

Marine Parks 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 amendments made to the following subordinate legislation by the *Marine Parks and Other Legislation Amendment Regulation 2024*:

- *Marine Parks Regulation 2017* made under the *Marine Parks Act 2004*.
- *Marine Parks (Declaration) Regulation 2006* made under the *Marine Parks Act 2004*.
- *Fisheries (General) Regulation 2019* made under the *Fisheries Act 1994*
- *State Penalties Enforcement Regulation 2014* made under the *State Penalties Enforcement Act 1999*

In my opinion, the *Marine Parks 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*. I base my opinion on the reasons outlined in this certificate.

Overview of the Subordinate Legislation

The primary purpose of the *Marine Parks and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) is to amend the *Marine Parks Regulation 2017*, the *Marine Parks (Declaration) Regulation 2006*, the *Fisheries (General) Regulation 2019* and the *State Penalties Enforcement Regulation 2014* to complement and support the *Marine Parks (Great Sandy) Zoning Plan 2024* and to make other minor administrative amendments.

Collectively, amendments will enhance the Department of Environment, Science and Innovation's (the department) management capability, reduce compliance burden, improve consistency with other legislation and provide additional clarity for marine park users and compliance officers.

Marine Parks Regulation 2017

The *Marine Parks Regulation 2017* (the Regulation) is subordinate legislation to the *Marine Parks Act 2004*. The Regulation supports implementation of a range of State marine park management measures. The Regulation includes provisions relating to permissions that may be granted in each marine park, commercial activity agreements, accreditations, regulatory notices and declarations, declaration of special activities, general entry or use provisions of marine parks, marine park zone objectives, offences and other matters relating to the use of marine parks, internal and external reviews of decisions, fees and prohibited purposes.

The amendments to the Regulation:

- Amend the definition of ‘public notice’ for declarations by the chief executive in relation to restricted access areas; prescribed commercial activities; and special activities to mean a notice published on the department’s website or other means the chief executive considers appropriate;
- Remove the requirement to return hard-copy permissions to the chief executive if the permission is amended, suspended, cancelled or surrendered;
- Extend the maximum duration of a commercial activity agreement (CAA) issued under the Regulation from 10 years to 15 years;
- Allow the chief executive to provide lawful access to a restricted access area or to lawfully conduct a special activity via written approval;
- Expand the reasons to establish a restricted access area;
- Make minor amendments to the definitions of ‘marine resources’, ‘zoned marine park’ and ‘unzoned marine park’; and
- Provide transitional arrangements for a range of matters arising from the commencement of the *Marine Parks (Great Sandy) Zoning Plan 2024*, that are provided for in the Regulation.

Marine Parks (Declaration) Regulation 2006

The *Marine Parks (Declaration) Regulation 2006* (the Declaration Regulation) is subordinate legislation to the *Marine Parks Act 2004*. A key purpose of the Declaration Regulation is to declare and define the outer boundaries of Queensland’s state marine parks.

Amendments to the Declaration Regulation change the method of describing the outer boundary of the Great Sandy Marine Park, from a map-based description (i.e. reference to a statutory plan) to a written ‘metes and bounds’ description.

The Declaration Regulation has also been amended to remove redundant transitional provisions that were required when the Great Sandy Marine Park was declared in 2006 and to include transitional provisions that authorise the undertaking of development works in the marine park where a development approval exists under the *Planning Act 2016* or the repealed *Sustainable Planning Act 2009* for works that had not commenced or been completed on commencement of the *Marine Parks (Great Sandy) Zoning Plan 2024*.

Fisheries (General) Regulation 2019

The *Fisheries (General) Regulation 2019* is subordinate legislation to the *Fisheries Act 1994*. The Regulation provides for the use and management of Queensland’s fisheries resources and fish habitats, in accordance with the objectives of the *Fisheries Act 1994*.

The *Fisheries Act 1994* provides for the declaration of Fish Habitat Areas (FHA). FHAs are a type of marine protected area that are declared over defined areas of coastal and inshore fish habitat with the objective of protecting those habitats from development-based disturbance and impacts. FHAs are an important management tool that contribute to the overall sustainability of Queensland’s fisheries resources.

There are 11 declared FHAs that either wholly or partly overlap the Great Sandy Marine Park.

The review of the *Marine Parks (Great Sandy) Zoning Plan 2017* provided an opportunity to address problematic management inconsistencies between the Great Sandy Marine Park and the declared FHAs in various locations around the marine park and to implement some location specific boundary adjustments to both the marine park and some declared FHAs to better manage emerging issues (e.g. climate change impacts).

Implementation of these adjustments has required amendments to the descriptors for included and excluded areas of declared FHAs in Schedule 3 of the *Fisheries (General) Regulation 2019*. These boundary amendments deliver a component of one of the objectives of the review of the *Marine Parks (Great Sandy) Zoning Plan 2017* which was to complement the management of the marine park with existing FHAs and adjoining National Parks and the K'gari (Fraser Island) World Heritage Area.

State Penalties Enforcement Regulation 2014

The *State Penalties Enforcement Regulation 2014* (the SPE Regulation) is subordinate legislation to the *State Penalties Enforcement Act 1999*, enacted to create the State Penalties Enforcement Registry (SPER) with the objectives of maintaining the integrity of fines as a viable sentencing or punitive option for offenders; maintaining confidence in the justice system by enhancing the way fines and other monetary penalties may be enforced; and reducing the cost to the State of enforcing fines and other monetary penalties.

Schedule 1 of the SPE Regulation prescribes penalty infringement notice (PIN) offences and the penalty value for nominated laws, including the *Marine Parks Act*, the *Marine Parks Regulation 2017* and the zoning plan for each State marine park.

Twenty-six offences are prescribed in the *Marine Parks (Great Sandy) Zoning Plan 2024*. Some are carried over from the repealed *Marine Parks (Great Sandy) Zoning Plan 2017* and some are new as an outcome of the review of the now repealed zoning plan. The SPE Regulation has been amended to prescribe a PIN value for offence provisions in the *Marine Parks (Great Sandy) Zoning Plan 2024*. Some of the PIN penalty values prescribed for offences in the *Marine Parks (Great Sandy) Zoning Plan 2017* have been adjusted to improve consistency with those applied for similar offences under other State environmental and wildlife management legislation and to reflect the serious nature of the offence.

Human Rights Issues

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

In my opinion, no human rights are engaged or limited by amendments to the *Fisheries (General) Regulation 2019*. However, in my opinion, human rights are engaged by amendments to the *Marine Parks Regulation 2017*, the *Marine Parks (Declaration) Regulation 2006* and the *State Penalties Enforcement Regulation 2014*.

Marine Parks Regulation 2017

In my opinion, the human rights that are engaged by amendments to the Regulation, if enacted, are:

- Freedom of movement (HR Act section 19)
- Property rights (HR Act section 24)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act section 28).

The specific sections being amended in the Regulation that are relevant to these rights are:

- Section 121 – Reasons for declaring restricted access areas
- Section 74(1) and 74(2) – Term and review of agreements (*i.e. commercial activity agreements*)

Marine Parks (Declaration) Regulation 2006

In my opinion, the human rights that are engaged by amendments to the Declaration Regulation, if enacted, are:

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (HR Act section 28).

The specific section being amended in the Declaration Regulation that is relevant to this right is:

- Schedule 3 – Great Sandy Marine Park.

State Penalties Enforcement Regulation 2014

In my opinion, the human rights that are engaged by amendments to the SPE Regulation, if enacted, are:

- Recognition and equality before the law (HR Act section 15)
- Property rights (HR Act section 24)

The specific section being amended in the SPE Regulation that is relevant to these rights is:

- Schedule 1 - *Marine Parks (Great Sandy) Zoning Plan 2024*

Protection of cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act)

The HR Act specifies that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights as Australia's first people. The Act says that Aboriginal and Torres Strait Islander peoples must not be denied this right, with other members of their community, to live life as an Aboriginal or Torres Strait Islander person who is free to practice their culture.

Section 28 of the HR Act is based on two international instruments. One is article 27 of the International Covenant on Civil and Political Rights, which Australia ratified in 1980. The other is articles 8, 25, 29 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples. Australia announced support for this declaration in 2009.

The preamble to the *Human Rights Act 2019* recognises:

“Although human rights belong to all individuals, human rights have a special importance for the Aboriginal peoples and Torres Strait Islander peoples of Queensland, as Australia’s first people, with their distinctive and diverse spiritual, material and economic relationship with the lands, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition and Ailan Kastom. Of particular significance to Aboriginal peoples and Torres Strait Islander peoples of Queensland is the right to self-determination”.

Both the *Marine Parks Regulation 2017* and the *Marine Parks (Declaration) Regulation 2006* support the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Marine Parks Regulation 2017

The Regulation provides tools to support best practice marine parks management, including where relevant, cooperative management with the traditional custodians of the tidal lands and waters that are incorporated in Queensland’s marine parks.

Amendments to the Regulation expand the reasons the chief executive may declare a marine park or part of a marine park to be a restricted access area to include reasons that provide specific recognition in marine parks of the potential need to protect areas of significance to First Nations peoples. The amendments enable the chief executive to declare a marine park or part of a marine park to be a restricted access area to manage a significant Aboriginal area in a way that is consistent with Aboriginal tradition; or to manage a significant Torres Strait Islander area in a way that is consistent with Island custom.

These additional reasons for declaring a restricted access area support the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, in particular the right to maintain and strengthen their spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection (28(2)(d)) and to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (28(2)(e)).

Marine Parks (Declaration) Regulation 2006

The outer boundary of the Great Sandy Marine Park, described in the Declaration Regulation, has been redefined using a contemporary written ‘metes and bounds’ description, to address inaccuracies of the statutory plan previously referenced in the Declaration Regulation and better accommodate the dynamic nature of coastal and marine environments. The use of a written description is the contemporary method of defining marine park boundaries, it provides a superior boundary description from legal and compliance perspectives and is the method that is used to define the outer boundaries of the other State marine parks in this Regulation.

At the request of the Butchulla Native Title Aboriginal Corporation, tidal sections (up to the limit of Highest Astronomical Tide) of land parcel lots within their Determination Area where exclusive native title has been recognised, have been included within the outer boundary of the

Great Sandy Marine Park. Marine park management and zoning over these areas as described in the *Marine Parks (Great Sandy) Zoning Plan 2024* enhances their conservation by generally protecting them from development impacts and extractive uses and raises awareness in the community of the cultural significance of these areas to the Butchulla people. This supports the cultural right of Aboriginal and Torres Strait Islander peoples to maintain and strengthen their distinctive spiritual, material, and economic relationships with waters and coastal seas with which they have a connection under Aboriginal tradition or Island custom (subsection 28(2)(d)).

Protection of property rights (section 24 of the HR Act)

Section 24 of the HR Act provides for property rights. This right is modelled on article 17 of the Universal Declaration of Human Rights. The right essentially protects a person from having their property unlawfully removed. Subsection (1) provides that all persons have the right to own property alone or with others. Subsection (2) provides that a person must not be arbitrarily deprived of their property.

This right could be relevant to laws, policies or decisions that restrict or regulate established patterns of access (especially for commercial or business purposes) to public property.

Marine Parks Regulation 2017

The amendment to section 74 of the Regulation extends the maximum term for which the chief executive may, for the State, enter into a commercial activity agreement (CAA) with a person for conducting a commercial activity in a marine park, from 10 years to 15 years. The amendment is consistent with the maximum term of a CAA prescribed by the *Nature Conservation (Protected Areas Management) Regulation 2017* under the *Recreation Areas Management Act 2006*.

A CAA has property-like characteristics, in that a CAA enables a person (such as the operator of a tourism program) to conduct a commercial activity in a marine park (or part of a marine park). CAAs can be transferred to another person when, for example that person purchases a tourism business that is operating in the marine park under a CAA. Currently in Great Sandy Marine Park, there are two types of commercial activities that can only be conducted under a CAA - whale watching and diving on the wreck of the ex-HMAS Tobruk. These CAAs in particular, therefore possess property-like characteristics that can be sold.

It is considered that the amendment to extend the maximum term from 10 years to 15 years establishes a management framework that engages property rights in a positive manner. If the amended maximum term is applied by the chief executive when entering into a CAA with a person, it is likely to improve business certainty on which investment decisions can be made by the person.

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

In my opinion, no human rights are limited by amendments to the *Marine Parks (Declaration) Regulation 2006* or the *Fisheries (General) Regulation 2019*.

This analysis therefore relates to human rights that may be subject to limitation or otherwise affected by the *Marine Parks Regulation 2017* and *State Penalties Enforcement Regulation 2014*.

Recognition and equality before the law (section 15 of the HR Act)

Section 15 of the HR Act provides that every person has the right to equal and effective protection against discrimination. Amendments to the *State Penalties Enforcement Regulation 2014* limit this right.

(a) the nature of the right

This right is based on Articles 16 and 26 of the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980. Section 15 of the HR Act encompasses both the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right provides that persons are equal before the law and are entitled to equal protection of the law without discrimination.

The *Marine Parks (Great Sandy) Zoning Plan 2024* includes 26 offences that carry a maximum penalty, some of which are new and some of which have increased, compared to the *Marine Parks (Great Sandy) Zoning Plan 2017*. Each of these offences has an associated penalty infringement notice (PIN) penalty value prescribed in the SPE Regulation. The right to recognition and equality before the law is limited by these amendments to the SPE Regulation, in that offences may adversely and disproportionately impact sectors of the community such as vulnerable groups or persons of a lower socio-economic status who may have more difficulty paying a monetary sum.

(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 penalty value of a PIN offence as prescribed in the SPE Regulation is based on the maximum penalty amount prescribed in the *Marine Parks (Great Sandy) Zoning Plan 2024* and established in accordance with the Department of Justice and Attorney-General (DJAG) ‘Guidelines for the prescription of penalty infringement notice offences under the State Penalties Enforcement Regulation 2014’ to ensure that the penalty is an appropriate and proportionate response to the offending behaviour.

Fourteen maximum penalty amounts prescribed in the repealed *Marine Parks (Great Sandy) Zoning Plan 2017* for offences, that have carried over to the *Marine Parks (Great Sandy) Zoning Plan 2024*, did not reflect the impact that a person committing the offence may cause on the natural or cultural values of the marine park and were inconsistent with the Queensland Statute Book by being low in comparison with penalty amounts for similar offences under other legislation. The increase in the value of the maximum penalty, and the PIN penalty value, for offences within the *Marine Parks (Great Sandy) Zoning Plan 2024* better reflects the potential detrimental impacts on the marine park resulting from non-compliance and bring penalties in line with similar offences established under other Queensland environmental legislation.

Imposing penalties for offences is a widely accepted practice for achieving compliance with legislation and deterring unwanted behaviours. Imposing PIN penalty values for zoning plan offences under the *Marine Parks (Great Sandy) Zoning Plan 2024* contributes to protection of

the environment, and provides less of a financial imposition for offenders than court imposed maximum penalties, which is consistent within a free and democratic society. Sustaining the natural environment for the future is in the public benefit, with the components of the environment providing a vast array of functions and ecosystem services including those that benefit the community and contribute to the survival of the human population.

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

Prescribing new and increased PIN penalty values in the SPE Regulation underpins the objective of deterring non-compliance with the *Marine Parks (Great Sandy) Zoning Plan 2024* to improve the conservation of the marine park values, including the long-term survival of threatened species by reducing the likelihood of behaviours that negatively impact on the marine park's natural and cultural values. It demonstrates to the community and the judicial system the serious nature of committing the offence in terms of its potential detrimental impacts on the natural and cultural values of the marine park. The increased financial deterrent to committing an offence and hence subsequent compliance with management provisions is expected to improve the status of local populations of various threatened species and the integrity of cultural resources of importance to First Nations peoples.

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

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified.

Setting new and amended penalty amounts is the most effective way to:-

- indicate to the courts, the community and potential offenders the serious nature of each offence and the consequences that the offences are likely to have on the long-term survival of several species, many of which are listed as threatened under state and/or Commonwealth legislation.
- ensure consistency of approach with other offences involving threatened species administered by the department.
- ensure consistency of approach with similar environmental offences in the Queensland Statute book.

Ongoing enforcement efforts and associated public education to create awareness of the offence provisions in the *Marine Parks (Great Sandy) Zoning Plan 2024* and associated PIN penalty values in the SPE Regulation is expected to assist with a reduction in negatively impacting behaviours in the Great Sandy Marine Park.

There are protections built into the fine enforcement system under the *State Penalties Enforcement Act 1999* for a person who has been issued with an infringement notice fine such that:

- A person who cannot afford to pay the whole fine can seek assistance from the State Penalty Enforcement Registry to pay the fine by instalments or settle the debt through other activities such as a work and development order; or

- A person who is experiencing hardship can apply to resolve their debt under a work and development order (which can include undertaking relevant courses, attending counselling and treatment programs or completing work with an approved hardship partner).

(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 low maximum penalty amounts in the repealed *Great Sandy (Marine Parks) Zoning Plan 2017* may have increased the risk of persons committing an offence in the marine park by providing an insufficient deterrent, compromising the ability of the repealed zoning plan to effectively conserve the marine environment (the primary purpose of the *Marine Parks Act 2004*). Changes to these penalty value and the establishment of maximum penalty amounts for new offences in the *Great Sandy (Marine Parks) Zoning Plan 2024* aligns penalties for similar offences under other subordinate legislation administered by the department. In conjunction with the PIN penalty value prescribed in the SPE Regulation, this meets the objective of deterring zoning plan offences and improves the consistency in the regulatory frameworks for addressing particular offences and is considered to provide a proportionate response to encourage appropriate behaviour and respect for natural and cultural values in a uniform way. A person who is issued with a PIN may pay the fine by instalments or settle the debt through other means (as outlined above). While the establishment of penalty infringement notice fines has the potential to disproportionately impact offenders from vulnerable and low socio-economic groups it is considered that the importance of maintaining the deterrent effect of penalties for the offences outweighs the impact on the right.

(f) any other relevant factors

Not applicable.

Freedom of movement (section 19 of the HR Act)

Section 19 provides 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 to live. Amendments to the *Marine Parks Regulation 2017* limit this right.

(a) the nature of the right

This right is based on Article 12 of the International Covenant on Civil and Political Rights. Australia became a party to this treaty in 1980. The right to freedom of movement (section 19 of the HR Act) protects the right of every person lawfully within Queensland to move freely within Queensland and to enter and leave it and choose where they will live.

Under section 121 of the *Marine Parks Regulation 2017*, the chief executive may declare a marine park or a part of a marine park to be a restricted access area if the chief executive reasonably believes the declaration is necessary or desirable for a range of reasons. These include to secure the safety of a person or a person's property; because of a natural disaster; to conserve or protect the marine park's natural or cultural resources (e.g. to protect a breeding area for native wildlife); to protect an area having significant use and non-use values; for public

health or safety; or to allow a person to conduct an authorised activity effectively and efficiently.

It is an offence to enter or remain in a restricted access area without a permission, a commercial activity agreement or a written approval that specifically authorises the entry; or without a reasonable excuse.

Amendments to the Regulation expand the reasons that the chief executive may declare a marine park or a part of a marine park to be a restricted access area. Four additional reasons for declaring a restricted access area have been included in section 121 of the Regulation:

- To manage a significant Aboriginal area in the area in a way that is consistent with Aboriginal tradition.
- To manage a significant Torres Strait Islander area in the area in a way that is consistent with Island custom.
- To protect infrastructure or equipment for a service in the marine park, including, for example, a water supply facility or power generating equipment.
- For the orderly or proper management of the area.

The restricted access area provisions (should a restricted access area be declared) limit freedom of movement by preventing people from moving freely within the relevant areas in the marine park. The limitation imposed by the additional reasons to declare a restricted access area is considered below.

(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

To manage a significant Aboriginal area in a way that is consistent with Aboriginal custom and to manage a significant Torres Strait Islander area in a way that is consistent with Island custom

Including these two reasons provides specific recognition in the Regulation of the potential need to restrict public access in order to protect areas of significance to First Nations peoples. While there is already a reason to ‘conserve or protect the natural or cultural resources of the marine park’, the examples provided relate to protecting natural resources (e.g. protecting a breeding area for native wildlife or enabling the restoration or rehabilitation of an area), leaving what constitutes protecting cultural resources open to interpretation. This addition removes any doubt that restricting access to an area of the marine park for the purpose of managing that area in a manner that is consistent with Aboriginal or Torres Strait Islander tradition may be required to protect the cultural resources of an area. These reasons are already provided for in declaring a restricted access area in protected areas declared under the *Nature Conservation Act 1992*. In many locations, marine parks directly adjoin (and in some cases overlap) areas protected under the Nature Conservation Act and culturally significant areas may extend across both the marine park and adjoining areas, therefore it may be necessary to extend a restricted access area across both a marine park and adjoining national park.

***To protect infrastructure or equipment for a service in the marine park,
For the orderly or proper management of the area***

Outside of conserving or protecting the cultural or natural resources of an area, the existing management reasons for declaring a restricted access area are limited to securing the safety of

a person or a person's property, for public health or safety, because of a natural disaster, to protect an area having significant use and non-use values, or to allow an authorised activity to be conducted effectively and efficiently. These two additional management reasons provide further opportunities to manage access to an area in situations not already provided for, while still limiting the reasons to those situations that require the general public to be excluded.

These two reasons are already provided for in declaring a restricted access area in protected areas under the Nature Conservation Act. In many locations, marine parks directly adjoin (and in some cases overlap) protected areas and it may be necessary to extend a restricted access area across both a marine park and protected area to ensure holistic and consistent management.

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

To manage a significant Aboriginal area in a way that is consistent with Aboriginal custom and to manage a significant Torres Strait Islander area in a way that is consistent with Island custom

Managing an area in a way that is consistent with Aboriginal or Torres Strait Island custom may, in certain circumstances require the exclusion of the general public, for example, the conduct of certain cultural activities that require a level of privacy to undertake or the discovery of a cultural site at risk of damage by human interference. Restricting public access would allow these activities and sites, for example, to be appropriately and respectfully managed.

*To protect infrastructure or equipment for a service in the marine park,
For the orderly or proper management of the area*

Managing an area to protect infrastructure or equipment for a service or for the orderly or proper management of the area may, from time to time, require management actions to be undertaken without any interference from public presence. For example, if the damage to service infrastructure or equipment is being caused by visitation, the presence of people would interfere with or hinder management actions.

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

In situations where exclusion of the public or particular persons is considered necessary to manage an issue (e.g. protect infrastructure or equipment), or where the presence of people undertaking certain activities may be causing a management issue it is considered that there are no less restrictive, reasonable available alternatives to achieve the purpose.

(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 benefit gained from the expanded set of reasons to restrict public access to an area of the marine park is enhancing the ability to manage areas without any (or significantly reduced) interference from public presence. Including the reason to manage a significant Aboriginal or Torres Strait Islander area in a way that is consistent with Aboriginal or Island custom, enables and supports the cultural rights of Aboriginal and Torres Strait Islander peoples, particularly

the right to maintain and strengthen their spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection (28(2)(d)) and to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (28(2)(e)).

The Regulation provides strict requirements for declaring a restricted access area. Before declaring a restricted access area the chief executive must give public notice of the proposed declaration, and interested persons may make written submission to the chief executive in relation to the proposed declaration, which the chief executive must consider. The chief executive may only declare a restricted access area for the reasons specified and must ensure the declaration is revoked as soon as practicable once satisfied that the reason for making the declaration no longer exists.

It is considered that any limitation on human rights under section 19 of the HR Act is reasonable and demonstrably justifiable.

(f) any other relevant factors

Not applicable

Property rights (section 24 of the HR Act)

Section 24 of the HR Act provides for property rights. Amendments to the *State Penalties Enforcement Regulation 2014* limit this right.

(a) the nature of the right

This right is modelled on article 17 of the Universal Declaration of Human Rights. The right essentially protects a person from having their property unlawfully removed. Subsection (1) provides that all persons have the right to own property alone or with others. Subsection (2) provides that a person must not be arbitrarily deprived of their property.

The *Marine Parks (Great Sandy) Zoning Plan 2024* includes 26 offences that have a maximum penalty prescribed, some of which are new and some of which have increased, compared to the repealed *Marine Parks (Great Sandy) Zoning Plan 2017*. Penalty infringement notice (PIN) penalty values have also been prescribed for each offence under the SPE Regulation. New and increased PIN penalty values in the SPE Regulation limits property rights to the extent that the payment of a monetary sum is required of a person in the event that they are issued a PIN for non-compliance with a zoning plan provision. The failure to pay a penalty infringement notice fine may result in enforcement action taken by the registrar of the State Penalty Enforcement Registry against the person, including among other actions, the seizure of the person's property and vehicle immobilisation as provided for in the *State Penalties Enforcement Act 1999*.

(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 penalty value for a PIN offence as prescribed in the SPE Regulation is based on the maximum penalty amount prescribed in the *Marine Parks (Great Sandy) Zoning Plan 2024* and is established in accordance with the DJAG 'Guidelines for the prescription of penalty infringement notice offences under the State Penalties Enforcement Regulation 2014' to ensure that the penalty is an appropriate and proportionate response to the offending behaviour.

Fourteen maximum penalty amounts prescribed for offences in the repealed *Marine Parks (Great Sandy) Zoning Plan 2017*, that have been carried over to the *Marine Parks (Great Sandy) Zoning Plan 2024* did not reflect the impact that a person committing the offence may cause on the natural or cultural values of the marine park and were inconsistent with the Queensland Statute Book by being low in comparison with penalty amounts for similar offences under other legislation.

The value of the maximum penalty in the *Marine Parks (Great Sandy) Zoning Plan 2024*, and the accompanying PIN penalty value in the SPE Regulation, better reflects the potential detrimental impacts on the marine park resulting from non-compliance and brings the value of these penalties in line with penalties for similar offences established under other Queensland environmental legislation.

Imposing penalties for offences is a widely accepted practice for achieving compliance with legislation and deterring unwanted behaviours. Imposing new and increased PIN penalty values for zoning plan offences in Great Sandy Marine Park contributes to the protection of the environment, which is consistent within a free and democratic society. Sustaining the natural environment for the future is in the public benefit, with the components of the environment providing a vast array of functions and ecosystem services including those that benefit the community and contribute to the survival of the human population.

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

Prescribing new and increasing PIN penalty values in the SPE Regulation underpins the objective of deterring negative behaviours that put the natural and cultural values of the Great Sandy Marine Park at risk, thereby improving conservation of the marine park values, including the long-term survival of threatened species. Amendments to PIN penalty values provide an indication to the community and the judicial system of the serious nature of committing the offence in terms of its potential detrimental impacts on the natural and cultural values of the marine park. The increased financial deterrent to committing an offence and hence subsequent compliance with management provisions is expected to improve the status of local populations of various threatened species and the integrity of cultural resources of importance to First Nations peoples.

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

No less restrictive, reasonable available alternatives to achieve effective conservation outcomes have been identified.

Public education to raise awareness regarding acceptable behaviour to protect the marine park's natural and cultural values, to prompt a person to act appropriately is unlikely to be effective in achieving conservation outcomes, without a regulatory basis to drive behavioural change. However, the PIN offences and associated penalty values prescribed in the SPE Regulation, when combined with ongoing compliance efforts and associated public education to create awareness of the new fines, is expected to assist with reduction in negative behaviours in the marine park.

As outlined in this Human Rights Certificate for section 15 of the *Human Rights Act 2019*, there are also protections built into the fine enforcement system under the *State Penalties Enforcement Act 1999* for a person who has been issued with a penalty infringement notice fine, and the ability to elect to have the matter heard by a court.

(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 maximum penalties for offences in the *Marine Parks (Great Sandy) Zoning Plan 2024* and associated PIN penalty values in the SPE Regulation provide a proportionate response to the current circumstances where a disparity exists between penalties under different legislation for committing a similar nature of offence. A more consistent regulatory framework will assist to encourage improved marine park user behaviour, with the aim of ultimately improving protection of the marine park's natural and cultural values. Any deprivation of property in the form of money as a result of the increase in maximum penalty values and PIN offence penalty values is considered to be proportionate and not arbitrary.

A person who is issued with a PIN may pay the nominated fine by instalments or settle the debt through other means. Any limitation on property rights is justified considering the benefit to the community by better protection and conservation of the marine environment.

(f) **any other relevant factors**

Not applicable.

Conclusion

I consider that the *Marine Parks and Other Legislation Amendment Regulation 2024*, amending the *Marine Parks Regulation 2017*, the *Marine Parks (Declaration) Regulation 2006*, the *Fisheries (General) Regulation 2019* and the *State Penalties Enforcement Regulation 2014* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

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

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