

Nature Conservation (Animals) 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 *Nature Conservation (Animals) Regulation 2020* made under the *Environmental Offsets Act 2014*, the *Marine Parks Act 2004*, the *Nature Conservation Act 1992* and the *State Penalties Enforcement Act 1999*.

In my opinion, the *Nature Conservation (Animals) Regulation 2020*, 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 *Nature Conservation (Animals) Regulation 2020* (the Animals Regulation) repeals the *Nature Conservation (Wildlife Management) Regulation 2006*, the *Nature Conservation (Wildlife) Regulation 2006*, and the *Nature Conservation (Administration) Regulation 2017*.

The Animals Regulation will become the single point of reference for all management and use of protected animals under the *Nature Conservation Act 1992* (NC Act). The Animals Regulation is a reform of the recreational and commercial wildlife licencing framework designed to:

- prevent the illegal trafficking and trade of protected animals through a robust licencing and record-keeping framework;
- to regulate the take of animals from the wild which threatens the long-term viability of wild populations; and
- update provisions to reduce unnecessary regulatory burden.

The Animals Regulation introduces a new licencing framework which replaces 11 licences with three licences to better reflect the current state of the wildlife keeping industry. Rather than considering the purpose of an activity (i.e. personal enjoyment or for business), the new licence system is based on the level of risk associated with keeping native animals. The licencing requirements will depend on the number and type of animals being kept, levels of breeding and trading undertaken, human health and safety risks and animal welfare matters.

The new framework reduces costs and regulatory burden for businesses and community members. The Animals Regulation improves administrative systems as it will be the single point of reference for the management and conservation of protected native animals. More broadly, the Animals Regulation will be the single point of reference for all animal provisions in the repealed regulations. This will simplify the legislative framework for all stakeholders.

The remainder of the Animals Regulation retains existing provisions and offences from the wildlife and wildlife management regulations. The Animals Regulation provides for the conservation of protected animals in Queensland by:

- defining conservation categories and species lists;
- establishing a licencing and permit framework;
- providing offences for an effective compliance framework;
- prescribing standards for effective record keeping; and
- including provisions for the conservation of marine mammals.

Schedule 8 includes consequential amendments to the *State Penalties Enforcement Regulation 2014*.

Human Rights Issues

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

The Animals Regulation and amendments to the State Penalties and Enforcement Regulation 2014 (SPE Regulation) have been assessed as having potential impacts on following human rights

1. Animals Regulation
 - Freedom of movement (section 19 of the *Human Rights Act 2019* (HR Act))
 - Property rights (section 24 of the HR Act)
 - Right to privacy and reputation (section 25 of the HR Act)
2. Offence provisions listed in the SPE Regulation as a Penalty Infringement Notice (PIN) offence as amended by the Animals Regulation
 - Property rights (section 24 of the HR Act)
 - Right to liberty and security of person (section 29 of the HR Act)
 - Right to a fair hearing (section 31 of the HR Act)
 - Rights in criminal proceedings (section 32 of the HR Act)

With reference to section 28 of the HR Act (Cultural rights (Aboriginal peoples and Torres Strait Islander peoples)), the Queensland Government is proud that First Nations peoples have continuing rights and responsibilities as the first peoples of Queensland, including traditional ownership and connection to land and waters. The NC Act provides for the protection of native animals and the Animals Regulation provides for the take, keep and use of native animals in a sustainable and equitable way. This sets a limit on the take of wild animals, achieving conservation of species and preventing illegal wildlife trade. The framework endeavours to ensure native animal populations thrive and remain viable in the wild, respecting First Nations peoples' ongoing connections with country.

The following provisions specifically acknowledge and protect cultural rights of First Nations peoples:

- Marine turtle or dugong taken under Aboriginal tradition or Island custom: section 32
- Keeping and using dead marine mammals: section 33
- Chief executive may declare special management areas: section 287
- Chief executive may declare special management marine mammal: section 294.

Section 32 of the Animals Regulation specifically authorises the take and use of turtles and dugongs in accordance with authorisations under the *Marine Park Act 2004* and the *Great Barrier Reef Marine Park Act 1975*. This ensures Aboriginal and Torres Strait Islander peoples are able to continue to practice traditional customs (without risking non-compliance with the Animals Regulation).

Section 33 allows Traditional Owners to take and use stranded marine mammals for communal purposes. Section 287 allows the Chief Executive for the NC Act to declare a special management area and section 280 allows declaration of a special management marine mammal. Special management areas recognise where activities in relation to using marine mammals can occur by First Nations peoples. Special management marine mammal provisions declare which mammals can be used by First Nations peoples. These sections work together to support cultural rights under section 28 of the HR Act.

Additionally, there are provisions that may engage cultural rights attributed to First Nations peoples, given the diversity of practices amongst different mobs in different regions of Queensland. The following provisions in the Animals Regulation may be seen to engage with cultural rights through contemplation of interactions with wild animals:

- Taking and keeping natural products: section 67 allows all people to take, keep and use a natural product (e.g. feather) other than for commercial purposes.
- Taking, keeping or use of a stranded marine mammal that is dead or dies: section 317 allows the Chief Executive to allow the take and use of a dead marine mammal for research purposes.
- Feeding native animals in the wild: section 333 states it is an offence to feed an animal in the wild in a way that would pose a threat to public safety or health.
- Disturbing particular native animals in the wild: section 334 states it is an offence to disturb a native animal, such as a dingo in Fraser Island.
- Tampering with animal breeding place: section 335 states it is an offence to tamper with an animal breeding place, such as a bird's nest.
- Abandoning and releasing animals: section 336 states it is an offence to release an animal in to the wild.

In some circumstances there may be valid cultural reasons for sections 67, 317, 333, 334, 335 and 336 not applying. Authorised officers undergo rigorous training to be able to assess and differentiate cultural practice from any intentional breaches of the Animals Regulation. Application of the regulation by trained officers ensures appropriate responses where there is a demonstrable cultural justification for a prima facie perceived breach of the Animals Regulation, where in fact cultural practices allow for variation in response.

Conservation officers are aware of the interactions the regulations may have with First Nations peoples, and are mindful prior to enforcement that information is gathered in each circumstance. An example of effective enforcement measures taken by conservation officers is traditional hunting and fishing in Moreton Bay by Quandamooka peoples. Conservation officers are trained to assess circumstances of fishing and hunting and accurately determine instances of traditional and cultural practice.

The enforcement of the regulation by trained officers sufficiently protects, upholds and recognises cultural practices and traditions exercised by First Nations peoples. Further, the Animals Regulation protects Country for future generations.

Therefore, the Animals Regulation affords specific protections where there are known cultural customs, and application of the regulation does not infringe on the cultural rights of First Nations peoples.

The Human Rights impact assessment of the Animals Regulation and SPE Regulation provided below outlines the relevant sections that have potential impacts, and discusses limitation considerations.

1. Animals Regulation: Consideration of reasonable limitations on human rights (section 13 HR Act)

Freedom of movement (section 19 of the HR Act)

(a) the nature of the right

Section 19 of the HR Act protects freedom of movement, preserving the rights of all persons to move freely within Queensland, enter and leave it, and choose where to live.

The Animals Regulation prescribes that a boat (sections 300, 302, 304, 305, 306, 307, 308, 309), vessel (sections 281, 283, 300 and 310) or aircraft (sections 281, 283, 300 and 310) must be outside the prescribed distance from a marine mammal. Section 301 of the regulation also prescribes speed limits (stated speed limits depending on location and zone) for boats in the vicinity of a marine mammal. Section 313 restricts a person's ability to enter the water within the prescribed distance of a marine mammal. Sections 314 and 315 also prohibit interactions, such as entering a no approach zone in a special management area (section 314) or feeding a marine mammal (section 315).

'No approach zone' and 'Prescribed distance' parameters exist and vary according to the vessel or craft that surrounds the animal, and whether the animal is a marine mammal or special management marine mammal. The distances and zones are based on scientific evidence and national guidelines for the protection of marine mammals. For example, for whales the prescribed distance is generally 300m, while for dolphins it is generally 150m.

These sections represent a limitation on a person's freedom to move within Queensland waters and include a penalty for non-compliance.

(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

Marine mammals are iconic species in relation to human connectivity to nature. Queensland East Coast Whales have been brought back from the brink of extinction, with humpback whales currently listed as 'vulnerable'. Whales are also a keystone species. The conservation of marine mammals so populations thrive and migration paths are protected, achieves the conservation objectives of the NC Act.

The purpose of limitations to freedom of movement is to ensure public safety and to promote the welfare of marine mammals. The distances allow people to witness iconic species and therefore engage with nature but not place citizens in at any physical risk while also

maintaining and balancing conservation objectives. This objective is consistent with a free and democratic society based on human dignity, equality and freedom.

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

By prescribing that appropriate distances are maintained between the marine mammals and human activity (such as the use of speed boats or restrictions on swimming with the animals) the regulation provides for the protection of the mammals from interference that may cause trauma or injury to migrating species or may cause health and safety risks to the public. Limiting the distance between people and marine mammals allows the mammals to migrate while minimising safety risks from dangerous encounters with vessels.

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

This approach is considered the least restrictive approach for protecting both people and marine mammals. The regulatory framework is supported by an enhanced education and awareness program which, when combined with regulatory measures achieves the purpose of conservation, animal welfare and public safety.

In addition, the provisions have been informed by scientific research and balance an individual's right to enter water and interact with the environment, without inhibiting their own safety or an animal's welfare. 'No approach zone' and 'Prescribed distance' parameters exist and vary according to the vessel or craft that surrounds the animal, and whether the animal is a marine mammal or special management marine mammal. The restrictions on approach distances to the animal are adequate to protect the animal without being unduly restrictive to the public.

These provisions are consistent with the National Guidelines for Whale and Dolphin Watching and the relevant provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (Cwth). Other States also have comparable and consistent regulatory frameworks.

(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

On balance, it is considered that the limitation on freedom of movement to remain within prescribed distances from a marine mammal and travel at prescribed speed is outweighed by the benefit of ensuring public safety and the protection of marine mammals.

Property rights (section 24 of the HR Act)

(a) the nature of the right

Section 24 of the HR Act protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property. This right does not provide a right to compensation.

The issuing of an animal authority (licences and permits in Chapter 4 of the Animals Regulation) to take or keep a native animal results in that animal becoming personal property. Provisions in the Animals Regulation which manage animal authorities and thereby limit property rights in relation to animals concern:

- Amendment, suspension or cancellation of animal authorities: sections 272, 273, 274, 275 and 313
- Dealing with excess animals: sections 96, 109 and 124.

In addition, sections 384, 385, 386, 387, 388, 389, 390, 391 and 392 of the Animals Regulation authorises conservation officers to seize property (cages, enclosures, animals, traps, etc.), limiting property rights in prescribed circumstances.

(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

Protected animals become personal property, rather than the property of the State, when they are taken or kept under an animal authority. When this has occurred, the Animals Regulation limits property rights by impacting a person's access to kept animals if a licence is amended, suspended or cancelled.

Animal authorities provide limits on the number of animals which can be kept, and whether or not authority holders can breed their animals. Non-compliance with these conditions may lead to the following actions:

- the licence holder may choose to apply for the appropriate licence type to keep and breed excess animals; or
- the licence holder may choose to humanely euthanise excess animals (or destroy unhatched eggs); or
- the Chief Executive of the department may deal with the animal or direct a person to deal with the animal in a particular way (e.g. sell or give away the animal).

There may be a perceived limitation on the property rights depending on the action chosen by the licence holder or direction given by the Chief Executive, as the provisions limit the right to discretionary interaction with the offspring.

Property subject to seizure may also restrict a person's access to or interactions with their property, which may include animals, vehicles, animal enclosures or places of residence. Seizure powers do not affect a person's ownership of seized property, just a person's access to it. Provisions protect natural justice principles, requiring the department to notify the property owner of their seized property and allowing persons to have their property returned following due process.

The purpose of providing the ability to amend, suspend or cancel an authority is to ensure the department has the tools to monitor and protect the safety of animal owners, native animals, and the general public while achieving the conservation objective of the NC Act. The Animals Regulation is clear on the grounds where these tools are to be used. For example, if a holder is in breach of an animal husbandry condition of an authority (providing animal with adequate food and shelter), the authorisation may be suspended until the non-compliance matter is resolved. In the meantime, access to the animal (property) may be denied, ensuring

the animal's health is protected. The Animals Regulation provides for natural justice prior to action being taken.

The potential limitation on property rights relating to animals that were bred without authorisation is required to enable the department to appropriately monitor wildlife trade and identify illegal activities.

The ability to restrict access to or seize property enables investigations of, and immediate response to, unlawful take, keep or use of native animals. For example, to ensure public safety, seizure powers may be used to seize dangerous snakes not appropriately kept or secured, given the public safety and health risks posed by an unsecured dangerous snake to those within and beyond the property.

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

The capacity to amend, suspend and/or cancel animal authorities offers proportionate responses to non-compliance with conditions of the authorities. This achieves the purpose of ensuring the safety of animal owners, native animals, and the general public, while achieving the conservation objective of the NC Act.

With regard to limiting discretionary interaction with animal offspring (from a breeding event resulting in excess animal holdings), sections 96, 109 and 124 provides options to the person to keep (under an appropriate authority), sell, give away, or surrender the animal. By providing these options, there are limited circumstances in which property rights may be impacted, thereby making it the least restrictive and most reasonably available way to achieve the purpose of limiting illegal wildlife trade. The limitation allows the department to be aware of, and to record action taken in relation to the offspring (such as sell, give away or euthanise animals as options for dealing with excess animals). Such action is undertaken by a designated Conservation Officer and supports a framework that prevents illegal wildlife trade.

In regards to the limitations on property rights due to seizure powers, affording powers to designated Conservation Officers to respond in a timely and effective way delivers on the purpose of ensuring the safety and well-being of native animals is protected, and public safety risks and illegal wildlife trade are appropriately managed.

Overall, the limitations on property rights are appropriate and proportional to safeguarding public safety and animal welfare, and achieving the effective management and enforcement of wildlife conservation objectives of the NC Act.

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

These provisions are considered the least restrictive approach for managing and enforcing compliance matters. Conservation Officers and police officers are trained to recognise situations that require seizure where seizure would serve investigation or penalisation and therefore do not exercise these powers arbitrarily or in the absence of trained judgement.

Removing these existing tools would result in the inability to effectively manage licences and effectively respond to incidents of non-compliance.

(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

On balance, the ability to amend, suspend, or cancel an authority to ensure wildlife conservation, public and wildlife safety is a justifiable limitation on the property rights. The restrictions on property rights to manage the unauthorised breeding of animals and during compliance procedures are also justifiable to manage wildlife trade activities and achieve the conservation objectives of the NC Act.

Privacy and reputation (section 25 of the HR Act)

(a) the nature of the right

Section 25 of the HR Act protects the individual from arbitrary interferences with their privacy, family, home and correspondence (written and verbal) and from unlawful attacks on their reputation.

The Animals Regulation interacts with privacy rights in circumstances where personal information (name and address) is collected during an animal authority being issued, and that information being displayed in the authority (section 249). These details may be used by the Chief Executive if additional information is required prior to deciding on the application for an authority (section 242). Name and address are also required when an authority is updated (section 80), when return of operations are required (sections 99, 112, 126, 136, 142, 160, 172, 179, 185, 199, 228, 341, 348 and 349) and when records are required (sections 99, 111, 125, 135, 141, 148, 159, 198, 233, 341, 342, 346 and 347). Where an animal is displayed, the authority must be presented.

The Animals Regulation protects privacy rights by ensuring name and address can be suppressed if an animal is displayed at a place other than the licensed premises (section 84).

Where an animal is sold or given away, a written statement must be accompanied with the animal including name and address of both buyer and seller (section 329).

When information (records and returns of operation) is provided to the department, the information is used to assess a person's capacity to safely interact with and care for native animals.

(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 purpose of the regulation authorising the request of private information is to ensure the department can correctly identify who licences will be issued to, and where native animals will be kept. This information is used to ensure an assessment can be made to previous unlawful activities relevant to dealings with animals, ensuring licences are not issued to unsuitable applicants, and also ensuring compliance activities can occur. Private information collected by the department under these provisions is collected, used and stored in accordance with the *Information Privacy Act 2009*.

The objective of collecting personal information is to ensure that conservation values are being upheld in dealings with protected animals, which reinforces a strong licencing framework and maintains public safety and animal welfare. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The relationship between the limitation on privacy rights and the purpose is to support the department's compliance and enforcement program in managing risks to illegal wildlife trade. That is, by ensuring the department has the ability to identify licence holders and their location, monitoring of the wildlife trade market can take place.

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

These provisions are considered the least restrictive approach for managing and enforcing compliance matters. Personal information is required for the department to issue a licence to an individual who can be identified and to record the address associated with the wildlife licence for compliance activities to be effective. If an animal is displayed at a place other than the licensed premises, the provisions provide for the person to obscure any personal identifying information, such as a person's address, to protect their private information.

Information collected in the department's licencing system is kept confidential in accordance with privacy laws. Information is only shared with government enforcement agencies as part of criminal investigation procedures. In the absence of this private information being held by the department to monitor interactions with protected animals, there are risks of illegal wildlife trade and biosecurity threats to people.

(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 limitation on privacy rights is balanced with the necessity for maintaining public safety and animal welfare with respect to licencing, and supporting the conservation objectives of the NC Act.

2. Offence provisions listed in the SPE Regulation as a PIN offence as amended by the Animals Regulation: Consideration of reasonable limitations on human rights (section 13 HR Act)

Property rights (section 24 of the HR Act)

(a) the nature of the right

Section 24 of the HR Act protects the right of all persons to own property (alone or with others) and provides that people have a right to not arbitrarily be deprived of their property. This right does not provide a right to compensation.

The SPE Regulation Amendments limit the right to property to the extent that a PIN may be prescribed and failure to pay a PIN may result in enforcement action relating to an unpaid fine. This can include seizure of a person's property or vehicle immobilisation as provided for under the SPE Act, thus limiting a person's right to property by inhibiting their capacity to trade the property, and/or restrict their access to and interactions with property.

(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 amendments to SPER will allow PINs attributable to a range of offences throughout the regulation to be enforced under the SPE Act.

This enforcement may in specific circumstances limit the right to property as described above. The purpose of these amendments is to ensure there is an effective system for issuing and enforcing fines for unlawful direct and indirect interactions or dealings with animals. This will ensure that there continues to be a proportionate and effective enforcement response to the variety of offences within the Animals Regulation and will encourage compliance with the law, minimising illegal wildlife trade risks. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The relationship between the purpose of the Animals Regulation offences and the potential limitation is to provide an efficient system for issuing and enforcing proportionate fines for the updated offences. This will encourage individuals to comply with the law by directly and indirectly interacting or dealing with animals lawfully and in accordance with conservation values, maintaining their safety and the safety of the public.

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

It is considered that there is no less restrictive and reasonably available way to achieve the purpose of safeguarding conservation and animal welfare and ensuring there is an efficient system for issuing and enforcing fines relating to the related offences, other than by prescribing the offences to be infringement notice offences under the SPER.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure seizure and sale of property or vehicle immobilisation would only occur infrequently for the offences. Importantly, the threshold amount which must be owed to the State Penalties and Enforcement Registry (SPER) before vehicle immobilisation can occur is prescribed under the SPE Act and currently set at \$5,000. In terms of seizure and sale, the SPER only undertakes this activity where it has registered an interest over the property to be seized. The SPE Act requires that the total amount owed by a debtor must be more than \$500 before the SPER can register an interest over property.

Other protections include that:

- a person who considers a fine should not have been issued may elect to have the matter heard by a court instead of paying the fine;

- if a fine is not paid within the specified timeframe and the infringement notice is registered with the SPER for enforcement action, the person may apply to pay their debt by instalments; and
- individuals who are experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

Authorised persons appointed to issue fines also receive training to ensure that fines are only issued in appropriate cases and circumstances and that it is made clear to the person receiving the fine that they can challenge the fine in court. The fine amount has been set at up to 10 per cent of the maximum penalty which is likely less than a court would impose but still at an amount to act as a disincentive for offending behaviour.

(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

Unlawful dealings with animals can create significant impacts on their conservation status, the function of ecosystems, animal safety and public safety. Impacts arising from unlawful interactions are diverse across the offences but may include pest introduction or invasion, physical and psychological harm to animals and people, illegal wildlife trade and decreased revenue from animal authorities through fees.

While there are material limitations on property rights through enforcement of the Animals Regulation via SPER, these limitations are not arbitrary and are not enforced without consideration of surrounding factual circumstances and not exercised without training and legislated authority. To that end, the benefit of the provisions in achieving the objectives nature conservation, animal welfare and maintaining a strong licencing framework which regulate wildlife trade outweighs any limitation on the right to property.

Right to liberty and security of person (section 29 *Human Rights Act 2019*)

(a) the nature of the right

Section 29 of the HR Act provides that every person has the right to liberty and security, including not being arbitrarily arrested or detained.

The Animals Regulation may limit the right to liberty and security of person to the extent that it prescribes infringement notice offences and failure to pay a penalty infringement fine may result in enforcement action under the SPE Act, which includes the issue of an arrest and imprisonment warrant by the SPER. Importantly, the SPER Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default.

(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 ability to issue a PIN for listed offences in the Animals Regulation allows enforcement and compliance actions that are proportionate to the offending behaviours which may potentially limit the right to liberty and security through arrest and imprisonment as described

above. The purpose of these amendments is to ensure the appropriate conservation and management of native animals, and that there is an effective system for issuing and enforcing fines to persons who commit PIN offences, which will encourage compliance with the law. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The relationship between the purpose of the PIN offences and the potential limitation is the benefit to the courts system by ensuring there is an efficient system for issuing and enforcing penalties outside of the court as well as maintaining conservation objectives. The limitation through enforcement also acts as a deterrent to both the offending party and other people considering offending in the same way.

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

As discussed above, there are a number of protections built into the fine enforcement system under the SPE Act to ensure that there are options available to assist persons who are experiencing hardship and unable to pay their fines. In addition, the SPER Charter ensures the powers of the SPER to issue arrest and imprisonment warrants are rarely used in practice.

While there may be less restrictive options, it is considered that they would not promote compliance with the licencing framework and uphold conservation objectives and animal protection to the same extent. For example, an option which could potentially be considered less restrictive is to prosecute these offences through a court. Under the *Penalties and Sentences Act 1992*, a court is required to take into account the financial circumstances of the offender and the nature of the burden that payment of the fine will have on the offender before imposing a fine. However, the burden of prosecuting each of these matters in a court means that this option is not feasible for each PIN, but a person may make that election if they wish.

Therefore, there is no less restrictive and reasonably available way to achieve the purpose of the regulation other than through the issuing of fines for certain offences.

(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

A person has several options in relation to an infringement notice fine. For example, the person may pay the fine in full, elect for a matter in relation to an infringement notice offence to be heard by a court or apply for approval to pay the fine by instalments. If the person does not act in relation to a fine, the SPER may take further enforcement action relating to the unpaid amount under the SPE Act. This may, as a last resort, result in the SPER issuing an arrest and imprisonment warrant under the SPE Act. The SPER Charter makes it clear that the use of other enforcement actions for unpaid fines is to be preferred over arrest and imprisonment. Other enforcement actions may include, among others, suspension of an individual's driver licence, seizure and sale of property and vehicle immobilisation.

Having regard to the nature and extent of the potential limitation on the right to liberty and security of person, the importance of implementing effective enforcement responses to offences that jeopardise the conservation objectives of the Animals Regulation are proportionate to the risk created by the offending behaviours.

Fair hearing and rights in criminal proceedings (section 31 and 32 *Human Rights Act 2019*)

(a) the nature of the right

Section 31 of the Human Rights Act provides that a person has the right to a fair and public hearing. Section 32 of the Human Rights Act protects the right to be presumed innocent until proven guilty and identifies minimum guarantees for which the person charged is entitled, including to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

A person does not have to attend court in relation to a PIN but may elect to do so if they believe the PIN has been improperly issued or they are unable to pay the PIN and wish to negotiate a lesser fine. While the SPE Regulation Amendments do not make any explicit limitation on the rights to a fair hearing and rights in criminal proceedings, some people may encounter barriers to the court process, including but not limited to disability, language and financial standing. Further disincentives include the time, effort and stress involved in court processes and the disincentive of the offender levy which will be imposed in any case where a court imposes a sentence, and this is in addition to any court-imposed fine. Therefore, there is an arguable link and possible limitation imposed by the SPE Regulation Amendments where the PIN is taken to court.

(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 purpose of the SPE Regulation Amendments is to implement effective enforcement responses that are proportionate to the risk created by the offending behaviour and help manage demand in the courts in Queensland while maintaining the right to a fair hearing and a person's rights in criminal proceedings.

The right to a fair hearing and rights in criminal proceedings are likely to have particular significance for certain individuals. For example, individuals may have a reasonable excuse for non-compliance including because they have trouble understanding the requirements of the Animals Regulation in dealing with protected animals. This is particularly relevant for persons for whom English is their second language (including immigrants and tourists) or persons who suffer from disadvantage (including intellectual disabilities or mental health conditions). In addition, some persons may not have access to identity documents, including persons in crisis or suffering homelessness. Further, some people may not have the financial capacity to pay a PIN and are therefore faced with no choice other than negotiation firstly with the authorised officer and then possibly the court for a less burdensome penalty. These are matters that would be taken into account by a court before any penalty is imposed on an individual.

Prescribing an offence under the SPE Act enables a fine to be issued to an alleged offender by an authorised officer without a charge being decided by an independent court after a fair and public hearing, and without the person having the opportunity to exercise their rights in

criminal proceedings. It is possible that such a fine may be imposed where the alleged offender has a reasonable excuse for their offending behaviour or even did not commit the offence that is alleged. In addition, it is possible that the particular circumstances of the offending behaviour, or the financial circumstances of the offender, or the burden which payment of the fine would impose on the offender could mean that if the matter was heard by a court a lesser fine than the amount prescribed under the SPE Act would be imposed.

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

The amendments to SPER will ensure compliance with the new, strong licencing framework, protection of animal welfare and maintenance of conservation objectives by ensuring there is an efficient system for issuing and enforcing fines, which encourages compliance with the law.

The relationship between the purpose of the Animals Regulation offences and the potential limitation is the regulatory benefit to the courts system as well as retaining the enforcement abilities with the requirements under the NC Act.

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

There are various protections built into the fine enforcement system under the SPE Act, including the ability for persons to elect to have the matter heard in court at various stages of the process. In addition, the SPER enforcement system includes a number of protections to ensure that there are supports and options available to assist persons who are experiencing hardship and unable to pay their fines.

Further, authorised officers are provided with extensive training by the department in respect of issuing fines for animal offences in appropriate circumstances, including guidelines which provide information and guidance for authorised persons in respect of reasonable excuses for a person's failure to comply with the Animals Regulation.

There is no less restrictive and reasonably available way to uphold the purpose and requirements of the Animals Regulation.

(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

On balance, it is considered that the importance of implementing effective enforcement responses that are proportionate to the risk created by the offending behaviour and help manage demand in the criminal courts in Queensland outweighs any potential limitations imposed on the right to a fair hearing or rights in criminal proceedings. Any potential limitation would not represent a complete restriction on an individual's right to a fair hearing or rights in criminal proceedings as individuals retain the capacity to elect to have the matter heard in court instead of paying the penalty amount. Further, there are various protections under the SPE Act which include the option for persons to elect to have their matter heard in court at various stages of the process. In particular, section 15 of the SPE Act requires that all penalty infringement notices must indicate that the alleged offender may elect to have the

matter of the offence decided by a court, which promotes awareness that persons may elect for the matter of the offence to be heard by a court at the time the person is issued with an infringement notice fine. In addition, there are various protections to assist persons who are unable to pay their fines.

Having regard to the nature and extent of the potential limitation on the right to a fair hearing and rights in criminal proceedings, the rights are protected by creating an infringeable offence with the option to challenge the matter in court and that any remaining potential limitation is reasonable considering the importance of implementing effective enforcement responses to offences that jeopardise the conservation objectives of the Animals Regulation.

Consequential amendments to the *Environmental Offsets Act 2014*

The Animals Regulation has resulted in administrative changes to subordinate legislation under the *Environmental Offsets Act 2014*. These amendments do not engage human rights as they are changes to references and provide consistency with species conservation status listings under the NC Act.

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

Based on the human rights analysis above, the benefits gained by fulfilling the purpose of the encroachment of the human rights outweigh the harm caused to the human right.

Conclusion

I consider that the *Nature Conservation (Animals Regulation) 2020* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE LEEANNE ENOCH MP
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