

Energy (Renewable Transformation and Jobs) Bill 2023

Statement of Compatibility

FOR

Amendments during consideration in detail moved by the Honourable Mick de Brenni MP, Minister for Energy and Clean Economy Jobs

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 and Clean Economy Jobs make this statement of compatibility with respect to the amendments to be moved during consideration in detail (the amendments) to the Energy (Renewable Transformation and Jobs) Bill 2023 (the Bill).

In my opinion, the amendments to the Bill are 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 amendments

The Queensland Energy and Jobs Plan (the Plan) outlined the State's considered, methodical approach for a coordinated energy transformation that delivers for communities and workers. To further support implementation of the Plan and Queensland's energy transformation, amendments will be moved during consideration in detail of the Bill. These amendments will contribute to two key policy objectives; that is, further enshrine social licence objectives in energy legislation and facilitate the energy transformation.

Amendments to further social licence objectives

The Plan commits to transforming the State's electricity system to deliver clean, reliable, and affordable power and to achieve 80% renewable energy by 2035. Social licence and community acceptance are essential for the transformation, and to achieving the State's renewable energy targets.

Two amendments to the Bill are proposed to further facilitate community partnerships and collaboration and build social licence. These amendments will sit alongside a suite of existing initiatives regulatory requirements (including planning and environmental obligations) that also work to build community acceptance and social licence.

Social licence criteria and code of conduct

To ensure greater consideration to social licence objectives through the energy transformation, amendments will be made to the *Electricity Act 1994* to require the regulator to consider if proponents have satisfied the social licence criteria when considering the issuing or transfer of a generation authority or a special approval for generating plant. The amendments also create a head of power for the Minister to develop a code of conduct for the purposes of the social licence criteria. Compliance with the code of conduct may be prescribed as a matter the regulator must consider when deciding if the social licence criteria are satisfied for the grant or transfer of a generating authority or special approval in relation to a generating plant. Transitional arrangements are outlined.

Renewable Energy Zone – Eligibility principles

Social licence is crucial to the renewable energy zone (REZ) framework, which will facilitate the coordinated, efficient development of transmission network infrastructure to connect new renewable generation.

An amendment to clause 42 will require that the process to identify eligible entities and projects that may connect to and access the REZ transmission network, must have regard to certain ‘eligibility principles’. The principles are social licence, developer capability, and project feasibility. This amendment will ensure social licence considerations are embedded in the process for identifying the entities and projects that can connect to a REZ, alongside other key REZ objectives.

Facilitating the energy transformation

Four additional amendments will be made during consideration in detail. Each are intended to further facilitate the energy transformation.

Ring-fencing

On 1 March 2024, the *Ring-fencing Guideline Electricity Transmission (Version 4)* became fully enforceable, imposing expanded obligations on Powerlink. Powerlink is a key partner in the State’s energy transformation and has been given enhanced functions to support a planned, coordinated and least-cost transformation in Queensland. Compliance with the new guidelines would have required Powerlink to divert focus and resources from supporting Queensland’s energy transformation.

Amendment 14 will insert a head of power in Part 11 to create Regulations that can modify or disapply Powerlink’s ring-fencing obligations. Safeguards will be in place, including that Regulations must be necessary to achieve the main purposes of the *Energy (Renewable Transformation and Jobs) Act 2024*, that a 3-year review will be undertaken of any Regulations made under this new power to ensure they remain necessary, and that these Regulations will sunset on 31 December 2035.

The amendments will retrospectively validate specific acts and omissions by Powerlink that occur between the full commencement of the expanded obligations (1 March 2024) and the day a Regulation is made, provided those acts and omissions would have been valid and lawful under the Regulation.

Renewable Energy Zones – Authorisation of additional conduct for competition legislation

Clause 83 of the Bill authorises specific conduct by entities for the purposes of the *Competition and Consumer Act 2010* (Cwlth) and Competition Code of Queensland. Amendment 13 to clause 83 of the Bill will insert a Regulation-making power to authorise additional conduct to facilitate a REZ or a proposed REZ. A clarifying amendment will also be made, to remove any doubt, that the conduct of an entity in the development of a management plan, including the preparation of and consultation on a draft of the management plan, is authorised prior to the declaration of a REZ.

Renewable Energy Zones – Protection from liability for Powerlink as a transmission network service provider

To facilitate the commercial viability of REZs, Powerlink may undertake engagement and negotiations with the market prior to the declaration of a REZ. Amendment 17 will insert new clause 179A into the Bill to provide Powerlink, in its capacity as a transmission network service provider, with a limited protection from liability for any acts done or omissions made, honestly and without negligence. This protection will only apply for acts or omissions to facilitate a proposed REZ, the proposed REZ transmission network or the proposed REZ controlled assets. Any liability that may arise will attach instead to the State. This protection will only apply to acts within two years from assent of the Act or until the proposed REZ is declared. This amendment will ensure Powerlink can confidently undertake commercial negotiations during the transition to the new REZ framework.

Application Acts – Regulation head of power

The *National Energy Retail Law (Queensland) Act 2014* (NERLQ Application Act) and *Electricity-National Scheme (Queensland) Act 1997* (NELQ Application Act) apply the National Electricity Law (NEL) and National Energy Retail Law (NERL) in Queensland.

While consistency with the NERL and NEL is important for Queensland as a participant in the National Energy Market, it is critical the regulatory framework remains fit for purpose for Queensland during the energy transformation. It must be appropriate and reflective of jurisdictional priorities and characteristics, including outcomes for Queensland customers.

New clauses will amend the Regulation-making powers in the NERLQ Application Act and NELQ Application Act. This will allow Regulations under these powers to modify the effect of the NEL and NERL as they apply in Queensland.

Human Rights Issues

Human rights relevant to the subordinate legislation (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*. In my opinion, the human rights that are relevant to the amendments to be moved is the right to non-interference with privacy, family, and home in section 25(a).

It is noted the right to privacy has internal limitations, in that it 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.

Amendments to further social licence objectives

Human rights promoted by the amendments

Social licence criteria and code of conduct

The amendments will give certainty to communities as the state navigates the energy transformation. The purpose of the social licence criteria and code of conduct amendments are to ensure generation proponents engage and work with landholders and communities when developing, building and operating generating plants. Community interests are given broad protection by the framework of civil and political rights which protect individual rights as enshrined in the *Human Rights Act 2019*.

Providing for social licence criteria that must be considered by the regulator when considering an application or a transfer of a generation authority or a special approval for generating plant under the *Electricity Act 1994* will provide an additional layer of protection for community and individual interests. Setting new standards and obligations for renewable energy developers will promote shielding individuals in affected communities from arbitrary interference within the sphere of autonomy to lead their own lives.

By providing for the creation of a head of power for the Minister to develop a code of conduct for social licence criteria, which will set the standard for renewable energy developers, the amendments help to protect and promote the right to privacy.

The amendments made to the *Electricity Act 1994* (through amendment 18) do not limit any human rights.

Renewable Energy Zones – Eligibility principles

The amendments will require that the process used to identify eligible entities and projects that may connect to and access the REZ, must have regard to certain ‘eligibility principles’: social licence, developer capability, and project feasibility. The social licence principle leverages the social licence criteria for the issuing or transfer of a generation authority under the new section 180(2)(f) of the *Electricity Act 1994*.

The principles will ensure that social licence considerations are embedded in the process to identify the entities and projects that can connect to a REZ. In embedding additional standards for proponents seeking to develop renewable projects in communities, the amendments promote protection of the right to privacy for individuals living in communities affected by the energy transformation.

The amendment made to clause 42 of the Bill (through amendment 3) does not limit any human rights.

Facilitating the energy transformation

I have considered whether the proposed amendments, that further facilitate the energy transformation, to be moved to the Bill might engage human rights under the *Human Rights Act 2019*.

Following consideration of the proposed amendments regarding ring-fencing, the authorisation of additional conduct for competition legislation, protection from liability, and the Regulation head of power in the Application Acts, I have concluded that these proposed amendments to be moved do not engage any human rights because only individuals have human rights (section 9, *Human Rights Act 2019*). The amendments concern government administration and will impact upon corporate entities only.

Conclusion

In my opinion, the amendments during consideration in detail to the Energy (Renewable Transformation and Jobs) Bill 2023 are compatible with human rights under the *Human Rights Act 2019* because they do not limit any human rights.

THE HONOURABLE MICK DE BRENNI MP
MINISTER FOR ENERGY AND CLEAN ECONOMY JOBS

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