

Land and Other Legislation Amendment Bill 2022

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, Scott Stewart, Minister for Resources make this statement of compatibility with respect to the Land and Other Legislation Amendment Bill 2022.

In my opinion, the Land and Other Legislation Amendment Bill 2022 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 Land and Other Legislation Amendment Bill 2022 (the Bill) delivers a range of clarifying, streamlining and minor amendments to legislation and regulations within the Department of Resource's portfolio. These amendments will either make existing policy intent clearer, reduce complexity, or ensure regulatory frameworks remain efficient, effective, and responsive to change.

Amendments to the *Land Act 1994* relate to streamlining administration and improving efficiency in how the legislation is applied, rather than changes in policy. For example, the Bill applies an alternative option for how a conversion of a lease can be initiated, giving the department an opportunity to act proactively in the allocation of state land.

Another amendment to the *Land Act 1994* will simplify and streamline the administrative process for the Commonwealth Department of Defence to efficiently manage and use the Greenvale and Shoalwater Bay training sites to support to delivery of the Australia-Singapore Military Training Initiative.

Other opportunities to streamline the administration of the *Land Act 1994* include: aligning the processes for temporary road closures with those for permanent closures; amendments to clarify the operation and decision-making framework for department initiated lease renewal where the chief executive decides not to offer a new lease; and enabling a lessee to voluntarily waive their right to payment for improvements established on the relevant land where a lease has been forfeited, surrendered or expired.

Amendments to the *Stock Route Management Act 2002* are proposed to support local governments to manage the stock route network by introducing a new application fee for travel and agistment permits—with the fee amount prescribed when the Stock Route Management Regulation is remade—while allowing local governments to keep all revenue from stock route fees and charges. The local government planning processes for stock route management will also be simplified.

The Bill reduces administrative complexity by amending the *Survey and Mapping Infrastructure Act 2003*, the *Survey and Mapping Infrastructure Regulation 2014*, the *Place Names Act 1994*, the *Vegetation Management Act 1999*.

These amendments include:

- modernising outdated requirements in the *Land Act 1994*, *Place Names Act 1994*, *Stock Route Management Act 2002* and *Vegetation Management Act 1999* to publish notices in newspapers (where a newspaper is no longer in circulation), instead allowing this to occur by suitable media channels.
- streamlining the process to commence survey standards and clarifying the application of ambulatory water boundary framework in the *Survey and Mapping Infrastructure Act 2003* (Survey and Mapping Infrastructure Act) and the *Survey and Mapping Infrastructure Regulation 2014*.
- improves the administrative process for listing regional ecosystems and corrects an unintended error in the *Vegetation Management Act 1999*.

The Bill amends the *Central Queensland Coal Associates Agreement Act 1968* to allow for the transfer of a special coal mining lease (SCML) in circumstances where the Central Queensland Coal Associates Agreement (agreement) then ceases to apply to the SCML. This will provide flexibility and certainty to the current parties to the agreement that an SCML can be transferred; in some cases without the transferee being subject to the benefits and obligations under the agreement.

Minor technical errors in the *Acquisition of Land Act 1967* that were identified because of a court judgement will be amended to ensure section references within existing provisions are accurate. The Bill will also correct an outdated definition of landholder of the land in the *Cape York Peninsula Heritage Act 2007* to reflect who may hold Aboriginal freehold land.

The Bill repeals three Acts, the: *Foreign Governments (Titles to Land) Act 1948*; the *Starcke Pastoral Holdings Acquisition Act 1994*; and the *Yeppoon Hospital Acquisition Act 2006*.

The repeal of the *Foreign Governments (Titles to Land) Act 1948* will remove outdated and unnecessary regulation, as there are other legislative instruments regulating foreign ownership in Australia. Foreign governments are still able to hold interests in land in Queensland. Foreign entities (governments, companies, and individuals) must register land ownership under the *Foreign Ownership of Land Register Act 1988* as well as comply with notification requirements under the *Foreign Acquisitions and Takeover Act 1975 (Cwlth)*.

The *Starcke Pastoral Holdings Act 1994* acquired specific land in Cape York with high environmental values, and the *Yeppoon Hospital Act 2006* acquired land for the construction of the Yeppoon Hospital and associated facilities. These acquisition processes have been fulfilled and these Acts are no longer required.

Human Rights Issues

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

I consider the following human rights are engaged, or are relevant, to the Land and Other Legislation Amendment Bill 2022:

- Property rights (section 24)—relevant to clauses 63-65 of the Bill in respect of a new application fee for stock agistment and travel permits

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*)

Property rights (section 24 of the *Human Rights Act 2019*) (HR Act)

(a) the nature of the right

The right to property protects all persons right to own property alone or in association with others. A person must not be arbitrarily deprived of their property. The term ‘property’ is not defined in the HR Act, however it has been interpreted liberally and beneficially to encompass economic interests in a broad sense.¹ The introduction of an application fee for a travel or agistment permit, limits the right to property rights under the section 24 of the *Human Rights Act 2019* by depriving a person of the amount of money which must be paid (if not waived for hardship) or additional income, or reducing the total profit which may be derived, from use of the stock route network.

International human rights law provides a strong indication that the right to property in section 24 of the HR Act is engaged by any increase in taxes (or fees that are similar to taxes) as is the case with the introduction of an application fee for a travel or agistment permit.

(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

The day-to-day cost to local government of managing the stock route network is significant and cost recovery to facilitate this management under the current regime is not achieved. Due to this shortfall local government must rely on revenue generated from ratepayers to fulfil their management responsibility for the stock route network.

A user pays approach is a commonly accepted principle when allocating resources. It is reasonable that the principle of user pays is applied when accessing the stock route network for commercial benefit to cover a reasonable share of the management of the network.

The proposal provides for local governments to charge an application fee for travel or agistment permits. An application fee is a direct, and effective measure, to assist local government to improve cost recovery for administering the stock route network, in particular application assessment costs. It reflects a user pays approach and is consistent with the principles of cost recovery and beneficiary pays as outlined in the Queensland Treasury ‘Principles for Fees and Charges January 2020’.

¹ See *PJB v Melbourne Health* [2011] VSC 327; (2011) 39 VR 373, *Victorian Taxi Families Inc and Redfield Court Holdings Pty Ltd v Commercial Passenger Vehicle, Commission* [2020] VSC 762, [88]-[94] (Cavanough J).

The purpose of the application of the fee is to support local governments to achieve greater cost recovery from private commercial users of the stock route network; ensure certainty for drovers and graziers that rely on the network; and contribute to a better funded stock route network. This will in turn reduce the level of local ratepayer and government subsidisation of private commercial uses of the network.

(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

The fee—proposed to be prescribed under the remade Stock Route Management Regulation—reflects what is already charged by some local governments, under the *Local Government Act 2009* (LGA), to recover assessment costs.

By imposing an application fee, the limitation will help achieve the objective of cost recovery by local governments administering the stock route network. This fee covers the administrative costs of assessing an application, and may include, for example, an on-ground assessment of the pasture and water available for stock.

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

No feasible alternative has been identified to achieve the policy objective. This proposal is considered the best way to achieve the purpose effectively. It achieves the purpose of a user pays approach and is consistent with the principles of cost recovery and beneficiary pays as outlined in the Queensland Treasury ‘Principles for Fees and Charges January 2020’.

As costs are incurred to assess an application, it is considered reasonable and just to recover these costs from the applicant who will receive a private benefit from use of the stock route network. The alternative approach of continuing the high level of local ratepayer subsidisation of stock routes is not considered equitable or financially sustainable for local governments.

The amendments will give local governments discretion to waive payment of the application fee if an applicant is experiencing financial hardship, for example because of drought or floods.

(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

The provision is considered a reasonable and balanced approach to ensure a better funded stock route network that will provide certainty to the users of the network. It is considered that the public benefit, and benefit to stock routes users as a whole, from improving cost recovery, outweighs the financial impacts and limitations on the property rights on individual pastoralists who seek to use the network to move their stock.

Conclusion

In my opinion, the Land and Other Legislation Amendment Bill 2022 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 a free and democratic society based on human dignity, equality, and freedom.

SCOTT STEWART
MINISTER FOR RESOURCES

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