

# Forestry and Other Legislation 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 *Forestry and Other Legislation Amendment Regulation 2024* made under the *Forestry Act 1959* and the *Nature Conservation Act 1992*.

In my opinion, the *Forestry and Other Legislation Amendment Regulation 2024*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (Human Rights Act). I base my opinion on the reasons outlined in this statement.

## Overview of the Subordinate Legislation

The *Forestry and Other Legislation Amendment Regulation 2024* (Amendment Regulation) is made under the *Forestry Act 1959* (Forestry Act) and the *Nature Conservation Act 1992* (NC Act).

The authorising law for the Amendment Regulation is:

- Section 26 of the Forest Act prescribes that an area of State forest may be revoked in whole or part by regulation, only if the Governor in Council shall cause to be laid on the table of the Legislative Assembly and on a resolution whereof not less than 14 days notice shall have been given being passed by the Legislative Assembly for the revocation.
- 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 32A of the Forestry Act prescribes that if land that is State plantation forest stops being a State forest, the declaration of that land as a State plantation forest is taken to have been revoked.
- 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 36A of the NC Act enables the Minister to recommend to the Governor in Council the making of a regulation prescribing an apiary area in a national park.
- Section 43D of the NC Act prescribes that a regulation may declare an area of land the subject of a conservation agreement as a special wildlife reserve.
- Section 47 of the NC Act prescribes that a conservation agreement may be terminated if the declaration of the nature refuge to which it relates is revoked.
- Section 48 of the NC Act prescribes that the State and landholders may enter into another conservation agreement that varies or terminates and replaces the earlier agreement.
- Section 50 of the NC Act prescribes that the Governor in Council may, by regulation, revoke the declaration of a nature refuge or coordinated conservation area in whole or in part.
- Section 64 of the NC Act prescribes that the Governor in Council may, by regulation, assign a name to, or alter the name of, a protected area or aggregation of protected areas.
- Section 175 of the NC Act prescribes that the Governor in Council may make regulations under this Act.

The primary purpose of the Amendment Regulation is to amend the forestry and protected area estates affecting one State plantation forest declaration, fifteen State forests, nine national parks and three conservation parks. The Amendment Regulation amends the *Forestry Regulation 2024*, *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.

These amendments include:

- revoking the entirety of the State plantation forest declaration on one State forest;
- revoking parts of ten State forests and the entirety of five State forests;
- redescribing eleven State forests;
- revoking parts of one national park;
- dedicating two new national parks and one new conservation park;
- increasing the area of six national parks and two conservation parks; and
- revoking one nature refuge to allow the area to be dedicated as a special wildlife reserve.

The conservation of nature in Queensland is supported by the dedication and declaration of protected areas representative of the biological diversity, natural features and wilderness of the State.

Revocations affecting the forestry and protected area estates are carefully considered and are only supported when they are sensible actions that link to balanced public interest outcomes or necessary management of the estates, and are in line with departmental policy including consideration of Human Rights Act matters.

Beekeeping currently occurs in a number of State forest areas that are being revoked and then dedicated as national park through the Amendment Regulation. To coincide with this change of tenure, the *Nature Conservation (Protected Areas Management) Regulation 2024* will also be amended to provide for the continuation of beekeeping activities in areas that contain apiary sites (apiary areas). The NC Act allows apiary permits to be granted for beekeeping in national parks if the apiary areas are prescribed in regulation.

The process of selecting and approving protected areas involves the relinquishing of relevant rights or interests of parties such as other state departments, resource companies or lease holders. This has been completed for all proposed amendments and the engagement with human rights has been considered during this process.

Activities undertaken after tenure changes (e.g. road, dam 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); 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 engaged in relation to certain actions in the Amendment Regulation.

No human rights have been identified as being engaged or limited by the amendments that will prescribe apiary areas in national parks. The amendments do not automatically authorise access to national parks for beekeeping, and any impacts on human rights will be assessed through the permit application process.

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.

The cardinal principle of management of State forest areas is the permanent preservation of such areas for the purpose of producing timber and associated products in perpetuity and of protecting the watershed therein.

The actions in the Amendment Regulation that change the tenure of unallocated State land areas to protected area designation promote the freedom of movement within Queensland by allowing public access to areas where previously it was not available.

The actions in the Amendment Regulation that change the tenure of State forest areas to protected areas promote the freedom of movement within Queensland by allowing public

access to additional areas that were not previously accessible due to commercial operations. Commercial activities were ceased over these State forest areas before they could be upgraded to protected area designation.

Dedicating new protected areas or amending existing protected areas engages the Section 28 Cultural Rights of Aboriginal peoples and Torres Strait Islander peoples in relation to the use of and access to land. A public notice was published on the Department of Environment, Science and Innovation website to seek views in consideration of the HR Act, including in relation to Aboriginal peoples' and Torres Strait Islander peoples' cultural rights. One query was received about future tenure arrangements that was not related to human rights. One comment was received related to resource interests on Targinie State Forest that was not related to human rights. There were no objections apparent or further comments received in relation to the proposed amendments, and the department progressed the proposal accordingly.

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

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

##### (a) the nature of the right

The right to freedom of movement (section 19 of the HR Act) protects the right of people to move freely within Queensland.

##### (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 Amendment Regulation action that revokes part of Expedition (Limited Depth) National Park is to allow for the temporary revocation of an already-constructed vehicle track within the national park to facilitate lawful thoroughfare access to an adjoining property containing leases for resource activities. This limits freedom of movement in a relatively small area of 24.657 hectares compared to the remaining national park, about 109,000 hectares, as it will no longer be accessible by the public. Custodianship of the land will be retained by DESI, as trustee, upon conversion to unallocated State land tenure.

The Amendment Regulation action that revokes the State forest designation on the entirety of Targinie State Forest to freehold tenure is to facilitate the construction of a proposed hydrogen pipeline and new multi-user infrastructure corridor linking the Coordinator-General's Gladstone State Development Area to the Port of Gladstone. This limits freedom of movement, as the area will no longer be accessible by the public upon conversion to freehold tenure.

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

The limitation in relation to revoking part of Expedition (Limited Depth) National Park will help to achieve the purpose of undertaking appropriate maintenance and ongoing use of the existing access track by DESI and parties requiring access to an adjoining property. As these actions do not align with the management principles of national parks, revocation will help achieve this purpose, with only minor changes to the existing public use of the area.

The limitation in relation to revoking Targinie State Forest will help to achieve the purpose of delivering clean, reliable and affordable energy through the construction of a proposed hydrogen pipeline and new multi-user infrastructure corridor. The associated compensation land, negotiated in accordance with the *Operational policy: Revocation of QPWS managed areas*, will add valuable conservation lands to the protected area estate.

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

After consideration of limited options, the Amendment Regulation action in relation to revoking part of Expedition (Limited Depth) National Park is the least restrictive way to achieve the purpose of the limitation to freedom of movement, and over the smallest area possible.

The Amendment Regulation action in relation to revoking Targinie State Forest is the least restrictive way to achieve the purpose of the limitation of freedom of movement in the already modified landscape. Revocation is the only available option to allow the construction of the proposed hydrogen pipeline and multi-user infrastructure corridor.

(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

For the action that revokes part of Expedition (Limited Depth) National Park, the limitation has a very defined scope of about 24.657 hectares, and persons subject to the limitation have the ability to move freely through the remaining national park, an area of about 109,000 hectares. The purpose of the limitation is to allow for the appropriate maintenance of and access to an already-constructed vehicle track within the national park to facilitate lawful thoroughfare access to an adjoining property containing leases for resource activities. Therefore, the limitation provides for an appropriate balance between purpose and impacts on affected persons.

The limitations in relation to revoking Targinie State Forest help support a necessary balance between the public interests in clean energy production and public access to State land. In this case, the revocation of Targinie State Forest is considered an appropriate balance between the purpose of the limitations and its impact on affected persons, given that the primary purpose of a State Forest is to produce timber and associated products rather than to facilitate public use of State land.

The limitations are consequently reasonable, lawful and justifiable and consistent with a free and democratic society based on human dignity, equality and freedom.

A consultation notice is published on DESI's website for all revocation proposals affecting the forestry and protected area estates (<https://www.desi.qld.gov.au/our-department/public-notices/consultation-on-proposed-amendments-to-the-protected-area-estates3>). 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 proposals in the Amendment Regulation was published on 15 July 2024 and closed on 12 August 2024. One comment was received from a third party interest related to a revocation proposal, and one query regarding future tenure arrangements,

but there were no queries or comments in relation to the consultation notice that related to human rights.

## **Conclusion**

I consider that the *Forestry and Other Legislation Amendment Regulation 2024* 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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