

Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 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 *Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022* made under the *Forestry Act 1959* (Forestry Act) and *Nature Conservation Act 1992* (the NC Act).

In my opinion, the *Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 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 *Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022* (Amendment Regulation) is made under the Forestry Act and NC Act.

The authorising law for the Amendment Regulation is:

- Section 26 of the Forestry Act prescribes that the Governor in Council may revoke via regulation, in whole or part, the setting apart and declaration of land as State forest or timber reserve, only if a resolution, whereof not less than 14 days' notice shall have been given, is passed by the Legislative Assembly.
- Section 32 of the Forestry Act prescribes that a regulation may revoke, in whole or in part, the setting apart and declaration of land as State forest or timber reserve if the Minister is satisfied that the land will be made available for tourist purposes or use as a road.
- Section 32A of the Forestry Act prescribes that if land that is State plantation forest stops being part of a State forest, the declaration of the land as a State plantation forest is taken to have been revoked.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 30 of the NC Act prescribes that for an area of State forest that is to be dedicated as a protected area, the regulation dedicating the area as protected area may revoke the State forest declaration, only if the Legislative Assembly has passed a resolution, on a motion of

which at least 28 days' notice has been given, requesting the Governor in Council to dedicate the area.

- Section 32 of the NC Act prescribes that the Governor in Council may, by regulation, revoke the dedication of a protected area in whole or part if the Legislative Assembly has passed a resolution, on a motion of which at least 28 days' notice has been given, requesting the Governor in Council to make the revocation.
- Section 33 of the NC Act prescribes that the Governor in Council may, by regulation, change the class of a protected area by dedicating the area as another class of protected area that gives the area less protection under this Act, only if the Legislative Assembly has passed a resolution, on a motion of which at least 28 days' notice has been given, requesting the Governor in Council to make the revocation.
- 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 to State forests and two classes of protected areas. The Amendment Regulation amends the *Forestry Regulation 2015*, the *Forestry (State Forests) Regulation 1987* and the *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 and NC Act and Amendment Regulation as compatible with the *Human Rights Act 2019* (HR Act).

The amendments include:

- revoking the declaration of part of one State plantation forest designation;
- revoking parts of three State forests;
- redescribing and subsequently revoking and dedicating parts of one State forest as national park;
- redescribing part of and subsequently changing the class of tenure of parts of one national park and dedicate the areas as part of an existing resources reserve; and
- revoking parts of two national parks.

The revocation of State forests and redescription or dedication of State forests and protected areas is machinery in nature. The process of administering and approving revocation proposals requires completion of legislative and policy requirements for the relevant rights or interests of interested parties. This has been completed for all proposed amendments and the engagement with human rights has been considered during this process.

The revocation of an area from the protected area or forestry estate is necessary in order to change an area into a more appropriate tenure that can accommodate proposed activities. A revocation or change in tenure does not fetter any future assessments or approval processes that are required for proposed activities. Subsequent activities (e.g. road, dam, authority or railway construction) are typically in the public interest, the impact of these specific activities on HR Act matters will be further assessed through relevant assessment and approval processes by relevant agencies as appropriate.

Human Rights Issues

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

The following rights are engaged:

- 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).

With such a diverse and widespread protected area and forestry estate, there is sometimes the need to balance this land use with competing interests for essential services that benefit the community. Along with population growth and responsible development, there is a continual need to improve and upgrade or develop new public infrastructure. Decisions to revoke parts of the protected area and forestry estate is not taken lightly, and are generally only endorsed when there are no practical alternatives. When taking land from protected areas or state forests, there is a need to balance the protection of the values that these areas afford and to change the tenure of these areas to accommodate uses that are incompatible with the protected area or forestry land.

One proposal is for the revocation of parts of one State forest to allow dedication of the area as national park, and three proposals involve the revocation of parts of national parks to create other tenures. The core aim of protected areas 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.

Four of the proposals involve the revocation of parts of State forests to create other tenures. State forest areas are generally accessible to the public for recreational purposes (walking, hiking, mountain biking, etc). Other activities such as stock grazing and camping, may also be permitted in State forests provided the necessary permits and authorities are obtained.

The revocation of a protected area or State forest and changing the tenure to accommodate incompatible uses has the potential to restrict movement through previously public areas. The proposed excision areas are typically small in area and, through the revocation application process, the impact on environmental, social and cultural values of the proposed revocation area is assessed.

When applicable, proponents are required to provide appropriate compensation to the State for the loss in land and these inherent values, and this compensation is invested back into expanding and managing Queensland's protected area and forestry estate such that the inherent values can be better protected or enhanced holistically for current and future generations.

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. The core value underpinning the various rights identified in section 28 is recognition and respect for Aboriginal peoples' and Torres Strait Islander peoples' identity, both as individuals and in common with their communities.

The right recognises that spiritual, economic and material connection with traditional lands and waters are an essential component of that identity and is inextricably connected to Aboriginal peoples' and Torres Strait Islander peoples' cultural heritage, language and kinship ties. The Amendment Regulation may interact with the ability of relevant Aboriginal peoples and Torres Strait Islander peoples to enjoy and exercise their cultural rights, as identified in section 28 of the HR Act, by limiting their access to areas following a revocation and by the changes to the physical landscape.

Part of the revocation policy requirements is for proponents to fulfil duty of care and establish mechanisms to mitigate potential impacts on First Nations peoples' heritage by preparing a cultural heritage management plan in consultation with the traditional owners of the land in accordance with the *Aboriginal Cultural Heritage Act 2003*. Furthermore, it is a requirement that Native title rights and interests are satisfied in the revocation process in accordance with the *Native Title (Queensland) Act 1993*.

As part of the consultation process, public notices were published on the Department of Environment and Science website on 9 September 2022 (<https://www.des.qld.gov.au/our-department/public-notices/public-notice-of-revocation-proposals-pursuant-to-section-30-and-32-of-the-environment-conservation-act-1992em>) for the proposed amendments to Oakview State Forest, Oakview National Park, Mount Etna Caves National Park and Tuchekeoi National Park. Separate public notices (<https://www.des.qld.gov.au/our-department/public-notices/public-notice-of-revocation-proposals-pursuant-to-section-30-and-32-of-the-environment-conservation-act-1992em>) were published on 13 October 2022 for the proposed amendments to Beerburrum East State Forest, Beerburrum West State Forest, Watalgan State Forest, Conondale National Park and Conondale Resources Reserve, seeking views in consideration of the HR Act, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights. Nil written responses relating to the HR Act were received in the 28-day consultation period, which ended on 7 October 2022 and 9 November 2022 (respectively), and the department progressed the proposals accordingly.

Conclusion

In my opinion, the *Forestry (State Forests) and Other Legislation Amendment Regulation (No. 4) 2022* is compatible with human rights under the Act because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

MEAGHAN SCANLON MP
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MINISTER FOR SCIENCE AND YOUTH AFFAIRS

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