

Nature Conservation (Protected Areas) (Omission of Lawn Hill Resources Reserves) 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 Resources Reserves) Amendment Regulation* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas) (Omission of Lawn Hill Resources Reserves) 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 Resources Reserves) 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 (Arthur Creek) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Gorge Mouth) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Gregory) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Gregory River Base) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Lilydale) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Littles Range) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Stockyard Creek) Resources Reserve from the Regulation.
- Removal of Lawn Hill (Widdallion) Resources Reserve from the Regulation.

The 1994 process whereby Governor in Council agreed to dedicate the land as resources reserves and include it in the Regulation was an invalid action. For the action to be valid, the previous tenures of the eight Lawn Hill Resources Reserves (a combination of Reserves for Departmental and Official (Natural Resources) Purposes and Reserves for Departmental and Official Purposes under the *Land Act 1962* (Land Act), collectively referenced as the D&OP

Reserves), must have been revoked. There is no evidence that this action was undertaken, therefore dedication of the resources reserves under the NC Act in 1994 was 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 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.

When the Regulation was made in 1994 Governor in Council did not have the jurisdictional power to include the eight Lawn Hill Resources Reserves in the statutory instrument.

Progressing the Amendment Regulation will enable progress of future tenure arrangements as agreed by the Waanyi people who have legal support of Chalk and Behrendt Lawyers and Consultants. The action will uphold commitments in the Proposed Boodjamulla Indigenous Land Use Agreement (ILUA) QI2023/003 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.

The Waanyi PBC support progress of the Amendment Regulation as it is essential for the land to be transferred as a combination of Aboriginal freehold land and national park (Aboriginal land) in accordance with the ILUA commitments.

A public notice was published on the DESI website on 25 June 2024 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 requesting further information about the proposal, but the respondent confirmed they had no concerns to raise in consideration of the *Human Rights Act 2019*. No further responses were received in the 28-day consultation period which ended 5 August 2024, and the Department of Environment, Science and Innovation progressed the proposal accordingly.

Conclusion

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

LEANNE LINARD MP
MINISTER FOR THE ENVIRONMENT AND THE GREAT BARRIER REEF
MINISTER FOR SCIENCE AND INNOVATION

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