

Environmental Protection 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, Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs make this statement of compatibility with respect to the Environmental Protection and Other Legislation Amendment Bill 2022 (the Bill).

In my opinion, the Bill 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 primary policy objective of the Bill is to improve administrative efficiency and ensure the regulatory frameworks within the Environment portfolio remain contemporary, effective and responsive. Specifically, the Bill amends the:

- *Environmental Protection Act 1994* (EP Act) to support industry, streamline and clarify regulatory processes, better protect the environment and improve community input and transparency;
- *Waste Reduction and Recycling Act 2011* to make minor, technical refinements related to administrative processes and interpretation; and
- *Wet Tropics World Heritage Protection and Management Act 1993* and *Land Title Act 1994* in response to a review of the Wet Tropics Management Plan 1998. The changes better protect the Wet Tropics of Queensland World Heritage Area, improve user understanding, align with other legislation and contemporise drafting.

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:

- Property Rights (section 24 of the HR Act)
- Privacy and Reputation (section 25 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.

Property rights (section 24 of the HR Act)

(a) the nature of the right

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others. Section 24 of the HR Act also provides that a person must not be arbitrarily deprived of their property. This right does not include a right to compensation if a person is deprived of their property.

Clause 85 of the Bill (amending s 371 of the EP Act) engages section 24 of the HR Act by allowing the administering authority to list particulars of land on the Environmental Management Register (EMR) where there is a reasonable suspicion that the land is contaminated land. Having particulars of land listed on the EMR will, in some circumstances, affect the future use of the land thus limiting the potential future value of that land.

(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 purpose of the EMR is to protect public health and the environment by ensuring the community are well informed of land that is, or is likely to be, contaminated. Particulars of land are recorded in the EMR if the land is contaminated, is suspected on reasonable grounds to be contaminated or has had, or currently has, a notifiable activity being carried out. The amendment provides the administering authority with the power to record particulars of land on the EMR where it suspects, on reasonable grounds, that the land is contaminated land. This amendment ensures that the administering authority is afforded some discretion in listing land on the EMR if, for example, an audit of a contaminated land investigation document determines that land was removed from the EMR based on incomplete or inaccurate information.

(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

Listing a person's land on the EMR is essential to the identification and management of contaminated land in Queensland. The ability to ensure that land is listed on the EMR where there is reasonable suspicion of contamination provides further protection of the environment and human health.

The proposed amendment does not alter the natural justice afforded to owners under the current legislation. Prior to recording the particulars of land on the EMR, the administering authority must issue a show cause notice to the owner of the land, which provides them with the opportunity to make representation about whether or not they agree that their land should be listed on the EMR. The administering authority must consider all representations made by the owner and issue a notice with appeal and review details once a decision is made. This process ensures natural justice for owners whose rights could be affected by the listing of the land on the relevant land register are considered prior to any adverse decision being made about their land.

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

There is not a less restrictive way of notifying the public that land is contaminated land, or reasonably suspected to be contaminated land, other than by listing particulars of the land on the EMR.

- (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

Amongst other things, the EMR identifies land that is contaminated land, or is suspected on reasonable grounds to be contaminated, and ensures that it is managed in a way that protects public health and the environment.

Privacy and reputation (section 25 of the HR Act)

- (a) the nature of the right

Section 25 of the HR Act provides that a person has the right not to have their 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. Section 25 of the HR Act also states that a person has the right not to have the person's reputation unlawfully attacked. It prohibits attacks on a person's reputation that are unlawful and intentional, based on untrue allegations. Reputation in the context of the right refers to one's appraisal by others. The clauses of the Bill which engage the right to privacy are detailed below.

Obtaining criminal records

Clause 101 of the Bill (inserting new chapter 9, part 5A into the EP Act) engages the right to privacy by allowing the chief executive to have access to personal information, specifically the criminal history of an individual, without that individual's consent.

Body worn cameras

Clause 102 of the Bill (inserting new s 486A into the EP Act) limits the right to privacy to the extent that it authorises the use of body-worn cameras which may inadvertently or unexpectedly record images and sounds of an individual without their consent.

Persistent offenders

Clause 108 of the Bill (inserting new s 506A into the EP Act) engages the reputational right by suggesting that a person may commit future offences based on past offences committed.

- (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

Obtaining criminal records

The purpose of this amendment is to assist authorised persons in determining whether the authorised person's entry of a place or vehicle, pursuant to chapter 9 of the EP Act, would create an unacceptable level of risk to their safety. Protecting the personal safety of an authorised person performing their duties under the EP Act supports that individual's right to life and human dignity. Protecting the safety of an authorised person can be supported by obtaining information about a person's criminal history which may suggest whether the presence of that person may endanger the authorised person.

Body worn cameras

The main purpose of authorising the use of body-worn cameras by authorised persons is to protect the safety of authorised persons. Body-worn cameras act as a deterrent to aggressive behaviour and are also important in the investigation of offences and evidence gathering.

The purpose of the EP Act is to protect Queensland's environment. To ensure compliance with the legislation, the government monitors compliance and responds to breaches of the legislation with consistent and proportionate enforcement action. In order to carry out these duties, authorised persons are given powers of entry to places and vehicles under the EP Act. Body-worn cameras support the protection of the health and safety of the authorised persons in performing their duties. The cameras are increasingly being used by government agencies, including fisheries inspectors and hospital security staff who are confronted with aggressive behaviour.

The use of body-worn cameras by authorised persons can also assist in the investigation of offences and gathering of evidence. These cameras may provide incontrovertible evidence of activities that are causing environmental harm. This is consistent with, and supports, the protection of the environment and human health.

Persistent offenders

The purpose of the amendment is to prevent persistent offenders from carrying out an activity if the court considers it necessary to stop that offender from committing further offences. In some cases, there can be a high risk of repeat offending and preventing these offenders from engaging in a specific activity may be necessary to stop the person from committing further offences under the EP Act.

- (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

Obtaining criminal records

Authorised persons may lawfully enter a place pursuant to the entry powers in the EP Act. The safety of an authorised person may be compromised by other persons present at the place of entry. The amendment is necessary to determine whether there is an unacceptable level of risk to the authorised person by providing access to the criminal history report of a person that is reasonably believed will be present at the place. The criminal history report may contain information to identify, to the extent reasonably practicable to do so, behaviour that suggests the relevant person's presence at the place or vehicle may endanger the authorised person's safety.

Criminal history checks have been commonly used for the purposes of employment, childcare, licensing, and visas. More recently, criminal history reports have been increasingly used by government agencies to safeguard the safety of administrative investigators in the performance of their duties.

Body worn cameras

At present, monitoring, recording or listening to private conversations is regulated by the *Invasion of Privacy Act 1971*. Section 43 of the *Invasion of Privacy Act 1971* prohibits a person from using a listening device to overhear, record, monitor or listen to a private conversation. Section 43(2)(a) of the *Invasion of Privacy Act 1971* provides an exception to this offence where the person recording the conversation is a party to the conversation.

The vast majority of private conversations being recorded by a body-worn camera will involve the authorised person being a party to the conversation. Therefore, the use of a body-worn camera would generally not be an offence under the *Invasion of Privacy Act 1971*. However, there may be instances where the authorised person's body-worn camera may inadvertently or unexpectedly record a conversation to which the person is not a party at that time. In these circumstances, it is considered reasonable that an authorised person would be protected from liability as a result of the use of body worn cameras used in the performance of their duties where conversations are recorded in circumstances that would otherwise amount to an offence by the authorised person.

Persistent offenders

The court may make an order to prevent a person who has already engaged in a serious environmental offence at least twice in the past five years from engaging in a specified activity. This amendment engages the right to reputation by suggesting that the person may be more likely to continue to commit an environmental offence. By enabling the court to make an order of this type, this limitation supports stronger environmental regulation by aiming to prevent further environmental offences from occurring. It contributes to meeting the objectives of the EP Act, which is to protect the environment.

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

Obtaining criminal records

There are no other measures that would be less restrictive and achieve the same purpose as effectively as the measures in the amendment.

The amendment includes several safeguards that reduce the impact on the right to privacy. The amendment is sufficiently limited to offences involving conduct, behaviour or circumstances that may suggest a person's presence at a place may endanger the authorised person's safety. The amendment also limits the ability to request criminal history reports to only those instances where there are reasonable grounds that the relevant person might be present at the place of entry and that their presence may create an unacceptable risk to the safety of an authorised person.

Additional safeguards include the requirement that the chief executive must ensure that the report is destroyed as soon as practicable when it is no longer needed for the purpose for which it was requested.

Body worn cameras

There are no less restrictive means to achieve the purpose of this amendment. The Bill has several safeguards that reduce infringement on human rights. Most significantly, new section 579D of the EP Act prohibits the use or disclosure of confidential information gained by a person in administering or performing a function under the EP Act unless expressly authorised.

Any recordings made by an authorised person while exercising a power under the Bill are a record under the *Public Records Act 2001*, are confidential, and must be retained in accordance with record keeping obligations.

Persistent offenders

There is no less restrictive approach that would achieve the same result of preventing the potential for further environmental offences from repeat offenders. The Bill provides safeguards as it is narrowly restricted to only apply to a person who has been convicted of a serious environmental offence at least twice in the previous five years.

- (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

Obtaining criminal records

The importance of ensuring the safety of an authorised person by protecting authorised persons from physical harm justifies the limitation imposed on the right to privacy.

Body worn cameras

The importance of protecting the health and safety of authorised persons in the performance of their duties justifies the limit on the human right. The majority of circumstances where the body-worn camera is in use will not involve the inadvertent or unexpected recording of persons not a party to the conversations with the authorised person. The additional provisions under section 579D further reduce the extent of limit on the right to privacy. Therefore, a fair balance is struck between the benefits of this amendment and the extent of the limitation.

Persistent offenders

The benefit of preventing further environmental damage from occurring from the activities of repeat offenders outweigh the limitations on human rights. Repeat offending may result in serious environmental harm which is likely to cause economic and human health implications.

(f) any other relevant factors

Obtaining criminal records

Criminal records are classified as ‘sensitive information’ in the *Information Privacy Act 2009* and is therefore given additional privacy protections.

Conclusion

In my opinion, the Environmental Protection 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.

Meaghan Scanlon
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Affairs