

Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023

Statement of Compatibility

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 Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement make this statement of compatibility with respect to the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023.

In my opinion, the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023 is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Pipelines will be essential for hydrogen production and export, as they will facilitate the transportation of hydrogen and other gases to markets or large facilities. For example, transporting hydrogen from a production facility to an export terminal.

In Queensland, the *Gas Supply Act 2003* (GS Act) and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) provide the regulatory frameworks for proponents seeking to transport petroleum and gas through pipelines.

The Bill is intended to provide a clear regulatory approval process to authorise the construction and operation of pipelines for hydrogen, hydrogen blends and hydrogen carriers, as well as other gases in Queensland. Hydrogen carriers could include ammonia, methanol, methylcyclohexane (MCH), dimethyl-ether and toluene.

The Bill achieves this objective by amending:

- the GS Act to expand its jurisdiction to hydrogen, hydrogen blends, biomethane and other gases; and
- the P&G Act to provide a clear and effective regulatory pathway for a proponent to apply for a pipeline licence for the transmission of hydrogen and other hydrogen carriers.

These amendments to the GS Act and the P&G Act will also provide consistency with changes being progressed nationally to the National Gas Law and the National Energy Retail Law to hydrogen and other renewable gases.

Human Rights Issues

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

I have considered each of the rights protected by Part 2 of the HR Act. In my opinion, the amendments to the GS Act and P&G Act potentially engage the following human rights by

expanding the existing pipeline licencing and safety framework to hydrogen, other renewable gases and other hydrogen carriers:

- Right to life (section 16 of the HR Act);
- Freedom of movement (section 19 of the HR Act);
- Property rights (section 24 of the HR Act); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28 of the HR Act).

(a) the nature of the rights

Section 16 of the HR Act recognises that every person has the right to life and has the right not to be arbitrarily deprived of life. The right to life includes an obligation on the State to take appropriate steps to protect the lives of individuals, this includes a positive duty on government to protect people from real and immediate risks to life.

Section 19 of the HR Act recognises the right of every person lawfully within Queensland to move freely within Queensland and to enter and leave it, and to choose freely where to live. The underlying value of the right to freedom, which is a necessary precondition for a free and democratic society and the right serves to protect individuals' liberty to choose where they live and travel within the State.

Section 24 of the HR Act protects the right of all persons to own property (alone or with others) and provides that people have a right to not be arbitrarily deprived of their property. This right does not provide a right to compensation.

Section 28 of the HR Act protects the right of Aboriginal peoples and Torres Strait Islander peoples to freely practise their culture, and provides that they must not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment.

These rights are broad in their application and the existing regulatory framework under the GS Act and P&G Act necessarily engages these rights in circumstances where construction of a pipeline is authorised under either Act. This is because the construction and operation of a pipeline may temporarily or permanently restrict a person from accessing or enjoying the use of land on which the pipeline is constructed.

The proposed amendments provide for safety considerations to be undertaken through the licensing process, including the requirement for safety to be a mandatory consideration that the Minister must take into account before granting a pipeline licence. These amendments promote the human right to life (rather than limit it) by enhancing safety to workers and the community and preventing serious risk of harm that can be caused by inadequate safety measures being adopted.

Whilst the proposed amendments enhance the right to life, the expansion of these frameworks to authorise hydrogen and other gas pipelines could limit a person's right to freedom of movement, property rights and Aboriginal peoples and Torres Strait Islander peoples' cultural rights. However, any limitation on these rights is reasonable and demonstrably justifiable as set out below.

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

Pipelines will be essential for hydrogen production and export, as they will facilitate the transportation of hydrogen and other gases to markets or large facilities. The amendments in the Bill seek to provide a clear regulatory pathway for the transportation and use of hydrogen and hydrogen carriers which could include substances such as ammonia, methanol, methylcyclohexane (MCH), dimethyl-ether and toluene in pipelines.

The Bill achieves this objective by extending the jurisdiction of the GS Act from processed natural gas to hydrogen, hydrogen blends, biomethane and other renewable gases. The Bill also extends the existing petroleum and gas pipeline licensing and safety framework in the P&G Act to allow for hydrogen and hydrogen carriers.

Although the grant of a distribution authority under the GS Act and the grant of petroleum pipeline licence (PPL) under the P&G Act do not create an interest in land, the construction and operation of a pipeline under either Act may temporarily or permanently limit the access and enjoyment of the land. This has the potential to limit a person's right to freedom of movement, property rights and Aboriginal peoples and Torres Strait Islander peoples' cultural rights.

Restricting access to land is necessary to ensure the reliable and secure operation of the pipeline by giving holders rights to access land to (among other things) construct and maintain the safe, continued and optimal operation of the pipeline.

Distribution pipelines under the GS Act are commonly constructed on public land, such as under roads. If a distribution authority holder proposed to construct a new distribution pipeline across private land, the holder would need to negotiate with the owner of that land to obtain an easement or other interest in the land. This likely means that it would not be feasible for a distribution authority holder to construct distribution pipelines across a large number of privately owned parcels of land.

Under the P&G Act, where a PPL holder is not the owner of the land, the legislative framework balances the interests of the PPL holder and landowners and native title holders through easements, written agreements or a Part 5 permission. These allow a PPL holder to construct and operate a pipeline in an optimal and secure fashion while minimising risk to human health and safety. On the other hand, landowners and native title holders are able to be compensated in return for allowing the PPL holder to access and restrict movement across the area of the pipeline licence.

The purpose of the limitation is to facilitate a hydrogen industry in Queensland. Globally, hydrogen is seen as a key ingredient for countries to meet decarbonisation targets, and represents a significant economic opportunity for the State. Queensland has the potential to become one of the world's largest producers and exporters of renewable hydrogen due to the State's abundant wind and solar resources, and the industry has the potential to contribute to the state's renewable energy targets of 70% by 2032 and 80% by 2035, creating sustainable jobs in regions.

If the purpose of the Bill is not achieved, the hydrogen industry in Queensland could be at risk of not developing and efforts to decarbonise could be undermined. Economic and employment benefits – particularly in Queensland’s regions – could also be at risk. The Bill will assist proponents to secure the financial support and investment required to commence projects.

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

The potential limitations on a person’s right to freedom of movement, property rights, and Aboriginal peoples and Torres Strait Islander peoples’ cultural rights in this manner achieves the purpose of facilitating the emerging hydrogen industry in Queensland.

The GS Act and the P&G Act currently provide the regulatory frameworks for proponents seeking to transport petroleum and gas through pipelines. In general terms, the GS Act regulates distribution pipelines for the supply of processed natural gas to customers, and the P&G Act regulates transmission pipelines which allow the transportation of gases from a point of origin to market. The purpose of the Bill is to extend these frameworks to hydrogen, hydrogen blends and other gases.

An appropriate regulatory framework to oversee the development and safe construction of pipelines for hydrogen is critical to ensuring community safety, while also providing certainty to industry to invest in hydrogen projects. To achieve this, the Bill proposes to expand the existing GS Act and P&G Act frameworks to authorise hydrogen, hydrogen blends and other gases transportation in pipelines.

The limitation on the identified human rights is necessary to ensure the reliable and secure operation of all pipelines by giving distribution authority holders under the GS Act the right to transport gases and connect customers, as well as allow PPL holders under the P&G Act rights to access land to (among other things) maintain the safe, continued and optimal operation of the pipeline.

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

No suitable alternatives were identified that would achieve the policy objectives of extending the existing processed natural gas regulatory framework in the GS Act to hydrogen and other renewable gases, and extending the existing petroleum and gas licensing and safety framework in the P&G Act to hydrogen pipelines. These amendments are critical to enable the safe transportation of hydrogen and renewable gases and development of Queensland’s hydrogen industry.

- (e) the balance between the importance of the purpose of the Bill, 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 potential limitation to freedom of movement, property rights, and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples is balanced by the benefits of extending the existing distribution authority framework in the GS Act and the petroleum and gas licensing pathway in the P&G Act to hydrogen pipelines. The Bill will support the development of Queensland’s hydrogen industry and assist with local and global decarbonisation.

The extension of the GS Act and P&G Act frameworks for the construction and operation of hydrogen pipelines in Queensland will provide a clear regulatory pathway for industry. This will also ensure that pipelines are managed in a safe and competent manner that enhances the right to life, and outweighs any potential limitations on the other human rights identified in this statement of compatibility.

Additionally, under the GS Act, distribution pipelines are commonly constructed on public land. With respect to private land, the distribution authority holder would need to negotiate with the owner of that land to obtain an easement or other interest in the land. As detailed above, this likely means that it would not be feasible for a distribution authority holder to construct distribution pipelines across a large number of privately owned parcels of land.

Furthermore, before entering land to construct or operate a pipeline under the P&G Act, the proponent must obtain pipeline land within the area of the licence. This generally requires the proponent to either own the land, or have obtained an easement over the land or written permission from the owner or any native title party. Landowners are able to be compensated in return for allowing the PPL holder access to land, and for the restriction on the use of their property in the area of any PPL. In limited circumstances, where agreement cannot be reached, the Minister administering the P&G Act can approve temporary access to construct and operate the pipeline for up to nine months and can also compulsorily acquire land for these purposes. These requirements also apply where native title exists in the area. Compensation is paid to the landowner or native title party if resumption occurs.

(f) any other relevant factors

The holder of a distribution authority under the GS Act or PPL under the P&G Act is subject to the ‘duty of care’ provisions within the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*. These Acts require the holder to take all reasonable care and practicable measures to ensure the activity does not harm Aboriginal and Torres Strait Islander cultural heritage. This goes towards safeguarding the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.

Conclusion

In my opinion, the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.

THE HONOURABLE MICK DE BRENNI MP
MINISTER FOR ENERGY, RENEWABLES AND HYDROGEN AND MINISTER FOR
PUBLIC WORKS AND PROCUREMENT