

Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) 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) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021 made under the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation).

In my opinion, the Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021, 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 purpose of the Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021 (the Amendment Regulation) is to amend the protected area estate register to correct an invalid action. The Amendment Regulation amends the Regulation, is of a machinery nature and is consistent with the objectives of the *Nature Conservation Act 1992* (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 the removal of one resources reserve from the Regulation and redescribing another resources reserve in the Regulation.

The 1994 process whereby the Governor in Council approved the dedication of the land as resources reserves and included the land in the Regulation was an invalid action. For the action to be valid, the previous tenure of Departmental and Official Purpose (D&OP) Reserve under the former *Land Act 1962* must have been revoked or cancelled. There is no evidence that this action was undertaken, therefore dedication of the reserves under the NC Act in 1994 is invalid and beyond power. Implementing the Amendment Regulation will correct this register.

The *Statutory Instruments Act 1992* requires that the correct authorising law is applied when making a regulation. The NC Act was not the correct instrument to apply to administer the land in 1994. Section 24AA of the *Acts Interpretation Act 1954* provides the power to amend or repeal a decision or instrument. As the reserves remain governed by the current *Land Act 1994* (Land Act), the NC Act had no power in 1994 to support a decision for the land to be dedicated by regulation as a protected area.

Generally, the removal of NC Act lands from the protected area estate requires a decision by the Legislative Assembly. As the authorising law is invalid, and the Land Act applies, the *Acts Interpretation Act 1954* would not permit such a decision to be made.

To remove the land from the Regulation requires the decision of the Governor in Council. From an overarching perspective, though the NC Act is not the correct authorising law, a mechanism must be applied to remove the land from the Regulation which looks to the NC Act as its head of power. In this respect, the Amendment Regulation applies to:

- Section 33 of the NC Act which prescribes that the Governor in Council, by regulation, may change the class of a protected area by dedicating the area as another class of protected area, or, amalgamate protected areas of the same class, and assign a name to the amalgamated area; and
- Section 175 of the NC Act which prescribes that the Governor in Council may make regulations under this Act.

Human Rights Issues

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

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

The Amendment Regulation will not diminish the freedom of movement or diminish access for the public, Traditional Owners, or government officers. Once the land is removed from the protected area estate governed by the NC Act, the land will be transitioned to a D&OP Reserve under the Land Act.

The State of Queensland, represented by the Department of Environment and Science (DES), would be the trustee of the D&OP Reserve land. DES would continue to implement a management regime which would mirror that of the resources reserves. This means that commercial tourism would continue, free and independent tourists will still be able to access and use the land, First Nations people with cultural associations to Country will continue to have access and freedom of movement on and through the land, and Traditional Owners are still able to exercise native title rights and interests in accordance with the Cape York United #1 Claim (QC2014/008) and the Northern Cape York Group #1 Determination (QCD2014/017).

Section 24 of the Queensland Human Rights Act 2019 – Property rights

The State is the owner of the resources reserves, under the management of DES represented by Queensland Parks Wildlife Service and Partnerships (QPWS&P). At the time when the land was recognised as D&OP reserves, the State also owned this land. The gazette notices for these D&OP Reserves recorded Jardine River as being under the joint trusteeship of “the Director of National Parks and Wildlife and the Director-General, Department of Resource Industries”; and Heathlands under the joint trusteeship of “the Director-General and Under Secretary, Department of Primary Industries and the Director of National Parks and Wildlife”.

Trusteeship of the land would be returned solely to DES in order to streamline the future transfer of the land to First Nations peoples. This has been approved by the contemporary Department of Agriculture and Fisheries and the Department of Resources.

Section 28 of *Human Rights Act 2020* – Cultural rights: Aboriginal people and Torres Strait Islander peoples

The land is affected by the Northern Cape York Group #1 Determination (QCD2014/017) and the Cape York United #1 Claim (QC2014/008), and a small area which is not claimed or determined. Amending the tenure from resources reserve under the NC Act to a D&OP reserve under the Land Act does not affect First Nations peoples' rights and interests, including Cultural Rights under section 28 of the HR Act. DES has been involved longstanding and detailed engagement and discussion with all relevant First Nations people and communities in relation to the proposed action and decision.

This Amendment Regulation is critical to enable the future correction of the Land Title Registry. There will be no change to the freedom of movement over the Jardine River and Heathlands reserves, there is no change to how Aboriginal Traditional Owners use and access the land. The Amendment Regulation will retain the status quo of ownership as it will be proposed that DES is the sole trustee of the D&OP reserves.

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

The action/decision is being made in support of the Cultural Rights of First Nations people from the local area. There are no limitations on human rights.

Conclusion

I consider that the Nature Conservation (Protected Areas) (Heathlands and Jardine River Resources Reserves) Amendment Regulation 2021 is compatible with the *Human Rights Act 2019*, it raises human rights issues but does not limit human rights.

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

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