

Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2023

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* (HR Act), I, Scott Stewart MP, Minister for Resources, provide this human rights certificate with respect to the *Petroleum and Gas (Safety) and Other Legislation Amendment Regulation 2023* (the Amendment Regulation) made under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act), the *Petroleum Act 1923* and the *State Penalties Enforcement Act 1999* (SPE Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

The Honourable Yvette D’Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, has granted authority for the preparation of this human rights certificate to the extent the proposed Amendment Regulation is made under the SPE Act for the purpose of amendments to the *State Penalties Enforcement Regulation 2014* (SPER).

Overview of the Subordinate Legislation

The *Petroleum and Gas (Safety) Regulation 2018* (P&G Regulation) is made under the P&G Act to provide effective and relevant safety regulation for petroleum and gas industries in Queensland by prescribing technical standards and safety requirements to ensure the safety of operating plant, gas work and gas devices, including safe use by consumers.

The purpose of the Amendment Regulation is to:

- make changes to the P&G Regulation to enable effective, risk-based safety regulation that will support a sustainable and safe Queensland hydrogen industry by removing ambiguity in the legislation and providing clarity regarding the requirements that apply to hydrogen—this includes prescribing relevant parts of the Hydrogen Safety Code of Practice, as well as local and international standards, in the P&G Regulation;
- amend the P&G Regulation to prescribe the Australian Standard *Gas appliances – Servicing of Type A appliances* (AS 4575) as the preferred standard for repairing, servicing and testing Type A gas devices; and
- also make consequential amendments to the SPER in relation to penalty infringement notices for offences under the P&G Act, that were affected by the commencement of the *Land, Explosives and Other Legislation Amendment Act 2019*.

Human Rights Issues

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

In my opinion, the human rights relevant to the Amendment Regulation are:

- recognition and equality before the law (section 15 of the HR Act)
- right to life (section 16 of the HR Act)
- property rights (section 24 of the HR Act)
- right to liberty and security of person (section 29 of the HR Act)
- fair hearing (section 31 of the HR Act)
- rights in criminal proceedings (section 32 of the HR Act).

I consider that the proposed amendments promote the human right to life at section 16 of the HR Act (rather than limit it) by enhancing safety and reducing the likelihood of accidents caused by faulty or poorly maintained gas devices. Prescribing AS 4575 in the P&G Regulation ensures compliance with servicing, repairing, and testing Type A gas devices, which helps identify potential safety hazards, prevent malfunctions, and ensure proper maintenance. Compliance with Australian Standards reduces the risk of harm to individuals who may be exposed to dangerous gas leaks or explosions, thus protecting their right to life.

Similarly, the amendments relating to hydrogen aim to remove ambiguity in the legislation and provide clarity regarding the requirements for safety that apply to hydrogen, particularly as they apply to recently developed uses of the fuel, such as in fuel cells for electric vehicles.

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

For the following human rights, I consider that any limitation on these rights is reasonable and demonstrably justifiable as set out below—

- recognition and equality before the law (section 15 of the HR Act)
- property rights (section 24 of the HR Act)
- right to liberty and security of person (section 29 of the HR Act)
- fair hearing (section 31 of the HR Act)
- rights in criminal proceedings (section 32 of the HR Act)

The Amendment Regulation involves several changes which relate to safety requirements and other requirements in the P&G Regulation which carry penalties or potential court action if breached.

The Amendment Regulation will provide clarity for safety requirements and other requirements as they apply to hydrogen in the P&G Regulation. The Amendment Regulation will also prescribe the Australian Standard for Gas appliances – Servicing of Type A appliances (AS 4575) as the preferred standard for repairing, servicing and testing Type A gas devices as a new safety requirement.

The Amendment Regulation will also broaden the scope of a number of offences. Failing to comply with a safety requirement is an offence (section 708A, P&G Act). It is also an offence not to comply with other requirements under the P&G Regulation, the relevant requirements affected by these amendments are—

- safety requirements relating to the gauge pressure that must be satisfied when connecting a gas system to the fuel gas network for the first time (section 77);
- safety requirements on the design, construction, operation, maintenance and abandonment of a distribution system (section 81);
- requirements that need to be satisfied prior to the supply of fuel gas to a gas system (section 82);
- requirements relating to a gas inspection certificate and gas compliance certificate for new vehicles and vessels (sections 105 and 106); and
- requirements relating to compliance with preferred standards for safety requirements (schedule 2).

The offences for failing to comply with these requirements carry monetary penalties and possible court action under P&G legislation and, in some instances, under the SPER.

Separate to the amendments above which relate to the requirements in the P&G Regulation, the amendments also include changes relating to the SPER regarding penalty infringement notices for offences under the P&G Act that were affected by the commencement of the *Land, Explosives and Other Legislation Amendment Act 2019*.

The amendments above add to the potential monetary penalties, or court action, for offences. It is because of these changes that the Amendment Regulation raises the human rights under sections 15, 24, 31 and 32 of the HR Act. The maximum penalties range from 20 to 500 penalty units¹.

(a) the nature of the right

Section 15 (Recognition and equality before the law) of the HR Act recognises that every person is equal before the law and is entitled to equal protection of the law without discrimination. This right is relevant where a law has a disproportionate impact on people who have an attribute or characteristic.

This right may be limited to the extent that the Amendment Regulation extends the scope of existing offences, which involve a financial penalty, through a court-imposed fine or other court action, or an infringement notice fine. The requirement to pay a fine for a breach of a requirement may adversely and disproportionately impact persons of lower socio-economic status who may have more difficulty in paying a monetary sum.

Section 24 (Property rights) of the HR Act protects the right of all individuals to own property and provides that people have a right to not be arbitrarily deprived of their property. Property is likely to include all real and personal property interests, including money. The Amendment

¹ The penalty unit value in Queensland is \$143.75 (current from 1 July 2022).

Regulation could limit this human right to the extent that it extends the scope of the existing penalties for the relevant offences. In the case of a court imposed fine, failure to pay that fine may result in further action. Where a penalty infringement notice is issued, the failure to pay the penalty amount for a breach of a safety requirement may result in enforcement action, such as the seizure and sale of the licence holder's property, if the fine remains unpaid.

Section 29 (Right to liberty and security of person) of the HR Act protects individuals against the unlawful or arbitrary deprivation of liberty. A person who is arrested or detained is entitled to certain minimum rights. They also have a right to be brought to trial without unreasonable delay. The Amendment Regulation may limit this right to the extent that it prescribes financial penalties that may be enforced under the SPE Act. The registrar of the State Penalties Enforcement Registry (SPE Registry) may issue an arrest and imprisonment warrant to a person for failing to pay an amount stated in an enforcement order after the person fails to pay a financial penalty. This could have a significant impact on an individual's right to liberty. Importantly, however, the SPE Registry's Charter, provided for under section 9 of the SPE Act, preferences the use of other enforcement actions for unpaid fines over arrest and imprisonment to reduce the use of imprisonment for fine default and the current process is in line with existing legal procedures and only applies in situations where an individual has failed to comply with the law.

Further, in relation to the SPE amendments, section 31 (Fair hearing) of the HR Act guarantees every individual the right to a fair and public hearing, by a competent, independent and impartial court or tribunal, which upholds procedural fairness and protects natural justice. Section 32 (Rights in criminal proceedings) of the HR Act safeguards several minimum guarantees for accused individuals in criminal proceedings, including the right to be informed of the nature and reason for a charge, and to defend themselves personally or with legal assistance. The Amendment Regulation may limit both these human rights to the extent that it extends the scope of existing infringement notice offences. This may arise because a person does not have to attend court in relation to an infringement notice offence, as the decision-making process to serve an infringement notice offence is delegated to an authorised person in RSHQ.

(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 purpose of the offence provisions, the scope of which may be potentially affected by the Amendment Regulation, is to enhance safety in the petroleum and gas sector. Safety in the sector is considered to be consistent with a free and democratic society. It is considered in the public interest to reduce risks and promote a person's right to life. Given the nature of the industry, there is potential for risks, some of which can be significant. The affected offence provisions, and the associated financial penalties, are underpinned by the objective of improving and enhancing safety.

Enabling the imposition of financial penalties improves and enhances safety and is a proportionate response to misconduct that can cause a serious risk of harm to the community. This is consistent with a free and democratic society based on human dignity, equality and freedom.

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

There is a direct relationship between the offence provisions and their financial penalties, and the objective of improving and enhancing safety in the industry. These penalties, along with subsequent enforcement options, including those available under the SPE Act, not only send a strong message that non-compliance will not be tolerated, but also ensures that individuals and businesses take their safety responsibilities seriously.

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

There is no other reasonably available and less restrictive way to enforce these requirements. Alternate policy options were considered, such as keeping the current regulatory arrangements (status quo) coupled with awareness campaigns or industry-led changes. However, without any legislative enforceability, non-legislative options are inadequate in achieving the desired safety outcomes, making the proposed amendments necessary. Additionally, some of the changes relating to hydrogen, involve changes to existing provisions and therefore, the changes could not be made outside the legislation.

Furthermore, the SPE Act also has inbuilt protections where property seizure or imprisonment is considered if a fine remains unpaid. These protections include that:

- The individual who becomes subject to a penalty infringement notice may elect to have the matter heard by a court instead of paying the fine. If the court finds the individual guilty of the offence, it has the discretion to consider multiple factors when handing down the penalty, including the individual's socio-economic status and other personal circumstances.
- If a fine remains unpaid and the infringement notice fine is registered with SPER for enforcement action, the individual may apply to pay their debt by instalments.
- Individuals experiencing financial hardship can apply to resolve their debt under a work and development order.

All persons, including those of low socio-economic status who may have lesser financial capacity to pay an infringement notice fine, or a fine imposed by court, can avoid the impact of any fine by complying with the requirements in the P&G Regulation. These requirements are in place for the safety and benefit of all parties.

(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

On balance, taking into account the nature and extent of the limitations and having regard to the information and analysis detailed above, I consider that the importance of ensuring safety in the industry, by enabling RSHQ to take enforcement action against non-compliance with requirements under the P&G legislation, outweighs any limitations on the human rights identified in this human rights certificate.

Conclusion

I consider that the Amendment Regulation is compatible with the HR Act because it limits relevant human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

SCOTT STEWART MP
MINISTER FOR RESOURCES

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