

10 February 2017

Mr J Pearce MP  
Member for Mirani  
Chair  
Infrastructure, Planning and Natural Resources Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

Dear Mr Pearce

### **STRONG AND SUSTAINABLE RESOURCE COMMUNITIES BILL 2016**

I am writing in response to a question on notice from the public hearing on Monday 6 February 2107, and to provide some further comments.

#### **Question on notice**

The Member for Keppel asked whether the Commission had any complaints or enquiries from jobseekers who have faced the issue by way of being told that they are not eligible to apply.

If a written complaint were received it would have been assessed as being outside the jurisdiction of the *Anti-Discrimination Act 1991*, and the person making the complaint would have been informed accordingly. Likewise, an enquirer would have been given the same information. As geographic location is not currently a prohibited ground of discrimination, the Commission database is not able to identify whether there have been complaints or enquiries of that nature.

However, the issue has occasionally been raised anecdotally with some of our regional officers when they are delivering training or undertaking community engagement. One of our officers has a relative who had lived all his life in a regional town, but in order to get a job at the mine near the town, he had to relocate himself and family to Brisbane, because locals would not be considered for employment. He now flies into the town from Brisbane to work at the mine.

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## Further comments

During the public hearing on 6 February 2017, Mr Cocks and Ms Ball were asked whether the Bill could be strengthened, and whether the best outcome had been reached.

In our view, the presumed reason (also called reverse onus) provision is critical to the effectiveness of the anti-discrimination provisions of the Bill. Without the presumed reason provision, it will be extremely difficult for a person making a complaint to demonstrate any link between being, or becoming, a local resident and not being employed, or being terminated, respectively. Companies could simply provide no reasons for their decisions. The Commission would not be able to accept a complaint that does not demonstrate an arguable link between the conduct and being or becoming a local resident.

We note that some submitters, including the Queensland Law Society, strongly object to the presumed reason provision. The presumed reason (or reverse onus) provision exists in the general protections in the *Fair Work Act 2009* (Cth). The general protections include discrimination on various grounds such as race, impairment, gender, etc. These general protections, including discrimination, have been imported into the new *Industrial Relations Act 2016* (Qld) passed by the Queensland Parliament late last year, and include a presumed reason (reverse onus) provision.

Another argument raised by some submitters is that 'location' is not in the nature of the attributes currently protected by the *Anti-Discrimination Act 1991*. The attributes currently protected are drawn from international human rights agreements and international labour conventions, some of which are identified in the preamble to the Act.<sup>1</sup>

The purpose of the anti-discrimination provisions of the Bill is to provide people with equal opportunity in employment at nearby large resource projects. This objective is not inconsistent with human rights principles and international obligations, for example:

1. The right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts – Article 6 of the *International Covenant on Economic, Social and Cultural Rights*.
2. The obligation to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof – Article 2 of the *International Labour*

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<sup>1</sup> The *International Convention on the Elimination of All Forms of Racial Discrimination*; the *Convention on the Elimination of All Forms of Discrimination Against Women*; the *International Labour Organisation Convention No. 111 – Discrimination (Employment and Occupation)*; the *International Labour Organisation Convention No. 156 – Workers with Family Responsibilities*; the *International Covenant on Civil and Political Rights*; the *Convention on the Rights of the Child*; the *Declaration on the Rights of Mentally Retarded Persons*; and the *Declaration on the Rights of Disabled Persons*.

*Organisation Convention No. 111 – Discrimination (Employment and Occupation).*

3. The right to liberty of movement and freedom to choose his residence – Article 12 of the *International Covenant on Civil and Political Rights*.

Finally, we would like to clarify that the prohibition of 100% FIFO workforce will not apply to existing projects.<sup>2</sup>

Thank you for the opportunity to provide submissions and appear before the Committee.

Yours sincerely



**KEVIN COCKS AM**  
**Anti-Discrimination Commissioner**

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<sup>2</sup> At the hearing we indicated the 100% FIFO workforce prohibition would apply to existing projects from commencement of the Bill. This was incorrect.