

# Mineral and Energy Resources and Other Legislation Amendment Bill 2024

## Statement of Compatibility

### FOR

## Amendments during consideration in detail to be moved by the Honourable Scott Stewart MP

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Mr Scott Stewart MP, Minister for Resources, make this statement of compatibility with respect to amendments during consideration in detail to be moved to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the amendments to be moved to the Bill are compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

## Overview of the Amendments

### *Amendments to the coexistence institutions and subsidence management framework*

The amendments to be moved during consideration in detail amend the Bill to remove the proposed subsidence management framework in new Chapter 5A of the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERC Act) and other related amendments, pending further consultation. This will allow key stakeholders to provide detailed feedback on the subsidence management framework and government to implement a coexistence framework that seeks to balance the rights and interests of the resources sector with those of landholders.

The amendments also include minor changes to the *Gasfields Commission Act 2013* (GFC Act) to clarify that the membership of the Coexistence Queensland board and any community leaders council they establish, include members from the agricultural industry to represent the interests of agricultural landholders.

Finally, the amendments also include a change to the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) to provide that the Office of Groundwater Impact Assessment may provide advice, on request by government entities, about subsurface impacts from authorised petroleum and gas activities. This is an important function to further support coexistence and will be achieved through an amendment to the P&G Act.

### **Amendments relating to the Corrective Services Act 2006 (CS Act)**

Amendments relating to the *Corrective Services Act 2006* (CS Act) will:

- validate the appointments of past acting professional board members to ensure the continued safe and effective administration of parole in Queensland, and
- clarify that the Parole Board Queensland (the Board) can continue to grant parole with a delayed release date to support the safe transition of suitable prisoners from custody to parole supervision.

### **Amendments to prohibit greenhouse gas storage activities and greenhouse gas stream enhanced petroleum recovery activities in the Great Artesian Basin**

The objective of the amendments is to give effect to a permanent ban on greenhouse gas (GHG) storage activities, including carbon capture and storage (CCS), and enhanced petroleum recovery (EPR) activities using a GHG stream including carbon dioxide (CO<sub>2</sub>), in the geographical area of the Great Artesian Basin (GAB) located in Queensland.

To deliver on this objection, the Bill amends the *Environmental Protection Act 1994* (EP Act), the *Greenhouse Gas Storage Act 2009* (GGS Act), the *Petroleum Act 1923* (Petroleum Act), and the P&G Act.

## **Human Rights Issues**

### **Human rights relevant to amendments to be moved to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)**

Consideration has been given as to whether the proposed amendments to be moved to the Bill might engage human rights under the HR Act, and which rights might be relevant to the Bill.

### **Amendments to the coexistence institutions and subsidence management framework**

The amendments to the coexistence institutions and subsidence management framework do not raise any human rights considerations under the HR Act.

### **Amendments relating to the Corrective Services Act 2006 (CS Act)**

The amendments relating to the CS Act engage human rights and further considerations to determine compatibility are outlined below.

Human rights engaged by the amendments include:

- the right not to be subject to arbitrary arrest or detention (section 29(2) of the HR Act) and
- the right to a fair hearing (section 31 of the HR Act).

### Validating the appointments of past acting professional board members

The amendment validates the appointments of past acting professional board members to address errors in how approved individuals were engaged. The amendment validates parole decisions to the extent of any invalidity because of the appointment errors.

The extent of any limitation on human rights is narrowed only to the extent that the amendment validates the Board decisions that involved a professional board member that was not appropriately appointed to the position. As the professional board member involved in the decision was not validly appointed, the parole decision may also be considered invalid.

This includes decisions under section 193 to grant or refuse a prisoner's application for a parole order and section 208B to immediately suspend a prisoner's parole order.

The validation provision is limited to decisions made during the period 3 July 2017 to 5 June 2024.

- Consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 of the HR Act)

(a) the nature of the right

The right to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. What constitutes a fair hearing depends on the facts of the case and requires a weighing of a number of public interest factors. The concept of a fair hearing is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The amendment limits the right to a fair hearing by retrospectively validating the decisions of the acting professional board members who were not validly appointed. This removes an avenue for the impacted offender to challenge the decision on these grounds. However, despite the errors in how the individuals were engaged to act, these individuals were otherwise suitable to be approved for appointment by Governor in Council and purported to act in the position in accordance with the requirements. Further, the amendment is limited to validating decisions only with respect to any defect from the appointment errors. Other grounds for challenge remain open to an offender.

The purpose of the limitation is to promote the continued safety of the community by ensuring that impacted parole decisions remain enforceable. This in turn promotes the right not to be detained arbitrarily (section 29(2) HR Act) for those offenders subject to impacted decisions, such as a prisoner released on an invalidly issued parole order who would otherwise be unlawfully at large. A secondary purpose is to support the effective operation of the parole system in Queensland by removing the need to administratively remake impacted decisions, allowing parole decision-making to continue with a focus on promoting community safety.

These are considered to be legitimate purposes in a free and democratic society.

*(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose including whether the limitation helps to achieve the purpose*

Any subsequent actions stemming from a decision to grant, refuse or suspend parole rely on the lawful authority of the Parole Board having made that decision. For example, actions taken by QCS in managing offenders on parole rely on the Parole Board having enabled conditions within the order for the offender to comply with. As another example, where a prisoner's parole is suspended, a police officer relies on a lawfully executed warrant to arrest.

By validating the past acting appointments, and decisions that may be invalid because of the invalid appointments, the parole decisions involving these members remain enforceable. This includes decisions to issue a warrant where a prisoner's parole has been suspended. The limitation ensures that such a warrant can be executed lawfully.

*(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill*

There are no less restrictive and reasonably available alternatives to achieve the purpose of ensuring that impacted parole decisions remain enforceable and the parole system in Queensland is properly administered.

A potential alternative has been considered to have all impacted decisions remade with validly appointed members. This would require significant resourcing to be diverted, causing significant delays to other parole decision-making. This also carries risks that decisions could be missed, further undermining the purpose. This option is therefore considered to not be reasonably available and to not be capable of achieving the purpose as effectively as the amendments.

The amendment includes safeguards to minimise the limitations on human rights. The scope of the validating provision is limited to only defects in the decisions as a result of the appointment errors and not any other reason and the amendment is limited to the period within which the validating provision applies the years the Parole Board Queensland has been in operation until the issue was confirmed and addressed.

*(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation*

On the one side of the scale, it is acknowledged that the amendments place a limitation on an offender's right to a fair hearing, by removing an avenue for a decision to be challenged. Given its retrospective application, such limitations must be strongly justified.

On the other side of the scale, the amendment is necessary to achieve an essential purpose, that is to ensure the continued enforceability of parole decisions and the safe and effective operation of parole in Queensland. Without the limitation, these objectives cannot be achieved effectively. Further, the amendment ensures that the extent of the limitation of human rights is as narrow as possible to achieve its purpose. This is ensured by limiting the scope of the

amendment to the validation of decisions only in relation to any defect resulting from the invalidity of the past appointment of acting professional board members.

For these reasons, the limitations on human rights presented by the amendment are considered justified, and the amendment is compatible with human rights.

(f) any other relevant factors

N/A.

Supporting safe transitions to parole

The amendment clarifies that the Parole Board can grant parole with a delayed release date of up to 14 days, subject to a prisoner's parole eligibility date having been reached, and ensures the validity of this practice in the past.

The amendment ensures the Parole Board can support the safe transition of suitable prisoners to parole supervision by allowing time for necessary arrangements and notifications to be in place prior to release to protect victims and the community and promote offender rehabilitation.

(a) the nature of the right

The *right to liberty* includes that a person has a right to not be arrested or detained except in accordance with the law. The right to liberty entitles all persons to liberty of the person, including protecting individuals against unlawful or arbitrary deprivations of their liberty.

Arbitrary has a particular meaning in the context of human rights. The Explanatory Notes to the HR Act provide that it means capricious, unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim sought.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Requiring a prisoner to remain in custody for up to 14 days after their application for a parole order is granted engages the prisoner's right to liberty because the prisoner is held in custody until the future date despite having been considered suitable for parole release. However, the right will only be limited if that continued detention is arbitrary. Because questions of proportionality arise when considering justification of limits on human rights under section 13 of the HR Act, it is convenient to consider these questions below before making a determination as to whether any limitation on the right to liberty will be arbitrary.

The purpose of delaying the prisoner's release is to support the safe transition of prisoners considered suitable for parole from custody to parole supervision, thereby promoting community safety and offender rehabilitation. These are considered to be legitimate purposes consistent with the principles of a free and democratic society.

*(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose including whether the limitation helps to achieve the purpose*

Any delay of a prisoner's release is directly related to supporting their safe transition out of custody and into community supervision.

Transition from custody can be a period of increased risk for an offender and the community. Appropriate planning and support can be an essential mitigation strategy to support an offender's successful transition. Preparation can include notifications to service providers or the Australian Border Force if relevant, or arrangements for the prisoner to safely travel to their accommodation or to ensure electronic monitoring or other equipment is available.

When the Parole Board grants a prisoner's parole application, the effective date is delayed to allow for these actions to take place before the prisoner is released from custody. A delay also provides the opportunity for a registered victim to be notified in preparation.

*(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill*

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments as effectively as the proposed amendment.

A shorter maximum timeframe, for example of seven days, has been considered. Seven days is not considered to provide sufficient time in all circumstances for the necessary arrangements to be made. The maximum timeframe provided must account for challenges, particularly in regional and remote areas, in arranging suitable travel for prisoners to their approved accommodation. It must also account for circumstances where other agencies or system processes should occur ahead of release, such as arrangements with the Australian Border Force, or for a victim to make any necessary safety arrangements, such as updates to a domestic and family violence order conditions in light of parole release. A maximum of 14 days is considered to strike a fairer balance between these objectives and providing a clear safeguard for the prisoner.

The inclusion of a maximum timeframe that can be set operates as a key safeguard for prisoners. Additionally, the Parole Board, in setting a period, must ensure its decision is compatible with human rights.

*(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation*

It is considered best practice that a prisoner that has been granted an application for a parole order should be released as soon as practicable into the community. Further detention after this decision is made must only be for as long as is absolutely necessary so as not to be arbitrary.

The amendment ensures that there is time for arrangements to be made to support the safe transition from custody to community supervision. Without arrangements for transport and accommodation in place, a prisoner's transition into the community may be negatively impacted by risk of homelessness or being released into the community a significant distance

from their approved accommodation. This in turn increases risk of re-offending and ultimately can place the community at risk. Providing a framework for the release to be delayed mitigates these risks by ensuring a proportionate and appropriate time is set.

For these reasons, the amendment does not limit the right to liberty because the further detention is not arbitrary and the amendment is considered to be compatible with human rights.

(f) any other relevant factors

N/A

**Amendments to prohibit greenhouse gas storage activities and greenhouse gas stream enhanced petroleum recovery activities in the GAB**

In my opinion, the amendments to prohibit carbon capture and storage in the GAB to be moved to the Bill as they amend the EP Act, GGS Act, Petroleum Act and the P&G Act engage the following human rights:

- Property rights (section 24 of the HR Act).

To determine whether property rights are limited by the Bill reasonably and demonstrably justifiably, the right must be considered in accordance with the relevant factors under section 13 of the HR Act and their interaction with the purpose of the limitation.

(a) the nature of the right

The amendments may impact property rights under section 24 of the HR Act. Section 24(2) states that a person must not be arbitrarily deprived of the person's property. Property refers to real and personal property and can include, among other things, licenses such as exploration permits. Whether the right stated in section 24(2) is limited depends on whether any deprivation caused by the amendments would be 'arbitrary'.

In a human rights context, 'arbitrary' refers to conduct that is capricious, unpredictable, or unjust, and deprivation is acts or decisions that, amongst other acts and decisions, limit or terminate property rights. It also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought, such as the purpose of the Bill. If a deprivation is proportionate under section 13 of the HR Act, it will not be arbitrary.

(b) the nature of the purpose of the limitation to be imposed by the amendments to be moved to the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Section 13(2)(b) of the HR Act requires consideration of the purpose of the limitation of a human right, including whether it is consistent with a free and democratic society based on human dignity, equality, and freedom. The purpose of the proposed amendments is to ban GHG storage activities and EPR activities that use a GHG stream in the GAB.

(c) *the relationship between the limitation to be imposed by the amendments to be moved to the Bill if enacted, and their purpose, including whether the limitation helps to achieve the purpose*

To determine whether the Bill's interference with property rights is arbitrary, section 13(2)(c) requires consideration of whether the limitation of property rights helps to achieve the purpose.

Amongst other things, the amendments would provide the Queensland Government with the power to end or withdraw all existing permits or applications for GHG exploration and EPR activities in the GAB. This means that resource authorities holders with currently granted GHG permits would have their resource authority cancelled or revoked.

These limitations are necessary to achieve the purpose of the Bill as currently granted GHG permits have already applied for EA amendments to allow for GHG storage activities. Without the ability to end or withdraw relevant permits or application, the purpose of the Bill could not be achieved.

(d) *whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the amendments to be moved to the Bill*

In consideration of whether there are any other ways to achieve the Bill's purpose that are reasonably available and less restrictive under section 13(2)(d), no suitable alternatives were identified in a way that is less restrictive on property rights and would achieve the Bill's purpose. The possibility of a moratorium on GHG storage activities in the GAB was considered, however, this option would allow GHG storage activities in the future which is not the intention of the government. Therefore, the purpose of the proposed amendments necessitates the ability to end or withdraw relevant permits and applications to ensure a permanent ban on GHG storage and GHG stream EPR activities.

(e) *the balance between the importance of the purpose of the amendments to be moved to the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation*

The potential limitation to property rights of resource authority holders resulting from the ability for the Queensland Government to end and withdraw all existing permits or applications for GHG exploration activities in the GAB is balanced by the benefits gained to Queensland such as limitation and mitigation any potential safety and environmental risks to the groundwater associated with injecting CO<sub>2</sub> into the GAB aquifers and ensuring the GAB's long-term sustainability is important for the significant proportion of food production that relies on the GAB as an important water source. The protection of the GAB from GHG stream EPR and GHG storage activities will be achieved through the amendments.

Therefore, to the extent that the amendments impact property rights, it is considered that they are proportionate under section 13 to a legitimate aim sought.

(f) *any other relevant factors*

Not applicable.



## Conclusion

In my opinion, the amendments to the coexistence institutions and subsidence management framework to be moved to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024 (the Bill) are compatible with human rights under the *Human Rights Act 2019* (HR Act) because they do not limit a human right. Additionally, the amendments to be moved to the Bill to ban GHG storage activities and GHG stream EPR activities in the GAB are compatible with human rights under the HR Act because they limit a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the Act.

**Hon Scott Stewart**  
Minister for Resources and Critical Minerals

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