

Energy (Renewable Transformation and Jobs) Bill 2023

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Committee Secretary
Transport and Resources Committee
Parliament House
George Street
Brisbane Qld 4000

By email: trc@parliament.qld.gov.au

Dear Committee Secretary

Energy (Renewable Transformation and Jobs) Bill 2023

Thank you for the opportunity to provide feedback on the Energy (Renewable Transformation and Jobs) Bill 2023 (**Bill**) and for the short extension of time to provide this submission.

As you may be aware, Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

We note this legislation has been drafted to implement to the Queensland Energy and Jobs Plan which seeks to:

- build a clean and competitive energy system for the economy and industries as a platform for accelerating growth;
- deliver affordable energy for households and business and support more rooftop solar and batteries; and
- drive better outcomes for workers and communities as partners in the energy transformation.

QLS supports a legislative framework which sets a clear pathway for the transition to more sustainable alternatives.¹ We also support the provision of meaningful assistance to workers, communities and regions as this transition occurs.

¹ Queensland Law Society, 2020 Call to Parties Statement: Queensland State Election, page 9 (<https://www.qls.com.au/Pages/Legal-Policy/Call-to-parties/State-Election-2020-Call-to-Parties-Statement>)

Key points

In the time available to examine the Bill and its impacts, we have considered the following issues:

- The need to include Aboriginal and Torres Strait Islander People in the process.
- Regulation-making powers that are consistent with fundamental legislative principles.
- The provision of further details on the supports available for workers and communities, as well as the provision of legal advice and assistance for affected workers.

Consultation process - Aboriginal and Torres Strait Islander People

As stated in the Explanatory Notes, an exposure draft of the Bill was released earlier in the year. QLS made a submission in respect of this draft, recommending the policy response provide for meaningful engagement and consultation with Aboriginal and Torres Strait Islander People about the impacts of climate change on land that they, as original custodians, have cared for and managed for over 60,000 years. We said that engagement should occur at the earliest stage, including as part of identifying potential Renewable Energy Zones (REZ) and Priority Transmission Investments (PTI).

We are pleased to see there has been some positive change in this regard and note particularly:

- Clause 49 which provides that a REZ assessment, requested by the Minister, is able to include an assessment of the impact that the development and operation of a transmission network has, or is likely to have, on Aboriginal peoples, Torres Strait Islander peoples and other communities.
- Clause 99(3)(d) which provides that at least 1 appointed board member of the new Queensland Energy System Advisory Board must be an Aboriginal person or Torres Strait Islander person.
- Clause 155(c) provides a function of the Jobs Advocate is to consult with businesses involved with the energy industry about how employment opportunities in, or related to, the energy industry could be increased for Aboriginal peoples and Torres Strait Islander peoples.

We urge that the implementation of the Queensland Energy and Jobs Plan include ongoing meaningful consultation with Aboriginal peoples and Torres Strait Islander peoples.

Fundamental legislation principles and regulation-making powers

QLS repeats the concerns raised in our earlier submission about the wide-ranging regulation-making powers contained in this legislation. The Explanatory Notes have highlighted some clauses where the regulation-making power might be considered to be a “regulation amending an Act” and that there is a risk the regulation-making power might have insufficient regard to the institution of Parliament.

QLS is concerned that this Bill, like many other bills recently, seems to acknowledge in the Explanatory Notes the potential breach of fundamental legislative principles (FLPs) and that this might be inconsistent with the *Legislative Standards Act 1992* (Qld), but then seeks to justify the potential breach on the basis that it is administratively inconvenient to return to Parliament to amend an Act including to update key definitions or standards. Administrative inconvenience is not sufficient justification for ignoring FLPs.

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It is disappointing that it seems to be increasingly acceptable to disregard Queensland's FLPs. There is a long history of commentary about the dangers of "Henry VIII" clauses in the Westminster system. The Queensland Office of Parliamentary Counsel has published a range of materials to support the drafting of good legislation² which should be better utilised.

We repeat the comments made in our submission on the Exposure Draft of this Bill in relation to the regulation-making power in clause 33. This clause contemplates that a regulation may be made under the Bill to provide for an application of the *National Electricity (Queensland) Law* or NER, or may also provide that a national provision does not apply or applies with stated modifications. This provision appears to be inconsistent with the FLPs that refer to a bill having sufficient regard to the institution of Parliament and that an Act should only be amended by another Act.³ These concerns have been highlighted in the Explanatory Notes, at page 18, however, they have been disregarded.

QLS disagrees with the approach proposed in the Bill. The Queensland legislation applying the national electricity laws should only be amended by another Act, not a regulation. We cannot support this breach of a fundamental legislative principle in the name of administrative convenience.

Under the Bill, any derogation will be made in a regulation pursuant to another Act with a different name. This will make it difficult to understand and interpret which aspects of the *National Electricity Law* (Qld) are in effect, without cross-referencing a number of pieces of legislation, including subordinate legislation.

QLS considers any derogation from the *National Electricity Law* (Qld) should not be made by regulation but should appear in primary legislation. Ideally, derogations would be clearly identified in the *Electricity—National Scheme (Queensland) Act 1997* (Qld), which applies the National Electricity Law to Queensland. For example, an existing modification of the National Electricity Law (Qld) presently appears in section 6A of the *Electricity—National Scheme (Queensland) Act 1997* (Qld).

We consider the following clauses also contain regulation-making powers that may be inappropriate, despite being purportedly justified in the Explanatory Notes:

- Clause 13 requires the Minister to prepare a public ownership strategy. The clause sets out some key terms and allows a regulation to further expand their meaning. We consider definitions of these key terms should be in the primary legislation.
- Clause 76 outlines the functions of a REZ delivery body and allows a regulation to set out additional functions. This is inappropriate. The functions of a body created by statute should be clearly set out in primary legislation so there can be proper parliamentary scrutiny and oversight of the proposed functions.
- Clause 84 of the Bill provides that for the purposes of Part 7, a regulation may provide for the application of a provision of the NEL in relation to a REZ transmission network or

² Queensland Office of Parliamentary Counsel, *Fundamental Legislative Principles*, accessed via: <https://www.oqpc.qld.gov.au/instructing-oqpc/flps> and Queensland Office of Parliamentary Counsel, Recourses, accessed via: <https://www.oqpc.qld.gov.au/instructing-oqpc/resources>

³ Section 4(4) of the *Legislative Standards Act 1992* (Qld); See also Department of the Premier and Cabinet (2019) *The Queensland Legislation Handbook Governing Queensland*, Part 7.3 – Institution of Parliament – accessed at <https://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook.aspx>

REZ controlled assets. The regulation may also provide that a national provision does not apply in relation to a matter or applies with stated modifications. We repeat the concerns raised in relation to clause 33 in this regard.

- Clause 90(5) which allows a regulation to set out requirements or obligations that must be complied with by a recipient or proposed recipient of a payment from the Job Security Guarantee Fund. Rights and obligations should ordinarily be provided for in the primary legislation, particularly where there is an adverse consequence to an obligation not being fulfilled.

Finally, it is critical that regulations are meaningfully consulted on before being made to ensure they are appropriate and fit for purpose as well as to avoid any unintended consequences.

Job Security Guarantee and Job Security Guarantee Fund

As noted in our earlier submission, the impact of the transition from coal-power to renewable energy sources on energy workers, communities and regions must be carefully managed. In this regard, we acknowledge the significance of the legislative commitments included in the Draft Bill in the form of the Job Security Guarantee and Job Security Guarantee Fund.

QLS supports the establishment of a Job Security Guarantee Fund and notes the government has indicated it will contribute \$150 million in this regard. Although this funding is very welcome and necessary, further investment must be proactive and ongoing to ensure that the purpose of the Fund is achieved in a timely and efficient manner.

Furthermore, QLS is mindful that affected workers may require legal advice to assist them in determining whether they meet eligibility requirements in order to access the Fund or when considering transferring between publicly owned energy corporations or new employment opportunities. Advice may also be required regarding entitlements such as long service leave as well as in relation to superannuation and insurance policies, such as for TPD. QLS considers that funding of this kind must also be factored into the ongoing funding model, particularly given the limited availability of legal assistance services in regional and remote Queensland.

In addition, we would also welcome further detail in respect of the Fund's operation including how it can be accessed and the categories of costs it will include. Further details about the process to be undertaken by workers and their advisors should be provided for in legislation, including for example whether decisions on eligibility will be reviewable.

To this end, we note the scope of the support proposed to be captured by the Job Security Guarantee, foreshadowed in the Queensland Energy Workers' Charter, includes, but is not limited to:


- every energy industry worker is guaranteed a job within the Government owned energy sector as it transforms;
- every energy industry worker will be offered agreed financial support and options to support transition to their new career;
- workers whose existing job no longer exists, and who do not wish to accept the offer of an alternative job in accordance with that commitment, will have access to other options in accordance with the Charter.

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It would be helpful to consider the comprehensive set of draft regulations and guidelines being contemplated prior to this legislation coming into effect. Specifically, QLS recommends there be public consultation on the regulations and guidelines referred to in clauses 90 and 91 of the Bill before they are made.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on [REDACTED]

Yours faithfully

A large black rectangular redaction box covering the signature area.

Chloé Kopilović
President