

Nature Conservation (Protected Areas) (Eastern Kuku Yalanji Area) 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) (Eastern Kuku Yalanji Area) Amendment Regulation 2024* made under the *Nature Conservation Act 1992*.

In my opinion, the *Nature Conservation (Protected Areas) (Eastern Kuku Yalanji Area) 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) (Eastern Kuku Yalanji Area) Amendment Regulation 2024* (Amendment Regulation) is to amend the protected area estate register and make additions to several classes of protected areas. The Amendment Regulation which amends the *Nature Conservation (Protected Areas) Regulation 1994* (Regulation), 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:

- Redescribing and changing the class of part of two existing Cape York Peninsula national parks as national parks (Cape York Peninsula Aboriginal land) – (CYPAL).
- Declaring a nature refuge over two parcels of Aboriginal freehold land.
- Dedicating five parcels of State land as national park.

Free, prior and informed consent (FPIC) is required from the First Nation's People that hold an interest in the land for the redescription of national parks to national parks (CYPAL) and declaration of nature refuge over Aboriginal freehold land in the Cape York Peninsula Region (the Region). FPIC has been confirmed through engagement with the Traditional Owner Negotiation Committee, the Jabalbina Yalanji Aboriginal Corporation board and through feedback from the Elders groups regarding relevant proposed amendments to the national parks and nature refuge. Human rights matters have been taken into account during this process.

Redescribing part of two existing Cape York Peninsula national parks as national parks (Cape York Peninsula Aboriginal land) – (CYPAL).

The Department of Environment, Science and Innovation (DESI) has consulted with the Eastern Kuku Yalanji (EKY) people since May 2018 regarding the proposed changes to the relevant parcels in the Region EKY have granted their consent for the proposed changes to the relevant parcels to this particular act within the Eastern Kuku Yalanji 2021 National Parks Land Transfer Indigenous Land Use Agreement (ILUA). In September 2021 the ILUA was agreed by the Native Title Parties, the State and the Wet Tropics Management Authority (the parties). The ILUA was then registered by the National Native Title Tribunal in June 2022 (QI2021/010) and included a number of Agreed Acts to be undertaken by the parties. As part of the ILUA, the parties also entered into a Conservation Agreement (CA) and an Indigenous Management Agreement (IMA). On behalf of the State, the ILUA Agreed Acts include three matters for the State to action.

Compliance action has been completed by the State over four lots to resolve encroachments onto the park by neighbours. There are now no impediments to the grant of this land as Aboriginal freehold land under the *Aboriginal Land Act 1991*, or to dedicating national park as national park (CYPAL). These lots are already included in the IMA, title deeds have been issued and joint management will take effect upon dedication via the Amendment Regulation.

The ILUA authorised the upgrade of land once known as part of Monkhouse Timber Reserve to Ngalba Bulal National Park. It was agreed that the action to include this land in the jointly managed Ngalba-bulal National Park (CYPAL) was to be completed in two stages. Title deeds for this land have been issued and this Amendment Regulation finalises this action enabling joint management to occur through the IMA.

Declaring a nature refuge over two parcels of Aboriginal freehold land.

Two lots of Aboriginal freehold land owned by Jabalbina Yalanji Aboriginal Corporation (the Corporation) are proposed for declaration as nature refuge in accordance with the executed CA. One lot was granted as Aboriginal freehold land following ILUA authorisation. The other lot was part of Daintree National Park and included a plant nursery. For the latter, the ILUA agreed the revocation of the lot from Daintree National Park so that the Corporation could incorporate the nursery as part of their business opportunities, whilst the balance of this land would be a nature refuge. The Legislative Assembly approved the revocation, land title deeds for the Aboriginal freehold land have been issued and the Amendment Regulation provides for the declaration of the proposed Yalanjiwarra Nature Refuge.

The Native Title parties were provided independent legal support in their decision making when agreeing the ILUA, IMA and CA.

Dedicating five parcels of unallocated State land as national park.

The dedication of three lots of State land as part of Giringun National Park, one lot of State land as part of Pinnacles National Park and one lot of State land as part of The Lakes National Park does not affect Native Title. Public notices were published on the DESI website which sought views in consideration of the NC Act, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights. No written responses were received in the consultation periods.

The core aim of dedicating new or amending existing national parks 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.

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.

The dedication of national park, the upgrade of national park to national park (CYPAL) and declaring the nature refuge requires the decision of the Governor in Council. In this respect, the Amendment Regulation applies to:

- 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 33 of the NC Act as this enables the Governor in Council to change the class of a protected area by dedicating the area as another class of protected area, or, change the boundaries of a protected area.
- Section 42AA of the NC Act as this enables the Governor in Council to dedicate national park or part of a national park as national park (CYPAL) where the land is in the Cape York Peninsula Region, becomes Aboriginal land and the Minister is satisfied an indigenous management agreement about the management of the land has been entered into.
- Section 46 of the NC Act as this enables the Governor in Council to declare a specified area subject to a conservation agreement, as a nature refuge.
- Section 64 of the NC Act as this enables the Governor in Council to 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.

Human Rights Issues

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

Section 19 of *Human Rights Act 2020* – Freedom of movement

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 (walking, hiking, camping, etc).

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 remaining actions in the Amendment Regulation do not engage with the freedom of movement recognised in section 19 of the Act, as there will be no change to public access to the relevant areas.

Section 28 of *Human Rights Act 2020* – Cultural rights: Aboriginal people and Torres Strait Islander peoples

The Amendment Regulation changes land owned in the Charters Towers Shire Council, Flinders Shire Council and the Townsville City Council areas by DESI to national park. This action will change the tenure of the area. The cultural rights of Aboriginal peoples and Torres Strait Islander peoples are engaged through this amendment. No objections apparent and no further comments were received to the public notification posted on DESI's website in relation to the proposed amendments.

In addition, the Amendment Regulation positively engages with section 28 of the Act where it provides for redescribing national park land as CYPAL and declaring a nature refuge over two parcels of Aboriginal freehold land. Specifically, the commencement of joint management arrangements and protection of Aboriginal freehold land will positively engage with section 28(2), which recognises the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to:

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

Once the land becomes national park (CYPAL) the Native Title parties will be decision makers about the land and jointly manage the land with DESI. Joint management provides opportunities for the Traditional Owners to actively conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources as joint land managers..

DESI reached an agreement on the actions affecting EKY lands through meetings with the Traditional Owner Negotiation Committee, the Jabalbina Yalanji Aboriginal Corporation board and through feedback from the Elders groups.

Public notices were published on the DESI website on 12 and 19 July 2024 regarding consultation on the proposed amendment to the protected area estate. They sought views in consideration of the NC Act, including Aboriginal peoples' and Torres Strait Islander peoples' cultural rights. No written responses were received in the consultation periods which were over periods of 28 days and ended 16 August 2024. The department progressed the proposal accordingly.

Conclusion

I consider that the *Nature Conservation (Protected Areas) (Eastern Kuku Yalanji Area) Amendment Regulation 2024* is compatible with the *Human Rights Act 2019* as it raises human rights issues but 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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