the cultural right of Aboriginal peoples and Torres Strait Islanders to practice their culture. The purpose of the limitation on use is to protect the broader public interest in ensuring people's safety. Protecting people's safety protects other rights such as the right to life and the right to security of the person.

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

It is considered that these restrictions on use are an effective means of promoting safe and responsible use of these areas. These use conditions are able to be changed (via a regulatory amendment) if they are not achieving their intended outcomes. This limitation however, is considered an effective means of ensuring public safety within these publicly used areas. Therefore the limitation achieves the purpose of these provisions.

(d) *whether there are any less restrictive and reasonably available ways to achieve the purpose*

As the State has a duty of care to the public accessing these areas, limiting access and use in the listed circumstances is considered the most reasonable approach to address public safety. These conditions relate to matters that are considered to cause the greatest amount of risk to the public. Alternative approaches such as voluntary compliance would be unlikely to be effective in achieving the desired outcome of ensuring public safety.

(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*

The restrictions on use are relatively limited in scope, and have the distinct purpose of protecting public safety. The broader public interest of both indigenous and non-indigenous people is promoted by this policy approach, which is considered a reasonable limitation on the human right of interfering with the cultural right of Aboriginal peoples and Torres Strait Islanders to practice their culture.

## **Conclusion**

I consider that the Land Regulation 2020 is compatible with the *Human Rights Act 2019* because it either does not limit human rights, or in instances where human rights may be limited, these limitations are reasonable and justified in a free and democratic society based on human dignity, equality and freedom.

**DR ANTHONY LYNHAM**  
MINISTER FOR NATURAL RESOURCES, MINES AND ENERGY

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