

Statement of Compatibility with Human Rights

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

Overview of the Bill

The purpose of the Pastoral Land Legislation Amendment Bill 2017 (the Bill) is to amend the *Pastoral Land Act* and *Pastoral Land Regulations* to:

- (a) implement a new methodology to set pastoral lease rents based on the capacity of the lease to support livestock (using estimated carrying capacity);
- (b) rectify an anomaly regarding penalty for late payment of pastoral rent;
- (c) enable the grant of subleases for non-pastoral purposes;
- (d) refine consent to transfer provisions to capture share transfers;
- (e) increase the number of members on the Pastoral Land Board; and
- (f) align payment periods for pastoral lease rent with existing Government policy.

The Bill also considers consequential amendments to:

- (g) align offence provisions with requirements of Part IIAA of the Criminal Code.

Human rights implications

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

Strict liability

Some offences in the Bill are strict liability offences or prescribe strict liability for certain physical elements in an offence. 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 reasonable 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 for the prosecution to prove fault or a 'guilty mind' for the offence or an element of the offence.

The following are strict liability offences:

- section 38(5) – interference with Aboriginal rights reserved under a pastoral lease;
- section 73(1A) – pastoral lessee failing to comply with a reasonable requirement in a notice from the Pastoral Land Board regarding the control of declared feral animals;
- section 75(2) – a person removing, defacing or damaging a marker at a monitoring site;
- section 82(2) – a pastoral lessee not complying with a direction from the Pastoral Land Board to revoke or amend a notice temporarily closing public access of an access route; and

- section 83(3) – failing to comply with a declaration or condition of a declaration made by the Pastoral Land Board regarding the closure of access for rehabilitation or other reason.

In the main these offences apply to a pastoral lessee or other person who would reasonably be expected to understand the conditions and obligations of a pastoral lease or a notice from the Pastoral Land Board. The offences are not punishable by imprisonment and a defence of reasonable excuse applies to each of them. What is a reasonable excuse will be up to a court to determine in the circumstances of the case. The offences are regulatory in nature and act as a deterrent to behaviour that would compromise the appropriate management of pastoral leases.

A number of offences have one element to which strict liability applies. The elements are:

- a member of the Pastoral Land Board has obtained information in the course of the member's duties as a member (section 22(1));
- a person has received a notice from the Minister (section 35(4) and 40(7));
- the Minister has not consented to a lease transaction (section 67(1));
- an area is a 'fenced reference area' (section 74) or an 'access route' (section 80);
- a pastoral lessee has failed to advise the Pastoral Land Board of damage to a fence that the lessee knows about (section 74(6)); and
- a pastoral lessee received a written notice from the Pastoral Land Board (section 89G(2)).

The relevant conduct and circumstances in which offences under these provisions could be committed require the prosecution to prove fault. The elements to which strict liability attach are matters that are either within or ought to be within the knowledge of a defendant. The offences are regulatory in nature and are not punishable by imprisonment. A defence of reasonable excuse applies to the offences under sections 35(4), 40(7), 74(6) and 89G(2).

Conclusion

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

The Bill is therefore compatible with human rights.