

Forestry and Other Legislation 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 *Forestry and Other Legislation Amendment Regulation 2021* made under the *Forestry Act 1959* (Forestry Act) and the *Nature Conservation Act 1992* (NC Act).

In my opinion, the *Forestry and Other Legislation 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 *Forestry and Other Legislation Amendment Regulation 2021* (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 any Crown land as a State forest.
- Section 32 of the Forestry Act prescribes that a regulation may revoke, in whole or part, the setting apart or declaration of land as a State forest if the Minister is satisfied that the land will be made available for tourist purposes or use as a public road.
- Section 32A of the Forestry Act prescribes that a regulation may declare a stated area of land that is a State forest to be a State plantation forest and that if land that is State plantation forest stops being a State forest or part of a State forest, the declaration of the land as State plantation forest is taken to have been revoked.
- 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, 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 50 of the NC Act prescribes that the Governor in Council may, by regulation, revoke the declaration of a nature refuge in whole or part.
- 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 State plantation forests, State forests and several classes of protected areas. The Amendment Regulation amends the *Forestry Regulation 2015*, *Forestry (State Forests) Regulation 1987* and *Nature Conservation (Protected Areas) Regulation 1994* and involves consequential amendments of a machinery nature that are consistent with the objectives of the Forestry Act and NC Act. A separate assessment process considers the Forestry Act, NC Act and associated subordinate legislation as compatible with the *Human Rights Act 2019* (HR Act).

The amendments include:

- amend the declaration of two State plantation forests;
- increase the area of three State forests;
- revoke part of two State forests and two State plantation forests;
- redescribe one State forest;
- redescribe three national parks after completion of up to date plans;
- increase the area of one national park;
- increase the area of one conservation park;
- declare three new nature refuges and expand one existing nature refuge; and
- revoke part of and redescribe one nature refuge.

The revocation of part of Byfield State Forest and Tuan State Forest will help provide a better and safer transport network. The Byfield State Forest revocation will provide safer road access to the popular Corbetts Landing Boat Ramp. The Tuan State Forest revocation will allow for the dedication of road reserve over the new Tinnanbar Road, formalising management of the public road corridor to facilitate improved road safety for users commuting to the Tinnanbar township. State plantation forest license over these areas has been surrendered to allow for the subsequent revocation of parts of State plantation forest associated with Byfield State Forest and Tuan State Forest. These actions were supported by the State plantation licensee, HQPlantations, and compensation was agreed upon as per section 61RH of the Forestry Act.

The setting apart and declaration of State forest for Byfield State Forest and Tuan State Forest is to amalgamate closed road reserves into the surrounding State forests. As part of the compensation arrangements for the revocation of State plantation forest on Byfield State Forest and Tuan State Forest, State plantation forest is to be declared over the new addition areas to these State forests and subsequently included in the State plantation license.

The redescription of areas in the forestry and protected area estate is a result of drawing new Administrative Plans using contemporary survey and mapping technology and standards. These amendments help to define the forestry and protected area estates clearly and accurately.

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 forestry and protected area tenure, the amendments to the protected area estate 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 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 2, 3, 4 and 5 of the Amendment Regulation prescribe the revocation and declaration of State plantation forest, the revocation and declaration of State forest, addition of land to national park, addition of land to conservation park, declaration of land as nature refuge and revocation of nature refuge land. Whilst these actions in themselves do 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 plantation forest, State forest, national park, conservation park 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 limitations are to protect the natural and cultural values and resources 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 restrictions only apply 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 State forests is to support the cardinal management principle of the Forestry Act for the permanent preservation of areas for the purpose of producing timber and associated products in perpetuity and of protecting the watershed therein.

The purpose of adding land to the protected area estate is to support the object of the NC Act 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 forestry and protected area tenures, and associated restrictions on the use of land added to State forests and protected areas, 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 forestry and 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 2, 3, 4, 5, 6, 7, 8 and 9 of the Amendment Regulation prescribe the revocation of State plantation forest, the revocation of State forest, addition of land to national park, addition of land to conservation park, declaration of land as nature refuge and revocation of nature refuge land. 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 the forestry and protected area estates 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 and resources 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 and resources of the land in the forestry and 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 forestry or protected area tenure, is directly linked to the purpose of ensuring public safety and permanently protecting the natural and cultural values and resources 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 forestry and 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 forestry tenure supports the cardinal forestry management principles to permanently preserve areas for the purpose of producing timber and associated products in perpetuity and of protecting the watershed therein.

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 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 protected area and forestry lands; and the positive impacts that the permanent reservation of forestry and 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 *Forestry and Other Legislation Amendment Regulation 2021* 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.

MEAGHAN SCANLON MP
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF
MINISTER FOR SCIENCE AND YOUTH AFFAIRS

© The State of Queensland 2021