

Stock Route Management Regulation 2023

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, Scott Stewart MP, Minister for Resources, provide this human rights certificate with respect to the *Stock Route Management Regulation 2023* (the Regulation) made under the *Stock Route Management Act 2002* (the Act).

In my opinion, the Regulation, 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

Queensland's stock route network provides an interconnected network of roads and reserves for driving stock on foot between destinations and is an important source of pasture during times of drought and other emergencies. The network also contains reserves for camping and water, and important environmental, recreational, and cultural values.

The stock route network is governed by the Act and the *Stock Route Management Regulation 2003*. The Act sets out the principles and responsibilities for managing the network, a planning process, and a system for issuing permits for stock to travel or agist on the network.

The Regulation will replace the expiring *Stock Route Management Regulation 2003*. The Regulation sets out key arrangements for managing the network, identifying which local governments are required to prepare a stock route network management plan, and setting the fees for a travel permit or agistment permit and other charges.

The Regulation makes the following important changes to improve efficiency and make the stock route network more sustainable into the future:

1. It reduces the regulatory and financial burden for local governments by mandating the preparation of stock route management plans for only those local governments with significant primary networks in their local area.
2. It changes the fee regime to enable local governments to achieve greater cost recovery for administering and managing the stock route network. It does this by:
 - (a) Increasing the fees for travel and agistment permits under a revised fee structure. Permit fees are based on a per day rate for travelling stock (instead of a per kilometre rate); new minimum and maximum fees for agisting stock are reflective of commercial rates; and travel and agistment fees for small stock set at one seventh the fee for large stock (instead of one fifth). These changes will commence with the notification of the Regulation.
 - (b) Prescribing the amount for a new application fee. This fee will commence with the proclamation of supporting provisions under the *Land and Other Legislation Amendment Act 2023*. The Act provides that this fee may be waived for hardship.

The Regulation will:

1. List the local governments required to have a stock route network management plan in place (Act, section 104).
2. Prescribe the interest on amounts payable for specific instances of non-compliance including for activities that the chief executive was required to respond to (e.g., necessary fencing and mustering activities) (Act, sections 153 and 159).
3. Prescribe the market value of stray stock seized on the network in circumstances where an owner cannot be identified (Act, section 170).
4. Set the amounts for fees that are payable (Act, section 309)—application fees, stock route agistment permits (and supporting criteria), stock travel permits, inspecting the register of water facility agreements and replacement permits.
5. For consistency, amend the *Nature Conservation (Protected Areas Management) Regulation 2017* to align the permit fees to travel stock in protected areas under the *Nature Conservation Act 1992* with fees for travelling stock under the Regulation.
6. Update definitions of terms used in the Regulation.

Human Rights Issues

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

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

- Property rights (section 24 of the HR Act) relevant to the Regulation in respect of a new application fee and increases in travel and agistment permits.

The provisions of the Regulation that engage these rights are detailed below, including further analysis of the limitations.

Property rights

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property.

Under the Act, a permit-based system allows pastoralists to either graze their stock on the stock route network (agistment) or move their stock on foot between destinations (travel). Fees are payable for making an application and obtaining a stock route agistment permit or a travel permit. The fees are prescribed in the Regulation.

The Regulation (Schedule 2) engages and limits 'property rights' to the extent that it introduces an application fee for permits and increases the fee levels for agistment and travel permits, depriving a person of their money, additional funds or potential profit.

Consideration of reasonable limitations on human rights (section 13 HR Act)

The human right limited by the regulation is analysed further below.

Property rights

(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 Property rights have been interpreted to include all real and personal property interests recognised under general law, including interests in land, contractual rights, and money and shares. The 'arbitrary' deprivation of property refers to conduct that is capricious, unpredictable, or unjust, and interferences that are unreasonable when considering the aims being sought.

The increased fees for a travel or agistment permit limit the right to property under section 24 of the HR Act by depriving a person of the amount of money which must be paid 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 (if not waived for hardship) and the introduction of increased fees for a travel or agistment permit.

(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 day-to-day cost to local governments of managing the stock route network is significant (around \$4.8 million annually) and cost recovery to facilitate this management under the current regime is not achieved. The current level of cost recovery is only around 3.5 per cent. Due to this shortfall, local governments must rely on revenue generated from ratepayers to fulfil their management responsibility for the stock route network. This is not sustainable.

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 Regulation sets the application fee and provides for increased fees for travel and agistment permits to be charged by local governments. The application fee (which may be waived for hardship) is to cover assessment costs incurred by local governments, and reflects the fee currently charged by some local governments under the *Local Government Act 2009* to recover the cost of assessing an application for a permit. Increased permit fees reflect 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'. It is also consistent with a principle under section 97 of the Act that a person who benefits from using the network must pay a reasonable amount for its use.

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

The fees were developed through extensive stakeholder consultation on the most appropriate fee regime based on an independent economic analysis of the costs and benefits of the stock route network and the uses on the network.

Increasing fees is consistent with stakeholder feedback during the review of the regulation that permit fees should reflect a user pays system and be increased for the ongoing upkeep of the stock route network, and so local governments can better recover their administration costs—but not to the extent that makes moving stock on foot or agisting stock unaffordable. The fee changes are a manageable cost increase for pastoralists and drovers. The cost increases are outweighed by the comparatively higher cost of trucking stock, purchasing fodder or agistment as well as the benefits derived from improved management of pasture, stock route facilities and other values on the network.

The fee increases are consistent with a free and democratic society and are reasonably necessary to support the effective administration and management of the stock route network, for the broader public benefit.

(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 fee changes and a better funded, maintained and more sustainable stock route network given that section 187B of the Act requires local governments to re-invest retained stock route revenue solely for the administration, maintenance, or improvement of the stock route network.

By imposing an increase in travel and agistment fees, the limitation on property rights will help achieve the objective of greater cost recovery by local governments administering the stock route network.

The combination of the application fee and increased permit fees for travel and agistment permits—together with enabling local governments to retain all revenue for continued re-investment in the network—is the most effective, and just, approach for achieving the policy objective of greater cost recovery for managing the stock route network. It also 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’ and payment for use principle under the Act.

The increased fees also reduce the level of ratepayer and government subsidisation of private commercial uses of the network.

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

There is no less restrictive and reasonably feasible way to achieve the purpose of greater cost recovery for local governments.

Extensive consultation was fundamental to identifying, assessing, and testing alternative fee models. Industry and local government stakeholders consider that the proposed fee model is the best way to achieve the purpose effectively without impacting too greatly on users of the network.

It is considered reasonable and just to recover the costs of managing the stock route network from the applicant and permit holder who will receive a private benefit from its use. The alternative approach of continuing the high level of local ratepayer subsidisation of stock routes is neither equitable nor financially sustainable for local governments and rate payers.

(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 extensive consultation and reviews of stock route legislation highlighted the importance of the stock route network to users and the state, regional and local economies, and supported reforms to increase cost recovery for local governments.

Increasing permit fees to a reasonable level and setting an application fee for permits are a proportionate response to increasing cost recovery, ensuring a more sustainable stock route network that will provide certainty to its users in the longer term. Any limitation on property rights is justified considering the direct benefit to pastoralists, drovers, other users, and the public of a better funded and managed stock route network. Local rate payers will benefit from a reduction in the subsidisation of the commercial use of the network.

(f) any other relevant factors

Travel permit fees required increasing as they have not changed since 1997. They have lost their value overtime and were too low to be annually indexed, resulting in significant shortfalls in cost recovery with time.

Local governments must charge an agistment permit fee that is within a range set out in the Regulation. The local government may charge a fee that is considered reasonable, having regard to several factors which influence the cost of managing stock on the land (e.g., for example the number and type of stock, land characteristics, and quality of pasture). The range of fees for the agistment of stock is comparable to that of New South Wales.

Conclusion

I consider that the Regulation 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.

SCOTT STEWART MP
MINISTER FOR RESOURCES

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