

Statement of Compatibility with Human Rights

Parks and Wildlife Commission Amendment Bill 2017

This Bill is compatible with the human rights as defined in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview of the Bill

The *Parks and Wildlife Commission Act* (the Act) establishes a Commission to 'establish and manage, or assist in the management of, parks, reserves, sanctuaries and other land, to encourage the protection, conservation and sustainable use of wildlife, to a establish land-holding corporation (the Conservation Land Corporation) (the Corporation) in connection with those purposes, and for related purposes.

The purpose of the Parks and Wildlife Commission Amendment Bill 2017 (the Bill) is to make the requirement for the Minister to establish an advisory council for the Commission discretionary, to replace the offence at section 36 of the Act with a new offence for the unauthorised disclosure of confidential information, to replace the offence at section 37 of the Act with a requirement for members of the Corporation to disclose personal interests in matters being considered, or about to be considered by the Corporation and to prescribe the effect of a member disclosing a personal interest, to apply the principles of criminal responsibility in Part IIAA of the Criminal Code to offences in the Act, and to modernise the language and terminology used in the Act.

Human rights implications

The Bill engages the right conferred under Article 14(2) of the International Covenant on Civil and Political Rights that everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law.

Strict liability

Clause 6 of the Bill replaces the offence at section 36 of the Act with a new offence. The new offence prescribes strict liability for one of its physical elements.

Section 43AN of the Criminal Code states that where strict liability is prescribed for an offence or an element of an offence, there are no fault elements for the offence or the physical element, and the defence of mistake of fact under section 43AX is available.

Strict liability offences engage the presumption of innocence because a person can be found guilty of an offence without the need to prove fault or 'a guilty mind' for the offence or for an element of the offence.

New section 36(2) states that strict liability applies to the physical element in new section 36(1)(a). That physical element is that the member of the Conservation Land Corporation obtains information in the course of performing duties as a member.

Strict liability is used in these circumstances because it can be reasonably expected that a member of the Conservation Land Corporation is aware of the fact that they are obtaining information in the course of performing their duties as a member. The objective of the offence is to ensure that members of the Conservation Land Corporation do not disclose confidential information without authorisation.

The offence at new section 36 is not wholly strict liability, as strict liability applies to only one physical element of the offence. Additionally, subsection 36(3) provides that subsection (1) does not apply where the person discloses the information for the administration of the Act, or with the consent of the person to whom the information relates, or for legal proceedings arising out of the operation of the Act, or if the information is otherwise available to the public. Section 43BE of the Criminal Code also provides that a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law.

Conclusion

This Bill does interfere with the presumption of innocence but in a reasonable and proportionate manner to achieve a legitimate outcome.

The Bill is, therefore, compatible with human rights.