

Save Our Sharks Bill 2014

Sponsor: Senator Siewert

Introduced: Senate, 25 March 2014

Purpose

1.118 The Save Our Sharks Bill 2014 (the bill) seeks to void the 10 January 2014 exemption granted under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999*, allowing the deployment of baited drum to catch sharks in Western Australia. The bill would also ensure that no similar declaration or exemption will have any effect.

Committee view on compatibility

Right to life

1.119 The right to life is contained in article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) and article 1 of the Second Optional Protocol to ICCPR. The right to life entails the right not to be deprived of life arbitrarily or unlawfully by the country or its agents. The right to life includes a duty on governments to take appropriate steps to protect the right to life of those within its jurisdiction.¹ This may include taking reasonable and appropriate measures to prevent or minimise identified and avoidable risks to the life of members of the community.

1.120 Under international human rights law, the right to life must be respected at all times.

Impact of voiding exemption

1.121 The statement of compatibility for the bill states that it does not engage any of the applicable rights or freedoms and is therefore compatible with human rights as it does not raise any human rights issues.²

1.122 However, the committee notes that the Minister for the Environment provided a statement of reasons in granting the exemption, in which the basis for the

1 UN Human Rights Committee, General Comment 6, Article 6 (right to life) (1982), paragraph 5.

2 Explanatory memorandum (EM), p. 3.

exemption was identified as 'significant increases in shark fatalities in Western Australia for the last three years'.³ The minister's statement noted:

The increase in shark strikes in Western Australia waters to well above historic norms has drawn national attention to the matter of public safety of water activities. The approaches and lessons learnt from the Western Australian trial will inform the mitigation approaches of other governments. The matter of public safety is therefore a matter of national interest.⁴

1.123 The minister further noted that the approach proposed was 'targeted at large sharks that are most likely to fatally injure humans in an unprovoked strike'.⁵

1.124 While the committee is not able to assess the likely efficacy of the measures permitted under the exemption granted by the minister, it notes that the stated reason for the exemption—to allow measures intended to reduce shark strikes and preserve lives—defines the measure as engaging the right to life.

1.125 The committee therefore requests Senator Siewert's advice as to the compatibility of the bill with the right to life.

Right to work and rights at work

1.126 The right to work and rights in work is contained in articles 6(1), 7 and 8(1)(a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶

1.127 The UN Committee on Economic Social and Cultural Rights has stated that the right to work affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly. Under article 2(1) of ICESCR, countries are obliged to take steps, to the maximum of available resources, to progressively achieve the full realisation of this

3 Department of the Environment, 'Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*' (15 January 2014).

4 Department of the Environment, 'Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*' (15 January 2014), paragraph 13.

5 Department of the Environment, 'Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*' (15 January 2014), paragraph 16.

6 Related provisions relating to such rights for specific groups are also contained in the International Convention on the Elimination of All Forms of Racial Discrimination (articles 5(e)(i) and (ii)), the Convention on the Elimination of All Forms of Discrimination against Women ((articles 11 and 14(2)(e)), the Convention on the Rights of the Child (article 32) and the Convention on the Rights of Persons with Disabilities (article 27).

right. A number of aspects of the rights, including but not limited to the right to non-discrimination in the enjoyment of ICESCR rights, are subject to an obligation of immediate implementation.

1.128 This right may be subject only to such limitations as are determined by law and compatible with the nature of the right, and solely for the purpose of promoting the general welfare in a democratic society. Such limitations must be proportional, and must be the least restrictive alternative where several types of limitations are available.

Economic impact of measure

1.129 As noted above, the statement of compatibility for the bill states that it does not engage any of the applicable rights or freedoms and is therefore compatible with human rights as it does not raise any human rights issues.⁷

1.130 However, the committee notes that the minister's statement of reasons for granting the exemption identified, in addition to the preservation of life, economic factors as a basis for his decision, broadly relating to the impact of increased shark strikes on the tourism industry. While the committee is not able to assess the likely impact of the measures permitted under the exemption granted by the minister, it notes that this additional stated reason for the exemption defines the measure as engaging the right to work and rights at work.

1.131 The committee therefore requests Senator Siewert's advice as to the compatibility of the bill with the right to work and rights at work.

7 EM, p. 3.