

# Energy (Renewable Transformation and Jobs) 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 Energy (Renewable Transformation and Jobs) Bill 2023 (the Bill).

In my opinion, the Bill 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 Bill

The Bill gives effect to the commitments made under the Queensland Energy and Jobs Plan (the Plan), which was released in September 2022. The Plan sets a bold vision to transform Queensland's electricity system to deliver clean, reliable, and affordable power for generations. This requires investment in the State's electricity networks, new renewable generators, and storage, including batteries and pumped hydro energy storage, to meet the renewable energy targets set out in the Plan.

To implement key policy commitments under the Plan and successfully transform the electricity system in Queensland, new legislation is required. The Bill:

- enshrines renewable energy targets of 50% renewable energy by 2030, 70% by 2032 and 80% by 2035;
- commits Government to maintaining public ownership of the Queensland energy system by requiring the Minister to prepare a public ownership strategy and report on progress against the targets. The public ownership strategy is to set out targets of 100% ownership of distribution, transmission, and prescribed deep storage assets, and equal to or more than 54% ownership of generation assets to be achieved by 2035;
- establishes legislative frameworks for a smooth, timely and coordinated delivery of the critical infrastructure outlined in the Queensland SuperGrid Infrastructure Blueprint (Infrastructure Blueprint);
- establishes the Priority Transmission Investment (PTI) framework which modifies some parts of the current National Electricity Law (NEL) and National Electricity Rules (NER) to allow the State to identify, assess, build and recover costs for PTI projects, to support timely delivery of critical backbone transmission;
- establishes the Renewable Energy Zone (REZ) framework to declare suitable parts of Queensland to be REZs, ensure the impact of REZs on Queensland communities is appropriately considered, provide for the coordinated and streamlined connection and

access to transmission networks in REZs, and to facilitate and support the development and operation of the transmission networks;

- enshrines the Job Security Guarantee Fund to give certainty to energy workers affected by the energy transformation at publicly owned coal-fired power stations and prescribed facilities;
- establishes new governance bodies to support industry, workers, and communities, including:
  - the Queensland Energy System Advisory Board (the Board), which is to provide advice to Government on updates to the Infrastructure Blueprint and produce an annual progress statement to track progress against renewable energy targets, and the optimal infrastructure pathway in the Infrastructure Blueprint;
  - the Energy Industry Council (the Council), which is to provide advice to the Minister on the intersection between the energy transformation and workforce issues for affected energy workers and their communities, opportunities for employment in the renewable energy industry and the skills and training that will be necessary to build workforce capacity;
  - the Queensland Renewable Energy Jobs Advocate (the Jobs Advocate), whose functions will include providing advice to the Minister on employment opportunities in the energy industry and strategies or incentives to encourage investors or employers to create such opportunities and consultation and engagement with businesses and Aboriginal peoples and Torres Strait Islander peoples in relation to how employment opportunities for Aboriginal peoples and Torres Strait Islander peoples could be increased;
- amendments to the *Electricity Act 1994* to assist in the deployment of new grid supporting technologies by generation, transmission and distribution entities under the Ministerial Infrastructure Designation process.

The Bill will provide certainty of the Government's ambition to address climate change, facilitate timely delivery of foundational infrastructure, support the existing workforce at publicly owned coal-fired power stations, and ensure a coordinated energy transformation in Queensland.

## 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 *Human Rights Act 2019* (the HR Act). In my opinion, the human rights under the HR Act that are relevant to the Bill are:

- Right to recognition and equality before the law (section 15);
- Right to life (section 16);
- Freedom of movement and to choose where to live (section 19);
- Freedom of expression (section 21)
- Taking part in public life (section 23);

- Property rights (section 24);
- Privacy and reputation (section 25);
- Right of children to protection in their best interests (section 26(2));
- Cultural rights – generally (section 27);
- Cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28);
- Right to be presumed innocent (section 32(1));
- Right not to incriminate oneself (section 32(2)(k)); and
- Right not to be tried or punished more than once (section 34).

As explained below, some of these human rights are protected and promoted, some are engaged but not limited, while others are limited, but in a way that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality, and freedom.

## **Renewable energy targets (Part 2) and human rights related to climate change**

### Human rights promoted by the Bill

Part 2 of the Bill provides for renewable energy targets. Clause 9 enshrines renewable energy targets of 50% electricity generated from renewable energy sources by 2030, 70% by 2032 and 80% by 2035. The Queensland Government has a longstanding commitment of achieving 50% renewable energy by 2030. To help deliver on this commitment, the Government established the Renewable Energy Expert Panel to provide advice on credible pathways to that goal. The expert panel delivered its report in 2016. Independent modelling indicates that Queensland will meet and beat the renewable energy target for 2030.<sup>1</sup> However, given the Queensland Government's longstanding commitment to 50% renewables by 2030, a more ambitious target may create uncertainty in the energy sector. That is why the Bill reaffirms the longstanding commitment to 50% renewables by 2030, with more ambitious targets beyond 2030. The renewable energy targets represent a minimum level of ambition, and the Government can and will strive to exceed those targets.

Increasing the generation of electricity from renewable energy sources is a key part of the Government's plan to achieve net zero emissions by 2050. The worst impacts of climate change can only be avoided if the world moves to net zero emissions by the middle of the century. According to the United Nations Human Rights Committee, climate change presents one of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life and other human rights.<sup>2</sup> The Land Court of Queensland has also recognised<sup>3</sup> that climate change can impact the right to life, the right of young people to enjoy their human rights without discrimination, the right of children to protection in their best interests, the right to property, the right to privacy and home and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples.<sup>4</sup> Those populations living in riverine and coastal locations will be some of the first impacted by climate change, including Aboriginal peoples and Torres Strait Islander peoples living in far North Queensland, and islands off the coast of Queensland. By setting renewable energy targets to avoid the worst impacts of climate change, the Bill helps to protect and promote those human rights. Part 2 does not limit any human rights.

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<sup>1</sup> *Queensland Energy and Jobs Plan* (28 September 2022) [11].

<sup>2</sup> *General Comment No 36 – Article 6: right to life*, 124<sup>th</sup> sess, UN Doc CCPR/GC/36 (3 September 2019) [62].

<sup>3</sup> *Waratah Coal Pty Ltd v Youth Verdict [No 6]* [2022] QLC 21.

<sup>4</sup> Sections 15, 16, 24, 25, 26(2) and 28 of the HR Act.

## **Priority transmission investments (Part 5) and renewable energy zones (Part 6) and impacts on cultural rights and rights related to property**

Part 5 of the Bill establishes the PTI framework, allowing the State to identify and assess PTI projects and support timely delivery of critical backbone transmission. Clause 26 provides that the responsible Ministers (the Minister and the Treasurer acting jointly) may declare a PTI. If a declaration is made, under clause 27, the responsible Ministers are to direct Powerlink to construct the investment.

Part 6 of the Bill establishes the REZ framework to facilitate and support the efficient and coordinated augmentation of the national transmission grid to accommodate the increased generation of electricity from renewable energy. Clause 38 provides that the Minister may recommend to the Governor in Council the making of a regulation to declare a REZ. For each REZ, there is to be a management plan under Part 6, Division 3. In recognition that a REZ declaration can impact local areas around the REZ, clauses 41, 42 and 43 provide that the management plan is to contain certain information including information about the boundary of the REZ, the existing or proposed transmission network for the REZ, as well as the associated timing and development. A draft of the management plan is to be consulted on for a period of not less than 60 days (clause 46) and must be undertaken prior to the Minister recommending the making of a regulation for a REZ declaration.

Similarly, before making a recommendation to the Governor in Council to make a regulation to make, amend or repeal a REZ declaration, the Minister must have regard to any REZ assessment carried out by the REZ delivery body under clause 51 on the Minister's request. REZ assessments may assess both the suitability of part of Queensland to accommodate the development and operation of a REZ as well as the impact that the development and operation of a REZ transmission network may have on particular matters including Aboriginal peoples, Torres Strait Islander peoples and other communities (clause 49).

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

PTI declarations under clause 26 and REZ declarations under clause 38 may result in infrastructure being built which impacts on:

- the freedom to choose where to live in section 19 of the HR Act (for example, where infrastructure results in local residents needing to move);
- the right to property in section 24 of the HR Act (for example, the visible amenity of neighbouring property owners);
- the right to non-interference with privacy, family and home in section 25(a) of the HR Act (for example, where infrastructure creates noise that disturbs the quiet enjoyment of one's home);
- cultural rights in section 27, and more specifically the cultural rights of Aboriginal peoples and Torres Strait Islander peoples in section 28 (for example, where the infrastructure is built on land with which Aboriginal peoples or Torres Strait Islander peoples have a connection under their tradition or custom, the infrastructure placement may interfere with their distinctive spiritual, material and economic relationship with the land).

Some of those human rights have internal limitations. The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy, family or home is unlawful or arbitrary. In a human rights context, ‘arbitrary’ refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

For impacts on land, territories, waters, coastal seas or other resources, the cultural rights of Aboriginal peoples and Torres Strait Islander peoples will only be engaged if they have a connection to that land or other resource under Aboriginal tradition or Island custom (definitions of ‘Aboriginal tradition’ and ‘Island custom’ in schedule 1 of the *Acts Interpretation Act 1954*). Further, section 28(2) of the HR Act states that the rights enumerated in that subsection must not be ‘denied’. Denial is a higher threshold for limitation of section 28(2) compared to other rights.

The Bill does not override, nor does it displace existing statutory processes for land acquisition and development. With the inherently diverse cultural rights of Aboriginal peoples and Torres Strait Islander peoples being maintained at a local level across Queensland, it is not feasible to state concretely whether the operation of clauses 26 and 38 will amount to a limitation or denial of cultural rights under section 28 of the HR Act in each circumstance. With the Bill establishing new PTI and REZ frameworks that operate at the State-wide level, this statement of compatibility will proceed on the basis there is a possibility a PTI or REZ declaration might result in impacts on a particular area with which Aboriginal peoples or Torres Strait Islander peoples do have a relevant connection, and that impact amounts to a denial of their cultural rights. In the case of decision making in relation to particular PTI projects or REZ declarations, downstream decision-makers will need to consider human rights in a manner that recognises the operation of cultural rights at a local level across Queensland, and consistent with their obligations under section 58 of the HR Act.

The Department of Energy and Public Works (the Department) undertook a four-week public consultation process on an exposure draft of the Bill. The Department received feedback from bodies representing Aboriginal and Torres Strait Islander economic and clean energy interests during this process. The Department also received feedback from other stakeholders who raised the importance of engagement with Aboriginal and Torres Strait Islander communities through the energy transformation and that this should be reflected within the Bill. This feedback has resulted in changes to the Bill. These changes include:

- A requirement that a person identifying as an Aboriginal person or a Torres Strait Islander person be appointed to the Board. This is to ensure a diversity of perspectives, including a First Nations perspective, are reflected in the advice given to the Minister by the Board. This advice will inform the development of the Infrastructure Blueprint, which in turn identifies projects that may be prescribed as eligible PTI.
- The period of consultation on the draft management plan for a REZ has been extended from a period of not less than 28 days to a period of not less than 60 days to provide a longer period for full and genuine consultation (clause 46).

- The Bill also now includes the ability for the Minister to request the REZ delivery body conduct a REZ assessment for a part of Queensland that contains, or may contain, a REZ. REZ assessments may include an assessment of the impact the development and operation of a REZ transmission network has, or is likely to have, on particular matters including Aboriginal peoples, Torres Strait Islander peoples and other communities (clause 49).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The limits on these human rights are reasonable and justified under section 13 of the HR Act 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 purpose of PTI declarations is to facilitate the construction of PTI (clause 17). The purpose of REZ declarations (clause 38) is to ensure a part of Queensland is to facilitate and support the efficient and coordinated augmentation of the transmission grid to accommodate the increased generation of electricity from renewable energy sources. These ultimately serve the purpose of 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 – Allowing PTI and REZs to be declared will help to achieve those purposes.
- Less restrictive alternatives – There are no less restrictive reasonably available alternatives to achieve the purposes of PTI and REZ declarations. Consideration was given to the following alternatives:
  - Consideration was given to confining the power to declare PTIs and REZs to areas that are without significance to Aboriginal peoples or Torres Strait Islander peoples. However, it would be difficult to select areas in Queensland that are without cultural significance before engaging investigation processes for particular sites, and doing so may negatively affect the efficiency and effectiveness of the energy transformation process.
  - Consideration was also given to whether existing ‘open access’ arrangements under the national electricity laws would constitute a less restrictive alternative to proposed REZ declarations. The proposed REZ declaration framework does not prevent or modify the assessments required under existing planning and approvals frameworks. However, in addition to these existing assessment processes, it also provides for the assessment of suitability and/or impacts

associated with generation and transmission development and so, on balance, is likely to be less restrictive compared to existing arrangements.

- Through the development of the Infrastructure Blueprint, consideration was given to the least cost, optimal infrastructure pathway to transform the electricity system and meet the renewable energy targets, while delivering reliable and affordable electricity supply to all Queensland electricity customers (including heavy industry which represents a very significant share of the State's overall electricity consumption profile and economy). The Infrastructure Blueprint proposes new high voltage backbone transmission (to be delivered via the PTI framework) to support the efficient connection and movement of energy across the State. High voltage transmission, rather than alternatives such as additional lower voltage transmission was preferred. High voltage transmission has less line losses, i.e., where electricity is lost in transit, than lower voltage transmission. Less line losses means each renewable development delivers more electricity to where it can be used, resulting in fewer renewable developments needed overall, fewer renewable development corridors and easement acquisitions, and reduced likelihood of impacts on property rights and areas of cultural significance.

In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are already narrowly tailored. In particular:

- Before a PTI is declared, Part 5, Division 2 sets out a process for candidate PTIs to be assessed and for the responsible Ministers to receive submissions from Powerlink and other advice from suitably qualified persons.
- Because a REZ declaration is to be made via regulation (clause 38(1)), the Minister will need to prepare a human rights certificate under section 41 of the HR Act that set outs the Minister's opinion on whether the regulation is compatible with human rights.
- Clause 40 provides that the Minister and the Treasurer must, in performing functions related to the making, amending or repealing of a REZ declaration, have regard to particular matters, such as any REZ assessment carried out for a part of Queensland that contains the proposed REZ. Prior to the REZ delivery body making a recommendation to the Minister that a part of Queensland be declared a REZ, the REZ delivery body must prepare a draft management plan (clauses 44 and 45). Clause 46 provides that consultation on the draft management plan must occur for a period not less than 60 days. This allows persons potentially affected by the REZ to voice their concerns and that these are considered and appropriately dealt with prior to the declaration of the REZ.
- As public sector entities, where the department or departmental representatives are undertaking decision-making processes relevant to REZ and PTI, they will be required to exercise any discretions compatibly with human rights under section 58 of the HR Act. That will include considering the impact on cultural rights and whether that impact is proportionate in the circumstances of a PTI or REZ declaration.

- Any relevant requirements in other legislation will also need to be complied with, including requirements under the *Environmental Protection Act 1994*, *Aboriginal Cultural Heritage Act 2003*, the *Torres Strait Islander Cultural Heritage Act 2003* and the *Native Title Act 1993* (Cwlth) and these downstream decision makers will be required to act in accordance with the *Public Sector Act 2022* and make decisions compatibly with human rights under section 58 of the HR Act.
- As a result of consultation on an exposure draft of the Bill, the Board's membership has been updated to require one board member to be an Aboriginal person or Torres Strait Islander person. This has been done, among other changes to the representation required on the Board, to promote diversity in membership of the Board and thereby facilitate diversity of perspectives where the Board is undertaking its functions. The Board will provide advice to the Minister on the Infrastructure Blueprint, which in turn identifies potential PTIs.
- Fair balance – The purpose of allowing PTI and REZ declarations to be made is to 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. While it is possible that PTI and REZ declarations 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. For clarity, the Priority Transmission Investment and REZ frameworks create new state-based frameworks that will derogate from national electricity legislative arrangements, but do not seek to override other statutory processes, rights, and obligations, including existing planning, environmental, development, and cultural rights frameworks.

As the potential interference with property and privacy is proportionate and not arbitrary, those rights are not limited by the PTI and REZ provisions in Parts 5 and 6 of the Bill. Where there may be a limitation of cultural rights and the freedom to choose where to live as a consequence of the PTI and REZ 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 clauses of the Bill in relation to REZs and PTIs are compatible with human rights.

### **Financial matters and cost recovery (Part 5, Division 3 and Part 6, Division 6)**

Part 5, Division 3 of the Bill provides a regulation-making power in relation to financial matters associated with PTIs. This will allow the responsible Ministers to direct Powerlink to recover specified amounts associated with the construction and operation of PTIs through Powerlink's Transmission Revenue Determination.

By way of background, Powerlink as a monopoly transmission business in the National Electricity Market is subject to economic regulation for regulated transmission services overseen by the Australian Energy Regulator (AER), as per the NEL and NER. Within this



regulated environment, Powerlink's Transmission Revenue Determination is an economic regulatory tool through which the AER determines how much Powerlink is allowed to earn from electricity customers in Queensland for providing them regulated transmission services they need to receive a safe and reliable electricity supply each day.

The effect of Part 5, Division 3 of the Bill, in part, is to allow the responsible Ministers to determine the share of each PTI that Powerlink is allowed to earn from its regulated revenue recovered from electricity customers on (i.e., what share of each PTI's construction and operation costs customers will pay for over time through their electricity bills).

When considering whether this may have the effect of depriving consumers of additional money, and in turn whether it would engage their right to property in section 24 of the HR Act, it is relevant to consider the appropriate counterfactual.

- A process is underway at a national level to incorporate emissions targets into the national electricity objective. This change, when finalised, will influence the transmission infrastructure approved under the national regulatory framework, particularly the timing of that infrastructure. Practically speaking, it is likely that more transmission investment will be required and earlier than may have been previously planned in order to transport large amounts of renewable generation to replace exiting coal generation. This means, regardless of whether the PTI mechanism exists, electricity customers are expected to pay more in the future for transmission infrastructure than they do today. In the absence of a shift towards renewables, electricity customers could face even higher transmission network costs as a result of climate change (i.e., increased and more intense weather events will damage existing transmission networks leading to higher replacement costs).
- The national process to incorporate emissions targets will likely not be sufficiently implemented in time to achieve the timeframes of the Plan and Infrastructure Blueprint. Given this, Queensland needs the PTI mechanism to ensure that transmission infrastructure is built in a timely and coordinated manner, to sequence the connection of major pumped hydro energy storage and REZs. Delayed delivery of Queensland's transmission backbone would likely increase costs on Queensland electricity customers (whether through higher construction costs as a result of constrained planning and delivery times or through greater reliance on higher cost sources of electricity to maintain supply) and negatively impact investment confidence in REZs.

Considering the above points, under a '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 Plan and Infrastructure Blueprint will reasonably result in lower costs in the long term than no plan at all.

Notwithstanding, where costs associated with PTI could engage electricity customers' right to property in section 24 of the HR Act, the right to property will only be limited if the property is deprived arbitrarily. In a human rights context, 'arbitrary' refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought.

The impact of Part 5, Division 3 on property is indirect. Clause 28 allows a regulation to include amounts which informs Powerlink's revenue determination, and therefore the amount that Powerlink can earn from regulated revenue recovered from electricity customers. However, the regulation may include an amount less than the total capital expenditure associated with the PTI project or gradually include amounts into Powerlink's revenue determination. 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. The regulation will need to be accompanied by a human rights certificate under section 41 of the HR Act, ensuring that human rights will be considered for any exercise of the power in clause 28. For these reasons, the impact on property is not arbitrary.

Part 6, Division 6 of the Bill provides a framework for the recovery of costs associated with the provision of the REZ transmission network incurred by the transmission network service provider as well as costs associated with a REZ assessment incurred by a transmission network service provider in its capacity as a REZ delivery body. In respect of costs associated with the provision of the REZ transmission network, these are to be recovered from the participants in the REZ (i.e. connecting generators) in the first instance by fees and charges set under clause 70. However, the responsible Ministers may also make a declaration under clauses 71 and 72, allowing a transmission network service provider to recover costs associated with the provision of the REZ transmission network, or REZ assessment costs, through charges for prescribed transmission services under its transmission determination made by the AER under the NER. In the event a declaration is made, these charges will ultimately be paid by consumers, which could engage their right to property in section 24 of the HR Act.

The impact of Part 6, Division 6 of the Bill is also indirect in that, if the Minister makes a declaration under clause 71 or 72 allowing for the recovery of costs through charges for prescribed transmission services, the relevant transmission determination for the TNSP must be made as prescribed by regulation (clause 73). This regulation will also need to be accompanied by a human rights certificate under section 41 of the HR Act, ensuring that human rights will be considered for any exercise of the power.

The impact of Part 6, Division 6 on property is also not arbitrary because the fees and charges are imposed on a cost-recovery basis, and the responsible Ministers must be satisfied of certain things before making a declaration under clause 71 or 72, including that the transmission network service provider acted reasonably and prudently or that the REZ assessment was conducted appropriately and efficiently, and that there is no other way for the transmission network service provider to reasonably recover the costs. These safeguards ensure that the charges are reasonable.

As the potential impact on the property of consumers is not arbitrary, the right to property is engaged but not limited by the financial and cost recovery provisions in Part 5, Division 3, and Part 6, Division 6 of the Bill.

**Power for a REZ delivery body and the Minister and Treasurer to obtain and use information for performing function (clauses 77, 78 and 79)**

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

Clause 77 confers a power on a REZ delivery body to obtain information from a person and clause 78 enables the REZ delivery body to use that information and other information in performing a function. Persons requested to provide the information may be corporations who do not hold human rights. However, corporations can only act through natural persons, and they will have human rights. Further, some persons requested to provide information may be natural persons.

Clause 79 also confers a power on the Minister or Treasurer to obtain information from a person to perform a function.

Clauses 77 and 79 are subject to a reasonable excuse exception, which is intended to impose only an evidential burden on the person to adduce or identify evidence of a reasonable excuse, rather than a legal burden to prove a reasonable excuse on the balance of probabilities. This means that the right to be presumed innocent in section 32(1) of the HR Act is not limited.<sup>5</sup>

Further, a reasonable excuse includes that complying might tend to incriminate the person. Accordingly, the provision does not limit the right to not incriminate oneself in section 32(2)(k) of the HR Act.

By requiring persons to provide information, these powers to obtain information engage:

- freedom of expression in section 21 of the HR Act which may include ‘the right to say nothing or the right not to say certain things’;<sup>6</sup> and
- the right to privacy in section 25(a) of the HR Act, which is a right to be let alone (the right to privacy will only be limited if the interference is unlawful or arbitrary, which it cannot be if it is proportionate under section 13 of the HR Act – whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13).

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

The limits on these human rights are reasonable and justified under section 13 of the HR Act for the following reasons:

- Nature of the human right – What is at stake in human rights terms is the ability to decline to provide information and to keep private matters private.
- Purpose – The purpose is to ensure that the REZ delivery body and the Minister and Treasurer have access to information required to exercise a function under the Bill.

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<sup>5</sup> *R v DA* [2016] VSCA 325; (2016) 263 A Crim R 429, 444 [48]

<sup>6</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

- Relationship between limitation and its purpose – Requiring people to provide relevant information will help to achieve that purpose.
- Less restrictive alternatives – The limit on human rights is already narrowly tailored. The requirement to provide information is subject to a reasonable excuse exception, which includes that complying might tend to incriminate the person. The use of information by the REZ delivery body and the Minister and Treasurer obtained under clauses 78 and 79 respectively are also subject to confidentiality requirements under clause 173 subject to specific use exceptions.
- Fair balance – The need to ensure the REZ delivery body and the Minister or Treasurer have the information they need to exercise a function under the Bill outweighs the minor impacts on the freedom not to express oneself and privacy.

As the interference with privacy is proportionate and not arbitrary, the right to privacy is not limited by clauses 77, 78 and 79. The limit on the freedom of expression is proportionate and therefore justified. Accordingly, the clauses are compatible with human rights.

### **The Job Security Guarantee Fund (Part 7) and the Queensland Renewable Energy Jobs Advocate (Part 10) and human rights related to employment**

#### Human rights promoted by the Bill

Part 7 of the Bill enshrines the Job Security Guarantee Fund to give certainty to particular energy workers affected by the energy transformation. While the HR Act does not protect the right to work, it does protect a number of human rights related to employment. The right to take part in public life (section 23) includes a right of equal access to the public service; the right to property (section 24) may protect a person's profession in some circumstances; and the right to privacy (section 25) protects a person's sphere of autonomy to lead their own lives, possibly including their professional lives. One of the purposes of the Job Security Guarantee Fund is to provide security and support to affected energy workers, including by providing training for, or access to, employment opportunities. By helping to achieve those purposes, the Bill protects and promotes those human rights related to employment. Part 7 does not limit any human rights.

Part 10 provides for the Jobs Advocate. Clause 154 establishes the Jobs Advocate, who has the function of providing advice to the Minister on opportunities for employment in the energy industry. In those ways, Part 10 also protects and promotes the above human rights related to employment. Part 10 also engages or limits human rights, considered below.

#### **Eligibility requirements for governance bodies (Parts 8, 9 and 10)**

Part 8 provides for the Board, which will provide advice to Government on updates to the Infrastructure Blueprint and produce an annual progress statement to track progress toward the renewable energy targets.

Part 9 provides for the Council, which will provide advice to the Minister on the intersection between the energy transformation and workforce issues for affected energy workers and their communities.

Part 10 provides for the Jobs Advocate, who will provide advice to the Minister on opportunities for employment in the energy industry, including any barriers to creating these opportunities.

The Bill sets out eligibility criteria for these governance bodies:

- clause 99 provides that appointed board members of the Board are to have knowledge, qualifications or skills in relation to certain things, and that a person identifying as an Aboriginal person or a Torres Strait Islander person be appointed to the Board;
- clause 100 provides that the chairperson of the Board is not to hold office or other position in a government entity and is to have knowledge, qualifications or skills in relation to certain things;
- clause 101 provides that a person is disqualified from becoming or continuing as an appointed board member or chairperson of the Board if they have conviction for certain indictable offences, or if they are insolvent or disqualified from managing a corporation;
- clause 127 provides that appointed council members of the Council are to be representatives of certain publicly owned energy businesses or certain industrial organisations;
- clause 131 provides that the chairperson of the Council is to be appropriately qualified, does not hold an office or other position in a government entity and is not to be a representative of an industrial organisation;
- clause 132 provides that a person is disqualified from becoming or continuing as an appointed council member or chairperson of the Council if they have conviction for certain indictable offences, or if they are insolvent or disqualified from managing a corporation;
- clause 158 provides that the Jobs Advocate is to be appropriately qualified to perform their functions; and,
- clause 159 provides that a person is disqualified from becoming or continuing as the Jobs Advocate if they have a conviction for certain indictable offences, or if they are insolvent or disqualified from managing a corporation.

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

These provisions may limit the right of access to public service and public office in section 23(2)(b) of the HR Act (and possibly other rights related to employment such as the rights to property and privacy in ss 24 and 25 of the HR Act). The reason is that people who do not meet those eligibility criteria will be excluded from those positions.

Eligibility criteria related to race and criminal convictions raise particular issues and are considered separately below.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified under section 13 of the HR Act as follows:

- Nature of the human right – What is at stake in human rights terms is the equal opportunity of all people to be appointed to public office in one of the new positions created by the Bill. The right of equal access to the public service and to public office is directed to preventing privileged groups from monopolising public service, in the sense of monopolising the composition of the public service.<sup>7</sup>
- Purpose – The purpose of the eligibility criteria is to ensure the integrity of the bodies established by the Bill and the people who comprise them, to ensure that the people who fill the roles have the appropriate skills and knowledge, and to ensure relevant expertise and representation of the community.
- Relationship between limitation and its purpose – The eligibility criteria help to achieve those purposes.
- Less restrictive alternatives – These provisions are the least restrictive way of ensuring integrity and that positions in the Board and Council and the Jobs Advocate are held by people with appropriate qualifications. The disqualifying matters are narrowly tailored to relevant matters such as a person’s ability to appropriately manage an organisation (disqualifying offences are considered separately below).
- Fair balance – The eligibility criteria are consistent with the underlying purpose of the right of access to the public service, that is, ‘[b]asing access to public service on equal opportunity and general principles of merit, and providing secure tenure, ensure that persons holding public service positions are free from political interference or pressures’.<sup>8</sup> Ultimately, the need for integrity and appropriately qualified people for the role outweighs the impact on the right of access to the public service and to public office (and any other human rights related to employment).

The obligations in clauses 104, 136, 162 to give written notice of insolvency or disqualification may also engage the right to privacy. However, it is an ancillary measure justified by the same need for integrity.

### **Eligibility criterion based on race and substantive equality**

Clause 99 of the Bill provides that at least one member of the Board is to be an Aboriginal person or a Torres Strait Islands person.

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

This eligibility criterion draws a distinction based on race and therefore may engage the right to equality and non-discrimination under section 15(3) and (4) of the HR Act, as well as the

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<sup>7</sup> *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [324].

<sup>8</sup> UN Human Rights Committee, *General Comment No 25*, 57th sess, UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) [23]

right of access to the public service on general terms of equality under section 23(2)(b) of the HR Act.

However, section 15 of the HR Act protects substantive equality, not just formal equality. For that reason, section 15(5) recognises that sometimes people must be treated differently in order to progress towards equality. Where differentiation is a measure for redressing disadvantage, it is not discrimination because it furthers equality. ‘Special measures are not an exception to the principle of non-discrimination but are integral to its meaning and essential to the ... project of eliminating ... discrimination and advancing human dignity and effective equality.’<sup>9</sup>

The right of equal access to the public service and to public office in section 23(2)(b) of the HR Act is concerned with ensuring a diverse and professional public service and public officers appointed on merit. Once again, to ensure a truly diverse public service, there may need to be special measures or affirmative action as envisaged by section 15(5) of the HR Act.<sup>10</sup>

A measure must satisfy three criteria to be a special measure under section 15(5) of the HR Act:

- the purpose of the measure must be to assist or advance particular people or groups of people;
- those people or groups of people must be disadvantaged; and
- their disadvantage must be caused by discrimination.

The purpose of requiring at least one member of the Board to be an Aboriginal person or Torres Strait Islander person is to ensure the Board has the benefit of a First Nations perspective. There can be no doubt that the Aboriginal peoples and Torres Strait Islander peoples of Queensland are disadvantaged by the historic and ongoing process of colonisation. Finally, their disadvantage arises from that long history of systemic discrimination.

Accordingly, the eligibility criterion in clause 99(3)(d) satisfies the requirements of a special measure under section 15(5) of the HR Act. That means that the eligibility criterion engages but does not limit the rights to non-discrimination and equal access to the public service in sections 15(3), (4) and 23(2)(b) of the HR Act.

### **Criminal history checks (Parts 8, 9 and 10) and the right to privacy**

Clauses 101, 132, 159 of the Bill make conviction of certain indictable offences (other than a spent conviction) a ground of disqualification from becoming or continuing as an appointed board member or chairperson of the Board, an appointed council member or chairperson of the Council, or the Jobs Advocate.

Under clauses 106, 138, 166, the Minister may request criminal history reports with the person’s consent.

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<sup>9</sup> Committee on the Elimination of Racial Discrimination, *General recommendation No. 32: The meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination*, 75<sup>th</sup> sess, UN Doc CERD/C/GC/32 (24 September 2009) 6 [20].

<sup>10</sup> Human Rights Committee, *General Comment No 25*, 57<sup>th</sup> sess, UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) 7 [23].

In addition, under clauses 107, 139, 167, there is an ongoing obligation to disclose any new convictions for certain indictable offences.

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

These provisions relating to a person's criminal history engage, but do not limit, the following human rights:

- the right to recognition and equality before the law (section 15 of the HR Act);
- the right to privacy and reputation (section 25 of the HR Act);
- the right to be presumed innocent (section 32(1) of the HR Act); and,
- the right not to be tried or punished more than once (section 34 of the HR Act).

#### *Recognition and equality before the law*

Section 15(2) protects a person's right to enjoy their other human rights without discrimination. Section 15(3) provides that every person is entitled to the equal protection of the law without discrimination. Section 15(4) provides that all people have the right to equal and effective protection against discrimination.

In the HR Act 'discrimination' is defined as including direct or indirect discrimination on the basis of one of the protected attributes in the *Anti-Discrimination Act 1991*, such as race. However, even if conviction rates are higher among people of a particular racial background, it is considered that the provisions relating to criminal histories are not unreasonable and do not amount to indirect discrimination on the basis of race.

Because the definition of 'discrimination' in the HR Act is inclusive, it protects against discrimination on additional grounds that are analogous to those protected by the *Anti-Discrimination Act 1991*.<sup>11</sup> Discrimination on the basis of an irrelevant criminal record may be an analogous ground of discrimination.<sup>12</sup> However, the disqualifying offences are tailored to only include offences that are relevant to the roles performed by appointed board members and the chairperson of the Board, appointed council members and the chairperson of the Council, and the Jobs Advocate. That is, only convictions that are not spent, and only if they involved fraud, dishonesty, assault, or damage or destruction of property. Accordingly, it is considered that the provisions relating to criminal histories do not discriminate on the basis of an irrelevant criminal record.

#### *Right to privacy*

These grounds of disqualification engage the right to privacy in section 25(a) of the HR Act. In the United Kingdom, the position is that police cautions take place in private and are therefore an aspect of the right to a private life. Convictions, which take place in public, become part of a person's private life as they recede into the past. Ordinarily, a conviction recedes into the past at the point that it becomes spent under the spent convictions regime.<sup>13</sup> There is also

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<sup>11</sup> *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [317]-[320].

<sup>12</sup> *Thlimmenos v Greece* [2000] ECHR 162; (2001) 31 EHRR 15, [39]-[49].

<sup>13</sup> *R (T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35; [2015] AC 49, 65-6 [18]; *R (L) v Commissioner of Police of the Metropolis* [2009] UKSC 3; [2010] 1 AC 410, [27].



authority that ordinarily employers are to be trusted to only take into account convictions which are relevant.<sup>14</sup>

Critically, under clauses 101, 132, 159, spent convictions under the *Criminal Law (Rehabilitation of Offenders) Act 1986* are not a ground for disqualification. Further, criminal history reports under clauses 106, 138, 166 are not to include spent convictions (due to the definition of ‘criminal history’ in schedule 1). This likely means that the convictions do not form part of the person’s private life, such that the disclosure of those convictions does not limit the right to privacy. Even if the convictions are private matters, any interference with privacy would not be arbitrary. The Minister may only request criminal history reports with the person’s consent. Further, by only requiring the disclosure of convictions that are not spent, these provisions of the Bill ‘balanc[e] the risk of blighting the prospects of ex-offenders and the risk of appointing unsuitable people to sensitive positions’.<sup>15</sup> It should also be noted that clauses 108, 140, 168 include important safeguards to maintain confidentiality of criminal history information, including an obligation not to disclose criminal history information and an obligation to destroy a criminal history report as soon as practicable after it is no longer needed.

Accordingly, these provisions relating to criminal histories engage, but do not limit, the right to privacy in section 25(a) of the HR Act.

#### *Right to reputation*

Section 25(b) of the HR Act protects the right not to have one’s reputation unlawfully attacked. However, the right to reputation does not protect against the foreseeable consequence of one’s own actions, such as, for example, the commission of a criminal offence.<sup>16</sup>

#### *Right to be presumed innocent*

The obligations in clauses 107, 139, 167 to disclose any new convictions for certain indictable offences do not engage the right to be presumed innocent in section 32(1) of the HR Act. That might potentially be the case with obligations to disclose new charges, however the provisions only require disclosure of convictions. A person who has been convicted is no longer entitled to be presumed innocent.

#### *Right not to be punished more than once*

It might be thought that disqualification on the basis of a criminal conviction amounts to double punishment. Section 34 of the HR Act protects the right not to be tried or punished more than once for an offence in relation to which the person has already been finally convicted or acquitted in accordance with law. The right embodies the principle of double jeopardy. ‘Punishment’ means a ‘sanction for a criminal offence’. It does not include non-penal consequences such as disciplinary measures.<sup>17</sup>

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<sup>14</sup> *R (P) v Secretary of State for Justice* [2019] UKSC 3; [2020] AC 185, 242-3 [51]-[52].

<sup>15</sup> *MC v United Kingdom* (2022) 74 EHRR 24, 861 [54].

<sup>16</sup> *Matalas v Greece* [2021] ECHR 247; (2021) 73 EHRR 26, 975-6 [39].

<sup>17</sup> UN Human Rights Committee, *General Comment No 32 – Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc CCPR/C/GC/32 (23 August 2007) 16 [57].

Accordingly, these provisions relating to criminal histories do not limit the right against double punishment in section 34 of the HR Act.

### **Reasonable excuse defences and right to be presumed innocent (Parts 8, 9 and 10)**

Parts 8, 9 and 10 of the Bill contain a number of reasonable excuse exceptions to obligations to provide information or documents:

- clause 104(2) provides that an appointed board member or chairperson of the Board must provide written notice of insolvency or disqualification to the Minister, unless the person has a reasonable excuse;
- clause 107(2) provides that an appointed board member or chairperson of the Board must provide written notice of new convictions for certain offences, unless the person has a reasonable excuse;
- clause 136(2) provides that an appointed council member or chairperson of the Council must provide written notice of insolvency or disqualification to the Minister, unless the person has a reasonable excuse;
- clause 139(2) provides that an appointed council member or chairperson of the Council must provide written notice of new convictions for certain offences, unless the person has a reasonable excuse;
- clause 162(2) provides that the Jobs Advocate must provide written notice of insolvency or disqualification to the Minister, unless the person has a reasonable excuse; and,
- clause 167(2) provides that the Jobs Advocate must provide written notice of new convictions for certain offences, unless the person has a reasonable excuse.

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

These reasonable excuse exceptions are intended to impose only an evidential burden on the person to adduce or identify evidence of a reasonable excuse, rather than a legal burden to prove a reasonable excuse on the balance of probabilities. This means that the right to be presumed innocent in section 32(1) of the HR Act is not limited.<sup>18</sup>

Further, it is intended that a reasonable excuse will include that the answer tends to incriminate the person. Accordingly, the provisions do not limit the right not to incriminate oneself in section 32(2)(k) of the HR Act.

By forcing people to divulge information, the above provisions do engage the right to privacy and the freedom of expression (which includes the freedom to say nothing). However, the limits on these human rights are reasonable and justified under section 13 of the HR Act for the following reasons:

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<sup>18</sup> *R v DA* [2016] VSCA 325; (2016) 263 A Crim R 429, 444 [48].

- Nature of the human right – what is at stake in human right terms is the ability to decline to provide information and to keep matters private.
- Purpose – The purpose is to facilitate the Board, the Council and the Jobs Advocate to perform their functions with honesty and integrity and to promote public confidence in their integrity, through ensuring that only suitable individuals are appointed to, and remain in office.
- Relationship between limitation and its purpose – requiring people to provide the stated information will help to achieve that purpose.
- Less restrictive alternatives – The limit on human rights is already narrowly tailored. The requirement to provide information is subject to a reasonable excuse. Information relating to notification of new convictions is required to be kept confidential and must be destroyed as soon as reasonably practicable after it is no longer needed.
- Fair balance – The need to promote public confidence in the integrity of the Board, the Council and the Jobs Advocate, and ensure that only suitable individuals are appointed to, and remain in office outweighs the minor impacts on the freedom to express oneself and privacy.

As the interference with privacy is proportionate and not arbitrary, the right to privacy is not limited by the above clauses. The limit on the freedom of expression is proportionate and therefore justified. Accordingly, the clauses are compatible with human rights.

### **Disclosure of conflicts of interest (Parts 8, 9 and 10) and privacy**

Clause 114 requires board members of the Board to disclose a conflict of interest, and clause 117 requires the conflict to be recorded in the Board's register of interests. Clause 116 provides that unless the board otherwise directs, the board member must not participate in decision making in relation to a decision for which they have a conflict.

Clauses 146, 148 and 149 make similar provision for conflicts of interest of council members of the Council.

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

Those requirements may potentially limit the right to privacy in section 25(a) of the HR Act, and the freedom of expression in section 21 which may include the right to say nothing or the right not to say certain things.<sup>19</sup> It is possible that preventing conflicted board members or council members from taking part in decision making might impact on their right to participate in the conduct of public affairs in section 23(1) of the HR Act, though it is not clear whether public affairs includes meetings of the Board or meetings of the Council.

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<sup>19</sup> *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on those human rights is justified by reference to the need to ensure integrity and transparency of the governance bodies.

- Nature of the human right – What is at stake in human rights terms, is the ability to keep information to oneself and to take part in the decision-making of public bodies.
- Purpose – The purpose of requiring disclosure of conflicts of interest is to enhance the performance, transparency and public accountability of the Board and the Council.
- Relationship between limitation and its purpose – Imposing a requirement for appointees to declare conflicts of interest, restricting the participation of Board and Council members where there is a conflict of interest, and requiring the Board and Council to maintain a register of interests supports the integrity and accountability of members and transparency in decision-making. The numerous stakeholders and competing interests of various groups make it vital that the independence and neutrality of those appointed to the bodies can be relied upon and is essential to ensure the good governance of the Board and Council.
- Less restrictive alternatives – The approach adopted in the Bill to manage conflicts of interest is considered the least restrictive way of achieving the policy intent of ensuring that conflicts of interest are declared and managed in way that is accountable, transparent and appropriate for Board and Council members.

To allow appointed Board and Council members to continue to make decisions regardless of their conflicts of interest would not serve the purposes of the Bill. Similarly, to expect members to act impartially, and be seen to act impartially, despite competing interests would be unrealistic. As such, there is no suitable alternative to preventing those with conflicts of interest from engaging in the decision-making process.

Efforts have been made to minimise the limitations placed on human rights. There is a narrow scope as to who is considered to have a conflicting interest; only those who are members, partners, employees or have another stated interest may be prevented from making decisions. Furthermore, the clauses provide the power for the Board or Council to decide to allow the member to participate in decision making regardless of a potential conflict. Allowing each conflict of interest to be considered individually lessens the restriction placed on the human right. Additionally, the members will only be prevented from decision making regarding decisions where they have conflicting interests. It can be expected that most representatives will still be involved for the majority of decisions made. Recognising that appointed members of the Council may be a representative of an entity which is the employer or trade union for affected energy workers, non-commercial interests arising solely due to this relationship have been exempted from the conflict of interest procedures, to ensure those members are not penalised for their membership in these organisations.

- Fair balance – The impact on human rights is at the lower end of the scale. There is not great importance in being free to withhold a conflict or to participate in a decision when

conflicted. On the other side of the scales, ensuring that the members act with integrity is of the utmost importance. Above all else, preventing members from making decisions in situations where they hold a competing interest is vital to maintaining the integrity of the bodies and for facilitating Queensland's energy transformation. The importance of ensuring the performance, transparency and public accountability of the Board and the Council outweigh the relatively minor impact on human rights.

As the interference with privacy is proportionate and not arbitrary, the right to privacy is not limited by the provisions related to conflicts of interest. Any limits on the freedom of expression and the right to take part in public life are proportionate and therefore justified. Accordingly, the provisions related to conflicts of interest are compatible with human rights.

### **Protections for confidential information (Part 11)**

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

Clause 173 imposes an obligation not to disclose confidential information acquired or accessed in a person's capacity under the Bill, subject to certain exceptions. By preventing people from disclosing certain information, this provision limits freedom of expression in section 21 of the HR Act.

#### If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, the limit on freedom of expression is reasonable and justified under section 13 of the HR Act:

- Nature of the human right – What is at stake in human rights terms, is the freedom to say what one wishes. Free expression is critical for an open society in which ideas are freely exchanged.
- Purpose – The purpose of the obligation in clause 173 is to protect confidential information, including private information. Confidential information is defined as information that could identify an individual, about their financial position or background, or that would be likely to damage the commercial activities of a person. Ultimately clause 173 serves to protect privacy under section 25(a) of the HR Act.
- Relationship between limitation and its purpose – By prohibiting people from disclosing confidential information, clause 173 helps to achieve those purposes of protecting confidentiality and privacy.
- Less restrictive alternatives – The limit on freedom of expression is narrowly tailored to that objective. Clause 173 only applies to particular people with a role under the Bill, there are exceptions to the obligation (for example with consent), and there are exceptions to the meaning of confidential information (such as publicly available information).
- Fair balance – Ultimately, the need to respect confidentiality and the privacy of individuals outweighs the freedom to freely express that confidential information.

Accordingly, clause 173 is compatible with human rights.

**Amendment to *Petroleum and Gas (Production and Safety) Act 2004***

Clause 190 of the Bill amends section 423(2) of the *Petroleum and Gas (Production and Safety) Act 2004* to replace the reference to ‘covered pipeline’ with ‘scheme pipeline’. This amendment preserves the ability of the Queensland Government to recover Queensland’s portion of Australian Energy Market Commission gas-related costs from the operators of economically regulated gas transmission pipelines through annual fees.

Those fees may be passed onto consumers. This may have the effect of depriving them of additional money. This would engage their right to property in section 24 of the HR Act. However, the right to property will only be limited if the property is deprived arbitrarily. In a human rights context, ‘arbitrary’ refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought.

The impact on property is not arbitrary because the fees are imposed on a cost-recovery basis, and calculated based on the kilometres of pipeline the subject of the holder’s pipeline licence.

As the potential impact on the property of consumers is not arbitrary, the right to property is engaged but not limited by the amendment in clause 190 of the Bill.

## **Conclusion**

In my opinion, the Energy (Renewable Transformation and Jobs) 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 accordance with section 13 of the Act.

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

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