

Petroleum and Gas (Safety) Amendment Regulation (No. 2) 2020

Human Rights Certificate

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

In accordance with section 41 of the *Human Rights Act 2019*, I, Dr Anthony Lynham MP, Minister for Natural Resources Mines and Energy provide this human rights certificate with respect to the Petroleum and Gas (Safety) Amendment Regulation (No. 2) 2020 made under the *Petroleum and Gas (Production and Safety) Act 2004*.

In my opinion, the Petroleum and Gas (Safety) Amendment Regulation (No. 2) 2020 (Amendment Regulation), as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The approval of gas devices is a standard requirement of Australian and international safety regulators. In Queensland, under section 731AA of the *Petroleum and Gas (Production and Safety) Act 2004* (the PG Act) a holder of a gas device approval authority (GDAA) may approve gas devices for supply, installation or use. The approval or certification of gas devices helps achieve the safety outcome of ensuring risks associated with flammable, explosive and toxic gas during the operation of devices are controlled and do not cause harm to workers or consumers.

The *Land, Explosives and Other Legislation Amendment Act 2019* (LEOLA Act) amends the PG Act to introduce a statutory framework for the appointment and operation of GDAA holders. Amendments to the PG Act made by the LEOLA Act are to commence simultaneously with GDAA related amendments in the the Amendment Regulation. Amendments made to the Petroleum and Gas (Safety) Regulation 2018 by the Amendment Regulation support the introduction of statutory processes for appointing and conditioning GDAA holders.

Reliance on administrative arrangements has resulted in unclear expectations and uncertainty and there have been challenges in relation to appointment expectations and dealing with sub-standard performance of approving authorities. A transparent and accountable process to appoint and condition approving authorities achieves the safety outcome in the most efficient way as it provides clarity and certainty for gas industry businesses including certification bodies, approval authorities, manufacturers, suppliers and users of gas devices and regulators.

The LEOLA Act amendments will ensure transparency and accountability for appointment and conditioning processes for GDAA holders by providing:

- statutory requirements for qualifications or experience for applicants which trigger internal and external review processes under the PG Act where an application is refused or conditions are imposed; and

- a statutory obligation making it an offence not to comply with conditions for holding a GDAA which triggers a range of non-compliance actions under the PG Act.

The Amendment Regulation prescribes application requirements and conditions for GDAA holders, rounding out a robust regulatory framework to underpin current administrative process and balances the interests of GDAA holders and regulator by prescribing:

- qualifications and minimum experience requirements and additional suitable person considerations for GDAA applicants, with further requirements and supporting information to be included in the *Gas Device Approval Authorities – Requirements document* (Requirements document); and
- general conditions for holding a GDAA including an obligation to comply with conduct and technical requirements in the *Queensland Code of Practice – gas device approval authority holders* (code of practice).

The Amendment Regulation adds two provisions to the suitable person considerations established in the PG Act through the LEOLA Act amendments. Firstly, a consideration related to the cancellation or refusal of equivalent authorities for the applicant by other Australian and New Zealand jurisdictions. Secondly, a provision to consider a disability or medical condition that would prevent an applicant from complying with technical requirements.

Proposed schedule 5A sets out qualifications and minimum experience requirements and references the Requirements document. This document is to provide further information about how an applicant's experience will be assessed and relied on by the chief inspector to condition the scope of work the holder is authorised to undertake.

The GDAA framework will provide that where an application is refused or a condition is imposed on a holder that they do not agree to, applicants will receive an information notice from the chief inspector. Information notices provide applicants with access to internal and external review processes, with an ultimate option to have their matter heard by the Queensland Civil and Administrative Tribunal.

Conditions for holding a GDAA included in the Amendment Regulation comprise:

- record keeping requirements for gas device approvals and the processes used by the GDAA holder to assess and approve gas devices
- notifying the chief inspector of changed circumstances that relate to suitable person considerations
- an obligation to meet safety outcomes when approving a gas device
- for GDAA holders that hold accreditation by the Joint Accreditation System of Australia and New Zealand to operate a product certification scheme, an obligation to comply with the *Rules for Gas Appliance and Component Certification for Australia* and
- for all other GDAA holders:
 - an obligation to comply with conduct and technical requirements in the code of practice
 - notification requirements for unsafe and unapproved gas devices, unqualified installation of gas devices
 - a requirement for chief inspector to authorise installation work by a GDAA.

Existing holders who wish to maintain an authority to approve gas devices, will be required to make a new application under the new framework within 12 months.

The chief inspector will be required to maintain a register of holders of GDAAs. Following the granting of a GDA, information about the holder will be published on the business.qld.gov.au website including the holder's name, contact person and telephone number as well as the scope and limitations of their authority.

Human Rights Issues

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

I consider the following human rights to be relevant to the Amendment Regulation:

- *Recognition and equality before the law* (section 15 of the *Human Rights Act 2019*); and
- *Privacy and reputation* (section 25 of the *Human Rights Act 2019*).

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) The nature of the right

Recognition and equality before the law

The right to recognition and equality before the law encompasses the right to enjoy human rights without discrimination. Under this right, every person should hold the same rights regardless of a particular characteristic or membership of a particular group.

Amendments relevant to this right are that an applicant for a GDA will be assessed in relation to suitable person considerations and will be required to hold the relevant qualifications and meet the experience threshold to be granted a GDA.

These provisions limit the right to recognition and equality before the law as it discriminates against an individual on the basis of impairment. This is done as a protective measure to both the individual and broader community. Additionally, applicants are subject to a certain higher level of scrutiny, based on a balance of risk, such as their offence history and previous compliance record.

Privacy and Reputation

Section 25 of the *Human Rights Act* protects an individual's privacy from being interfered with in an unlawful manner. The right to privacy is broad and extends to matters such as personal information, data collection and correspondence and private life more generally. For example, the right to privacy protects the individual against interference with their physical and mental integrity, freedom of thought and conscience, legal personality, sexuality, family and home, and individual identity (including appearance, clothing and gender). Only lawful and non-arbitrary intrusions may occur upon privacy, family, home, correspondence and reputation.

The requirement for an applicant of a GDA to provide evidence that they have the relevant experience and professional qualifications to demonstrate they meet the criteria, has the potential to limit or otherwise affect the applicant's right to privacy and reputation.

Applications to hold a GDAA are currently subject to an established administrative process. The regulatory framework is designed to formalise this process and provide transparency and accountability to the GDAA processes.

There are no new impacts associated with this right than that which is occurring under the existing process. Requiring applicants to declare certain information and provide proof of identity, qualifications and experience is an essential component of the application process, ensuring an application is properly made and relates to the applicant. Successful applicants are requested to provide consent to publish their contact details on the web. There are limited impacts to the holder's privacy and reputation from publishing this information. These are outweighed by the holders' commercial interest in having this information published alongside information that sets out legal obligations for approval of gas devices prior to their supply, installation or use. There is also an essential safety consideration for the public as it provides a reliable reference point for persons that have been granted a GDAA to approve gas devices.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The authorisation and approvals regime supported by the Amendment Regulation is aimed at ensuring only those people who are assessed as suitable persons and meet all relevant qualification and experience requirements are granted a GDAA. To achieve this intent, the regime imposes obligations on authority holders to ensure certain persons hold the relevant skills, experience and qualifications. Holders must also comply with any obligations placed on them as GDAA holders. A failure to comply with GDAA conditions is an offence and is grounds for suspension or cancellation of the holder's authority. Considerations under section 731AD of the PG Act limit this right only for the purpose of ensuring that GDAA holders meet the established requirements for the protection of the holder, industry and the broader community.

Personal information is only collected and maintained for the purpose of publishing information about persons granted a GDAA and the scope of work authorised by that authority. Failure to do this would place a significant risk on the regulator, industry and community as there would be no way of knowing who an approved holder was and determining compliance of obligations. On balance this is a required function for the scheme to operate effectively and safely. Similarly, contact details of GDAA holders being published online provides the public with a repository of who is an approved holder. This is required to mitigate risks of unapproved individuals performing gas device related activities and is an appropriate balance of protection of privacy and reputation with risk to industry, community and approved GDAA holders.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limitations to the right to recognition and equality before the law have only been imposed where there could be negative impacts to the holding of a GDAA such as where it would be unsafe for the holder or the community (i.e. if an applicant had a medical condition that would impact their ability to perform gas device related tasks in a safe manner or where an applicant has had multiple previous non-compliances or convictions for relevant offences

and is considered unsafe to hold a GDAA). This will ensure that only those people with the required characteristics are successful in their GDAA applications.

Disclosure of personal information obtained in the administration of the amendment regulation will be limited. As outlined above, approved holders will have limited personal information (the holder's name, a contact name where the holder is a company, a telephone number and the scope and limitation of the holder's authority) published in a GDAA register. This publication of this information benefits the holder's commercial interests and informs the public and industry of approved holders. Limiting the right to privacy and reputation by requiring the applicant to demonstrate their professional qualifications and experience as part of the application process will enable a decision-maker to appropriately consider these matters in determining the applicant's suitability. The regulatory framework governing GDAA's balances the need to ensure compliance with the operation of the GDAA process and the protection of the community.

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

Applicants who are not considered to be a suitable person will have a right to have the decision reviewed, as such it is considered that there are no less restrictive and reasonable available ways to achieve the purpose of ensuring that only appropriately qualified and suitable people are the holders of a GDAA. On balance, I consider the limitations on the right to recognition and equality before the law are reasonable and demonstrably justifiable.

The personal information provided by applicants in pursuit of a GDAA application is necessary to be held by the chief inspector to determine suitability to become a GDAA holder and for ongoing compliance measures. Furthermore, publishing of the approved holders on the business.qld.gov.au website is in the interests of the public to inform who is an approved holder. It also presents a commercial benefit to the approval holder. Disclosure of personal information is limited and the impact to the right of privacy and reputation is the least restrictive reasonably available way of achieving the proper operation of the GDAA scheme through transparency and integrity.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The Amendment Regulation limits a person's right to privacy and reputation, however, only where necessary. On balance, it is considered that the importance of ensuring only those individuals who meet the criteria and are assessed as appropriate for ensuring a gas safety outcome are authorised, outweighs the negative impact on the right to privacy and reputation (to the extent that it is limited).

Additionally, while some people may not be granted a GDAA due to particular characteristics, this limitation only applies where it is essential. The right to equality and to privacy are essential human rights however, the preservation of ensuring community safety has to be balanced with these rights. To ensure that the community is protected, it is essential that only those people who meet the relevant criteria and characteristics are considered for approval. The regulatory framework governing GDAA's has sought to balance these considerations and minimise the potential impacts upon the rights and liberties of individuals with the benefits and safety of the community. As GDAA holders are able to charge for their services in relation to gas device approval work, publication of

their contact information benefits their commercial interest and provides a public benefit of accurate information about who is an approved holder. All other personal details gathered through the application process will be stored in compliance with the relevant privacy legislation and standards by the inspectorate.

(f) any other relevant factors

Nil.

Conclusion

I consider that the Petroleum and Gas (Safety) Amendment Regulation (No. 2) 2020 is compatible with the *Human Rights Act 2019* because it does not limit, restrict or interfere with a human right, but that limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

DR ANTHONY LYNHAM MP
MINISTER FOR NATURAL RESOURCES, MINES AND ENERGY

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