

Environmental Protection and Other Legislation Amendment Bill 2020

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Hon Leeanne Enoch, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts make this statement of compatibility with respect to the Environmental Protection and Other Legislation Amendment Bill 2020.

In my opinion, the Environmental Protection and Other Legislation Amendment Bill 2020 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 Bill

The purposes of the Environmental Protection and Other Legislation Amendment Bill 2020 (the Bill) are to:

- provide for the statutory appointment of a Rehabilitation Commissioner with specific functions, including defining best practice management for progressive rehabilitation and closure plans (PRCPs), and facilitating better public reporting about rehabilitation in Queensland;
- clarify and improve residual risk requirements to better manage risks to the State from former resource sites;
- amend the *Environmental Protection Act 1994* (EP Act) and *Water Act 2000* to remove unnecessary provisions, address omissions and technical errors, and clarify and improve regulatory processes and tools.

Human Rights Issues

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

In my opinion, the human rights under the *Human Rights Act 2019* (HR Act) that are relevant to the Bill are:

- Freedom of expression (section 21 of the HR Act)
- Privacy and reputation (section 25 of the HR Act); and
- Cultural rights - Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

For the reasons outlined below, I am of the view that the Bill is compatible with each of these human rights.

Freedom of expression and cultural rights – Aboriginal peoples and Torres Strait Islander peoples (sections 21 and 28 of the *Human Rights Act 2019*)

Section 21 of HR Act provides that every person has the right to hold an opinion without interference and the right to freedom of expression. Section 28 of the HR Act protects the distinct cultural rights attributed to individuals and communities of Aboriginal and Torres Strait Islander peoples. This includes cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with their land.

Establishing the statutory position of Rehabilitation Commissioner may promote freedom of expression and the cultural rights of Aboriginal peoples and Torres Strait Islander Peoples. The Rehabilitation Commissioner will consult on, and raise awareness of, rehabilitation matters, which is expected to provide additional opportunities for the consideration of cultural rights in relation to the rehabilitation of land.

Privacy and reputation (section 25 of the *Human Rights Act 2019*)

Section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The right protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

Clause 84 of the Bill amends section 521 of the EP Act so that the administering authority must provide review notices to other relevant persons. This amendment aims to provide a greater protection of the right to privacy, as the procedure for review currently requires the review applicant to provide a review notice to other relevant persons, often by first obtaining the contact information from the administering authority. With the amendments, the administering authority will be required to provide a review notice to other relevant persons, as the administering authority holds the contact details and information of these other persons.

Clause 81 inserts a new section 444O into the EP Act which requires the Rehabilitation Commissioner to provide an annual report that includes details of any interests disclosed by the Commissioner under section 72D(1)(a) of the *Integrity Act 2009*. The annual report will be tabled in the Legislative Assembly. In complying with the requirement in the *Integrity Act 2009* to disclose conflicts of information, the Commissioner's right to privacy may be impacted as they may have to reveal personal information. In contrast, in complying with the requirement in the Bill to provide an annual report that includes details of interests disclosed under the *Integrity Act 2009*, there will be no impact on privacy rights because the Bill specifically provides that no confidential information is to be included in the report.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Privacy and reputation (section 25 of the *Human Rights Act 2019*)

(a) the nature of the right

As noted above, section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The right protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

Clause 60 of the Bill amends section 275 of the EP Act to require the administering authority to record the post-surrender management report in a public register. Information on surrendered resource sites - including the former environmental authority holder's name and contact information - will be located in the post-surrender management report. This will limit the right to privacy of the environmental authority holder as personal information about them will be available to the public in the register.

Clause 79 amends the duty to notify for contaminated land. This duty applies to owners and occupiers, and local governments. The duty may require a person to provide personal information relating to their personal affairs, thereby limiting the right to privacy. The amendment clarifies in what circumstances the duty applies. For example, the amendment clarifies that the duty applies in respect of any land, rather than just contaminated land. There is no change to who the duty applies to (i.e. it continues to apply to owners and occupiers, and local governments). However, given that it potentially applies in more circumstances, more owners and occupiers may be required to notify (and, in doing so, provide personal information).

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

In relation to the provisions of the Bill that introduce a post-surrender management report, and require the report to be recorded in the relevant register, the purpose of limiting the right to privacy of a former environmental authority holder by making this information publically available is to ensure that there is public accountability for residual risks, and to ensure that the public can access information about residual risks on any former resource sites. In most circumstances, environmental authority holders of resource activities are companies, not individuals, so it may only be limited circumstances that the provisions relating to a post-surrender management report will limit an individual's right to privacy. Where an individual's rights are limited, the purpose of this limitation is consistent with a legitimate and reasonable purpose.

The purpose of the changes to contaminated land provisions ensure the duty to notify applies to owners and occupiers of *any* land, not just contaminated land. The requirement to notify about matters such as contamination or pollution events is an important aspect of the environmental protection regime. It ensures that events with the potential to cause material or significant environmental harm are appropriately managed. It is important this duty applies in respect of any land, rather than just contaminated land, as environmental management actions may be required before land becomes contaminated land. While more owners and occupiers will potentially be required to notify, and provide personal information in the course of that notification, the provision of this personal information is aimed at ensuring that an appropriate environmental investigation can be undertaken.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

As discussed above, the introduction of the post-surrender management report is an essential component of the Bill as it ensures information about remaining environmental risks on former resource sites are available to the public. Where there is any personal information in a post-surrender management report, that information will be limited. The inclusion of personal information will help to ensure that environmental authority holders for resource sites take accountability for risks associated with the ongoing management of the land after surrender. .

Amendments to provisions relating to the duty to notify for contaminated land which may require a person to provide information to the administering authority relating to their personal affairs, are directly related to achieving the purpose. The administering authority may require personal information, such as name and address, in order to assess the degree of environmental risk associated with contamination or pollution events that are subject to the duty to notify. Personal information will assist with matters such as contacting individuals for further information, identifying the affected land, and investigating any culpability for environmental harm.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill.

Requiring post-surrender management reports that include personal information of a former environmental authority holder to be kept on a publicly accessible register is the most effective way of achieving the desired policy objective to ensure the public can access information about residual risks on a former resources site. Personal information regarding environmental authority holders, including names and registered addresses, are already available in the 'environmental authority register' available on the department's website. Any additional impact on a person's privacy related to the requirement to keep a post-surrender management report accessible on a public register will be negligible.

For the duty to notify provisions, there are no other options available to achieve the purpose. The duty is considered to be reasonably limited to circumstances where there is an

environmental risk and where there is, therefore, a public interest in the administering authority being notified.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

Any potential impact on the right to privacy and reputation arising from the post-surrender management report requirements included in the Bill are outweighed by the benefit to the community. Keeping the post-surrender management report on a public register will ensure the public can access information about residual risks on a former resources site, including information about the former environmental authority holder, thereby encouraging responsibility and accountability by holders. The Bill ensures that human rights are only impacted to the extent required to deliver the policy objectives.

In relation to the changes to the duty to notify for contaminated land, any potential impact on the right to privacy and reputation is considered to be outweighed by benefits to the community. The amendments support achievement of greater environmental protection with regard to risks associated with contaminated land. While personal information may be collected as part of the notification process, this information is required to conduct an investigation into environmental risks.

- (f) any other relevant factors

Not applicable.

Conclusion

In my opinion, the Environmental Protection and Other Legislation Amendment Bill 2020 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

HON LEEANNE ENOCH
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