

# Nature Conservation (Protected Areas) Amendment Regulation 2021

## 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, Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs provide this human rights certificate with respect to the *Nature Conservation (Protected Areas) Amendment Regulation 2021* made under the *Nature Conservation Act 1992* (the NC Act).

In my opinion, the *Nature Conservation (Protected Areas) Amendment Regulation 2021* 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 2021* (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, conservation park or resources reserve.
- 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 that varies (the later agreement), 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 Amendment Regulation is to amend the protected area estate and make amendments and additions to several classes of protected areas. The Amendment Regulation amends the *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 NC Act. A separate assessment process considers the NC Act and NC Regulation as compatible with the *Human Rights Act 2019* (HR Act).

The amendments include:

- increase in the area of three national parks;
- increase in the area of one resources reserve;
- redescription of two national parks;
- renaming two national parks;
- redescription of one conservation park;
- declaration of four new nature refuges;
- redescription of one nature refuge;
- redescription and renaming of one nature refuges;
- redescription and renaming of one nature refuge as two nature refuges.

The dedication of new or amended protected areas is machinery in nature. The process of selecting and approving 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.

## Human Rights Issues

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

The rights under 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).

As there are land use restrictions associated with protected area tenure, the amendments to the protected area estate that results 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 protected area tenure. These limitations are discussed in further detail below.

The Amendment Regulation will also have positive impacts on section 28 Cultural Rights for Aboriginal peoples and Torres Strait Islander peoples, that is, it will protect and promote these rights, specifically in relation to the renaming of two national parks with names chosen by First Nations partners in the management of the land.

## **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 4, 5 and 6 of the Amendment Regulation prescribe the addition of land to several national parks, resources reserves and nature refuges. 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 national parks, resources reserves and nature refuges 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 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 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, 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 that would cause 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 protected area tenure, and associated restrictions on the use of land added to a protected area, 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 (e.g. walking rather than driving) to traverse land and only applies to the land that is being added to the 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

Section 3 of the Amendment Regulation, a transitional provision, prescribes that, if the context permits, references to the old name for the national park may be taken to reference the new name for the national park.

The action of renaming an existing national park could have the potential effect of promoting the cultural right by lessening restrictions on the ability for Aboriginal peoples and Torres Strait Islander peoples, with a connection to the land under Aboriginal tradition or Island custom, to being able to maintain and strengthen their distinctive spiritual, material and economic relationship with the land.

Sections 4, 5, 6 and 7 of the Amendment Regulation prescribe the addition of land to several national parks, resources reserves and nature refuges. 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, restricting where people may traverse the land via vehicle or foot.

Adding land to national parks, resources reserves and nature refuges 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 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 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 is directly linked to the purpose of permanently preserving the natural and cultural values of the land in the protected area estate, and to the purpose of allowing for the involvement of First Nations partners in the management of the national park in which they have an interest under Aboriginal tradition or Island custom.

The restrictions imposed on the ways in which the relevant land can be used, as a result of becoming protected area tenure, is directly linked to the purpose of ensuring public safety 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

Although it could conceivably be argued that there might be certain circumstances in which a cultural right of Aboriginal peoples and Torres Strait Islander peoples could potentially be limited by the operation of these sections, in practice 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 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 dedication and ongoing management 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 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 protected area lands; and the positive impacts that the permanent reservation of protected area lands has on the achievement of the section 28(2)(b), (d) and (e) component of the human right.

## **Conclusion**

I consider that the *Nature Conservation (Protected Areas) Amendment Regulation 2021* 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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