

Environmental Protection (Transshipping Activities) Amendment Regulation 2020

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 Enoch MP, Minister for Environment and the Great Barrier Reef, Minister for Science and Minister for the Arts provide this human rights certificate with respect to the Environmental Protection (Transshipping Activities) Amendment Regulation 2020 made under the *Environmental Protection Act 1994*.

In my opinion, the Environmental Protection (Transshipping Activities) Amendment Regulation 2020, 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 Protection (Transshipping Activities) Amendment Regulation 2020 (Amendment Regulation) gives legislative effect to the Queensland Government's transshipping policy. The transshipping policy does not allow transshipping activities to be carried out within the Great Barrier Reef Marine Park. In other areas, transshipping is regulated as an environmentally relevant activity (ERA) under the *Environmental Protection Act 1994* (EP Act).

The Amendment Regulation:

- clearly prescribes transshipping as an ERA requiring an environmental authority;
- introduces a provision requiring the administering authority to refuse an environmental authority application for a transshipping activity if it is to be carried out in the Great Barrier Reef Marine Park, or outside the port limits of a port within the Great Barrier Reef World Heritage Area; and
- makes further amendments to clarify and improve the operation of ERA 50 (Mineral and bulk material handling).

Transshipping is defined as the loading or unloading of bulk materials or minerals from one ship to another ship at a rate of 100 tonnes or more a day. However, transshipping does not include loading or unloading of bulk materials or minerals related to emergency responses, refuelling of a ship, transporting bulk materials to remote areas of the State, or transferring bulk materials or minerals between two or more ships that are docked at a port.

Human Rights Issues

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

In my opinion, the only human rights that are relevant to the Amendment Regulation are cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28, *Human Rights Act 2019*).

Section 28 of the *Human Rights Act 2019* provides that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. They must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

This right may be considered to be relevant to the Amendment Regulation as transshipping is a method for transportation of resources that can be extracted from land which Aboriginal peoples and Torres Strait Islander peoples have a connection. The Amendment Regulation inserts a new section 41AB in the Environmental Protection Regulation 2019 that will effectively prohibit transshipping activities in the Great Barrier Reef Marine Park and outside ports in the Great Barrier Reef World Heritage Area, in order to protect marine biodiversity in these areas. Transshipping in these areas may have been an option for transporting resources extracted from land which Aboriginal peoples and Torres Strait Islander peoples have a connection.

Despite this, section 28 of the *Human Rights Act 2019* is not considered to be limited by the Amendment Regulation. In particular, it is not considered that the Amendment Regulation restricts the economic relationship with, or productive capacity of, the land and other resources which Aboriginal peoples and Torres Strait Islander peoples have a connection under Aboriginal tradition or Island custom.

It is recognised that Aboriginal peoples and Torres Strait Islander peoples historically made many different uses of resources from the land and that there is a history of trade by sea. The Amendment Regulation applies only to loading and unloading minerals at a rate of 100 tonnes or more a day, involving industrial-scale processes. The Amendment Regulation does not regulate the extraction of resources from the land. While the transshipping process itself may support important economic activity of Aboriginal peoples and Torres Strait Islander peoples, this economic relationship is not considered to arise under Aboriginal tradition or Island custom. Other activities potentially impacted by the Amendment Regulation, including current or future large-scale extraction of mineral sands, are not held to be of the same nature or scale of traditional practices and customs.

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

The Amendment Regulation does not limit human rights.

Conclusion

I consider that the Environmental Protection (Transshipping Activities) Amendment Regulation 2020 is compatible with the *Human Rights Act 2019* because it raises human rights issues but does not limit human rights.

Leeanne Enoch MP
Minister for Environment and the Great Barrier Reef,
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