

Nature Conservation (Protected Areas Management) 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 Management) Regulation 2024* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas Management) 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 *Nature Conservation (Protected Areas Management) Regulation 2024* (the Regulation) operates under the *Nature Conservation Act 1992* (NC Act). The object of the NC Act is the conservation of nature while allowing for the involvement of Indigenous people in the management of protected areas in which they have an interest under Aboriginal tradition or Island custom. The NC Act provides that the conservation of nature is to be achieved by a range of measures including the declaration of protected areas and the management of those areas in accordance with management principles specified in the Act to guide the conservation of natural and cultural resources, and use of the areas.

The Regulation replaces the *Nature Conservation (Protected Areas Management) Regulation 2017* in order to provide for the ongoing and improved management of protected areas declared under the NC Act. The Regulation includes important provisions regarding:

- (a) a framework for permits and other authorities for the use of protected areas;
- (b) procedures and requirements relating to those permits and other authorities;
- (c) regulation of conduct in protected areas, with particular regard to conserving natural and cultural resources and values, and protecting human health and safety;
- (d) enforcement powers in relation to protecting the environment, human well-being and property;
- (e) offences, and penalties for those offences;
- (f) fees payable for permits, authorities and other various uses; and
- (g) transitional provisions to provide for continuity between the *Nature Conservation (Protected Areas Management) Regulation 2017* and the *Nature Conservation (Protected Areas Management) Regulation 2024*.

Protected areas are subject to a range of commercial and recreational uses – including use by the public for activities such as camping, picnicking, scenic driving, mountain biking, and nature appreciation. Commercial and recreational uses are managed through a number of mechanisms, including the grant of permits, agreements and other authorities. The Regulation provides a system of permits and other authorities for use in such circumstances and also includes the procedures and requirements relating to those permits and other authorities. This includes provisions regarding the application, assessment and decision-making processes, periods of time for which permits and other authorities may be granted, amendment, suspension, cancellation, and transfer procedures and the fees payable under the NC Act.

As is the case with the management of most public places, some actions and behaviours need to be regulated in order to protect the environment, provide for public safety, avoid overcrowding and protect the rights of other visitors. The Regulation addresses these issues by including a range of offence provisions as a deterrent to behaviour that could interfere with protected area management, cause damage to property, cause unacceptable environmental impact, affect other people’s reasonable enjoyment of the environment and facilities, and threaten people’s health and safety. For example, restrictions apply in regard to the driving of vehicles, access by livestock and domestic animals, undertaking commercial activities, disposing of waste, and the lighting of fires.

The provisions in the Regulation generally mirror the requirements that apply to other managed areas such as forestry areas and recreation areas. This allows for consistent and effective management of similar issues, and also promotes improved understanding of the relevant rules by protected area users.

An online survey was prepared as the main consultation tool as part of the regulation review and development process. The majority of respondents across all of the survey questions indicated that the proposed changes would have a benefit to or no impact upon them. In addition to the survey, direct consultation was undertaken with First Nations partners, private protected area landholders, authority holders, and peak industry and other representative bodies.

Human Rights Issues

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

In my opinion, the Regulation positively engages the following human rights under the *Human Rights Act 2019* (HR Act):

- Right to life (HR Act section 16)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act section 28).

The following human rights are also engaged under the HR Act:

- Freedom of movement (HR Act section 19)
- Freedom of expression (HR Act section 21)
- Property rights (HR Act section 24)
- Privacy and reputation (HR Act section 25).

Right to life (HR Act s16)

The right to life (section 16) protects that every person has the right to life and has the right not to be arbitrarily deprived of life. This right includes an obligation for public entities to act to protect the lives of individuals, including positive measures that seek to address threats to life through adequate safety measures. The Regulation promotes the right to life of users of protected areas by deterring unsafe behaviours to improve safety in protected areas. Examples of these behaviours include unsafe driving, entry into restricted access areas and areas closed to the public for health and safety reasons, and misconduct that interferes with the health and safety of persons. The Regulation restricts the feeding and disturbance of animals including those that are dangerous, venomous and capable of injuring a person, and restricts the lighting and use of fires.

The stipulated vehicle, boat or recreational craft use requirements in Sections 239, 240, 241, 244, 245, and 246 of the Regulation serve as proactive measures aimed at safeguarding the lives of drivers, passengers, and other users traversing protected areas. By mandating adherence to road rules, regulatory notices and conservation officer directions, the Regulation helps to curtail unsafe driving behaviours and other matters that pose inherent risks to human life and safety by providing rangers with a framework for issuing fines to offenders. Additionally, requirements for a person operating a vehicle in a protected area to have a valid driver's licence (section 235) and for the vehicle to be registered (section 236) serve as critical safeguard that seeks to ensure that only qualified and authorised individuals operate vehicles within these areas. Furthermore, the restrictions (sections 238, 239, 240) relating to certain vehicle types reflect existing restrictions under the Queensland Road Rules and serve to further enhance overall road safety within protected areas.

Sections 227 and 274 in the Regulation relate to the powers of conservation officers to direct a person to leave the protected area to secure the person's safety, where they reasonably believe circumstances exist that are a danger to a person or where the presence of a person in a protected area may interfere with an emergency or rescue activity. Similarly, sections 20, 28, 29 and 37 provide for the display of regulatory notices and the declaration of restricted access areas and areas closed to the public for public health and safety.

A range of offences in the regulation are also aimed at ensuring a safe environment for visitors to protected areas, including restriction on the lighting, keeping, using and putting out of fires (229, 230 and 232); depositing of dangerous litter or burning substances (sections 231 and 256); the feeding and disturbance of animals (section 209-211.); and actions that interfere with the health and safety of a person (section 266).

By promoting responsible driving practices, ensuring driver competency, prohibiting unsafe behaviours and imposing necessary safety measures, the Regulation contributes significantly to the creation of a safer and more secure environment in protected areas, where the preservation of human life remains paramount.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act s28)

(a) the nature of the right

Section 28 of the HR Act protects cultural rights attributed to individuals and communities of Aboriginal peoples and Torres Strait Islander peoples. The right extends to the enjoyment, maintenance, control, protection, and development of, but not limited to, identity, heritage, practice, custom, teachings, and observances. The right also provides for Aboriginal peoples and Torres Strait Islander peoples to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. This section is modelled on Article 27 of the *International Covenant on Civil and Political Rights* and Articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples.

Drone use

Regulating the operation of drones for recreational purposes in certain areas where a regulatory notice for the activity is erected under section 250, positively engages with cultural rights of Aboriginal peoples and Torres Strait Islander peoples. Drones are sometimes used in ways that could affect the cultural resources and values of an area. The use of drones can disrupt sacred sites or animals, disturb cultural ceremonies, or intrude upon culturally significant landscapes. By regulating their operation in areas where cultural activities and resources are located, the Regulation respects and protects the cultural heritage of Aboriginal peoples and Torres Strait Islander peoples, consistent with the principles outlined in Section 28 of the HR Act.

Impacts on natural and cultural resources

Section 219 of the Regulation also engages cultural rights of Aboriginal peoples and Torres Strait Islander peoples. Section 219 prohibits a person from collecting natural material, for example, gathering stick and branches in a protected area for making a fire, without authorisation. Section 261 prohibits a person from defacing cultural or natural resources, such as carving into trees or graffitiing a rockface. The offences primarily serve the purpose of environmental conservation by safeguarding cultural and natural resources, including plants and natural habitats. This aligns with the values of a free and democratic society, emphasising the protection of the environment for the benefit of present and future generations. While this offence applies broadly, there is no limitation on First Nations People exercising their native title rights under the Commonwealth *Native Title Act 1993*.

Regulation of damaging activities on protected areas

Chapter 7 of the Regulation also provides for the control of a number of activities that could impact upon First Nations People's cultural rights to protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. This is achieved through the setting of offences for access to, use of and conduct within protected areas. These include offences relating to unlawful fires (sections 229 - 232), unauthorised structures or works (sections 233 and 234) and pollution and misuse of waterways (section 251-255, 260). These offences promote the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by improving protection of cultural and natural resources. Native title rights and interests are not limited by these offence provisions.

Restricted access areas and displaying regulatory notices

The Regulation affords specific protections for the cultural rights of Aboriginal people and Torres Strait Islander people where there are management instruments in place on Aboriginal land protected areas, including seeking the written consent of the Indigenous landholder for the grant of the protected area authority (sections 48, 49, and 116). Specific protections are also in place in relation to the declaration of restricted access areas and displaying of regulatory notices, including notices prohibiting the use of drones noted above (sections 24, 25, 30, 31, 32).

Permitting framework

The Regulation includes a permitting framework for activities on protected areas, which aims to ensure that any such use is appropriate and sustainable for the conservation of the cultural or natural resources of a protected area. The permitting assessment process contains consideration of the impact of a proposal on both natural and cultural resources (section 115). In particular, the chief executive's ability to grant a resources permit, apiary permit (section 47) and activity permit (section 75) for a protected area requires the consideration of the requirements of Chapters 3 and 5, which includes a range of matters to ensure the protection of natural and cultural values, and the wishes of relevant Traditional Owners. Departmental officers also follow the Native Title work procedures in assessing protected area authority applications to ensure appropriate consideration of native title and to satisfy the requirements of the Commonwealth *Native Title Act 1993*. Through this process, Traditional Owners are consulted on permit applications. As such, the permitting systems serves to positively engage First Nations People's cultural rights to protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. Any potential impact on human rights, including cultural rights of Aboriginal peoples and Torres Strait Islander peoples, is considered prior to the grant of any authority.

The provisions in sections 65 and 71 authorise the holder of a resource or apiary permit to take, use, keep and interfere with the cultural or natural resources stated on the permit. These provisions limit the grant of such permits in a manner that protects these cultural rights, and may only be granted following a specific case-by-case assessment of the impact on human rights. Therefore, there is no limitation on the cultural rights of Aboriginal peoples and Torres Strait Islander peoples from these provisions.

Consultation

The department engaged directly with First Nations partners prior to consultation with the broader community. Over 100 First Nations groups, including registered native title body corporates and native title representative bodies, were consulted as part of the review seeking feedback on regulatory proposals. These groups were advised on the purpose of the review, the existing provisions and key changes proposed, the timeframes associated with consultation, and how to provide feedback and the way to contact the department for further information or to request a meeting. First Nations groups were also emailed a link to the online survey at the commencement of the broader public consultation. When requested, DESI held a number of meetings with First Nations groups to discuss the proposed amendments in more detail, with no further issues raised.

Consideration of reasonable limitations on human rights (s13 *Human Rights Act 2019*)

Freedom of movement (HR Act s 19)

(a) the nature of the right

Section 19 of the HR Act protects freedom of movement, preserving the rights of all persons to move freely within Queensland, enter and leave it, and choose where to live. This section is based on Article 12 of the International Covenant on Civil and Political Rights. The right to move freely within Queensland means that a person cannot be arbitrarily forced to remain in, or move to or from, a particular place. The right includes freedom from physical and procedural barriers.

Use of vehicles, boats, recreational craft and aircraft

Chapter 7, Part 6 of the Regulation prescribes areas where vehicles, boats recreational craft and aircraft can be operated in protected areas and how they can be used. Section 247 restricts the unauthorised use of recreational craft, and sections 248 and 249 restricts the unauthorised flying or landing of aircraft and recreational craft on protected areas. Section 245 prescribes traffic controls such as speed limits and requirements for complying with signs prohibiting or otherwise restricting the use of vehicles, boats and recreational craft in the area. Section 246 provides for a conservation officer to give a direction about the use of a vehicle, boat and recreational craft, while section 243 provides additional requirements about their use such as prohibiting driving or riding anywhere other than on a road or along a route or surface that a regulatory notice states is a route or surface along which a specified type of vehicle is prohibited from being driven or ridden.

The purpose of restricting vehicle, boat and recreational craft access to particular protected areas ensures that use of the area is limited to certain activities in keeping with the objects of the area, protecting environmental and cultural values and promoting public safety. While these provisions regulate how an area may be accessed, right to freedom of movement is not limited, as these areas may still be accessed by a person without vehicles, boats or recreational craft.

Direction to leave an area

- (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

Sections 227, 228, 273 and 274 provide conservation officers with the power to direct someone to leave a protected area. This power relates to a range of purposes, including to protect cultural or natural resources of the protected area; secure the safety of a person or a person's property; or to minimise disturbance to persons in the area or where the person is believed to be committing an offence against the Act. A conservation officer may direct a person camping at a camping site to leave the protected area if the conservation officer reasonably believes it is necessary to allow for the equitable use of the camping site by others (where the person has camped for longer than the regulated maximum timeframe), or where and the natural condition of the site is being degraded. A conservation officer may also direct a person to leave in dangerous circumstances such as a natural disaster, or where they may interfere with an emergency or rescue activity.

These provisions limit freedom of movement by preventing people from moving freely within the relevant parts of the protected area. The requirement for a person to move from the area is not arbitrary and is only used where necessary for safety, equity, protection of environmental values, orderly management of an area or other emergency scenarios, which is consistent with a free and democratic society based on human dignity, equality and freedom.

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

The limitations imposed by sections 227, 228, 273 and 274 are closely related to the purpose they serve. The power to direct a person to leave a protected area is specifically tailored to achieve the objectives of safeguarding cultural and natural resources, ensuring public safety, and maintaining order and equity in the use of camping sites and other amenities. By restricting freedom of movement in specific, clearly defined circumstances - such as overextended camping duration, ecological harm, or emergency situations - the provision enables conservation officers to effectively manage and protect the environment and its users.

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

While alternative measures have been considered, the current restrictions remain the most appropriate balance between the right to free movement and the need to protect the values of protected areas. For instance, while education and signage can prevent some negative impacts, the power to direct people to leave is essential for situations where immediate compliance is necessary.

- (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

The limitations are moderate and applied in a targeted and proportionate manner, thus preserving the integrity and accessibility of protected areas. Considering the specific context of protected areas, where the consequences of unrestricted access can lead to damage or harm

to persons, the limitations on movement can be regarded as a necessary and responsible approach. They only apply in circumstances where there is a clear justification to act, ensuring that the essential qualities of human rights are still respected and upheld.

Declaration of restricted access areas or areas closed to the public

Section 28 provides for the declaration of restricted access areas to secure the safety of a person or their property, because of a fire or other natural disaster, conserve or protect the cultural or natural resources of the area including to enable restoration or rehabilitation, to protect breeding areas for native wildlife, or to areas that are significant to Aboriginal or Torres Strait Islander peoples in a way that is consistent with Aboriginal tradition or Island custom. Restricted access areas may also be declared to protect a facility or other infrastructure in an area, protect the character and amenity of the area, or for the orderly or proper management of an area. Section 37 provides for the declaration of areas closed to the public for public health and safety. Offences for entering these areas are provided in sections 199 and 200. Section 201 provides an offence for an unauthorised person from entering a national park (scientific). Sections 90 and 93 provide for an authority to enter restricted access areas and national parks (scientific).

(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 nature of the purpose of the limitation is to ensure public safety, conserve cultural and natural resources, protect wildlife and significant areas, and maintain the character and orderliness of various territories. The restrictions, although they impose limitations on the freedom of movement, do this with the intent to serve the common good, which is fundamental to the values of a free and democratic society – placing emphasis on human dignity, equality, and freedom by safeguarding the collective interests of communities and the natural environment.

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

The relationship between the limitation and its purpose is direct and substantial. By restricting access to certain areas, the regulation aims to prevent harm to individuals and damage to property due to natural disasters, ensure the conservation and protection of environmental and cultural resources, and manage public health and safety concerns effectively. These restrictions are designed to be implemented to achieve specific objectives, thereby contributing positively to the achievement of these purposes.

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

Any less restrictive measures may not provide an adequate level of protection or control required in various contexts, such as immediate threats to public safety or the need for ecological conservation. Consequently, the restrictions are considered to be proportionate to the risks and necessary for the protection of higher priority community and environmental values.

(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

The balance between the importance of the purpose of the limitation and the importance of preserving the human right of freedom of movement is maintained through the tailored application of the restrictions. The Regulation provides a framework to evaluate the need for restrictions case-by-case, applying limitations only when and where necessary. Moreover, the legislation provides avenues for exemptions where appropriate, ensuring that the limitations are not absolute but are implemented with discretion and consideration for individual circumstances. Thus, the nature of the limitation is justified and reasonable.

Freedom of expression (HR Act s21)

(a) the nature of the right

Section 21 of the HR Act protects the right of every person to freedom of expression, including the right to hold an opinion without interference and to seek, receive and impart information. The right to freedom of expression protects almost all types of expression, as long as it conveys or attempts to convey a meaning. This is judged by its impact on reasonable members of the public who are exposed to it, without knowing the purpose of the person who expressed it. This right is based on Article 19 of the International Covenant on Civil and Political Rights.

Safe use of vehicles

Section 239 of the Regulation requires that the drivers, riders or passengers of particular vehicles wear a helmet. This includes for bicycles, personal mobility devices, motorbikes, quad bikes and utility off road vehicles. Enforcing the use of helmets may have perceived limitations for the right to freedom of expression.

(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

Mandating helmets may infringe upon individual freedom of expression by limiting a person's ability to choose whether or not to wear a helmet while riding. It may be perceived as limiting their ability to express their personal values or beliefs, even if those beliefs involve assuming the risk of riding without a helmet. Road safety is inherently consistent within a free and democratic society. It is considered to be in the public interest to reduce injuries associated with vehicle accidents, for example, by encouraging the use of helmets when operating the relevant type of vehicle.

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

The government has a strong interest in promoting public safety and well-being. Mandating the use of helmets aligns with this interest by reducing the likelihood of severe head injuries, which can have long-term consequences for individuals and society as a whole. Research consistently demonstrates that wearing helmets significantly reduces the risk of head injuries in the event of a fall or collision. Therefore, the limitation of not wearing helmets directly contributes to the purpose of minimising the severity of injuries sustained in accidents.

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

Wearing helmets is the least restrictive and reasonably available means to achieve safety goals due to its proven effectiveness in mitigating the risk of head injuries when accidents occur involving the use of these vehicle types. Unlike other potential measures that may rely on voluntary compliance or behavioural change, helmets provide a tangible and immediate form of protection against head-related accidents. Moreover, helmets are readily accessible, with a wide range of options available in various styles, sizes, and price points, making them attainable for people of all backgrounds and skill levels. By prioritising the protection of well-being without unduly infringing on personal freedoms, helmet requirements represent a pragmatic and effective approach to enhancing safety in using these vehicles in protected areas.

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

The importance of minimising serious risk to human safety by providing efficient enforcement mechanisms outweighs any limitations on freedom of expression. The provision provides an appropriate balance between protecting the right to life of drivers, riders and passengers of these vehicles, while allowing these vehicles to be used in protected areas. These existing provisions are consistent with maintaining human rights, as the powers are not arbitrarily exercised. Given the restrictions and oversights placed on the powers, it is considered proportionate and justifiable with respect to any potential limitation on human rights.

Person not to display or disseminate notices etc.

Section 271 provides that a person must not display or disseminate a notice, or other document in a protected area without the written approval of the chief executive. This provision may be seen as a limitation on the right to freedom of expression as it establishes a process that could restrict the sharing of ideas and information in public spaces.

(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

By preventing the unauthorised placement of printed materials, the limitation seeks to uphold principles of public order, environmental protection (in particular the reduction of littering), and the responsible use of public spaces. These principles are inherently consistent within a free and democratic society.

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

The limitation directly aligns with its purpose by providing a mechanism for oversight and control over the distribution of printed materials. By requiring written approval from the chief executive, the limitation aims to ensure that such activities are conducted in a manner that respects community standards and safeguards against potential harm, inconvenience or environmental degradation caused by indiscriminate displaying or dissemination of materials.

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

No less restrictive, reasonable available alternatives to achieve the management outcomes have been identified. The requirement for written approval represents a measured approach to regulating the display and distribution of printed materials. While it does impose a restriction, it also provides individuals with a pathway to seek approval for their activities. This process ensures oversight and control while still allowing for freedom of expression. This requirement strikes a reasonable balance between regulating the use of public spaces and preserving individual liberties, as it allows for lawful expression while mitigating potential negative impacts.

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

The limitation on the display and distribution of printed materials is proportionate and justified in light of its intended purposes. It seeks to maintain public order and regulate the use of public spaces, all of which are important for the management of protected areas. At the same time, the requirement for written approval acknowledges and respects the fundamental right to freedom of expression by providing individuals with a mechanism to seek permission for their activities. As such, the limitation can be considered justified within a democratic society, as it seeks to achieve legitimate objectives while still upholding fundamental rights.

Property rights (section 24)

(a) The nature of the right

Property rights (section 24) protect the right of all persons to own property and provides that people have a right to not be arbitrarily deprived of their property (including money). In the human rights context, arbitrarily is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective. This right does not include a right to compensation if a person is deprived of their property. This right is based on Article 17 of the Universal Declaration of Human Rights.

Restricting grant of authority on nature refuges and special wildlife reserves

The Regulation (sections 63, 78 and 79) positively engages property rights by restricting the grant of authorities on nature refuges and special wildlife reserves without the consent of the landholder on these privately owned protected areas. By stipulating that authorities cannot be granted on these lands without the explicit consent of the landholder, the Regulation upholds the autonomy and rights of private property owners, ensuring that their consent is central to any decision-making process that could impact the use and conservation of their land.

Amendment, suspension or cancellation of authorities

Chapter 5, Part 5 provides for the amendment, suspension or cancellation of authorities. While the grant of a protected area authority may have some commercial and financial implications for the applicant, these authorities are not formal property rights. Additionally, while the grant of an authority allows for access to the protected area property, the authority

does not transfer property rights to the authority holder, therefore any amendment, suspension or cancellation provisions do not result in the holders being deprived of property.

Fees

Enforcing permit fees under sections 85 and 102 may be perceived as engaging property rights by imposing a financial prerequisite on the use of protected areas. However, the requirement to purchase permits does not constitute a limit on property rights because it is not compulsory in all instances; rather, it is conditional upon the desire to enter or engage in particular activities within protected areas. If an individual chooses not to engage in these activities or access these areas, there is no deprivation of property. Additionally, under Chapter 8 the chief executive may waive or reduce the payment of a fee to the extent, including entirely, if deemed appropriate in certain circumstances.

Structures and works

(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

Section 233 stipulates provisions around erecting structures or conducting work in a protected area. Section 234 complements the provisions of section 233 by detailing the enforcement mechanism for the removal of unauthorised structures or works. The provisions in these sections may be perceived as limiting property rights by imposing a regulatory framework that requires written approval for erecting or modifying structures in protected areas and prescribing strict remediation measures for unauthorised activities, thereby restricting individuals' free use of their property within these regions.

The purpose of the limitations imposed by sections 233 and 234 is to protect the ecological integrity and conservation values of protected areas. These limitations require written approval for structures and works (section 233) and outline procedures for addressing non-compliance (section 234), reflecting a deliberate commitment to environmental stewardship. Such regulation supports free and democratic values by promoting the responsible use of shared resources and preventing actions that might disproportionately affect the community and future generations. These provisions aim to achieve a balance between individual property rights and the collective right to a healthy environment, which is rooted in the respect for human dignity, equality, and freedom.

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

The limitations are closely aligned with their purpose of environmental conservation. By controlling human activity within protected areas and providing mechanisms for remediation in cases of non-compliance, these sections serve as instrumental tools to protect natural resources. Requiring approvals for changes to the landscape and mandating the reversal of unauthorised alterations support the sustainable management of these areas and help maintain conservation values, thereby meeting the provisions' purpose.

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

The provisions have been identified as the least restrictive and reasonably available ways to achieve the purposes. Any less stringent alternative might compromise the level of protection afforded to the environment. These provisions ensure that oversight is maintained without absolutely prohibiting structures and works, by allowing for a conditional use of property within protected areas, which is a responsible approach to environmental management.

(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

While the provisions limit certain activities within protected areas, they do so with the intention of safeguarding the environment for the public's benefit, which is a legitimate regulatory objective. The limitation is not absolute - the provision allows for structures and works with appropriate oversight, which provides a safeguard against arbitrary deprivation of property. The importance of protecting the environment for present and future generations is significant and justifies the limitation on the use of property within these areas. The mechanism for obtaining written approval also adds an element of predictability and reasonableness to any deprivation of property that may occur, which can be seen as proportionate in pursuit of the objective.

Privacy and reputation (HR Act section 25)

(a) The nature of the right

Section 25 of the HR Act protects the individual from arbitrary interferences with their privacy, family, home, and correspondence (written and verbal), and from unlawful attacks on their reputation. The Regulation interacts with privacy rights in circumstances where personal information is requested under the following provisions.

Drone use

The Regulation pertaining to restrictions on drone possession and operation in section 250 positively engage the right to privacy and reputation. By implementing restrictions on drone activity, the department is helping to prevent unwelcome observation and safeguard individuals' privacy within protected areas. The provision reduces the circumstances whereby visitors' enjoyment of nature and their recreational activities are impacted by concerns about being photographed, recorded or otherwise monitored. Thus, regulating drones protects individuals' rights to privacy and reputation, fostering a safer and more respectful environment for all.

Request of information

The Regulation also engages with privacy rights in circumstances where personal information is requested by the department.

Limitations to right to privacy may be perceived in circumstances where personal information (i.e. name and address) is collected as part of a protected area authority application (sections include 124, 160, 166, 176). These details are used by the chief executive prior to deciding on

the application for a protected area authority, such as to formally identify an applicant and determine their suitability (sections 107-110) for grant of the authority. In these cases, a person is voluntarily seeking an agreement or authority and the collection of information is part of that voluntary action. An individual is not being forced to provide information as they are not being forced to apply for an authority. Under section 101 certain information must be included in the record returns for a commercial activity permit or a relevant organised event permit.

Sections 159 and 198 require the granted authority or agreement to be made available for inspection if requested by a trained authorised officer when undertaking compliance activities on a protected area, in order to ensure the activities being undertaken are lawfully authorised. Private information collected, used and stored by the department is subject to strict control principles and practices, and complies with the *Information Privacy Act 2009*. The information is not made publicly available.

The purpose of sections authorising the request of private information is to ensure that compliance officers can correctly identify who authorities are issued to, verify the validity of the authority in order to ensure the activities being undertaken are lawful, verify a person's authorisation to drive, and assess that commercial activities or events and associated payments are occurring in accordance with their authority conditions. The collection of this information is not unlawful nor arbitrary and therefore there is not considered a limitation of privacy rights.

Details to be written on camping tag

(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

Under section 224, a person's name and permit details are required to be displayed on a camping tag. The purpose of the Regulation authorising the request of private information is to ensure that compliance officers can correctly identify who the camping permit is issued to and verify the validity of the permit. Private information collected by the department under these provisions is collected, used and stored in accordance with the *Information Privacy Act 2009*. The objective of collecting personal information is to ensure that conservation and recreational values are being upheld in dealings with camping, which reinforces a strong management framework. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The relationship between the limitation on privacy rights and the purpose is to support the department's compliance and enforcement program in managing camping areas. That is, by ensuring the department has the ability to identify legitimate permit holders.

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

These provisions are considered the least restrictive approach for managing and enforcing compliance matters. The personal information is required for the department to issue a permit to an individual who can be identified. Only personal information that is necessary for

compliance is collected. Collecting this information enables the compliance officer to effectively and accurately carry out functions for which they have the statutory power.

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

The limitation on privacy rights is balanced with the necessity for carrying out the management of camping areas with respect to permitting and supporting the objectives of the NC Act. In this sense, the provisions are justified as they serve legitimate purposes in ensuring the security and efficient administration of camping facilities. The provisions are justified within a democratic society as they strike a necessary balance between privacy considerations and the effective management of camping areas for the benefit of all users.

Licences and authorities to be produced on request

(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

Section 235 requires a person to produce a driver's licence on request of a conservation officer unless the person has a reasonable excuse. This offence is required to ensure that conservation officers are able to enforce the requirements for drivers to hold a driver's licence by requesting the production of a driver's licence. Similarly, sections 159 and 1980 require that a person produce a copy of their protected area authority for inspection if requested by a conservation officer. This may occur when a conservation officer is undertaking compliance activities on a protected area, in order to ensure the activities being undertaken are lawfully authorised.

Private information obtained by the department under these provisions is collected, used and stored in accordance with the *Information Privacy Act 2009*. The information is not made publicly available. The objective of collecting personal information is to ensure that appropriate identification is provided when applications are made for conducting certain activities which assists with maintaining conservation and recreational values of the protected area in dealings with vehicle use, and under protected area authorities, which supports existing land management frameworks. These objectives are consistent with a free and democratic society based on human dignity, equality and freedom.

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

The relationship between the limitation on privacy rights and the purpose is to support the department's compliance and enforcement program in managing vehicle use and other activities on protected areas. That is, by ensuring the department has the ability to identify valid license and authority holders.

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

The provisions are considered the least restrictive approach for managing and enforcing compliance matters. Personal information is required to be provided for the department to issue an authority to an individual who can be identified and to record the address associated with the licence for compliance activities to be effective. Only personal information that is necessary

for compliance is collected. Collecting this information enables the compliance officer to effectively and accurately carry out functions for which they have the statutory power.

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

The limitation on privacy rights is balanced with the necessity for supporting the objectives of safety, conservation and compliance with the provisions of the Regulation by managing lawful vehicle use and other activities on protected areas. In this sense, the provisions are justified as they serve legitimate purposes in ensuring the security and efficient administration of protected area authorities and provide users with a means of providing evidence, when necessary, of the legitimacy of the activities they are undertaking within the protected area. This information is not requested arbitrarily, and undertaking activities that require authorisation is voluntary. The provisions are justified within a democratic society as they strike a necessary balance between privacy considerations and the effective management of protected areas for the benefit of all users.

Conclusion

I consider that the *Nature Conservation (Protected Areas Management) Regulation 2024* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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