

Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 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) Amendment Regulation (No. 2) 2020* made under the *Nature Conservation Act 1992* (the NC Act) .

In my opinion, the *Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 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) Amendment Regulation (No. 2) 2020* (the Amendment Regulation) is made under the *Nature Conservation Act 1992*.

The authorising law for the regulation are:

- Section 29 of the NC Act prescribes that a regulation may dedicate a specified area of State land as a national park or conservation park.
- Section 46 of the NC Act prescribes that a regulation may declare a specified area of State land, or the area the subject of a conservation agreement, as a nature refuge.
- Section 48 of the NC Act prescribes that the State and the landholders bound by a conservation agreement for a nature refuge or coordinated conservation area (the *earlier agreement*) may enter into another conservation agreement for the nature refuge or coordinated conservation area (the *later agreement*) that varies, or terminates and replaces, the earlier agreement.
- Section 64 of the NC Act prescribes that the Governor in Council may, by regulation, assign a name to, or alter the name of, a protected area or aggregation of protected areas.
- Section 175 of the NC Act prescribes that the Governor in Council may make regulations under this Act.

The purpose of the *Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2020* (the Amendment Regulation) is to amend the protected area estate and make additions to several classes of protected areas. The Amendment Regulation amends the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) and involves consequential amendments of a machinery nature that are consistent with the objectives of the NC Act. A separate assessment process considers the NC Act and the Regulation as compatible with the *Human Rights Act 2019*.

The amendments include:

- increase the area of one existing national park and one existing conservation park;
- redescribe one national park and one conservation park after completion of up to date plans; and
- alter the name of and redescribe one nature refuge due to a replacement conservation agreement and the completion of a new plan.

The dedication of new or amended protected areas is machinery in nature. The process of selecting and approving new protected areas involves the relinquishing of rights or interests of interested parties such as other State departments, resource companies or lease holders. This has been completed for all proposed amendments to national parks and conservation parks therefore human rights issues have been taken into account during this process.

New nature refuges are declared over privately owned freehold, leasehold or reserve land. To establish the nature refuge a voluntary conservation agreement is entered into after negotiations with the landholder. The legislation framework adhered to in declaring these areas includes specifying the proposed management intent for the new area and providing written notice to, and, where required, receiving submissions from, all interested parties affected by the proposal.

Human Rights Issues

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

Section 19– Freedom of movement

The core aim of dedicating new or amending existing national parks or conservation parks under the Regulation is to permanently preserve, to the greatest extent possible, the area's natural condition, to protect the area's cultural resources and values and provide for ecologically sustainable activities and ecotourism. Access to areas may be restricted due to cultural or natural resources or values that are sensitive or require rehabilitation. Biosecurity threats or disaster management may also may also cause limitations on freedom of movement.

However, the freedom of movement limitations are proportionate with the benefits provided to the general public, in creating new publically accessible areas such as national parks. The limitations are also consistent with not imposing positive obligations on the State, whereby the State would not be required to provide absolute freedom of movement on protected area estate.

Nature refuges typically occur on private land, and as such, landholders of private land have the right to decide who can enter their land (other than other lawful entry). The declaration of the nature refuge does not change the landholder's right to allow access to the property.

Section 24 – Property rights

Declaration of a new or extension to a nature refuge may engage a person's property rights. However, as the land remains in the private ownership of the landholder, and the decision whether to declare their land as a nature refuge is voluntary, there is no limitation or restriction of this right.

Section 25– Privacy and reputation

The negotiation of a nature refuge requires the collection of data and personal information from the landholders of the land, correspondence directly with the landholder and to other parties about the nature refuge, and publishing of lot on plan details, such as in the Regulation and associated spatial layer. As such, this may engage section 25 the human right to privacy and reputation.

While the collection of data and personal information is a requirement of negotiating a nature refuge, engaging in this process is voluntary. Data and personal information that are collected are managed in accordance with the *Public Records Act 2002* and the Information Privacy Principles outlined in the *Information Privacy Act 2009*. The collection of data and personal information is not unlawful or arbitrary, therefore, it is considered that there is no limitation on the right to privacy and reputation.

Section 28 – Cultural rights – Aboriginal people and Torres Strait Islander peoples

Dedicating new or amending existing national parks or conservation parks may have a potential indirect impact, or create limitations, on cultural rights in relation to the land, for example, where the dedication of the area is as a requirement of an Indigenous Land Use Agreement. The Amendment Regulation is consistent with the objectives of the NC Act, namely the conservation of nature, while allowing for the involvement of Aboriginal peoples and Torres Strait Islander peoples in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom. Any limitations or indirect impact on cultural rights of Aboriginal or Torres Strait Islander peoples are considered reasonable and proportionate as the interest of Aboriginal or Torres Strait Islander peoples are allowed for and encourage the maintenance of their relationship with the lands, seas and waterways.

During the nature refuge negotiation process that occurs prior to declaration, all persons with an interest in the proposed or existing nature refuge area, including native title holders and applicants, and parties to Indigenous Land Use Agreements, are provided with an opportunity to respond to the proposed declaration. Responses and consent are received from consulted parties, where required, before the subordinate legislation is made.

The amendments may limit or indirectly impact the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, however are considered reasonable and proportionate to the land management and nature conservation outcomes.

Conclusion

I consider that the *Nature Conservation (Protected Areas) Amendment Regulation (No. 2) 2020* is compatible with the *Human Rights Act 2019* because it does not 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.

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