

Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023

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, Leanne Linard, Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs provide this human rights certificate with respect to the *Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023*, 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) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023* (Amendment Regulation) is to amend the protected area estate register to correct an invalid action. The Amendment Regulation amending the *Nature Conservation (Protected Areas) Regulation 1994* (Regulation), is of a machinery nature and is consistent with the objectives of the *Nature Conservation Act 1992* (NC Act). A separate assessment process considers the NC Act and the Regulation as compatible with the *Human Rights Act 2019*.

The amendment includes:

- Removal of Heathlands Resources Reserve from the Regulation.

The 1994 process whereby Governor in Council agreed to dedicate the land as resources reserve and include them 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the previous tenure of Departmental and Official Purpose (D&OP) Reserve under the *Land Act 1962* (Land Act) must have been revoked or cancelled. There is no evidence that this action was undertaken, therefore dedication of the resources reserve under the NC Act in 1994 is invalid and beyond power.

On 15 July 2021, Governor in Council approved the majority of Heathlands Resources Reserve (HRR) be omitted from the Regulation and revert to its previous tenure of D&OP Reserve under the Land Act. An area of about 9.205 hectares, described as lots 4 and 5 on SP296927, were thought to be validly dedicated and therefore remained HRR. However, on 6 October 2022, a native title determination was made in this area. The determination

identified that the HRR should correctly revert to its previous tenure of D&OP Reserve. This decision is supported by the Queensland Department of Resources who administers the Commonwealth *Native Title Act 1993*.

Implementing the Amendment Regulation will correct this error on the land title register and accurately reflect the protected area estate.

Generally, the removal of NC Act lands from the protected area estate requires a decision by the Legislative Assembly. In this case the authorising law (the NC Act) is invalid, and the Land Act applies, so a decision of the Legislative Assembly is not required or is appropriate as the Land Act still applies.

The decision to implement the Amendment Regulation relies on section 24AA of the *Acts Interpretation Act 1954* which provides the power to amend or repeal a decision made about a statutory instrument. In this case, the Governor in Council has this delegation.

The *Statutory Instrument Act 1992* (SI Act) also applies to this case in the absence of the NC Act. When the Regulation was made in 1994 Governor in Council did not have the jurisdictional power to include the HRR in the statutory instrument. This SI Act supports that the Amendment Regulation aligns the reading of the Regulation with the correct tenure status of the land.

Progressing the Amendment Regulation will enable progress of future tenure arrangements currently being negotiated with the Atambaya Aboriginal people and the Wuthathi Aboriginal people. Cape York Land Council Aboriginal Corporation as the legal representative for the Traditional Owners has endorsed the proposal.

Omitting 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 derives its power from the NC Act. 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.
- 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*)

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

The State is the owner of the resources reserve, under the management of the Department of Environment and Science (DES) represented by the Queensland Parks and Wildlife Service and Partnerships (QPWS&P). At the time when the land was recognised as D&OP Reserve, the State also owned this land. The gazette notice for the D&OP Reserve recorded Heathlands

Resources Reserve under the joint trusteeship of “the Director-General and Under Secretary, Department of Primary Industries and the Director of National Parks and Wildlife”.

After the Amendment Regulation is made, trusteeship of the land would be returned solely to DES in order to streamline the future transfer of the land. This has been approved by the current Department of Agriculture and Fisheries and the Department of Resources.

A positive outcome of the assessment on property rights is that the Amendment Regulation will correct an invalid action and subsequently allow tenure actions leading to the conclusion of the land dealing. This will result in the transfer of ownership of approximately 1,830 hectares of land to Atambaya people and Wuthathi people.

Section 28 of the *Human Rights Act 2019* – Cultural rights: Aboriginal peoples and Torres Strait Islander peoples

The Amendment Regulation positively engages section 28 of the Act. Specifically, the future transfer of land to Aboriginal peoples will contribute to section 28(2):

- (d) to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom; and
- (e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

The Atambaya people and the Wuthathi people are finalising negotiations with the State about future tenure arrangements.

A public notice was published on the DES website on 10 March 2023 regarding consultation on the proposed amendment to the protected area estate. It sought views in consideration of the *Human Rights Act 2019*, including Aboriginal peoples’ and Torres Strait Islander peoples’ cultural rights. Nil written responses were received in the 28-day consultation period which ended 11 April 2023, and the department progressed the proposal accordingly.

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

Nil

Conclusion

I consider that the *Nature Conservation (Protected Areas) (Omission of Heathlands Resources Reserve) Amendment Regulation 2023* is compatible with the *Human Rights Act 2019*, because it does not limit human rights.

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