

# Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 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 (No. 3) 2021* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 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) Amendment Regulation (No. 3) 2021* (Amendment Regulation) is to amend the protected area estate and make additions to several classes of protected areas. The Amendment Regulation amends the *Nature Conservation (Protected Areas) Regulation 1994* (the Regulation) and involves consequential amendments of a machinery nature that are consistent with the objectives of the *Nature Conservation Act 1992* (NC Act).

The amendments include:

- adding unallocated State land to the protected area estate and redescribing as national park (Cape York Peninsula Aboriginal land) – CYPAL;
- redescribing four existing Cape York Peninsula national parks as national parks (CYPAL); and
- retaining some parcels of land as national park to enable the State to deal with infrastructure encroachments from neighbours, lots which no longer exist as they have been eroded away and now form part of a waterway, additional tenure actions, road actions and a proposed future revocation of an area of national park which will enable the Aboriginal corporation to continue a nursery business which already exists.

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. Free, prior and informed consent is required from the First Nations Peoples that hold an interest in the land for the redescription of national parks to national parks (CYPAL).

This proposal to dedicate and redescribe protected areas will be enshrined in an Indigenous Land Use Agreement (ILUA) to be authorised by the Native Title Parties, the State and the Wet Tropics Management Authority (the parties).

## Authorising law

- Section 32 of the NC Act prescribes that the Governor in Council, 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, 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.
- Section 42AA of the NC Act prescribes that the Governor in Council, by regulation, may dedicate national park or part of a national park as national park (CYPAL) where the land is in the Cape York Peninsula Region, becomes Aboriginal land and the Minister is satisfied an Indigenous management agreement about the management of the land has been entered into.
- Section 42AC of the NC Act prescribes that the Governor in Council, by regulation, may dedicate other land as national park (CYPAL) where under the *Aboriginal Land Act 1991*, an entity has entered into an Indigenous management agreement for the land and the Minister and the Indigenous landholder agree that the land is to be managed as a national park (CYPAL). The grant of the land as Aboriginal land is subject to a condition that the land must become national park (CYPAL).
- Section 64 of the NC Act prescribes 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.

## Human Rights Issues

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

The following right is engaged:

### **Cultural rights – Aboriginal people and Torres Strait Islander peoples (section 28 *Human Rights Act 2019*)**

Dedicating new protected areas or amending existing national parks may have a potential indirect impact, or create limitations, on cultural rights in relation to the land. Cultural rights of Aboriginal people are protected and enhanced through this amendment as dedicating the new protected areas which will be jointly managed enables a broader range of cultural practices to be undertaken on the land. Implementing the Amendment Regulation goes hand in hand with agreeing an Indigenous management agreement and ILUA between the parties (including the State). Native title rights and interests for this proposal have been negotiated with the Eastern Kuku Yalanji People and the outcome is agreed in an ILUA. In particular, the ILUA clearly addresses Future Acts.

This Amendment Regulation is consistent with the objectives of the NC Act, namely the conservation of nature, while allowing for the involvement of Aboriginal peoples in the management of protected areas in which they have an interest under Aboriginal tradition. The Eastern Kuku Yalanji people have also sought to apply traditional names to the redescribed some of the national parks (CYPAL) and which reflect their cultural names. This Amendment

Regulation promotes cultural rights by delivering the aspiration of First Nations peoples to have traditional names.

The Amendment Regulation to convert the majority of these national parks to national park (CYPAL) under the NC Act does not affect First Nations peoples' rights and interests, including Cultural Rights under section 28 of the *Human Rights Act 2019*.

**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 peoples from the local area. There are no limitations on human rights.

## **Conclusion**

I consider that the *Nature Conservation (Protected Areas) Amendment Regulation (No. 3) 2021* is compatible with the *Human Rights Act 2019* because it 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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