

Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024

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 and Minister for Science and Innovation provide this human rights certificate with respect to the *Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024*, 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 Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024* (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 Act).

The amendment includes:

- Removal of Lawn Hill (Creek) Resources Reserve from the Regulation.

The 1994 process whereby Governor in Council agreed to dedicate lot 9 on CP850717 as a resources reserve and include it in the Regulation was an invalid action. For the action to be valid, the previous tenure of Reserve for Departmental and Official (Natural Resources) Purposes (D&OP Reserve) under the *Land Act 1962* (Land Act) must have been revoked. 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.

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.

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.

When the Regulation was made in 1994 Governor in Council did not have the jurisdictional power to include the Lawn Hill (Creek) Resources Reserve described as lot 9 on CP850717 in the statutory instrument.

Progressing the Amendment Regulation will enable progress of future tenure arrangements as agreed by the Waanyi people, who have received legal support in their decision making. The action will uphold commitments in the Indigenous Land Use Agreement (ILUA) as approved by the Waanyi Native Title Aboriginal Corporation Registered Native Title Body Corporate (RNTBC) (Waanyi PBC) and the State.

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 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):

- (Part 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
- (Part e) to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.

A public notice was published on the Department of Environment, Science and Innovation's website on 14 November 2023 regarding consultation on the proposed amendment to the protected area estate. It sought views in consideration of the Act, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights. One written response was received in the 28-day consultation period which ended 12 December 2023. The response

was outside of the scope of the consultation notice and no concerns were raised in consideration of the *Human Rights Act 2019*.

Conclusion

I consider that the *Nature Conservation (Protected Areas) (Omission of Lawn Hill (Creek) Resources Reserve) Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

LEANNE LINARD
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF
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