

Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 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, Shannon Fentiman, Minister for Employment and Small Business and Minister for Training and Skills Development provide this human rights certificate with respect to the *Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2020* made under the *Nature Conservation Act 1992* (NC Act).

In my opinion, the *Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 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. 3) 2020* (the Amendment Regulation) is made under the NC Act.

The authorising law for the Amendment Regulation is:

- 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 175 of the NC Act prescribes that the Governor in Council may make regulations under this Act.

The purpose of the Amendment Regulation is to amend the protected area estate and make an addition to a class of protected area. The Amendment Regulation amends the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) and involves a consequential amendment of a machinery nature that is 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 amendment includes:

- increasing the area of one existing national park; and
- correcting the erroneous area description of one national park.

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 the national park and therefore human rights issues have been taken into account during this process.

Human Rights Issues

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

The rights under the *Human Rights Act 2019* (the HR Act) which are relevant to the Amendment Regulation include:

- Freedom of movement (section 19 of the HR Act); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

Clause 3 – Schedule 2: Moreton Island National Park of the Amendment regulation provides for the addition of land to Moreton Island National Park.

As there are land use restrictions associated with national park tenure, this section may be relevant to the right to freedom of movement (section 19 of the HR Act) and the Cultural Rights under Section 28 as a result of the land becoming national park tenure. These limitations are discussed in further detail below.

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

Section 19 of the *Human Rights Act 2019* – Freedom of movement

(a) the nature of the right

Section 19 of the HR Act provides for the right to freedom of movement, specifically that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

(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 Amendment Regulation limits the freedom of movement by restricting the use of vehicles and other modes of transport on the land being added to the national park, to comply with the management principles of this tenure of land.

The restriction only applies in certain circumstances and the person has the ability to be able to move freely if they comply with simple requirements, such as using existing or alternate tracks, or moving via foot instead of vehicle. These limitations are consequently 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 purpose of adding land to a national park 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, as well

as Biosecurity threats or disaster management. Where the right to freedom of movement is limited, the limitation helps achieve the purpose of preserving 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 by preventing damage to these areas from the use of vehicles, or other modes of transport, or access by persons.

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

The management principles of national park tenure, and associated restrictions on the use of land added to a national park, are the best available solutions to ensure the long-term preservation of the natural values of the land.

(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 the right to the freedom of movement only restricts movement in limited circumstances which can be easily resolved by the relevant person complying with simple requirements, such as using an existing track, alternative path, or less damaging mode of movement (i.e. walking rather than driving) to traverse land and only on the land that is being added to the national park. As the limitation has a very limited scope, and persons subject to it have the ability to move freely throughout Queensland by complying with simple requirements, the limitation provides for an appropriate balance between the purpose of the limitation and the impact on an affected person and is therefore justified.

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

(a) the nature of the right

Section 28 of the HR Act provides for the distinct cultural rights held by Aboriginal peoples and Torres Strait Islander peoples as Australia's first people.

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy and maintain control, protect and develop their identity and cultural heritage; to maintain and use Indigenous languages; to maintain kinship ties; a freedom to teach cultural practices and educations to their children; the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs. Subsection (2) establishes that Aboriginal peoples and Torres Strait Islander peoples must not be denied these rights as individuals or with other members of their community.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the *Human Rights Act 2019*, which provides that the Act does not affect native title rights and interests.

(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 limitation on section 28 cultural rights within the Amendment Regulation results in the restriction of the ways in which the land being added to the national park estate is able to be used. The purpose of this limitation is to protect the natural and cultural values of the land, and thus promote and protect rights under section 28 of the HR Act. This limitation, in turn, helps to ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to enjoy their traditional relationship with land in the long-term.

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

The restrictions imposed on the ways in which the relevant land can be used through becoming national park tenure is directly linked to the intention of preserving the natural and cultural values of the land.

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

While the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are limited by the operation of this section, Aboriginal peoples and Torres Strait Islander peoples with cultural connections to the lands will be able to continue and maintain their distinctive relationship with those lands under Aboriginal tradition or Island custom through Native Title rights and general public access to the land in a manner that is consistent with national park tenure.

(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 dedication of land as national park tenure promotes this human right through ensuring that Aboriginal peoples and Torres Strait Islander peoples are not denied the right to conserve and protect the environment and productive capacity of their land. Therefore, the limitations on this right, through the dedication of the land as national park tenure, and subsequent restrictions on the ways in which the land can be used, are balanced through the protection of the land to ensure that the natural and cultural values of it are conserved in perpetuity.

Conclusion

I consider that the *Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 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.

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