

# Queensland Climate Transition Bill 2023

## Statement of Compatibility

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

In accordance with section 38 of the Human Rights Act 2019, I, Michael Berkman, Member for Maiwar, make this statement of compatibility with respect to the *Queensland Climate Transition Bill 2023 (the Bill)*.

In my opinion, the Bill is 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. It limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

### Overview of the Bill

The Bill seeks to support Queensland to meet its obligations under the Paris Agreement to keep global heating below 1.5°C above pre-industrial levels, by reducing scope 1, 2 and 3 greenhouse gas emissions.

It creates a new Act which establishes statewide targets including a 75% reduction in emissions on 2005 levels by 2030, net zero emissions by 2035, and a phase out of fossil fuel exports by 2030.

The Act also establishes a new statutory authority to facilitate a strategic transition plan that ensures consultation, compensation, training and job opportunities for workers and local communities affected by the transition away from fossil fuels.

## Human Rights Issues

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

In my opinion, the human rights under the HR Act that are relevant to the Bill are:

- Right to life (Section 15)
- Taking part in public life (Section 23)
- Property rights (Section 24)
- Cultural rights - Aboriginal and Torres Strait Islander peoples (Section 28)

Section 15 of the HR Act protects every person's right to life and the right not to be arbitrarily deprived of life. In my view the Bill enhances rather than limits the right to life, by introducing measures that would limit global warming and reduce the risks to life posed by climate change. Relevantly to clauses 15 and 16 of the Bill, which prohibit the approval of new coal,

oil or gas projects, in considering the approval of a new coal mine in Queensland, the 2022 Land Court decision in *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 determined that “approving the project would contribute to foreseeable and preventable life-terminating harm”. The combustion of coal, whether in Queensland or elsewhere, would make a material contribution to increasing emissions, which would increase the risk of fatalities in Queensland from bushfires and bushfire smoke, heat waves, mosquito borne diseases, floods and cyclones. The decision concluded that “climate change is one of the most pressing and serious threats to the right to life”. The reduction targets set out in the Bill would have the effect of limiting those threats and protecting the right to life.

Section 28 of the HR Act protects the distinct cultural rights of Aboriginal and Torres Strait Islander peoples, including the right to “conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources” (s28(2)(e)).

The Bill enhances rather than limits the rights of Aboriginal and Torres Strait Islander people to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources by introducing measures that would limit global warming and reduce the risks to culture posed by displacement from and destruction of Country due to sea level rise and other climate change impacts.

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

**Section 23 - Taking part in public life**

**(a) the nature of the right**

Section 23 of the HR Act protects every person’s right and opportunity to participate in the conduct of public affairs without discrimination. It could be argued that the eligibility requirements for membership of the Board of the Queensland Climate Transition Authority, as set out in clause 35 of the Bill, limit this right by specifically requiring members to hold certain qualifications or experience in a number of listed areas.

**(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 purpose of any potential limitation on rights to take part in public life posed by these membership requirements is to limit global temperature increases to 1.5°C or well below 2°C, in accordance with the Paris Agreement, and ensure that workers and communities affected by the measures implemented to achieve the reduction targets have employment stability and income security.

A fit-for-purpose Board with adequate qualifications is needed to oversee the Climate Transition Authority, to ensure those workers and communities are adequately represented,

consulted and considered in the development and implementation of the Queensland Climate Transition Plan, and that the Plan is consistent with the objectives of the Bill including the temperature limits.

This is essential to preserve the dignity, equality and freedom of fossil fuel workers in circumstances where the measures implemented to achieve the reduction targets in the Bill will have impacts on their lives and economic security, as well as to ensure accountability of the Climate Transition Authority as a statutory authority.

The Bill does not prevent anyone from participating in the development of the Climate Transition Plan in their sector or region.

**(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**

The phase out of fossil fuels will impact workers currently employed in the resources industry, as well as businesses and communities currently dependent on income from fossil fuel exports. Government support for a coordinated approach to decarbonisation would lead to the best case scenario for the resources industry and Queensland's economy and wellbeing more generally.<sup>1</sup>

The Queensland Climate Transition Authority as established by this Bill would enable this coordinated approach and support regions impacted by the decarbonisation of the economy to develop long-term economic, social and environmental resilience and prosperity. To ensure the Authority is adequately facilitating long-term regional planning, meaningful participation of stakeholders and implementing a plan that is consistent with the principles set out in the Bill including consistency with the reduction targets, Board members must be adequately qualified in the relevant areas set out at clause 35(3).

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

There are no reasonably available ways to achieve the purpose of the Bill that are less restrictive on 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 essential that the Climate Transition Authority has sufficient oversight to ensure Queenslanders are protected from job losses and economic uncertainty as a result of sudden or unplanned declines in fossil fuel investment, increased risk of global penalties and sanctions, stranded assets and growing tension and confusion in communities without an adequate transition plan.

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<sup>1</sup> Joe Hinchcliffe, The Guardian (27 November 2022) *Queensland faces 'significant' wellbeing decline if it doesn't quickly transition to renewables, report says*  
<https://www.theguardian.com/australia-news/2022/nov/27/queensland-faces-significant-wellbeing-decline-if-it-doesnt-quickly-transition-to-renewables-report-says>

The IPCC's 6th Assessment Report outlines the extreme importance of limiting global temperature increases to 1.5 degrees celsius or well below 2 degrees celsius. It projected that the severity of global warming's impacts on biodiversity, human health and economies significantly increases by every increment of warming, in particular beyond 1.5 degrees.

These impacts include:

- Increased frequency and severity of extreme weather events and disasters including flooding and extreme high rainfall, droughts, bushfires and cyclones
- Mass displacement and involuntary migration due to disasters and sea level rises of between 40cm and 90cm over the next 60-80 years
- Loss and degradation of much of the world's forests, reefs and wetlands
- Reduced food and water security due to more heat and drought events causing crop production losses and barriers to food production and access in vulnerable regions
- Adverse effects on physical and mental health, including increased risk of climate-sensitive disease
- Compromises to key infrastructure including transportation, water, sanitation and energy
- The extinction of up to 18% of terrestrial species at 2 degrees of warming or 29% at 3 degrees, compared to up to 14% at 1.5 degrees

Many of the impacts of global warming are especially pronounced for Queensland. In particular, 2 degrees of warming is projected to destroy more than 99% of the Great Barrier Reef, compared to a very serious but not fatal decline of 70-90% at 1.5 degrees. The Australian and Queensland governments' failure to adequately protect the Reef from the impacts of climate change, as well as water quality and land management issues, led to the Unesco recommending in 2022 that the site be inscribed on the List of World Heritage In Danger.<sup>2</sup> Destruction of the Reef would impact Queensland's tourism economy by an estimated annual \$3.9 billion, or more than 33,000 jobs<sup>3</sup>. Queensland is also significantly more vulnerable to impacts from extreme weather and disasters. Analysis by the Climate Council predicts 65% of Queensland properties will be uninsurable by 2030 due to the state's high risk from extreme weather and sea level rise.<sup>4</sup>

These risks to Queensland's environment, economy and resident health and safety are enormous, and in my view justify any potential limitations on participation in the Board are of minimal extent particularly when weighed against the consequences of climate change and/or an unplanned transition.

**(f) any other relevant factors**

Not applicable.

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<sup>2</sup> Report on the Joint World Heritage Centre/ ICN Reactive Monitoring Mission to the Great Barrier Reef (Australia) from 21 to 30 March 2022 <https://whc.unesco.org/en/list/154/documents>

<sup>3</sup> Deloitte Access Economics (2017) *At what price? The economic, social and icon value of the Great Barrier Reef* <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/Economics/deloitte-au-economics-great-barrier-reef-230617.pdf>

<sup>4</sup> Climate Council (2022) *Uninsurable Nation: Australia's most climate-vulnerable places* <https://www.climatecouncil.org.au/resources/uninsurable-nation-australias-most-climate-vulnerable-places/>

## **Section 24 - Property rights**

### **(a) the nature of the right**

Section 24 of the HR Act protects the rights of all persons to own property and not to be arbitrarily deprived of that property. It could be argued that the provisions in the Bill allowing the Queensland Climate Transition Authority to cancel or amend existing fossil fuel authorities amounts to an arbitrary deprivation of property, but this is a tenuous argument given human rights do not extend to corporate entities and it is unlikely individuals will be impacted by these provisions.

### **(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**

Even if the provisions amount to an arbitrary deprivation of property, this limitation is well justified by the need to limit global temperature increases to 1.5°C or well below 2°C, in accordance with the Paris Agreement, by reducing greenhouse gas emissions to which new fossil fuel projects contribute.

Given the urgent and existential threat posed by climate change if warming increases beyond 1.5°C, and the limitations that new fossil fuel authorities would place on human rights including the right to life and cultural rights, it is considered that this is a proper purpose.

The Bill also provides for the establishment of the Queensland Climate Transition Authority which will consult with affected stakeholders (such as shareholders and individuals who have entered into employment, supply or service contracts with fossil fuel authority holders) on an orderly transition plan to implement the phase-out of fossil fuel exports, ensuring participation, consultation and new opportunities for individuals affected by the exercise of these powers.

### **(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**

Recent research and modelling makes clear that coal production from developed nations must be phased out by 2030, with all fossil fuel production phased out by 2034, in order to have even a 50% chance of limiting global heating to 1.5°C in accordance with the Paris Agreement.<sup>5</sup> Given Queensland's significant contribution to global greenhouse gas emissions and our relative wealth and ability to implement this rapid phase-out with new opportunities for affected workers and communities, a 2030 deadline is both reasonable and achievable. This will necessarily require cancellation or amendment of existing fossil fuel authorities and the Bill provides that power to the Queensland Climate Transition Authority

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<sup>5</sup> Calverley, D. & Anderson, K. (2022). *Phaseout Pathways for Fossil Fuel Production Within Paris-compliant Carbon Budgets*.  
<https://research.manchester.ac.uk/en/publications/phaseout-pathways-for-fossil-fuel-production-within-paris-complia>

which would also work with affected stakeholders to minimise the negative impacts of the transition away from coal.

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

Given the clear evidence that coal production must be phased out by 2030 and oil and gas by no later than 2034 in order to meet the temperature goals set out in the Paris Agreement, there are no reasonably available ways to achieve the purpose of the Bill that are less restrictive on 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**

The importance of limiting global temperature increases to 1.5°C or well below 2°C is set out above. These risks to Queensland's environment, economy and resident health and safety are enormous, and in my view justify any potential limitations on human rights created by the amendment or cancellation of existing fossil fuel authorities.

**(f) any other relevant factors**

Not applicable.

**Conclusion**

In my opinion, the *Climate Transition Bill 2023* is compatible with human rights under the Human Rights Act 2019 because it limits human rights only to the extent that is reasonable and demonstrably justifiable, in accordance with section 13 of the Act.