

Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023

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Transport and Resources Committee
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Transport and Resources Committee

Chair	Mr Shane King MP, Member for Kurwongbah
Deputy Chair	Mr Lachlan Millar MP, Member for Gregory
Members	Mr Bryson Head MP, Member for Callide
	Mr James Martin MP, Member for Stretton
	Mr Les Walker MP, Member for Mundingburra
	Mr Trevor Watts MP, Member for Toowoomba North

Committee Secretariat

Telephone	+61 7 3553 6621
Email	trc@parliament.qld.gov.au
Committee webpage	www.parliament.qld.gov.au/trc

All web address references are current at the time of publishing.

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Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

On behalf of the committee, I thank those organisations who made written submissions on the Bill. I wish to acknowledge the assistance of the Department of Energy and Public Works and also thank our Parliamentary Service staff.

I commend this report to the House.

A handwritten signature in black ink that reads "Shane King". The signature is written in a cursive, flowing style.

Shane King MP

Chair

Recommendation

Recommendation 1

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The committee recommends the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023 be passed.

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Executive Summary

The Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023 was introduced into the Legislative Assembly by the Honourable Mick de Brenni MP, Minister for Energy, Renewables and Hydrogen and Minister for Public Works and Procurement, and referred to the Transport and Resources Committee (committee) on 9 May 2023.

Summary of the Bill

The objective of the Bill is to provide a clear regulatory assessment pathway to authorise the construction and operation of pipelines for hydrogen and hydrogen carriers in Queensland. Hydrogen carriers could include ammonia, methanol, methyl-cyclohexane (MCH), dimethyl-ether and toluene in pipelines.

To achieve its objective, the Gas Supply and other Legislation (Hydrogen Industry Development) Amendment Bill 2023 proposes to amend:

- The *Gas Supply Act 2003* to expand its jurisdiction to hydrogen blends biomethane and other gases; and
- The *Petroleum and Gas (Production and Safety) Act 2004* to provide a clear and effective regulatory pathway for a proponent to apply for a pipeline license for the transmission of hydrogen and hydrogen carriers.

Key issues examined

The key issues raised during the committee's examination of the Bill included:

- The hydrogen industry in Queensland and its potential development
- The transportation of hydrogen via pipelines
- The processes in place to protect property owners potentially impacted by pipelines
- The Department of Energy and Public Works' consultation with stakeholders
- Compliance of the Bill with the *Legislative Standards Act 1992*
- Compliance of the Bill with the *Human Rights Act 2019*.

The committee considered issues of fundamental legislative principle and was satisfied that the Bill has sufficient regard to the rights and liberties of individuals and that the Bill is compatible with human rights in accordance with the *Human Rights Act 2019*.

Conclusion

The committee recommends that the Bill be passed.

1 Introduction

1.1 Policy objective of the Bill

The objective of the Bill is to provide a clear regulatory approval process to authorise the construction and operation of pipelines for hydrogen, hydrogen blends and hydrogen carriers, as well as other gases in Queensland. Hydrogen carriers could include ammonia, methanol, methylcyclohexane (MCH), dimethyl-ether and toluene.¹

To achieve this objective, the bill proposes to amend:

- The *Gas Supply Act 2003* in order to expand its jurisdiction to hydrogen, hydrogen blends, biomethane and other gases; and
- The *Petroleum and Gas (Production and Safety) Act 2004* in order to provide a clear and effective regulatory pathway for a proponent to apply for a pipeline license for the transmission of hydrogen and hydrogen carriers.²

1.2 Background

There is growing global demand for renewable hydrogen because it has the potential to be an energy and fuel source which supports decarbonisation. Countries such as Japan, South Korea and Singapore are looking to renewable hydrogen in order to meet their ambitious net zero emissions commitments and decarbonisation targets.³ Japan, in particular, has set hydrogen usage targets of three million tonnes per annum by 2030 and 20 million tonnes per annum by 2050.⁴

Recent independent modelling has forecast that Queensland's hydrogen industry could be worth \$33 billion by 2040.⁵ This potential is founded on the local industry becoming a global supplier of choice for renewable or 'green' hydrogen, as well as providing Queenslanders with clean, reliable and affordable power.⁶

Queensland's developing hydrogen industry requires a regulatory framework to support its growth. This was noted in the 2022 *Queensland Energy and Jobs Plan* which included an action item for the Department of Energy and Public Works (DEPW) to 'prepare legislation to support effective regulation of hydrogen development and use'.⁷

The first phase of this legislative commitment, and the subject of this bill, are amendments to provide a regulatory framework for transporting renewable gases and hydrogen in pipelines. This is due to pipelines being critical infrastructure required to transport hydrogen and other gases from a production facility to an export terminal.⁸

While the scope of the bill is narrow, DEPW advised us that they are 'leading a broad review of Queensland's regulatory frameworks to ensure all elements of the hydrogen value chain have an effective regulatory framework in place'.⁹

¹ Statement of Compatibility, p 1.

² Explanatory Notes, p 2.

³ Explanatory Notes, p 1.

⁴ Department of Energy and Public Works, public briefing transcript, Brisbane, 25 May 2023, p 2.

⁵ Department of Energy and Public Works, public briefing transcript, Brisbane, 25 May 2023, p 2.

⁶ Explanatory Notes, p 1.

⁷ Queensland Government, Queensland Energy and Jobs Plan, p 31.

⁸ Explanatory Notes, p 1.

⁹ Department of Energy and Public Works, correspondence, 21 June 2023, p 2.

1.3 Legislative compliance

Our deliberations included assessing whether or not the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

1.3.1 *Legislative Standards Act 1992*

Our assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified issues which are discussed below.

1.3.2 *Human Rights Act 2019*

A statement of compatibility was tabled with the introduction of the Bill as required by section 38 of the *Human Rights Act 2019* (HR Act). Our assessment of the Bill's compatibility with the HR Act is included below.

We find the Bill is compatible with human rights. The statement of compatibility contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

1.4 Should the Bill be passed?

We are required to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023 be passed.

2 Examination of the Bill

This section discusses key issues raised during our examination of the Bill. It does not discuss all consequential, minor or technical amendments.

In Queensland, the *Gas Supply Act 2003* (GS Act) and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act) provide the existing regulatory frameworks for proponents seeking to transport petroleum and gas through pipelines.

The Bill aims to provide the regulatory approval process to authorise the construction and operation of pipelines for hydrogen, hydrogen blends and hydrogen carriers, as well as other gases in Queensland by amending the GS Act and the P&G Act.¹⁰

The proposed amendments to the GS Act and the P&G Act also aim to provide consistency with changes being progressed nationally to the National Gas Law and the National Energy Retail Law in regards to hydrogen and other renewable gases.¹¹

2.1 Consultation process

DEPW released an exposure draft of the Bill on their website on 6 March 2023 for a four-week consultation period. More than 125 stakeholders were also targeted for feedback by DEPW. Online and in person briefing sessions were then held with a range of stakeholders.

¹⁰ Statement of Compatibility, p 1.

¹¹ Explanatory Notes, p 1.

DEPW advised that, 'Where appropriate, the Bill has been amended to address stakeholder feedback.'¹²

2.2 Amendments to the Gas Supply Act 2003

The Bill proposes to expand the GS Act's remit from processed natural gas to include hydrogen, hydrogen blends, biomethane and other 'covered gases'.

Clause 5 of the Bill amends section 3 of the GS Act to extend its main purposes from regulation of the distribution of processed natural gas to regulation of covered gases. The term 'covered gas' is defined in clause 7. This change reflects the intention for the GS Act to apply to hydrogen and other renewable gases, in addition to processed natural gas.¹³

Section 4 of the Bill provides clear limits on the scope of the GS Act, for example by expressly excluding matters such as safety and quality from its jurisdiction. The amendment to section 4 is necessary to ensure these excluded matters remain unaffected by the addition of covered gases in the GS Act.¹⁴

2.2.1 Processed natural gas

Clause 7 of the Bill amends section 9 of the GS Act to introduce the key definition 'covered gas' into the Act. A 'covered gas' is defined in the Bill as a primary gas or gas blend. A 'primary gas' is processed natural gas as well as hydrogen, biomethane, synthetic methane or a substance prescribed by regulation that is suitable for consumption. The term 'gas blend' is defined in the Bill as meaning primary gases that have been blended together and is suitable for consumption.

2.2.2 Requirements for application

Under the GS Act, a distribution authority authorises its holder to:

- (a) transport processed natural gas through a distribution pipeline or system within a stated area (distribution area); and
- (b) provide customer connection services to premises in the area.¹⁵

Clause 8 of the Bill amends section 28 of the GS Act to ensure applications for a distribution authority will include the type of covered gas to be authorised. This ensures there is transparency over what type of covered gas is being transported within a distribution authority, and is a necessary change given the Act will now apply to hydrogen and other renewable gases in addition to processed natural gas.¹⁶

2.2.3 Public notice by regulator and submissions

Clause 9 of the Bill amends section 29(2)(a) of the GS Act to add a further requirement to the notice the regulator must publish before deciding an application for a distribution authority. In particular, the regulator must publish details about the type of covered gas for the distribution authority prior to the regulator considering submissions and making a decision about the application.¹⁷

2.3 Amendments to the Petroleum and Gas (Production and Safety) Act 2004

The P&G Act currently provides a regulatory framework for the petroleum and gas industry in Queensland, including a licencing regime for the construction and operation of pipelines. It also

¹² Explanatory Notes, p 5.

¹³ Explanatory Notes, p 6.

¹⁴ Explanatory Notes, p 6.

¹⁵ *Gas Supply Act 2003*, s 21

¹⁶ Explanatory Notes, p 7.

¹⁷ Explanatory Notes, p 7.

addresses safety and technical issues related to the production, transportation and use of petroleum, natural gas and fuel gas.

However, hydrogen, while prescribed as a fuel gas under the Petroleum and Gas (General Provisions) Regulation 2017, is not expressly listed as a substance that can be transported under a pipeline licence. The proposed amendments to the P&G Act would enable the licencing and operation of transmission pipelines to transport hydrogen and hydrogen carriers.

These proposed amendments include the requirement for safety to be a mandatory consideration when deciding whether to grant a pipeline licence.¹⁸

DEPW advised:

Currently, hydrogen is not regulated under the act except to the extent that it is used or intended to be used as a fuel gas. The bill proposes to amend the Petroleum and Gas (Production and Safety) Act to provide a clear and effective regulatory pathway for a proponent to apply for a pipeline licence for the transmission of hydrogen and other hydrogen carriers. To enable this, the bill amends the definition of 'fuel gas' to include hydrogen or a hydrogen gas blend that is used or intended to be used as a fuel to produce heat, light or power. Hydrogen used or intended to be used as a fuel is already included as a fuel gas under the Petroleum and Gas (General Provisions) Regulation; however, the bill proposes to elevate this definition to the act. This will provide greater clarity about the regulation of hydrogen in Queensland.¹⁹

2.3.1 Broadening secondary purposes of the Act

Clause 12 of the Bill amends section 3A of the P&G Act. The amendment broadens the existing secondary purposes of the Act to include the construction and operation of pipelines for regulated hydrogen. The amendment provides certainty to industry and community stakeholders that there is a framework in place that will regulate hydrogen and hydrogen carriers in pipelines in a way that is safe, effective and efficient.²⁰

2.3.2 Meaning of LPG and fuel gas

Clause 13 of the Bill amends the meaning of fuel gas in section 11 of the P&G Act to include hydrogen, or a hydrogen gas blend, used or intended to be used as a fuel to produce heat, light or power. A hydrogen gas blend is processed natural gas and hydrogen that have been blended together. Hydrogen is being elevated to the P&G Act to provide visibility and clarity for the regulation of hydrogen in Queensland. The clause also makes a minor amendment to the definition of processed natural gas for consistency with the GS Act.²¹

2.3.3 New defined term for regulated hydrogen

Clause 14 of the Bill inserts a new section that includes a new defined term for regulated hydrogen.

Regulated hydrogen is hydrogen, or a hydrogen gas blend, or another substance prescribed by regulation that is involved in, or produced for, a process related to the storage or transport of hydrogen. Regulated hydrogen is not petroleum and its potential uses extend beyond what is permitted under the term fuel gas.

Inserting a new defined term clarifies that substances which are regulated hydrogen can be licenced under the P&G Act fall within the established safety pipeline framework and jurisdiction of Resources Safety and Health Queensland (RSHQ). The ability to prescribe another substance by regulation as

¹⁸ Explanatory Notes, p 3.

¹⁹ Public briefing transcript, Brisbane, 25 May 2023, p 3.

²⁰ Explanatory Notes, p 8.

²¹ Explanatory Notes, p 8.

regulated hydrogen provides the flexibility to add other carrier substances that may be required as technology and industry knowledge develops.²²

2.3.3.1 *Submitter views*

Glencore's submission to the committee proposes that the Bill be broadened to prescribe ammonia for the purposes of the new section 11A of the P&G Act. Glencore suggest that:

There are opportunities to supply low emissions, low carbon ammonia as a feedstock to industrial processes, both internationally and domestically.

...

To facilitate this opportunity, and because there is no material difference between transporting ammonia by pipeline for the purpose of hydrogen supply or for ammonia chemical supply, it would be sensible for the PPL regime to apply to the transport of ammonia regardless of its intended end use.²³

Glencore submit that 'the end use of a product should not be determinative of the tenure that may be granted to transport that product.'²⁴

However, DEPW advised:

The intent of the amendments ... is to provide a regulatory assessment pathway to authorise the construction and operation of transmission pipelines for hydrogen and hydrogen carriers (regulated hydrogen) in Queensland.

...

The amendments are not intended to allow for the transportation of a substance prescribed by regulation that is used for a purpose which is not associated with the emerging hydrogen industry.²⁵

2.3.4 What is a pipeline

Clause 15 of the Bill amends the definition of pipeline in section 16 to add regulated hydrogen as a substance that may be transported through a pipe or systems of pipes. The intent of this amendment is to provide clarity to industry and community stakeholders about substances that are authorised to be transported in pipelines.²⁶

2.3.5 What is a distribution pipeline

Clause 16 of the Bill amends the definition of a distribution pipeline in section 16A to clarify the distinction between distribution pipelines and transmission pipelines for fuel gas. This clause also broadens the definition of major user facility to include:

- A facility operated as a place of export for fuel gas, including, for example, a port; and
- A facility operated for the liquefaction of fuel gas before it is transported to a facility operating as a place of export for fuel gas.

Without these changes, a pipeline transporting fuel gas that consists of hydrogen will be considered a distribution pipeline under the P&G Act and cannot be licenced.

These definitional changes do not apply to regulated hydrogen which is not fuel gas.²⁷

²² Explanatory Notes, pp 8-9.

²³ Submission 1, p 2.

²⁴ Submission 1, p 2.

²⁵ Department of Energy and Public Works, correspondence, 21 June 2023, p 1.

²⁶ Explanatory Notes, p 9.

²⁷ Explanatory Notes, p 9.

2.3.5.1 *Submitter views*

Glencore's submission proposes that the definition of 'major user facility' in section 16A would benefit from being broadened to also refer to export facilities for 'regulated hydrogen'.²⁸

DEPW responded:

Regulated hydrogen is defined separately to fuel gas and as such, the change to the definition of major user facility which only relates to fuel gas will not apply to regulated hydrogen.

Should a proponent seek to transport a substance prescribed as regulated hydrogen (e.g. ammonia) to an export facility, an application would be able to be made for a pipeline licence under the *Petroleum and Gas (Production and Safety) Act 2004*.²⁹

2.3.6 Public notice requirement

Clause 20 of the Bill amends section 411 to require that a public notice state each substance proposed to be transported through the pipeline. The intent of this amendment is to require the applicant to be transparent about the substances proposed to be transported in the pipeline the subject of the licence application.³⁰

We sought additional details from DEPW on this aspect of the Bill as well as details on any other communications that occur more directly with impacted landholders. DEPW responded:

The *Petroleum and Gas (Production and Safety) Act 2004* requires notification for pipelines in a newspaper circulating throughout the State or, if the proposed licence is an area pipeline licence, generally in the area. The proponent is also required to notify any relevant local governments.

In addition, impacted landholders will have had communications from the proponent for the pipeline land to be first obtained. To be eligible to construct a pipeline, pipeline land must be owned by the proponent, or be land over which the proponent:

- holds an appropriate easement for the construction or operation of the pipeline; or
- has obtained the owner's written permission to enter to construct or operate the pipeline; or
- holds a part 5 permission to enter to construct or operate the pipeline.

Usually, the parties will negotiate either an easement or an agreement with the relevant landholders which will also provide for any compensation payable. However, where an easement or an agreement cannot be negotiated, the proponent may apply to the Minister for Resources for a Part 5 permission. A Part 5 permission is a temporary permission to enter the land to construct and operate a pipeline. In the rare circumstance where pipeline land is not settled after the expiry of the Part 5 permission, the land may be compulsorily acquired.³¹

2.3.7 What is an operating plant

The P&G Act defines 'operating plant' in section 670. The definitions listed include:

- a pipeline authorised under a petroleum authority, other than a pipeline that transports only produced water without any petroleum³²
- a distribution pipeline.³³

²⁸ Submission 1, p 2.

²⁹ DEPW, correspondence, 21 June 2023, p 2.

³⁰ Explanatory Notes, p 10.

³¹ DEPW, correspondence, 6 June 2023, p 4.

³² Section 670 (2)(d), *Petroleum and Gas (Production and Safety) Act 2004*

³³ Section 670 (2)(e), *Petroleum and Gas (Production and Safety) Act 2004*

Clause 27 of the Bill amends section 670 to allow for regulated hydrogen substances to be excluded from being operating plant where the substance is prescribed as an 'excluded compound'. This will allow RSHQ to independently determine if the operating plant safety framework is the most suitable safety framework for regulated hydrogen substances prescribed in section 11A. Where a substance is prescribed as an 'excluded compound' and therefore not operating plant, the safety framework under the *Work Health and Safety Act 2011* will apply.³⁴

2.3.7.1 *Submitter views*

Queensland Law Society (QLS) submitted that:

The amendments to subsection 670(10) of the *Petroleum and Gas (Production and Safety) Act 2004* create a two limb test to determine whether it is an excluded compound. A substance must be both: (a) prescribed as an excluded compound under subsection 11A(c) of the Act; and (b) declared by regulation to be an excluded compound for the purpose of section 670.

If the intention is that pipelines carrying only the substances prescribed in section 6A of the *Petroleum and Gas Regulation* are to be excluded from the definition of 'operating plant', then the Regulation should go further and state that those substances are excluded compounds for the purpose of section 670 of the Act.³⁵

DEPW have advised, 'The approach proposed in the QLS submission will be provided to the Office of the Queensland Parliamentary Counsel for consideration in drafting the relevant amendments to the P&G Regulation.'³⁶

2.4 Native Title

The Bill does not mention native title, so we sought information from DEPW regarding native title and the negotiation of proposed new pipelines. DEPW advised:

The amendments proposed in the Bill will not impact on existing requirements in relation to Native Title.

The *Native Title Act 1993* (Cwth) sets out specified processes that must be followed for any 'future act' on land or waters that would affect Native Title rights and interests. All future Acts trigger the obligation to address Native Title, and there are a variety of processes available. Applications for pipeline licences are considered future Acts and are subject to Native Title processes. For pipeline licences under the *Petroleum and Gas (Production and Safety) Act 2004*, the permit can be granted pursuant to section 24MD6A of the *Native Title Act 1993* (Cwth), which affords the Native Title party the same procedural rights as would apply to a holder of freehold land.

The granting of the pipeline licence does not provide for the right to enter the land and construct a pipeline. If Native Title exists in relation to land within the area of a pipeline licence, section 401 of *Petroleum and Gas (Production and Safety) Act 2004* requires that the pipeline proponent must have or hold: an easement; or a written agreement; or a Part 5 permission for the Native Title rights and interests before entering to construct and operate the pipeline.

This will mean that the proponent negotiates and registers an Indigenous Land Use Agreement (ILUA) with any Native Title holders. The Department of Resources does not have any involvement in the negotiation of the agreements between the Native Title holder and the pipeline licence holder. The timeframes for negotiating Native Title will vary depending on the parties' ability to negotiate the ILUA.³⁷

³⁴ Explanatory Notes, p 11.

³⁵ Submission 3, p 3.

³⁶ Department of Energy and Public Works, correspondence, 21 June 2023, p 2.

³⁷ Department of Energy and Public Works, correspondence, 6 June 2023, p 5.

2.5 H2 Water

QLS noted that it broadly supported the proposed approach of the Bill and that it ‘provides for straight forward and sensible amendments to the *Gas Supply Act 2003* (Qld) (GS ACT) and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).’³⁸

QLS recommended that ‘consideration be given to establishing a framework for granting pipeline licences for water where the water is required for the production of hydrogen or where water is the by-product of hydrogen production.’³⁹

DEPW responded that while this ‘issue falls outside the scope of the bill’, it will be considered as part of ‘a broad review’ that they are leading of ‘Queensland’s regulatory frameworks to ensure all elements of the hydrogen value chain have an effective regulatory framework in place.’⁴⁰

2.6 Land access

APA Group Limited submitted their general support for the Bill and added the following proposal in regards to land access:

Easements (and other land access rights) generally reflect what was negotiated between the parties and are naturally inconsistent in drafting. Some existing easements in their current form may only permit the transportation of natural gas/hydrocarbons. This means transporting hydrogen and other future fuels in existing pipelines, either as additives to, or instead of, natural gas may constitute a new permitted purpose. If this is the case, all existing easements in Queensland would need to be reviewed and new easements may need to be negotiated if the original permitted purpose is not sufficient.

This would be a very costly and drawn out process for industry and governments and could present challenges for meeting Queensland’s clean energy targets. This process also involves risks that one landholder (or a minority of landholders) could prevent an existing pipeline from being able to transport hydrogen or other future fuels and severely impact a project.⁴¹

DEPW responded:

Should a proponent seek to use an existing pipeline to transport a substance that is not provided for under an existing easement, an amendment of the easement will be required.

...

It is vital that industry go above and beyond the minimum regulatory requirements in order to build and maintain its social licence to operate. This can be assisted by nurturing positive, productive and transparent relationships with landholders in line with growing investor and customer expectations regarding environmental, social and governance performance. This will include engaging with landholders in instances where a variation to an existing easement is necessary.⁴²

Speaking generally about land access issues, QLS provided a broad explanation of the process for the application for a pipeline licence in an area subject to public consultation. It advised:

... the department does seek the input of local impacted stakeholders. Then if and when a pipeline licence is granted, negotiation for access associated with the traditional form of an easement is underway, there are stepped out mechanisms for those negotiations to take place. If negotiations do not reach an agreed outcome, there are mechanisms in place for that to be overcome as well.⁴³

³⁸ Submission 3, p 1.

³⁹ Public hearing transcript, Brisbane, 19 June 2023, pp 1-2, and Submission 3, pp 2-3.

⁴⁰ Department of Energy and Public Works, correspondence, 21 June 2023, p 4.

⁴¹ Submission 5, p 3.

⁴² Department of Energy and Public Works, correspondence, 21 June 2023, p 8.

⁴³ Public hearing transcript, Brisbane, 19 June 2023, p 3.

Committee comment

The committee notes that there was broad support for the provisions of the Bill received during the consultation process, as well as from four of the five submissions we received.

In regards to suggestions from submitters that the Bill should include provisions for issues such as H2 Water and land access, the committee is pleased that DEPW have committed to further consider these and other matters raised by stakeholders as part of the broader review that they are leading into the regulatory framework for Queensland's hydrogen value chain.

2.7 Fundamental legislative principles

'Fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.⁴⁴ The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

We bring the following to the attention of the Legislative Assembly.

2.7.1 Delegation of legislative power – regulation making by the Governor in Council

The Bill proposes amendments that will allow for a range of matters to be prescribed by regulation. For example, it proposes to amend the GS Act to insert the new term 'covered gas', which will allow for an additional gas to be prescribed by regulation.⁴⁵ It proposes to amend the P&G Act to provide for an additional requirement when making an application for a pipeline licence: to require that an application be accompanied by information, prescribed by regulation, that is relevant to the Minister for Resources being satisfied that an applicant is able to competently and safely manage the location, design, construction and operation of the pipeline.⁴⁶

2.7.1.1 Institution of Parliament

Fundamental legislative principles include requiring that legislation has sufficient regard to the institution of Parliament. Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill:

- allows the delegation of legislative power only in appropriate cases and to appropriate persons
- sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.⁴⁷

The explanatory notes acknowledge that introducing the new terms 'covered gas' and 'regulated hydrogen'⁴⁸ which provide for additional gases and substances to be prescribed by regulation, may impact on whether the Bill has sufficient regard to the institution of Parliament because the provisions 'delegate legislative power to regulations that may be made by the Governor in Council, as opposed to by Parliament'.⁴⁹

⁴⁴ *Legislative Standards Act 1992* s 4.

⁴⁵ Bill, cl 7 inserts GS Act, new s 9(1), (2).

⁴⁶ Bill, cl 18 amends P&G Act, s 409 (and references the requirements proposed by clause 19 of the Bill, which seek to amend section 410 of the P&G Act).

⁴⁷ LSA, s 4(4)(a), (b).

⁴⁸ Into the GS Act and P&S Act, respectively.

⁴⁹ Explanatory notes, p 3.

The explanatory notes state that any infringement of fundamental legislative principles is justified because:

... new gases may become suitable for distribution due to continuing developments in research, science, technology and supply chains. Similarly, other substances may be identified as being suitable for the storage or transport of hydrogen as technology and industry knowledge develops.⁵⁰

Additionally, the explanatory notes consider that these new provisions reduce the possibility of requiring successive amendments to the GS Act and P&G Act, 'which would increase administrative burden on the executive government and industry'.⁵¹

Committee comment

It appears that the intention of the provisions allowing regulations to prescribe additional gases as covered gases and to prescribe other substances as involved in (or produced for) a process related to the storage or transport of hydrogen is to give flexibility to the regulatory framework so that it may respond to developments, such as in science and technology, as they arise.

Further, the amendments may reduce administrative burden and delay, as future matters prescribed by regulation will mean new amendment legislation will not need to be introduced into Parliament. This may allow the regulatory framework to be more responsive and agile to changes in the industry and assist with bringing about a more practical and efficient regulatory system.

The other regulation making powers proposed by the Bill appear to be motivated by safety concerns. For example, they aim to enhance competency and safety by requiring the investigation of such matters as part of an application for a pipeline licence, and that appropriate safety measures are considered prior to construction of a pipeline.

Regulations made by the Governor in Council under the GS Act⁵² and P&G Act⁵³ must be tabled in the Queensland Parliament.⁵⁴ The Queensland Parliament may disallow a regulation made under a Queensland Act.⁵⁵

We are satisfied that the Bill sufficiently subjects the exercise of the delegated legislative power to the scrutiny of the Queensland Parliament because any regulation must be tabled in the Queensland Parliament, and it may be disallowed by the Parliament.

2.7.2 Right to freedom of movement, property rights and cultural rights

The Bill would expand the existing pipeline licencing and safety framework to hydrogen, other renewable gases and other hydrogen carriers.⁵⁶ Where construction of a pipeline is authorised under

⁵⁰ Explanatory notes, p 4.

⁵¹ Explanatory notes, p 4.

⁵² GS Act, s 323.

⁵³ P&G Act, s 859.

⁵⁴ Being subordinate legislation, if the regulation is not tabled it ceases to have effect. See *Statutory Instruments Act 1992* (SI Act), s 49.

⁵⁵ See SI Act, s 50.

⁵⁶ Statement of compatibility, p 2. Part 2 of the Bill proposes to amend the GS Act to expand the existing processed natural gas supply provisions to include covered gases, including hydrogen. Clause 12 of the Bill proposes to amend section 3A of the P&G Act to include the following as a purpose of that Act: 'to facilitate and regulate, as a key authorised activity for pipeline licences, the construction and operation of pipelines for regulated hydrogen in a way that is safe, effective and efficient'. Other clauses of the Bill seek to expand the existing framework to include hydrogen, such as by proposing to amend the existing definition of

an Act amended by the Bill,⁵⁷ the construction and operation of the pipeline may temporarily or permanently restrict a person from accessing or enjoying the use of land on which the pipeline is constructed.⁵⁸ These provisions may limit the right to freedom of movement,⁵⁹ property rights⁶⁰ and Aboriginal and Torres Strait Islander Peoples' cultural rights.⁶¹

The HR Act provides that these human rights can be limited, but only where it is reasonable and justified in a free and democratic society based on human dignity, equality and freedom.⁶²

According to the statement of compatibility, restricting access to land for the construction and maintenance (among other things) of a pipeline 'is necessary to ensure the reliable and secure operation of the pipeline'.⁶³

Distribution pipelines⁶⁴ are commonly constructed on public land, such as under roads. The statement of compatibility contends that it would generally not be feasible for a distribution authority holder to construct pipelines across a large number of private properties because they would need to negotiate with the owners of that land to obtain easements or other interests in the land.⁶⁵

The P&G Act provides mechanisms for procuring access to land associated with a pipeline licence. The statement of compatibility asserts that the legislative framework⁶⁶ balances the interests of the petroleum pipeline licence (PPL) holder and landowners and native title holders⁶⁷ through easements, written agreements or a 'permission' that can be granted under Part 5 of the P&G Act.⁶⁸

'pipeline' (clause 15 of the Bill) to include the substances included in the new term, 'regulated hydrogen' (clause 14 of the Bill).

⁵⁷ Such as by a distribution authority under the GS Act or a petroleum pipeline licence (PPL) under the P&G Act (statement of compatibility, p 3). Existing section 16 of the P&G Act identifies petroleum, fuel gas, produced water or prescribed storage gases as substances generally transported through a pipeline. The Bill proposes to amend section 16 to expand the definition of pipeline to include regulated hydrogen.

⁵⁸ Statement of compatibility, p 2

⁵⁹ Section 19 of the HR Act provides that every person lawfully within Queensland has the right to move freely within Queensland and to enter and leave it, and has the freedom to choose where to live.

⁶⁰ Section 24 of the HR Act provides that all persons have the right to own property (alone or in association with others), and that a person must not be arbitrarily deprived of the person's property.

⁶¹ Section 28 of the HR Act provides that Aboriginal and Torres Strait Islander Peoples must not be denied their distinct cultural rights, including the right, with other members of their community, to freely practise their culture and to not be denied certain rights in relation to traditional knowledge, spiritual practices, language, kinship ties, relationship with land and resources, and protection of the environment. Statement of compatibility, p 2.

⁶² HR Act, s 13.

⁶³ Statement of compatibility, p 3.

⁶⁴ Under the GS Act.

⁶⁵ Statement of compatibility, p 3. The Bill merely amends the GS Act to provide that the existing provisions also apply to covered gases, including hydrogen.

⁶⁶ Under the P&G Act.

⁶⁷ Section 8 of the P&G Act provides that, despite any provisions of the P&G Act, a 'native title holder' within the meaning of section 224 of the *Native Title Act 1993* (Cth) has the procedural and other rights that the holder has under that Commonwealth Act.

⁶⁸ For example, chapter 4, part 5 of the P&G Act provides a process for a person who holds (or has applied for) a PPL to apply to the Minister for Resources for permission to enter the area (or proposed area) of the licence to construct or operate a pipeline. An applicant must state the steps they have taken to become the owner of the land; or be granted an appropriate easement to construct or operate the pipeline; or obtain the permission of the owner of the land to enter the land to construct or operate the pipeline.

The statement of compatibility asserts that this legislative framework allows:

... a PPL holder to construct and operate a pipeline in an optimal and secure fashion while minimising risk to human health and safety. On the other hand, landowners and native title holders are able to be compensated in return for allowing the PPL holder to access and restrict movement across the area of the pipeline licence.⁶⁹

According to the statement of compatibility, the purpose of limiting a person's right to access or enjoy the use of land on which a pipeline is constructed is to facilitate Queensland's hydrogen industry. It states that the Bill will 'assist proponents to secure the financial support and investment required to commence projects'.⁷⁰

The statement of compatibility considers that the limitations on the right to freedom of movement, property rights and cultural rights are necessary to ensure the reliable and secure operation of all pipelines by giving distribution authority holders the right to transport gases and connect customers, as well as to allow PPL holders rights to access land to (among other things) maintain the safe, continued and optimal operation of the pipeline.⁷¹

The statement of compatibility contends there are no less restrictive ways to achieve the purpose of the Bill. It concludes that the potential limitations to freedom of movement, property rights, and cultural rights are:

... balanced by the benefits of extending the existing distribution authority framework in the GS Act and the petroleum and gas licensing pathway in the P&G Act to hydrogen pipelines. The Bill will support the development of Queensland's hydrogen industry and assist with local and global decarbonisation.⁷²

Although landowners are able to be compensated for allowing the PPL holder access to land, and for the restriction on the use of their property in the area of any PPL, the statement of compatibility acknowledges:

In limited circumstances, where agreement cannot be reached, the Minister administering the P&G Act can approve temporary access to construct and operate the pipeline for up to nine months and can also compulsorily acquire land for these purposes. These requirements also apply where native title exists in the area. Compensation is paid to the landowner or native title party if resumption occurs.⁷³

2.7.2.1 Submitter views

AgForce submitted that it would like to see an extension of Part 3 of the HR Act, pertaining to Section 24, Property Rights, of the proposed amendments to include the privacy elements of Section 25 of the HR Act, being 'Privacy and reputation. A person has the right, (a) not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.'⁷⁴

AgForce submitted it:

... would support this to extend beyond the current parameters; to include privacy protections for primary producers that consider the effect of pipe infrastructure development, surveillance, monitoring and maintenance, which may impact upon primary producers; right to privacy (including noise factors); mental health and wellbeing; animal welfare and disturbances and bio-security factors of nearby primary producers' properties. We would like to see this issue addressed including through the hydrogen licencing, as a breach and revocation upon cause approach.⁷⁵

⁶⁹ Statement of compatibility, p 3. See P&G Act, s 456.

⁷⁰ Statement of compatibility, pp 3, 4.

⁷¹ Statement of compatibility, p 4.

⁷² Statement of compatibility, p 4.

⁷³ Statement of compatibility, p 5.

⁷⁴ Submission 4, p 2.

⁷⁵ Submission 4, p 2.

DEPW acknowledged the matters raised in relation to the consideration of privacy rights of landholders by Agforce. DEPW advised:

All pipelines under the *Petroleum and Gas (Production and Safety) Act 2004*, including any future hydrogen pipelines, can only be constructed and operated on private land if an easement or written agreement has been reached with the relevant landholders and native title holders. Where agreement cannot be reached under the *Petroleum and Gas (Production and Safety) Act 2004*, the proponent can apply to the Minister for Resources for a Part 5 permission, which provides temporary access to construct and operate a pipeline. A Part 5 permission may also indicate the intent for the Minister for Resources to acquire the land if an agreement or easement is not reached with the landholder or native title party.

An additional protection under the *Mineral and Energy Resources (Common Provisions) Act 2014* is the restricted land framework which generally means that resource companies cannot enter land within 200 metres of certain buildings, structures or areas without the written consent of the landholder. There is no obligation on landholders to give consent. The protections offered under the restricted land framework can also apply to landholders even though their property is not located within the boundaries of the resource authority. This goes towards protecting the privacy of landholders and will apply to any future hydrogen pipelines authorised under the *Petroleum and Gas (Production and Safety) Act 2004*.⁷⁶

In relation to the Bill's limitation on Aboriginal and Torres Strait Islander Peoples' cultural rights, the statement of compatibility notes that a holder⁷⁷ is subject to certain 'duty of care' provisions,⁷⁸ which require the holder to take all reasonable care and practicable measures to ensure the activity does not harm Aboriginal and Torres Strait Islander cultural heritage.⁷⁹

2.7.2.2 Submitter views

In their submission, the Traditional Owners of the Gladstone, Bundaberg and North Burnett regions, the Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda First Nations People, (BGGGTB People) outlined concerns in regards to the Bill's 'Statement of Compatibility and the procedures followed to determine whether the Bill was compatible with human rights.'⁸⁰

The BGGGTB People are represented by the First Nations Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda People Aboriginal Corporation Registered Native Title Body Corporate ICN 8650 (the PBC).

The PBC notes that the Gladstone Region and the Gladstone State Development Area are currently experiencing 'significant commercial industrial activity', which includes hydrogen related infrastructure developments.⁸¹ Their submission states that the 'Bill will therefore be of significant relevance to the Gladstone region and these developments.'⁸² The submitter's concerns about the Statement of Compatibility and whether the Bill was compatible with human rights specifically relate to:

... the failure of the Department and the Minister to meet their obligations under the HR Act in relation to consideration of the impact of the Bill on the Indigenous cultural rights of the BGGGTB People prior to putting the Bill before the Parliament due to:

- their lack of consultation with the BGGGTB People in relation to the potential impact of the limitations on their Indigenous cultural rights – without that knowledge no person can make a judgement on whether the limitations that will arise from passage of the Bill are reasonable and demonstrably justifiable; and

⁷⁶ Department of Energy and Public Works, correspondence dated 21 June 2023, pp 5-6.

⁷⁷ Of a distribution authority under the GS Act or PPL under the P&G Act.

⁷⁸ Within the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*.

⁷⁹ Statement of compatibility, p 5.

⁸⁰ Submission 2, p 3.

⁸¹ Submission 2, p 2.

⁸² Submission 2, p 2.

- the apparent reliance on cultural heritage and native title rights to meet the obligations to protect indigenous cultural rights when those rights are very limited and do not cover the much broader suite of indigenous cultural rights identified in the HR Act.⁸³

The submission advises that hydrogen industry ‘proponents in the region have been actively working with PBC to understand the impact on BGGGTB People’s rights and how they can be addressed. This has included signing Memorandums of Understanding (MoUs)...’⁸⁴

However, the submission states that the Queensland Government had not yet made ‘contact with the BGGGTB People as the Traditional Owners that are most affected by any potential developments and changes to the regulatory environment governing the Hydrogen industry...’⁸⁵

The submission states:

It is not the intention of the PBC to impede the development of this important new industry but it is incumbent on it to ensure that the indigenous cultural rights of the BGGGTB People are respected by all involved. It is only able to do this if it is consulted in relation to matters that place potential limitations on those rights and at a point that enables it to have meaningful input.

...

The views and concerns of the PBC, as the representative of the affected First Nations People, have not been appropriately canvassed in the development of the Gas Supply and Other Legislation (Hydrogen Industry Development) Amendment Bill 2023 (Qld). Under these circumstances, a Statement of Compatibility that suggests that indigenous cultural and human rights have been properly considered under this proposed legislation is disingenuous. It is not possible for any person to determine whether the limitations imposed on those rights by the Bill are reasonable and demonstrably justifiable having regard to the matters listed in s13(2) of the HR Act without a proper understanding of exactly what those cultural rights encompass for the BGGGTB People and how the potential limitations will impact on those rights.⁸⁶

DEPW provided the following response to the concerns outlined by the PBC:

The Department of Energy and Public Works acknowledges the concerns raised by the PBC in relation to the lack of consultation on the Bill and reliance on the Native Title Act and Cultural Heritage Acts in the Statement of Compatibility to provide adequate protection for the rights of First Nations peoples.

...

The Department is committed to ensuring that meaningful engagement occurs, and representatives of the Hydrogen Division met with the Executive Chair of the PBC on 14 June 2023 to discuss engagement into the future. The Department is leading a broad review of Queensland’s regulatory frameworks to ensure all elements of the hydrogen value chain have an effective regulatory framework in place. As part of this work, consultation will occur with the PBC and other First Nation stakeholders.

...

Although the grant of a distribution authority under the *Gas Supply Act 2003* and the grant of petroleum pipeline licence (PPL) under the *Petroleum and Gas (Production and Safety) Act 2004* do not create an interest in land, the construction and operation of a pipeline under either Act may temporarily or permanently limit the access and enjoyment of the land. This has the potential to limit a person’s right to freedom of movement, property rights and Aboriginal peoples and Torres Strait Islander peoples’ cultural rights. Restricting access to land is necessary to ensure the reliable and secure operation of the pipeline by giving holders rights to access land to (among other things) construct and maintain the safe, continued and optimal operation of the pipeline.

⁸³ Submission 2, p 3.

⁸⁴ Submission 2, p 3.

⁸⁵ Submission 2, p 3.

⁸⁶ Submission 2, pp 3-4.

This potential limitation is justified as it is necessary to facilitate a hydrogen industry in Queensland.

...

Additionally, subject to the passage of this legislation through the Parliament, any decision to grant a potential future application for a hydrogen pipeline must be compatible with human rights in accordance with requirements specified in section 58 of the *Human Rights Act 2019*. These requirements mean that the decision-maker will need to identify the human rights relevant to the decision, including consideration and compatibility of the decision with cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*).⁸⁷

Committee comment

The Bill's potential restrictions on human rights are motivated by the intention to give licence holders rights to access land to (among other things) construct and maintain pipelines, and (more generally) to support the development of a hydrogen industry in Queensland.

Some temporary potential limitations on human rights may occur, such as during construction of a pipeline, and may inconvenience members of the public wishing to access the land in question. There is also scope for significant impacts, for example, on a landowner in circumstances where a licence holder applies to construct a pipeline on the landowner's land.

The statement of compatibility observes that the P&G Act contains a range of processes governing such an instance, including ways that a licence holder may consult with or negotiate with a landowner in order to bring about agreement (whether by an easement, written agreement or a Part 5 permission), including compensation, for the use of the landowner's land.

These existing provisions may involve significant repercussions for a landowner, such as a Ministerial decision to grant a licence holder the right to construct or operate a pipeline on land without the landowner's agreement⁸⁸ or to compulsorily acquire land. These repercussions could present substantial limitations on that landowner's human rights, including property rights and/or cultural rights.

The committee notes the concerns of the Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda First Nations Peoples in regards to the Statement of Compatibility, cultural heritage issues and the initial lack of consultation by the government. We acknowledge the important point they make – that the cultural heritage rights protected under Section 28 of the HR Act may be broader than those contemplated by the *Aboriginal Cultural Heritage Act 2003* and the *Torres Strait Islander Cultural Heritage Act 2003*. We also acknowledge that effective consultation with rights holders is the optimal way to clarify the extent of rights protected under the HR Act.

The committee is pleased that DEPW have now commenced consultations with the BGGGTB to clarify cultural heritage rights potentially impacted by hydrogen related infrastructure developments. We encourage DEPW to initiate similar consultations across the state with other potentially impacted groups in areas of planned hydrogen industry development.

We conclude that the limitations on the right to freedom of movement, property rights and cultural rights proposed by the Bill are reasonable and justifiable.

⁸⁷ Department of Energy and Public Works, correspondence dated 21 June 2023, pp 3-4.

⁸⁸ For a period up to 9 months.

Appendix A – Submitters

Sub #	Submitter
01	Glencore Coal Assets Australia Pty Limited
02	Board of the First Nations Bailai, Gurang, Gooreng
03	Queensland Law Society
04	AgForce Queensland Farmers Limited
05	APA Group

Appendix B – Officials at public departmental briefing

Department of Energy and Public Works

- Kahil Lloyd, Executive Director, Hydrogen
- Marcus Rees, Director, Georesources
- Bronwyn Story, Director, Hydrogen, Policy and Strategy
- Shoena Messner, Acting Chief Inspector Petroleum and Gas, Resources, Health and Safety Queensland

Appendix C – Witnesses at public hearing

Queensland Law Society

- Ms Wendy Devine, Principal Policy Solicitor
- Mr James Plumb, Member of QLS Energy and Resources Law Committee

Abbreviations and acronyms

Abbreviation	Definition
BGGGTB People committee	Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda First Nations People Transport and Resources Committee
DEPW	Department of Energy and Public Works
GS Act	<i>Gas Supply Act 2003</i>
HR Act	<i>Human Rights Act 2019</i>
ILUA	Indigenous Land Use Agreement
MCH	methylcyclohexane
MoUs	Memorandums of Understanding
the PBC	the First Nations Bailai, Gurang, Gooreng Gooreng, Taribelang Bunda People Aboriginal Corporation Registered Native Title Body Corporate
P&G Act	<i>Petroleum and Gas (Production and Safety) Act</i>
PPL	petroleum pipeline licence
QLS	Queensland Law Society
RSHQ	Resources Safety and Health Queensland

Statement of Reservation LNP Members of the Transport and Resources Committee

The LNP broadly supports the intent of this Bill and believes it will assist in the development of a hydrogen and hydrogen carrier industry in Queensland.

We also reiterate the importance of compulsory acquisition powers, when used fairly with due process, for nation-building and strategic projects.

However, the Opposition does have some concerns with elements of the bill. There are opportunities for better leadership around the ongoing number of projects that may be subject to compulsory acquisition. Unnecessary angst has been caused over the years through projects that have gone through a process for compulsory acquisition, only for the project to not proceed. This leadership should extend to ensure that communities are not faced with potentially many years of angst and uncertainty for projects that do not proceed. This leadership must also extend to the coexistence of projects within easements, where possible. The government must also ensure consistency with other similar regulations for those who will be impacted.

Pipelines and similar projects can bring community benefits, but they also bring significant impacts to landholders and those near the project. While many good biosecurity processes are followed by contractors and construction companies, it's important that these are reinforced at all stages to ensure there aren't unintended consequences of work crews traversing through different properties and regions.

Through the Department's own admission, the notification process can be improved for communities. The Government could have used this bill as an opportunity to improve and modernise the notification process and failed to do so.

The LNP also welcomes the Department's comments in relation to encouraging common user infrastructure, however, there are different hydrogen products that need varying methods of transportation and storage, so this may have limitations as to who can benefit and utilise this infrastructure. Government leadership in this regard will go a long way to reducing wider impacts on communities.

The LNP looks forward to hearing more from the Government and DEPW in relation to their 'broad review' of Queensland's regulatory frameworks and how further changes may be beneficial to our state.



Lachlan Millar MP
Member for Gregory
Deputy Chair



Bryson Head MP
Member for Callide



Trevor Watts MP
Member for Toowoomba North