Land and Other Legislation Amendment Bill (No. 2) 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, Scott Stewart, Minister for Resources make this statement of compatibility with respect to the Land and Other Legislation Amendment Bill (No. 2) 2023.

In my opinion, the Land and Other Legislation Amendment Bill (No. 2) 2023 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 Land and Other Legislation Amendment Bill (No. 2) 2023 (the Bill) amends the *Land Act 1994* (Land Act), *Land Title Act 1994* (Land Title Act), Land Regulation 2020, *Place Names Act 1994* (Place Names Act), *Recreation Areas Management Act 2006* (RAM Act), *Petroleum Act 1923* (1923 Act), *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act), *Geothermal Energy Act 2010* (GE Act), and *Greenhouse Gas Storage Act 2009* (GGS Act) and makes minor administrative and consequential amendments.

Land Act, Land Title Act and Land Regulation amendments

The Bill provides a range of streamlining amendments to the Land Act that reduce administrative complexity and duplicative decision making. The Bill will improve the allocation of tenure by removing the requirement that the chief executive assess the 'most appropriate use' of the land. This amendment will remove duplicative decision making between the Land Act and the planning framework and will result in timelier allocation of tenure. This amendment will further clarify that the chief executive must take account of planning instruments under the *Planning Act 2016* when evaluating the most appropriate tenure.

The Bill also amends the Land Act to ensure the administration of state land remains effective and responsive. The Bill will enable unallocated State land to be granted to the State without competition and without establishing that the land is required for a public purpose, allowing for the streamlined allocation of state land for government projects. Additionally, the Bill will enable the Minister to dedicate unallocated State land as a reserve for another purpose, having regard to community need and public interest.

The Land Act will also be amended to support the most appropriate tenure for land dealings. To better align with similar provisions in the Land Act, the Bill will enable the chief executive to proactively offer a deed of grant to a trustee of an operational reserve. The Bill will also

remove the restriction which prevents certain trustees of operational reserves applying to convert the tenure to freehold. To further streamline the process of freehold conversion, amendments in the Bill will remove the restriction preventing an application from being lodged for a deed of grant over a part of an operational reserve. Additionally, the Bill includes a new provision which will provide a pathway to freehold conversion for certain non-Indigenous deeds of grant in trust.

In addition, mechanisms for state or statutory body trustees to issue trustee leases without departmental oversight will be extended to streamline administrative processes. To support effective decision-making, the Bill will establish a self-assessable framework to enable trustees to determine the appropriateness of additional purposes on trust land.

To further support diversification on leasehold land and streamline the installation of essential community infrastructure, the Bill will remove the restrictions that prevent pastoral term leases from having additional purposes. The Bill will also remove the ability of certain leaseholders to apply under section 154 of the Land Act for ministerial approval that purposes be added or removed from their leases.

The Bill also removes a provision of the Land Title Act that allows the creation of unallocated State land without consent. This amendment will reduce the administrative burden and risk imposed on the State by the creation of unapproved unallocated State land. Several other amendments to the Land Title Act and Land Act in the Bill clarify policy intent and support contemporary decision-making.

Place Names Act amendments

In Queensland, the Place Names Act is the primary legislation for naming places. The Act defines what a place is under this legislation and outlines the process for naming, changing or discontinuing a name, as well as defining the boundary of a place.

Amendments to the Place Names Act aim to improve decision-making and reduce the regulatory burden, update the legislation to reflect contemporary technologies and clarify the application of the legislation.

Amendments in the Bill will clarify that changes to locality boundaries are included in the place naming process, which aligns with current practice.

The issues required to be considered in preparing and deciding a place naming proposal will be amended to reduce duplication, acknowledge other important legislative frameworks in place naming (notably the *Human Rights Act 2019* (HR Act) and the *Anti-discrimination Act 1991*), consider the socio-economic effects of giving, changing or discontinuing a place name on businesses, communities and government agencies, and transitional arrangements for place name changes.

The Bill provides for transitional arrangements enabling communities and businesses to transition to a new or changed place name over a defined period.

Amendments will provide for existing approved names to be discontinued and removed from the Gazetteer for places named under previous Acts that are outside of the scope of the current definition of 'place'.

The requirement to develop a proposal for a place name will be transferred from the Minister to the chief executive and the chief executive's delegation powers will be updated accordingly. These amendments provide an appropriate separation between proposal and decision.

The Bill will expressly provide for ministerial delegation to another Minister to remove the reliance on the delegation provisions of the Land Act.

The requirement to prepare a proposal to remove a name will be removed where there is strong evidence that a name is distressing to the community or part of a community (e.g. trauma caused to Aboriginal people or Torres Strait Islander people by the name's association with historical violence) or the name is derogatory, racist or sexist.

The Bill will also dispense with the need for a proposal to be made and released for public consultation in circumstances where the proposal is for a minor or technical matter, the name is offensive or causes harm, extensive public consultation has occurred through other government initiatives or public processes, or the proposal is unlikely to be of substantial interest.

The timeframe for public submissions on a place naming proposal will be shortened to one month allowing for simple or non-controversial place name proposals to be decided quickly.

The Bill will enable public submissions to be made using multiple channels including audio and video for place naming proposals to provide more inclusive submission formats.

The Bill will clarify the requirements for entries in the Gazetteer and provide a contemporary framework for public access utilising the department's website. The Bill will also clarify that the offence provision for using an unapproved place name in trade or commerce does not apply if the name is part of a business name.

The Bill provides continuity and legal certainty that a place name change has no effect on a person's rights and obligations under other legislation or legal documents where a previous name is referenced.

RAM Act amendments

On 7 June 2023, Fraser Island was officially renamed as K'gari under the Place Names Act, in recognition of the traditional name for the Island used by the Butchulla First Nations People. Most of the land on K'gari is also a recreation area declared under the *Recreation Areas Management Act 2006* (RAM Act).

The Bill amends provisions in the RAM Act to enable the renaming of a recreation area to be made by regulation. This will allow for the future renaming of the Fraser Island Recreation Area to the K'gari Recreation Area, consistent with the renaming of the Island, as K'gari.

1923 Act, P&G Act, GE Act and GGS Act amendments

The Queensland Government expects the resources industry to pay their applicable rates and charges to foster social licence and provide benefits to the regions and local communities within which they operate.

Mandating the payment of local government rates and charges as a condition of a resource authority allows the department to support local governments in the event of non-payment, and ensure the regulatory framework supports communities and the sustainable growth of the resources industry.

Currently, the payment of local government rates and charges is only a mandatory condition under the *Mineral Resources Act 1989* (MR Act). Consequently, the department is unable to support local governments in recovering unpaid rates and charges if the resource authorities sit under legislation other than the MR Act.

The Bill will amend the 1923 Act, P&G Act, GE Act and GGS Act to require the payment of local government rates and charges as a mandatory condition of a resource authority across these Acts. The amendments will allow the department to take prescribed non-compliance action against resources authorities in the event the rates and charges are unpaid, including using security to repay unpaid rates and charges, and allowing the Minister to take non-payment of rates and charges into consideration when processing renewal applications.

Human Rights Issues

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

I have considered each of the rights protected by Part 2 of the HR Act. In my opinion, the human rights that are relevant to the Bill are:

- Recognition and equality before the law (section 15 of the HR Act)
- Freedom of expression (section 21 of the HR Act)
- Property rights (section 24 of the HR Act)
- Right to privacy and reputation (section 25 of the HR Act)
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

Land Act amendments

I consider the following human rights are engaged by the Bill:

- Recognition and equality before the law (section 15 of the HR Act)
- Property rights (section 24 of the HR Act).
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

Recognition and equality before the law – section 15

Section 15(3) of the HR Act provides that every person is equal before the law and is entitled to the equal protection of the law without discrimination.

Clauses 51 and 69, which provide that additional purpose provisions do not apply to term leases for grazing purposes on certain lands under the *Forestry Act 1959* and the *Nature Conservation Act 1992,* engage this human right. Lessees that hold leases for grazing purposes over land that is contained within State forests and timber reserves under the *Forestry Act 1959,* and certain tenures under the *Nature Conservation Act 1992,* will not be able to apply for ministerial approval under the Land Act to add or remove purposes on their lease.

This amendment does not limit the right contained in section 15(3) of the HR Act because the use of land under these tenures is already constrained by the purpose and operation of the *Forestry Act 1959* and the *Nature Conservation Act 1992*.

Property rights – section 24

Section 24 of the HR Act provides that all persons have the right to own property alone or in association with others and a person must not be arbitrarily deprived of the person's property. Property includes real and personal property, including contractual rights, leases, shares, patents, and debts. Property may also include statutory rights and non-traditional or informal rights, such as a licence to enter or occupy land, and other economic interests.[1]

Clauses 29 and 37 of the Bill promote the property rights of a trustee by enabling the trustee to purchase trust land in freehold. Providing trust land with a pathway to freehold enables the trustee to exercise greater control of the land with limited state oversight. These clauses allow for expanded use and enjoyment of the trust land and thereby promote the trustee's property rights in relation to the land.

Similarly, clause 58 is relevant to property rights, as an individual lessee's use and enjoyment of the land will be expanded by providing greater ability to add additional purposes to a lease.

Deprivation is considered to include a substantial reduction of a person's use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property. This may include restricting the property owner's ability to enjoy exclusive possession of the property, disposing, transferring, or deriving profits from the property.

Arbitrariness in a human rights context can be defined as conduct that is capricious, unpredictable, or unjust or unreasonable, in the sense of not being proportionate to the legitimate aim sought. Therefore, any limitation on property rights must be proportionate and not capricious, unpredictable, unjust, and unreasonable.

[1] Alistair Pound and Kylie Evans, Annotated Victorian Charter of Rights (Lawbook, 2nd ed, 2019) 183

New sections 52AA and 52AB (clause 41) will enable trustees to undertake inconsistent actions provided the action does not diminish the purpose of the trust land, or adversely affect the public interest.

A new public interest test replaces the current test that an inconsistent action must not adversely affect any business in the area surrounding the reserve or land granted in trust. The new test allows for the consideration of a broader set of interests; however, any impact on surrounding businesses is still considered. The definition of public interest has been updated to include the economic interests of the public, meaning any economic impact (positive or negative) of an inconsistent action must be considered. The amended test enables the land to be managed to benefit the people of Queensland (i.e., the public interest), rather than the current narrower test that focusses only upon impacts on businesses in the area surrounding the trust land.

Further, adopting a public interest test will also ensure that a wider range of interests can be considered. The decision maker must consider what impact an inconsistent action will have on the public interest, including impact on cultural, economic, environmental, heritage, land protection, planning, recreational, social, and strategic interests. Property rights are an important consideration of these interests and particularly the economic interest.

Where trustees are incorporated bodies or individuals, the trustee must apply to the Minister to take an inconsistent action under new section 52AA. The Minster will consider an inconsistent action on a case-by-case basis and assess the compatibility with the HR Act, including identifying relevant property rights under section 24 that may be affected before the approval of an inconsistent action. If the action engages property rights, it must be reasonably and demonstrably justified pursuant to section 13 of the HR Act.

Where the trustees are a public entity, such as the State or statutory bodies, the trustees will be required to consider human rights, including identifying relevant property rights under section 24 of the HR Act that may be affected before undertaking an inconsistent action. If the action changes property rights, it must be reasonably and demonstrably justified pursuant to section 13 of the HR Act.

While property rights may be engaged by clause 41 of the Bill, the public interest test expands rather than limits the matters that may be considered by the decision maker and does not limit how existing property rights are exercised.

Cultural rights of Aboriginal peoples and Torres Strait Islander peoples – section 28

Section 28 of the HR Act recognises that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. Part of this right is structured around connection to land with the right stating that Aboriginal peoples and Torres Strait Islander peoples must not be denied the right, with other members of their community, to maintain and strengthen their distinctive spiritual, material, and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom (section 28(2)(d) of the HR Act).

The scope of what constitutes a connection to land for this right is broad. In *Clark-Ugle v Clark* [2016] VSCA 44, the court held that the right to maintain a relationship with land is not dependent on residency, and therefore Aboriginal persons who do not live on the land but nevertheless maintain a relationship with that land still enjoy cultural rights. Further, *Stevenson v Yasso* [2006] 2 Qd R 150, 165 [47] held that it is not necessary to establish native title to establish Aboriginal tradition. This means that a right to relationship with the land founded on Aboriginal tradition may exist in instances where native title has been extinguished.

The cultural rights of Aboriginal peoples and Torres Strait Islander peoples are engaged by the following clauses in the Bill:

- Clause 18 which clarifies that actions taken by trustees in relation to trust land must not be inconsistent with the *Native Title Act 1993* (Cwlth) and *Native Title (Queensland) Act 1993*. While the cultural rights of Aboriginal peoples and Torres Strait Islander peoples are broader than native title rights, this amendment requires trustees to comply with native title obligations when taking an action in relation to trust land.
- Clauses 20, 29 and 37 provide for the allocation and dedication of state land, a fundamental function of the Land Act which can overlap with this right. Clause 20 enables the Minister to grant reserves for community need, that is in the public interest, so that emerging and unforeseen community needs can be addressed. Clauses 29 and 37 provide processes for freehold conversion of all or part of an operational reserve or a non-Indigenous operational deed of grant in trust. These amendments are intended to ensure effective management of the land, and the public infrastructure assets situated on them, and to reduce administrative burden on the State in maintaining oversight. These clauses engage but do not limit this right.

Preserving cultural rights and protecting the ability for Aboriginal peoples and Torres Strait Islander peoples to strengthen and maintain their relationship with land is important to ensure the continual development of First Nations' culture. Any allocation of land under the Land Act has the potential to engage these rights, however the process for land allocation is well understood and accounted for by legislative requirements and administrative processes.

The amendments enabling the allocation of land via the process to convert land to freehold tenure do not initiate tenure conversion or allocation of land, they establish an administrative process whereby the conversion of trust land and allocation of unallocated State land may occur following appropriate evaluation required by the Land Act.

The allocation of tenure is considered on a case-by-case basis and requires an assessment under section 16 of the Land Act, which includes having regard to the object of the Act. The object of the Act includes that land must be managed with consideration and balancing of the cultural opportunities and values of the land.

In deciding to dedicate or grant land, or to convert trust land to freehold, the decision maker must give proper consideration to human rights, including identifying relevant cultural rights under section 28 of the HR Act that may be affected. If a proposed action would limit cultural

rights, the limit must be reasonably and demonstrably justified pursuant to section 13 of the HR Act.

Importantly, any action taken under the Land Act must not be inconsistent with the *Native Title Act 1993* (Cwlth) and *Native Title (Queensland) Act 1993*. To the extent that native title rights may be impacted, negotiations between the parties involved would be required to address native title, before an action could be taken.

It is considered that the Bill will not limit the cultural rights of Aboriginal peoples and Torres Strait Islander peoples and any engagement of human rights will be assessed through the administrative processes.

RAM Act amendments

I consider the following human rights are engaged by the Bill:

- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act)

Section 28 of the HR Act protects the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples. Aboriginal peoples and Torres Strait Islander peoples must not be denied the right to enjoy their identity and cultural heritage and use their language to maintain and strengthen connection under Aboriginal tradition or Island custom. The HR Act also protects the rights of Aboriginal peoples and Torres Strait Island peoples to conserve and protect the environment of their land and waters.

The Bill promotes and supports the cultural rights of Aboriginal peoples and Torres Strait Islander peoples by recognising the use of Aboriginal language in the context of naming recreation areas. The amendment to the RAM Act provides the legislative mechanism for the renaming of recreation areas by regulation and will facilitate the Fraser Island Recreation Area being renamed to K'gari Recreation Area. This aligns with the recent change of the official name of the Island to K'gari, the traditional name used by the Butchulla First Nations People for the Island.

This amendment supports the cultural rights of Aboriginal peoples and does not affect, engage or limit any other human rights under Part 2, Division 2 and 3 of the HR Act.

1923 Act, P&G Act, GE Act and GGS Act amendments

I consider the following human rights are engaged by the Bill:

- Property rights (section 24 of the HR Act).

Section 24 of the HR Act protects people from having their property arbitrarily removed. The right says that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. Property refers to real and personal property and can include, among other things, licences such as resource

authorities. Deprivation is considered to be acts or decisions that, amongst other acts and decisions, limit or terminate property rights.

Clauses 4, 10, 99, and 102 of the Bill introduce the payment of local government rates and charges as mandatory conditions of resource authorities within the 1923 Act, P&G Act, GE Act and GGS Act, and allow the Minister to take non-compliance action, including the termination of the resource authorities, in the event that they do not comply with the new mandatory condition.

Section 24 of the HR Act requires that the termination of property rights be arbitrary, meaning that the termination be decided by random choice, rather than through reason or system. The local government rates and charges amendments will provide the Minister the power to terminate a resource authority, only if the local government rates and charges go unpaid. This means that any termination of a resource authority under the new mandatory condition will be a result of non-compliance, not random choice. For this reason, clauses 4, 10, 99, and 102 of the Bill do not limit property rights and are compatible with human rights.

Place Names Act amendments

I consider the following human rights are engaged by the Bill:

- Recognition and equality before the law (section 15 of the HR Act)—in relation to removing the requirement that submissions to a place name proposal must be made in writing.
- Freedom of expression (section 21 of the HR Act)—in relation to removing the requirement for written submissions; the reduction of the minimum timeframe for making a submission; and the additional exceptions to the requirement to publish a place name proposal. Further, the right is also engaged by prohibiting the use of an unapproved name, unless otherwise permitted.
- Property rights (section 24 of the HR Act)—in relation to a continuation period during which time the former name of a place may continue to be used as an approved name alongside a new name for a defined period of up to five years, with the possibility of one extension of up to five years; and the effects of a place name change on the rights and obligations of a person.
- Right to privacy and reputation (section 25 of the HR Act)—in relation to changes to locality boundaries; the removal of offensive or harmful place names; and the continuation period allowing a former name to be used for a limited period if the Minister so decides.
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act)—in relation to the removal of offensive or harmful place names.

Amendments promoting human rights

Clause 115 of the Bill amends the Place Names Act to remove the requirement that submissions to a place name proposal must be in writing. This amendment engages and promotes the following human rights: recognition and equality before the law (section 15); and freedom of expression (section 21). The mandating of written submissions currently indirectly limits the

opportunity for persons with a disability to participate in place naming. The amendment enables submissions to be made through multiple different technological platforms, including audio and video. While the focus is on people with disabilities, the overall effect of this amendment is that the ability to make a submission by any means is not limited to a particular group or groups of people thus making the place naming process more inclusive.

The amendment is also consistent with Australia's commitment under Article 21 of the 2006 United Nations Convention on the Rights of Persons with Disabilities (the Convention). Article 21 requires all signatories to the Convention to take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice.

Clause 114 (new section 8) enables a continuation period to be stated during which the former name of a place may continue as an approved name for up to five years. This amendment provides an additional tool to better manage changes to place names, particularly where the potential socio-economic impacts may be significant. The application of this provision enhances property rights and the right to privacy and reputation by giving a person time (up to a maximum of five years) to adjust their normal/day-to-day living practices as they transition to the new place name.

In relation to the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, the Place Names Act amendments embed requirements throughout that consider Aboriginal tradition and Island custom when seeking to name, rename or remove a place name. Significantly, the Bill provides new tools and a framework to promptly and sensitively remove place names that are considered offensive or cause harm to the community (or part of the community), including to First Nations peoples. The aim of the changes is to provide a framework that recognises the importance of a place name to the wellbeing of people, enabling better connection with heritage, culture, or community. For First Nations people the use of First Nations place names can foster a stronger sense of belonging and pride, helping to maintain a positive connection with their identity and cultural heritage.

Using a First Nations place name recognises and promotes the right of the relevant Aboriginal people and Torres Strait Islander people to enjoy, maintain, control, protect and develop their identity and cultural heritage, and to use their language, including traditional cultural expressions. It also allows them to strengthen their relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom.

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) the nature of the right

Freedom of expression – section 21(2)

The right to freedom of expression includes the freedom to impart information and ideas whether within Queensland and whether it is done orally, in writing, in print, by way of art, or in another medium chosen by the person. Place naming includes giving a name to a place, changing an approved name, discontinuing the use of an approved name as well as defining the boundary of a place. The right of freedom of expression is engaged by removing the requirement for written submissions; reducing the minimum timeframe for making a submission; and the additional exceptions to the requirement to publish a place name proposal. The Place Names Act does not limit freedom of expression, other than requiring documents published in trade or commerce not to represent an unapproved name as the approved name of a place.

Property rights – section 24

This right protects the right of all people to own property and protects people from having property taken arbitrarily. The HR Act does not define 'property', but international and Australian law indicates that it includes real and personal property (e.g., land, chattels, money), including contractual rights, leases, shares, patents and debts. Property may also include statutory rights and non-traditional or informal rights (e.g., licence to enter or occupy land and right to enjoy uninterrupted possession of land), and other economic interests.[2]

Some of the ways place names can interact with property rights include branding or marketing strategies (particularly in commercial or residential developments which may influence marketability, property rights and values); intellectual property rights (e.g., patents and trademarks); place names based administrative and legal frameworks (e.g., services; contracts; court orders; compliance, including penalty infringement notices); and the socio-economic effects of place name changes.

For the Place Names Act amendments in the Bill, the right to property is engaged in relation to changes to locality boundaries; the removal of offensive or harmful place names; prohibiting the use of an unapproved name in trade or commerce unless otherwise permitted (i.e., by a limited period during which time the former name of a place may continue to be used as an approved name alongside the new approved name); and the effects of a place name change on the rights and obligations of a person.

Right to privacy and reputation – section 25(a)

The right to not have a person's privacy arbitrarily interfered with protects the right of a person to maintain their identity. The value of a place name to a person's identity is often rooted in the

[2] ibid

concept of 'sense of place'—the emotional and psychological attachment that individuals develop toward a particular geographic location that has shaped their personal experiences and memories; their group, cultural and social identity; their sense of wellbeing and feeling at home in the community; how they view themselves and relate to the world around them. The name of a place can also influence how other people perceive a person by association.

People's locality can play an important part in their identity and connection to their area. So, place name changes can signal a shift away from what an individual may identify and connect with. In the context of the Bill, the provisions relating to new place names, locality boundary changes and the removal of offensive or harmful names have the potential to engage a person's right to privacy and reputation.

(b) 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

Reduced minimum consultation period

The proposed amendment to section 9(4) (clause 115) reduces the minimum timeframe for public consultation on a place naming proposal from two months to one month. This amendment considers the advantages of modern technology, including the ease of access to and the sharing of information. The amendment provides greater flexibility to adjust the consultation period in consideration of matters such as the complexity of, or community interest in, the place name proposal; and the extent to which consultation under other government processes can inform decision-making on the naming proposal. This is a proper purpose which is consistent with a free and democratic society.

Place name proposals exempted from publication

The proposed replacement of section 10 (clause 116) enables place name proposals not to be published where the chief executive is satisfied that:

- The proposal relates only to a minor or technical matter. Examples include minor adjustments to locality boundaries or coordinates, correcting typographical errors, accuracies or omissions.
- The proposal is beneficial to the community because it relates to a change to, or discontinuance of an approved name of a place because the approved name is distressing to a part of the community or group of Aboriginal people or Torres Strait Islander people because of its historical or cultural significance; or it is derogatory, racist or sexist. Such names are offensive or cause harm. The ability to promptly remove such names minimises the ongoing hurt to the community or part of the community, for example, Aboriginal people or Torres Strait Islander people.
- The proposal is not likely to be of substantial interest to the community or any particular part of the community. Influencing factors could include whether the place is in a remote

or sparsely populated area, and how well known the place is to the local or general community.

- The proposal has already been subject to adequate public consultation and further public consultation would not be beneficial to the community or part of the community, including, for example, a community or group of Aboriginal people or Torres Strait Islander people. Examples include public consultation on place name proposals led by other naming authorities (e.g., Department of Environment and Science, Department of Transport and Main Roads, local governments) or arising from Path to Treaty processes.

The purpose of broadening the scope of place name proposals exempted from publication is to avoid duplicative engagement with communities, reduce regulatory burden; and, in the case of the removal of offensive names, to minimise ongoing community distress. Consultation processes impose a cost in both time and resources to both the organisation seeking to name a place and on people and organisations to respond to the name. Streamlining consultation processes is a proper purpose which is consistent with a free and democratic society.

Changes to locality boundaries

Currently, the Place Names Act makes no reference to locality boundaries although changes to suburb boundaries (which is a locality) do amount to place name changes under the Act. For clarity, the Bill amends section 7 of the Act (clause 113(3)) to explicitly include changes to boundaries of a named area in the legislation. Locality names and boundaries are essential for addressing and the provision of essential services. This is a proper purpose which is consistent with a free and democratic society.

Removing offensive and harmful names

Currently, there is no distinct process to remove an offensive or harmful name in Queensland. The basic process of suggesting a name change to the naming authority, developing a proposal, and mandatory public consultation prior to deciding the proposal applies. Broadening section 10 of the Place Names Act (clause 116) to include dispensing with the need to publish proposals to remove offensive or harmful names facilitates the removal of such names where their continued use is hurtful or further consultation would deepen the hurt. There are place names in Queensland known to be offensive and for this reason, some names have been changed recently. It is expected that truth telling as part of the Path to Treaty process and the state-wide audit of offensive names currently underway may identify more offensive names, increasing the need for additional tools to deal more flexibly, sensitively and where appropriate promptly with these names. This is a proper purpose which is consistent with a free and democratic society.

Effects of changing or discontinuing a name

Clause 124 (new section 18A) provides that the effects of giving, changing or discontinuing a place name has no effect on a person's rights and obligations. This provision will apply both prospectively and retrospectively (clause 127, new section 23) to provide legal certainty since

a place name change is not intended to alter any rights and obligations under other laws. This is a proper purpose which is consistent with a free and democratic society.

Renaming Fraser Island to K'gari raised concerns around impacts on the validity of provisions in other legislation and the validity of documents including legal documents where the name Fraser Island is referenced. The proposed provision will ensure that documents that reference an approved name (e.g., penalty infringement notices, court documents, search warrants, criminal charges, private and commercial contracts, leases, references to places on the electoral districts map under an electoral redistribution, etc) are not rendered invalid through a name change.

(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

All limitations help to achieve the purpose of the proposed amendments which are to clarify the scope and application of the legislation, improve decision making, reduce the regulatory burden, and update the legislation to reflect technological advancements.

Consultation period and submission format

Changes to the method and timeframes for making submissions provide flexibility for place naming decisions to be made in a timelier manner. In addition, removing the requirement that submissions must be in writing removes indirect discrimination and enhances the right to freedom of expression. This makes the place naming process more inclusive.

Place name proposals exempted from publication

Broadening the criteria to dispense with the publication of a place name proposal reduces unnecessary red tape. It also provides flexibility to deal more proactively and sensitively with place names that are offensive or hurtful, reducing the risk of causing further harm to a community or part of a community.

Changes to locality boundaries

Clarifying that changes to locality boundaries are part of place naming provides certainty in the scope and application of the legislation, including ensuring that human rights considerations can be duly considered when developing and deciding such proposals.

Removing offensive and harmful names

The potential impacts on human rights of removing an offensive name with or without public consultation will vary depending on the specific circumstances (including personal experiences, cultural context, and the significance of the name). A name that is offensive or is associated with negative histories can have complex and varying effects on a person's identity or community morale. For example—

- Removing an offensive name can contribute to improved psychological well-being by reducing the emotional distress and negative self-perception associated with being identified by a derogatory term. This can positively impact self-esteem and mental health.

- Changing a name that is culturally or socially offensive can allow individuals to better connect with their heritage, culture, or community. It can foster a stronger sense of belonging and pride, helping them to maintain a positive connection with their identity. For Aboriginal people or Torres Strait Islander people, replacing an offensive or harmful name with an Indigenous name has the benefit of acknowledging and respecting their identity, experiences, and cultures.
- An offensive name can affect how others perceive and interact with an individual and potentially hinder professional and personal opportunities. Removing the name could lead to more respectful and inclusive interactions in various settings, and fairer treatment and consideration. This allows the person to form healthier relationships and connections and enables the individual to pursue their goals without facing unnecessary obstacles.
- Removing an offensive name can symbolize societal progress and a commitment to inclusivity, diversity, and equality. This can contribute to a broader cultural shift towards recognizing and addressing systemic discrimination.

At the other end of the scale, removing an offensive or harmful name can be seen to erase history and cause division within communities. Those individuals who do not share the view that the name is offensive or harmful may feel disconnected from their family, community, personal relationships, or cultural heritage or historical roots. This can potentially lead to uncertainty, feelings of loss or displacement, and thus loss of identity. This feeling may be amplified where a proposal to remove an offensive name is not published because the person's right to freedom of expression has been interfered with.

It is also noted that in some circumstances place names (despite being harmful) can provide insight into historical events that have taken place in an area and contribute to truth telling in Queensland.

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

There is not a less restrictive way to achieve the purposes of the proposed amendments. The limits on human rights are already narrowly tailored. In fact, for the proposed amendments to sections 8, 9, 10 and 11, these measures can be seen, in most instances, to have a positive effect in terms of reducing the regulatory burden and minimising further harm in respect of hurtful and harmful place names.

(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 right to freedom of expression may be limited by the reduction of the minimum timeframe for making a submission, the waivers for the non-publication of place name proposals, and the prohibition relating to the use of an unapproved name unless otherwise permitted. The latter has a similar limiting effect on property rights. There is some uncertainty about how a place

name change affects the rights and obligations of a person in so far as property rights is concerned. A person's right to privacy and reputation may be limited if their sense of place and identity is adversely affected by changes to place names (including by non-publication of place name proposals, changes to locality boundaries, the removal of offensive or harmful place, and the continuation period allowing a former name to be used as an approved name).

The extent to which the amendments limit these rights are minor and justifiable. However, place naming can range from being a simple to a complex process meaning that the size of the impacts on these human rights can also vary significantly. For this reason, important safeguards have been built in to allow the framework to be more flexible and responsive to actual needs. This further reduces the risk of the impacts on human rights increasing. The safeguards include:

- Not restricting how submissions are made, and not precluding an extension of time being given or a consultation period from being extended to give interested parties more time to make a considered submission.
- Constraining the circumstances where publication of place name proposals can be waived while enabling the exercise of discretionary powers for the chief executive to publish an exempted proposal regardless, or for the Minister to require publication of a proposal for any reason.
- Embedding the consideration of the potential effects of place name changes on human rights, including on First Nations peoples, in the process of developing and deciding a place name proposal (refer clauses 112 and 114 to 118).
- Enabling the Minister to permit a continuation period in which both the existing name and a new name may be used concurrently as approved names for a limited period, increasing the capacity to better manage the potentially significant socio-economic and the human rights effects of changing or discontinuing a place name.
- Confirming the continuity and validity of statutes and legal documents that reference a former name, minimising disruptions for anyone affected.

The Place Names Act has not been changed substantially since it commenced. The outcome is a rigid and outdated place naming process in what is now a very different operational environment that includes significant shifts in government policies and priorities, community values and expectations, business practices and technology, and changes to legislation.

Taking all the above into account, and considering the importance of achieving a more responsive, expedited and efficient place naming framework, and in particular one that supports the removal of offensive or harmful names, the limitations are fair and balanced, and the benefits outweigh the harm.

(f) <u>any other relevant factors</u>

The proposed minimum consultation period of one month is consistent with the minimum consultation periods in other Australian jurisdictions (generally either one month or 30 days compared to two months in Queensland currently).

The approach of allowing naming authorities to consider outcomes of other government or non-government processes when naming a place is not new. Jurisdictions where such provisions are legislated include Victoria, New South Wales, South Australia, New Zealand and Canada.

While the details vary, most Australian jurisdictions (other than South Australia) have policies or legislated processes in place to remove names that are offensive to sectors of the community.

Conclusion

In my opinion, the Land and Other Legislation Amendment Bill (No. 2) 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 a free and democratic society based on human dignity, equality, and freedom.

SCOTT STEWART
MINISTER FOR RESOURCES