

Nature Conservation (Protected Areas Management) and Other Legislation 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, Leanne 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 (Protected Areas Management) and Other Legislation Amendment Regulation 2020* made under the *Nature Conservation Act 1992*, the *Marine Parks Act 2004*, the *Forestry Act 1959*, the *Recreation Areas Management Act 2006* and the *State Penalties Enforcement Act 1999*.

In my opinion, the *Nature Conservation (Protected Areas Management) and Other Legislation Amendment 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 (Protected Areas Management) and Other Legislation Amendment Regulation 2020* (the Amendment Regulation) contains consequential amendments arising from the Department of Environment and Science's (DES) statutory review of the protected wildlife framework. This review was undertaken ahead of the impending expiry of the *Nature Conservation (Wildlife Management) Regulation 2006* (the Wildlife Management Regulation).

As an outcome of the review, two new regulations are being made to replace the Wildlife Management Regulation; the *Nature Conservation (Animals) Regulation 2020* and the *Nature Conservation (Plants) Regulation 2020*. The review also results in the repeal of the *Nature Conservation (Administration) Regulation 2017* (the Administration Regulation), which contained relevant administrative provisions that applied to management of protected areas and protected wildlife. These administrative provisions are now proposed to be included in each of the relevant regulations under the new framework, meaning a common administrative regulation is no longer necessary.

Consequently, the Amendment Regulation transfers relevant administrative provisions relating to protected area management from the Administration Regulation into the *Nature Conservation (Protected Areas Management) Regulation 2017* (PAM Regulation). There is no change to policy intent, however, some changes have been made to comply with contemporary drafting practices.

The Amendment Regulation makes consequential amendments to the *Marine Parks Regulation 2017* to remove a reference to the Administration Regulation.

The Amendment Regulation also amends the *State Penalties Enforcement Regulation 2014* (SPE Regulation) under the *State Penalties Enforcement Act 1999* (SPE Act) to update section numbers for offence provisions changed in the PAM Regulation by the Amendment Regulation as a consequence of the repeal of the Administration Regulation.

Following the Amendment Regulation, the PAM Regulation will become the single regulation containing all provisions relevant to the management and administration of protected areas under the *Nature Conservation Act 1992* (NC Act).

Human Rights Issues

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

This Human Rights impact assessment outlines the interaction of the *Human Rights Act 2019* (HR Act) with the Amendment Regulation, including amendments to the PAM Regulation and the associated amendments to the SPE Regulation. The minor amendment to the *Marine Parks Regulation 2017* does not engage any human rights.

1. The amendments to the PAM Regulation engage with the following human rights:
 - Property rights (section 24 of the HR Act)
 - Right to privacy and reputation (section 25 of the HR Act)
 - Cultural rights (Aboriginal peoples and Torres Strait Islander peoples) (section 28 of the HR Act)

- **Property rights (section 24 of the HR Act)**

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.

While the grant of a protected area authority may have some commercial and financial implications for the applicant, these authorities are not formal property rights. Clause 24, sections 71BF-71BR (ADR57-ADR68) and section 71DL-71DP (ADR 106-110) provide for the amendment, suspension or cancellation of authorities.

Additionally while the grant of an authority allows for access to the protected area property, the authority does not transfer property rights to the authority holder, therefore any amendment, suspension or cancellation provisions do not result in the holders being deprived of property.

The existing PAM Regulation allows for the seizure of items only in prescribed circumstances, such as where a conservation officer reasonably believes that unlawful conduct or unlawful access is occurring or that the items are in the protected area for the purposes of unlawful taking, keeping, use or interference with natural or cultural resources. Conservation officers may also seize items reasonably believed to be abandoned within the protected area.

Property subject to seizure under the existing PAM Regulation may restrict a person's access to or interactions with their property, which may include vehicles, aircraft, boats, recreational craft, stock, appliances or structures. The seizure is not arbitrary and is restricted to the specific

circumstances listed in that regulation. The Amendment Regulation does not amend these seizure powers.

Clause 31 of the Amendment Regulation authorises the way in which conservation officers may deal with seized items. The ability to restrict access to, or seize property enables immediate response to, and investigation of, unlawful conduct on a protected area, particularly in relation to items that pose a threat to the safety of humans or wildlife, such as traps, poisons and explosives. While seized dangerous items must be destroyed for public safety (Section 159AD-ADR124), the department is unable to retain other seized items indefinitely, and the process for dealing with such items is clearly outlined in clause 31.

Clause 31 (section 159AF-ADR126) protects natural justice principles, requiring the department to notify the property owner of the seizure of their property, and where the owner is not known requires publication of a notice in a newspaper or fixed at the location where the item was seized. Section 159AG-ADR127 outlines the requirements of a return of the seized items once an owner is identified.

The circumstances of dealing with seized items authorised under this Amendment Regulation are not arbitrary and are only undertaken as a last resort where required for safety purposes and where the owner of seized items cannot be located.

- **Right to privacy and reputation (section 25 of the HR Act)**

Section 25 of the HR Act protects the individual from unlawful or arbitrary interference with their privacy, family, home and correspondence and from unlawful attacks on their reputation. This section is modelled on Article 17 of the *International Covenant on Civil and Political Rights*.

The Amendment Regulation interacts with privacy rights in circumstances where personal information (i.e. name and address) is collected as part of a protected area authority application (Clause 24, sections include 71AB ADR23; 71AR-ADR53; 71AJ-ADR26). These details are used by the chief executive prior to deciding on the application for a protected area authority, such as to formally identify an applicant and determine their suitability for grant of the authority. In these cases, a person is voluntarily seeking an agreement or authority and the collection of information is part of that voluntary action. An individual is not being forced to provide information as they are not being forced to apply for an authority.

Sections 71CM-ADR70 and 71DT ADR114 also requires the granted authority or agreement to be made available for inspection if requested by a trained authorised officer when undertaking compliance activities on a protected area, in order to ensure the activities being undertaken are lawfully authorised.

Private information collected, used and stored by the department is subject to strict control principles and practices, and complies with the *Information Privacy Act 2009*. The information is not made publically available. The collection of this information is not unlawful nor arbitrary and therefore there is not considered a limitation of privacy rights.

- **Cultural rights (Aboriginal peoples and Torres Strait Islander peoples) (section 28 of the HR Act)**

Section 28 of the HR Act protects cultural rights attributed to individual and communities of Aboriginal peoples and Torres Strait Islander peoples. The right extends to the enjoyment, maintenance, control, protection and development of, but not limited to, identity, heritage, practice, custom, teachings and observances. The right also provides for Aboriginal peoples and Torres Strait Islander peoples to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

This section is modelled on Article 27 of the *International Covenant on Civil and Political Rights* and Articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples.

The Amendment Regulation affords specific protections for the cultural rights of Aboriginal people and Torres Strait Islander people where there are management instruments in place on Aboriginal land protected areas, including seeking the written consent of the Indigenous landholder for the grant of the protected area authority (Clause 14, sections 19AA, 19AB and 19AC (ADR26, 34, 35)).

The Amendment Regulation also provides for the permitting framework for activities on protected areas, which aims to ensure that any such use is appropriate and sustainable. The objective of the permitting framework is to ensure conservation of the cultural or natural resources of a protected area. The permitting assessment process contains consideration of the impact of a proposal on both natural and cultural resources (Clause 24, section 71AJ-ADR26). Departmental officers follow the Native Title work procedures in assessing protected area authority applications to ensure appropriate consideration of native title and to satisfy the requirements of the Commonwealth *Native Title Act 1993*. Through this process, Traditional Owners and other First Nations people with direct interests in the area are consulted on permit and authority applications. This permitting system therefore supports First Nations People's cultural rights to protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

2. The amendments to the SPE Regulation contained within the Amendment Regulation may engage with the following human rights

- **Property rights (section 24 of the HR Act)**

Part 6 of the Amendment Regulation relates to the SPE Regulation, which engages with the right to property to the extent that a failure to pay a Penalty Infringement Notice (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. However, this Amendment Regulation makes no changes of substance to the SPE Regulation, and merely involves updating legislative section references. There is no offence listed for a PIN and thus no limitation placed by the Amendment Regulation on property rights.

- **Right to liberty and security of person (section 29 of the HR Act)**

Part 6 of the Amendment Regulation relates to amendments to the SPE Regulation. The SPE Regulation may engage the right to liberty and security of a 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. However, this Amendment Regulation makes no changes of substance to the SPE Regulation, and merely involves updating legislative section references. Any enforcement action would not be arbitrary or unlawful. There is no limitation placed by the Amendment Regulation on the right to liberty and security of person.

- **Right to a fair hearing (section 31 of the HR Act) and Rights in criminal proceedings (section 32 of the HR Act)**

Section 31 of the HR Act provides that a person has the right to a fair and public hearing. Section 32 of the HR 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.

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. However, under the SPE regulation, 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.

Part 6 of the Amendment Regulation relates to amendments to the SPE Regulation. This Amendment Regulation makes no changes of substance to the SPE Regulation, and merely involves updating legislative section references. There is no limitation placed by the Amendment Regulation on the right to a fair hearing or rights in criminal proceedings.

Conclusion

I consider that the *Nature Conservation (Protected Areas Management) and Other Legislation Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because while it may limit, restrict or interfere with human rights, 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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