

Agriculture and Other Legislation Amendment Bill 2019

Statement of Compatibility

FOR

Amendments during consideration in detail moved by the Honourable Mark Furner MP

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

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, Mark Furner, Minister for Agricultural Industry Development and Fisheries, make this statement of compatibility with respect to the amendments to be moved in consideration in detail (ACiDs) for the Agriculture and Other Legislation Amendment Bill 2019 (the Bill).

In my opinion, the amendments to be moved during consideration in details for the Bill are compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

The Bill is an ‘omnibus’ Bill which addresses a number of impediments, identified over the past several years, to the efficient and effective regulation of agriculture; animal management and welfare; forestry; and fisheries. For convenience, the Bill also addresses two unrelated matters - concerning the Racing Integrity Commission and threatened species classification. The Bill also contains a number of specific miscellaneous objectives, including addressing the risks posed by certain protest actions on farming land, or which relate to improving animal welfare.

This Statement of Compatibility relates to the proposed ACiDs. The two most significant amendments contained in the ACiDs, forming the basis for this statement, are the provisions, which provide for the repeal of the *Queensland Agricultural Training Colleges Act 2005* (QATC Act) and the provisions which amend clause 132 of the Bill, which relates the amendment of the offence of unlawful assembly offence within the *Summary Offences Act 2005*.

Human Rights Issues

Repeal of the *Queensland Agricultural Training Colleges Act 2005*

Clause 5 of the ACiDs provides for the repeal of the QATC Act. The provisions also make the necessary provisions for its assets, liabilities and other consequential matters.

The Clause achieves this by:

- repealing the QATC Act and providing transitional arrangements for relevant matters including:
 - transfer of QATC assets to the State so that these assets can be re-purposed as appropriate;
 - transfer of QATC liabilities, records and other obligations to the State;
 - continuation of agreements made by QATC, such as agreements made pursuant to the transition arrangements;
 - agreed arrangements regarding the staff transition;
 - consequential amendments to other legislation in Schedule.

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

In my opinion, the human right under the HR Act that are relevant to this amendment is:

- Right to education (section 36).

Amendment 5 and 6 of the ACiDs insert clauses 128A and 128B into the Bill to provide for the repeal, savings and transitional provisions for the QATC Act. The practical effect of this is that the QATC board will be dissolved and the agricultural training colleges operating under the Act will cease operation.

The repeal of the Act potentially limits the second limb of this human right discussed below, as the repeal of the Act will result in the dissolution of the QATC as an educational entity and potentially reduce access to vocational education of this kind.

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

(a) the nature of the right

The right to education has two limbs, the first to provide the right of every child to primary and secondary education appropriate to the child's needs. The second limb provides the right to have access, based on a person's abilities, to further vocational education and training that is equally accessible to all.

The right encompasses three key elements:

- availability of educational institutions and programs in sufficient quantity;
- accessibility of educational institutions, including physical accessibility of school locations; and
- acceptability of the educational equality.

This clause is modelled on article 13 of the International Covenant on Economic and Social Rights. The provision is intended to be consistent with *Education (General Provisions) Act 2006* and to provide rights in respect of the aspects of education service delivery for which the State is responsible.

- (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 limitation on the right to education in this provision relates to the repeal of the Act which dissolves the QATC as an educational entity. The closure of the QATC colleges on 31 December 2019 related to this repeal was administratively undertaken. This amendment potentially limits the second limb of the right, as the dissolution of QATC as a training entity will remove a vocational education provider and, therefore, reduce the accessibility of training of this kind in certain locations.

The purpose of the limitation is to address the financial viability concerns regarding the ongoing operation of the colleges. The evidence that supports the purpose of the limitation was a review undertaken of education and training in Central and Western Queensland, which identified that the QATC's residential-based training model was no longer viable, as shown by years of declining enrolments, under-utilised facilities and mounting financial losses, notwithstanding substantial Government support. This purpose is one that has a legitimate basis in a modern society, where there are competing demands for the resources of Government. The limitations on this right are, therefore, consistent with a free and democratic society based on human dignity, equality and freedom.

- (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

Limiting the right to education will allow the colleges to be closed, ending an educational institution that is no longer financially viable or reflective of the demands of the market. This limitation on the right to education, therefore, directly helps to achieve the purpose.

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

The limitation, resulting from the repeal of the QATC Act, is the only way to achieve the purpose of the amendment. The review of the colleges concluded that there was no ability to turn the situation around due to the changing nature of training requirements for agricultural industries, including the increasingly competitive nature of the training market. For this reason, there are no other alternatives which achieve the same purpose that would have a lesser impact on the right.

It is further evident from the outcomes of the review that the low demand for education of this kind in the format of a residential college does not justify the continued existence of the colleges. In this sense, the effect in limiting this right is already minimal as those potentially affected are presently pursuing alternative vocational education. Relatedly, the decline in enrolments to the training colleges reflects that there are viable vocational education alternatives for students in the absence of the QATC.

The limitation on this right only extends to the closure of colleges operated under the QATC Act, and other, alternative vocational education providers such as TAFES will still exist to services the educational demands. Other training providers are available in the region, and new operators are being engaged to re-start the provision of education and training services using the former QATC facilities. It is expected that these new providers will be more viable, providing a broader range of courses in a more flexible manner.

To mitigate the impact on the right to current students, all students who have not previously completed their studies have been transferred to another education provider at no cost to the students. Additionally, the department engaged with educational providers and stakeholders to identify and address any training gaps arising from the closure of the QATC.

(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 on the right to education in this provision relates to the repeal of the Act, which dissolves the QATC as an educational entity. The closure of the QATC colleges on 31 December 2019, related to this repeal, was administratively undertaken. However, the permanent dissolution of QATC associated with the repeal of the Act may reduce access to vocational education of this kind and may limit this right.

Conversely, the purpose of these amendments to repeal the QATC Act and to dissolve the colleges reflects the practical reality that the QATC education model was not financially viable and that the colleges were undersubscribed in these communities as an education provider. The ongoing operation of the colleges would only be possible with significant Government support, which, in itself, would be an impost on the wider society.

For this reason, the limit on this right involves a balance between the rights of the limited number of students affected against the broader policy purpose relating to the financial viability of the colleges and the ongoing financial burden the colleges present to the State and its citizens. Overall, when balanced against each other, there is greater overall benefit in achieving the purpose of the amendment at the expense of a small reduction in this right. On this basis, it is reasonably and demonstrably justified in the circumstance.

Amendment of Clause 132 (Amendment of s 10A (Unlawful Assembly))

Clause 132, amends section 10A of the *Summary Offences Act 2005* to provide (broadly) that a gathering of three or more people on land used for specified purposes is unlawful if the conduct of the gathered persons, taken together, would cause a person in the vicinity to believe, on reasonable grounds, that the conduct is likely to cause economic loss to a business conducted on the land or poses a risk to the safety of any person or food, or a risk to animal welfare or biosecurity.

The objective of the amendments to clause 132 is to ensure section 10A of the *Summary Offences Act 2005*, as amended by clause 132, is not broader than necessary to achieve its intent, including to ensure it does not extend beyond conduct which is already unlawful and

which actually disrupts a business or poses a risk to the safety of any person or food, or a risk to animal welfare or biosecurity.

The ACiDs achieve their policy objective by amending clause 132 to impose a more direct requirement that the conduct:

- unlawfully happens on, or unlawfully affects, the land; or
- poses a risk to the safety of a person or food, or a risk to animal welfare or biosecurity or is likely to directly disrupt the operation of a business operated on the land.

The specifics amendments are:

- amendment 6, which amends clause 132 to remove the test that “if the conduct happens on land in 13(1) that conduct... would cause a person in the vicinity to believe, on reasonable grounds, that the conduct”... would pose a risk to the health and safety of a person; pose a risk to the welfare of an animal; pose a biosecurity risk; or is likely to disrupt business carried out on the land. The land referred to in s13 (1) includes land used for agricultural activity, an animal husbandry activity, a holding facility, a food production facility, or land used for the exhibition of animals (agricultural land). In this case, amendment 6 narrows the offence so that it is not subject to what a person in the vicinity might reasonably believe, but rather, what the conduct actually achieves; and
- amendment 7 which replaces the words “cause economic loss to” in the offence of unlawful assembly to “directly disrupt the operation of” to narrow the offence to conduct that only occurs direct and not potentially indirect economic loss.

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

In my opinion, the human rights under the HR Act that are relevant to this amendment are:

- Freedom of expression (section 21); and
- Peaceful assembly and freedom of association (section 22).

Amendments 6 and 7 of the ACiDs amend the offence of unlawful assembly which is being extended by Clause 132. The amendments being proposed by the ACiDs specifically provide that, if the conduct of the three or more people taken together unlawfully happens on, or unlawfully affects, agricultural land, it will be an unlawful assembly if the conduct directly disrupts the operation of a business carried out on the land.

The amendment limits the right to peaceful assembly and the freedom of association as it may undermine a person’s ability to exchange, give or receive information, to express views or to conduct a protest or demonstration on this agricultural land. Equally, this amendment may limit the ability of persons to join others to formally pursue a common interest on this land in association with one another.

The amendments potentially limit the right to freedom of expression, as they limit the ability of people to seek, receive and express information and ideas on agricultural land.

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

(a) the nature of the right

The right to peaceful assembly upholds the right of individuals to gather in order to exchange, give or receive information, to express views or to conduct a protest or demonstration. The right is expressly limited to peaceful assemblies that do not involve violence. It covers both the preparing for, and conducting of, the assembly by the organisers and the participation in the assembly. The right to peaceful assembly is modelled on article 21 of the International Covenant on Civil and Political Rights (ICCPR). It covers both the preparing for, and conducting of, the assembly by the organisers and the participation in the assembly. Not every assembly of individuals is protected by this right. In international law, ‘assembly’ in this context means the intentional, temporary gathering of several persons for a specific purpose.

The freedom of association protects the rights of individuals to join together to formally pursue a common interest - for example, political groups, sporting groups and trade unions. It includes the freedom to choose between existing organisations or to form new ones. Under international law, the justifications for limiting the freedom of association must be based on real and not hypothetical concerns. The right to freedom of association is modelled on article 22 of the ICCPR. While it is important for political purposes and trade unions, it extends to all forms of association with others. It includes the freedom to choose between existing organisations and form new ones.

The right to freedom of expression protects the right of all persons to hold an opinion without interference and the right of all persons to seek, receive and express information and ideas, including verbal and non-verbal communication. This right is modelled on article 19 of the ICCPR. Freedom of expression covers both the right to hold and express an opinion, through speech, art, writing (or other forms of expression) and to seek out and receive the expressions of others’ opinions. The right is central to the fulfilment of other rights such as cultural rights and freedom of thought, conscience and religion.

(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 limitation on the rights to peaceful assembly, freedom of association, and freedom of expression concern the limitation on the right of groups to freely associate, assemble, and express information and ideas on agricultural land if the conduct might disrupt the operation of a business carried out on this land.

The purpose of the limitation is to address the risks posed by groups that have been entering this land. The groups, upon entry, may directly disrupt a business carried out on the land, as the amendment specifically relates to, but may also pose risks to, human safety, animal welfare, biosecurity and food safety. These other concerns are captured by clause 132 but are not amended by the ACiDs.

Though the amendments legislate against the type of conduct the rights would otherwise seek to preserve, this limitation will only apply on private land and relate to particular conduct. The

limitation on the right is only associated with actions that may cause harm and is, therefore, no wider than necessary to achieve its purpose.

The purpose of the limitation, from ensuring businesses can operate without disruption to ensuring the safety of humans and food, is consistent with a free and democratic society based on human dignity, equality and freedom.

(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

Limiting the rights to peaceful assembly, freedom of association, and freedom of expression will minimise the economic impacts of unauthorised entry by groups on agricultural land, as well as other adverse effects related to human safety, biosecurity, animal welfare and food safety.

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

The limitation on the rights is the least restrictive way to address the specific adverse actions associated with the assembly of people on agricultural land that disrupt business or result in other outcomes. Current laws do not address the behaviour of groups once they enter the land or the economic and safety risks associated with their actions once on the land.

For this reason, the amendment to unlawful assembly presents the most targeted and least restrictive approach to dealing with these actions. The extension of the offence only relates to land where the risks posed by unlawful assembly are exacerbated and only relates to adverse actions that have a real, and not remote, chance of occurring because of the action. Similarly, the intention of the specific amendments in the ACiDs to clause 132 further narrows the offence to ensure that the conduct being regulated is no wider than necessary to achieve the intent. For example, the substitution of the words “cause economic loss to” in the offence of unlawful assembly to “directly disrupt the operation of” will ensure that this offence is narrowed to avoid indirect economic loss being captured by this offence.

It is an important factor to note that the land to which the offence relates is private land, and that it is presently unlawfully to enter, or remain in, such land. For this reason, it is presently unlawful for assemblies and associations of this kind to occur on the land that is the subject to protest action. On this basis, the amendments only seek to further regulate that which is already unlawful.

(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 extension of the offence of unlawful assembly to conduct on agricultural land that, among other results, directly disrupts the business operating on that land limits the right of peaceful assembly, freedom of association, and freedom of expression for those who engage in this conduct. This amendment, therefore, reduces these persons’ ability to assemble or associate on this land to potentially promote or protest about a legitimate cause or concern.

Balanced against the limitation of these rights for individuals in these groups is a number of legitimate and competing concerns that emanate from certain protest actions. These include more private concerns like the disruption of the business activities to the business operating on the land or the potential protection of families and children that could be harmed as a result of the protest action. However, the limitation of the right through the amendments also protects the broader public interest by ensuring that animal welfare, biosecurity and food safety are not compromised by the protest action. When the limitation of the right is balanced against the myriad of public and private benefits from regulating this activity, it is my opinion that the amendment is reasonably and demonstrably justified in the circumstance.

Conclusion

In my opinion, the ACiDs to the Agriculture and Other Legislation Amendment Bill 2019 are compatible with human rights under the *Human Rights Act 2019* because they limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

MARK FURNER MP

MINISTER FOR AGRICULTURAL INDUSTRY DEVELOPMENT AND FISHERIES

© The State of Queensland 2020