

Nature Conservation and Other Legislation Amendment Bill 2022

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Meaghan Scanlon, Minister for the Environment and the Great Barrier Reef and Minister for Science and Youth Affairs make this statement of compatibility with respect to the Nature Conservation and Other Legislation Amendment Bill 2022.

In my opinion, the Nature Conservation and Other Legislation Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The primary purpose of the Bill is to amend the *Nature Conservation Act 1992* (NCA) to provide a 20-year extension to enable beekeeping on specified national parks to continue until 31 December 2044. The extension will only apply to areas where beekeeping could be lawfully undertaken immediately prior to the transfer of the land to national park.

Unrelated to the extension of beekeeping amendments, other amendments in the Bill will:

- enhance the Department of Environment and Science's capacity to respond to misconduct on Queensland Parks and Wildlife Service managed areas such as State forests, marine parks, recreation areas and national parks by:
 - a) providing new offences for impersonating a forest officer and a ranger; and
 - b) expanding existing obstruction offences so that they apply to obstructing conservation officers, authorised officers and inspectors in the performance of their functions under the NCA, the *Recreation Areas Management Act 2006* (RAMA) and the *Marine Parks Act 2004* (MPA);
- relocate from subordinate legislation into the NCA, the powers of officers to seize and deal with things that are seized; administrative provisions relating to approved forms, and the internal and external review of decisions to reflect current drafting practices; and make consequential amendments to the State Penalties Enforcement Regulation 2014 to enable conservation officers to continue to issue penalty infringement notices (PINs) in relation to offences for tampering with seized things under the NCA;
- make amendments to *Wet Tropics World Heritage Protection and Management Act 1993* (Wet Tropics Act) to reflect National Cabinet changes to intergovernmental arrangements resulting from the Conran Review, streamline the process for making consequential amendments to the Wet Tropics Management Plan 1998 when changes are required to reflect amendments to the Act, and to remove the outdated version of the Intergovernmental Agreement from Schedule 1 of the Act; and

- correct several minor errors in the NCA and the Wet Tropics Act to correct a spelling error and insert and update several cross references to other sections of the legislation that were not identified when previous amendments were made to these Acts.

Human Rights Issues

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

In my opinion, the human rights that are relevant to the Bill are:

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28)
- Property rights (section 24)
- Liberty and security of person (section 29)
- Fair hearing (section 31)
- Rights in criminal proceedings (section 32)

Time extension for beekeeping on national parks

Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28) is relevant to the amendments in clause 25 of the Bill.

Beekeeping is inconsistent with the management principles for national parks and there is some scientific research indicating that non-native bees have the potential to outcompete native fauna for floral resources and disrupt natural pollination processes. However, beekeeping is currently permitted on a temporary basis on 49 national parks. This is predominantly a consequence of land transfer processes, particularly the 1999 South East Queensland Forests Agreement (SEQFA), where it was agreed to dedicate a number of State forests (where beekeeping was a lawful use) as national parks. As part of these forest transfer processes, amendments were made to the NCA in 2004 to provide for the temporary continuation of beekeeping in relevant national parks, until 31 December 2024, to provide time for alternative land outside of these national parks to be found; however, finding sufficient and accessible alternative sites has been challenging.

Apiary sites in national parks contribute to the production of honey and other honeybee related products and also provide locations for beehives to recover when they are not being used to provide pollination services to the agricultural sector.

Loss of access to national parks on 31 December 2024 would have a detrimental impact on the supply of honeybee products and crop pollination services and consequently the government announced that legislation would be introduced to provide a 20-year extension to the current phase out. The extension will provide continued access for the industry to honey resources on specified national park lands and time to work to seek alternative sites off national parks; support adoption of industry best practice on protected areas; and identify initiatives to assist the industry to progressively relocate off-park over the next 20 years.

Twelve First Nations groups currently have native title determinations or native title claims over national parks with apiary sites located on them. The Department of Environment and Science wrote to each of these groups to seek feedback about whether the proposed amendments providing for the extension of beekeeping in national parks would have any

impact on their human rights, particularly the cultural rights of Aboriginal people and Torres Strait Islander people under section 28 of the *Human Rights Act 2019*.

One First Nations group raised concerns that non-native bees will compete with native pollinators, disrupt the proper pollination of some plants, including bushfood plants, and that escaped feral bee colonies will compete with native birds and mammals for tree hollows, which will lead to the potential degradation of the cultural and natural resources of the area. They provided feedback indicating that issuing apiary permits, which authorises beekeeping activities on national parks, without consulting and obtaining their consent would be inconsistent with the section 28 of the *Human Rights Act 2019*, specifically subsections 28(2)(a), 28(2)(d) and 28(2)(e). No other responses were received by the Department of Environment and Science regarding this matter.

While the Bill amends the NCA to enable beekeeping to continue in national parks until 31 December 2044, the amendments themselves do not automatically authorise access to national parks for beekeeping. The amendments only provide a time extension and a similar framework to what is currently in place for the beekeeping industry to apply for apiary permits in a prescribed apiary area under the Nature Conservation (Protected Areas Management) Regulation 2017.

It is during the permit application process that the department will assess compatibility with section 28 of the *Human Rights Act 2019* and consider the lawfulness and reasonableness of any limitations identified. Therefore, the Department of Environment and Science will need to assess each permit application and consider a range of matters, including human rights and also Native Title matters, before deciding whether to grant a permit.

It is concluded that the Bill will not limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, and noted that any engagement of human rights will be assessed through the permit application process.

Relocation of subordinate legislation to the NCA – seizure powers

Property rights (section 24) is relevant to the provisions being inserted in relation to seizure powers in clause 15 and an offence in relation to seized things in clause 48.

The right to property under the *Human Rights Act 2019* protects the right of all persons to own property (alone or with others) and provides that people have a right to not be deprived of their property arbitrarily.

In relation to the relocation of powers of officers to seize and deal with things that are seized (seizure powers) from subordinate legislation to the NCA, the existing seizure provisions are not arbitrary and are restricted to the specific circumstances currently listed in the regulation. The provisions allow for the seizure of property only in prescribed circumstances, such as where a conservation officer reasonably believes that the thing(s) is/are being used with unlawful intent/actions, conduct or access in a protected area, or reasonably believed to be abandoned within a protected area.

A consequential amendment to the State Penalties Enforcement Regulation 2014 (SPE Regulation) will continue prescribing an offence to interfere with seized things as a PIN offence. If an individual fails to pay the fine specified in the PIN, they are subject to the

enforcement powers under the *State Penalties Enforcement Act 1999* (SPE Act), which may limit the right to property through the seizure and sale of property.

The right to liberty and security of person (section 29) is relevant to the offence provision being inserted in relation seized things in clause 48.

The right to liberty and security of person provides that a person must not be subjected to arbitrary arrest or detention, and must not be deprived of their liberty except on grounds, and in accordance with procedures, established by law. Relocating existing seizure powers from regulations to the NCA consequentially amends the SPE Regulation. The SPE Regulation may engage the right to liberty and security of a person to the extent that it prescribes PIN offences, and failure to pay a PIN fine may result in enforcement action under the SPE Act.

However, the Bill makes no changes of substance to the SPE Regulation, and merely involves updating legislative section references. Any enforcement action would not be arbitrary or unlawful. There is no new limitation placed by the Bill on the right to liberty and security of person.

The rights to a fair hearing (section 31) and criminal proceedings (section 32) is relevant to the offence provision being inserted in relation to seized things in clause 48.

The right to a fair hearing provides individuals with the right to have a charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This facilitates procedural fairness and protects natural justice. Similarly, the rights in criminal proceedings provide the right to be presumed innocent until proven guilty according to law as well as rights to certain minimum guarantees, including the right of accused persons to be informed of the nature and reason for a charge and to defend themselves personally or through legal assistance. Prescribing offences under the SPE Regulation enables a PIN fine of a fixed amount to be issued to an individual without a charge being decided by an independent court after a fair and public hearing, and without the person having the opportunity to exercise their rights in criminal proceedings. There is no limitation placed by the Bill on the right to a fair hearing or rights in criminal proceedings.

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*)

Relocation of subordinate legislation to the NCA – seizure powers

Section 24 – Property rights

(a) the nature of the right

The transfer of existing seizure provisions from subordinate legislation to the NCA engages with human rights related to property. The right to property (section 24) protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Property subject to existing seizure provisions may restrict a person's access to or interactions with their property, which may include vehicles, aircraft, boats, recreational craft, stock, appliances, equipment, structures or works. Seizure powers do not affect a person's ownership of seized property but do deprive a person's access to their property during the period of seizure.

In relation to seizure powers generally, affording powers to conservation officers to seize items in a timely and effective way delivers on the purpose of appropriately managing the use of natural and cultural resources and native wildlife protected under the NCA. The ability to restrict access to, or seize property enables immediate response to, and investigation of, unlawful conduct, particularly in relation to items that pose a threat to the safety of humans or wildlife, such as dangerous appliances and equipment, traps, poisons and explosives.

These powers support the protection of cultural and natural resources and wildlife, and protect the safety of the public, which is a responsibility of government and consistent with free and democratic society based on human dignity, equality and freedom.

The purpose of prescribing an offence under the SPE Regulation to interfere with a seized thing is to enable conservation officers to take action to enforce the direction not to tamper with seized things to allow proper investigation procedures, and to deter any further use of seized things in a protected area, particularly things that may impact public safety or harm cultural and natural resources.

Prescribing the offence to interfere as a PIN offence under the SPE Regulation will mean that a person will be subject to the enforcement powers under the SPE Act if, for example, an individual does not pay the PIN fine. Enforcement action under the SPE Act in relation to an unpaid fine may include, among other things, the suspension, seizure or sale of property.

Prescribing an offence under the SPE Act enables a PIN to be issued, rather than a charge being decided by an independent court after a fair and public hearing, and the person having the opportunity to exercise their rights in criminal proceedings. However, a person may still elect to have the matter heard in Court if they believe the PIN has been improperly issued to them.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The existing seizure provisions are not arbitrary and are restricted to the specific circumstances currently listed in the NCA's subordinate legislation. The provisions allow for the seizure of property only in prescribed circumstances, such as where a conservation officer reasonably believes that the items are being used for unlawful actions, conduct or access in a protected area, or reasonably believed to be abandoned within a protected area. Conservation officers may also immediately seize items that are abandoned on other land, or on land without landowner consent to protect native wildlife and prevent unnecessary injury, suffering or loss of life.

Prescribing an offence to interfere with seized items under the SPE Regulation allows PINs to be issued to individuals who commit this offence. This, in turn, facilitates an efficient enforcement mechanism that addresses the nature of the offending behaviour. It also helps achieve the purpose of ensuring (as best as possible) the safety of the public, cultural and natural resources and native wildlife.

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

For the existing seizure provisions, this limitation is the least restrictive on the human right to property that serves the compliance objectives of the NCA because it restricts access to property for a period, rather than impinging on ownership. Powers of seizure are only able to be exercised by trained and qualified officers, meaning that adequate safeguards are in place to restrict the impact of the limitation and to ensure the egalitarian application of the power.

These provisions are considered the least restrictive approach for managing and enforcing compliance matters. Conservation officers are trained to recognise situations that require seizure where seizure would serve investigation or penalisation and therefore these powers are not exercised arbitrarily or in the absence of trained judgement.

The proposed amendments also protect natural justice principles, requiring the department to notify the property owner of their seized property and allowing persons to have their property returned following due process.

There is no less restrictive and reasonably available way to achieve the purpose of prescribing the offence under the SPE Regulation. Prosecuting the offence through the courts would involve delays and would be less efficient as an enforcement response, taking into account the nature of the offending. Moreover, if this PIN offence were not in place, then a higher maximum penalty would apply and would require application through the court system, which places a higher burden on government and the offender.

The State Penalties Enforcement Registry (SPER) enforcement system also includes a number of protections to ensure that there are options available to assist persons who are experiencing hardship and unable to pay their PIN fines and to ensure that the limitation on the right to property would only occur infrequently for the prescribed offences.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

On balance, taking into account the nature and extent of the limitations and having regard to the information and analysis detailed above, I consider that the importance of minimising the serious risk to human safety and minimising the risk to cultural and natural resources and native wildlife protected under the NCA by providing efficient enforcement mechanisms outweighs any limitations on the abovementioned human rights.

The seizure powers provide an appropriate balance between allowing the NCA to be effectively enforced (and thus achieve its purpose) and having these rights limited. These existing provisions are consistent with maintaining human rights, as the powers are not arbitrarily

exercised. Given the restrictions and oversights placed on the powers, it is considered the laws are proportionate and justifiable with respect to any potential limitation on human rights.

(f) any other relevant factors

N/A

Conclusion

In my opinion, the Nature Conservation and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

**MEAGHAN SCANLON MP
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