

Environmental Legislation Amendment Regulation 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 *Environmental Legislation Amendment Regulation 2025* made under the *Environmental Offsets Act 2014*, the *Environmental Protection Act 1994*, the *Fisheries Act 1994*, the *Nature Conservation Act 1992*, the *State Penalties and Enforcement Act 1999*, and the *Waste Reduction and Recycling Act 2011*.

In my opinion, the *Environmental Legislation Amendment Regulation 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 *Environmental Legislation Amendment Regulation 2025* (the Amendment Regulation) amends the *Environmental Offsets Regulation 2014* (Offsets Regulation), the *Environmental Protection Regulation 2019* (EP Regulation), the *Fisheries (General) Regulation 2019* (Fisheries Regulation), the *Nature Conservation (Animals) Regulation 2020* (Animals Regulation), the *Nature Conservation (Koala) Conservation Plan 2017* (Koala Conservation Plan), the *Nature Conservation (Macropod) Conservation Plan 2017* (Macropod Conservation Plan), the *Nature Conservation (Plants) Regulation 2020* (Plants Regulation), the *State Penalties Enforcement Regulation 2014* (SPE Regulation), and the *Waste Reduction and Recycling Regulation 2023* (WRR Regulation).

The purpose of the Amendment Regulation is detailed below.

Waste matters:

- change the non-regulated waste threshold values for per- and poly-fluoroalkyl substances (PFAS);
- clarify the application of non-regulated waste threshold values for PFAS;
- clarify that waste solar panels are not regulated waste under the EP regulation;
- clarify that soil managed under the contaminated land provisions in the *Environmental Protection Act 1994* (EP Act) is not regulated waste under the EP Regulation; and
- prescribe mixed construction and demolition waste recycling as an activity for which a residue waste discount application may be made and correct drafting errors in the *Waste Reduction and Recycling Regulation 2023* (WRR Regulation) and make other minor administrative and clarification amendments.

Nature conservation matters:

- complete the routine update of listings and nomenclature of wildlife listed under the *Nature Conservation Act 1992* (NC Act);
- update the definition of koala habitat tree stated in the Koala Conservation Plan;
- update the Offsets Regulation to refer to the new version of the Queensland Environmental Offsets Policy;
- make minor and consequential amendments to the Animals Regulation to ensure appropriate management of the largemouth sawfish under the NC Act, and to the Fisheries Regulation to ensure the species is still regulated under the *Fisheries Act 1994* (Fisheries Act);
- make minor clarification and consequential amendments to the Animals Regulation to correct errors and better ensure achievement of original policy intent;
- introduce a new offence related to macropods under the Macropod Conservation Plan; and
- amend the SPE Regulation to create an infringement notice offence corresponding to the new offence under the Macropod Conservation Plan.

Waste matters

Environmental Protection Regulation 2019

Commercial or industrial waste containing PFAS is considered by default as Category 1 regulated waste. The threshold values established for tested waste for PFAS are currently zero. The effect of the zero values is that all commercial and industrial waste containing PFAS is considered Category 1 regulated waste, and the waste cannot change category or be classified as non-regulated waste regardless of the PFAS values. The amendment to the EP Regulation introduces non-regulated waste threshold values for tested waste to allow waste containing PFAS that has been tested in accordance with testing requirements and the PFAS values are lower than the non-regulated waste threshold values to be considered non-regulated waste.

The EP Regulation contains non-regulated waste threshold values for persistent organic pollutants (other) (POP) and for PFAS. The EP Regulation provides the meaning of POP that includes a number of types of PFAS. The amendment to the EP Regulation removes PFAS from the meaning of POP to clarify that the non-regulated waste threshold values for PFAS apply (and not the non-regulated waste threshold values for POP) to determine if waste containing PFAS can be classified as non-regulated waste where no other POP are present.

The amendment excluding solar panels from regulated waste provides clarity for stakeholders and industry and reduces the costs and regulatory burden associated with the management of waste solar panels. Waste solar panels would still be considered general waste and the regulatory requirements for management of this waste as a general waste would remain in force to minimise the potential for environmental harm.

The amendment to regulated waste also clarifies that contaminated soil managed under the contaminated land provisions in the *Environmental Protection Act 1994* (EP Act) is not a regulated waste.

Drafting errors in the EP Regulation are addressed to ensure that the tables in Schedule 9 (Regulated waste and waste that is no regulated waste) are appropriately referenced in the definition of regulated waste described in section 42(2).

Waste Reduction and Recycling Regulation 2023

Amendments in the WRR Regulation address omissions and drafting errors and prescribe a new recycling activity for a residue waste discounting application.

A waste disposal site is defined in section 8A of the *Waste Reduction and Recycling Act 2011* (WRR Act) and excludes facilities that only receive waste that is exempt from the waste levy by regulation for that definition. Types of exempt waste for the definition are listed in section 6 of the WRR Regulation. The amendment reinstates alum sludge and other residuals from drinking water treatment processes as an exempt waste for waste disposal sites to align with the original policy intent.

Weight measurement criteria are defined in section 26 of the WRR Act by reference to the criteria prescribed by regulation. Section 25 of the WRR Regulation prescribes the weight measurement criteria to be used to measure waste or other material that is required to be measured under section 59 of the Act (When waste or other material must be measured) and in the circumstances mentioned in section 60(6) of the Act (if the weighbridge is not in operation). Reference to section 61 of the Act (Measurement of waste other than by weighbridge) is missing from the criteria in the WRR Regulation. The amendment ensures that measurement of waste other than by weighbridge is appropriately referenced in the weight measurement criteria.

The WRR Act provides for a levy discount for residue waste from particular recycling to assist in attracting and maintaining recycling activities in Queensland. Section 44 of the WRR Act sets out the criteria for recommending activities to be prescribed as eligible to make an application for a discounted waste levy. The amendment prescribing mixed construction and demolition waste recycling as an activity for which a residue waste discounting application may be made will support the sustainability of the recycling activity at a high efficiency rate and is consistent with the criteria set out in section 44 of the WRR Act.

Nature conservation matters

Species reclassifications and taxonomic changes

Nature Conservation (Animals) Regulation 2020 and Nature Conservation (Plants) Regulation 2020

Amendments to the Animals Regulation and the Plants Regulation update species classifications. Species reclassification is a routine, ongoing process undertaken to meet the requirements of the NC Act, including the protection and conservation of Queensland's native wildlife. It ensures that listings under the NC Act are kept up to date with current scientific knowledge. The Species Technical Committee (STC), an expert panel of government and non-government scientists, is responsible for overseeing the wildlife classification process. The STC provides an independent, unbiased, scientific assessment of nominations for changes to species listings, based on the most recent scientific data, and makes recommendations for

changes to species classifications. Administrative amendments are also required to the Animals and Plants Regulations to provide nomenclature updates.

Nature Conservation (Koala) Conservation Plan 2017

The amendment to the Koala Conservation Plan, under the NC Act, updates the definition of a ‘koala habitat tree’ to reflect the current taxonomic nomenclature, specifically to include the newly created genus *Blakella*. Species of the new genus were previously grouped within the genus *Corymbia*. The amendment does not seek to change the original intent of the provision.

Environmental Offsets Regulation 2014

The amendment relating to the Queensland Environmental Offsets Policy gives effect to the new version of the policy, which requires updating to reflect amended ‘koala habitat tree’ definition under the Koala Conservation Plan. It does not seek to change the original intent of the provision.

Management of protected fish species

Nature Conservation (Animals) Regulation 2020 and Fisheries (General) Regulation 2019

The listing of the largemouth sawfish (endangered) makes this species newly protected wildlife under the NC Act. As this species is recognised as a fisheries resource, it will continue to be managed as a ‘fish’ under the Fisheries Act for conservation purposes. Such management arrangements are remaining status quo. Administrative and consequential amendments are therefore required under the Animals Regulation and Fisheries Regulation to ensure the species is appropriately regulated as both a protected animal and ‘fish’ under each respective framework.

Miscellaneous amendments

Nature Conservation (Animals) Regulation 2020

Minor clarifying and administrative amendments to the Animals Regulation are also required to make several miscellaneous changes. The amendment relating to the incidental take, keep and movement of sick, injured or orphaned protected animals excludes persons who publicly provide their contact details to act as a wildlife rescuer or rehabilitator. It does not seek to change the original intent of the provision.

The amendment relating to the grant of permits to keep for animals taken under rehabilitation permits removes reference to animal classes; requiring any animal kept under the authority to contribute to the rehabilitation of the same, or a closely related species. It does not seek to change the original intent of the provision.

The amendment relating to dealing with and moving dead protected animals that were kept under an exhibited animal authority clarifies how the holder may deal with the animal after death. It seeks to address a gap in regulation.

The amendments relating to marine vessel “wake” restrictions remove all references to “wake” in the Animals Regulation as the generation of some degree of wake is unavoidable. It does not seek to change or affect the original intent of the provisions containing references to wake.

Nature Conservation (Macropod) Conservation Plan 2017

The amendment to the Macropod Conservation Plan, under the NC Act, addresses a regulatory gap regarding the potentially unsustainable and inhumane take of macropods resulting from provision of macropod tags, by macropod harvesting licence holders, to unauthorised persons without penalty. A new offence will be created requiring approved tags to be kept in the holder's possession, or otherwise at the licensed premises.

State Penalties Enforcement Regulation 2014

Amendments to the SPE Regulation make certain offences subject to the issuing of a Penalty Infringement Notice (PIN) under the *State Penalties and Enforcement Act 1999* (SPE Act). The offences relate to the misuse of a macropod harvesting licences under the Macropod Conservation Plan the licence holders namely a new offence where a macropod licence holder improperly handles or store their tags.

PIN offences are an alternative to prosecution through the court system. A person who is issued a PIN for an offence may discharge their liability by payment of a financial penalty. There is no requirement for the offence to be prosecuted through the court system, although a person may elect to go to court to challenge the offence or the penalty imposed by the PIN.

Human Rights Issues

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

The new offence for improper possession or storage of approved Queensland macropod tags, introduced by the Amendment Regulation (including the creation of an infringement notice offence), may limit the following human rights:

- Right to recognition and equality before the law (section 15 of the HR Act)
- Right to property rights (section 24 of the HR Act)
- Right to privacy and reputation (section 25 of the HR Act)
- Right to liberty and security of person (section 29 of the HR Act)
- Right to a fair hearing and rights in criminal proceedings (section 31 and 32 of the HR Act)

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

Amendments to the State Penalties Enforcement Regulation 2014

(a) the nature of the right

Right to recognition and equality before the law (section 15 of the HR Act)

Section 15 (Right to recognition and equality before the law) reflects that every person holds the same human rights by virtue of being a human and not because of some particular characteristic or membership of a particular social group. This right encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination.

This Amendment Regulation may limit the property rights to the extent that it introduces new financial penalties, through a court-imposed fine or infringement notice fine, for macropod harvesting licence holders who do not comply with the conditions of their licence. The requirement to pay a fine may adversely and disproportionately impact sectors of the community such as persons of lower socio-economic status which may have more difficulty paying a monetary sum.

Property Rights (section 24 of the HR Act)

Section 24 (Property Rights) of the HR Act protects the right of all persons to own property and provides that people have a right to not arbitrarily be deprived of their property. Property includes all real and personal property interests recognised under general law and may include statutory rights. In the human rights context, 'arbitrarily' is taken to mean capricious, unpredictable, unjust and unreasonable in the sense of not being proportionate to a legitimate policy objective.

The Amendment Regulation may limit property rights to the extent that it includes a new offence with a maximum penalty of 165 penalty units, with a PIN amount of 5 penalty units. Failure to pay a fine may result in the enforcement action being taken by the registrar of the State Penalties Enforcement Registry (SPER) against the person, including among other actions seizure of a person's property and sale of property (for example a vehicle owned by the individual) as provided for under the SPE Act.

Right to liberty and security of person (section 29 of the HR Act)

Section 29 (Right to liberty and security of person) of the HR Act provides a person with certain protections relating to liberty and security, ensuring that a person is not subject to arbitrary arrest or detention, or is deprived of their liberty other than on grounds, and in accordance with procedures, established by law. The right may only be limited where such limitation is proportionate and not capricious, unpredictable, unjust or unreasonable.

The Amendment Regulation may limit the right to liberty and security to the extent that it prescribes financial penalties that may be enforced under the SPE Act. The registrar of the SPER may, in rare circumstances, issue an arrest and imprisonment warrant to a person for failing to pay as stated in an enforcement order, after the person has failed to pay a financial penalty. Importantly however, the SPER Charter, provided under section 9 of the SPE Act, preference for the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default.

Fair hearing and rights in criminal proceedings (section 31 and 32 of the HR Act)

Section 31 (Fair Hearing) of the HR Act provides a person charged with a criminal offence the right to have the charge decided by a competent, independent and impartial court after a fair and public hearing. A principle of the right is that each party must be given a reasonable opportunity to present their case, which involves being informed of the case being made by the opposing party and having the opportunity to respond. This right is limited where a person is deprived of the right to have a criminal charge or a civil proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Section 32 (Rights in criminal proceedings) of the HR Act provides the right to be presumed innocent until proven guilty according to law as well as rights to certain minimum guarantees for which the person charged is entitled, including to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance.

The Amendment Regulation may limit the right to a fair hearing and rights in criminal proceedings to the extent that it prescribes infringement offences. This may arise because a person does not have to attend court in relation to an infringement notice offence.

(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 new offence provisions is to ensure the integrity of the Macropod Conservation Plan. The Macropod Conservation Plan provides for the conservation of macropods through population monitoring, setting harvest quotas and ensure harvesting is done responsibly to ensure the ecological sustainability of populations.

The Amendment Regulation enhances the Macropod Conservation Plan by allowing a PIN to be issued to macropod harvesting licence holders that improperly handle, or store macropod tags. The introduction of an appropriate enforcement response discourages behaviour that compromises the macropod harvesting framework and its purpose of ensuring ecologically sustainable and humane take. The take of animals by non-licensed persons exposes the animals to the risk of inhumane treatment by persons who have not proven their competency to cull animals efficiently and humanely.

Unauthorised possession or use of approved tags is an offence, however, the act of providing tags to an unauthorised person is currently not an offence. It is appropriate that there is an equivalent offence provision for licence holders that deliberately contravene their obligations under the Macropod Conservation Plan.

This is a proportionate response consistent with a free and democratic society based on human dignity, equality and freedom.

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

There is a direct relationship between the offence provisions and their financial penalties and the purpose of upholding the Macropod Conservation Plan by ensuring animal take is carried out in a lawful, ecologically sustainable and humane manner by licensed persons. The fine will send a strong deterrent message to encourage compliance with the Macropod Conservation Plan by ensuring persons who pass on their tags are subject to a similar offence provision current provided for a person who unlawfully accepts tags from a licensed person.

In addition, there is a direct relationship between the prescription of infringement notices for the offences and the purpose of providing an efficient means of enforcing these offences and avoiding court costs. This is because the infringement notice fine system allows enforcement through the issue of a fine by an authorised officer which the alleged offender can pay while avoiding a court process.

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

It is considered there are no less restrictive and reasonably available way to uphold the purpose and requirements of the Macropod Conservation Plan. A person can avoid having to pay a fine by complying with the macropod harvesting licence requirements.

Financial penalties, including penalty infringement notices, are a key measure to help deter unlawful behaviour that may compromise the Macropod Conservation Plan and pose a risk of

inhumane treatment of animals. A person can avoid having to pay a fine by observing the conditions of the licence.

If these offences were not infringement notice offences, they would all need to proceed to court where additional costs may be payable. Infringement notice offences provide several benefits to alleged offenders who decide not to contest the infringement notice fine. These benefits include not having to attend court or prepare their defence with or without legal representation, as well as giving them certainty about their legal position.

Importantly, there are several protections built into the fine enforcement system under the SPE Act which ensure that the seizure and sale of property or vehicle immobilisation because of non-payment of an infringement notice fine would only occur infrequently. In terms of seizure and sale, SPER only undertakes this activity where it has registered an interest over the property to be seized. The SPE Act sets out the minimum amount that must be owed by a debtor before SPER can register an interest over property, or before vehicle immobilisation can occur.

Other protections built into the fine enforcement system under the SPE Act include that:

- a person who considers a PIN should not have been issued may elect to have the matter heard by a court instead of paying the fine;
- if a fine is not paid within the specified timeframe and the infringement notice fine is registered with SPER for enforcement action, the person may apply to pay their debt by instalments; and
- individuals who are 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).

All persons, including those of low socio-economic status who may have lesser financial capacity to pay a financial penalty can avoid the impact of the fine by complying with the Macropod Conservation Plan.

A person who receives a court-imposed fine or PIN who cannot afford to pay the whole fine amount can also seek assistance from the SPER to pay the fine by instalments or settle the debt through other activities such as a work and development order.

Where a matter is heard by a court, if the court finds the person guilty of the offence, it has the ability to consider multiple factors when handing down the penalty, one of which may include the person's socio-economic status or ability to pay a fine.

- (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

Financial penalties for non-compliance with the macropod harvesting licence requirements provide a proportionate response to ensure the integrity of the Macropod Conservation Plan and uphold the ecologically sustainable and human control of animal populations.

For the reasons outline above, any potential human right impact is considered reasonable and justified. The supply of macropods tags to unauthorised persons can promote unlawful dealings with macropods, potentially leading to conservation and animal welfare concerns.

It is important for the integrity of the Macropod Conservation Plan that those who have been licences to harvest macropods comply with their obligations and that they are held accountable when non-compliance occurs.

In addition, allowing infringement notices to be issued for non-compliance provides an efficient enforcement option. If this enforcement option was not available, there would likely be reduced deterrence. This is because a decision to prosecute is made on public interest grounds, including the consideration of the cost of prosecution. If there was a reduction in prosecutions due to cost, some offenders may consider that the State is unlikely to issue a complaint and summons to anyone other than the most recidivist offenders, thereby reducing the deterrent effect of the offences. This would directly affect the State's ability to ensure compliance with the Macropod Conservation Plan scheme, potentially exposing animals to inhumane take by unqualified and unlicensed persons.

Prescribing infringement notices offences provides the benefit to alleged offenders who decide not to contest the infringement notice of not having to attend court. Without that option, all persons charged with the offences outlined above would be forced to expend the time, effort and stress involved in court proceedings. Even those prepared to plead guilty would also be required to pay the costs associated with the offender levy and the issuing of the complaint and summons.

The Amendment Regulation does not affect the ability for individuals to elect to have their matter heard by a court. Section 15 of the SPE Act requires that all infringement notice fines must indicate that the alleged offender may elect to have the matter decided by a court. This promotes awareness that persons have this option at the time they are issued with a PIN. This gives the person the choice between electing to have the matter dealt with under the SPE Regulation or electing to have the matter heard by a court. This enables individuals to choose the option that best suits their circumstances.

As outlined above, there are several protections built into the fine enforcement system under the SPE Act including those designed to assist persons who are unable to pay their infringement notice fines.

(f) any other relevant factors

N/A

Conclusion

I consider that the *Environmental Legislation Amendment Regulation 2025* 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.

ANDREW POWELL MP
MINISTER FOR THE ENVIRONMENT AND TOURISM
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