

Nature Conservation and Other Legislation Amendment Regulation 2022

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 and Other Legislation Amendment Regulation 2022* made under the *Environmental Offsets Act 2014*, the *Environmental Protection Act 1994*, the *Nature Conservation Act 1992* and the *State Penalties Enforcement Act 1999*.

In my opinion, the *Nature Conservation and Other Legislation Amendment Regulation 2022*, 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 *Nature Conservation and Other Legislation Amendment Regulation 2022* (Amendment Regulation) amends the *Environmental Offsets Regulation 2014* (Offsets Regulation), the *Environmental Protection Regulation 2019* (EP Regulation), the *Nature Conservation (Animals) Regulation 2020* (Animals Regulation), the *Nature Conservation (Estuarine Crocodile) Conservation Plan 2018* (Crocodile Conservation Plan), the *Nature Conservation (Plants) Regulation 2020* (Plants Regulation), the *Nature Conservation (Protected Areas Management) Regulation 2017* (PAM Regulation) and the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to progress the reclassification of wildlife, modify animal authorisations, ensure conservation officers have the appropriate enforcement and compliance powers to deal with koala habitat related development offences under the *Planning Act 2016* (Planning Act), and make other minor amendments.

The Amendment Regulation amends the Animals Regulation and Plants Regulation for the purpose of updating the conservation status of wildlife. Species reclassification is a routine, ongoing process undertaken to meet the requirements of the *Nature Conservation Act 1992* (NC Act), including the protection and conservation of Queensland's wildlife. It ensures that listings under the NC Act are kept up-to-date with current scientific knowledge. The Species Technical Committee (STC), an expert panel of government and non-government scientists, is responsible for overseeing the wildlife classification process. The STC provides an independent, unbiased, scientific assessment of nominations for changes to species listings, based on the most recent scientific data, and makes recommendations for changes to species classifications. The Amendment Regulation also amends the Offsets Regulation to refer to the newest version of the Offsets Policy, under the *Environmental Offsets Act 2014*, which is updated in response to changes to wildlife classifications.

The amendments to the Animals Regulation, under the NC Act, will allow a person to keep or use a newly protected animal. This is achieved by ensuring that the "Permit to Keep"

authorisation allows the keep and use of animals that were lawfully obtained prior to becoming ‘protected’ animals under the NC Act; and by allowing the keep and use of crayfish species, which are currently used as aquaculture brood stock, by adding new provisions under the “Farming Licence” authorisation to include animals that were lawfully obtained under a different Act of the State. This achieves appropriate monitoring and regulation of newly protected species while limiting impact to the existing, and previously lawful, commercial and recreational keep and use of protected animals under the NC Act.

Administrative amendments are also required to amend schedules 1 and 2 of the SPE Regulation, under the *State Penalties Enforcement Act 1999* (SPE Act), to reflect the Department of Environment and Science (DES) enforcement authority to allow conservation officers to issue penalty infringement notices (PINs) for offences specific to koala habitat area under the Planning Act. The proposed amendments seek to transfer administrative authority for koala related offences by separating this offence from the existing non-specific offence provision in the SPE Regulation.

Minor amendments are also required under the PAM Regulation, the Crocodile Conservation Plan and the EP Regulation to correct technical errors. These corrections were discussed with the Office of the Queensland Parliamentary Counsel to achieve consistency and correct interpretation as a result of drafting and typographical errors. Amending these errors will not result in a change from the original intent or effect of the legislation.

Human Rights Issues

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

Consideration has been given as to whether the Amendment Regulation might engage human rights under the *Human Rights Act 2019* (HR Act). The minor amendments to the Plants Regulation, PAM Regulation, Crocodile Conservation Plan, Offsets Regulation and the EP Regulation do not engage any human rights.

- **Property rights (section 24 of the HR Act)**

Section 24 of the HR Act protects the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property. The Amendment Regulation does not engage property rights as particular animals may have been lawfully kept without a required authorisation prior to their listing as ‘protected’ animals under the NC Act.

Under the normal listing process, any animal listed as ‘protected’ under the NC Act is, by default, not to be taken, kept or used without appropriate authorisation. If status quo is maintained under the NC Act, then there will be no ability to keep or use a ‘protected’ animal, thereby limiting property rights. The proposed amendments intend for licence/permit holders to allow continued keep and use, which preserves property rights. As DES is preserving property rights, within the parameters of achieving the conservation intent of the NC Act, there is no engagement of property rights under the HR Act.

The SPE Regulation stipulates the administering authority and authorised person for issue of PINs under different legislation. Following regulatory amendments in February 2020, which

amended the *Planning Regulation 2017* to provide increased protection to koala habitat areas in South East Queensland, DES was delegated enforcement authority under the Planning Act to undertake enforcement action by the Department of State Development, Infrastructure, Local Government and Planning (DSDILGP). Currently, koala provisions exist within the general non-specific offences in the SPE Regulation. The proposal merely delegates the power to issue these PINs to conservation officers under the NC Act and clearly identify their powers extending only to koala habitat offences under the Planning Act. The amendment regulation does not engage human rights as it does not create new PINs, increase PIN fines, or change scope of offences. These amendments merely delegate the power to issue these specific PINs to a different group of Queensland Government employees and gives DES a greater range of options to deal with contraventions in a proportionate manner. While the amendments create a specific offence provision for interfering with koala habitat, these offences currently exist as non-specific offences under the SPE Regulation and therefore do not engage human rights.

The remaining amendment provisions do not engage human rights as they correct typographical errors, update scientific nomenclature, clarify policy intent and ensure listings under the NC Act are kept up-to-date with current scientific knowledge, and that appropriate management and conservation measures are afforded to species most at risk of extinction.

The proposed amendments to the Animals Regulation and the SPE Regulation have been assessed against human rights under the HR Act and do not engage human rights.

While the Amendment Regulation overall therefore does not engage human rights, it is recognised that the operational aspects of implementing this regulation will require the consideration of human rights.

Conclusion

I consider that the Amendment Regulation is compatible with the *Human Rights Act 2019* because it does not engage any human rights.

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