

Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved by the Honourable Mark Bailey MP, Minister for Transport and Main Roads

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

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Mark Bailey MP, Minister for Transport and Main Roads, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Transport and Other Legislation (Road Safety, Technology and Other Matters) Amendment Bill 2020 (the Bill).

In my opinion, the amendments to be moved to the Bill are 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 Amendments

The general amendments to the *Transport Infrastructure Act 1994* (the TIA) in the Bill include providing for the Department of Transport and Main Roads (TMR) to preserve certain existing secondary legal interests in TMR's land. The general amendments to Chapter 9 of the TIA include provisions enabling certain secondary legal interests (such as easements and leases) that currently exist over land that has busway transport infrastructure constructed on it to continue when the land is declared as busway land. The general amendments also establish the busway perpetual lease, for land declared as busway land, to be included.

The proposed amendment to be moved to the Bill provides for the chief executive to instruct the registrar of titles to include subsequent parcels of land (declared as busway land) into the existing busway perpetual lease. This provision is important to streamline the administrative processes for including land into the existing busway perpetual lease for both TMR and the Department of Natural Resources, Mines and Energy.

Human Rights Issues

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

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

- Property rights (section 24 of the *Human Rights Act 2019*) (relevant to clauses 37 - 39).

If human rights may be subject to limitation if the amendment is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

(a) the nature of the right

Section 24(2) of the Human Rights Act 2019 provides that a person must not be arbitrarily deprived of the person's property. As the Transport and Public Works Committee (the Committee) noted in their Report No. 39 (the Report), "there is no definition of 'arbitrary' in the Human Rights Act 2019", but, applying a human rights meaning, "it will be construed to mean an unreasonable, unjust or disproportionate interference".

Currently, for busways, apart from legislative transport easements of support (section 28AC of the Transport Planning and Coordination Act 1994), all existing secondary interests in land declared as busway are extinguished upon a busway declaration. To reinstate these interests, the State must negotiate and prepare new agreements with the affected parties. The general amendments to the TIA provide for the beneficiaries of secondary interests to continue to benefit from their interests, unaffected by the land becoming busway land. To be clear, all functional interests (easements/leases) will continue except in the very rare situation where obsolete interests would be extinguished. The general amendments include notification provisions and, if an interest is extinguished, the holder will be entitled to fair compensation.

As the Committee noted in its examination of the busway amendments to the TIA (sections 37 to 39 of the Bill) at 2.3.2 of the Report, "stakeholders raised no issues in relation to [them]", which was subsequently followed by it not being raised in the "Compatibility with the Human Rights Act 2019" section of the Report.

The amendment is purely administrative in nature and provides for the chief executive to directly instruct the registrar of titles to include subsequent parcels of land, that have been declared busway land, into the existing busway perpetual lease.

(b) the nature of the purpose of the limitation to be imposed by the amendment if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The general amendments to the TIA will benefit secondary interest holders by preserving their interest in land, unaffected by the land becoming busway land. In the rare occurrence that an interest is extinguished, the interest holder will be entitled to fair compensation.

The amendment, providing for the chief executive to instruct the registrar of titles to include subsequent parcels of land declared as busway land into the existing busway perpetual lease, does not in any way alter these principles and does not give rise to any possible limitation of human rights.

- (c) the relationship between the limitation to be imposed by the amendment if enacted, and its purpose, including whether the limitation helps to achieve the purpose

As outlined above, the general amendments to the TIA will benefit secondary interest holders by preserving their interest in land, unaffected by the land becoming busway land. In the rare occurrence that an interest is extinguished, the interest holder will be entitled to fair compensation.

The amendment, providing for the chief executive to instruct the registrar of titles to include subsequent parcels of land declared as busway land into the existing busway perpetual lease, does not in any way alter these principles and does not give rise to any possible limitation of human rights.

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

The proposed amendment is the least restrictive and most reasonable way of achieving the purpose as stated above.

The general amendments to the TIA will benefit secondary interest holders by preserving their interest in land, unaffected by the land becoming busway land. All functional interests (easements/leases) will continue except in the very rare situation where obsolete interests would be extinguished. The general amendments include notification provisions and, if an interest is extinguished, the holder will be entitled to fair compensation.

The amendment, providing for the chief executive to instruct the registrar of titles to include subsequent parcels of land declared as busway land into the existing busway perpetual lease, does not in any way alter these principles and does not give rise to any possible limitation of human rights.

- (e) the balance between the importance of the purpose of the amendment, 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 limitation of the general amendments to the TIA is demonstrably justified because the limitations on an individual's right to property is only in very rare situations. For the most part, it is outweighed by the benefit to secondary interest holders by preserving their interest in land, unaffected by the land becoming busway land.

The amendment, providing for the chief executive to instruct the registrar of titles to include subsequent parcels of land declared as busway land into the existing busway perpetual lease, does not in any way alter these principles and does not give rise to any possible limitation of human rights.

Conclusion

In my opinion, the amendment to be moved during consideration in detail is compatible with human rights under the *Human Rights Act 2019* as it does not arbitrarily deprive an individual's right of their property (s24(2)) and because the general amendments in the Bill limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

HONOURABLE MARK BAILEY MP
MINISTER FOR TRANSPORT AND MAIN ROADS

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