

# Electrical Safety and Other Legislation 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* (HR Act), I, Grace Grace, Minister for State Development and Infrastructure, Minister for Industrial Relations and Minister for Racing, provide this human rights certificate with respect to the *Electrical Safety and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) made under the:

- *Electrical Safety Act 2002* (ES Act);
- *Safety in Recreational Water Activities Act 2011* (SRWA Act);
- *State Penalties Enforcement Act 1999* (SPE Act); and
- *Work Health and Safety Act 2011* (WHS Act).

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

## Overview of the Subordinate Legislation

The primary objective of the *Electrical Safety and Other Legislation Amendment Regulation 2024* (the Amendment Regulation) is to give effect to a second tranche of legislative recommendations from the *Review of Queensland's Electrical Safety Act 2002* (the Review). Amendments to the *Electrical Safety Regulation 2013* (ES Regulation) seek to clarify existing requirements and strengthen the electrical safety framework.

In summary, the Amendment Regulation amends the ES Regulation to:

- clarify that testing is a form of energised electrical work (or 'live work');
- in relation to service lines, update the examples of facilities that may be provided by a person in control of the electrical installation;
- clarify triggers for ensuring safety switches are installed for general purpose socket-outlets on residential land by removing obsolete dates;
- enhance Queensland's implementation of the Electrical Equipment Safety System (EESS) by:
  - clarifying the definition of 'second-hand' for the purposes of selling second hand in-scope electrical equipment;
  - clarifying that requirements for selling second-hand in-scope electrical equipment apply to non-profit organisations;
  - introducing a definition of 'certificates of suitability';
  - providing a requirement for certifiers (recognised external certification schemes) to comply with the Equipment Safety Rules when issuing certificates of suitability;
  - updating the method used by the regulator to notify of intention to make a declared scheme from a newspaper notice to a website update;

- clarify circumstances in which accredited auditor inspections are not required for reconnection of hazardous area electrical installations ('like for like');
- remove an incorrect reference in section 279 relating to the duty of a person conducting a business or undertaking (PCBU) supervising a training person;
- prescribe GoldlinQ as a prescribed electricity entity;
- prescribe the *Labour Hire Licensing Act 2017* (LHL Act), *Safety in Recreational Water Activities Act 2011* (SRWA Act) and *Work Health and Safety Act 2011* (WHS Act) to increase efficiency of information sharing within the Office of Industrial Relations;
- extend the scope of Part 3, Division 1 from electrical work 'on' energised electrical equipment to electrical work 'on or near' energised electrical equipment;
- reduce the timeframes for electrical contractors to notify the regulator of changes to the Qualified Business Person (QBP) or Qualified Technical Person (QTP) on their electrical contractor's licence;
- change the unit of measurement from months to days for automatic suspensions and cancellations of electrical contractor licences where a QTP or QBP is not endorsed on the licence for the prescribed time period;
- introduce requirements to de-energise the relevant electrical installation in a domestic building prior to working in or via a roof space;
- prescribe 'water equipment' as prescribed electrical equipment; and
- make minor and machinery changes to improve clarity of existing requirements and consistency with current drafting conventions.

In addition, the Amendment Regulation seeks to improve the operational efficiency of the regulator, by ensuring a clear basis for information sharing between the arms of the regulator. Information obtained under the *Electrical Safety Act 2002* (ES Act), SRWA Act and WHS Act is often required to be shared between the arms of the regulator for the purposes of administration or enforcement of each of the respective safety frameworks.

Finally, the Amendment Regulation amends the *State Penalties Enforcement Regulation 2014* (SPE Regulation) to:

- update references to existing infringement notice offences, contained in sections 14, 82 and 84 of the ES Regulation, to ensure that penalty infringement notices can continue to be issued.
- introduce a new infringement notice offence where a PCBU fails to ensure, so far as reasonably practicable, that work does not occur in the roof space of the building unless the relevant electrical installations are de-energised or either of the prescribed circumstances apply.
- introduce three infringement notice offence for non-compliance with the following existing quad bike requirements under the WHS Regulation:
  - persons with management or control of a quad bike at a workplace must take all reasonable steps to ensure that a quad bike operator is at least 16 years, or the minimum age recommended by the quad bike's manufacturer;
  - persons with management or control of a quad bike at a workplace must take all reasonable steps to ensure quad bikes are not used to carry passengers, unless they are designed to carry passengers; and the passenger is at least 16 years, or the minimum age recommended by the quad bike's manufacturer; and
  - workers must wear a crash helmet while riding the quad bike or riding as a passenger on the quad bike.

- introduce six infringement notice offences to encourage compliance with the following crystalline silica requirements under the WHS Regulation:
  - the prohibition that a PCBU not carry out, or direct or allow a worker to carry out, work that involves manufacturing, supplying, processing or installing engineered stone benchtops, panels or slabs;
  - PCBUs carrying out, or directing or allowing a worker to carry out, processing of engineered stone must, before the work is carried out, give the regulator a written notice in a form approved by the regulator which includes the prescribed information requirements;
  - PCBUs must not carry out, or direct or allow a worker to carry out, processing of a crystalline silica substance (CSS) unless the processing is controlled;
  - a PCBU carrying out the processing of a CSS that is high risk must ensure the processing is carried out in accordance with a silica risk control plan prepared in relation to the processing and is available to all workers at the workplace and provided to workers before they start the processing;
  - the PCBU carrying out processing of a CSS that is high risk must ensure the processing is stopped immediately or as soon as it is safe to do so where the processing is not carried out in compliance with the prescribed requirements and may only be resumed in accordance with the silica risk control plan prepared in relation to the processing; and
  - a PCBU must keep a record of crystalline silica training undertaken by a worker in compliance with the WHS Regulation for inspection under the WHS Act.

## Human Rights Issues

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

I have considered the rights protected by Part 2 of the HR Act. In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- right to recognition and equality before the law (section 15);
- right to life (section 16);
- property rights (section 24);
- privacy and reputation (section 25);
- right to liberty and security of person (section 29);
- fair hearing (section 31); and
- rights in criminal proceedings (section 32).

### Human rights promoted by the Amendment Regulation

#### *Right to life (section 16, HR Act)*

The Amendment Regulation supports and promotes the right to life (section 16, HR Act). The purpose of the ES Act is directed at eliminating the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity (section 4, ES Act). The amendments contained in the Amendment Regulation strengthen and enhance the electrical safety legislative framework and are consistent with the purpose of the ES Act.

New Part 6, Division 7 introduces requirements for work in domestic roof spaces, aimed at reducing the electrical risk to workers performing work in the roof space. These requirements recognise that the most effective way of reducing electrical risk to persons working in domestic roof spaces is by de-energising the building's relevant electrical installation. Where de-energisation is not reasonably practicable, or it is necessary for a thing to be energised in order to test, service or commission the thing, additional safety requirements must be complied with to reduce the electrical risk to workers. These new requirements recognise the serious electrical risk of working in domestic roof spaces and promotes the worker's right to life.

Notably, the Amendment Regulation also extends the scope of requirements for electrical work *on* energised electrical equipment to include electrical work *near* energised electrical equipment in response to the risks of arc flash (Part 3, Division 1, ES Regulation). Arc flash incidents are avoidable but continue to occur in Queensland; often resulting in significant burns and injuries for unprotected workers. Changes made by the Amendment Regulation recognise the risk of arc flash to workers and other persons as a result of working near energised electrical equipment, with the extended requirements seeking to promote the worker's right to life.

An electrical current in water presents a serious drowning risk to persons who are in the body of water by its ability to cause paralysis. Prescribing water equipment as *prescribed electrical equipment* for the purposes of section 14A of the ES Act seeks to protect the right to life of swimmers and bathers who enter swimming pools where extra low voltage equipment, such as a pool light or pump, is installed.

### **Human rights potentially limited by the Amendment Regulation**

#### **Consideration of reasonable limitations on human rights (section 13, HR Act)**

The Amendment Regulation potentially limits and interferes with the following human rights, in respect to the following amendments:

#### ***Prescribing water equipment as prescribed electrical equipment***

- property rights (section 24).

#### ***Prescribed Acts***

- privacy and reputation (section 25).

#### ***Infringement notice offences***

- right to recognition and equality before the law (section 15);
- property rights (section 24); and
- right to liberty and security of person (section 29).

#### (a) the nature of the right

***Prescribing water equipment as prescribed electrical equipment (section 24, HR Act)***

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 not to be arbitrarily deprived of their property. Deprivation in this sense includes the substantial restriction on a person's use or enjoyment of their property.

The Amendment Regulation seeks to prescribe *water equipment* as prescribed electrical equipment. By prescribing water equipment as prescribed electrical equipment, water equipment is brought within the definition of electrical equipment. As a consequence, water equipment will be subject to the regulatory framework for electrical equipment safety. The regulatory framework for electrical equipment safety includes supply chain duties, licensing requirements, ministerial recall powers and incident notification reporting.

As a result, the Amendment Regulation may affect a person's property rights. This includes the person's ability to perform and derive profits from particular work where they do not hold an appropriate licence. It also impacts the person's ability to derive profits where they are involved in the supply chain and do not comply with the relevant duties and regulatory requirements.

The Amendment Regulation may affect a person's use or enjoyment of water equipment where a seizure or recall power under the ES Act is exercised. This includes where an inspector exercises powers to take property from a person for the purpose of analysis, testing or examination, or where the Minister instigates a recall of an item where the Minister considers that the item is placing, or will, place persons or property at electrical risk.

***Prescribed Acts (section 25, HR Act)***

Section 25 of the HR Act provides that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with, and to not have the person's reputation unlawfully attacked.

There are confidentiality provisions under the ES Act, SRWA Act, and WHS Act which restrict the use and sharing of information obtained under each Act. This restriction pertains to information where it is obtained or accessed in the exercises of a person's power of function under each Act. However, a number of exemptions may apply, allowing information to be shared in very specific circumstances. One exemption provides that information may be legally shared where it is necessary for the administration or enforcement of each Act prescribed by regulation.

The Amendment Regulation seeks to amend the ES Regulation, SRWA Regulation and WHS Regulation to prescribe new Acts for the purposes of sharing information for the administration or enforcement of that Act. The ES Regulation is amended to prescribe the LHL Act, SRWA Act and WHS Act. The SRWA Regulation is amended to prescribe the ES Act and WHS Act. Finally, the WHS Regulation is amended to prescribe the ES Act and SRWA Act.

***Infringement notice offences (sections 15, 24, 29, 31 and 32, HR Act)***

*Right to recognition and equality before the law*

Section 15 of the HR Act provides that every person has the right to recognition as a person before the law, every person is equal before the law and that laws should not be discriminatory.

The Amendment Regulation will limit the right to recognition and equality before the law as prescribing ten additional infringement notice offences may disproportionately impact some individuals and businesses who may find it more challenging to pay a fine (otherwise known as a penalty infringement notice or PIN) due to their financial status.

*Property rights*

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 not to be arbitrarily deprived of their property. Deprivation in this sense includes the substantial restriction on a person's use or enjoyment of their property.

The Amendment Regulation may limit property rights to the extent that it prescribes infringement notice offences which result in the deprivation of property (i.e., money) should a fine be paid. Failure to pay a fine may result in enforcement action being taken by the State Penalties Enforcement Registry (SPER) against the person, which could include the seizure of the person's property and vehicle immobilisation, as provided for in the SPE Act.

*Right to liberty and security of person*

Section 29 of the HR Act provides a person with certain protections relating to liberty and security. This includes ensuring a person is not subject to arbitrary arrest, detention or is deprived of their liberty other than on grounds, and in accordance with procedures, established by law.

The Amendment Regulation may limit the right to liberty and security to the extent that it prescribes financial penalties that may be enforced under the SPE Act. SPER 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 fine. Importantly, however, the SPER 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.

- (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

***Prescribing water equipment as prescribed electrical equipment (section 24, HR Act)***

In line with the purposes of the ES Act, limiting the right to property is intended to minimise the electrical safety risk to workers and the community associated with water equipment. This limitation achieves the purpose of preventing persons from being killed or injured, and property from being damaged or destroyed, by electricity. Achieving this is consistent with a free and democratic society based on human dignity, equality and freedom.

***Prescribed Acts (section 25, HR Act)***

The purpose of the limitation on the right to privacy is to ensure that information can be disclosed where required by law to ensure the safety of workers and the community. The nature of the purpose is consistent with a free and democratic society, as it aims to protect workers and the community for risk. Information shared under these Acts is done for the purpose of administration or enforcement of another Act.

***Infringement notice offences (sections 15, 24 and 29, HR Act)***

The purpose of limiting the identified rights is to improve the safety of workers and other persons in line with the purposes of the ES Act and WHS Act. An infringement notice offence allows for an effective and efficient response to an alleged offence, discouraging further non-compliance. A person to whom a fine is issued retains the entitlement to a court hearing if they choose. Electing to pay a fine creates efficiencies for the alleged offender and does not unduly burden the court system with minor matters.

The nature of the purpose of the limitations 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

***Prescribing water equipment as prescribed electrical equipment (section 15, HR Act)***

There is a direct relationship between the limitations, achieving the purpose of the ES Act and intent of the amendments. Restrictions on the use and enjoyment of water equipment is appropriate to ensure that electrical risks associated with extra low voltage equipment in water are minimised through supply chain duties and licensing requirements. Further, depriving persons of water equipment through a ministerial recall where it is considered to pose electrical risk through a known or suspected fault or defect is intended to reduce the electrical risk to persons and property.

***Prescribed Acts (section 25, HR Act)***

Whilst there are alternative information sharing pathways available for the regulator, the amendments focus on streamlining internal process to ensure the fast and effective communication of information for the purposes of administration or enforcement of the Acts. There is a direct relationship between the limitation on the right to privacy for information obtained and shared under these Acts and its use to ensure and improve safety for Queensland workers and the community. Personal information of individuals remains subject to various requirements to maintain appropriate confidentiality.

***Infringement notice offences (sections 15, 24 and 29, HR Act)***

There is a direct relationship between the limitations and achieving the purpose of the ES Act and WHS Act, and intent of the amendments. Introducing and maintaining infringement notice offences seeks to send a strong message of deterrence to improve safe work practices and therefore decrease electrical and other work health and safety risks to workers and other persons.

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

***Prescribing water equipment as prescribed electrical equipment (section 15, HR Act)***

Prescribing water equipment as prescribed electrical equipment recognises these items place or may place persons at electrical risk given the high level of risk when water and electricity interact. Supported by the Review, and enabled by amendments in the *Electrical Safety and Other Legislation Amendment Act 2024*, it is considered there are no less restrictive or reasonable ways to achieve the purpose.

***Prescribed Acts (section 25, HR Act)***

The sharing of information within the regulator is imperative to the ability of the regulator to enforce and administer each of the Acts, with an aim of ensuring the health and safety of workers and the community. As such, there is no reasonable alternative to achieving the purpose of the amendment.

***Infringement notice offences (sections 15, 24 and 29, HR Act)***

The alternative to the amendments in the Amendment Regulation is to not prescribe the ten new offences as infringement notice offences. This alternative does not offer a less restrictive way to achieve the proper purpose of the limitations as it would require instances of offending behaviour to be dealt with by a court. This would therefore not achieve the efficiencies afforded by enforcing offences by way of fines.

For these reasons, it is considered that there are no other less restrictive and reasonably available ways to achieve the purpose.

(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

***Prescribing water equipment as prescribed electrical equipment (section 15, HR Act)***

I am satisfied the Amendment Regulation strikes a fair balance between the benefits for electrical safety gained by prescribing water equipment as prescribed electrical equipment, and any limitation to the human rights to property. The importance of ensuring the electrical safety of our community and workers outweighs any potential limitation to a person's property rights.

***Prescribed Acts (section 25, HR Act)***

I am satisfied the Amendment Regulation strikes a fair balance between the benefits gained by allowing information obtained under identified Queensland Acts with the respective regulator, and any limitations to the human rights of privacy and reputation that may result from the commencement of the Amendment Regulation provisions.

***Infringement notice offences (sections 15, 24 and 29, HR Act)***

I am satisfied the Amendment Regulation strikes a fair balance between the benefits for electrical and work health and safety gained by introducing ten new infringement notice offences, maintaining existing infringement notice offences and any limitations to the human rights identified above. The importance of ensuring the electrical and work health and safety of the community and workers outweighs any potential limitation on the human rights identified.



(f) any other relevant factors

Nil.

## Conclusion

I consider that the *Electrical Safety and Other Legislation Amendment Regulation 2024* is compatible with human rights under the HR Act because it limits 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.

**GRACE GRACE MP**  
Minister for State Development and Infrastructure  
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