

Mineral and Energy Resources and Other Legislation Amendment Bill 2024

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* (HR Act), I, Scott Stewart, Minister for Resources and Critical Minerals make this statement of compatibility with respect to the Mineral and Energy Resources and Other Legislation Amendment Bill 2024 (the Bill).

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

Overview of the Bill

The primary policy objectives of the Bill are to enhance the State's coexistence framework, improve regulatory efficiency, modernise the Financial Provisioning Scheme, strengthen industry's ESG credentials, and to protect the environment.

To deliver on these objectives, the Bill amends the *Electricity Act 1994* (Electricity Act) *Fossicking Act 1994* (Fossicking Act), the *Gasfields Commission Act 2013* (GFC Act), the *Geothermal Energy Act 2010* (GE Act), the *Greenhouse Gas Storage Act 2009* (GGS Act), the *Land Access Ombudsman Act 2017* (LAO Act), the *Mineral and Energy Resources (Common Provisions) Act 2014* (MERCPC Act), the *Mineral and Energy Resources (Financial Provisioning) Act 2018* (MERFP Act), the *Mineral Resources Act 1989* (MR Act), the *Petroleum Act 1923* (1923 Act), the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act), *Public Sector Act 2022* (PS Act), and the *Water Act 2000* (Water Act).

Enhanced Coexistence Arrangements

The Queensland Resources Industry Development Plan (QRIDP) recognises that sustainable coexistence between the resources and agricultural sectors is critical to ensuring the state continues to realise the benefits from these industries.

The Bill contains amendments that will insert a risk-based management framework for the assessment and management of coal seam gas induced subsidence (CSG-induced subsidence) into the MERCPC Act to assist with the continued coexistence of these industries. This framework will ensure that the potential impacts and consequences from CSG-induced subsidence are assessed at both the regional level and at the farm scale. It will also establish processes for resource tenure holders and landholders to make agreements in relation to the management of CSG-induced subsidence, and, to compensate for any consequences on agricultural operations that occur. The framework also provides for the consideration of any

potential critical consequences on agricultural operations that may arise from CSG-induced subsidence.

Additionally, in line with Action 24 of the QRIDP, reforms are proposed to the state's coexistence institutions, which includes the GasFields Commission Queensland (GFCQ), the Land Access Ombudsman (LAO), and the Office of Groundwater Impact Assessment (OGIA). The reforms are intended to ensure these institutions are well-aligned, contemporary and efficient, to deliver upon Action 24 of the QRIDP.

Specifically, the Bill will amend the GFC Act to rename the GFCQ to Coexistence Queensland and expand its responsibilities beyond the onshore gas industry to include the broader resources sector and the renewable energy industry. Under this expanded remit, Coexistence Queensland will be tasked with providing advice on existing and emerging coexistence issues to government and broader stakeholders. It will also offer engagement and information services, in line with its expanded remit, to industry, landholders and the community.

The Bill will also amend the LAO Act to expand the functions of the LAO to provide a broader range of dispute resolution services to assist stakeholders in the negotiation of a range of land access agreements, as well as expanding its existing investigation processes to include access agreements under the MERC Act and new subsidence management plans and agreements. The Bill also provides a head of power to fund this expanded remit through an industry levy and fee for service model.

The Bill will also amend the MERC Act and the Water Act to expand OGIA's functions to conduct independent scientific assessment and impact analysis to support the new framework for managing CSG-induced subsidence as well as providing advice to Government on broader subsurface impacts from petroleum and gas activities. OGIA's existing industry levy will be expanded to fund these new activities.

Improved regulatory efficiency

Action 36 of QRIDP committed to improve resource project assessment processes leading to business improvement, better quality applications and more transparent and efficient approvals. The Bill achieves this by amending the Fossicking Act, GE Act, GGS Act, MERC Act, MR Act, P&G Act, and the 1923 Act (Resource Acts) to assist in delivering this commitment by improving land release and rent management frameworks, clarifying existing provisions, and fixing minor and technical issues throughout the Resource Acts.

The Bill amends the MERC Act to introduce a regulation making power to prescribe deferral arrangements for the payment of rent in exceptional circumstances. The Bill also amends the MERC Act to insert another regulation making power for the Minister for Resources (the Minister) to have discretion to apply alternative ways of calculating the rent payable for a resource authority in exceptional circumstances.

The Bill amends the MR Act to provide the Minister with the discretion to not re-release land for exploration within two-months following relinquishment and decide how and when land that is suitable for exploration should be re-released following relinquishment. The Bill also

amends the MR Act to introduce a new mandatory condition for mining leases that requires the surface of the lease to be kept tidy.

The Bill amends the Fossicking Act to ensure that a licensee cannot fossick on land to which a current mining lease application applies without the written permission of the mining lease applicant and amends the Fossicking Act to address unintended outcomes of previous amendment that excludes fossicking from a large portion of Queensland.

The Bill amends the GE Act, GGS Act, MR Act, 1923 Act, and the P&G Act to ensure that the confidentiality periods specified in their respective subordinate legislation would apply in the event that the tenure ceases to exist because a higher form of tenure is granted.

The Bill amends the MERCPC Act to introduce an altitude-based threshold that ensures that aerial surveys conducted at or above 1000ft will no longer be considered an advanced activity, and will be exempt from automatically requiring entry notices, periodic entry reports, and negotiating conduct and compensation agreements.

The Bill amends the MR Act to introduce a consistent and permanent framework that will provide appropriate timeframes for mining lease holders and applicants to update their development plans in the event that the prescribed mineral thresholds under schedule 2A of the Mineral Resources Regulation 2013 (MR Reg) change. This amendment will ensure that transitional provisions in the MR Act are not required each time the prescribed thresholds are updated and will ensure the resources industry certainty in regard to their obligations to submit and update development plans.

The Bill amends the P&G Act to clarify existing provisions and support authority holders to better understand their obligations while ensuring effective administrative decision making, and amends the MERCPC Act, MR Act, and the 1923 Act to address several minor and technical errors throughout these Acts to ensure the regulatory framework is operating as intended.

Financial Provisioning Scheme

The Bill also amends the MERFP Act, which establishes the Scheme Manager and the Financial Provisioning Scheme (the Scheme) to manage the risk of the State incurring costs where resource companies do not fulfil their rehabilitation obligations. It involves an assessment of the company's rehabilitation obligations, their likelihood of default and asset saleability. Based on their estimated rehabilitation costs (ERC) and a risk assessment, resource companies must either make an annual contribution to an insurance style scheme fund or provide surety equal to the ERC. Environmental Authorities (EA) with an ERC of less than \$100,000 are not eligible for a risk assessment and must provide surety equal to the ERC.

The Scheme has been reviewed and a number of potential refinements have been identified. The Bill seeks to promote efficiencies and improve the State's risk position and exposure by modifying the risk assessment criteria, modernising company risk categories, and reducing administrative burden for both industry and Government.

The Bill amends the MERFP Act to increase the prescribed ERC for risk assessments from the existing \$100,000 to \$10 million to reduce the compliance and administrative burden on an EA.

The Bill amends the MERFP Act to introduce an additional risk category of ‘Moderate-High’ to better allocate resource activities to risk categories. The Bill also makes appropriate changes to the prescribed percentages of risk categories. The risk categories of ‘Very Low’ and ‘Low’ rates remain the same; however, ‘Moderate’ reduces from 2.75 per cent to 2.25 per cent, and the new ‘Moderate-High’ risk category will be 6.5 per cent.

The Bill amends the MERFP Act to increase the fund threshold for BBB+ or better credit rates entities to \$600 million, increasing availability of finance. However, the fund threshold of \$450 million will be retained for all other entities that are higher risk.

The Bill amends the MERFP Act to include transitional arrangements that will provide more flexibility for EA holders that are transitioning to higher risk categories. The Bill will also align EA assessments by grouping them by the assessed entity and to realign annual review dates so grouped assessments can be reviewed at the same time.

The Bill amends the MERFP Act to introduce assessment pathways through the Scheme Manager Guidelines to reflect more nuanced assessments. This will include a ‘streamlined’ assessment for those EAs with a mine that is unchanged year-on-year and with an ERC of \$50 million or more incurring a fee 50 per cent less than what they otherwise currently pay.

Finally, the Bill makes an internal-to-Government change to the MERFP Act related to the eligibility for abandoned petroleum and gas site being eligible for a grant for remediation. The Bill seeks to make abandoned petroleum and gas sites eligible.

Powers to Acquire Land

The Bill will amend the Electricity Act to clarify the power of authorised electricity entities to acquire land, including compulsorily, where it is required for electricity works or proposed works, even where it may result in third party benefits or interests, including for a private party.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Div 2 and 3 of the HR Act)

In my opinion, the **financial provisioning scheme** amendments to the MERFP Act do not engage human rights as they relate to risk assessments and financial assurance provisions of mining companies.

Section 11(2) of the HR Act provides that only individuals have human rights. As the direct effect of the financial provisioning scheme amendments is on mining companies and their interests, it is arguable that the amendments have no effect on human rights.

However, because the **CSG-induced subsidence** amendments to the MERCP Act affects the property rights of landholders, requires landholders to provide information and engage in negotiation processes, and may impact on the cultural rights of aboriginal and Torres Strait

Islander peoples and the right to freedom from forced work, I have proceeded on the basis that it engages the following human rights of individuals:

- Property rights (section 24 of the HR Act)
- Privacy and Reputation (section 25 of the HR Act)
- Cultural rights - Aboriginal and Torres Strait Islander peoples (section 28 of the HR Act)
- Freedom from forced work (section 18 of the HR Act).

In my opinion, the **coexistence institutions** amendments to the MERCPC Act, LAO Act, Water Act (s 456), and the Water Regulation 2016 engage the following human rights:

- Privacy and reputation (section 25 of the HR Act)

In my opinion, the **improved regulatory efficiency** amendments to the Fossicking Act, GE Act, GGS Act, MERCPC Act, MR Act, P&G Act, and the 1923 Act engage the following human rights:

- Freedom of movement (section 19 of the HR Act),
- Property rights (section 24 of the HR Act).

In my opinion, the land acquisition power amendments to the Electricity Act engage the following human rights:

- The right to choose where to live (section 19 of the HR Act);
- The right to property (section 24 of the HR Act);
- The right to non-interference with privacy, family and home (section 25(a) of the HR Act);
- Cultural rights generally (section 27 of the HR Act); and
- Cultural rights of Aboriginal and Torres Strait Islander peoples, especially the right to maintain and strengthen their connection to country (section 28 of the HR Act).

To determine whether the human rights identified as being limited by the Bill are done so reasonably and demonstrably justifiably, each right will be considered individually below in accordance with the relevant factors under section 13 of the HR Act and their interaction with the purpose of the limitation.

CSG-induced subsidence

Property rights

(a) the nature of the right

The first human right engaged by the CSG-induced subsidence part of the Bill is *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 resource authorities. 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 considered to be 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, 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, 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.

For the discussion of the CSG-induced subsidence amendments and their limitations on human rights, the purpose of the amendments in this part of the Bill is to ensure sustainable coexistence between landholders and resource tenure holders by introducing a management framework that will assist in assessing and managing the consequences that may arise from CSG-induced subsidence.

(c) the relationship between the limitation and its 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. The assessment, conduct and management of resource activities as part of the proposed risk-based management framework for CSG-induced subsidence may temporarily restrict a person from accessing or enjoying the use of land which is subject to a resource authority.

These limitations are necessary to achieve the purpose of the Bill as access is required to properties in order to assess and manage the impacts of CSG-induced subsidence on farming operations, and to provide a pathway for the assessment and management of consequences and the payment of any necessary compensation to the landholder. Without the ability for impacted properties to be accessed under the proposed management framework, the purpose of the Bill, to assess and manage the consequences of the CSG-induced subsidence, could not be achieved.

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

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 of assessing and managing CSG-induced subsidence impact from existing and future extraction of CSG. The purpose of the Bill requires access to property to perform the functions under the proposed management framework.

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

The potential limitation to property rights of landholders and tenure holders resulting from management framework is balanced by the mutual benefits gained from developing well-informed management plans and agreements that will support the maintenance of the integrity of the landholder's agricultural property while supporting appropriate resource activity, including ensuring appropriate compensation requirements are negotiated.

Therefore, to the extent that the CSG-induced subsidence amendments in the Bill impacts property rights, it is considered that they are proportionate under section 13 to a legitimate aim sought.

As a result, the Bill does not deprive a person of their property arbitrarily and therefore does not limit the right stated in section 24.

(f) any other relevant factors

Not applicable.

Right to privacy

(a) the nature of the right

The Bill as it relates to CSG-induced subsidence also engages the *right to privacy* under section 25 of the HR Act. The nature of this right under section 25(a) provides that a person has the right not to have their privacy, family, home, or correspondence unlawfully or arbitrarily interfered with. The right protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally.

To the extent the Bill interferes with privacy rights of landholders, the interference will be lawful. In this context, therefore, whether the right stated in section 25(a) is limited depends on whether any interference caused by the Bill would be 'arbitrary'. As previously discussed, in a human rights context, 'arbitrary' refers to conduct that is capricious, unpredictable, or unjust, and interference with a human right will not be arbitrary if it is proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the HR Act, it will not be arbitrary.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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.

For the discussion of the CSG-induced subsidence amendments and their limitations on human rights, the purpose of the amendments in this part of the Bill is to ensure sustainable coexistence between landholders and resource tenure holders by introducing a management framework that

will assist in assessing and managing the consequences that may arise from CSG-induced subsidence.

(c) the relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose

To determine whether the Bill's interference with privacy rights under section 25(a) is arbitrary, section 13(2)(c) requires consideration of whether the limitation of privacy rights helps to achieve the purpose. Requiring landholders to provide personal and property details, as well as potentially commercially sensitive information to government and tenure holders, is necessary to enable the conduct of assessments under the proposed CSG-induced subsidence management framework, such as individual farm field assessments and developing subsidence management plans.

With this information, tenure holders can undertake well-informed farm field assessments and develop appropriate and well-informed agreements with landholders and maintain social licence for resource activities in the affected communities. Without the requirement for landholders to provide this information, the purpose of the Bill could not be adequately achieved.

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

To further determine arbitrariness, section 13(2)(d) requires consideration of whether there are any other ways to achieve the Bill's purpose that are reasonably available and less restrictive on property rights. As the sharing of potentially commercially sensitive information to government and tenure holders is necessary for the functionality of the proposed management framework, no suitable alternatives were identified in a way that is less restrictive on privacy rights that would achieve the Bill's purpose of assessing and managing CSG-induced subsidence impact from existing and future extraction of CSG.

To ensure that any private or confidential information is protected, the amendments will include appropriate requirements to protect commercial in confidence information that is exchanged between the tenure holders and landholders to ensure the limitation of the human right is limited only to the extent that is necessary.

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

As discussed, the potential limitation of privacy rights is required to allow for the assessment and management of potential consequences on agricultural properties and businesses which is considered more important to foster coexistence.

Therefore, to the extent that the CSG-induced subsidence amendments in the Bill impacts the right to privacy, it is considered that they are proportionate under section 13 to a legitimate aim sought. As a result, the Bill does not interfere with privacy rights in a way that is ‘arbitrary’ in the sense described above, and therefore does not limit the right stated in section 25(a).

(f) any other relevant factors

Not applicable.

Cultural Rights – Aboriginal peoples and Torres Strait Islander peoples

(a) the nature of the right

Section 28 of the HR Act provides that Aboriginal peoples and Torres Strait Islander peoples hold distinct cultural rights. These rights must not be denied the rights to maintain and strengthen their distinctive spiritual, material, and economic relationships with land with which they have a connection under Aboriginal tradition, and to conserve and protect the environment and productive capacity of their land. Section 28 details several distinct cultural rights, however, in particular the Bill limits the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to be able to:

- maintain and strengthen their distinctive spiritual, material, and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom (section 28(2)(d)); and
- conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources (section 28(2)(e)).

These rights can be limited in circumstances when it is reasonable and demonstrably justifiable to do so in a free and democratic society based on human dignity, equality, and freedom.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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.

For the discussion of the CSG-induced subsidence amendments and their limitations on human rights, the purpose of the amendments in this part of the Bill is to ensure sustainable coexistence between landholders and resource tenure holders by introducing a management framework that will assist in assessing and managing the consequences that may arise from CSG-induced subsidence.

(c) the relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose

To determine whether cultural rights are limited reasonable and demonstrably justifiably, section 13(2)(c) requires consideration of whether their limitation helps to achieve the purpose of the Bill. The assessment, conduct and management of resource activities as part of the

proposed risk-based management framework for CSG-induced subsidence may temporarily or permanently restrict a person, including Aboriginal peoples and Torres Strait Islander peoples, from accessing or enjoying the use of land which is subject to a resource authority. These rights also may be limited if a critical consequence occurs because of CSG-induced subsidence which impacts on their ability enjoy their rights stated above.

These limitations are necessary to balance the rights of landholders and resource tenure holders, ensure the management of CSG-induced subsidence on farming operations, and to provide a pathway for the assessment and management of consequences and the payment of any necessary compensation to the landholder. Without the ability for impacted properties to be accessed under the proposed management framework, and the restriction on access to land where Aboriginal peoples and Torres Strait Islander peoples practice their cultural rights, the purpose of the Bill, to assess and manage the consequences of the CSG-induced subsidence, could not be achieved.

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

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), as access to property is necessary for the functionality of the proposed management framework, no suitable alternatives were identified in a way that is less restrictive on the cultural rights on Aboriginal peoples and Torres Strait Islander peoples.

The Bill does not alter existing tenure frameworks (including land access), compensation arrangements, movement rights and native title arrangements under the MR Act, MERC Act and the *Native Title Act 1993 (Cth)* (Native Title Act) as they relate to activities undertaken pursuant to a resource authority. Further, the requirements under the Native Title Act and *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* continue to apply to the land subject to the co-existence frameworks in the Bill.

Therefore, the proposed management framework is the least restrictive reasonably available way to achieve the Bill's purpose of assessing and managing CSG-induced subsidence impact from existing and future extraction of CSG in a way that supports the development of enduring, mutually beneficial relationships between key interested parties including resource companies, Aboriginal peoples and Torres Strait Islander peoples, landholders, and communities.

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

Sustainable coexistence is a key element for long term responsible and sustainable growth of both the resource and agricultural industries in Queensland. The risk-based management framework for CSG-induced subsidence supports the development of enduring, mutually beneficial relationships between key interested parties including resource companies, Aboriginal peoples and Torres Strait Islander peoples, landholders, and communities.

The potential limitation to the cultural rights of Aboriginal peoples and Torres Strait Island peoples is balanced by the need to restrict access to, and movement on, a claim or authority area to ensure the safety of responsible tenure holders and members of the community, and the conduct of assessment and management activities.

Therefore, to the extent that the CSG-induced subsidence amendments in the Bill impacts the cultural rights of Aboriginal peoples and Torres Strait Islander peoples, it is considered that they are reasonably and demonstrably justifiably limited.

(f) any other relevant factors

Not applicable.

Freedom from forced work

(a) the nature of the right

The Bill as it relates to CSG-induced subsidence also engages the *right to freedom from forced work* under section 18 of the HR Act. The nature of this right under section 18(2) provides that a person must not be made to perform forced or compulsory labour. This section is based on Article 8 of the International Covenant on Civil and Political Rights. Australia ratified this treaty in 1980.

Forced labour is when someone is compelled to do work. It brings with it a sense of physical or mental constraint. It may involve the threat of punishment if the person does not perform the work. ‘Work’ has a broad meaning and can cover all kinds of work or service, not just physical work. This right could be relevant to laws, policies, acts or decisions that compel the provision of any labour or the performance of any service under threat of a penalty.

Under the Bill, owners or occupiers of private land may be required to work in the sense of preparing for and negotiating subsidence management plans and subsidence compensation agreements with resource tenure holders. If a landholder does not negotiate, the landholder is required to participate in alternative dispute resolution and ultimately may be required to participate in Land Court proceedings if agreement cannot be reached. However, no penalty may be applied, and no threat of a penalty may be made under the Bill if a landholder does not perform this work. Accordingly, it is considered that the Bill does not limit this human right.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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 amendments in this part of the Bill is to ensure sustainable coexistence between landholders and resource tenure holders by introducing a management framework that will assist in assessing and managing the consequences that may arise from CSG-induced subsidence and ensuring any costs resulting from the framework are compensated for or covered by the resource tenure holder.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The proposed risk-based management framework for CSG-induced subsidence may temporarily restrict a landholder's ability to perform their usual business or work when preparing for negotiation or negotiation a subsidence management plan or subsidence compensation agreement.

These limitations are necessary to achieve the purpose of the Bill as negotiation of an agreement with the landholder is required to manage the impacts of CSG-induced subsidence on farming operations, and to provide a pathway for the management of consequences and the payment of any necessary compensation to the landholder.

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

As landholder time and resources needed to prepare and negotiate subsidence management plans and subsidence compensation agreements is necessary for the functionality of the proposed management framework, no suitable alternatives were identified in a way that is less restrictive on the right to freedom from forced work that would achieve the Bill's purpose of assessing and managing CSG-induced subsidence impact from existing and future extraction of CSG.

The Bill does include amendments to ensure that the resource authority holder will be responsible for the professional fees necessarily and reasonably incurred in the negotiation and preparation of a CCA, including the costs for an agronomist. The negotiation and preparation costs are payable by the resource authority holder even if the negotiations of a CCA are abandoned. The Land Court will have the jurisdiction to determine whether the costs were necessarily and reasonably incurred in the event of a dispute, and make an order accordingly.

To ensure that any landholders labour, time and resources is remunerated, amendments will include compensation liability for any cost, damage or loss incurred by the subsidence claimant resulting from the impacts or predicted impacts from CSG-induced subsidence to ensure the limitation of the human right is limited only to the extent that is necessary.

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

The potential limitation to the right to freedom from forced work of landholders resulting from the management framework is balanced by the mutual benefits gained from developing well-informed management plans and subsidence compensation agreements that will support the maintenance of the integrity of the landholder's agricultural property while supporting appropriate resource activity.

Therefore, to the extent that the CSG-induced subsidence amendments in the Bill impacts rights to the freedom from forced work, noting that it is considered that the Bill does not limit this human right, it is considered that they are reasonably and demonstrably justifiably limited.

(f) any other relevant factors

Not applicable.

Coexistence institutions

Right to privacy

(a) the nature of the right

The Bill as it relates to the coexistence institutions engages the right to privacy under section 25 of the HR Act. As mentioned above, the nature of this human under section 25(a) provides that a person has the right not to have their privacy, family, home, or correspondence unlawfully or arbitrarily interfered with, and protects privacy in the sense of personal information, data collection and correspondence.

To the extent the Bill interferes with privacy rights of landholders, the interference will be lawful. In this context, therefore, whether the right stated in section 25(a) is limited depends on whether any interference caused by the Bill would be ‘arbitrary’. As previously discussed, in a human rights context, ‘arbitrary’ refers to conduct that is capricious, unpredictable, or unjust, and interference with a human right will not be arbitrary if it is proportionate to a legitimate aim sought.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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 amendments in this part of the Bill are to reform the state’s coexistence institutions, namely the GFCQ, LAO and OGIA to ensure these institutions are well-aligned, contemporary, and efficient to deliver upon Action 24 of the QRIDP. The reforms propose amendments to the functions and responsibilities of these institutions so that they can play critical roles in the proposed subsidence management framework.

For the discussion of the coexistence institutions amendments and their limitations on human rights, the purpose of these amendments as they relate to the right to privacy is to require landholders impacted by CSG-induced subsidence to exchange personal, property or business information and details to these institutions.

(c) the relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose

To determine whether the right to privacy limited reasonable and demonstrably justifiably, section 13(2)(c) requires consideration of whether their limitation helps to achieve the purpose of the Bill.

The purpose of requiring the disclosure of personal and property details to OGIA is to inform the assessment, management and monitoring activities which form the basis of the CSG-induced subsidence management framework. The limitation imposed by the Bill on the identified human rights is necessary to ensure OGIA can obtain required information to support

analysis of historical subsidence, undertaking periodic cumulative subsidence assessment and developing regional risk assessments, impact management strategies and subsidence impact reports. These analyses will inform the subsidence management plans and potentially compensation agreements negotiated by tenure holders and landholders to ensure adequate management and compensation of CSG-induced subsidence impacts on a property or business operating on the land.

The purpose of requiring the disclosure of personal and property details and relevant information to the LAO is to enable the operation of the new functions alternative dispute resolution and determination functions for disputes between a tenure and land holder in relation to the requirements of the CSG-induced subsidence management framework. The limitation on property rights is necessary to enable the LAO to make preliminary inquiries to decide whether a land access dispute referral should be accepted, or seek information or documents, or access to information or documents, in relation to a dispute or an investigation for alternative dispute resolution and determinative matters.

Therefore, as the expanded functions and responsibilities of the coexistence institutions could not function as intended without the Bill's amendments, the limitation on the right to privacy by the coexistence institution amendments helps achieve the purpose of the Bill.

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

To further determine arbitrariness, section 13(2)(d) requires consideration of whether there are any other ways to achieve the Bill's purpose that are reasonably available and less restrictive on human rights.

No suitable alternatives were identified that would achieve the purpose of assessing and managing CSG-induced subsidence impact from existing and future extraction of CSG activities through the expansion of the functions and responsibilities of the institutions. These amendments are critical to support the coexistence of resource activities and agricultural activities in Queensland and a relationship that is mutually beneficial to both sectors and the community and would not be possible if not for the Bill.

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

The potential limitation to privacy and reputation rights of tenure holders and landholders resulting from disclosure of personal and property information to OGIA and the LAO is balanced by the mutual benefits gained from parties developing well-informed management plans and agreements together and achieving positive outcome through dispute resolution pathways. Additionally, the amendments will include appropriate requirements to protect commercial in confidence information that is exchanged between the tenure holders, landholders, and the institutions. Finally, the provision of personal information is for a prescribed and limited purpose in each circumstance.

Therefore, to the extent that the coexistence institutions amendments in the Bill impacts the right to privacy, it is considered that they are proportionate under section 13 to a legitimate aim sought. As a result, the Bill does not interfere with privacy rights in a way that is ‘arbitrary’ in the sense described above, and therefore does not limit the right stated in section 25(a).

(f) any other relevant factors

Not applicable.

Improved regulatory efficiency

Freedom of movement

(a) the nature of the right

The first human right limited by the improved regulatory efficiency part of the Bill is *freedom of movement* under section 19 of the HR Act. The nature of the right protects the rights of people in Queensland to choose where they live, and to move freely within, and leave and come back to Queensland, as long as they are doing so lawfully. The right means that public entities, such as the Queensland Government, cannot act in a way that would unduly restrict freedom of movement. This right can be limited where it is reasonable and demonstrably justified in a free and democratic society.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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 improved regulatory efficiency amendment that interferes with the human right of freedom of movement is to recognise that mining lease applications have invested significant time and capital in determining that commercial quantity and quality of the land to reach the application lodgement stage that can be impacted by fossicking activities.

(c) the relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose

To determine whether the improved regulatory efficiency amendments limit the right to freedom of movement in a manner that is reasonably and demonstrably justified, section 13(2)(c) requires that the limitation helps to achieve the purpose of the Bill.

The limitation on the freedom of movement is necessary as it allows mining lease applicants to decide whether or not fossickers are able to fossick on the land to which the application relates in order to preserve the integrity of their application. The amendments also mean that if a fossicking licensee is discovered fossicking on land to which a mining lease application applies without the written permission of the applicant, they will have committed an offence under the Fossicking Act and may be fined up to 50 penalty units, or \$7740.

Without these amendments and limitation on the right to freedom of movement of fossickers, the purpose of the Bill could not be achieved.

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

Section 13(2)(d) requires consideration of whether there are any other ways to achieve the Bill's purpose that are reasonably available and less restrictive on the right to freedom of movement.

No suitable alternatives were identified that would achieve the purpose of the Bill. Requiring fossickers to obtain written permission from mining lease applicants in order to fossick on that land is the least restrictive and reasonably available way to achieve the purpose identified above.

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

The potential limitations on the rights to freedom of movement of fossickers under section 19 of the HR Act is balanced by the need to recognise the significance of the time and capital invested by mining lease applications. The limitation is limited in circumstances and will only impact fossickers who seek to fossick on land that is subject to a mining lease application where the applicant determines that is not appropriate for fossicking activities to take place on that land. In all other cases, fossickers will maintain the same rights to fossick as they currently experience.

Therefore, to the extent that the improved regulatory efficiency amendments in the Bill impacts the right to freedom of movement, it is considered that they are reasonably and demonstrably justifiably limited.

(f) any other relevant factors

Not applicable.

Property rights

(a) the nature of the right

The improved regulatory efficiency amendments also limit *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 resource authorities. Whether the right stated in section 24(2) is limited depends on whether any deprivation caused by the amendments would be 'arbitrary'. As discussed above, 'arbitrary' refers to conduct that is capricious, unpredictable, or unjust, and deprivation is considered to be acts or decisions that, amongst other acts and decisions, limit or terminate property rights. If a deprivation is proportionate to a legitimate aim sought it will not be arbitrary.

(b) The nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

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 improved regulatory efficiency amendment that interferes with the human right of property rights is to introduce a new mandatory condition for mining leases that requires the surface of the lease to be kept tidy in order to manage hazards on the surface of mining leases that could lead to injuries, fires, and damage to health and safety.

(c) the relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose

To determine whether property rights are limited reasonable and demonstrably justifiably by the improved regulatory efficiency amendments, section 13(2)(c) requires consideration of whether their limitation helps to achieve the purpose of the Bill.

The limitation the new mandatory condition for the surface area of a mining lease to be kept in a tidy state imposes on the property rights of mining lease holders, is necessary to prevent injuries, fires, and damage to health and safety that can result from improperly organised operations, equipment, and stores. The introduction of the new mandatory condition will provide the Minister with the power to terminate a resource authority as a compliance measure if the resource authority holder does not keep the surface of their mining lease tidy.

This is necessary as the mandatory condition, as well as the possibility of compliance action being taken against the mining lease holder, will ensure that mining lease surfaces are kept in a tidy state and hazards resulting from untidy surfaces are avoided. Therefore, the limitation of property rights helps to achieve purpose of the Bill as the ability for the department to cancel a non-compliant tenure will ensure that tenures keep the surface area of their mining lease tidy.

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

To further determine arbitrariness, section 13(2)(d) requires consideration of whether there are any other ways to achieve the Bill's purpose that are reasonably available and less restrictive on property rights. No suitable alternatives were identified that would achieve the purpose of the Bill. Mandating that the surface area of mining leases be maintained as tidy as a mandatory condition of tenure is the most effective ways to achieve the purpose identified above.

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

The potential limitations to the property rights of mining lease holders under section 24 of the HR Act by the introduction of a new mandatory to maintain the surface area of the mining lease in a tidy state is balanced by the benefits to mining lease holders these amendments will provide by ensuring that organised operations, requirements, and stores are maintained in order to

minimise hazards such as injuries, fires, and damage to health and safety that can result from untidy mining lease surfaces.

Therefore, to the extent that the improved regulatory efficiency amendments in the Bill impacts the property rights, it is considered that they are proportionate under section 13 to a legitimate aim sought. As a result, the Bill does not deprive a person of their property rights in a way that is 'arbitrary' in the sense described above, and therefore does not limit the right stated in section 24.

(f) any other relevant factors

Not applicable.

Clarified powers to acquire land

The Bill amends section 116 of the Electricity Act to clarify that an authorised electricity entity may acquire land, including compulsorily, for electricity works or proposed works, even where that acquisition may result in a benefit flowing to a third party or other private entity engaged in network connections or other activities which form part of the Queensland electricity grid.

Currently, authorised electricity entities may take land as if they were a constructing authority under the *Acquisition of Land Act 1967* (ALA). To avoid any doubt when the land taken is used by, or benefits, private entities, the amendments will clarify that the process of taking land under that Act will continue to be used, but the acquisition is not done under that Act.

The amendments also validate past acquisitions of land under the previous section 116, including acquisitions which may have benefitted private entities. The amendments clarify that this is the case even where another entity has derived a benefit from any action taken on the land after it was acquired. The amendments also clarify that anything done or purportedly done as a result of, or in reliance on, the taking of land is taken to be, and always to have been, as valid and lawful as it would have been if, at the time it was done, new section 116 had been in force.

Human rights potentially limited (Part 2, Divisions 2 and 3 of the HR Act)

The power to take land, including easements, may potentially limit the following human rights:

- The right to equal protection without discrimination (section 15 of the HR Act);
- The right to choose where to live (section 19 of the HR Act);
- The right to take part in public life (section 23 of the HR Act);
- The right to property (section 24 of the HR Act);
- The right to non-interference with privacy, family and home (section 25(a) of the HR Act);
- Cultural rights generally (section 27 of the HR Act); and

- Cultural rights of Aboriginal and Torres Strait Islander peoples, especially the right to maintain and strengthen their connection to country (section 28 of the HR Act).

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. Because the Bill authorises any interference, any interference would be lawful. 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 *Human Rights Act*, it will not be arbitrary. Accordingly, whether the interference with property or 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*). The cultural rights of First Nations peoples are inherently diverse, and not all land that may be compulsorily acquired will be the subject of a continuing connection to Country. However, because it is possible that the power might be exercised to acquire land with which an Aboriginal people or Torres Strait Island people have a connection, the power has the potential to limit that right.

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 of the HR Act)

In my view, any limit on the above human rights is reasonable and justified as follows:

(a) the nature of the 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 maintain their connection to Country and to enjoy and protect their identity and cultural heritage.

(b) purpose

The purpose of the amendments is to clarify that authorised electricity entities may acquire land required for essential infrastructure delivery to support the necessary expansion of the Queensland electricity grid. The power to acquire land for works where there is a measurable benefit to another entity which may use the land after it is acquired, reflects the broad public and community benefits derived by such acquisitions (for example, through the delivery of electricity to the grid) and the fact that third party/private benefits are often inherent in electricity entities meeting their statutory obligations. Key elements of the electricity supply chain have evolved to involve private businesses and increasing public/private partnerships. This is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps achieve the purpose

The clarified power to take land and potentially benefit third parties will help to achieve those purposes.

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

The clarified power to take land is necessary to achieve these purposes. Currently, it could be considered there is uncertainty around the application of the existing power to acquire land when exercised by authorised electricity entities for the benefit of third parties, but this often has substantial (non-incremental) broad public or, in the case of remote Queensland, community benefits. In considering the availability of less restrictive alternatives, it is also relevant that the potential limits on human rights are already narrowly tailored and subject to existing safeguards. In particular:

- Compulsory acquisition powers will be exercised in accordance with the processes in the ALA providing for the right to object to proposed resumptions and the right to claim compensation for any resumption.
- Compensation will be assessed compatibly with the existing processes under the ALA.
- When exercising the power as a public entity under the HR Act to take land, the authorised electricity entity will be required to give proper consideration to human rights and to exercise the power in a way that is compatible with human rights under s 58 of the HR Act.
- 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*, *Native Title (Queensland) Act 1993* and the *Native Title Act 1993 (Cth)*.

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

On one side of the scales, it is important that authorised electricity entities have the powers necessary to facilitate the delivery of infrastructure to support development of the Queensland electricity grid, including the provision of benefits on occasion to third parties to meet statutory obligations such as connection of new generation or load and ensuring a secure and reliable electricity system. On the other side of the scales, compulsory acquisition of land is one of the most severe ways that a person's property and home can be interfered with, and in particular cases may amount to a denial of a First Nations person's connection to their country. However, the extent of that impact on human rights is mitigated in important ways, including the adoption of the existing safeguards under the ALA (as modified and adapted as necessary) to ensure fair compensation. Ultimately, the importance of ensuring authorised electricity entities have the appropriate powers they need to support acquisition outweighs the interference with human rights.

As the potential interference with property and privacy is proportionate and not arbitrary, those rights are not limited by the power to acquire land.

Other human rights which may be engaged are section 15 (right to equal protection without discrimination) and section 23 (right to take part in public life).

Section 15 of the Human Rights Act requires substantive equality in the content and operation of the law: *Re Lifestyle Communities Ltd [No 3]* (2009) 31 VAR 286.

However, it is considered that the exercise of compulsory acquisition powers under the processes mandated by the ALA would not limit this right, as any person who has an interest in land that is proposed to be compulsorily taken would have the same rights under the ALA, being:

- The right to object to the proposed resumption of the land
- The right to ask to be heard in support of the grounds of objection (which incorporates the right to a fair hearing under section 31 *Human Rights Act*)
- The right to have the grounds of objection and matters raised in support of the grounds of objection considered before a decision is made whether to proceed with the resumption of the land
- The right to claim compensation for the resumption of the land in accordance with the processes set out in the ALA

There may potentially be a limitation of the right to a fair hearing where validation provisions of the Bill give effect to validating a past acquisition which benefitted a third party, but the existing provisions of the Electricity Act would have required the electricity entity to follow the compensation procedures that applied to constructing authorities.

Section 23 of the HR Act provides that every person has the right, and is to have the opportunity, without discrimination to participate in the conduct of public affairs either directly or through freely chosen representatives.

The compulsory acquisition process under the ALA (which must be followed under the amendments) provides for the involvement and opportunity of every person with interests in the subject land to participate without discrimination. The ALA processes facilitate this participation through notification and service procedures, the right to object and the right to be heard in relation to any grounds of objection. Accordingly, it is considered that the right to take part in public life will be facilitated by the amendments.

While there may be a limitation on other human rights, these limitations are proportionate to the aim of ensuring authorised electricity entities have the appropriate powers they need to support acquisition. For these reasons, the limitation is justified and accordingly, the proposed amendments to the Electricity Act are compatible with human rights.

Conclusion

In my opinion, the Mineral and Energy Resources and Other Legislation Amendment 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 justified in a free and democratic society based on human dignity, equality and freedom.

Scott Stewart
Minister for Resources and Critical Minerals

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