

# Forestry 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 *Forestry and Other Legislation Amendment Regulation 2020* made under the *Forestry Act 1959* (the Forestry Act) and the *Nature Conservation Act 1992* (the NC Act).

In my opinion, the *Forestry 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 *Forestry and Other Legislation Amendment Regulation 2020* (the Amendment Regulation) is made under the Forestry Act and NC Act.

The authorising law for the Amendment Regulation is:

- Section 25 of the Forestry Act prescribes that the Governor in Council may, by regulation, set apart and declare as a State forest – (a) any Crown land.
- Section 32 of the Forestry Act prescribes that a regulation may revoke, in whole or in part, the setting apart and declaration of land as a State forest or timber reserve if satisfied that the land will be made available for tourist purposes or use as a road.
- Section 97 of the Forestry Act prescribes that the Governor in Council may from time to time make regulations, not inconsistent with this Act, prescribing all matters and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- 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 30 of the NC Act prescribes that the Governor in Council may, by regulation, revoke the setting apart and declaration of a timber reserve in whole or part despite the Forestry Act 1959.
- Section 32 of the NC Act prescribes that the Governor in Council may, by regulation, revoke the dedication of a protected area in whole or part.
- Section 33 of the NC Act prescribes that the Governor in Council may, by regulation, change the class of a protected area by dedicating the area as another class of protected area and amalgamate protected areas of the same class, and assign a name to the amalgamated area.

- Section 43D of the NC Act prescribes that a regulation may declare an area of land the subject of a conservation agreement as a special wildlife reserve.
- Section 47 of the NC Act prescribes that a conservation agreement has effect until it expires under its terms unless it is terminated by another conservation agreement or the declaration of the nature refuge to which it relates is revoked.
- Section 50 of the NC Act prescribes that the Governor in Council may, by regulation, revoke the declaration of a nature refuge or coordinated conservation area in whole or part.
- 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 65 of the NC Act prescribes if a protected area, or part of a protected area, is dedicated or declared under this Act to be a protected area of a different class, the later dedication or declaration revokes the earlier dedication or declaration of the area or the part of the area to which the dedication or declaration relates.
- 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 forestry and protected area estates and make amendments and additions to several classes of forestry tenures and protected areas. The Amendment Regulation amends the *Forestry Regulation 2015* (the Forestry regulation), *Forestry (State Forests) Regulation 1987* (the State Forest regulation) and *Nature Conservation (Protected Areas) Regulation 1994* (the NC Regulation) and involves consequential amendments of a machinery nature that are consistent with the objectives of the Forestry Act and the NC Act. A separate assessment process considers the Forestry Act, Forestry regulation, State Forest regulation, NC Act and NC Regulation as compatible with the *Human Rights Act 2019*.

The amendments include:

- increasing the area of six existing national parks;
- redescribing one national park, two conservation parks and one resources reserve;
- upgrading part of one existing resources reserve to national park;
- upgrading one existing resources reserve to conservation park;
- revoking part of one timber reserve to upgrade it to national park;
- increasing the area of two state forests;
- revoking parts of one national park and one conservation park;
- providing for the inclusion of the special wildlife reserves class of protected area;
- declaring one new special wildlife reserve; and
- revoking one existing nature refuge (to allow declaration as special wildlife reserve).

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

New special wildlife reserves are declared over privately owned freehold, leasehold, reserve, Aboriginal or Torres Strait Islander land. To establish a special wildlife reserve a voluntary conservation agreement is entered into after negotiations with the landholder. The landholder is also required to prepare a management program for the special wildlife reserve, which must state the management outcomes for the protection, presentation and use of the special wildlife reserve, as well as actions to achieve these outcomes. The legislative framework adhered to in declaring these areas requires certain activities be prohibited from occurring on a special wildlife reserve (consistent with the management principles for a special wildlife reserve) and a process of 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*)**

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
- Property rights (section 24 of the HR Act); and
- Privacy and reputation (section 25 of the HR Act); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

#### **Property rights – (section 24 of the HR Act)**

Declaration of a new special wildlife reserve 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 special wildlife reserve is voluntary, there is no limitation or restriction of this right.

#### **Privacy and reputation – (section 25 of the HR Act)**

The negotiation of a special wildlife reserve 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 special wildlife reserve, and publishing of lot on plan details, such as in the Regulation and associated spatial layer. As such, this may engage section 25 of the *Human Rights Act 2020* in relation to the human right to privacy and reputation.

While the collection of data and personal information is a requirement of negotiating a special wildlife reserve, 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 in this circumstance is not unlawful or arbitrary, therefore, it is considered that there is no limitation on the right to privacy and reputation.

As there are land use restrictions associated with forestry and protected area tenure, the amendments to the forestry and protected area estates that result in the addition of land may be relevant to the right to freedom of movement (section 19 of the HR Act) and the Cultural Rights under Section 28 of the HR Act as a result of the land becoming forestry or protected area tenure. These limitations are discussed in further detail below.

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

**Freedom of movement (section 19)**

**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**

Sections 3, 5, 8(2) and 9(2) of the Amendment Regulation prescribe the addition of land to several State forests, national parks and conservation parks. Whilst this action in itself does not limit human rights, these tenures of land are managed in a way that limits freedom of movement by restricting the use of vehicles and other modes of transport on the land, or requiring people to only use designated tracks or walk ways. Therefore, the action of adding land to State forests, national parks and conservation parks will limit the right to freedom of movement as it facilitates the management of this land in way that restricts free movement on the land in certain circumstances. The purpose of the limitation is to protect the productive capacity of the land being added to the forestry estate and to protect the natural and cultural values of the land being added to the protected area estate by reducing the damage that can occur to these lands as a result of access by members of the public.

The restriction only applies in certain circumstances and the person has the ability 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 the forestry estate is to permanently reserve such areas for the purpose of producing timber and associated products in perpetuity and to protect a watershed therein. Access to State forests may be restricted to ensure public safety due to the carrying out of timber felling or quarrying activities, or to ensure that forest products are protected. The purpose of adding land to the protected area estate 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 protected 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 ensuring public safety, protecting forest products, or 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 interactions of the public with forest product extraction activities and 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 forestry and protected area tenure, and associated restrictions on the use of land added to a State forest or protected area, are the best available solutions to ensure the long-term preservation of the forest product or 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 (e.g. walking rather than driving) to traverse land and only applies to the land that is being added to the forestry or public protected area estate. 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.

**Cultural rights – Aboriginal people and Torres Strait Islander peoples (section 28)**

(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

Sections 3, 5, 8(2) and 9(2) of the Amendment Regulation prescribe the addition of land to several State forests, national parks and conservation parks. Whilst this action in itself does not limit human rights, these tenures of land are managed in a way that may limit cultural rights for Aboriginal peoples and Torres Strait Islander peoples. Cultural rights may be limited through restrictions on the ways in which the land may be accessed and used. For example, controlling the removal of natural products from the land by non-authorised persons, and restricting where people may traverse the land via vehicle or foot.

Adding land to State forests, national parks and conservation parks could in certain circumstances have the potential effect of limiting this cultural right by restricting the ability for Aboriginal peoples and Torres Strait Islander peoples, with a connection to the land under Aboriginal tradition or Island custom, from being able to maintain and strengthen their distinctive spiritual, material and economic relationship with the land.

The purpose of restricting the ways in which the forestry land may be used and accessed is to ensure public safety by restricting access only to areas of constructed tracks or roads and restricting access to certain parts of the land whilst timber felling or quarrying activities are carried out..

The mere addition of the land to a State forest does not mean that it will be used for forest products purposes. In the event that the land is proposed to be used for these purposes, a human rights assessment would be undertaken by the Department of Agriculture and Fisheries to determine the compatibility of these actions with the section 28 cultural right at that time. However, unless such a proposal were to occur in the future, the action of declaring this land as State forest will merely result in the permanent reservation of the land.

Similarly, the purpose of the limitation as it relates to the land being added to the protected area estate is to ensure public safety by restricting access only to areas of constructed tracks or roads and to preserve the natural and cultural values of the land in perpetuity by reducing the damage that can occur to these lands as a result of access by members of the public. This limitation therefore promotes and protects the rights under section 28 of the HR Act, namely section 28(2)(e).

(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, as a result of becoming forestry or protected area tenure, is directly linked to the purpose of ensuring public safety, preserving the productive capacity of the land for forestry purposes and permanently protecting the natural and cultural values of the land being added to the protected area estate.

(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 may be limited by the operation of these sections, 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 and general public access to the land in a manner that is consistent with forestry or protected area 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 declaration of land as State forest tenure seeks to permanently reserve the land for the purpose of producing timber and associated products in perpetuity and to protect a watershed therein. Transferring land to this tenure does not automatically mean that this land will be used for forest products purposes, but may instead be preserved in perpetuity.

In the event that the land were proposed to be used for forest product purposes, a human rights assessment to determine the compatibility of this action with section 28 would be undertaken to ensure that the proposed land use was compatible with the HR Act. However, the action of declaring the land as State forest merely reserves the land in perpetuity, and as such, only limits the section 28 cultural right in relation to access and use of the land as outlined above.

The dedication of land as protected area tenure seeks to permanently preserve, to the greatest extent possible, the area's natural condition and to protect the area's cultural resources and values. Therefore, the addition of land to the protected area estate protects and promotes this cultural right, namely section 28(2)(e).

Restrictions on the ways that the land may be used and accessed as a result of becoming forestry or protected area tenure may limit the ability for Aboriginal peoples and Torres Strait Islander peoples, that have a connection to the land under Aboriginal tradition or Island custom, to maintain and strengthen their distinctive spiritual, material and economic relationship with land in certain circumstances. However, these restrictions help ensure public safety and protect and promote the section 28 cultural rights, through the preservation of land in perpetuity, which helps ensure that Aboriginal peoples and Torres Strait Islander peoples can continue to maintain and strengthen their distinctive relationship with the land in the long-term.

Therefore, the limitations on this right are balanced by the need to ensure the safety of the public, including Aboriginal persons and Torres Strait Islander persons with a connection to the land, when accessing the forestry and protected area lands; and the positive impacts that the permanent reservation of forestry and protected area lands has on the achievement of the section 28(2)(e) component of the human right.

## Conclusion

I consider that the *Forestry and Other Legislation Amendment 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.

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