

# Forestry and Other Legislation 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 *Forestry and Other Legislation Amendment Regulation 2023* made under the *Forestry Act 1959* and the *Nature Conservation Act 1992*.

In my opinion, the *Forestry and Other Legislation 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 *Forestry and Other Legislation Amendment Regulation 2023* (Amendment Regulation) is made under the *Forestry Act 1959* and the *Nature Conservation Act 1992* (NC Act).

The authorising law for the Amendment Regulation is:

- 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 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 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 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 affecting one timber reserve, six State forests, two national parks and seven conservation parks.

The Amendment Regulation amends the *Forestry Regulation 2015*, *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 the NC Act.

The amendments include:

- redescription and revocation of the entirety of Wickham Timber Reserve to dedicate the area as part of Plunkett Conservation Park;
- revocation of part of Beerwah State Forest to dedicate the area as the new Mooloolah River Conservation Park;
- redescription and revocation of the entirety of West Cooroy State Forest to dedicate the area as the new West Cooroy Conservation Park;
- redescription of the entirety of Deer Reserve State Forest and subsequent revocation of parts to be dedicated as the new Deer Reserve Conservation Park;
- redescription of the entirety of Luttons State Forest and subsequent revocation of parts to be dedicated as part of Glass House Mountains Conservation Park;
- redescription of the entirety of Mount Mee State Forest and subsequent revocation of parts to be dedicated as part of D’Aguilar National Park;
- revocation of parts of Daintree National Park;
- revocation and redescription of parts of Kamerunga Conservation Park;
- redescription of part of Tallebudgera Creek Conservation Park and subsequent revocation of parts of the conservation park;
- revocation of part of Passchendaele State Forest to dedicate the area as a reserve.

The revocation proposal affecting the Daintree National Park relates to two agreed actions in the Eastern Kuku Yalanji 2021 National Parks Land Transfer Indigenous Land Use Agreement. The first action is to recognise the change of the ambulatory boundary of the Daintree River, which has permanently inundated four land parcels within the national park making them inaccessible. The regulation amendment is considered administrative to correct the national park boundaries. The second action is to allow lot 10 on SP296958 to be granted to the Eastern Kuku Yalanji people as Aboriginal freehold where a nature refuge is proposed to be placed over most of the parcel to protect the values and reduce loss to the protected area estate.

The proposal to revoke parts of Kamerunga Conservation Park is to accommodate the upgrade of the Cairns Western Arterial Road, which includes the Kamerunga Bridge over the Barron River. The upgrades will improve capacity and reliability for the road corridor which provides the only alternative access north from Cairns when the Captain Cook Highway is closed or inundated.

The proposal to revoke part of Tallebudgera Creek Conservation Park will resolve a historic access issue for residential properties in Burleigh. The area already contains a physically constructed driveway and use of the area will be unchanged. Redescription of the parcels ensures accurate measurement and that only the required area is removed.

The proposal to revoke part of Passchendaele State Forest is to allow the land to be dedicated as a reserve under the *Land Act 1994*. Following the revocation, Southern Downs Regional Council has agreed to be appointed as trustee of the reserve and to provide an authority to the

Amiens History Association who will establish the Amiens Legacy Centre, a public tourism facility to tell the story of the area that was once a soldier settlement following World War I.

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 public. Along with population growth and responsible development, there is a continual need to improve and upgrade or develop new public infrastructure. Suitable land availability remains a constant challenge. Revoking the protected area and forestry estate is the last resort amongst all alternatives considered. When taking land from State forests or protected areas, there is a need to strike the balance between protection of the values which the areas offer and to sacrifice those marginal parts of land in select circumstances for proposal that are reasonable and demonstrably justifiable. 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.

For all revocation proposals affecting the forestry and protected area estate, 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 estates such that the inherent values can be better protected or enhanced holistically for current and future generations.

Subsequent activities (e.g. road, dam, authority or railway construction) are typically in the public interest, the impact of these specific activities on *Human Rights Act 2019* 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);
- Property rights (section 24 of the HR Act); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

Sections 19 and 28 of the HR Act are positively engaged in relation to five of the proposals where forest products agreements have ceased through consultation and prior arrangements on State forests and the land is to be dedicated as protected area. State forest and timber reserve 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 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. Protected areas are generally accessible to

the public for recreational activities, provided the necessary permits and authorities are obtained (walking, hiking, camping, etc). The change of tenure from State forest to a protected area designation promotes the freedom of movement within Queensland by allowing public access to additional areas.

The Cultural rights of Aboriginal peoples and Torres Strait Islander peoples are also positively engaged and protected through the dedication of these protected areas, as the dedication of a protected area has the potential to broaden long-term cultural practices to be undertaken on the land where members of the community can enjoy, maintain, control, protect and develop cultural heritage, knowledge and beliefs through the conservation and protection of the environment and productive capacity of the land.

The proposal to revoke part of Tallebudgera Creek Conservation Park positively engages section 24 of the HR Act. The action will ensure there is practical access for the existing adjacent residential properties.

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

#### **Freedom of movement (section 19)**

(a) the nature of the right

Section 19 of the HR Act provides for the right to freedom of movement, specifically that every person lawfully within Queensland has the right to move freely within Queensland, enter or leave Queensland, and choose where they live.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The revocation of parts of the Daintree National Park are for the purposes of granting Aboriginal freehold land under the *Native Title Act 1993* and as per the Eastern Kuku Yalanji 2021 National Parks Land Transfer Indigenous Land Use Agreement. This action limits freedom of movement in a relatively small area of 8.032 hectares compared to the remaining national park, as it will no longer be accessible by the public. The remaining revocation areas for this proposal are considered administrative to correct the boundary of the Daintree River.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation in relation to the Daintree National Park helps achieve the purpose of protecting the area's natural values and recognising native title rights and interests over the land.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The granting of Aboriginal freehold land and subsequent declaration of a nature refuge is considered the most appropriate action to ensure the existing nursery site can operate on a tenure compatible with the land use without disruption. This action has been assessed and agreed upon as per the Eastern Kuku Yalanji 2021 National Parks Land Transfer Indigenous Land Use Agreement.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

As the limitation has a very limited scope, and persons subject to it have the ability to move freely throughout the remaining Daintree National Park, the limitation provides for an appropriate balance between the purpose of the limitation and the impact on an affected person and is therefore justified.

This limitation is consequently consistent with a free and democratic society based on human dignity, equality and freedom.

A consultation notice is published on DES's website for all revocation proposals affecting the forestry and protected area estates. The notice is to consult on the proposed amendments and to seek views in consideration of the HR Act, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights.

The consultation notice for the Passchendaele State Forest revocation was published on 10 October 2023 and closed on 9 November 2023.

The consultation notice for the remaining proposals in the Amendment Regulation was published on 25 August 2023 and closed on 25 September 2023. Nil written responses were received for both consultation notices.

## Conclusion

I consider that the *Forestry and Other Legislation Amendment Regulation 2023* is compatible with the *Human Rights Act 2019* 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*.

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