Strong and Sustainable Resource Communities Bill 2016
Response to public submissions

Background

The Infrastructure, Planning and Natural Resources Committee (the Committee) invited public submissions on the Strong and Sustainable Resource Communities Bill 2016 (the Bill).

The public submission process closed on 12 December 2016, with 22 submissions received. Of the 22 submissions received:

- six were from local government bodies
- six were from trade unions
- four were from industry and related organisations
- three were from non-government organisations
- two were from private submitters; and
- one from the Anti-Discrimination Commission Queensland.

The Department of State Development (DSD) notes that there were diverse views put forward in the submissions received from industry and related organisations and those of local government bodies and trade unions.

There is general concern amongst local government bodies and trade unions that the provisions in the Bill do not go far enough in legislating against existing fly-in fly-out (FIFO) practices and that the Bill should include a wider definition of nearby regional communities' to apply to more communities in the region.

Industry and related organisations were most concerned about the perceived retrospective application of the anti-discrimination provisions on future workforce arrangements; need to legislate on social matters; and increased regulatory burden.

The summary below explains the key issues raised by submitters. It is divided into general themes and includes a response by DSD for each theme, except the prohibition of underground coal gasification which is responded to by the Department of Natural Resources and Mines.

I. General

1. Definition of nearby regional community – Towns of more than 200 people within a 100 kilometre (km) radius of a large resource project

1.1. Submissions

Submission reference
1, 2, 8, 9, 10, 11, 12, 17, 18, 19, 20, 22

Local government bodies and trade unions raised the following matters:

- the definition is limited, with a wider definition required to include more regional communities
- the distance should be in the order of 150km -200km radius
- drive-in, drive-out from regional communities for a shift roster makes greater distances possible
- there are smaller towns (i.e. under the 200 person threshold) that would be well positioned to potentially house resident workers.

Industry and related organisations raised the following matters:

- the practicality of drive times and fatigue management issues
- to manage driver fatigue, the maximum distance to a local community should be 30km
- a town of 200 persons is too small to support workers for a project andshould be revised to 1000 persons.

Private submitters and non-government organisations raised the following matters:

- 100km is a reasonable distance because long commutes to work are not uncommon
- The definition should be expanded to encompass all affected residents/landowners within a set area around the project (rather than a town).

1.2. DSD Response

The '200 people' definition is used because this corresponds with the Australian Bureau of Statistics' definition of a locality. Towns such as Wandoan and Alpha are localities as they have more than 200 people.

The 100km radius is:

- based on the concept of a natural catchment for the supply of labour to a project and community expectations of direct benefits from a project
- not intended to represent a distance threshold related to commuting fatigue management.
- a logical catchment area to include those communities that have a natural expectation of direct linkages or an association with a nearby resource project
- a balanced compromise between stakeholder views.

The social impact assessment (SIA) would also take into account the impacts of resource development on surrounding landholders.

The Bill provides discretion for the Coordinator-General to include or exclude individual projects or towns, regardless of the distance or town population. The factors the Coordinator-General may consider in this decision could include:

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

To provide certainty about which projects and towns are subject to these provisions, the Coordinator-General will publish a list on DSD's website.

The Coordinator-General is still considering this definition and how best to communicate and implement it, with the concept of distance being the recommended approach.

2. Prohibition of 100 per cent FIFO

2.1. Submissions

Submission reference
2, 3, 5, 7, 8, 11, 12, 13, 17, 18, 19, 20

Local government bodies, non-government organisations, trade unions and private submitters raised the following matters:

- the prohibition of 100 per cent FIFO workforces is not viable, as employing simply one non-FIFO worker would be compliant with the Bill
- there are no targets or thresholds for local workforce participation
- suggested alternatives include maximum 25 - 50 per cent FIFO workforces
- the Coordinator-General should, as part of the SIA conditions, determine an appropriate FIFO percentage.

2.2. DSD Response

The prohibition of 100 per cent FIFO for future projects near regional communities is an important element, but just one of the components of the Bill and supporting framework, and should not be considered in isolation.

It will operate in conjunction with the Strong and Sustainable Resource Communities (SSRC) policy, the anti-discrimination law and the revised SIA process, which together will lead to a more balanced employment of local residents and benefits to the local community.

In practice, the most effective and right balance for workforce accommodation arrangements on each project will be reached collaboratively with the project proponent, local government, the community and the Coordinator-General on a case-by-case basis during the environmental impact statement (EIS) process. The Coordinator-General will set approval conditions to address all impacts and capitalise on all opportunities.

The Coordinator-General's revised draft SIA Guideline requires project proponents to prioritise local and regional communities as a preferential labour source where possible.

3. Limited application to operational phase

3.1. Submissions

Submission reference
2, 5, 7, 8, 10, 11, 12, 13, 17, 18, 19, 20, 22

Local government bodies, non-government organisations and trade unions stated that the prohibition of 100 per cent FIFO workforces should apply to more than the operation phase – it should apply to the construction and decommissioning phases as well.

3.2. DSD Response

The provisions related to 100 per cent FIFO and anti-discrimination do not apply to construction workforces. The two government inquiries into FIFO work practices focussed on the operational phase.

FIFO accommodation arrangements are usually an appropriate and widely-accepted means of managing the impacts of large project construction workforces on regional communities.

However, there may be circumstances in which the provision related to the prohibition of 100 per cent FIFO workforces would be appropriate to apply to construction workforces. For example, this could be appropriate where construction programs for a project extends over many years, or where a nearby regional community has workers who have the necessary construction skills available for the particular project.

The Bill provides flexibility for the Coordinator-General to decide whether construction workers for a particular project should be captured by the provisions. This would be determined on a case-by-case basis during the EIS process.

4. Retrospectivity

4.1. Submissions

Submission reference
1, 2, 4, 5, 7, 9, 11, 12, 13, 16, 17, 18, 20, 21

Industry and related organisations raised the following matters:

- the *Anti-Discrimination Act 1991* (AD Act) provisions in the Bill are retrospective and undermine existing investment decisions made projects for which the EIS process was completed after 30 June 2009
- retrospectivity increases Queensland's sovereign risk, reduces investor confidence, and breaches fundamental legislative principles.

Local government bodies raised the following matters:

- the prohibition of 100 per cent FIFO workforces should apply to all existing large resource projects
- the AD Act provisions should apply to all existing projects, including those with EIS assessment reports completed prior to 30 June 2009.

Non-government organisations stated that the prohibition of 100 per cent FIFO workforces should apply to large resource projects that have publically notified an EIS, but have not yet been developed

4.2. DSD Response

The 100 per cent FIFO requirement in the Bill only applies to future projects approved after the Bill is enacted.

The anti-discrimination provisions in the Bill will apply only to the future recruitment of operational workers after the Bill is enacted for future projects, and those approved since 30 June 2009.

The mid-2009 date is justified on the basis that this is around the time that mining and gas project proposals completing their EIS began to be subject to a more comprehensive SIA process. Those projects were required to prepare a social impact management plan which included workforce accommodation proposals.

5. Travel time and fatigue management

5.1. Submissions

Submission reference
1, 9, 13, 23

Private submitters stated that current FIFO practices are risky regarding fatigue management because FIFO workers are still driving to/from FIFO hubs before/after each roster.

Industry and related organisations stated that the Bill presents road safety and fatigue management issues with the assumption that a worker can commute to and from work up to 100km each way.

Local government bodies stated that local government should be involved in the risk assessment phase relating to travel – daily commute versus staying in on-site camps.

5.2. DSD Response

There is nothing in the Bill to prevent an employer requiring a local worker to stay in an accommodation village during the shift rotation for reasons such as fatigue management, or a local worker choosing to stay in a camp with the FIFO workers. However, the policy intent of the SSRC framework is that workers should not be compelled to stay in a camp and workers should have choice.

The SIA process can consider the feasibility of commuting local workers to and from the mine site versus staying on site in order to manage road impacts and fatigue management issues.

6. Rostering

6.1. Submissions

Submission reference
1, 2, 3, 5, 8, 11, 12, 22

Private submitters raised the following matters:

- current rostering practices are not healthy for workers and they are not family-friendly
- rosters should encourage people to live locally (e.g. 5 days on, 2 days off)

Local government bodies and trade unions raised the following matters:

- the AD Act provisions prohibit discrimination in advertising, but inadvertently allow workers to be discriminated against via rostering, shift length, requirement to stay in accommodation camps, etc.
- additional provisions should be included to prohibit any requirement for workers to stay in project accommodation if they live within 100km

6.2. DSD Response

The Bill is not prescriptive regarding roster arrangements and camp accommodation requirements for local workers.

The Bill will not make it unlawful for companies to:

- specify that an employee must commence work at the same time as FIFO workers and work under the same conditions as other workers performing the same duties
- require workers from a nearby regional community to live in an accommodation village during the work roster.

There could be circumstances where fatigue management requirements would preclude local workers from a daily commute to the resource project site. For example, even though a local worker may live within a 100km straight-line radius from the resource project, varying road conditions may risk worker safety if they were to commute from work each day. The SIA process for a large resource project would assess the feasibility for workers to commute safely from a nearby regional community. These arrangements would need to be considered on a case-by-case basis.

7. Red tape

7.1. Submissions

Submission reference
4, 9, 23

Industry and related organisations raised the following matters:

- the legislation is unnecessary

- the legislation and SIA Guideline will add red tape, costs and delays during an already difficult time for the industry.

7.2. DSD Response

The Bill aims to give workers greater choice about where they live and provide increased benefits from projects to the local community. The Bill is in response to community concerns about the excessive use of FIFO work practices and the view that the benefits of resource projects are not being distributed fairly. It follows two government inquiries into FIFO work practices and is a clear government policy commitment.

The Bill:

- does not apply to small-scale resource projects (i.e. those projects do not go through an EIS process)
- does not prevent companies from using substantial (i.e. close to 100 per cent) FIFO workforce arrangements for projects located remote from regional communities
- only applies if there is a nearby regional community.

Importantly:

- decisions made by the Coordinator-General and conditions set to manage social impacts will not be subject to appeal in either the Land Court or the Planning and Environment Court (although the usual right of judicial review of statutory decisions in the Supreme Court would still apply)
- all existing statutory timeframes at each step of the EIS process will not change.

Therefore, the provisions are considered to be fair and reasonable and the development timeframes for large resource projects should not be adversely affected.

8. Mental and physical health of FIFO workers

8.1. Submissions

Submission reference
7, 12, 17, 19, 22

Trade unions raised the following matters:

- the Bill does not address the mental health of FIFO workers
- a FIFO code of practice should be developed.

Non-government bodies stated that the SIA should provide for “mental health” impacts to be assessed along with “health and community well-being”

8.2. DSD Response

The intention is, that together, the SSRC Act and the SIA Guideline will support resource worker and community health and wellbeing.

The Bill prescribes that the SIA for each resource project must provide plans for health and community wellbeing.

The draft SIA Guideline specifies a number of requirements for a proponent to assess the potential impacts of a project on the mental and physical health of FIFO workers, including:

- a workforce management plan that addresses employee assistance programs
- a strategy for provision of recreation, infrastructure and health and social services in the accommodation camps
- a health and community wellbeing plan that details:
    - the level of on-site health services to be provided for workers
    - impacts on community services and facilities, including child care, family, domestic violence, youth and disability support, community and sporting organisations
    - consultation, monitoring and mitigation strategies in relation to potential community health impacts in relation to air quality, noise and water.

II. List of projects/towns the SSRC Act would apply to

9. Timing of future projects included on the list/consultation on the draft list

9.1. Submissions

Submission reference
5, 9, 20

Non-government bodies raised the following matters:

- the timing of the publication of the names of the towns captured by the provisions of the Bill is not specified
- the EIS should include notification of towns.

Industry and related organisations stated that the Coordinator-General should publish an exposure draft of any list of nearby towns for the purposes of the Bill, upon which the project proponent can provide feedback.

Local government bodies stated that a formal process be established for local governments to make a submission to the Coordinator-General for consideration of towns as nearby regional communities.

9.2. DSD Response

The list of those projects captured will be determined after the SSRC Act's commencement with appropriate consultation with the relevant proponent and key stakeholders.

The Coordinator-General may write to the owner of a large resource project with an EIS approval after 30 June 2009 and with a nearby regional community. Each owner would be provided with the opportunity to consider the list and provide the Coordinator-General with any information they consider relevant.

Relevant local governments would also be provided with the opportunity to provide their views.

For each project not yet subject to an EIS evaluation report, the Coordinator-General's subsequent decision on whether a project should be added to the list will be subject to consultation with relevant stakeholders during the EIS process.

The list of towns and projects captured by the Bill's anti-discrimination provisions would be published on DSD's website. The published list would include the name of the owner of the project (the mining or petroleum lease holder) and the date operation commenced.

Should the Coordinator-General identify the construction phase of a future project as being subject to the provisions of the Bill, this would also be published on the DSD website. A Coordinator-General's decision on whether to include the construction workforce would follow a comprehensive SIA and EIS assessment that would include extensive consultation with stakeholders and the development of a workforce management plan.

10. Discretion of Coordinator-General to include projects/towns on list

10.1. Submissions

Submission reference
2, 8, 9, 11, 18

Local government bodies raised the following matters:

- the Bill should enable the Coordinator-General to nominate towns with smaller populations
- the Coordinator-General should notify the relevant local government of the details of a decision and the reasons for the decision.

Industry and related organisations stated that the Coordinator-General must take into account road safety and fatigue management in determining if any town is a 'nearby regional community'.

10.2. DSD Response

The Bill specifies that the anti-discrimination provisions will apply to large resource projects with towns having a population of 200 people or more located within a straight-line distance of 100 km from the project. However, the Bill also provides the Coordinator-General with the authority to include or exclude particular towns for each project.

The factors the Coordinator-General may consider in the decision to include or exclude particular towns (but not specified in the Bill) include:

- worker safety
- road travel conditions
- the capacity of small towns to supply appropriately skilled labour
- the specific needs of the project
- existing practices for the provision of labour from a community to the project area.

The Coordinator-General will publish the list of towns and projects captured by the provisions.

The Coordinator-General's decision on whether to include the construction phase for the prohibition of 100 per cent FIFO workforces would be made in the context of the preparation of the assessment report of a project's EIS and SIA for new projects.

For new projects, the EIS process provides the Coordinator-General with the means of considering the particular circumstances that apply to a proposed new project. Therefore, for these projects the Coordinator-General will be able to consult with the proponents and other stakeholders before a decision on whether to add that project or particular localities to the list and use the detailed assessment in the SIA and EIS.

11. The application of the Bill to Adani's Carmichael mine

11.1. Submissions

Submission reference
5, 11

Local government bodies and non-government organisations stated that the prohibition of 100 per cent FIFO workforces should apply to the Carmichael mine project.

11.2. DSD Response

Adani's project has already been through an EIS process and therefore the 100 per cent FIFO requirement does not apply to this project.

As the closest relevant towns of Moranbah and Clermont are more than 160km from the proposed Carmichael mine site, the proposed mine does not have a nearby regional community. Therefore the AD provisions do not apply either.

Regardless, Adani has stated that it is not proposing 100 per cent FIFO and has made many clear public statements about its commitment to employing locals.

III. Compliance

12. Enforcement and penalties

12.1. Submissions

Submission reference
2, 3, 8, 9, 11, 12, 18, 19, 23

Private submitters stated that the Bill must bind resource companies with serious penalties for non-compliance.

Local government bodies stated that the maximum penalty is only 20 penalty points, which is immaterial and not a deterrent for large budget projects.

Trade unions raised the following matters:

- penalties contained in the Bill are insufficient to provide any real deterrence
- there is only one penalty provision in the Bill which relates to advertising and penalties should also apply to breaches related to SIA and engagement obligations
- non-compliance with the prohibition of 100 per cent FIFO workforces is an enforceable condition but not a civil penalty provision – it should be both.

Industry and related organisations raised the following matter

- non-compliance with the prohibition of 100 per cent FIFO workforces as an enforceable condition does not reflect the realities of the modern labour market; hiring practices should remain the fundamental right of the employer/project owner
- the Bill enables penalties for an organisation of up to $48 760 for an intracompany or an intercompany transfer, if the large resource project owner does not advertise the position locally. Compliance with the SSRC Act should only apply to externally advertised roles.

12.2. DSD Response

There will be significant penalties for non-compliance. For example, the prohibition of 100 per cent FIFO would be a deemed enforceable condition under the *State Development Public Works Organisation Act 1971* (SDPWO Act). The maximum penalty for non-compliance with an enforceable condition would be 1665 penalty units (approximately $1 million for a corporation). This penalty regime currently applies to non-compliance with all Coordinator-General's conditions imposed under the SDPWO Act.

The penalty for an offence of advertising in a way that would discriminate against local employment would be 400 penalty units (approximately $244 000 for a corporation).

The reference to a maximum of 20 penalty units is in section 15 of the Bill. That penalty applies only to administrative non-compliance with future regulations such as failure to submit information within specified timeframes. This is the standard penalty for a matter of this type under comparable Queensland legislation.

For non-compliance with the anti-discrimination provisions of the Bill, an aggrieved person (complainant) may lodge a complaint with the Anti-Discrimination Commission Queensland (ADCQ). If the individual provides sufficient evidence, and ADCQ accepts the complaint, it will notify the resource company and commence a conciliation process.

If the person is dissatisfied with the outcome of the conciliation process, the ADCQ may provide leave for the person to seek redress through the Queensland Civil and Administrative Tribunal (QCAT). Under the *Industrial Relations Act 2016* (assented on 9 December 2016), responsibility for anti-discrimination actions would pass from QCAT to the Queensland Industrial Relations Commission.

The Bill provides equal opportunity for locals to be considered for jobs. With respect to hiring practices, the Bill would not prevent an employer from offering employment to a

FIFO worker who has superior skills, experience or qualifications. A case of alleged discrimination would have to be submitted to the ADCQ for further investigation.

The current practice of internal transfers within companies would not be captured by the discrimination and advertising discrimination provisions in the Bill.

DSD and the Department of Justice and Attorney-General have committed to undertaking a post-implementation review of the proposed SSRC Act within two years of the Bill being enacted.

IV. Social impact assessment and conditioning

13. Conditions on social impacts

13.1. Submissions

Submission reference
2, 3, 5, 8, 11, 13, 16, 18, 20, 21

Local government bodies, trade unions and non-government organisations raised the following matters:

- local governments should be a formal referral agency in the EIS process to assist the assessment of social impacts and the development of conditions on social impact matters
- the Coordinator-General should consult on the development of social conditions and publically notify the social conditions once complete
- social conditions should protect communities from boom-bust cycles, and encourage diversity, integration and participation in the community
- the Bill makes social conditions enforceable conditions under the SDPWO Act, irrespective of whether the project EIS is assessed under the *Environmental Protection Act 1994* (EP Act) or under the SDPWO Act; it may be simpler to prosecute under the SSRC Act
- the Bill should provide a mechanism for a relevant union to request a change to conditions and for the public or community organisations to object to social conditions in court

Industry and related organisations, and non- government organisations stated that the Coordinator-General's power in the Bill to impose social conditions:

- is too broad and should require a statutory guideline
- is not subject to any specific limitation or any appeal process; which creates uncertainty and has the potential to significantly delay projects.

13.2. DSD Response

The Bill provides the Coordinator-General with an additional head of power to declare approval conditions to manage social impacts for resource projects going through an EIS under the EP Act. This will enable a more comprehensive and consistent approach to the management of social impacts of resource projects across regions.

Coordinator-General conditions are not subject to appeal (e.g. through the jurisdiction of the Land Court or Planning and Environment Court). This addresses industry's

concern that the SSRC Act will create a raft of new public objection opportunities in those two courts.

The condition setting regime in the Bill adopts the condition setting regime in the SDPWO Act. This currently allows the Coordinator-General to impose conditions to manage the social impacts of projects on local communities.

The arrangement for challenge of stated conditions under the Bill is essentially the same as social conditions currently imposed by the Coordinator-General under the SDPWO Act. That is, the decisions of the Coordinator-General could still be subject to judicial review and the inherent jurisdiction of the Supreme Court.

There is specific provision in the Bill to require consultation with local government on the development of the SIA for each project. The draft SIA Guideline also includes a cross agency reference group that would ensure an enhanced role for local government in the SIA process and the Coordinator-General's evaluation and setting of appropriate social conditions for a large resource project.

V. Local employment, local businesses and housing

14. Local employment hierarchy

14.1. Submissions

Submission reference
17, 19, 20, 23

Trade unions stated that hierarchy of local employment preference should be included in the Bill.

Industry and related organisations stated that local preference hierarchy would limit sought after diversity outcomes.

14.2. DSD Response

A hierarchy of recruitment preference is not included in the Bill as a strictly legal requirement. However, the hierarchy of recruitment is included in the SSRC Policy and the draft SIA Guideline. The draft SIA Guideline includes the matters that must be considered in the SIA process, including a commitment from project proponents to prioritise local and regional communities as the preferred labour source.

The workforce plan required by the draft SIA Guideline is aimed at delivering the SSRC Policy to prioritise local recruitment and provide choice for workers where they live.

The draft SIA Guideline requires that the proponent demonstrates that it has considered, in priority order, recruitment:

- from the local and regional community
- to the region (i.e. relocation to live locally)

- from priority areas, such as areas of high unemployment and socio-economic disadvantage
- broadening to other areas within Queensland, as required.

The anti-discrimination provisions in the Bill are aimed at providing equal opportunity for locals to be considered for employment. This would ensure that suitability qualified local workers are not disadvantaged in the recruitment process for local employment opportunities.

Equal opportunity for locals and workforce diversity are not mutually exclusive objectives and the SIA process requires proponents to consider both. The draft SIA Guideline also asks proponents to pursue training and development strategies for vulnerable groups, women, people with disability and Indigenous people.

15. Local businesses and workforce training

15.1. Submissions

Submission reference
2, 3, 8, 11, 18, 20, 22, 23

Local government bodies raised the following matters:

- the object of the Bill refers to residents but not to local businesses
- procurement from local business and workforce training is important.

Trade unions stated that the operator should ensure mandatory traineeships drawn from the local community.

Industry and related organisations stated that workforces are generally unavailable in the vicinity of large resource projects.

15.2. DSD Response

A local business and industry content (i.e. procurement) plan would be required as part of the SIA process.

The plan should include:

- an assessment of the current local community and regional supplier capacity and capability
- any proposed programs and policies to be implemented to build local and regional capacity and capability
- procurement strategies and initiatives to be implemented for local and nearby regional suppliers

The Queensland Resources Council (QRC) and Energy Sector Code of Practice for Local Content (2013) (the Code) is widely used as a basis for procurement plans across the resources sector. The Code will continue to be utilised in the SIA process as part of reporting on local content and procurement.

DSD participates in the annual review of the effectiveness of the Code. DSD is working with QRC to identify methods for improved data collection on the location and

status of temporary worker accommodation as part of QRC's annual reporting. DSD has a team dedicated to developing local business capabilities and help ensure full and fair access to opportunities from private/public sector projects.

A workforce management plan would be required as part of the SIA process. This plan would be expected to outline training and development strategies for the recruitment of local and regional workers to build better local and regional skills capacity and include targets and performance indicators for these strategies.

16. Housing and Accommodation standards

16.1. Submissions

Submission reference
3, 8, 19, 22

Private submitters and non-government organisations raised the following matters:

- to support local communities, resource companies should be required to locate its workforce in town rather than in separate camps
- consideration needs to be given to the potential to accommodate workers in town so as to increase the workforce integration into the community

Trade unions stated that minimum standard should be provided for FIFO accommodation.

Local government bodies raised the need to avoid 'boom and bust' land and housing cycles associated with large resource projects.

16.2. DSD Response

The SIA assessment of housing impacts of a resource project will inevitably be strongly influenced by the economic cycle at the time, especially in relation to housing availability and cost.

The draft SIA Guideline aims to optimise worker accommodation arrangements. To support a worker accommodation strategy, a project proponent should:

- undertake a review of the housing market to identify available accommodation within proximity of the project
- where a new worker accommodation village is proposed, justify the location of the proposed facility, with consideration of worker health and community well-being.

As part of each SIA, a proponent will be required to prepare a Housing and Accommodation Plan. This plan must consider the local housing market and outline strategies for the provision of accommodation for workers and their families who wish to live locally and the level of assistance that will be provided by the proponent. The proponent's recruitment and accommodation programs should be regularly monitored to ensure they are responsive to, and are effectively achieving, the planned outcomes.

VI. Anti-Discrimination Act provisions

17. Residence as a ground of "discrimination"

17.1. Submissions

Submission reference
4, 6, 9, 16, 18, 19, 21

Industry and related organisations raised the following matters:

- it is not appropriate to include place of residence as a ground for discrimination in the AD Act along with fundamental attributes of race, sex and age
- whether there had been consultation with the ADCQ on the workability of proposed amendments to the AD Act and the impact on the ADCQ

Trade unions raised the following matters:

- locality should be listed directly as an attribute under the AD Act
- it is costly and complex to take a case to the ADCQ

17.2. DSD Response

A recommendation of the Committee's inquiry into FIFO practices was for the government to consider amending the AD Act to include location as a prohibited ground of discrimination. The Committee considered that this was one of the ways to facilitate choice without making retrospective amendments and creating sovereign risk.

One of the purposes of the AD Act is to promote equality of opportunity for everyone and protect them from unlawful discrimination and other objectionable conduct.

The proposed amendments in the Bill to the AD Act have been developed in consultation with the ADCQ and this is highlighted in its submission to the Committee. The ADCQ considers the Bill reflects the policy objectives of the Government while being workable for the Commission to administer.

As the discrimination against local residents provisions of the Bill are unique, they will be provided for in a separate chapter (chapter 5B) of the AD Act. Some elements of the AD Act are expressly excluded that would generally apply to an 'attribute' of discrimination to fit the purpose of local residence as grounds of discrimination (i.e. being able to enquire where a worker or job applicant resides).

18. Extent of potential liability under the AD Act provisions

18.1. Submissions

Submission reference
4, 6, 16, 21

Industry and related organisations raised the following matters:

- the joint and several liability for the owner and principal contractor in relation to discrimination offences would unsettle contractual relationships between commercial parties

- the absence of a reasonable defence steps in the discrimination provisions would make the owner liable where it may have taken all possible steps to prevent the breach
- the reverse onus of proof on the owner in relation to discrimination complaints is unjust as this removes the presumption of innocence.

18.2. DSD Response

The Bill provides for a reverse onus of proof where a complainant alleges that a person was not offered work because they were a resident of a nearby regional community or their employment was ended because the worker intended to become a resident of a nearby regional community and travel to the project other than as a FIFO worker.

The reversal of the onus of proof is required because in these cases job applicants or employees are not in a position to know or discover the intent of the employer or relevant decision maker. The reason why the action was taken is within the knowledge of the person who took the action. Without reverse onus of proof it would be disproportionately difficult for a complainant to establish the reason for the action taken against them by the respondent (the owner or principal contractor).

Reverse onus of proof currently applies under the Commonwealth *Fair Work Act 2009* and in the *Industrial Relations Act 2016*.

The owners of a large resource project and the principal operating contractor are jointly liable for contravention of the anti-discrimination provisions. 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.

VII. SIA Guideline

19. Coordinator-General's SIA Guideline and consultation

19.1. Submissions

Submission reference
4, 5, 8, ,9, 11, 14, 17, 19, 20

Local government bodies raised the following matters:

- the terminology in the Bill that Coordinator-General 'may' make SIA Guideline as opposed to 'must' make SIA Guideline
- the role of consultation and partnership with local government is critical in managing the SIA process.

Industry and related organisations stated that consultation process on the draft SIA Guideline 2016 was an issue.

19.2. DSD Response

The Coordinator-General has had a non-statutory guideline in place for managing SIA since 2009 and the Bill provides for a statutory SIA Guideline. The draft SIA Guideline will be finalised by the Coordinator-General subject to any refinements arising from consultation and the Committee process.

Through June and July 2016, the Office of Coordinator-General consulted with unions, relevant peak bodies such as QRC and its members, detailed meetings with BMA and Rio Tinto and visits to ten local governments in resource regions including Isaac Regional Council, Central Highlands Regional Council, Western Downs Regional Council, Toowoomba Regional Council, Banana Shire Council, Maranoa Regional Council, Mackay Regional Council, Gladstone Regional Council, Rockhampton Regional Council and Whitsunday Regional Council.

In the draft SIA Guideline, there is provision for the Coordinator-General to establish cross-agency reference (CARs) groups to provide a collaborative approach to SIA.

Membership of the CAR groups would include relevant state government agencies and local governments. A project proponent may be invited to a CAR group meeting to discuss project details and proposed impact management strategies. Technical experts or other key stakeholders may also be invited to attend CAR group meetings as required. The governance structure and membership will be established in a terms of reference for the SIA CAR group.

20. Assessment of impacts on local government infrastructure and services

20.1. Submissions

Submission reference
2, 8, 10, 11, 13, 20

Local government bodies raised the following matters:

- services in local communities are frequently inadequate to address the impacts of projects (e.g. disaster management, social support services, health and emergency services)
- SIA must provide for impacts of the project on local government and community assets, services and land-use planning schemes
- infrastructure agreements should be required between proponents and relevant local governments
- local governments should be able to fully participate in the assessment of the cumulative impacts of multiple resource projects operating in the same region.

20.2. DSD Response

The impacts of a large resource project on surrounding services and infrastructure are subject to assessment in the EIS process. Where mining companies have attributed to rapid growth in a particular area, they have a responsibility to contribute to the capacity of local government services and infrastructure such as health facilities, child care, emergency services, roads, education and training. The SIA requires proponents to identify all social and economic impacts of their project and to identify measures to address those impacts.

The proposed SIA CAR groups will provide for a collaborative approach to SIA and include state government agencies and relevant local governments. Project proponents and other key stakeholders may be invited to attend some CAR group meetings.

21. Monitoring, review and compliance

21.1. Submissions

Submission reference
11, 18, 20

Local government bodies raised the following matters:

- SIA management plans should be required before a project's approval so that mitigation and management strategies can be in place before a project commences construction
- an approved SIA must be reported on and updated at the completion of the construction phase and transition to the operational phase of the project
- there should be a requirement for a resource project to regularly update and review their SIA
- an adaptive management approach in managing social impacts is required.

Trade unions raised the following matters:

- the SIA must be routinely reviewed during the lifecycle of the project by an enforcement unit to ensure compliance and to remedy breaches
- there should be regular compliance checks (including from third parties formally raising a suspected breach and prosecuting it) to ensure that the operator is complying with the obligation imposed.

21.2. DSD Response

Monitoring and reporting by the proponent on the management of social impacts will be a standard condition stated by the Coordinator-General in the EIS evaluation for each project.

Reporting by proponents will mostly be annual for a period of five years from commencement of construction. After that time the interval for reporting may be much longer (e.g. each ten years) or at times of key changes to the operation of the project (e.g. a large quantum increase in production).

Prior to the construction of a project, the reporting regime may be amended if more than two years have elapsed between the evaluation report and the commencement of construction.

An assessment of the progress and outcomes against the Coordinator-General conditions, mitigation strategies and proponent's commitments will be undertaken for each of the five management plans required as part of the SIA.

Compliance work undertaken by the Office of the Coordinator-General will be done in close consultation with the resource company, relevant state agencies and local government.

VIII. Department of Natural Resources and Mines

22. Prohibition of underground coal gasification

22.1. Submissions

Submission reference
4, 5

- QRC does not support the explicit ban on underground coal gasification (UCG) in Queensland, raising concerns about its impact on innovation in the resources sector.
- The Lock the Gate Alliance supports the provisions in the Bill effecting the prohibition on UCG in Queensland.

22.2. DNRM response

- The UCG trials were conducted on a limited scale in order to demonstrate the viability of the UCG process.
- While the Queensland Government's Independent Scientific Panel (ISP) Report on UCG Pilot Trials remained open to the possibility that the UCG concept is feasible, it also found that sufficient scientific and technical information was not yet available to reach a final conclusion.
- 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.
- In accordance with this policy position, the proposed amendments to the *Mineral Resources Act 1989* will prohibit mineral (f) activities (including UCG and *in situ* oil shale gasification) in Queensland.
- Activities relating to environmental rehabilitation still need to be carried out where UCG activities have been conducted, and the legislation allows for this to occur.