

# Energy (Renewable Transformation and Jobs) Amendment Regulation 2024

## 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, the Honourable Mick de Brenni MP, Minister for Energy and Clean Economy Jobs provide this human rights certificate with respect to the Energy (Renewable Transformation and Jobs) Amendment Regulation 2024 (the Regulation) made under the *Energy (Renewable Transformation and Jobs) Act 2024* (the Act).

In my opinion, the 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 Act implemented key policy commitments from the Queensland Energy and Jobs Plan, which was released in September 2022 alongside the Queensland SuperGrid Infrastructure Blueprint (Infrastructure Blueprint).

Relevantly, the Act:

- establishes a requirement for the Minister to set a strategy for public ownership of Queensland's energy assets, with minimum ownership targets enshrined in the Act as well as key definitions relevant to the setting of this strategy;
- establishes the Priority Transmission Investment (PTI) framework, which allows the State to identify, assess, build, and recover costs for PTI projects, to support timely delivery of critical backbone transmission. Part of this framework modifies some of the current National Electricity Law (NEL) and National Electricity Rules (NER); and
- enshrines the Job Security Guarantee Fund (the Fund) to give certainty to energy workers affected by the energy transformation at publicly owned coal-fired power stations and prescribed facilities.

The Regulation supports the objectives of the Act by providing for the operationalisation of Parts 5 and 7 of the Act and by ensuring Part 3 of the Act operates as intended.

### *Public Ownership*

Section 13(1) of the Act provides that the Minister must prepare a public ownership strategy that sets out a 100 per cent public ownership target for transmission and distribution assets, amongst other public ownership targets for energy assets. Section 13(3) of the Act provides for the definition of transmission and distribution assets, and it provides that particular assets may be excluded from the definition by Regulation.

The Regulation excludes the distribution system of Essential Energy that is subject to special approval SAO1-11 from the definition of transmission and distribution assets under the Act. For context, Essential Energy (ABN 37 428 185 226) is a New South Wales government-owned

energy corporation (GOC). Essential Energy holds special approval SAO1-11 for distribution under the *Electricity Act 1994* and provides distribution services near the New South Wales and Queensland border.

As Essential Energy is a New South Wales GOC operating at the Queensland-New South Wales border, it is considered appropriate to exclude these assets from the definition of transmission and distribution assets in the Act.

#### *Priority Transmission Investment*

The Regulation for the PTI framework provides for the following functions that support the operation of the Act:

- Prescribing transmission projects that may progress under the PTI framework, as ‘eligible PTI’ (these include the Gladstone Project, Borumba Connections, Central Queensland Connection, Pioneer-Burdekin Pumped Hydro Energy Storage and NQ Connection, Townsville to Hughenden Connection);
- Declaring ‘PTI assessment documents’, which are the documents that will form the assessment that the PTI framework requires be undertaken on all prospective priority transmission investments;
- Enabling Powerlink to recover the costs of PTI in the manner determined by the responsible Ministers (i.e., the Minister and the Treasurer). This is achieved through the establishment of three types of financial directions that allow the responsible Ministers to include cost allowances associated with the construction and maintenance of PTI within Powerlink’s revenue determination and associated regulatory asset base (RAB); and
- Making other derogations from national laws and rules which are necessary to enable the PTI framework to leverage the existing national framework, where appropriate.

#### *Job Security Guarantee Fund*

For the Fund, the Regulation has been developed to enable it to operate now that it has been established under the Act. The Regulation contains the following main components:

- Designating Kogan Creek Mine and Meandu Mine as prescribed facilities, enabling eligible workers at these sites to have access to the Fund;
- Establishing eligibility requirements (based on tenure) for non-GOC workers at publicly owned coal-fired power stations and prescribed facilities to ensure support is available for long-term workers at these sites;
- Prescribing the categories of costs and support that will be payable from the Fund;
- Determining the eligibility of affected energy workers or other entities to receive support; and
- Establishing reporting requirements for entities or individuals that receive money from the Fund to ensure transparency.

## Human Rights Issues

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

During the development of the Regulation, due regard was given to its compatibility with the *Human Rights Act 2019*. In my opinion, the human rights under the *Human Rights Act 2019* that are relevant to the Regulation are reflective of the rights engaged by the Act:

- Freedom of movement and to choose where to live (section 19);
- Property rights (section 24);
- Privacy and reputation (section 25);
- Cultural rights – generally (section 27); and
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28).

The Regulation operationalises both the PTI framework and the Fund under the Act. As such, the Regulation, to the extent it deals with the PTI and JSG framework, engage the same human rights as considered in detail by the statement of compatibility that accompanied the primary legislation.

For the Public Ownership provisions, no human rights have been identified as being engaged by the Regulation.

### Eligible PTI and impacts on cultural rights and rights related to property

The Act established the PTI framework, thereby allowing the State to identify and assess PTI projects and support timely delivery of critical backbone transmission needed for the energy transformation.

- Section 20(1) of the Act provides that the Governor in Council may make Regulations under the Act with respect to prescribing an ‘eligible PTI’. The PTI elements of the Regulation support commencement of the Act by prescribing transmission projects as eligible PTI, which means these projects may be progressed under the PTI framework, which may result in the project being constructed.
- Section 26 of the Act provides that the responsible Ministers may declare a PTI. If a declaration is made under section 27 of the Act, the responsible Ministers are to direct Powerlink to construct the investment.

### Relevant human rights (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The statement of compatibility for the primary legislation noted the PTI framework will result in infrastructure being built which may impact upon the following rights under the *Human Rights Act 2019*:

- the freedom to choose where to live (section 19);
- the right to property (section 24);
- the right to non-interference with privacy, family and home (section 25(a)); and
- cultural rights (section 27), and more specifically, the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28).

Considered in isolation, the PTI elements of the Regulation do not promote, interfere or engage human rights in a manner distinct to the primary legislation. Instead, it operationalises the Act by prescribing projects which may progress through the PTI framework, therefore facilitating their potential construction. As with any infrastructure development, the construction of transmission infrastructure as facilitated by the Regulation may interfere with the liveability of certain areas, the visible amenity of neighbouring land, and create noise disturbances. Further, infrastructure may be built on land in which Aboriginal peoples or Torres Strait Islander peoples have a connection to under their tradition or custom.

The Regulation does not override, nor displace existing statutory processes for land acquisition and development. The identification and prescribing of an eligible PTI via Regulation is the first stage of the PTI process, with assessment undertaken of the suitability of an eligible PTI undertaken at the candidate PTI stage (see section 21 of the Act). As there are still phases of assessment to determine the suitability of the project and its location/route, the act of prescribing a project as an eligible PTI will not amount to a limitation or denial of cultural rights under sections 27 and 28 of the *Human Rights Act 2019* in and of itself.

In any case, section 58 of the *Human Rights Act 2019* requires downstream decisions, relating to the PTI framework, to contemplate human rights in a manner that recognises the operation of cultural rights at a local level across Queensland. For example, when considering whether to declare a PTI and direct Powerlink to construct it, such matters will need to be considered.

#### Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Limitations on human rights that may arise out of the operation of the PTI framework are reasonable and justified under section 13 of the *Human Rights Act 2019* for the following reasons:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one’s home and property free from interference, as well as the ability of Aboriginal peoples and Torres Strait Islander peoples to uphold their connection to Country and to enjoy and protect their identity and cultural heritage.
- Purpose – The Regulation prescribes five significant transmission projects as ‘eligible PTI’. This marks the initial stage of the PTI process and is a prerequisite for key transmission projects to advance to the assessment stage within the PTI framework. Prescribing transmission projects is foundational to facilitating the transition to renewable energy, enabling the renewable energy targets to be met and providing significant benefits for Queensland while mitigating the impact of climate change. These are proper purposes consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – Prescribing eligible PTI projects is necessary for the operation of the PTI framework and will therefore help to achieve those purposes.
- Less restrictive alternatives – There are no less restrictive alternatives available to achieve the purposes of the PTI framework.
- Fair balance – The purpose of prescribing eligible PTI projects is to ultimately increase the amount of electricity generated from renewable energy sources, in order to enable

the renewable energy targets to be met and provide significant benefits for Queensland (i.e., for projects that eventually become declared PTI projects). While it is possible that a PTI project may result in impacts on the human rights of property owners and Aboriginal peoples and Torres Strait Islander peoples, there are a number of safeguards built in to avoid and minimise that impact as much as possible. Ultimately, these potential impacts on human rights are outweighed by the importance of efficient and coordinated development of transmission and associated renewable energy that will help to achieve the renewable energy targets and transform Queensland's energy system, which will in turn protect and conserve land and sacred sites for the future.

- As considered in the statement of compatibility, the potential interference with property and privacy for a PTI project is proportionate and not arbitrary. Those rights are not limited by the Regulation. Where there may be a limitation of cultural rights and the freedom to choose where to live as a consequence of the PTI provisions, these limitations are proportionate in consideration of the need to support renewable development and address the ongoing, and escalating impacts of climate change. For these reasons, the limitation is justified and accordingly, the proposed sections of the Regulation in relation to PTI are compatible with human rights.

### **Priority Transmission Investments – Financial Matters**

Section 28 of the Act allows the responsible Ministers to determine the share of each PTI that Powerlink is allowed to recover from electricity customers, through its regulated revenue (i.e., what share of each PTI's construction and operation costs customers will pay for over time through their electricity bills).

The Regulation provides for the responsible Ministers to direct Powerlink to recover specified amounts associated with the construction and operation of PTIs through Powerlink's revenue determination. Revenue determinations are an existing regulatory process, used under the national framework to determine a transmission network service provider's (TNSP) regulated revenue. The ability for the responsible Ministers to direct Powerlink to recover specified amounts through their revenue determination is achieved through the establishment of three financial directions that enable the inclusion of cost allowances within Powerlink's revenue determination and its associated regulatory asset base (RAB). The Regulation also confers functions on the AER, who is required to implement these directions.

The three financial directions are the primary PTI allowance direction, the RAB allocation direction, and the material change direction.

*The primary PTI allowance direction:* This direction, when used, includes forecast incremental operating expenditure in Powerlink's revenue allowance, fixes capital and operating expenditure forecasts for the purposes of expenditure incentive schemes, and contributes to identifying where actual capital expenditure exceeds forecast capital expenditure.

*The RAB allocation direction:* This direction, when used, allows the responsible Ministers to specify the proportion and timing of when a PTI's capital expenditure is included in Powerlink's regulated asset base. It allows critical transmission for the transformation to be delivered when needed, and at the scale required, while providing flexibility for a longer and/or delayed recovery period or for costs to be recovered from multiple sources (i.e., through the RAB, as well as grants, GOC dividends and the State Budget).

*The material change direction:* This direction, if used, allows the responsible Ministers to make further adjustments to the value of Powerlink's RAB, where there has been a material change in circumstances since the RAB allocation direction was made. This type of direction may only be made within 18 months after Powerlink has advised the Minister of the day the PTI was completed.

The statement of compatibility considered whether the cost recovery provisions may have the effect of depriving consumers of additional money due to the potential for higher transmission network costs, and in turn whether it would engage their right to property in section 24 of the *Human Rights Act 2019*.

It was noted that regardless of whether the overarching PTI mechanism exists, electricity customers are facing increased transmission network costs for new-build or replacement transmission infrastructure. In the absence of a shift towards renewables, transmission network costs will rise as a result of climate change (i.e., increased and more intense weather events will damage existing transmission networks leading to higher replacement costs).

Under this 'do nothing' option, Queensland electricity customers would be expected to pay more than they currently do for transmission network services. However, the PTI option to build transmission infrastructure according to the Queensland Energy and Jobs Plan and Infrastructure Blueprint will reasonably result in lower costs in the long term than no plan at all.

For further context, the national process for transmission is designed to deliver on NEM objectives, and not focus on specific state objectives or benefits. As such, the national process is not well-suited to supporting Queensland to deliver the scale and pace of transformation outlined in the Queensland Energy and Jobs Plan and Infrastructure Blueprint. Consequently, Queensland needs the three financial direction mechanisms in the Regulation to ensure costs associated with transmission infrastructure called for by Queensland's optimal infrastructure pathway can be recovered in the manner directed by the responsible Ministers.

Section 28 of the Act provides the head of power for Regulation to include amounts in Powerlink's revenue determination and RAB. The Regulation enables responsible Ministers to include an amount less than the total capital expenditure associated with the PTI project or gradually include amounts into Powerlink's RAB. This flexibility means that customers may not be required to pay for the total capital cost of the project, and the gap may be funded by other means.

Overall, the potential impact on the property of consumers is not arbitrary, the right to property is engaged but not limited by the financial direction provisions in the Regulation.

### **Job Security Guarantee**

The statement of compatibility noted the Fund protected and promoted several human rights related to employment, including:

- the right to take part in public life (section 23);
- the right to property (section 24); and
- the right to privacy (section 25).

The Regulation enables the Fund to achieve its purposes, including implementing the Job Security Guarantee, the intention of the State to provide security and support to affected energy workers.

The Regulation achieves this purpose by prescribing the categories of costs for which amounts can be paid from the Fund and the types of affected energy workers eligible to receive each category of support. By enabling the Fund to operate, the Regulation protects and promotes the human rights related to employment noted above.

The Regulation requires entities that receive money directly from the Fund to provide certain information to the chief executive, including the total amount of funds received, the purpose for which the amounts were paid from the fund, the amount of any unspent funds and any other details required under the fund guideline.

It also outlines the tenure requirements for affected energy contractors and prescribed energy workers to be eligible to receive support from the Fund. This will require information to be provided about an individual's work history to demonstrate they meet the thresholds prescribed. Applications made to the Fund by or on behalf of a worker will also need to contain sufficient information to demonstrate the individual meets the requirements.

These provisions will require information to be provided to decision makers and may engage the right to privacy and reputation in section 25 of the *Human Rights Act 2019*.

Limitations on human rights that may arise out of the operation of the Fund framework are reasonable and justified under section 13 of the *Human Rights Act 2019* for the following reasons:

- Nature of the human right – What is at stake is the ability to not provide information and keep certain matters private.
- Purpose – The purpose of the reporting provision is to support the transparent operation of the Fund and ensure money is being used appropriately and for the purpose for which it was provided. Long term non-GOC workers are eligible to receive support from the Fund as “affected energy contractors” and “relevant prescribed energy workers”. This recognises these individuals work alongside GOC workers and are anticipated to be affected by the changing operations of the sites. The information provided about an individual's work history then enables decision makers to ensure the individual is eligible under these sections and section 86 of the Act.
- Relationship between limitation and purpose – Without the obligation to report on the use of the funds there would be no mechanism to ensure funding is being used appropriately.
- Less restrictive alternatives – There are no less restrictive alternatives for the reporting obligations as the limit of human rights has already been tailored by only requiring entities that receive money directly from the Fund to report to the chief executive. Regarding the provision of information about eligibility there are no less restrictive alternatives that would enable the Fund to operate. However, if an individual does not wish to provide the necessary information to satisfy the tenure requirements or to report on the use of the funds received, they may elect to not seek support from the Fund.

- Fair balance – The need to ensure relevant prescribed energy workers and affected energy contractors can access the Fund, as well as ensuring the transparent and appropriate operation of the Fund outweighs the minor impacts of the right to privacy.

In consideration of the scope of eligibility criteria for individuals to access the Fund and lack of less restrictive alternatives, the potential interference with the right to privacy is proportionate and not arbitrary. For these reasons, such a limitation is justified and accordingly, the proposed sections of the Regulation in relation to the Fund are compatible with human rights.

## **Conclusion**

I consider that the Energy (Renewable Transformation and Jobs) Amendment Regulation 2024 is compatible with the *Human Rights Act 2019* because it does not limit human rights.

**MICK DE BRENNI MP**  
MINISTER FOR ENERGY AND CLEAN ECONOMY JOBS

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