

Recreation 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 *Recreation Areas Management Regulation 2024* made under the *Recreation Areas Management Act 2006* (RAM Act).

In my opinion, the *Recreation 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 *Recreation Areas Management Regulation 2024* (the Regulation), which operates under the *Recreation Areas Management Act 2006* (RAM Act) provides for the effective management of recreation areas, in order to achieve the object of the RAM Act - the establishment, maintenance and use of recreation areas, and the provision, coordination, integration and improvement of recreational planning, recreational facilities and recreational management for these areas.

There are seven recreation areas declared in Queensland: Green Island (offshore of Cairns); Fraser Island (K'gari), Inskip Peninsula, Cooloola, Bribie Island, Moreton Island (Mulgumpin) and Minjerribah (on North Stradbroke Island). The Department of Environment, Science and Innovation (DESI) manages all recreation areas, other than Minjerribah and Mulgumpin recreation areas, which are managed by the registered native title body corporate for the areas, Quandamooka Yoolooburrabee Aboriginal Corporation, under an agreement with DESI.

The Regulation sets out provisions to manage a range of commercial and recreational uses, including use by the public for activities such as camping, bushwalking, four-wheel driving, swimming and other nature-based activities in the seven recreation areas. The Regulation includes important provisions regarding:

- continuation of declared recreation areas;
- regulation of conduct in recreation areas, with particular regard to conserving natural and cultural resources and values, and protecting human health and safety;
- the regulation of activities to ensure the protection of the environment, such as the disposal of waste, and bringing domestic animals or plants into the area;
- enforcement powers in relation to protecting the environment, human well-being and property;
- record keeping requirements that apply to particular permit holders such as commercial operators and organisers of events;

- offences and the penalties for these offences;
- fees payable for permits and authorities under the *Recreation Areas Management Act 2006*; and
- transitional provisions to ensure continuity between the *Recreation Areas Management Regulation 2017* and the *Recreation Areas Management Regulation 2024*.

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, authority holders, peak industry groups 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 engages the following human rights under the *Human Rights Act 2019* (HR Act):

- Right to life (HR Act section 16)
- Freedom of movement (HR Act section 19)
- Freedom of expression (HR Act section 21)
- Privacy and reputation (HR Act section 25)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act section 28).

Right to life (HR Act s16)

Section 16 of the HR Act protects that every person has the right to life and has the right not to be arbitrarily deprived of life. The vehicle requirements within the Regulation positively engage the right to life of drivers, passengers and other users of recreation areas by deterring unsafe driving behaviours to improve road safety.

The stipulated vehicle use requirements in Sections 15, 16, 19, 20, 21 and 24 of the Regulation serve as proactive measures aimed at safeguarding the lives of drivers, passengers, and other users traversing recreation areas. By mandating adherence to road rules or regulatory notices, including speed limits and traffic signs, the Regulation helps to curtail reckless driving behaviours 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 recreation area to have a valid driver's licence and for the vehicle to be registered serve as a critical safeguard that seeks to ensure that only qualified and authorised individuals operate vehicles within these areas. Furthermore, the restrictions relating to certain vehicle types, such as quad bikes and motorised trikes, reflect the existing restrictions under the Queensland Road Rules and serve to further enhance overall road safety within recreation areas. By promoting responsible driving practices, ensuring driver competency, and imposing

necessary safety measures, the Regulation contributes significantly to the creation of a safer and more secure environment, where the preservation of human life remains paramount.

Freedom of movement (HR Act s19)

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.

The Regulation prescribes areas where vehicles, vessels and recreational craft can be operated in recreation areas and how they can be used. Section 25 restricts the use of unauthorised use of motorised vessels on freshwater lakes or watercourses in a recreation area unless the use or operation is authorised by the chief executive's written approval, or in accordance with a regulatory notice. Section 24 prescribes traffic controls such as speed limits and requirements for complying with signs. Section 22 provides other requirements about using vehicles, vessels or recreational craft such as prohibiting driving or riding anywhere other than on a road; on a part of a coastal beach that is not vegetated; or along a route or on a surface that a regulatory notice states is a route or surface along or on which a specified type of vehicle is prohibited from being driven or ridden.

The purpose of restricting vehicle, vessel and recreational craft access to particular recreation 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 promotes 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, vessels or recreational craft.

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act s 28)

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.

Regulating the operation of drones for recreational purposes in certain areas where a regulatory notice for the activity is erected under Section 33, 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.

Section 9 of the Regulation may also engage cultural rights of Aboriginal peoples and Torres Strait Islander peoples by prohibiting a person from taking or using a plant in a recreation area for making a fire without a written approval. The offence primarily serves the purpose of environmental conservation by safeguarding 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*. Further, should any other persons wish to undertake this activity lawfully, they may apply to the chief executive for a written approval where specific consideration of human rights would be undertaken on a case-by-case basis.

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 contact the department for further information, or to request a meeting. First Nations groups were also emailed a link to an online survey used at the commencement of 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 (section 13 *Human Rights Act 2019*)

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 which includes the freedom to seek, receive and impart information and ideas of all kinds, whether orally, in writing, in print, by way of art, or in another medium chosen by the person.

Person not to disseminate notices etc.

Section 43 provides that a person must not disseminate a notice, handbill or other printed or written matter in a recreation area without the written approval of the chief executive. Disseminate includes displaying, distributing, dropping, scattering or throwing down the material. 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 dissemination of printed materials, the limitation seeks to uphold principles of public order, environmental protection, 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 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 dissemination 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 dissemination of printed materials is proportionate and justified in light of its intended purposes. It seeks to maintain public order and protect the environment which are important for the management of recreation 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.

Safe use of vehicles

The provisions in Section 19 require that a helmet be worn by persons operating or riding on a vehicle including personal mobility devices, bikes, motorbikes, and conditionally registered vehicles.

(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

Enforcing the use of helmets may have perceived limitations on the right to freedom of expression. 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.

Mandating riding 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.

(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 while riding 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 while riding. Therefore, the limitation of not wearing helmets directly contributes to the purpose of minimising the severity of injuries sustained in riding 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 in riding due to its proven effectiveness in mitigating the risk of head injuries. 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 riders of all backgrounds and skill levels. By prioritising the protection of riders' well-being without unduly infringing on personal freedoms, helmet requirements represent a pragmatic and effective approach to enhancing safety in riding personal mobility devices in recreation 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 allowing personal mobility devices to be used in recreational areas and having these rights limited. Additionally, while it may limit freedom of expression, it positively engages the right to life. As such, it is considered proportionate and justifiable with respect to any potential limitation on other human rights.

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 provisions pertaining to restrictions on drone possession and operation in Section 33 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 recreational 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.

The Regulation also engages with privacy rights in circumstances where personal information is requested by the department. There are a number of provisions that require personal details to be collected, displayed or inspected, including camping tags (Sections 10 and 11), vehicle tags (Section 28 and 29), and records of activities conducted under particular permits (Part 8).

(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 Sections 10 and 11, a person's name is required to be collected in granting a camping permit and must be displayed on the camping tag for inspection. Similarly, under Section 28, a person's name is required to be displayed on the tag for a vehicle access permit, which for particular recreation areas must be displayed (Section 29). Under Part 8, certain information must be included in the record returns for a commercial activity permit or a relevant organised event permit.

The purposes of the Regulations authorising the request of private information are 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, and assess that commercial activities or events and associated payments are occurring in accordance with their authority conditions. Private information requested 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 appropriate identification is provided when applications are made for conducting certain activities which assists with maintaining conservation and recreational values in dealings with vehicle use, and other recreational and commercial activities, 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 use of recreation areas. That is, by ensuring the department has the ability to verify the lawfulness of activities occurring on recreation areas.

(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. Only personal information that is necessary for compliance is collected. Collecting this information enables the authority assessment or 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 appropriate management of recreation areas with respect to permitting and compliance and supporting the objectives of the RAM Act. In this sense, the provisions are justified as they serve legitimate purposes in ensuring the security and efficient administration of camping bookings and provide users with a means of providing evidence, when necessary, of the legitimacy of the activities they are undertaking within the recreation 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 recreation areas for the benefit of all users.

Conclusion

I consider that the *Recreation 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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