

# Forestry and Other Legislation Amendment Regulation (No. 2) 2019

Explanatory notes for SL 2019 No. 257

made under the

*Forestry Act 1959*

*Marine Parks Act 2004*

*Nature Conservation Act 1992*

## General Outline

### Short title

*Forestry and Other Legislation Amendment Regulation (No. 2) 2019*

### Authorising law

Sections 26, 32 and 97 of the *Forestry Act 1959* (Forestry Act)

Section 25 of the *Marine Parks Act 2004* (MP Act)

Sections 29, 46, 48, 64 and 175 of the *Nature Conservation Act 1992* (NC Act)

### Policy objectives and the reasons for them

The objectives of the *Forestry and Other Legislation Amendment Regulation (No. 2) 2019* (Amendment Regulation) are to:

- revoke the setting apart and declaration of parts of three existing State forests for road purposes;
- revoke the setting apart and declaration of part of one existing State forest to allow the grant of Aboriginal freehold land under the *Aboriginal Land Act 1991* in accordance with an Indigenous land use agreement (ILUA), and subsequently redescribe the State forest following the completion of an up-to-date plan using contemporary survey and mapping technology and standards;
- amendment of a national park plan reference in a marine park zoning plan due to redescription of the national park;
- redescribe two State forests, three existing national parks, three existing conservation parks and one existing resources reserve after the completion of up-to-date plans;

- increase the area of five existing national parks and two existing conservation parks;
- declare five new nature refuges;
- increase the area of one existing nature refuge; and
- decrease the area of two existing nature refuges.

There is the occasional the need to revoke the setting apart and declaration of areas from the State forest estate to rectify errors in how the land has been described, gazetted or used, for example correct boundary inconsistencies, historic incursions or to achieve more effective management boundaries, to allow for the upgrade or expansion of public infrastructure such as roads and railways, or to recognise native title rights and interests and traditional laws and customs of Aboriginal and Torres Strait Islander people. The Amendment Regulation will revoke:

- part of Murray Upper State Forest to allow the grant of Aboriginal freehold land under the *Aboriginal Land Act 1991* in accordance with ILUA commitments between Abraham Muriata on his own behalf and on behalf of the Girramay People, the Girramay People Aboriginal Corporation ICN 4739, the Cassowary Coast Regional Council and the State of Queensland, and subsequently redescribe the State forest using contemporary survey and mapping technology and standards;
- parts of Beerburrum East State Forest to upgrade the Bruce Highway to six lanes to reduce traffic congestion and improve road safety associated with anticipated regional traffic growth;
- parts of Curra State Forest for the upgrade and realignment of the Bruce Highway; and
- part of Toolara State Forest to enable the realignment of Tin Can Bay Road for improved road safety and flood mitigation purposes, including the upgrade of the Coondoo Creek Bridge.

## Achievement of policy objectives

To achieve its objective, the Amendment Regulation will amend:

1. Schedule: State forests of the *Forestry (State Forests) Regulation 1987* to:
  - a. revoke the setting apart and declaration of part of Murray Upper State Forest, described as lot 190 on SP218278 containing an area of 6.497 hectares, about 27 kilometres north-west of Cardwell, to allow the grant of Aboriginal freehold land under the *Aboriginal Land Act 1991* in accordance with Indigenous Land Use Agreement commitments between the Girramay People, the Cassowary Coast Regional Council and the State of Queensland, and subsequently redescribe the entirety of the State forest as lots 1, 46, 113 and 861 on AP9215, (the new total area of the State forest will be about 1,258.962 hectares);
  - b. revoke the setting apart and declaration of parts of Beerburrum East State Forest, described as lots 100 to 103 on SP269532 containing an area of 36.499 hectares (the remaining area of the State forest will be about 12,961.2848 hectares), to upgrade the Bruce Highway to six lanes to reduce traffic congestion and improve road safety associated with anticipated regional traffic growth, about 11 kilometres north of Caboolture;

- c. redescribe the entirety of Palen State Forest 1 as lots 1 and 2 on AP9208, containing an area of about 460 hectares, using contemporary survey and mapping technology and standards (resulting in no change to the area), about 70 kilometres west of Gold Coast;
  - d. redescribe the entirety of Palen State Forest 2 as lots 1 and 2 on AP9209, containing an area of about 101.87 hectares, using contemporary survey and mapping technology (an increase of about 4.17 hectares), about 70 kilometres west of Gold Coast;
  - e. revoke the setting apart and declaration of parts of Curra State Forest, described as lots 100 to 103 on SP300755 containing an area of 66.712 hectares (the remaining area of the State forest will be about 4,760.928 hectares), for the upgrade and realignment of the Bruce Highway, about 12 kilometres north of Gympie; and
  - f. revoke the setting apart and declaration of part of Toolara State Forest, described as lot 100 on SP305001 containing an area of 0.9222 hectares (the remaining area of the State forest will be about 41,589.0778 hectares), to enable the realignment of Tin Can Bay Road for improved road safety and flood mitigation purposes, including the upgrade of the Coondoo Creek, about 30 kilometres north-east of Gympie.
2. Schedule 2, section 27 of the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* to:
- a. amend the reference for the Bowling Green Bay National Park in Schedule 2, section 17 of the *Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004* from “lot 32 on plan NPW653” to “lots 1 to 5 on AP9205” to be consistent with the redescription of the national park in the *Nature Conservation (Protected Areas) Regulation 1994* in this Amendment Regulation. This section describes the boundary of the Cape Bowling Green general use zone (QI GU-19-02) in the Great Barrier Reef Coast Marine Park, which shares a boundary with the Bowling Green Bay National Park.
3. Schedule 2: National parks of the *Nature Conservation (Protected Areas) Regulation 1994* to:
- a. redescribe the entirety of Albinia National Park as lot 1 on AP22482, containing an area of about 7,368.7728 hectares, using contemporary survey and mapping technology and standards (resulting in an increase of about 8.7728 hectares), about 108 kilometres south of Emerald;
  - b. redescribe the entirety of Bowling Green Bay National Park as lots 1 to 5 on AP9205, containing an area of about 57,233.072 hectares, using contemporary survey and mapping technology and standards (resulting in a decrease of about 894.928 hectares), about 38 kilometres south-east of Townsville. The tidal boundaries have changed significantly since the previous plan was drawn in 1999;
  - c. dedicate an area of unallocated State land, described as lots 61 to 67, 71, 76 to 82, 91, 92, 95 to 100, 111 to 121, 132, 133, 135, 136, 139 and 141 to 160 on plan D1141 containing an area of 11.3707 hectares as part of the existing Dalrymple National Park, about 33 kilometres north-west of Charters Towers. The lots were acquisition properties that will consolidate the national park boundary and facilitate improved management of the area;

- d. dedicate an area of unallocated State land, described as lot 2 on SP296671 containing an area of about 14,600 hectares as part of the existing Homevale National Park, about 73 kilometres south-west of Mackay. The State purchased the pastoral lease in 2014 for the purpose of expanding the protected area estate;
  - e. dedicate an area of unallocated State land, described as lot 298 on plan LN369 containing an area of 7.28 hectares as part of the existing Mount Archer National Park, about 9 kilometres north-east of Rockhampton. The proposed dedication as national park is a commitment of the Darumbal Protected Areas Indigenous Land Use Agreement;
  - f. dedicate an area of unallocated State land, described as lot 221 on plan WD4605, containing an area of about 3.12 hectares, as part of the existing Mount Barney National Park, and subsequently redescribe the entirety of the national park as lots 1 to 7 on AP19334, resulting in a new area description of about 18,264.981 hectares (resulting in an overall decrease in the area description of about 2.929 hectares), about 75 kilometres south-west of Gold Coast. The redescription is required to correct an erroneous description in the previous area for the national park (about 18,267.91 hectares, which should have been about 18,272.816 hectares), then to add the addition of lot 221 on plan WD4605 containing an area of about 3.12 hectares, and then to recalculate the total area of the national park using contemporary survey and mapping technology and standards, resulting in the new area description of the national park of about 18,264.981 hectares (a decrease in area of about 10.9550 hectares from the corrected area description); and
  - g. dedicate an area of unallocated State land, described as lot 2 on SP313076, containing an area of about 200 hectares, as part of the existing Pinnacles National Park, about 30 kilometres south-west of Townsville. The State committed to establishing the area as protected area in an offset approval under the *Environmental Protection Biodiversity Conservation Act 1999* to the Department of Transport and Main Roads (TMR). The Department of Environment and Science (DES) has a Heads of Agreement with TMR to manage the area for the preservation of critical habitat for the endangered southern subspecies of black-throated finch.
4. Schedule 3: Conservation parks of the *Nature Conservation (Protected Areas) Regulation 1994* to:
- a. redescribe the entirety of Albinia Conservation Park as lot 2 on AP22483, containing an area of about 313.7 hectares, using contemporary survey and mapping technology and standards (resulting in a decrease of about 6.3 hectares, about 108 kilometres south of Emerald. The new plan also corrects the erroneous description of the conservation park as lot 491 in Inset A of the old plan NPW881 Sh 2;
  - b. dedicate an area of unallocated State land, described as lot 466 on plan EP1956, containing an area of 20.248 hectares as part of the existing Bowling Green Bay Conservation Park, about 38 kilometres south-east of Townsville. Subsequently, redescribing the entirety of the Bowling Green Bay Conservation Park as lots 1 to 4 on AP9206, containing a new area of about 3443.3752 hectares, using contemporary survey and mapping technology and standards (resulting in an overall increase of about 63.3752 hectares). The tidal boundaries have changed significantly since the previous plan was drawn in 1999; and

- c. dedicate an area of unallocated State land, described as lot 1 on SP252516, containing an area of 1.037 hectares as part of the existing Wongaloo Conservation Park, about 31 kilometres south-east of Townsville, and subsequently redescribe the entirety of Wongaloo Conservation Park as lots 1 to 5 on AP9207, containing a new area of about 1,665.1634 hectares, using contemporary survey and mapping technology and standards (resulting in an overall increase of about 0.6674 hectares). The amendment also corrects the erroneous total of the previous area, resulting in a reduction of about 0.0014 hectares to the previous area of the conservation park.
5. Schedule 3A Resources reserves of the *Nature Conservation (Protected Areas) Regulation 1994* to:
    - a. redescribe the entirety of Albinia Resources Reserve as lot 3 on AP22484, containing an area of about 41.4 hectares, using contemporary survey and mapping technology and standards (resulting in a decrease in area of about 2.6 hectares), about 108 kilometres south of Emerald.
  6. Schedule 5 Nature refuges of the *Nature Conservation (Protected Areas) Regulation 1994* to:
    - a. declare an area of about 101 hectares as Cooloothin Creek Nature Refuge, described as the part of lot 25 on SP104706, containing an area of about 101 hectares, shown on plan PA1063, about 12 kilometres north-west of Noosa. An executed conservation agreement is in force for this area of land and it is now required under legislation to be declared as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*;
    - b. declare an area of about 14 hectares as Dendrophilia Nature Refuge, described as the part of lot 7 on RP884809, containing an area of about 14 hectares, shown on plan PA1074, about 20 kilometres south of Atherton. An executed conservation agreement is in force for this area of land and it is now required under legislation to be declared as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*;
    - c. redescribe the entirety of Esmeralda Nature Refuge as the part of lot 75 on SP273198, containing an area of about 23,279 hectares, shown on plan PA1055, about 90 kilometres south-east of Croydon. This amendment is required due to a recalculation of the area using contemporary survey methods which resulted in an increase in area (1089 hectares) and a change in plan number;
    - d. declare an area of about 77.8 hectares as Jirralulu Nature Refuge, described as the part of lot 88 on SP217949, containing an area of about 77.8 hectares, shown on plan PA1065, about 65 kilometres north-west of Bundaberg. An executed conservation agreement is in force for this area of land and it is now required under legislation to be declared as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*;
    - e. redescribe the entirety of Long Grass Nature Refuge as lot 38 on plan CC233, lot 56 on SP142633 and lot 29 on SP142634, containing an area of 414.8231 hectares, shown on plan PA1079, about 20 kilometres south-east of Toowoomba. This amendment is required due to a recalculation of the area using contemporary survey methods that has resulted in a slight decrease in area (0.1769 hectares) and a change in plan number;

- f. declare an area of about 56 hectares as María Creek Nature Refuge, described as the part of lot 5 on RP800379, containing an area of about 56 hectares, shown on plan PA1028, about 31 kilometres south of Innisfail. An executed conservation agreement is in force for this area of land and it is now required under legislation to be declared as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*;
- g. declare an area of 434.9 hectares as Mount Emerald Wind Farm Nature Refuge, described as lot 22 on SP210202, containing an area of 434.9 hectares, about 50 kilometres south-west of Cairns. An executed conservation agreement is in force for this area of land and it is now required under legislation to be declared as a nature refuge in the *Nature Conservation (Protected Areas) Regulation 1994*; and
- h. redescribe the entirety of Nasser's Nature Refuge as part of lot 10 on SP300480, containing an area of about 32 hectares, shown on PA1054, about 4 kilometres south-east of Atherton. This amendment is required due to an erroneous area description for the nature refuge (about 34 hectares, which should have been about 33.6 hectares) and due to a recalculation of the area using contemporary survey methods (resulting in an overall reduction from the previous area description by about 2 hectares). The new area description for the nature refuge is about 32 hectares.

## Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the main objects of the *Forestry Act 1959*, that is:

- the setting apart and declaration of a State forest by or under the Act shall not be revoked in whole or in part unless the Governor in Council has caused to be laid on the table of the Legislative Assembly a proposal for such revocation; and after such proposal has been laid before the Legislative Assembly, the Governor in Council, on a resolution whereof not less than 14 days notice shall have been given being passed by the Legislative Assembly that such proposal be carried out, shall by regulation, revoke such setting apart and declaration in accordance with that resolution (section 26); or
- the setting apart and declaration of a State forest by or under the Act shall not be revoked in whole or in part unless the Minister being satisfied, having regard to the purposes of the Act and the public interest, may recommend the Governor in Council make a regulation to revoke, in whole or in part, the setting apart and declaration of land as a State forest or timber reserve, for road purposes for public use (section 32); and
- 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 97).

The Murray Upper State Forest amendment proposal was tabled in the Legislative Assembly of Queensland on 4 September 2019 in accordance with section 26 of the *Forestry Act 1959*, with the Legislative Assembly passing a resolution on 19 September 2019 requesting the Governor in Council revoke the setting apart and declaration of the area in accordance with the aforementioned resolution.

The Amendment Regulation is consistent with the objectives of the NC Act, namely the dedication and declaration of areas representative of the biological diversity, natural features and wilderness of the State as protected areas.

The Amendment Regulation is consistent with the main objects of the MP Act which is to provide for the conservation of the marine environment.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is not inconsistent with any other legislation.

## **Benefits and costs of implementation**

The benefits of the Amendment Regulation are that areas representative of the biological diversity, nature features and wilderness of the State will be added to the protected area estate.

Implementing the Amendment Regulation is in the public interest, is not considered to constitute significant subordinate legislation and will have negligible costs. The revoked area of Murray Upper State Forest recognises the native title rights and interests and traditional laws and customs of First Nations peoples.

Costs relating to DES's administration and ongoing management of associated areas are met through existing annual budget allocations.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles in accordance with section 4(5) of the *Legislative Standards Act 1992*.

## **Consultation**

The Office of Best Practice Regulation, Queensland Productivity Commission, was not consulted because DES applied a self-assessable exclusion in accordance with *The Queensland Government Guide to Better Regulation* (the Guide) and determined that the regulatory amendment is of a machinery nature in accordance with category (g) of the Guide.

In relation to the proposed Murray Upper State Forest amendment, the Girramay People, Cassowary Coast Regional Council and the State of Queensland agreed to enter into an Indigenous Land Use Agreement (ILUA) in November 2009. The proposed Murray Upper amendment is a commitment of the ILUA and will provide for the grant of Aboriginal freehold land to the Girramay People. HQ Plantations were also consulted and agreed to the removal of plantation license over "Area 86A" that interacts with the proposed revocation area. In accordance with section 26(2) of the Forestry Act, after such proposal has been laid before the Legislative Assembly, the Governor in Council, on a resolution whereof not less than 14 days notice shall have been given being passed by the Legislative Assembly that such a proposal be carried out, by regulation, shall revoke such setting apart and declaration in

accordance with that resolution. The revocation of Murray Upper State Forest was passed on a motion by the Legislative Assembly of Queensland on 19 September 2019.

No further external consultation was required on the remaining State forest amendments under the *Forestry (State Forests) Regulation 1987*, as the amendments are machinery in nature.

In relation to the amendment to Cape Bowling Green Marine Park, no consultation was required as this is a minor consequential amendment to update a plan number in accordance with amendments made to the *Nature Conservation (Protected Areas) Regulation 1994*.

The proposed addition to Mount Barney National Park originated from a Scenic Rim Regional Council offer to relinquish the parcel to DES for amalgamation with the adjacent national park. DES liaised with Scenic Rim Regional Council to coordinate the transfer of the land parcel to the department for dedication as national park.

No further external consultation was required on the remaining national park, conservation park or resources reserve amendments under the *Nature Conservation (Protected Areas) Regulation 1994*, as the amendments are machine in nature.

In relation to the amendments to nature refuges under the *Nature Conservation (Protected Areas) Regulation 1994*, parties consulted under section 44 and 45 of the NC Act, where relevant, include Native Title claimants, holders or their representatives, Indigenous Land Use Agreement parties, mining interest holders, financial institutions, sublessees, covenant holders and easement holders. Landholders have been closely involved in the development of their conservation agreements. Responses and consent have been received from consulted parties where relevant.

In relation to the declaration of Cooloothin Creek Nature Refuge, Dendrophilia Nature Refuge, Jirralulu Nature Refuge and Maria Creek Nature Refuge and the amendment of Long Grass Nature Refuge, nil interested parties were identified and no further consultation was required as a result.

In relation to amendment of Esmeralda Nature Refuge, a mining interest holder, a financial institution, a sublessee, one Native Title holder and six Indigenous Land Use Agreement parties were identified. All parties were consulted and consent was received where required.

In relation to the declaration of Mount Emerald Nature Refuge, a sublessee was identified, consultation occurred and consent was received.

In relation to amendment of Nasser's Nature Refuge, a financial institution was identified, consultation occurred and consent was received.

All parties consulted support the amendments.

No changes to the Amendment Regulation were required as a result of the consultation.