

Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2025

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, Andrew Powell MP, Minister for the Environment and Tourism and Minister for Science and Innovation provide this human rights certificate with respect to the *Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2025* made under the *Nature Conservation Act 1992* (NC Act).

In my opinion, the *Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2025*, 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 NC Act provides instructions on how applications for ecotourism facilities on national parks should be assessed and dealt with. The NC Act contains strict criteria which must be satisfied before the grant of an authority for such facility can be made by the chief executive.

Section 35(1) of the NC Act states that:

- (1) The chief executive may grant, make, issue or give a lease, agreement, licence, permit or other authority over, or in relation to, land in a national park if:
 - (a) the use under the authority is only for a service facility or an ecotourism facility; and
 - (b) if the use under the authority is for a service facility, the chief executive is satisfied-
 - (i) the cardinal principle for the management of national parks will be observed to the greatest possible extent; and
 - (ii) the use will be in the public interest; and
 - (iii) the use is ecologically sustainable; and
 - (iv) there is no reasonably practicable alternative to the use; and
 - (c) if the use under the authority is for an ecotourism facility, the chief executive is satisfied-
 - (i) the use will be in the public interest; and
 - (ii) the use is ecologically sustainable; and
 - (iii) the use will provide, to the greatest possible extent, for the preservation of the land's natural condition and the protection of the land's cultural resources and values; and

- (d) the use under the authority is prescribed under a regulation made for this section to be a permitted use for the area.

In accordance with section 141 of the NC Act, the chief executive may not delegate power under section 35 of the NC Act.

The following areas are currently under consideration for ecotourism facility authorities under the requirements of section 35(1)(c):

1. a total of 22.49 hectares for an ecotourism facility within Great Sandy National Park over part of Lots A & B in Lot 1 on Plan AP23771; and
2. a total of 5.5 hectares for two campgrounds on the Ngaro Track within Whitsunday Islands National Park over part of Lot 428 on Plan NPW621.

As per section 35(1)(d) of the NC Act, the chief executive cannot grant an authority for an ecotourism facility unless the use is prescribed under regulation – this being Schedule 3 of the *Nature Conservation (Protected Areas Management) Regulation 2024*. Section 175 of the NC Act provides the Governor in Council with the power to make regulations under the NC Act with respect to the use of the land and activities in protected areas.

It is important to note that the *Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2025* (Amendment Regulation) is not the point of decision with regard to the proposed uses, it is required in accordance with section 35(1)(d) of the NC Act to provide the pathway for the chief executive to make a decision on whether to grant an authority.

The effect of the subordinate legislation is to allow the chief executive, at their discretion, to approve an authority for –

1. Elanda Point Pty Ltd (Habitat Noosa) which is an existing ecotourism facility that operates under two *Land Act 1994* leases granted in 1986 (under the now repealed *Land Act 1962* and *National Parks and Wildlife Act 1975*) for a term of 50 years, expiring on 25 October 2036. A new section 35 ecotourism authority, pending consideration by the chief-executive under the NC Act, would see minor changes to the existing Land Act lease boundaries, allow for construction of 19 new glamping tents and ablutions block, and provide for increased environmental monitoring and reporting, and greater financial contributions back to the Department of the Environment, Tourism, Science and Innovation (DETSI).
2. A preferred supplier selected by QPWS&P following an Expression of Interest process for a tourism operator to conduct best-practice guided tours along the Ngaro Track on Whitsunday Islands National Park. The proposed authority, pending consideration by the chief-executive, would include two campsites that provide camping platforms, communal shelters for cooking and gathering, storage areas, toilets and water storage facilities.

Habitat Noosa has provided an application under the NC Act to address how the activity will meet the management principles of a National Park, address public interest and to ensure that no practicable alternatives exist. An Environmental Management Plan has been submitted to address the potential impacts of the activity on natural and cultural values of the National Park and outlines management measures proposed to mitigate against these impacts.

An Expression of Interest process run by DETSI for a tourism operator to manage campsites and run best-practice guided tours on the newly DETSI-built Ngaro Track on Whitsunday Islands National Park was conducted in 2024. The preferred supplier has demonstrated the

suitability of their proposal against set criteria during this process. Their proposal was required to address criteria similar to those required under section 35 of the NC Act. DETSI will work closely with the preferred supplier on the commercial terms of the proposal prior to the preferred supplier submitting an application for an ecotourism facility authority under section 35 the NC Act.

Human Rights Issues

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

Consideration has been given as to whether the Amendment Regulation engages human rights under the *Human Rights Act 2019* (HR Act). The Regulation Amendment itself does not trigger human rights impacts, but it does provide a pathway that enables the Chief Executive to consider the grant of an authority under section 35 of the NC Act. The Amendment Regulation will allow for prescribed activities to be authorised under section 35 of the NC Act in the prescribed areas, allowing for decisions that would likely engage section 19 (Freedom of movement) and section 28 (Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples) of the HR Act. The issuing of an authority over the prescribed areas for the operation of an ecotourism facility will prevent the general public as well as Aboriginal and Torres Strait Islander peoples from having access to the prescribed areas.

Prior to an authority being issued, an assessment process is undertaken against set criteria under the NC Act. Further, the chief executive of DETSI is a ‘public entity’ under the HR Act and is therefore subject to section 58(1) of the HR Act in making their decision to grant (or otherwise) an Authority pursuant to section 35 of the NC Act. This section of the HR Act states that:

it is unlawful for a public entity to

- (a) to act or make a decision in a way that is not compatible with human rights; or
- (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

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

Freedom of movement (section 19 of the HR Act)

(a) the nature of the right

The human right identified in section 19 recognises that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where they live. The right means that a person cannot be arbitrarily denied access to areas that are open to the public, such as national parks.

(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 purpose of the Amendment Regulation is to allow for an authority to be issued, pending consideration by the chief executive, for an ecotourism facility within the prescribed areas. This will subsequently limit access to the part, or all of authority area for the public for the length of the authority. This limitation is necessary as it will facilitate access to areas that may otherwise be inaccessible to some user-groups to enable visitors to enjoy iconic nature destinations, provide for appropriate tourism uses at key tourism destinations that support local economies and industry, and to maintain commercial viability of the tourism experience which will support ongoing maintenance of the trail and associated infrastructure.

Consideration will be given to ensuring that low-cost options, and independent public access remains for part of the prescribed area during the assessment process and will be appropriately conditioned in any authority issued by the chief executive DETSI.

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

This limitation on human rights is necessary to ensure visitor safety while prioritising accessibility to national parks for a greater diversity of visitors. The limitation is also appropriate to ensure that the relevant tourism operators are given commercial security over operations.

Consideration will be given to the limitation of this human right in the assessment process and will be appropriately conditioned in any authority issued by the chief executive DETSI.

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

Through the assessment process prior to issuing any ecotourism authority, DETSI will identify if there are alternative measures that could permit the commercial entity to operate while imposing fewer restrictions on people's freedom of movement. This might include shared access arrangements or partial/seasonal exclusivity only. The proposed authority areas are small in comparison to the size of the relevant protected areas where existing public and tourism access remains.

Any appropriate pathways will be appropriately conditioned in any authority issued by the chief executive DETSI, and outlined in a separate *Human Rights Assessment* as per section 58(1) of the HR Act.

(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 benefits derived from granting exclusive use over the prescribed areas are balanced against the impact on people's freedom of movement.

The size of the proposed authority areas has been considered to ensure that only land necessary to achieve the purpose of the limitation has been included and the right of movement within the broader national park outside the authority areas is not affected.

Cultural Rights – Aboriginal peoples and Torres Strait Islander Peoples (section 28 of the HR Act)

(a) the nature of the right

Section 28 of the HR Act provides for the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Subsection (1) recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights.

Subsection (2) recognises the rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy and maintain control, protect and develop their identity and cultural heritage; to maintain and use Indigenous languages; to maintain kinship ties; a freedom to teach cultural practices and educations to their children; the right to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs. Subsection (2) establishes that Aboriginal peoples and Torres Strait Islander peoples must not be denied these rights as individuals or with other members of their community.

Subsection (3) provides that Aboriginal peoples and Torres Strait Islander peoples have the right not to be subjected to forced assimilation of their culture.

This section is intended to be read with section 107 of the HR Act, which provides that the Act does not affect native title rights and interests.

(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 purpose of the Amendment Regulation is to allow for an authority to be issued, pending consideration by the chief executive, for an ecotourism facility within the prescribed areas. Where an authority is issued by the chief executive DETSI, it will give the effect that commercial entities are authorised to limit access to First Nations peoples to the authority area for the duration of the authority.

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

The grant of the proposed authority shall not undermine the ability of First Nations peoples to maintain and strengthen their cultural heritage and connection to the land. Where any authority is granted, DETSI will impose conditions that support, rather than impede, these cultural rights. This may include a requirement to notify Traditional Owners of proposed activities, involve Traditional Owners in developing and delivering any tourism product, and support employment of First Nations people on Country.

With respect to the proposed site within Great Sandy National Park, on 11 April 2024, Chair of the Kabi Kabi Peoples Aboriginal Corporation (KKPAC) wrote to DETSI, outlining that Boreen Point, Elanda Point and the surrounding areas are of high cultural significance to Kabi Kabi peoples. The letter stated that KKPAC is very concerned that in recent years there had been significant development of the site without consultation to ensure avoiding harm to

Aboriginal cultural heritage. Further, the letter claimed that there been no engagement with the Kabi Kabi Registered Naive Title Claimants or KKPAC since Habitat Noosa took ownership of the current lease.

Through the assessment process prior to issuing any ecotourism authority over the prescribed areas, DETSI will appropriately consider the impact of any ecotourism authority on cultural rights. DETSI and the proponents will continue to engage with Traditional Owners during the assessment phase.

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

Any subsequent authority issued will be required to undergo assessment to ensure that the ecotourism facility can be operated by reducing impacts on cultural rights where possible. This may include the authority holders working with Traditional Owners regarding access to the area (or part thereof) for cultural purposes, or by implementing joint management arrangements.

(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 cultural significance of the land and the rights of Aboriginal peoples and Torres Strait Islander peoples must be weighed against the benefits of the commercial entity's use of the prescribed area. The limitation should not disproportionately affect the exercise of cultural rights and will be assessed appropriately prior to the chief executive DETSI issuing an authority.

Conclusion

I consider that the *Nature Conservation (Protected Areas Management) Amendment Regulation (No. 2) 2025* is compatible with the *Human Rights Act 2019* because it does not directly limit human rights, and in the instances where human rights may be limited, through the subsequent grant of an authority under section 35 of the NC Act, any limitation will be assessed and approved if it is deemed reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

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MINISTER FOR THE ENVIRONMENT AND TOURISM
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