

# Strong and Sustainable Resource Communities Bill 2016

## Explanatory Notes

### Short title

The short title of the Bill is the Strong and Sustainable Resource Communities Bill 2016 (the Bill).

### Policy objectives and the reasons for them

The objective of the Bill is to ensure that regional communities in Queensland, which are in the vicinity of large resource projects, benefit from the operation of those projects. The Bill will limit the use of fly-in, fly-out (FIFO) workforces and ensure that local workers from nearby regional communities are employed in the operation of large resource projects.

The Bill aims to:

- prescribe the social impact assessment (SIA) process for large resource projects;
- prevent the use of 100 per cent FIFO workforces for the operation of future large resource projects located near regional communities;
- prevent resource companies discriminating against local residents in the future recruitment of operational workers;
- support existing and new workers who choose to live and work in regional communities; and
- resolve the inconsistency that approval conditions may be imposed by the Coordinator-General for projects subject to an environmental impact statement (EIS) under the *State Development and Public Works Organisation Act 1971* (SDPWO Act), but not for projects subject to an EIS under the *Environmental Protection Act 1994* (EP Act).

The Bill fulfils the government's 2015 election commitment and also responds to the October 2015 recommendations made by:

- the Infrastructure Planning and Natural Resources Committee (IPNRC) Parliamentary Inquiry into FIFO work practices in regional Queensland; and
- an independent expert FIFO review panel.

The Bill is part of a broader Strong and Sustainable Resource Communities (SSRC) policy framework, including a revised SIA Guideline, which will provide a comprehensive and integrated approach to the management of social impacts of resource projects.

The SSRC policy framework also aims to:

- support resource communities to attract and retain workers and their families;
- improve participation of local governments in the SIA process for each project;
- improve access for competitive local businesses to resource project supply chains;

- help protect resource worker health and wellbeing;
- provide sufficient flexibility to respond to the peaks and troughs in the resource sector; and
- minimise any consequential increases in costs to both proponents and governments in the assessment and operation of resource projects.

The Bill also amends the *Mineral Resources Act 1989* (MR Act).

#### Mineral Resources Act 1989 amendments

The MR Act is amended to insert provisions that will prohibit all mineral (f) activity in Queensland. Mineral (f) activity, within the MR Act, includes *in situ* gasification of coal (underground coal gasification (UCG)) and *in situ* gasification of oil shale which use similar processes to extract the mineral. The Bill gives effect to the government's decision to prohibit all UCG activities in Queensland.

In 2009, the Queensland Government established a process to undertake limited UCG trials to determine the commercial and environmental viability of this potential industry. As part of this process, an independent scientific panel (ISP) produced a report on the UCG trials. While the ISP remained open to the possibility that the UCG concept is feasible, it also identified that sufficient scientific/technical information was not yet available to reach a final conclusion, particularly in relation to potential commercial scale UCG projects.

The ISP report demonstrated there were unresolved issues surrounding the potential impact of UCG activities. Along with the issues associated with the trial projects to date, this uncertainty led the Queensland Government to the decision that the potential issues of allowing UCG projects to grow to commercial scale were not acceptable.

While UCG and *in situ* oil shale gasification activities will be prohibited in Queensland, the holder of a mining tenement for a UCG trial project will not be prevented from carrying out activities necessary for environmental rehabilitation, and the decommissioning and removal of plant and equipment related to the carrying out of UCG activities. There are no granted mining tenements in Queensland where *in situ* oil shale gasification activities are being, or have been, carried out.

## **Achievement of policy objectives**

To achieve its objectives, the Bill will:

- prescribe the requirement for a SIA as part of the EIS for resource projects assessed under either the SDPWO Act or the EP Act;
- create a new head of power for the Coordinator-General to state approval conditions for a resource project subject to an EIS under the SDPWO Act or the EP Act;
- prohibit the future use of 100 per cent FIFO workforce arrangements for resource projects located near to regional communities that have been subject to an EIS under the SDPWO Act or the EP Act; and
- amend the *Anti-Discrimination Act 1991* (AD Act) to prohibit discrimination against locals during the recruitment processes for new workers and enable FIFO workers to move into the local community if they choose (for existing large resource projects that have been subject to an EIS under the SDPWO Act or the EP Act).

The objectives will be supported by a substantial revision of the previous Coordinator-General's non-statutory SIA Guideline, which will become a statutory instrument for assessment of resource projects under the Bill.

#### Mineral Resources Act 1989 amendments

The Bill will achieve its policy objective in relation to implementing the government's decision to prohibit UCG activities in Queensland by amending the MR Act.

## **Alternative ways of achieving policy objectives**

The alternatives to the Bill and proposed framework were considered and are discussed below.

#### No change to legislation

This option would rely on:

- the decision of the Coordinator-General to require a SIA as part of the terms of reference for an EIS for each individual project;
- voluntary commitment of resource companies to not undertake 100 per cent workforce practices and to provide local residents with an equal opportunity to be considered for jobs as FIFO workers; and
- resource projects assessed under the EP Act not being subject to approval conditions managing the impacts of a project on the social environment, while projects assessed under the SDPWO Act are subject to such conditions.

The determination has been that resource companies and future Coordinators-General cannot be relied upon to implement the policy objectives without a legislative obligation. This would be an inconsistent and inappropriate approach to the management of social impacts of large resource projects.

#### Amend the *State Development and Public Works Organisation Act 1971* and/or the *Environmental Protection Act 1994*

This option would rely on:

- prescriptive requirements that would be inconsistent with other condition-making powers in either Act (e.g. no 100 per cent FIFO);
- provisions that would be inconsistent with the purpose of either Act (e.g. no discrimination against locals); and
- retrospective application of new requirements to existing project approvals.

#### Mineral Resources Act 1989 amendments

The government considered all options and has decided to introduce a legislative moratorium to prohibit UCG activities by amending the MR Act.

## Estimated cost for government implementation

The enhancement of the SIA function within the Office of the Coordinator-General will incur additional cost to:

- manage the administration of the proposed SSRC Act;
- extend the jurisdiction for SIA and approval conditions for projects assessed under the EP Act;
- monitoring and compliance actions on stated social conditions; and
- increased obligations for engagement with local governments and communities before, during and after each EIS process.

It is not possible, at this stage, to estimate any costs for the Anti-Discrimination Commission Queensland in relation to complaints of location discrimination by residents of regional communities, but these are not expected to be significant.

### Mineral Resources Act 1989 amendments

There are no estimated costs for government arising from the introduction of the legislative moratorium to prohibit UCG and *in situ* oil shale gasification activities in Queensland.

## Consistency with fundamental legislative principles

The Bill is generally consistent with the Fundamental Legislative Principles as defined in section 4 of the *Legislative Standards Act 1992*. Potential breaches of the principles are set out below.

### *Does the legislation have sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(2)(a)*

The Bill gives the Coordinator-General statutory discretion to decide that:

- (a) the 100 per cent FIFO prohibition and the anti-discrimination provisions apply to construction workers (in addition to operational workers) for particular new projects; and
- (b) particular projects with an EIS evaluation/assessment report completed since 30 June 2009 and ‘nearby regional communities’ be specifically subject to or not subject to those provisions, regardless of the project being within 100 kilometres (km) of a locality of more than 200 people.

The decision on construction workers ((a) above) could only be made in the context of the EIS assessment for new projects during which the Coordinator-General considers a wide range of relevant social, economic and physical impacts and management/offset measures. Therefore, the proposed SSRC Act would be consistent with the Coordinator-General’s existing discretionary decision making powers. In any case, the provision to potentially include construction workers is aimed solely at those projects for which the construction program is over an extended period, leading nearby regional communities to have a reasonable expectation that they have equal opportunity of employment over that longer timeframe.

The decision to include or exclude particular existing projects or towns ((b) above) will be guided by: worker safety; travel conditions; the practical capacity of a small township to

supply skilled labour to the project; and existing practices for the provision of labour from a community to the project area. The list of towns captured by the provisions for each project will be published on the Department of State Development's (DSD) website.

The AD Act amendments provide that the matters published on DSD's website are evidence of these matters. The facilitation of evidence through this measure is justifiable as it applies only in a civil context, the matters published are factual and non-contentious, and the evidentiary effect may be challenged.

#### Reversal of Onus of Proof

*Does the legislation have sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(2)(a)*

In relation to the anti-discrimination provisions, the Bill provides for a reversal of the onus of proof where a complaint alleges that a person was not offered work because they were residents of a nearby regional community or their employment was ended because the worker was, or became, a resident of a nearby regional community and chose to travel to the project other than as a FIFO worker. It is presumed that the respondent discriminated as alleged, unless the respondent proves otherwise.

Arguably, this is not inconsistent with fundamental legislative principles as in practice, the owners of large resource projects are corporations and the reversal will not apply to individuals. Further, the complaint taken is not a criminal proceeding. The reversal is justifiable as employees cannot be in a position to discover the intent of their employer or relevant decision-maker. The reason why the action was taken is within the knowledge of the person who took the action and, without this reversal; it would prove disproportionately difficult for an applicant to establish the reason for the action taken against them by the respondent. A similar reversal of the onus of proof applies under the *Fair Work Act 2009* (Cwth).

#### Liability

*Does the legislation have sufficient regard to the rights and liberties of individuals – Legislative Standards Act 1992, section 4(2)(a)*

The AD Act amendments provide that the owner of a large resource project and a principal operating contractor are jointly liable for contravention of the anti-discrimination provisions. This may raise an issue of consistency with fundamental legislative principles. However, the liability applies only in a civil context, and not in the context of criminal proceedings. The measure is justifiable because, in practice, the owners of large resource projects are corporations and the liability will not apply to individuals, and it is considered reasonable that an owner or principal contractor should be responsible for actively managing and monitoring agents or related bodies corporate operating on their behalf.

Similarly, the offence provision relating to advertising or document about recruitment in clause 8 makes the owner strictly liable for a contravention. This is also justified in that the

owner should be responsible for actively managing and monitoring agents or related bodies corporate operating on their behalf.

## **Consultation**

### **Community**

The Bill addresses recommendations in the IPNRC Report No. 9 that were supported by the government in their response to the report. The Bill also addresses recommendations of the FIFO review panel.

There has been extensive and comprehensive consultation with stakeholders in the community on the State's proposed approach to FIFO practices. Consultation on the SSRC policy framework and draft Bill has occurred with local governments and key stakeholders.

Resource companies and their peak bodies have expressed concern about any retrospective policy application and are also sensitive to any policy proposals that would unnecessarily increase costs. The Bill does not include any retrospective provisions. The Local Government Association of Queensland supports the government's response to prescribe in legislation the requirements for SIA, and supports the development of regional communities through the proposed measures.

#### Mineral Resources Act 1989 amendments

No community consultation was carried out prior to the government's decision to prohibit UCG and *in situ* oil shale gasification activities.

### **Government**

All government agencies have been consulted on the Bill. The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel and other relevant government agencies.

## **Consistency with legislation of other jurisdictions**

Project assessments for mining in Queensland, New South Wales (NSW) and Western Australia (WA) follow the same basic process with the preparation of an EIS by the proponent (which includes an assessment of social impacts). Queensland is in a unique position due to a concentration of resource projects near to larger regional communities. The objective of the proposed legislation is on obtaining the benefits of resource activity for regional communities in Queensland.

There are no precedents in other Australian jurisdictions for creating place of residence as a ground to prohibit discrimination.

#### Mineral Resources Act 1989 amendments

The moratorium to prohibit all mineral (f) activity is specific to the State of Queensland.

# Notes on provisions

## Part 1 Preliminary

### Clause 1 Short title

*Clause 1* states that, if enacted, the Bill may be cited as the *Strong and Sustainable Resource Communities Act 2016* (SSRC Act).

### Clause 2 Commencement

*Clause 2* states that the Bill commences on a day to be fixed by proclamation, other than Part 3, Division 3, which commences on assent.

### Clause 3 Object of Act

*Clause 3* provides that the object of the Bill is to ensure that regional communities in Queensland in the vicinity of large resource projects should benefit from the operation of the projects.

The Bill achieves this objective by:

- requiring owners of, or proponents for, large resource projects:
  - to prepare a social impact assessment (SIA) for the projects;
  - to employ people from nearby regional communities;
  - not to discriminate against residents from nearby regional communities when employing for the projects; and
- ensuring that conditions to manage social impacts of resource projects are applied consistently under both the *State Development and Public Works Organisation Act 1971* (SDPWO Act) and the *Environmental Protection Act 1994* (EP Act).

The Bill defines a **large resource project** as a ‘resource activity’ (defined in the EP Act) that is subject to an environmental impact statement (EIS) under either the EP Act or the SDPWO Act. This provision should prevent the Bill applying to small and most medium-scale resource projects because those projects are not usually subject to an EIS under those Acts.

A proponent of a large resource project must prepare a SIA for the project. A **social impact assessment**, for a large resource project is defined as an assessment of the potential positive and negative social impacts of the project that is required as part of an EIS. The requirements for inclusion in a SIA are prescribed in clause 9 of the Bill.

The owner or principal operating contractor of a large resource project and all agents acting for them on the operation of the resource project must provide equal opportunity of employment in the operation of the project, regardless of where the workers live. The owner is taken to be the mining or petroleum lease holders for the large resource project.

Clause 8 and 19 provides further detail about the grounds for discrimination and when they apply.

### Clause 4 Act binds all persons

*Clause 4* states that the Act, if enacted, binds all persons, including the State.

## **Clause 5 Definitions**

*Clause 5* states that Schedule 1 defines particular words used in the Bill.

## **Part 2 Provisions for the benefit of residents of communities in the vicinity of large resource projects**

### **Clause 6 Prohibition on 100% fly-in fly-out workers for large resource projects**

*Clause 6* states that this section applies to those projects which have not yet publically notified a draft EIS for the project under section 33(1) of the SDPWO Act or an EIS notice under section 51(2)(b) of the EP Act, the owner for that project when the project becomes operational must not employ a workforce that comprises 100 per cent FIFO workers. As this applies only to the operational phase of the project, these provisions do not generally apply to the construction or decommissioning phases of a project. In clause 12, the Coordinator-General may also nominate the construction phase following a comprehensive EIS assessment.

It is intended that all workers associated with the establishment of petroleum wells are considered to be operational workers for all provisions in the Bill.

The prohibition on 100 per cent FIFO would apply only to those projects that have a *nearby regional community*, defined as a locality having a population of more than 200 people within 100 km of the project unless otherwise decided by the Coordinator-General. This would allow some discretion where a project is approximate to the distance nominated or other significant considerations should apply.

A limit on the minimum size of regional communities to which this provision applies is considered necessary because smaller communities have limited capacity to supply suitably skilled workers for a large resource project. The limit of 200 people is taken from the Australian Bureau of Statistics (ABS) definition of 'locality'. The most current ABS published list of localities and urban centres would be considered for the definition of a 'nearby regional community'.

It is generally intended that that individuals living between nominated localities and the project would be captured by clause 6 and the anti-discrimination provisions.

The percentage of FIFO workers includes those other forms of long distance commuting arrangement (e.g. bus). This would mean that those workers that commute from the wider region to the project (more than 100 km) are not included as local workers for the purpose of the 100 per cent FIFO. The prohibition of 100 per cent FIFO is to further encourage project proponents to consider opportunities for local and nearby regional communities to benefit from the project.

It is recognised that the prohibition of 100 per cent FIFO practices will have limited application. The legislation would not preclude a high percentage of FIFO workers being employed. Nonetheless, this provision provides a clear statement to the industry. The SIA process applied to each project will seek a commitment from proponents to a significantly lower FIFO percentage on a case-by-case basis where appropriate. In particular, the SIA



Guideline requires the proponent to consider local and regional communities as a preferential labour source where a competitive and capable workforce is available.

The owner of a large resource project is ultimately responsible for ensuring that the requirement not to employ 100 per cent FIFO is met. Nonetheless, these provisions will also apply to related companies, contractors, labour hire companies or other third parties responsible for the recruitment and employment of workers for the project.

**Clause 7 Prohibition on 100% fly-in fly-out workers for large resource projects taken to be an enforceable condition**

*Clause 7* states that the requirement to which clause 6 applies, an owner or any other person of a large resource project must not employ a workforce that comprises of 100 per cent fly-in, fly-out workers, is an enforceable condition under the section 157A of the SDPWO Act. The condition would automatically apply to all resource projects near to a regional community subject to an EIS under the SDPWO Act or the EP Act.

**Clause 8 Offence relating to advertising or document about recruitment for large resource project**

*Clause 8* provides that the advertising or documentation for recruitment at a large resource project should not prohibit residents of nearby regional communities from applying for these positions. A clear example of this discrimination would be where the advertising for a position states that the position is for FIFO workers and local applicants would thereby be precluded from applying. The intent of this provision is around the discriminatory content of the advertising documentation and not the extent of the advertising. While every effort should be made to advertise positions widely and make available to all residents of regional communities, this is not always practicable.

The penalty units for an offence in relation to discriminatory advertising reflect the enforcement provisions in the SDPWO Act. In practice, the owner of a large resource project will be a corporation. The applicable penalty offence will be calculated at five times the nominated amount of 400 penalty units (in accordance with the *Penalties and Sentences Act 1992*).

This section creates a summary offence which would be prosecuted in the Magistrates Court and subject to appeal to the District Court.

**Clause 9 Requirement for owner of, or proponent for, large resource project to prepare a social impact assessment**

*Clause 9* sets out the requirements for a proponent of a large resource project to prepare a SIA as part of the EIS for the project. The SIA must provide for:

- community and stakeholder engagement;
- workforce management;
- housing and accommodation;
- local business and industry procurement;
- health and community wellbeing.

There is a requirement that the local government must be consulted on the development of the SIA.

Under this clause, the Coordinator-General may also make a guideline stating the details that must be included in a SIA and publish it on the department's website. The Coordinator-General's SIA Guideline sets out in detail the matters (including the five elements above) that must be addressed in the SIA.

**Clause 10 Requirement for social impact assessment for large resource projects under the *Environmental Protection Act 1994***

*Clause 10* sets out the interaction between the Coordinator-General's SIA process and EIS's for large resource projects assessed under the EP Act. There are certain statutory points in an assessment of an EIS under the EP Act where the Coordinator-General would advise the chief executive administering the EP Act whether the SIA is able to proceed.

The Coordinator-General would provide advice on the adequacy of the SIA component of the EIS submitted by the proponent prior to release for public consultation. There would be a further adequacy assessment once the EIS is publically notified.

Administrative arrangements between the Office of the Coordinator-General and Department of Environment and Heritage Protection would be in place for the Office of the Coordinator-General to provide SIA advice at all stages of the EIS. The Coordinator-General would be responsible for the SIA component of the terms of reference for the EIS, consideration of the draft SIA and final SIA component of the EIS and the social chapter of the EIS assessment report.

**Clause 11 Coordinator-General may state conditions to manage the social impact of large resource projects generally**

*Clause 11* sets out the requirements if the Coordinator-General states conditions for a large resource project to manage potential impacts on the social environment and how it is affected if the project is assessed under the EP Act.

The section explains that conditions imposed on a project under the EP Act have the same effect as conditions imposed on a project under Part 4, Division 8 of the SDPWO Act. The Coordinator-General would also be responsible for managing enforcement actions that may arise from any non-compliance with any stated social conditions for projects assessed under the EP Act.

The Coordinator-General must give the Minister administering the EP Act and the proponent of the project a copy of the stated conditions. The imposed conditions are taken to form part of the EIS assessment under section 57 of the EP Act. The Coordinator-General would align with the timeframes in the EP Act in the provision of SIA requirements and provide any stated conditions at the time of the EIS assessment report.

There is provision for an application by a proponent to change a condition where a condition is no longer applicable or the circumstances of the condition have significantly changed. The Coordinator-General would manage the change request process for stated social conditions under this Act for projects in the same way that this process is currently administered for other conditions under the SDPWO Act.

It is clarified that the conditions stated under this Act are not subject to the jurisdiction of the Land Court nor the Planning and Environment Court.

**Clause 12      Coordinator-General may nominate large resource project as a project for which persons employed during construction phase are workers for this Act**

*Clause 12* states that the Coordinator-General may include the construction phase of a large resource project as subject to the prohibition against 100 per cent FIFO in clause 6 and the anti-discrimination provisions in clause 8 and 19. A Coordinator-General's decision to include the construction workforce would follow a comprehensive EIS assessment that would take into account the scale and duration of the construction stage and capacity of the nearby regional communities to support local employment.

**Clause 13      Publication of details of nearby regional communities and large resource projects**

*Clause 13* lists the publication details of those nearby regional communities and large resource projects subject to provisions in clause 6, 8 and 19. This will include the names of each regional community that is linked with the resource project and the name and owner of the project. This information is linked with the definition of a nearby regional community and the Coordinator-General would publish the list on the department's website to inform all parties.

The Coordinator-General's list would also be required to be updated where the ownership details change and the date the operational phase commences (i.e. when the provisions for operational workers for a particular project commence).

**Clause 14      Owner of large resource project must advise the Coordinator-General of particular matters**

*Clause 14* provides that the Coordinator-General must be advised of the start of the operational phase of the project and if there is any change of ownership of the project, including the name of the new owner.

This provision would ensure the timely update of the publication details in clause 13 and confirm ownership and exact commencement of operational phase as evidentiary aids in clause 19.

**Clause 15      Regulation-making power**

*Clause 15* states that the Governor in Council may make regulations under this Act. A regulation may be made about the fees payable under the Act and imposing penalties for a contravention of a provision of a regulation of no more than 20 penalty units. These fees will be consistent with the fees prescribed under the State Development and Public Works Organisation Regulation 2010.

## **Part 3                      Amendment of Acts**

### **Division 1                Amendment of this Act**

**Clause 16      Act amended**

*Clause 16* states that Division 1 of the Bill amends this Act (once enacted).

**Clause 17 Amendment of long title**

*Clause 17* amends the long title to remove the reference to the *Anti-Discrimination Act 1991* (AD Act) and *Mineral Resources Act 1989* (MR Act) amendments, when the amendments to those pieces of legislation have been removed in the first reprint of this Act as required under the *Reprints Act 1992*.

**Division 2 Amendment of Anti-Discrimination Act 1991**

**Clause 18 Act amended**

*Clause 18* states that Division 2 of the Bill amends the AD Act.

**Clause 19 Insertion of new ch 5B**

*Clause 19* inserts a new Chapter 5B into the AD Act.

**Chapter 5B Discrimination against residents of regional communities (complaint)**

**New section 131B Definitions for chapter**

The definitions contained in Chapter 5B are linked to the definitions in the proposed SSRC Act, Schedule 1.

**New section 131C (Prohibition on discrimination against persons in nearby regional communities in relation to work on large resource projects)**

New section 131C (2)(a) provides that the owner or principal operating contractor of a large resource project must not discriminate against a resident of a nearby regional community when recruiting workers for the project.

Discrimination is taken to occur where a person advertises, or is otherwise recruiting, workers for the project, and the local resident is not offered work, or is disadvantaged in the recruitment process, because they are a resident of a nearby regional community. This section does not prevent an owner from not offering an applicant work because they do not have the necessary skills, experience and qualifications or have a lower level of skills, experience, or qualifications than another applicant who is not a resident of a nearby regional community.

The owner or a principal contractor of a large resource project is responsible for ensuring that the requirement not to discriminate against residents of regional communities is met. The owner is taken to contravene the section whether it is the owner or a related body corporate of the owner or an agent of the owner or related body corporate. Similarly, the principal contractor is taken to contravene whether it is the principal contractor or an agent of the principal contractor. An agent of the owner or principal contractor, for example, could include related companies, contractors, recruitment agencies, or other third parties responsible for the recruitment and employment of workers for the project.

If the principal operating contractor contravenes this section during the course of their work as a principal contractor, both the owner and the principal contractor are joint and severally liable for the contravention, and a proceeding under the Act may be taken against either or both of them.

Subsection (2)(b) prohibits an owner of a large resource project from terminating the employment of an existing or new worker because they become a resident of a nearby regional community and choose to travel to the project other than as a FIFO worker.

The definition of a ‘nearby regional community’ is the same as that relating to the prohibition on employing 100 per cent FIFO. However, the anti-discrimination provisions apply to projects that have received an EIS evaluation report under the SDPWO Act or an EIS assessment report under the EP Act after 30 June 2009. Therefore, this provision applies to some existing resource projects. This date has been nominated as approximately the time that contemporary SIA practice commenced in Queensland. The provision is not retrospective as it does not alter existing approvals for resource projects and would only apply after the commencement of the Act. The provision only applies to future hiring practices for resource companies.

The intent of the Bill is not to make it unlawful for companies to:

- advertise to preferentially recruit workers from a nearby local or regional community;
- specify that an employee must commence work each day at the project at the same time as FIFO workers and work under the same conditions as other workers performing the same duties; and
- require workers from a nearby regional community to live in an accommodation village during the work roster period.

#### **New section 131D (Provisions of this Act that do not apply for this chapter)**

This section states that sections 9 (discrimination of certain types prohibited), 10 (meaning of direct discrimination), 11 (meaning of indirect discrimination), 124 (unnecessary information), 132 (Act’s vicarious liability purpose and how it is to be achieved), 133 (vicarious liability), 204 (burden of proof – general principle) and 205 (burden of proof – indirect discrimination) of the AD Act do not apply for this chapter.

Sections 9, 10 and 11 are excluded because the chapter provides for a specific, hybrid form of discrimination limited to recruitment and termination of employment of local workers near large resource projects.

Section 124 is excluded to ensure it is not unlawful for an owner to request information about whether a person is a resident of a nearby regional community. For example, an owner may seek to do this to ensure they are not discriminating in contravention of new section 131C.

Section 133 is excluded because new Chapter 5B specifically provides for when an owner will be vicariously liable for discriminatory conduct by other persons.

Sections 204 and 205 are excluded because the chapter specifically provides for burden of proof in new sections 131E and 131F.

#### **New section 131E (Burden of proof - general principle)**

It is for the complainant to prove that the respondent contravened this chapter, subject to section 131F.

### **New section 131F (Reason for action to be presumed unless proved otherwise)**

This section is in relation to complaints that a person was not offered work during recruitment for a large resource project or a person's employment was terminated because the person was, or became a resident of a nearby regional community and chose to travel to the project other than as a FIFO worker.

This section provides that unless the respondent proves otherwise, it is presumed that the action was taken for the alleged reason. The reversal of the onus of proof is justifiable as in these cases, the reasons an applicant did not get a job, or a worker's employment was terminated, are known to the employer and may not be known to the applicant or worker. Without this reversal, it would prove disproportionately difficult for an applicant to establish the reason why the adverse action has been taken against them by the respondent. A similar arrangement is in place under the *Fair Work Act 2009* (Cwth).

### **New section 131G (Evidentiary aid)**

This section provides that the matters published under the SSRC Act, section 13, are evidence of these matters. Section 13 of the SSRC Act requires the Coordinator-General to publish on the department's website certain information relating to the names of projects, owners and regional communities that are subject to the anti-discrimination provisions. This will assist the administration of complaints by the Anti-Discrimination Commission Queensland and provide transparency for owners, recruiters and residents of regional communities regarding the application of the new prohibitions.

#### **Clause 20 Amendment of schedule (Dictionary)**

*Clause 20* defines particular words used in this Act that cross reference to definitions in the SSRC Act.

## **Division 3 Amendment of Mineral Resources Act 1989**

#### **Clause 21 Act amended**

*Clause 21* states that Division 3 of the Bill amends the MR Act.

#### **Clause 22 Amendment of s 6 (Meaning of *mineral*)**

*Clause 22* amends section 6 of the MR Act to insert a note. This note provides a reference to provisions of the MR Act that apply a moratorium in relation to mineral (f). These provisions are detailed under Chapter 12, Part 4A of the MR Act.

#### **Clause 23 Amendment of s 197 (Application for renewal of mineral development licence)**

*Clause 23* amends section 197 of the MR Act to correct a simple typographical error identified during the preparation of this Bill.

#### **Clause 24 Amendment of s 208 (Adding other minerals to licence)**

*Clause 24* amends section 208 of the MR Act as a consequence of new section 334ZJD. New section 334ZJD provides that:

- the Minister must not approve an application already made to add mineral (f) to a mineral development licence under section 208; and

- a person must not apply to add mineral (f) to a mineral development licence under section 208.

Therefore, section 208 of the MR Act is amended by this clause to omit the (now) redundant subsection that provided what the Minister must be satisfied of before approving an application to add mineral (f) to a granted mineral development licence.

**Clause 25 Amendment of s 232 (Eligible person may apply for mining lease)**

*Clause 25* amends section 232 of the MR Act as a consequence of new section 334ZJD. New section 334ZJD provides that the Minister must not:

- grant a mining lease application for mineral (f) under section 234 of the MR Act; or
- approve an application to mine mineral (f) made pursuant to section 298 of the MR Act.

Further, new section 334ZJD provides that a person must not apply for:

- a mining lease for mineral (f) under section 232 of the MR Act; or
- approval to mine mineral (f) under section 298 of the MR Act.

Therefore, section 232 of the MR Act is amended by this clause to omit the (now) redundant subsection that provides for the circumstances when a mining lease for a mineral or minerals, that include mineral (f), may be granted.

**Clause 26 Amendment of s 334J (Access rights for particular activities)**

*Clause 26* recognises that section 391B of the MR Act as referenced under section 334J of the MR Act has been replaced with a similar provision, being section 55 of the *Mineral and Energy Resources (Common Provisions) Act 2014*.

**Clause 27 Amendment of s 334ZE (Persons who may apply for, or be granted, a mining tenement for land in the area of MDLA364)**

*Clause 27* provides for a consequential amendment to section 334ZE of the MR Act because of the omission of section 232(2) of the MR Act by clause 25 (Amendment of s 232 (Eligible person may apply for mining lease)). In turn, section 232(2) of the MR Act was omitted as a consequence of new section 334ZJD.

Because of the omission of section 232(2) of the MR Act, the remaining subsection (1) is now unnumbered as provided for in section 5 of the *Reprints Act 1992*. This is reflected by this amendment.

**Clause 28 Amendment of s 334ZF (Persons who may apply for, or be granted, a mining tenement for particular land in the area of SL12/42239)**

*Clause 28* provides for a consequential amendment to section 334ZF of the MR Act because of the omission of section 232(2) of the MR Act by clause 25 (Amendment of s 232 (Eligible person may apply for mining lease)). In turn, section 232(2) of the MR Act was omitted as a consequence of new section 334ZJD.

Because of the omission of section 232(2) of the MR Act, the remaining subsection (1) is now unnumbered as provided for in section 5 of the *Reprints Act 1992*. This is reflected by this amendment.

**Clause 29 Insertion of new ch 12, pt 4A**

Clause 29 inserts new Chapter 12, Part 4A into the MR Act. Chapter 12, Part 4A inserts new sections 334ZJA to 334ZJG, inclusive, into the MR Act.

Generally, this part will provide for a prohibition on underground coal gasification activities, for the extraction or production of mineral (f) as defined in section 6 of the MR Act.

**Part 4A (Moratorium relating to mineral (f))**

**Division 1 (Preliminary)**

**New section 334ZJA (Purpose of part)**

New section 334ZJA provides for matters relating to a moratorium for mineral (f).

**New section 334ZJB (Relationship with other provisions)**

New section 334ZJB provides that the new sections within new Chapter 12, Part 4A, do not limit or otherwise affect or suspend rights or obligations of the holder of a mineral (f) development licence. In particular, new section 334ZJB lists the following where any right or obligation is not affected or limited by new Chapter 12, Part 4A:

- a relevant environmental condition; or
- the EP Act; or
- the *Petroleum and Gas (Production and Safety) Act 2004*, Chapter 3; or
- another Act relating to mining tenements (e.g. *Mineral and Energy Resources (Common Provisions) Act 2014*).

**New section 334ZJC (Inconsistency with other provisions)**

New section 334ZJC provides for when there may be an inconsistency between other provisions of the MR Act, or the conditions detailed in a mineral (f) development licence. In such circumstances, the provisions detailed in new Chapter 12, Part 4A will apply to the extent of the inconsistency.

**Division 2 (Activities for mineral (f))**

**New section 334ZJD (Prohibitions relating to mineral (f))**

New section 334ZJD provides that the Minister must not approve or grant an application already made pursuant to sections 197, 208, 232 and 298 or renew a mineral (f) development licence as provided for in section 197A of the MR Act. This section also provides that certain applications relating to mineral (f) under certain sections of the MR Act cannot be made.

The Minister must not approve or grant the following applications that have already been made pursuant to the MR Act:

- an application made under section 197 to renew a mineral (f) development licence; or
- an application made under section 208 to add mineral (f) to a mineral development licence; or
- an application for the grant of a mining lease for mineral (f) made under section 232; or
- an application made under section 298 to mine mineral (f).



A person, who would ordinarily be eligible to make an application under the MR Act, must not do so if the application is for any of the following:

- to renew a mineral development licence under section 197, if the application is made for mineral (f), or another mineral and mineral (f); or
- to add mineral (f) to a mineral development licence under section 208; or
- for a mining lease under section 232 if the application identifies mineral (f), or another mineral and mineral (f); or
- to add a mineral to a mining lease, under section 298, if the application is made for mineral (f), or another mineral and mineral (f).

New section 334ZJD also provides a clarification that despite the Minister not being allowed to approve or grant the applications detailed under this new section, or a person not being allowed to make an application detailed under this new section, the section does not apply to the renewal of a mineral (f) development licence because of new section 334ZJG.

### **New section 334ZJE (Activities under mineral (f) development licence)**

New section 334ZJE provides that any activity that relates to mineral (f), authorised under the MR Act or any other Act relating to mining, such as the carrying out of underground coal gasification, is no longer authorised to be carried out.

However, new section 334ZJE also provides for the types of activities (for example, environmental) that are authorised to be carried out in the area of a mineral (f) development licence; defining these as ‘rehabilitation activities’.

### **New section 334ZJF (Obligations under mineral (f) development licence)**

New section 334ZJF provides that:

- if the only activities a holder of a mineral (f) development licence may carry out are those detailed at new section 334ZJE as ‘rehabilitation activities’, then the holder’s ‘rent obligation’ may be waived by the Minister for all or part of the term of the mineral (f) development licence;
- if the only activities a holder of a mineral (f) development licence may carry out are rehabilitation activities, the Minister may by written notice, waive or reduce another obligation of the holder in relation to mineral (f) for all or part of the term of the mineral (f) development licence;
- ‘obligation’ means an obligation under the MR Act, or a condition of the mineral (f) development licence; and
- ‘rent obligation’ means the obligation to pay rental on the licence.

For example, it is a condition of a mineral (f) development licence for its holder to submit reports to the Minister about authorised activities carried out for the mineral (f) development licence. Such a condition may be waived by the Minister for the period determined by the Minister, and may be for the whole of the current term, or for part of the current term, of the mineral (f) development licence.

However, any other reporting obligation under another Act (e.g. EP Act), cannot be waived by the Minister administering the MR Act and must still be complied with.

Another example is a condition of the mineral (f) development licence to carry out an activity that, but for new section 334ZJE(1), would ordinarily have been authorised for a mineral (f) development licence. This would include activities that are the carrying out of underground coal gasification.

Again, such a condition may be waived or reduced by the Minister for the period determined by the Minister. This period may be for the whole of the current term, or for part of the current term of the mineral (f) development licence.

However, any other obligation or condition to carry out certain activities under another Act (e.g. EP Act), cannot be waived by the Minister administering the MR Act and must still be complied with.

### **New section 334ZJG (Automatic renewal of mineral (f) development licence)**

New section 334ZJG provides for the automatic renewal of a mineral (f) development licence in certain circumstances.

If the only activities a holder of a mineral (f) development licence may carry out are those detailed at new section 334ZJE(2) as ‘rehabilitation activities’, then the mineral (f) development licence is taken to be renewed.

### **Clause 30 Amendment of s 363 (Substantive jurisdiction)**

Clause 30 amends section 363 of the MR Act to correct a simple drafting omission identified during the preparation of this Bill.

### **Clause 31 Amendment of sch 2 (Dictionary)**

Clause 31 provides for the amendment of Schedule 2, Dictionary to the MR Act. This clause provides for:

- the definition of terms used throughout new Chapter 12, Part 4A and Chapter 13, Part 4; and
- a consequential amendment to the definition of ‘*proposed lease area*’, in Schedule 2, Dictionary to the MR Act because of the omission of section 232(2) of the MR Act by clause 25 (Amendment of s 232 (Eligible person may apply for mining lease)). In turn, section 232(2) of the MR Act was omitted as a consequence of new section 334ZJD.

Because of the omission of section 232(2) of the MR Act, the remaining subsection (1) is now unnumbered as provided for in section 5 of the *Reprints Act 1992*. This is reflected by this amendment.

## **Schedule 1 Dictionary**

Schedule 1 is the dictionary which defines particular words used in the Bill to aid in interpretation of the legislation.

An *agent* of an owner or a related body corporate of an owner, means a person who has actual, implied or ostensible authority to act on behalf of the owner or related body corporate.

An *EIS* is an environmental impact statement made under section 51(2)(b) of the EP Act or section 33(1) of the SDPWO Act.

A ***fly-in fly-out worker*** is a worker who travels by aeroplane, or another means, such as a car or bus, from a place that is not a nearby regional community to work on the operational phase of a large resource project.

A ***large resource project*** is a resource activity (defined in the EP Act) that involves geothermal; GHG storage; mining and petroleum activities that are subject to an EIS under either the EP Act or the SDPWO Act.

***Mineral*** as defined under the MR Act is a substance naturally occurring as part of, dissolved or suspended in water on, within or extracted from the earth's crust.

***Mining lease*** is a lease granted under the MR Act.

A ***nearby regional community***, for a large resource project, means a town, the name of which is published on the department's website under section 13. The town also has a population of more than 200 people and within 100 kilometres of a large resource project; or as determined and notified in writing by the Coordinator-General to the owner of the project. The criteria that the Coordinator-General may consider when determining whether a locality or urban centre is specifically included or excluded from the published list regardless of its distance from the project and size might include:

- worker safety;
- travel conditions;
- the practical capacity of a small township to supply skilled labour to the project; and
- existing practices for the provision of labour from a community to the project area.

The ***operational phase*** is the period from when the production of coal, a mineral or petroleum product starts and finishes.

An ***owner*** of a large resource project is the holder of the project mining or petroleum leases.

***Petroleum*** is substance extracted or consisting of hydrocarbons that occur naturally in the earth's crust, as defined under section 10 of the *Petroleum and Gas (Production and Safety) Act 2004*.

***Petroleum lease*** is a lease granted under the *Petroleum and Gas (Production and Safety) Act 2004* or the *Petroleum Act 1923*.

The ***Planning and Environment Court*** is continued in existence under section 435 of the *Sustainable Planning Act 2009*. The Planning and Environment Court hears matters, for example, in relation to the conditions set in an EIS by the Coordinator-General to manage the social impacts of a project.

***Principal contractor*** means the person that operates all or a significant part of the large resource project for the owner of the project.

***Related body corporate*** is where a body corporate is a holding company or subsidiary of another body corporate for the owner of a large resource project; as defined under section 50 of the *Corporations Act 2001* (Cwth).

A **resident** is a person whose principal place of residence is in the nearby regional community to a project.

**Resource project** means resource activities carried out, or proposed to be carried out, under one or more resource tenures, in any combination, as a single integrated operation. This has the meaning as given in the EP Act, section 112.

**Social impact** of a large resource project, means the potential positive and negative impacts of the project on the social environment.

**Social impact assessment** is an assessment of the potential positive and negative social impacts of a project that is required as part of an EIS for a large resource project.

**Town** in relation to a large resource project, means the area listed as a locality or urban centre by the Australian Bureau of Statistics. Urban Centres and Localities are a geographical unit that statistically describe Australian population centres with populations exceeding 200 persons.

**Worker** is a person employed to work on the operational phase of a large resource project or during the construction phase of a project if nominated by the Coordinator-General under clause 12 and published on the department's website.