

Resources and Other Legislation Amendment Bill 2021

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Scott Stewart, Minister for Resources make this statement of compatibility with respect to the Resources and Other Legislation Amendment Bill 2021.

In my opinion, the Resources and Other Legislation Amendment Bill 2021 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The amendments in the Resources and Other Legislation Amendment Bill 2021 provide certainty to industry and community stakeholders and ensure the integrity of the tenure system by clarifying the legal standing of certain historically granted tenures, activities, and entitlements under the *Mineral Resources Act 1989* and *Petroleum Act 1923*.

The Bill aims to reduce unnecessary expenditure and regulation in the context of significant impacts of the COVID-19 pandemic on the personalised transport industry by repealing the *Personalised Transport Ombudsman Act 2019*.

The Bill enhances the water restrictions compliance and enforcement framework by ensuring water restrictions can equitably be investigated and enforced across the South East Queensland region. It also excludes cyber security measures, reported to the Water Supply Regulator, from being made publicly available. This will mitigate the risks of malicious attacks on water service providers and water supply schemes.

Mineral Resources Act 1989

The amendments validate certain mining leases that were granted between the commencement of the *Mineral Resources Act 1989* and 2010, for which there may have been some deficiencies in the administrative process relating to the formal issuing of lease instruments.

Petroleum Act 1923

The amendments also address issues in relation to authorities to prospect and leases granted under the *Petroleum Act 1923*. In particular, they seek to:

- Clarify that a production lease with a validly made application for renewal under the *Petroleum Act 1923* continues in force until the application is decided or is otherwise resolved; and
- Provide that authorities to prospect which are subject to an application for a production lease will continue in force if the lease application remains undecided on

1 November 2021. They also clarify that the associated production lease applications can also be decided after 1 November 2021 if required.

Personalised Transport Ombudsman Act 2019 and Transport Operations (Passenger Transport) Act 1994

The *Personalised Transport Ombudsman Act 2019* provides for the establishment of the Personalised Transport Ombudsman to help resolve complaints relating to personalised transport services. The Personalised Transport Ombudsman was expected to be appointed in 2020 but the appointment and commencement of the legislation was deferred due to the impacts of the COVID-19 pandemic on industry.

The Department of Transport and Main Roads has since reviewed the objectives of the *Personalised Transport Ombudsman Act 2019*, focusing on issues raised by the former Transport and Public Works Committee and industry submissions during committee consideration of the Bill for the *Personalised Transport Ombudsman Act 2019* (the Review). The Review noted that industry is recovering from impacts of the pandemic and did not support further regulation at this time. The Review also determined that the cost of establishing the Personalised Transport Ombudsman and administering the *Personalised Transport Ombudsman Act 2019* would outweigh any potential benefits of the Personalised Transport Ombudsman to the personalised transport industry and users of personalised transport services.

The Bill repeals the *Personalised Transport Ombudsman Act 2019* relating to the establishment of the Personalised Transport Ombudsman and makes a minor consequential amendment to the *Transport Operations (Passenger Transport) Act 1994*. This responds to industry views and results in cost savings for government. The Department of Transport and Main Roads will establish channels for mediation of personalised transport matters and enhance existing complaints frameworks to ensure systemic issues which may arise are monitored on an ongoing basis.

South East Queensland Water (Distribution and Retail Restructuring) Act 2009

The *Water Supply (Safety and Reliability) Act 2008* enables water service providers to set restrictions for the volume of water, hours of use and the way water is used. It is an offence to contravene a water service provider's water restriction with penalties attached. The purpose of the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* is to facilitate the restructuring of the water industry in South East Queensland and improve water services and wastewater services to customers in response to the Millennium Drought.

The Bill provides investigation and compliance powers for water restrictions to the distributor-retailers in the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009*. The powers available to distributor-retailers will align with powers local government water service providers already have under the *Local Government Act 2009*. Equitable powers between all water service providers will ensure consistency in the imposition, investigation and enforcement of water restrictions.

Water Supply (Safety and Reliability Act) 2008

In 2017, the Queensland Audit Office conducted an audit to assess water service providers' ability to identify and manage the risks associated with monitoring, treating and distributing

drinking water in their service areas. To action the recommendations from the audit, the water supply regulator (the Chief Executive responsible for administering the *Water Supply (Safety and Reliability Act) 2008*) issued a report requirement notice to require cyber security information and metrics to be included in key documents, such as a water service provider's drinking water quality management plan and annual reporting requirements.

In September 2019, when the first annual reports with the new cyber security information were required, it was identified there was significant risk to urban water security throughout Queensland. The risk was the result of key water service provider documents, which now contained highly sensitive cyber security information, being required to be made publicly available under sections 575 and 575A of the *Water Supply (Safety and Reliability) Act 2008*.

The amendments remove the current requirement for water service providers to make publicly available highly sensitive cyber security information and reporting metrics.

Human Rights Issues

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

The proposed amendments could be considered to engage with two rights provided for under the *Human Rights Act 2019*:

- Section 24(2) that a person must not be arbitrarily deprived of their property;
- Section 25(a) a person has the right not to have the person's privacy, family, home or correspondence (written and verbal) and reputation unlawfully or arbitrarily interfered with; and
- Section 31 the right to a fair and public hearing.

The clauses of the Bill that are relevant to these rights are:

- Clause 3, which relates to the validation of mining leases under the *Mineral Resources Act 1989*;
- Clause 5, which relates to the continuing effect of production leases that are subject to a renewal application under the *Petroleum Act 1923*;
- Clause 6, which relates to the continuing effect of particular authorities to prospect and applications for production leases under the *Petroleum Act 1923*;
- Clause 7, which contains transitional provisions relating to the continuing effect of production leases that are subject to a renewal application under the *Petroleum Act 1923*; and
- Clauses 9 to 13 introduce a new type of authorised person for distributor-retailer water service providers with the specific role and function to monitor and enforce non-compliance with water restrictions within their service area. This includes the powers of entry, powers to search a place or part of a place and powers to require a persons name and address.

The proposal to repeal the *Personalised Transport Ombudsman Act 2019* does not engage human rights because it repeals provisions that have not commenced. The repeal does not affect a person's ability to make complaints or resolve issues through existing mechanisms and State and Commonwealth regulatory oversight bodies.

The proposal to no longer require highly sensitive cyber security information to be made publicly available by water service providers does not engage human rights. This is due to human rights only being conferred on a person and the amendments relate to information on infrastructure owned and operated by entities.

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*)

Amendments to the Petroleum Act 1923

Property rights

It is arguable that the human right under section 24(2) of the *Human Rights Act 2019* is limited by these amendments. The nature of the human right in section 24(2) of the *Human Rights Act 2019* is to ensure that people are not arbitrarily deprived of their property. The Explanatory Notes for the *Human Rights Act 2019* state that the right “essentially protects a person from having their property unlawfully removed”. This could apply to a landowner or lessee of a property (collectively, a landholder).

The grant of tenure does not create an interest in land and therefore does not remove a person’s property as such. However, it can limit landholders’ enjoyment of parts of their land for a period of time while authorised activities for a tenure are occurring.

This limitation is reasonable and justifiable in accordance with section 13 of the *Human Rights Act 2019* for the following reasons:

- It allows the State to realise its property in the resources that sit below a landholder’s land. The subsequent rent and royalties paid by the tenure holder to the State provide revenue that funds general expenditure for all Queensland residents.
- Without conferring exclusive rights to explore for, or exploit, resources in a particular area, resource operators would be unwilling to invest large sums required to undertake the necessary activities.
- It provides protections for public health and safety by ensuring that only appropriately trained and qualified persons are able to enter and remain on a part of the tenure where authorised activities are actively occurring.

It should also be noted that landholders are compensated for any limitation on the enjoyment of property rights that come from the tenure holder undertaking authorised activities.

For petroleum tenures, this limitation is mitigated by the land access framework set out in the *Mineral and Energy Resources (Common Provisions) Act 2014*, which provides for the circumstances in which the tenure holder may enter private land to undertake authorised activities.

Under this framework, where authorised activities occur that are more likely to limit a landholder’s property rights, the tenure holder must have an agreement, usually a conduct and compensation agreement, in place with the landholder. A conduct and compensation agreement covers how and when the tenure holder may enter the private land, how authorised activities must be carried out, and the tenure holder’s compensation liability for any compensatable effect that may occur.

If the parties cannot reach agreement, there is a statutory negotiation process which affords the landholder a due process and full compensation for any impacts authorised activities will have on their land. Additionally, environmental authority conditions that apply to the tenure holder in carrying out authorised activities, protect the landholder's enjoyment of their property from nuisance impacts as a result of these activities, e.g., noise and dust limits.

A similar framework applies for mining leases, where a compensation agreement is required with landholders prior to the grant of the mining lease. In the case where there is a dispute about compensation payable, the matter may be referred to the Land Court of Queensland for resolution.

On balance, for the reasons above, any limitation of the human right at section 24(2) of the *Human Rights Act 2019*, imposed by the grant of tenure, is reasonable and justifiable in a free and democratic society based on human dignity, equality, and freedom.

Fair hearing

The right to a fair hearing provides that a person who is party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing.

The potential engagement with this right occurs in relation to the proposed amendments which will provide that a production lease with a validly made application for renewal under the *Petroleum Act 1923* continues in force until the application is decided or is otherwise resolved.

This proposed amendment is consistent with other application processes under both the *Petroleum Act 1923* and the contemporary petroleum legislation under the *Petroleum and Gas (Production and Safety) Act 2004*. It is also consistent with the long-standing administrative practice of the Department of Resources which is based on the view that a production lease which is subject to renewal continues in force until such time as the renewal application is decided.

The absence of an express provision in the *Petroleum Act 1923* relating to renewal applications has created some ambiguity about the standing of production leases that are subject to validly made renewal applications but are not decided prior to their expiry date.

The potential engagement with this human right occurs because there is currently a case before the Land Court of Queensland which involves, amongst other things, the issue of a production lease holder's rights after an application for renewal has been lodged, during the period between the expiry date and when the application is decided.

Ultimately, these amendments do not deny either party to this case the right to have their proceeding decided by a competent, independent, and impartial court or tribunal after a fair and public hearing. However, they do provide clarity about the applicable legal position in this situation, which may impact the future conduct of that aspect of the proceeding. This does not prevent the parties from raising other issues with the Land Court of Queensland for consideration.

Whilst it is considered that the amendments are compatible with human rights, it is considered that any perceived limitation to the right to a fair hearing in this particular case is justified by the fact that the amendments create the very certainty that is being sought from the Court, in a manner which is consistent with the purpose and intent of the *Petroleum Act 1923* as well as long-standing departmental administrative and operational practice. It is considered the Parliament of Queensland may legislate to clarify the operation of the regulatory framework in situations where there is ambiguity or uncertainty.

The proposed amendments are justifiable because they provide certainty to production lease holders that they can enjoy continued access to the area of the lease and ensure the safe and efficient operation of the infrastructure and equipment used to produce petroleum whilst decisions on renewal applications are being assessed. These operations have a broader societal benefit through the generation of economic development opportunities in our regions and royalty streams to government which fund vital public services.

On balance, for the reasons above, any limitation of the human right at section 31 of the *Human Rights Act 2019*, is reasonable and justifiable in a free and democratic society based on human dignity, equality, and freedom.

Amendments to the South East Queensland Water (Distribution and Retail Restructuring) Act 2009

The water restriction investigation and enforcement provisions included in the Bill, for the distributor-retailers, potentially engage the following human rights:

- property rights; and
- privacy and reputation.

Clause 13 of the Bill amends the *South East Queensland Water (Distribution and Retail Restructuring) Act 2009* to enable distributor-retailer appointed water restriction officers to enter private and commercial property under certain circumstances.

Section 24 of the *Human Right Act 2019* provides for the right to property and protects the right of all persons to own property (alone or with others) and provides that people have a right not to be arbitrarily deprived of their property. A person's property rights are engaged under the Bill as a water restrictions officer has the power to enter a property, with the owner's consent or without consent but under a warrant.

Section 25 of the *Human Rights Act 2019* protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal) and reputation. The right is broad in its application; however, for the purpose of distributor-retailer water restriction compliance powers in the Bill, the potential engagement of the right occurs with regard to the individual's privacy, family, and home. Only lawful and non-arbitrary intrusions may occur upon privacy, family, and the home. This right is engaged under the Bill as a water restrictions officer can gather information and evidence of water restriction contravention and use this to undertake enforcement action.

The purpose of the limitation on property and privacy rights is to undertake investigation and compliance action against those contravening a water restriction in order to help protect the long-term security and availability of drinking water supply for the South East Queensland (SEQ) region.

Water is essential for life and to protect the right to life of all members of the community, all water service providers need equivalent powers to investigate and take appropriate enforcement action against proven non-compliance with a water restriction notice. Failure to comply with water restrictions places all members of the community at risk in times of water scarcity, therefore it is equitable that all sectors of the community contribute to maximise the remaining water supply and that there is parity in the water restrictions investigation and enforcement powers available to different water service providers.

Since January 2013, Seqwater has been responsible for SEQ's long-term water security and, in accordance with the *Water Act 2000*, has developed Water for Life: South East Queensland's Water Security Program 2016-2046, version 2, which ensures there will be enough water available to meet the growing needs of SEQ for the next 30 years. The water security program uses a combination of demand, supply, and system operation actions to ensure water security for SEQ. Water restrictions are a key demand management strategy within the program's adaptive drought response plan. While the water security program sets the SEQ Water Grid storage capacity level at which restrictions are to be imposed on the community to maximise the remaining water supply, the responsibility to compel or impose water restrictions lies with SEQ water service providers.

Limiting the right to property and the right to privacy as proposed under the amendments will enable water restrictions officers to gather information and evidence to substantiate whether or not a water restriction imposed on the property has been contravened and undertake enforcement action. Appropriate enforcement action protects the long-term security of drinking water supply.

There is no less restrictive way to achieve the purpose of the amendments. The distributor-retailers are authorised to impose water restrictions and issue penalty infringement notices to those contravening a water restriction. The proposed new powers ensure that appointed officers are issuing notices based on evidence of proven breaches of water restrictions. The powers granted restrict entry onto private property to a specific set of circumstances.

Entry to private property is only for the purpose of gathering information and evidence to substantiate whether or not a water restriction imposed on the property has been contravened under the *Water Supply (Safety and Reliability) Act 2008*. Before entering the property, the consent of the owner or occupier must be obtained. The owner or occupier may withdraw consent at any time and consent may be given on conditions, e.g., on a specific date or time, other than compensation. Water restrictions officers are not permitted to enter any part of the place where a person resides.

It is considered that any potential abrogation of property rights or privacy rights imposed by the Bill are not arbitrary because there is a purpose for the entry and a clear process by which lawful entry can be obtained.

It is considered that the benefits gained by enabling distributor-retailer water restrictions officers to access properties to determine whether a water service provider imposed water restriction has been contravened helps protect the rights of the entire community.

Ensuring the preservation of the community's right to life is considered to outweigh the limitation of property and privacy rights for a small number of people potentially illegally using water.

Conclusion

In my opinion, the Resources and Other Legislation Amendment Bill 2021 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.

The Honourable Scott Stewart
MINISTER FOR RESOURCES

© The State of Queensland 2021