

Agriculture and Fisheries and Other Legislation Amendment Bill 2023

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, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, make this statement of compatibility with respect to the Agriculture and Fisheries and Other Legislation Amendment Bill 2023.

In my opinion, the Agriculture and Fisheries and Other Legislation Amendment Bill 2023 is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill will amend the *Agricultural Chemicals Distribution Control Act 1966*; the *Animal Care and Protection Act 2001* (ACP Act); the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act); the *Biosecurity Act 2014* (Biosecurity Act); the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*; the *Drugs Misuse Act 1986*; the *Exhibited Animals Act 2015*; the *Farm Business Debt Mediation Act 2017* (FBDM Act); the *Fisheries Act 1994* (Fisheries Act); the *Forestry Act 1959*; the *Nature Conservation Act 1992* (NC Act); the *Sugar Industry Act 1999*; and the *Veterinary Surgeons Act 1936* (VS Act). The Bill makes consequential amendments as set out in Schedule 1 to the Bill.

The first key element of the Bill is to amend the AMCD Act, implementing recommendations of the *Strong dog laws: Safer communities* discussion paper, and making significant changes to the control and management of dogs in Queensland, including:

- banning restricted breeds of dogs in Queensland;
- introducing a statewide requirement to keep dogs under effective control;
- increasing the penalties for offences relating to the control of dogs, up to and including imprisonment for the most serious offences; and,
- streamlining and clarifying processes for external reviews and destruction orders.

The second key element of the Bill is to amend the Fisheries Act to establish a framework for independent onboard monitoring (IOM) requirements. The framework includes powers to impose video monitoring and onboard observer conditions, approve relevant equipment, or appoint onboard observers.

IOM is a key element in supporting continued access to commercial fishing within the Great Barrier Reef (GBR) World Heritage Area and meeting Wildlife Trade Operation conditions for the trawl fishery.

Further, the Bill includes suitable amendments to implement recommendations of the recently completed legislative reviews of the Biosecurity Act and the FBDM Act.

The Bill also includes a number of miscellaneous amendments to Acts within the portfolio jurisdiction of the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities.

A. Amendments to the AMCD Act

On 25 June 2023, the *Strong dog laws: Safer communities* discussion paper was publicly released for community consultation. The reforms included proposals endorsed by the Animal Management Taskforce and additional options to better protect the community from dangerous dogs, including:

- Developing and implementing a comprehensive community education campaign.
- Imposing a new state-wide ban on restricted dog breeds.
- Reviewing penalties for owners of dogs that cause harm.
- Introducing a new offence that includes imprisonment as a maximum penalty for the most serious dog attacks.
- Clarifying when a destruction order must be made for a regulated dog.
- Streamlining the external review process for regulated dogs to minimise unnecessary delays experienced by councils and relevant parties.

Outlined below are legislative amendments the Bill makes in response to the reforms included in the discussion paper and feedback following community consultation.

Restricted breed ban

Currently, it is an offence to keep a restricted dog in Queensland without a permit. A ‘restricted dog’ is defined as those banned from import into Australia under the *Customs (Prohibited Imports) Regulation 1956* (Cth), which lists the following breeds:

- Dogo Argentino;
- Fila Brasileiro;
- Japanese tosa;
- American pit bull terrier/pit bull terrier; and,
- Perro de Presa Canario/Preso Canario.

The Bill reflects community concerns by removing the ability for any permits to be issued for new restricted dogs, prohibiting those breeds in Queensland after commencement. The amendments will make it an offence for a person to keep the above dog breeds in Queensland.

The Bill includes transitional provisions to support existing compliant owners of a restricted dog at the time of commencement to continue to be issued permits for the life of their dog. The Bill also includes a delayed commencement to give Queensland dog owners appropriate notice of the change to ensure they are compliant prior to the ban.

State-wide requirement for effective control of dogs

Under the AMCD Act the responsible person for a restricted, declared dangerous, or declared menacing dog (regulated dogs) is required to keep the dog under effective control as a condition of their dog’s permit. However, unlike in some local government areas, there is no general requirement for a responsible person to keep their non-regulated dog under effective control.

The Bill introduces a new statewide requirement ensuring the responsible person for any dog must keep the dog under effective control at all times when in a public place. For example, the person in control of the dog is physically able to control the dog, or the dog is appropriately tethered and supervised or contained in an enclosure. It will be an offence for a person to fail to effectively control the dog.

The Bill also harmonises the new and existing effective control requirements while maintaining the current stricter control requirements for regulated dogs. Including limiting the responsible person to only adults, and a specific requirement that leashes, harnesses, or tethers be appropriate to restrain the dog and ensure it is not a risk to community health or safety.

Increased penalties for dog attacks and offences relating to the control of dogs

Recognising the significant impact dog attacks have on victims, their families, and the broader community, the Bill aims to send a clear message to persons responsible for dogs that they must act appropriately to control their dogs and prevent these kinds of attacks.

The Bill introduces new and increased penalties for offences relating to the control of dogs, including increased penalties based on the degree of harm caused. For example, the new maximum penalties for offences related to dog attacks on people, include:

- if a person encourages a regulated dog to attack and the attack causes death or grievous bodily harm to a person, a maximum penalty of 700 penalty units (PU) or three years imprisonment applies; and
- if a person fails to keep a regulated dog under effective control and the dog attacks a person causing death or grievous bodily harm, a maximum penalty of 600 PU or two years imprisonment applies.

The higher maximum penalties also apply in cases where a person has been convicted of a serious dog offence in the preceding five years. The definition of a serious dog offence includes offences under the AMCD Act where a dog attacked causing bodily harm.

Acknowledging community concerns more broadly the Bill includes increases to the maximum PU value of key offences under the AMCD Act related to compliance and control of a dog by owners, including:

- failure to comply with permit conditions for a restricted dog, from 75 to 150PU (section 81);
- failure to comply with permit conditions when a proposed regulated dog notice is in force, from 75 to 150 PU (section 93);
- failure to comply with permit conditions for a declared dangerous or menacing dog, from 75 to 150 PU (sections 97 and 98); and,
- failure to comply with a compliance notice for a regulated dog, from 75 to 150 PU (section 134).

Destruction orders

Currently, the AMCD Act gives authorised persons, often local government officers, the power to make a destruction order for a seized regulated dog where it does not meet other criteria, such as for immediate destruction. As this is effectively a ‘catch-all’ provision it gives limited guidance on when an authorised person should make a destruction order.

The Bill addresses the need for additional guidance by introducing a new power for the chief executive to make guidelines to assist authorised persons in discharging their duties under the AMCD Act, such as to assist in determining when to make a destruction order.

The Bill also requires an authorised person to make a destruction order where the dog is a regulated dog and the regulated dog attacked causing grievous bodily harm or death to a person, or maimed or killed an animal. Emphasising the risk to community safety where a person has failed to control their dog following a regulated dog declaration.

Streamlining external reviews

The Bill limits the scope of appeals of Queensland Civil and Administrative Tribunal (QCAT) decisions on destruction orders to appeals on questions of law. This is intended to reduce delays in dealing with dogs subject to destruction orders which should reduce the costs to local government of housing the dogs during proceedings. Timely resolution of proceedings also minimises the emotional uncertainty for the dog’s owner in the case of an appeal or review. Limiting the scope of appeals is expected to reduce the case load of the QCAT Appeals (QCATA).

B. Amendments to the Fisheries Act

On 28 November 2022, the International Union for Conservation of Nature and the United Nations Educational, Scientific and Cultural Organization (UNESCO) released a report on the Reactive Monitoring Mission to the Great Barrier Reef (GBR), 21-30 March 2022.

A key commitment for addressing UNESCO's concerns includes Queensland implementing appropriate independent mechanisms for discard and bycatch monitoring in higher-risk fisheries. For example, by legislating the requirement for mandatory Independent Onboard Monitoring (IOM).

The Bill amends the Fisheries Act to implement a legislative framework for IOM requirements as outlined below. The Bill also includes, outlined below, amendments to address repeated interactions with protected animals, suspension of authority for non-payment of fees, proof of appointments, appeals relating to disposed of fisheries resources, streamlining the aquaculture authority approval process, and amending the definition of 'fish'.

Independent onboard monitoring

IOM can be facilitated by using two accepted methods: independent onboard observers or onboard camera systems. Onboard camera technology or onboard observers, can collect information on non-target and non-retained catch and detect interactions with protected species during commercial fishing activities. The information collected can then be compared with logbooks provided by fishers to independently validate the logbook data.

The Bill amends the Fisheries Act to establish a framework for IOM requirements, including:

- chief executive powers to impose video monitoring or onboard observer conditions;
- chief executive powers to approve monitoring equipment and appoint onboard observers;
- installation requirements for video monitoring equipment; and,
- an offence for interfering with monitoring equipment.

To support the legislative framework the Bill includes heads of power to prescribe relevant matters by regulation, including:

- specific authorities and boats to which video monitoring or onboard observers will apply;
- requirements for how monitoring equipment is to be used and the period of use; and,
- types of information about monitoring equipment use that must be kept.

Repeated interactions with protected animals

The Bill amends the Fisheries Act to authorise the chief executive to amend a fisheries authority to impose conditions where an authority holder has had repeated interactions with protected animals in a 12-month period.

Non-payment suspension

The Bill amends section 68AB of the Fisheries Act to provide for the automatic suspension of an authority where the authority holder was issued a fee notice and failed to pay their fee by the due date.

Proof of appointments

The Bill amends the Fisheries Act to provide that in a proceeding for an offence against the Fisheries Act, the appointment of the chief executive, a delegate of the chief executive, or an inspector must be presumed unless the contrary is proved.

Limit on appeal

The Bill amends the Fisheries Act to provide that a person may not appeal if a dead seized fisheries resource is immediately disposed of by an inspector who, on reasonable grounds, believes the fisheries resources are putrid, unfit for sale, of no value or of insufficient value to justify their sale.

Streamlined authorisations for aquaculture operations

Currently operational and land-use aspects of aquaculture development require authorisation under the *Planning Act 2016* (Planning Act). This is despite operational aspects being primarily regulated under fisheries and biosecurity legislation. This means that even minor changes to the operational aspects (such as an expansion of the list of approved species) must be processed under the Planning Act's development approval process.

The Bill amends the Fisheries Act to provide more efficient management of aquaculture operations by establishing a new 'aquaculture authority' as a separate type of permit under the Fisheries Act. The purpose of this new authority is to separate the management of operational matters (such as the lists of approved species) from the planning and land-use aspects of aquaculture development. In addition, the amendments will formerly accommodate aquaculture development authorised under the *Economic Development Act 2012* and the *State Development and Public Works Organisations Act 1971*.

Meaning of 'fish'

The Bill amends the meaning of 'fish' under the Fisheries Act to clearly define when a species is a 'fish' for fisheries resource purposes and when a species is a protected animal under the NC Act for conservation purposes.

For example, protected species that have no fisheries resource value, such as small freshwater gobies, will be managed under the NC Act. Alternatively, species such as the silver perch, are considered a popular fisheries resource and should continue to be managed as such under the Fisheries Act despite their 'threatened' status, so long as the management does not result in compromising the conservation intent of the species.

C. Amendments to the Biosecurity Act

The amendments to the Biosecurity Act included in the Bill will address a number of recommendations made by the *Review of the Biosecurity Act 2014* report, including:

- transferring the lists of prohibited and restricted matter to the *Biosecurity Regulation 2016*;
- improving the Department of Agriculture and Fisheries (DAF) ability to work collaboratively with local governments on biosecurity management;
- clarifying the definition of 'dispose' as it relates to Category 3 restricted matter;
- giving the chief executive power to approve extending the maximum period during which an inspector may use emergency powers from 96 hours to 7 days;
- providing that inspectors must attempt to notify a property owner/lessee, rather than seek consent, prior to entering a property;
- extending the maximum period of a biosecurity emergency order (BEO) from 21 days to 6 weeks to support emergency responses;
- allowing a BEO to require a person to maintain movement records; and,
- other minor clarifications and administrative amendments.

Transferring lists of prohibited and restricted matter

Currently amending the lists of prohibited and restricted matter set out in Schedule 1 and Schedule 2 of the Biosecurity Act requires legislative amendment of the Act. The Biosecurity Act review considered this unnecessarily time-consuming and burdensome for managing lists of prohibited and restricted matter, particularly in cases where there is already national agreement about the relevant pest or disease.

The Bill amends the Biosecurity Act to transfer the lists of prohibited and restricted matter in Schedule 1 and Schedule 2 of the Biosecurity Act into the *Biosecurity Regulation 2016* (Biosecurity Regulation) to support the efficient and timely management of these lists, while maintaining an appropriate level of oversight through the regulation process.

Extending the maximum length of biosecurity emergency orders

Under the Biosecurity Act, a BEO can be applied for a maximum period of 21 days. The Biosecurity Act Review identified that responding to the 2016 White Spot Disease outbreak demonstrated that 21 days was insufficient time to resolve all the uncertainty around the source of the disease and risk pathways in order to confidently transition to another tool.

The Bill amends the Biosecurity Act to increase the maximum length of time a BEO may be in effect from 21 days up to 6 weeks.

Locally significant pests

Under the Biosecurity Act, local governments are authorised to deal with any biosecurity pests listed under the prohibited and restricted matter schedules of the Biosecurity Act (and Biosecurity Regulation) as invasive biosecurity matter. Other locally significant invasive plants and animals must be dealt with under the local government legislation, specifically *Model Local Law No. 3 (Community and Environmental Management) 2010*.

The Biosecurity Act Review considered that the need to operate under two pieces of legislation poses problems for local government authorised officers. The Bill amends the Biosecurity Act to allow local governments to deal with pests other than invasive biosecurity matter. Limited to locally significant invasive plants and animals that have been identified in their biosecurity plan, but which are not classified as invasive biosecurity matter state-wide.

Extending the duration of emergency powers

Under the Biosecurity Act, when an inspector finds a pest, disease, weed or contaminant that may pose a significant threat to the economy, environment, and community they can use their emergency powers under sections 278-285 of the Act for a duration of up to 96 hours.

During biosecurity emergencies, like the 2016 White Spot Disease outbreak, 96 hours was found to be insufficient time to undertake preliminary investigations, which may include sending biosecurity matter for testing. The Biosecurity Act Review recommended extending the maximum duration an inspector's emergency powers can operate from 96 hours to 7 days. This would ensure additional time is available where required to respond more effectively to emergencies.

The Bill amends the Biosecurity Act to implement this recommendation with the added safeguard that the extension of the maximum period beyond 96 hours, up to a maximum of 7 days, be approved by the chief executive. The amendment also requires reasons for the decision to be provided to the inspector, and upon request to any occupier or person directed or authorised to take steps by the inspector.

Aligning entry powers under orders

The Biosecurity Act Review recommended that entry powers under a movement control order (MCO) order be aligned with those available under a BEO. This will support responsiveness to biosecurity risks under an MCO, and better align with the emergency-type situations in which an MCO may be implemented. The Bill amends the Biosecurity Act to align the powers of entry under an MCO with those available under a BEO.

D. Other amendments

The Bill also includes a number of miscellaneous amendments to Acts within the portfolio jurisdiction of the Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities. Amendments considered to engage human rights are detailed below, other amendments include a minor definition clarification under the *Agricultural Chemicals Distribution Control Act 1966* and minor updates to prescribed state plantation forest lists under the *Forestry Act 1959*.

Animal Care and Protection Act 2001

The Bill amends the ACP Act to ensure businesses are appropriately responsible for the conduct of their employees/representatives for offences under the ACP Act.

Drugs Misuse Act 1986

In October 2019, DAF finalised a Decision Regulatory Impact Statement which examined potential reforms to the DM Act to support the industrial cannabis industry in Queensland. The reforms examined included two changes that were only achievable through Act amendments. Enabling different types of testing of industrial cannabis, and information sharing for law enforcement and regulatory efficiency purposes. The Bill amends the DM Act to implement those outstanding reforms as detailed below.

Authorising information sharing

In achieving the purposes of the DM Act, the Queensland Police Service (QPS) has an enforcement role that sits across the entire Act. However, DAF maintains responsibility for regulating the industrial cannabis industry under Part 5B. Despite this overlap in responsibility, there are limited provisions in the DM Act for the sharing of information. The Bill amends the DM Act to insert a new information sharing provision into Part 5B to allow the chief executive to enter into information sharing arrangements.

Analysis of industrial cannabis

Currently, an industrial cannabis licence holder is prohibited from supplying plant material or seed to a laboratory to undertake other tests, such as for plant health or seed germination. The Bill includes the DM Act to clarify when a licence holder can supply industrial cannabis plants and seeds to a person and for a purpose prescribed by regulation, in order to support the development of a new testing framework in the *Drugs Misuse Regulation 1987*.

Human review legislative review

The Bill amends the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* and the *Sugar Industry Act 1999*, addressing two potential incompatibilities identified during a review of DAF's legislation following the commencement of the HR Act.

Farm Business Debt Mediation Act 2017 review

The Bill amends the FBDM Act in response to FBDM Act Review by amending the name of enforcement action notices issued under section 14 and, inserting a requirement that the FBDM Act be reviewed every 10 years.

Cultural language amendments

The Fisheries Act and NC Act currently use outdated and offensive language in reference to First Nations peoples. Queensland's Path to Treaty establishes the vision to reframe the relationship with First Nations peoples – the Bill amends both Acts to replace outdated legislative terminology with culturally appropriate language.

Veterinary Surgeons Act 1936

The Bill amends the VS Act to include a specific power to allow the Veterinary Surgeons Board to require a veterinary premises approval holder to produce relevant records, in addition to veterinarians.

Human Rights Issues

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

A. Amendments to the AMCA Act

In my opinion, the following human rights are engaged by the amendments to the AMCD Act included in the Bill:

- Freedom of movement (section 19);
- Property rights (section 24);
- Cultural rights – generally (section 27);
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28);
- Right to liberty and security of person (section 29); and,
- Fair hearing (section 31).

B. Amendments to the Fisheries Act

In my opinion, the following human rights are engaged by the amendments to the Fisheries Act included in the Bill:

- Property rights (section 24);
- Right to privacy and reputation (section 25); and,
- Fair hearing (section 31).

C. Amendments to the Biosecurity Act

In my opinion, the following human rights are engaged by the amendments to the Biosecurity Act included in the Bill:

- Freedom of movement (section 19);
- Freedom of thought, conscience, religion, and belief (section 20);
- Property rights (section 24);
- Right to privacy and reputation (section 25);
- Cultural rights – generally (section 27); and,
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

D. Other amendments

In my opinion, the following human rights are engaged by other amendments included in the Bill:

- Right to privacy and reputation (section 25);
- Fair hearing (section 31); and,
- Rights in criminal proceedings (section 32).

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*)

A. Amendments to the AMCD Act

Banning of restricted dog breed in Queensland

The human rights relevant to this amendment are:

- Freedom of movement (section 19); and,
- Property rights (section 24).

(a) the nature of the right

The right to ***freedom of movement*** protects the right of every person within Queensland to move freely within Queensland, enter or leave Queensland and choose where they will live. This right means that public entities cannot act in a way that would unduly restrict freedom of movement.

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

(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

Clause 48 of the Bill removes the ability for new permits to be issued for restricted dog breeds, and instead prohibits a person from owning a restricted dog breed in Queensland. Restricted dog breeds are defined as those listed in the *Commonwealth Customs (Prohibited Imports) Regulations 1956* (Cwlth), for which importation into Australia is already prohibited.

To reflect the removal of the ability to issue permits for restricted dog breeds, the Bill removes the existing offence for owning a restricted dog without a permit and replaces it with an offence for owning a prohibited dog. This offence carries the same penalty and is intended to reflect that permits can no longer be issued, thereby making the dog breeds prohibited. The Bill also updates seizure and destruction order provisions to reflect the new status of these dog breeds as prohibited.

The amendment appropriately safeguards the rights of existing restricted dog breed owners in Queensland by including a transitional amendment to grandfather dogs of a restricted breed registered and permitted in Queensland at the time of commencement.

Where a person owns a restricted breed of dog and fails to permit that dog before commencement, they will no longer have the option to obtain a permit to keep a restricted breed of dog. Clause 47-49 of the Bill will limit ***property rights*** by making it an offence to own a restricted dog breed after commencement, requiring a person to potentially surrender or have the dog seized, depriving them of their property.

Similar to the discussion above, the amendments will limit ***freedom of movement*** by prohibiting a person from bringing a restricted breed of dog into Queensland after commencement, which may influence or limit a person's decision to enter or leave Queensland freely.

(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 purpose of the limitation on ***freedom of movement*** and ***property rights*** is to remove the identified dangerous dog breeds from the community to reduce the risk of attack posed by these breeds and improve community safety.

The amendment addresses community safety concerns about dog attacks generally and the risk of serious attacks posed by restricted breeds. Only a small number of people own a restricted breed of dog in Queensland, and the amendment ensures a transitional arrangement to support those existing responsible owners. The amendment is expected to primarily prevent any further dogs of a restricted breed from being brought in from interstate.

It is not possible to achieve this purpose without limiting the rights mentioned above, as the banning of restricted breeds of dogs in Queensland necessitates controls on the movement of those dogs into Queensland and requirements for surrender or seizure for non-permitted dogs after commencement.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. While the importation of these dogs into Australia is already prohibited, not all States and Territories have controls on the desexing and breeding of existing restricted breeds. Despite the number of these restricted breeds in Queensland being low, it is not possible to ensure new dogs can't be introduced into Queensland from interstate without these amendments.

Community sentiment is a key factor influencing the prohibition of the currently restricted breeds of dogs. In public consultation undertaken in July – August 2023, the proposal to ban these breeds was supported by a strong majority of survey responses and submissions, and key themes emerging were that these breeds were historically bred for fighting and are not appropriate to be kept in populated areas, and that human safety is more important than a person's preference to own a particular breed of dog. While there were opposing views that breed alone does not determine the risk of a dog attacking, and that training and care of a dog is more important, neither those factors nor the current regulatory framework appear to address the strong community fears about these dogs.

The amendment contains appropriate safeguards by giving all current dog owners in Queensland time to obtain a restricted dog permit where they may have been otherwise unaware of their obligations and ensures dogs of a restricted breed permitted on commencement can continue to be permitted in Queensland for the life of the dog.

(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

On balance, the purpose of removing the identified dangerous dog breeds from the community to reduce the risk of attack posed by these breeds and improve community safety is considered to outweigh the potential limitations to freedom of movement and property rights.

Particularly noting that owners will be given a window to ensure they are compliant with the existing permit requirements for restricted breeds of dog and that owners compliant at the time of commencement will be able to keep their dog under the existing framework for the dog's life.

(f) any other relevant factors

Nil.

Introducing a new requirement for all dogs to be effectively controlled in public places

The human rights relevant to this amendment are:

- Property rights (section 24);
- Cultural rights – generally (section 27); and
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

(a) the nature of the right

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

Cultural Rights – generally, in section 27 of the HR Act protect a person’s cultural rights generally, ensuring persons with a particular cultural, religious, racial, or linguistic background are not denied the right to enjoy their culture, practice their religion, and use their language.

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples, in section 28 of the HR Act, protect the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples. This includes cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with the 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

Clause 25 of the Bill introduces a new statewide requirement for a person responsible for a dog to keep that dog under effective control while in public, including a new offence for failing to keep a dog under effective control.

Clause 25 of the Bill will limit **property rights** as it places requirements on a person for how they must keep their dog under effective control in public, thereby placing restrictions and controls on how they deal with their property.

Similar to the discussion above, the amendments will limit **cultural rights – generally** and **cultural rights – Aboriginal peoples and Torres Strait Islander peoples** to the extent the requirements for effective control are inconsistent with a person’s cultural beliefs relating to animals or pets. For example, dog ownership may be viewed as a shared responsibility in some communities.

This may mean dogs are not registered, desexed or contained within one property as they are seen as common property. The amendment affects this type of shared ownership as dogs must now be under effective control or contained on a property and not allowed to move freely within the community.

(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

There is a rational connection between the limitation on property rights, cultural rights – generally, and cultural rights – Aboriginal peoples and Torres Strait Islander peoples.

The purpose of the limitation on **property rights**, **cultural rights – generally**, and **cultural rights – Aboriginal peoples and Torres Strait Islander peoples**, is to ensure that dogs are appropriately restrained in public places and under the full control of the owner or responsible person for the dog.

The amendment will also meet community expectations and ensure statewide consistency, with not all councils having implemented a requirement for effective control, removing any ambiguity about whether a person is in an area where effective control applies.

It is not possible to achieve this purpose without limiting the rights mentioned above. The intersection of individual rights in public places necessitates the consideration of not only the property rights or cultural rights that may be limited by the amendment, but also the need to safeguard the rights of others who share that public space.

For example, members of the public, particularly victims of previous dog attacks, equally have the right to freedom of movement within those public spaces without fear of uncontrolled dogs. Most importantly, if an uncontrolled dog seriously attacks a person, there is a very real risk a person’s life may be lost.

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

There are no less restrictive and reasonably available alternatives to ensure dogs are effectively controlled in public places. It is important to establish a clear legislative requirement for a person to keep their dog under effective control, which will then be supported by new offence provisions, examined below, to send a strong deterrent message.

Additionally, a comprehensive community education campaign will be developed and deployed to support the implementation and adherence to the amendments.

- (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

Promoting responsible dog ownership, which includes establishing a clear statewide requirement for keeping dogs under effective control in public, is intended to support community safety by reducing the incidence of threatening dog behaviours experienced in the community.

The limitation on a person's property rights by having restrictions or conditions placed on how they manage their dog in public is considered appropriate in the interests of public safety. Further, it is important to note these restrictions are not new in any local government area that has already implemented effective control laws, and owners will retain the option to simply leave their dog at home.

Cultural rights, generally and for Aboriginal and Torres Strait Islander peoples, will be limited in some aspects of shared dog ownership. When a dog in these communities is in public, the dog will need to be under the effective control of a suitable person and not be free to roam around the community.

This will limit the traditional cultural expression but, in doing so, will support the community's safety. However, a necessary balance must be struck between those limitations and the rights of those impacted by uncontrolled dogs to lawfully and freely use the same public spaces.

On balance, the benefits to community safety by reducing the incidence of fear and potentially serious harm caused by uncontrolled dogs in public places outweigh the limit on a person's property rights and cultural rights to the extent of allowing dogs to roam freely or uncontrolled in public places.

- (f) any other relevant factors

Nil.

Imprisonment as a maximum penalty for the most serious dog attacks

The human right relevant to these amendments is the right to liberty (section 29).

- (a) the nature of the right

Section 29(1) of the HR Act states that every person has the *right to liberty*. This right to liberty means that people must not be arrested and detained unless provided for by law. Their arrest and detention must also not be arbitrary.

- (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

Clause 25 of the Bill introduces a new offence for someone who fails to keep their dog under effective control. The new offence includes a scale of aggravating circumstances, including where a dog not under effective control attacks a person or animal and where that attack causes death or grievous bodily harm.

The new offence also includes higher penalties if the dog is a regulated dog or the person has been convicted of a serious dog offence in the preceding five years, reflecting their prior awareness of the potential risks and harm. The maximum penalty for this offence is 600 penalty units or two years imprisonment, where death or grievous bodily harm is caused to a person, and the dog was a regulated dog or the person was convicted of a serious dog offence in the preceding five years.

Similarly, clause 26 of the Bill amends the existing offence where a person fails to take reasonable steps to ensure their dog does not attack in section 194 to reflect the same scale of aggravating circumstances and higher penalties as above. As effective control is a specific requirement for public places, with specific conditions, the amended section 194 is intended to operate in parallel circumstances where effective control is not required, but a person is still expected to take reasonable steps to ensure their dog does not attack.

Clause 26 of the Bill also amends the existing offence where a person encourages a dog to attack under section 195 of the AMCD Act. While section 195 will have the same scale of aggravating circumstances as the above offences, the new penalties are higher to reflect the very serious nature of encouraging a dog attack. The maximum penalty for this offence is 700 penalty units or three years imprisonment, where death or grievous bodily harm is caused to a person, and the dog was a regulated dog or the person was convicted of a serious dog offence in the preceding five years.

Arguably, the introduction of maximum penalties, which include imprisonment, limits a defendant's *right to liberty* by providing detention in custody as a penalty. However, a defendant will still be protected by the rights in subsections 29(4) to (7) of the HR Act, which provides several procedural rights once a person has been arrested or detained.

(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 purpose of the limitation of the *right to liberty* is to protect community safety by incentivising dog owners and responsible persons to ensure the dog under their control does not threaten or attack another human.

The amendment particularly considers the issue of repeat offences where either the dog has already had a malicious or dangerous dog declaration made, making it a regulated dog or a person has previously failed to control their dog, and harm has resulted. The latter circumstance aims to deter owners from simply surrendering a dog after an incident and repeating a problematic cycle with a new animal.

It is not possible to achieve this purpose without limiting the right to liberty. Higher penalties, up to and including imprisonment, are needed to support community safety and emphasise the importance of keeping dogs under control to prevent attacks. Specific deterrence is also required in cases where a person was aware a dog might be dangerous due to its status as a regulated dog or the person has committed similar offences previously and still failed to keep their dog under control.

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

There are no less restrictive and reasonable alternatives to achieve the identified purpose. While alternatives, such as stricter laws on bringing dogs into public places at all, could be considered, those laws would still need penalties attached for enforcement, even if that wasn't imprisonment.

Additionally, stricter general laws that might prohibit dogs entirely in more public places would limit the rights of all dog owners in Queensland. Responsible dog owners would be those most affected by stricter general prohibitions, and without higher penalties stricter general prohibitions are not expected to deter those already not taking reasonable steps to prevent dog attacks.

- (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

On balance, the safety of the community outweighs the limited circumstances where an owner or responsible person for a dog that seriously attacks and harms another person may be sentenced to a period of imprisonment.

A maximum penalty is the most severe sentence that a court can give for an offence and is for the worst category of cases of that type. As such, the limitation of the right to liberty is not certain and will be up to the court at the time of sentencing to consider the relevant factors, including the overall seriousness of the offence.

Further, the right to liberty is intended to protect a person from arbitrary arrest or detention, not otherwise in accordance with procedures established by law. For the reasons identified above, there is a clear purpose for implementing these higher penalties, and it is not intended to be arbitrary.

- (f) any other relevant factors

Community consultation undertaken in 2023 demonstrated strong support for imprisonment for the most serious dog attacks.

Clarifying when a destruction order must be made for a regulated dog

The human rights relevant to this amendment are:

- Property rights (section 24);
- Cultural rights – generally (section 27); and
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

- (a) the nature of the right

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

- (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

Under the AMCD Act, an authorised person has discretionary powers relating to the destruction of dogs, including whether to make a destruction order. Clause 66 of the Bill removes the discretion not to make a destruction order where the dog is a regulated dog and attacks, causing grievous bodily harm or death to a person, or maims or kills an animal.

Clause 66 of the Bill will limit **property rights** as removing the discretion not to make a destruction order will, in limited cases, require the destruction of those dogs, thereby depriving the owner of their property.

- (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 purpose of the limitation is to reflect community expectations about the treatment of dogs involved in attacks that cause physical harm and ensure a destruction order is made in response to incidents where the dog is a regulated dog and has gone on to attack, causing further harm.

The amendment reflects the severity of an incident where the dog was already known to be a higher risk due to being a regulated dog. A regulated dog that goes on to attack and causes actual harm has already demonstrated risk factors on at least two occasions and may pose a future serious risk if a destruction order is not made.

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

There are no less restrictive and reasonably available alternatives to achieve the identified purpose. The current provisions are not considered to be meeting community expectations about how regulated dogs are dealt with following an attack.

While it is expected that an authorised officer would likely make a destruction order in the identified circumstances, there is a need to ensure a destruction order is always made. This amendment supports community safety by ensuring a destruction order is always made where a seized dog is already regulated as a declared dangerous or menacing dog, and has gone on to attack a person or animal.

- (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

On balance, the benefits to community safety by requiring the destruction of particular dangerous or menacing dogs are considered to outweigh the limitation on property rights. Particularly noting that in most circumstances an authorised person would already be likely to order the destruction of the dog.

Ensuring these regulated dogs are not returned to the community protects the right to life of members of the community who might otherwise have come in contact with the animal and been attacked causing grievous bodily harm or death.

- (f) any other relevant factors

Nil.

Limiting destruction order appeals to questions of law

The human right relevant to this amendment is the right to a fair hearing (section 31).

- (a) the nature of the right

The right to a *fair hearing* provides a party to a civil proceeding with the right to have the proceeding decided after a fair and public hearing. The right encompasses the ‘equality of arms’ principle, which requires all parties to a proceeding to have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties to the proceeding.¹ The principle outlines that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds.²

- (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

Clause 17 of the Bill limits appeals of external review decisions by the Queensland Civil and Administrative Tribunal (QCAT) on destruction orders to only questions of law.

Under the *Queensland Civil and Administrative Tribunal Act 2009*, a person must seek leave to appeal on a question of fact or mixed question of law and fact. Clause 17 of the Bill limits the right to a *fair hearing* by removing the ability to appeal a QCAT external review decision on a question of fact.

¹ *Ragg v Magistrates’ Court of Victoria & Corcoris* [2008] VSC 1, [46]

² *Human Rights Committee, General Comment No 32: Right to equality before courts and tribunals and to fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (27 July 2007) [13]

- (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

By the time a destruction order decision reaches QCATA, the decision will have been through the original decision maker, an internal review process, and a QCAT external review process. This process typically takes a significant period of time, sometimes exceeding 12 months, during which time the relevant dog remains under the care of the local government.

The purpose of the limitation of the right to a *fair hearing* is to reduce the financial and administrative burden on local governments that are required to fund the maintenance and care of the relevant dog during the appeal process, as well as the costs associated with the appeal itself. A further purpose of this restriction is to reduce the administrative burden on QCATA, which has a significant caseload, including due to people seeking a second arbiter of fact for their case.

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

There is no identified less restrictive or reasonably available way of achieving the identified purpose. The restriction of appeals to QCATA to only questions of law is necessary to prevent owners of dangerous dogs from trying to have their case re-tried on the facts, delaying destruction.

The emotional attachment an owner justifiably has towards a dog can result in a person appealing to QCATA to see if that tribunal viewed the facts differently, despite the matter having been through three decision makers, including an internal and an external review. It is for a similar reason that the restriction of appeals to questions of law is the preferred approach within Queensland's court system.

- (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

On balance, the purpose of reducing the financial and administrative burden on local government and QCAT by restricting appeals to QCATA to questions of law is considered to outweigh the limitation of the right to a *fair hearing*. The Tribunal will not be burdened by unmeritorious appeals where the factual matters have already been reviewed twice. The advantage of this is not just to local governments (in the form of fewer appeals and shorter retention periods for dogs otherwise subject to those appeals) but to members of the general public awaiting hearings on other matters in QCAT.

- (f) any other relevant factors

Nil.

B. Amendments to the Fisheries Act

Independent onboard monitoring

The human rights relevant to this amendment are:

- Property rights (section 24); and
- Right to privacy and reputation (section 25).

- (a) the nature of the right

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

The *right to privacy* in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust,

or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate. The scope of the right is broad, and the underlying value of the right is the importance of protecting a person's freedom from the unjustified involvement of public authorities in their private sphere.³

The concept of 'privacy' is not defined in the HR Act. It has been interpreted to encompass information privacy, including personal information and health records and correspondence, and extends to an individual's private life, including a person's identity and physical and mental integrity.⁴ Privacy can also include an individual's geographical or spatial privacy and property.

(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

Clause 173 of the Bill amend the Fisheries Act to establish a framework for independent onboard monitoring (IOM) requirements. IOM allows data reported by commercial fishers on bycatch or interactions with protected species, to be independently validated.

The amendments support two methods of IOM: independent onboard observers and onboard camera systems. Both methods can collect accurate information on bycatch and detect interactions with protected species during commercial fishing activities. The information collected can then be compared with logbooks provided by fishers to validate the logbook data independently.

Onboard observer conditions under the amendments will authorise the chief executive or a regulation to impose an onboard observer condition where it is reasonably necessary to monitor whether the purposes of the Fisheries Act are being achieved or how commercial fishing activities are conducted under an authority. This would require an authority holder to permit an independent onboard observer to be on the fishing vessel monitoring commercial fisheries activities being undertaken and collecting information, such as the catch of protected marine animals or other compliance data.

Video monitoring conditions under the amendments will similarly authorise the chief executive or a regulation to impose a video monitoring condition where it is reasonably necessary for monitoring purposes, for example on boats fishing in select high-risk fisheries. This would require an authority holder to install approved camera monitoring equipment on their boat to record and monitor commercial fishing activities. The footage will be supplied to the Department of Agriculture and Fisheries to be used in independently validating data.

Clause 173 of the Bill will limit the **right to privacy** as while the target of IOM is data on bycatch and interactions with protected species, incidental data about the activities of people on the commercial fishing vessel will also be captured. For example, video imagery of people interacting with bycatch or protected species.

Additionally, as the **right to privacy** can include an individual's geographical or spatial privacy and property, a requirement to have an independent onboard observer will limit this right to the extent it requires a vessel owner to allow a person to enter and remain on their property for monitoring purposes.

Similarly, the amendments will limit **property rights** to the extent they can be required to install monitoring equipment on their vessel under an IOM requirement, thereby interfering with the person's property.

(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 purpose of the limitation on **property rights** and the **right to privacy** is to legislate the use of IOM to support the ongoing sustainable management of fisheries resources in Queensland, and of the Great Barrier Reef World Heritage Area. IOM will provide more accurate and reliable data for fisheries

³ *Director of Housing v Sudi* [2010] VCAT 328 [29].

⁴ *Kracke v Mental Health Review Board* (2009) 29 VAR 1; [2009] VCAT 646 [619]

management, as well as satisfy Wildlife Trade Operation approvals, maintaining access to export markets.

It is not possible to achieve this purpose without limiting the rights mentioned above. As bycatch is returned to the sea when the catch is being sorted it can only be validated if it is independently witnessed and documented by an onboard observer or captured on camera.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. As identified above, because bycatch is returned to the sea when the catch is being sorted it can only be validated if it is independently witnessed.

The two methods of either an onboard observer or camera capture are used in fisheries worldwide and are considered part of best-practice fisheries management. For example, the Australian Fisheries Management Authority has had an independent data validation program that uses a combination of onboard camera monitoring and observers since 2015.

(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.

On balance, the purpose of supporting the ongoing sustainable management of fisheries resources in Queensland by enabling the validation of bycatch data, is considered to outweigh the limitations on *property rights* and the *right to privacy*. Evidence-based practices are needed to manage the sustainability of Queensland's fisheries resources. To be effective those practices need to be based on data that is accurate and can be independently validated.

The Federal government has also set time-bound conditions on two trawl fisheries to introduce IOM in order to maintain export accreditation. If IOM were not implemented, losing export accreditation may significantly impact fishers, impacting their businesses to a greater extent than IOM.

(f) any other relevant factors

Nil.

Repeated interactions with protected animals

The human rights relevant to this amendment are property rights (section 24).

(a) the nature of the right

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

(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

Clause 140 of the Bill inserts new section 61A which creates a power for the chief executive to amend a fisheries authority to impose conditions where an authority holder has had repeated interactions with protected animals in a 12-month period.

Repeated interactions with protected animals have the potential to harm vulnerable populations, the amendment is intended to reduce this risk by allowing the chief executive to impose conditions that reduce future interactions with protected animals. The conditions may include requiring an authority

holder to develop an individual mitigation plan, or place temporary restrictions on factors such as how long nets may be placed in the water or the type of fishing apparatus that may be used.

Authorities under the Fisheries Act have property-like characteristics, clause 140 of the Bill will limit *property rights* where the conditions might impact the way a person operates under their authority, such as restrictions on how long nets may be placed in the water which might impact catch.

- (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 purpose of the limitation on *property rights* is to reduce the risk of harm to protected animals where there are repeated interactions within a 12-month period, supporting the overall sustainability of Queensland's fisheries.

It is not possible to achieve this purpose without limiting property rights as repeated interactions within a 12-month period means the way in which a person is allowed to operate under their authority may need to be modified temporarily to reduce that interaction. The ability to amend an authority to place these additional conditions is essential to ensuring that behaviour is modified and there are appropriate consequences for failing to do so.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. It is important that a fisheries authority appropriately reflect relevant conditions for operating under that authority, and that those conditions are appropriately considered based on the ongoing sustainable management strategies for Queensland's fisheries.

The amendment contains appropriate safeguards to minimise the potential limitation, including they can only be imposed in response to multiple interactions, and any conditions need to have an end date, and be reviewed by the chief executive.

- (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

On balance, the purpose of reducing the risk of harm to protected animals where there are repeated interactions within a 12-month period, is considered to outweigh the limitation on *property rights*. Sustainably managing Queensland's fisheries is essential to ensuring these resources are available not just now but into the foreseeable future, and the health of the aquatic ecosystem as a whole contributes to that including the roles protected animals play in that ecosystem.

While conditions may limit an authority holder's property rights temporarily, not reducing harm to protected animals may risk more drastic future action should there be a significant risk to those protected animals due to repeated interactions. For example, as identified above in relation to IOM, the implementation of that requirement includes the monitoring of interactions with some protected species as bycatch, and it is now a requirement in order to maintain export accreditation in two trawl fisheries.

- (f) any other relevant factors

Nil.

Non-payment suspension

The human rights relevant to this amendment are property rights (section 24).

(a) the nature of the right

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

(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

Clause 143 of the Bill amends section 68AB of the Fisheries Act to provide for the automatic suspension of an authority where the authority holder was issued a fee notice and failed to pay their fee by the due date.

Under section 68AB currently, action is only taken after the due date for fee payment has lapsed and non-payment has occurred, at which point the chief executive has the discretion to issue the authority holder a notice requiring fee payment or the authority is suspended after the specified period.

Clause 143 of the Bill will limit *property rights* to the extent that authorities have property-like characteristics and their suspension or cancellation prohibits the authority holder from carrying out activities under the authorities. While suspension occurs under the existing framework, the move to automatic suspensions without first issuing a notice regarding the non-payment will increase the limitation.

(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 purpose of the limitation on *property rights* is to reduce the administrative and financial burden in relation to following up on non-payment of fees when authority holders already receive notice prior to the fee becoming due and the fee is a predictable annual payment.

The current process takes considerable resources and comes at a substantial cost to the department to administer the current fee collection process over a 6-month period. The costs to collect fees on average outweighs the fees being collected.

Similar to other fees such as vehicle registration, these fees are due annually, and are predictable by the authority holder. The requirement for the department to wait for non-payment to occur, issue a notice regarding the non-payment, and then wait for a further period to lapse prior to the authority being suspended places an unnecessary burden on the department.

It is not possible to achieve this purpose without limiting property rights, moving to automatic suspensions for non-payment reduces the administrative burden of the follow up process, including a decision maker needing to issue a notice for non-payment. Automatic suspension also creates an incentive to pay the relevant fee before the deadline so as not to have fishing activities interrupted.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. Suspension of an authority is a necessary consequence of a failure to pay the fee amount, and while shifting that to an automatic suspension without issuing a further notice first may limit property rights, the current process places a significant administrative and cost burden on managing the system.

The amendment contains appropriate safeguards to minimise the potential limitation, including ensuring the person has a minimum of 30 days notice before suspension occurs. Suspension is also automatically

lifted upon payment of the fee or establishing a repayment agreement, the latter of which provides additional flexibility for authority holders unable to meet the full fee amount at once.

- (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

On balance, the need to encourage the timely payment of fees for an authority and reduce the significant financial and administrative burden of chasing non-payment is considered to outweigh the limitation on *property rights*.

Authority holders are issued fee notices in advance of the due date to ensure they are aware of when fee payment is due. It is appropriate that a level of responsibility is held by authority holders to ensure their fee is paid on time rather than requiring the department to actively chase non-payment before an authority can be suspended.

- (f) any other relevant factors

Nil.

Proof of appointments

The human right relevant to this amendment is the right to a fair hearing (section 31).

- (a) the nature of the right

The right to a *fair hearing* provides a party to a civil proceeding with the right to have the proceeding decided after a fair and public hearing. The right encompasses the ‘equality of arms’ principle, which requires all parties to a proceeding to have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties to the proceeding.⁵ The principle outlines that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds.⁶

- (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

Clause 156 of the Bill inserts a new section 184A which provides that in a proceeding for an offence against the Fisheries Act, the appointment of the chief executive, a delegate of the chief executive who gives written notices or approves forms, or an inspector must be presumed unless the contrary is proved.

Clause 156 of the Bill will limit the right to a *fair hearing* by reversing the onus of proof with respect to the appointment of the chief executive, a delegate of the chief executive or an inspector. Where a person seeks to allege one of those persons is or was not validly appointed, the onus would be on them to present evidence to support that invalidity as the starting point must be a person was validly appointed.

- (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 purpose of the limitation on the right to a *fair hearing* is to reduce the administrative burden on the department during the prosecution of fisheries offences and ensure fewer inspectors are not unnecessarily taken out of the field to give evidence. Currently, during some fisheries prosecutions, a

⁵ *Ragg v Magistrates’ Court of Victoria & Corcoris* [2008] VSC 1, [46]

⁶ *Human Rights Committee, General Comment No 32: Right to equality before courts and tribunals and to fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (27 July 2007) [13]

small number of defendants create a significant administrative burden for the department by frustrating the prosecution process.

For example, by claiming that they are sovereign or the state has no lawful jurisdiction and returning fines with words such as “void” written on them under the belief they cannot be validly fined at law or challenging the validity of the appointments or authority of members of the department to prosecute them. This can result in the department needing to hold trials often involving a significant number of witnesses for offences that would otherwise often be dealt with by way of fine.

This is particularly an issue with regard to appointments and delegations in the course of prosecutions as this can result in multiple inspectors and other department staff being required to physically attend court to give evidence in respect of their appointment or delegation. The amendment intends to address this issue by providing that for a proceeding for an offence against the Fisheries Act, the appointment of the chief executive, a delegate of the chief executive, or an inspector must be presumed unless the contrary is proved.

This will reduce the burden on the department to make witnesses available to give in-person evidence on matters that can otherwise be satisfied by an instrument of delegation, letter of appointment, or similar document that could be provided to a defendant as part of the evidence brief. It is not possible to achieve this purpose without limiting the right to a fair hearing, as the shift in the burden of proof is necessary to achieve the intended purpose.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. Currently, section 184(2) of the Fisheries Act is less restrictive and provides that the appointment of an inspector must be presumed unless a party, by reasonable notice, requires proof. However, this does not address the issue in cases where a defendant holds beliefs such as that the state has no jurisdiction as the burden still rests on the department to present the evidence at trial.

In the absence of a significant issue or defect appointments and delegations are typically not controversial matters, with documentary evidence existing as prima facie evidence. The amendment is not intended to free the department of ever providing any proof a person relevant to a prosecution was appointed. Documents such as an instrument of delegation or letter of appointment could still be provided as part of the evidence brief. It is merely intended that the starting point should be that the appointment is valid to eliminate the need to present this evidence in further detail at trial.

(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

On balance, the purpose of reducing the administrative burden on the department and ensuring inspectors are not unnecessarily taken out of the field to give evidence, is considered to outweigh the limitation on the *right to a fair hearing*.

As noted above, appointments and delegations are typically not controversial matters, and documents such as instruments of delegation are typically sufficient as prima facie evidence. The amendment merely seeks to address a somewhat recent phenomenon where, despite there being prima facie evidence, the department is required to present further in person evidence at trial to address broad assertions about the invalidity of the state’s jurisdiction over certain defendants. Particularly in response to otherwise relatively minor offences that can be dealt with by way of fine.

(f) any other relevant factors

Nil.

Limit on appeal

The human rights relevant to this amendment are:

- Property rights (section 24); and,
- Right to a fair hearing (section 31).

(a) the nature of the right

The right to a *fair hearing* provides a party to a civil proceeding with the right to have the proceeding decided after a fair and public hearing. The right encompasses the ‘equality of arms’ principle, which requires all parties to a proceeding to have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties to the proceeding.⁷ The principle outlines that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds.⁸

(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

Clause 152 of the Bill amends section 165 of the Fisheries Act to provide that a person may not appeal if a dead seized fisheries resource is immediately disposed of by an inspector who, on reasonable grounds, believes the fisheries resources are putrid, unfit for sale, of no value or of insufficient value to justify their sale.

Clause 152 of the Bill will limit the right to a *fair hearing* to the extent that it prevents a person from appealing the seizure and disposal of fisheries resources in the above circumstances.

(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 purpose of the limitation on the right to a *fair hearing* is to ensure appeals aren’t made in circumstances where an appropriate remedy, such as returning the seized fisheries resource, is not possible due to it having been disposed of already.

Currently, section 165 of the Fisheries Act already restricts appeals in cases where the seized fisheries resource was alive and immediately returned to the wild, or other place from which it was taken. In both circumstances, the ability to appeal the seizure and either disposal or return to the wild of the fisheries resources, could not give an appropriate remedy as the department would have no way to return the fisheries resources in the event of a successful appeal.

It is not possible to achieve this purpose without limiting the right to a fair hearing, as that limitation is a necessary consequence of prohibiting appeals in the above circumstances.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. Fisheries resources that have been seized and disposed of are incapable of being returned, the inability for a successful appeal means the appeal process itself would be an unnecessary burden on those involved.

It is important to note that this amendment does not remove the ability for a person to otherwise seek compensation for the disposed of fisheries resource. Section 179 of the Fisheries Act provides an

⁷ *Ragg v Magistrates’ Court of Victoria & Corcoris* [2008] VSC 1, [46]

⁸ *Human Rights Committee, General Comment No 32: Right to equality before courts and tribunals and to fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (27 July 2007) [13]

alternative avenue under which a person may seek to claim compensation where a person incurs a loss or expense because of the exercise of a power under Part 8.

The ability to claim compensation other than through appeal is considered to strike the appropriate balance where the fisheries resource is incapable of being returned.

- (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

On balance, the purpose of ensuring appeals aren't made in circumstances where an appropriate remedy, such as returning the seized fisheries resource, is not possible is considered to outweigh the limitation on the *right to a fair hearing*.

While removing or limiting options for appeal limits the right to a fair hearing, this limitation must be balanced against the resource and administrative burden where any appeal is unable to give an appropriate remedy or a remedy is otherwise available.

The department would have no way to return disposed of fisheries resources in the event of a successful appeal, and the amendment does not limit the ability to seek compensation under section 179 of the Fisheries Act which provides an alternative avenue for financial compensation other than appeal.

- (f) any other relevant factors

Nil.

C. Amendments to the Biosecurity Act

Extend the maximum duration of emergency powers

The human rights relevant to this amendment are:

- Freedom of movement (section 19);
- Freedom of thought, conscience, religion, and belief (section 20);
- Property rights (section 24);
- Cultural rights – generally (section 27); and
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

- (a) the nature of the right

The right to *freedom of movement* protects the right of every person within Queensland to move freely within Queensland, enter or leave Queensland and choose where they will live. This right means that public entities cannot act in a way that would unduly restrict freedom of movement.

The right to *freedom of thought, conscience, religion and belief* protects the rights of every person to think and believe what they want, and to have or adopt a religion without being influenced to do so. This right includes being able to publicly and privately practice their religion as an individual or in a group. It requires the state not to interfere with an individual's spiritual or moral existence.

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property. However, this right does not include a right to compensation if a person is deprived of their property.

Cultural Rights – generally, in section 27 of the HR Act protect a person's cultural rights generally, ensuring persons with a particular cultural, religious, racial, or linguistic background are not denied the right to enjoy their culture, practice their religion, and use their language.

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples, in section 28 of the HR Act protect the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples. This includes

cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with the 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

Clauses 89 and 104 of the Bill extend the maximum period a biosecurity emergency order (BEO) may be in effect under the Biosecurity Act from 21 days to up to 6 weeks (42 days), and authorises the chief executive to approve extending the maximum duration within which an inspector may exercise their emergency powers from 96 hours up to 7 days (168 hours). The amendments will ensure that during a biosecurity emergency inspectors have adequate time to undertake preliminary investigations and that any subsequent BEO can be of an appropriate length to respond to a biosecurity emergency while not having to re-make the emergency order.

While there is no proposed increase to the emergency powers available to an inspector or under a BEO, an increase in the maximum periods still has an impact on the rights of individuals affected by the possible extended use of those powers.

Under a BEO or the use of an inspector's emergency powers, restrictions may be placed on a person's movement such as requirements to stop and undergo inspection, pass through checkpoints, or restrict the movement of property. Clauses 89 and 104 of the Bill will limit the right to **freedom of movement** by extending the maximum period a BEO can be in place, or that an inspector can use emergency powers, which has the consequential effect of extending the maximum period of time a person's movement could be restricted under those powers.

Similar to the discussion above, the amendments will also limit **property rights** by increasing the maximum period within which a person may be required to destroy their property under a BEO or a direction given by an inspector.

Similar to the discussion above, the amendments will limit **cultural rights – generally** and **cultural rights – Aboriginal peoples and Torres Strait Islander peoples** by increasing the maximum period within which a person may be required to take action that potentially conflicts with a cultural belief they hold, such as destroying an animal or using herbicidal control to destroy a plant.

(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

There is a rational connection between the limitation on the rights to freedom of movement, property, cultural rights – generally, and cultural rights – Aboriginal peoples and Torres Strait Islander peoples.

The purpose of the limitation of **freedom of movement, property rights, cultural rights – generally, and cultural rights – Aboriginal peoples and Torres Strait Islander peoples**, is to ensure adequate time to assess and respond to a biosecurity emergency, and reduce uncertainty to those impacted.

During biosecurity emergencies, like the 2016 White Spot Disease outbreak, 96 hours was found to be insufficient time for inspectors to undertake preliminary investigations, which may include sending biosecurity matter for testing. Similarly, the 21 day maximum duration of a BEO was also found to be insufficient time to resolve all the uncertainty around the source of the disease and risk pathways in order to confidently transition to another tool.

It is not possible to appropriately manage biosecurity emergencies without the emergency powers available to inspectors, and BEOs. Being unable to extend the period of time an inspector can use their emergency powers currently results in needing to prematurely implement another tool, such as a BEO, to provide the necessary controls. This presents operational challenges where insufficient information is available to properly inform the need for and conditions of a BEO.

Further, being unable to make a BEO for longer than 21 days simply requires the making of consecutive BEOs, which can create uncertainty for those impacted by the BEO during a fast-paced emergency

response. Where an emergency is unlikely to be resolved in 21 days, those impacted are required to wait for the subsequent order to see what the next proposed length or conditions are which inhibits the ability of individuals to forward plan for the impacts.

It is not possible to achieve this purpose without limiting the rights mentioned above as the limitation is due to the powers available under these emergency tools, and as such is an indirect consequence of extending the duration these tools may be used.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. The extended duration itself does not cause the limitation but rather a consequence of extending the period powers available under each emergency tool may be used. As the powers themselves are not changing and are necessary to respond to biosecurity emergencies there is no less restrictive way to achieve the purpose.

While other response tools are available, such as BEOs, rather than extending the period an inspector can use their emergency powers, similar restrictions would still be used, therefore not reducing the human rights impact. Further, the extended duration of the emergency powers is needed to properly inform the conditions of those other response tools, and premature implementation could result in ineffective or unnecessarily strict conditions.

Additionally, as identified above the making of consecutive BEOs of the maximum 21 days length has been identified as causing uncertainty during an emergency response. Making consecutive orders imposing the same conditions would also not otherwise reduce the limitations imposed by the conditions of the order itself.

The amendments also contain appropriate safeguards to reduce human rights limitations. The chief executive must approve any extended duration of inspector emergency powers beyond the current 96 hours. The chief executive must provide written reasons for the approval to the inspector and, upon request to any occupier or person directed or authorised to take steps by the inspector. The chief executive must also ensure a BEO is revoked when satisfied there is no longer a biosecurity risk.

(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

Inspector's emergency powers and BEOs are only used in exceptional circumstances to facilitate responses to significant or emergency biosecurity outbreaks. The limitations on human rights presented in their use are necessary to prevent significant potential impacts on Queensland's economy, environment, and way of life. An efficient response to biosecurity events is critical to prevent the further spread of the biosecurity matter, protect public health and safety, and prevent significant economic and environmental harm.

On balance, the purpose of supporting an effective and efficient response during a biosecurity emergency is considered to outweigh the potential limitations caused by extending the maximum period for these emergency response tools. In particular, alternatives such as prematurely implementing a BEO, or the making of consecutive BEOs under the current process would be unlikely to reduce the rights limitations.

(f) any other relevant factors

Nil.

Requirement to notify before entry

The human right relevant to this amendment is privacy and reputation (section 25).

(a) the nature of the right

The ***right to privacy*** in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate. The scope of the right is broad, and the underlying value of the right is the importance of protecting a person's freedom from the unjustified involvement of public authorities in their private sphere.⁹

The concept of 'privacy' is not defined in the HR Act. It has been interpreted to encompass information privacy, including personal information and health records and correspondence, and extends to an individual's private life, including a person's identity and physical and mental integrity.¹⁰ Privacy can also include an individual's geographical or spatial privacy and property.

(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

Clause 102 of the Bill removes the requirement that an authorised officer, using biosecurity program powers of entry under the Biosecurity Act, attempt to seek consent prior to entry, instead requiring notification prior to entry.

This amendment will limit the ***right to privacy*** by permitting entry into a person's property without consent or a warrant, this may limit the right to the extent that an authorised officer may access the private sphere of a person's property without consent.

(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 purpose of the limitation of the ***right to privacy***, is to reduce instances of confusion and animosity that occur when an officer is refused consent only to tell an occupier they are entering without consent after, and support authorised officers to take timely and effective action to address biosecurity threats.

It is not possible to achieve this purpose without limiting the right to privacy mentioned above as any delay in entry can lead to important, time-sensitive and significant risk mitigation actions being delayed which ultimately compromises the timeliness and efficacy of biosecurity responses.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. The requirement to attempt to seek consent prior to entry in an emergency response environment can be challenging and confusing for an occupier given the potential high emotional turmoil experienced in a response event. This particularly occurs when an officer is refused entry, but then goes on to advise the occupier that they have the power to enter regardless of consent.

This confusion can create animosity and inhibit subsequent communication between occupiers and authorised officers about actions required to address the biosecurity risk. Any delay in entry can also lead to important, time-sensitive and significant risk mitigation actions being delayed which ultimately compromises the timeliness and efficacy of the response. Importantly, due to the nature of biosecurity

⁹ *Director of Housing v Sudi* [2010] VCAT 328 [29].

¹⁰ *Kracke v Mental Health Review Board* (2009) 29 VAR 1; [2009] VCAT 646 [619]

responses even where consent is not given currently, entry powers still allow officers to enter without consent, thereby still limiting the right to privacy.

- (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

On balance, the need to support timely responses during a biosecurity emergency outweighs the limit on a person's privacy that not adhering to best practice of attempting to seek consent first poses. Particularly given that where consent is refused currently, authorised officers are still empowered to enter irrespective.

- (f) any other relevant factors

Nil.

Aligning entry powers under orders

The human rights relevant to this amendment are:

- Freedom of movement (section 19);
- Freedom of thought, conscience, religion, and belief (section 20);
- Property rights (section 24);
- Privacy and reputation (section 25);
- Cultural rights – generally (section 27); and,
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

- (a) the nature of the right

The right to **freedom of movement** protects the right of every person within Queensland to move freely within Queensland, enter or leave Queensland and choose where they will live. This right means that public entities cannot act in a way that would unduly restrict freedom of movement.

The right to **freedom of thought, conscience, religion and belief** protects the rights of every person to think and believe what they want, and to have or adopt a religion without being influenced to do so. This right includes being able to publicly and privately practice their religion as an individual or in a group. It requires the state not to interfere with an individual's spiritual or moral existence.

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property, however, this right does not include a right to compensation if a person is deprived of their property.

The **right to privacy** in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate.

The right is broad and encompasses an individual's information privacy, including personal information. The *Information Privacy Act 2009* (Qld) identifies personal information as being information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Information can be considered private if the individual has a reasonable expectation of privacy when considering all relevant circumstances.¹¹

Cultural Rights – generally, in section 27 of the HR Act protect a person's cultural rights generally, ensuring persons with a particular cultural, religious, racial, or linguistic background are not denied the right to enjoy their culture, practice their religion, and use their language.

¹¹ *Australian Broadcasting Corporation v Lenah Game Metas Pty Ltd* [2001] HCA 63, [42]

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples, in section 28 of the HR Act protect the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples. This includes cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with the 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

Clause 91 of the Bill aligns the powers of entry under a movement control order (MCO) with those available under a BEO, allowing authorised officers under the Biosecurity Act to enter or re-enter a place that is not a dwelling with or without consent to ensure compliance during an MCO. This supports responsibility to biosecurity risks under an MCO, better aligns with the emergency-type situations in which an MCO may be implemented, and is consistent with other emergency response tools like BEOs.

Currently, an MCO can include a number of prohibitions or restrictions, impose obligations, or give directions to persons. This includes that a person must do various things under the direction of an authorised officer. The Biosecurity Act also makes it an offence for a person to fail to comply with the MCO. However unlike under a BEO, there are currently no powers for authorised persons to enter a place subject to an MCO to ensure that compliance.

Importantly the powers only relate to enforcing compliance with the MCO itself, meaning in most cases the relevant human right will have already been limited by the conditions of the MCO itself before an authorised person is required to take actions to enforce compliance.

Clause 91 of the Bill will limit the right to **freedom of movement** by giving an authorised person the power to give directions restricting the movement of a person or biosecurity matter in the place to which the MCO applies, for the purposes of enforcing compliance with conditions in the MCO. For example, that a person not move certain biosecurity matter the subject of the MCO.

Similar to the discussion above, the amendment will also limit **property rights** by giving an authorised officer the power to give directions to destroy their property where required under an MCO.

Similar to the discussion above the amendment will limit the **right to privacy** by giving an authorised officer the power to direct a person to answer questions at the place to which an MCO applies for the purposes of ensuring compliance with the MCO. This amendment will also limit the **right to privacy** by permitting entry into a person's property without consent or a warrant, this may limit the right to the extent that an authorised officer may access the private sphere of a person's property without consent.

Similar to the discussion above, the amendment will limit **cultural rights – generally** and **cultural rights – Aboriginal peoples and Torres Strait Islander peoples** where the action a person may be required to take to comply with the MCO potentially conflicts with a cultural belief they hold, such as destroying an animal or using herbicidal control to destroy a plant.

(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

There is a rational connection between the limitation on the rights to freedom of movement, property, privacy, cultural rights – generally, and cultural rights – Aboriginal peoples and Torres Strait Islander peoples.

The purpose of the limitation of **freedom of movement, property rights, right to privacy, cultural rights – generally**, and **cultural rights – Aboriginal peoples and Torres Strait Islander peoples**, is to ensure consistency across the emergency response tools and support timely and effective action to address biosecurity threats to mitigate the spread of biosecurity risks.

It is not possible to appropriately manage biosecurity emergencies without emergency response tools like MCOs, BEOs, and inspector emergency powers. Currently, there are no specific entry powers for authorised persons concerning an MCO, this lack of consistency with the entry powers available under

a BEO inhibits the effective use of MCOs as an emergency response tool. The only alternative to efficiently respond during a biosecurity emergency, particularly where there may be difficulties locating owners to gain consent, is to use another emergency tool such as a BEO in tandem with an MCO.

It is not possible to achieve this purpose without limiting the rights mentioned above as the limitations are due to the powers available under all these emergency tools, and as such is a consequence of aligning the entry powers across these orders.

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

There are no identified less restrictive or reasonably available ways of achieving the identified purpose. As identified above, currently the only alternative to efficiently respond during a biosecurity emergency, particularly where there may be difficulties locating owners to gain consent to enter, is to use another emergency tool such as a BEO in tandem with an MCO. The practical effect of which is the same limitation of rights whether the powers relied on are under a BEO, inspector emergency powers, or now an MCO.

Aligning the entry powers under an MCO is expected to limit the need to use multiple emergency response tools to obtain the intended outcome. The entry powers under an MCO have been specifically limited to only the extent reasonably necessary for enforcing compliance with the MCO, this is intended to be less intrusive than using powers under a BEO or inspector emergency powers, which may have a much broader scope than compliance with the MCO.

(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

As identified above, MCOs, BEOs, and inspector emergency powers are emergency response tools only used in exceptional circumstances to facilitate responses to significant or emergency biosecurity outbreaks. The limitations on human rights presented in their use are necessary to prevent significant potential impacts on Queensland's economy, environment, and way of life.

On balance, the purpose of supporting an effective and efficient response during a biosecurity emergency is considered to outweigh the potential limitations caused by aligning the entry powers across these emergency response tools. Particularly, where the alternative is to simply rely on overlapping emergency response tools that have the otherwise needed powers, thereby limiting human rights in the same way.

(f) any other relevant factors

Nil.

Directions to occupier or owner

The human rights relevant to this amendment are:

- Freedom of movement (section 19);
- Freedom of thought, conscience, religion, and belief (section 20);
- Property rights (section 24);
- Cultural rights – generally (section 27); and
- Cultural rights of Aboriginal and Torres Strait Islander peoples (section 28).

(a) the nature of the right

The right to *freedom of movement* protects the right of every person within Queensland to move freely within Queensland, enter or leave Queensland and choose where they will live. This right means that public entities cannot act in a way that would unduly restrict freedom of movement.

The right to *freedom of thought, conscience, religion and belief* protects the rights of every person to think and believe what they want, and to have or adopt a religion without being influenced to do so. This right includes being able to publicly and privately practice their religion as an individual or in a group. It requires the state not to interfere with an individual's spiritual or moral existence.

Property rights in section 24 of the HR Act protect the right of all people to own property alone or with others. It provides that a person must not be arbitrarily deprived of their property, however, this right does not include a right to compensation if a person is deprived of their property.

Cultural Rights – generally, in section 27 of the HR Act protect a person's cultural rights generally, ensuring persons with a particular cultural, religious, racial, or linguistic background are not denied the right to enjoy their culture, practice their religion, and use their language.

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples, in section 28 of the HR Act protect the distinct cultural rights held by Aboriginal and Torres Strait Islander peoples. This includes cultural heritage, practices, and observances, traditional language and expression, kinship ties, and distinctive relationship with the 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

Clause 100 of the Bill clarifies that a direction under a Biosecurity Act prevention and control program, such as to destroy biosecurity matter, can also be given to the owner of a place regardless of whether an occupier is present.

The purpose of the limitation is to ensure that an authorised officer can give relevant directions to the owner of a property, or a biosecurity matter or carrier, despite there being an occupier present. This addresses circumstances where there is an occupier such as a renter who may otherwise be directed to destroy biosecurity matter despite not being the owner of the property or the matter itself.

Clause 100 of the Bill will limit the right to *freedom of movement* where the direction given to an owner would restrict their movement, such as requiring the person to go to or remain away from a location.

Similar to the discussion above, the amendment will also limit *property rights* where the direction given to an owner requires them to damage or destroy their property. For example, if destroying an invasive plant with herbicidal controls also damages other plants on the person's property.

Similar to the discussion above, the amendment will limit *cultural rights – generally* and *cultural rights – Aboriginal peoples and Torres Strait Islander peoples* where the action an owner may be required to take to comply with the direction potentially conflicts with a cultural belief they hold, such as destroying an animal or using herbicidal control to destroy a plant.

(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

There is a rational connection between the limitation on the rights to freedom of movement, property, cultural rights – generally, and cultural rights – Aboriginal peoples and Torres Strait Islander peoples.

The purpose of the limitation of *freedom of movement, property rights, cultural rights – generally*, and *cultural rights – Aboriginal peoples and Torres Strait Islander peoples*, is to ensure directions under a prevention and control program can be given to the most appropriate person.

The destruction of the biosecurity matter under a prevention and control order would occur whether the direction was given to the occupant or the owner, or the authorised officer exercised their power to destroy the matter. Further, the same human rights limitations identified above would currently occur where the direction is given to an occupier.

Allowing directions to be given to the owner of a property regardless of an occupant being present ensures the direction can initially be given to the owner where appropriate, supporting their opportunity to make their own representations to the authorised officer and conduct the eradication.

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

There is no identified less restrictive or reasonably available way of achieving the identified purpose. Directions need to be issued under prevention and control programs to achieve their purpose in managing biosecurity risks, the current restriction preventing a direction being given to the owner when an occupier is present only serves to put some occupiers in a difficult position in relation to property that is not theirs.

(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

On balance, ensuring directions under a prevention and control program can be given to the owner of a property regardless of whether an occupier is present outweighs the identified limits on the owner's rights. Preventing the direction from being given to the owner would only serve to cause the same limits to remain the burden of the occupier who may not own the property or matter subject to the direction.

(f) any other relevant factors

Nil.

Requirement to maintain movement records

The human rights relevant to this amendment are:

- Freedom of movement (section 19); and,
- Right to Privacy (section 25).

(a) the nature of the right

The right to **freedom of movement** protects the right of every person within Queensland to move freely within Queensland, enter or leave Queensland and choose where they will live. This right means that public entities cannot act in a way that would unduly restrict freedom of movement.

The **right to privacy** protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate.

The right is broad and encompasses an individual's information privacy, including personal information. The *Information Privacy Act 2009* (Qld) identifies personal information as being information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Information can be considered private if the individual has a reasonable expectation of privacy when considering all relevant circumstances.¹²

(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

Clauses 88 and 90 of the Bill makes clear that the conditions that can be imposed under MCOs and BEOs may include requirements for relevant people to keep traceability records where required for the implementation of disease control measures.

¹² *Australian Broadcasting Corporation v Lenah Game Metas Pty Ltd* [2001] HCA 63, [42]

The purpose of the limitation is to ensure that an MCO or BEO can include appropriate conditions to maintain movement records of biosecurity risks during an emergency response. For example, the movement of people, vehicles, livestock, plant material, soils, and other risk items such as tools and equipment. These movements need to be traceable as they form a part of disease control measures and help rapidly define the scale and location of the incident.

Clauses 88 and 90 of the Bill will limit the right to *freedom of movement* to the extent that requiring a person to maintain movement records for review may negatively impact a person's movement decisions during an MCO or BEO.

Similar to the discussion above the amendment will limit the *right to privacy* in that requiring a person to keep records of their movements during an MCO or BEO for review, limits a person's privacy in relation to their personal movements.

(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

There is a rational connection between the limitation on the rights to freedom of movement, and privacy. The purpose of the limitation of *freedom of movement*, and *right to privacy*, is to ensure the ability to require that a person maintains records of specified movements when necessary during a biosecurity response.

Traceability of biosecurity risks, such as movements of people or biosecurity matter, onto and off affected properties during a biosecurity emergency supports effective and efficient responses. This process is currently managed through the issuance of permits or with supervised movements. However, in many instances, it is not practicable for Biosecurity Queensland to monitor all movements from properties affected by an MCO or BEO.

It is not possible to achieve this purpose without limiting the rights mentioned above as the limitation is inherent in the issue of traceability, and a person's movements and privacy would be similarly, if not more restricted, under a system where they need to seek permits for or be supervised during their movements.

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

There is no identified less restrictive or reasonably available way of achieving the identified purpose. As identified above, allowing a person to maintain their own movement records for review if necessary is considered less restrictive than making them apply for a permit for movement which could be time-consuming and onerous, or supervising their movements.

(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

On balance, the need to efficiently track biosecurity risks during an emergency response is considered to outweigh the limited impact on a person's right to privacy by needing to keep movement records for review. Further, as the movements tracked would be those onto and off a person's property, these movements are already somewhat publicly available to the extent that any passer-by could lawfully observe many of them.

(f) any other relevant factors

Nil.

D. Other amendments

ACP Act amendment

The human rights relevant to this amendment are:

- Fair hearing (section 31); and,
- Rights in criminal proceedings (section 32).

(a) the nature of the right

The right to a *fair hearing* provides a party to a civil proceeding with the right to have the proceeding decided after a fair and public hearing. The right encompasses the ‘equality of arms’ principle, which requires all parties to a proceeding to have a reasonable opportunity to present their case under conditions that do not disadvantage them against other parties to the proceeding.¹³ The principle outlines that the same procedural rights are to be provided to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds.¹⁴

Section 32(1) of the HR Act upholds the presumption of innocence and provides that a person charged with a criminal offence has the *right to be presumed innocent until proved guilty according to law*.

(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

Clause 6 of the Bill amends section 181 of the *Animal Care and Protection Act 2001* (ACP Act) to provide that a person is liable for the conduct of their representatives. Currently, section 181 of the ACP Act is limited to offences where it is relevant to prove a person’s state of mind, which limits responsibility for employers in relation to offences with strict liability. The purpose of the limitation is to ensure that employers are held to account for the actions of their employees where animal welfare is compromised.

Section 181 of the ACP Act reverses the onus of proof for applicable offences by placing the burden on the employer, or other relevant person, to prove they were not in a position to influence their representative's behaviour, or took reasonable steps to prevent the conduct.

Clause 6 of the Bill will limit the right to a *fair hearing* and *right to be presumed innocent until proved guilty according to law* to the extent it expands the application of section 181 to apply to all offences under the ACP Act, thereby expanding the reversed onus of proof requirements. Noting the corporations do not have human rights, these limitations will be only in circumstances where the employer is a person, not in the cases of corporate entities which many employees operate under.

(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

There is a rational connection between the limitation on the rights to a fair hearing and right to be presumed innocent until proved guilty according to law. The purpose of the limitation of the right to a *fair hearing*, and *right to be presumed innocent until proved guilty according to law*, is to ensure that employers are held to account for the actions of their employees where animal welfare is compromised.

It is important that animal welfare standards are upheld by not only employees in direct contact with animals but also by employers. Employers have an obligation to ensure their employees provide appropriate standards of welfare to animals under their care and provide supporting environments and procedures. In addition, it is unfair for employees not to also hold employers accountable where both have roles to play in upholding our animal welfare standards.

¹³ *Ragg v Magistrates’ Court of Victoria & Corcoris* [2008] VSC 1, [46]

¹⁴ *Human Rights Committee, General Comment No 32: Right to equality before courts and tribunals and to fair trial*, 90th sess, UN Doc CCPR/C/GC/32 (27 July 2007) [13]

It is not possible to achieve this purpose without limiting the rights mentioned above as the reversal of the onus of proof is needed to place the obligation on employers to demonstrate their positive steps. The employer is in a better position to be able to keep and provide evidence of their reasonable steps to prevent the conduct of their representatives than the State is to demonstrate that an employer failed to take reasonable steps.

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

There is no identified less restrictive or reasonably available way of achieving the identified purpose. As discussed above, the reversal of the onus of proof is needed to ensure responsibility is placed on the employer who is best based to not only take reasonable steps to prevent the conduct of their representatives, but to also keep records of those steps.

Leaving the legislation as it stands would continue the current situation where employers in specific circumstances could not be held to account where employees do not meet minimum requirements for the welfare of animals under their care. This leaves the punitive burden resting solely on the employees.

(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

In order to ensure that our animal welfare standards are upheld, employers and employees responsible for animals in their care must bear a level of responsibility to adhere to those standards. This obligation is already placed on employees by the various offences under the ACP Act that make it an offence to engage in certain conduct. This amendment importantly ensures that obligation is equally placed on employers to take reasonable steps to prevent their employees from engaging in that same conduct.

On balance, the purposes of ensuring that employers are held to account for the actions of their employees where animal welfare is compromised is considered to outweigh the potential limitations caused by reversing the onus of proof. This is considered based on the more advantageous positions employers are in to take and keep records of the reasonable steps they take, the locus of control they have over certain employee conduct, that the animals concerned are in the care of their business, and that employees are already liable for their conduct.

(f) any other relevant factors

Nil.

Authorise information sharing

The human right relevant to this amendment is privacy and reputation (section 25).

(a) the nature of the right

The ***right to privacy*** in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate.

The right is broad and encompasses an individual's information privacy, including personal information. The *Information Privacy Act 2009* (Qld) identifies personal information as being information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Information can be considered private if the individual has a reasonable expectation of privacy when considering all relevant circumstances.¹⁵

¹⁵ *Australian Broadcasting Corporation v Lenah Game Metas Pty Ltd* [2001] HCA 63, [42]

- (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

Clause 126 of the Bill inserts a clear power into the DM Act to authorise information-sharing arrangements with other departments or relevant bodies, including interstate jurisdictions.

The purpose of the amendment is to ensure DAF can enter into proactive information-sharing arrangements with relevant entities such as the Queensland Police Service. The proactive sharing of information will support DAF in administering the Part 5B provisions relating to industrial cannabis in Queensland, such as licensing, and the Queensland Police Service to undertake effective enforcement action across the whole DM Act.

The amendment is also intended to support the development of the industrial cannabis industry, such as through the sharing of industry information with relevant equivalent interstate agencies or bodies that also manage industrial cannabis.

Clause 126 of the Bill will limit the *right to privacy* to the extent that the type of information shared may be sensitive in nature, such as identifying details of industrial cannabis license holders.

- (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

There is a rational connection between the limitation on the *right to privacy*, and the purpose of authorising information-sharing arrangements with other departments or relevant bodies, including interstate jurisdictions. Inherent in the nature of information sharing generally is the engagement and potential limit of a person's right to privacy.

It is not possible to achieve this purpose without limiting the right to privacy, as even sharing information with other agencies through existing more limited authorisations would engage the right to privacy by nature of the information sharing. The amendment is intended to support proactively sharing information between relevant agencies to provide greater overall support for the industrial cannabis industry in Queensland.

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

There are no less restrictive and reasonably available alternatives to sharing this type of information. While the *Information Privacy Act 2009* makes provision for the use of information and provides safeguards for the handling of personal information in the public sector, these provisions are limited and not designed for the proactive sharing of information without consent.

- (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 ability for DAF to enter into productive information-sharing arrangements with relevant entities, including proactive sharing, will support DAF and other relevant entities to undertake their functions and support the development of the industrial cannabis industry.

For example, proactive information sharing will reduce the risks that police enforcement activity could mistakenly target a legal industrial cannabis grower by providing for the exchange of up-to-date information about industry participants. This would serve to protect the right to privacy of industrial cannabis growers to the extent that mistaken enforcement action could result in unnecessary searches of a licensed grower's property.

Effective and efficient information-sharing is expected to benefit DAF, relevant entities, and the industrial cannabis industry, including participants whose information may be shared. On balance, the

benefits of information-sharing arrangements are considered to outweigh the limit on a person's privacy where the shared information relates to them.

(f) any other relevant factors

Nil.

Power to require record production

The human right relevant to this amendment is privacy and reputation (section 25).

(a) the nature of the right

The ***right to privacy*** in section 25 protects an individual from unlawful or arbitrary interferences and attacks on their privacy. An arbitrary interference is conduct that is capricious, unpredictable or unjust, or an unreasonable interference in that it is disproportionate to the aim. Accordingly, any limitation on the right to privacy must be proportionate.

The right is broad and encompasses an individual's information privacy, including personal information. The *Information Privacy Act 2009* (Qld) identifies personal information as being information or an opinion about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion. Information can be considered private if the individual has a reasonable expectation of privacy when considering all relevant circumstances.¹⁶

(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

Clause 191 of the Bill extends the Veterinary Surgeons Board of Queensland's (the Board) power, under the *Veterinary Surgeons Act 1936*, to direct the production of veterinary practice records to include the ability to direct a veterinary premises approval holder to produce records about the practice of veterinary science at their premises.

The purpose of the amendment is to ensure that when a veterinary surgeon is no longer employed at a particular veterinary practice, the Board is able to direct the veterinary premises approval holder to produce records, without having to exercise more invasive entry and search powers.

Clause 191 of the Bill may limit the ***right to privacy*** to the extent that any records produced contain a person's private information, for example where records contain details of the owner of the treated animal.

(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

There is a rational connection between the limitation on the ***right to privacy***, and the purpose of authorising the Board to be able to direct a veterinary premises approval holder to produce records. Requiring a person to produce records that may contain personal information, like the details of a pet's owner, has the necessary effect of engaging and possibly limiting the right to privacy.

It is not possible to achieve this purpose without limiting the right to privacy, as whether the records are obtained under the existing power to direct the relevant veterinary surgeon, or under the Board's more invasive entry and search powers, it is the information itself that engages the right rather than the particular person required to produce it.

¹⁶ *Australian Broadcasting Corporation v Lenah Game Metas Pty Ltd* [2001] HCA 63, [42]

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

There are no less restrictive and reasonably available alternatives to sharing this type of information. The Board could currently exercise other powers to obtain the records where the relevant veterinary surgeon has left. However, those powers are more invasive and would involve the Board exercising entry and search powers, which is excessive if there is no strong opposition to cooperating with the Board.

Additionally, as the records would be obtained regardless of the particular power used to obtain them, there is not expected to be an expansion on the current limitation to a person's right to privacy that may otherwise be engaged when the records are handed over.

- (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

On balance, the need for the Board to access relevant records of a veterinary practice to perform its functions is considered to outweigh the limited circumstances where the practice records may contain a person's private details, such as the owner of a pet, noting that a veterinary practice's record will primarily relate to the animals treated, and would be otherwise shared under other powers too.

- (f) any other relevant factors

Nil.

Conclusion

In my opinion, the Agriculture and Fisheries and Other Legislation Amendment Bill 2023 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.

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AND MINISTER FOR RURAL COMMUNITIES