

**BHP Billiton Mitsubishi Alliance**

12 December 2016

Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
Brisbane Qld 4000

Via email: ipnrc@parliament.qld.gov.au

Dear Research Director

Strong and Sustainable Resource Communities Bill 2016

BHP Billiton appreciates this opportunity to make a further submission regarding the SSRC Bill to the Committee.

Since the middle of 2015, our company has made a detailed submission to this Committee, appeared in front of this Committee at a public hearing in Brisbane, appeared in front of the Independent panel that also enquired into 100% fly-in-fly-out commuting arrangements, provided the Independent panel a site visit to our Buffel Park Accommodation Village and has also provided our feedback on the draft Exposure Bill directly to the Coordinator General (attached). Our position as we have put previously has not changed.

We have also provided our consistent and unchanged views to the Executive Government.

As a company that employs over 10,500 people in Central Queensland, with 92% of these working at residential mines and living locally, and having spent A\$3.4 billion on Queensland goods and services in the last financial year, it is very disappointing that our operations have been singled out and specifically targeted by this Bill.

Our company trained more than 500 people who had no prior resource sector experience and we have achieved 25% female and 5% indigenous participation rates as a result. We would be unlikely to have achieved these numbers had it not been for our ability to specifically recruit labour under the approved FIFO models.

Specifically setting these mines up as FIFO operations required a significant spend on infrastructure including an accommodation village and long term aircraft and bus charter agreements, as well as rosters that are significantly different to our residential mines.

The investment alone for the Buffel Park accommodation village was around \$200 million and is based on permanent and full usage for the life of mine. This was incurred in good faith in reliance on the conditions granted by the State.

A subsequent change in Queensland's law that erodes the value of this overall investment is deeply disturbing to our business.

If the Government proceeds with this Bill as it is currently drafted (impacting major resource projects approved after 30 June 2009) then we reserve our right to enter into discussions to achieve fair and reasonable compensation from the State, given the sunk costs incurred in good faith and in accordance with the approved conditions at these operations that would be wasted, plus the additional costs that would be incurred from having to address the changes.

Our key concerns and recommendations in relation to the proposed legislation are set out below.

A. Retrospective operation of the legislation undermines our investment

In 2009 when our existing operations in Queensland had 700 unfilled roles, with no hope of finding labour in the Bowen Basin, we worked with the Government of the day to agree on other sources of labour – namely Brisbane and Cairns. In order to address this concern, our operations at Daunia and Caval Ridge were approved on a 100% FIFO basis, enabling us to source labour from these areas.

The introduction of an obligation on us not to discriminate against residents of nearby regional communities when recruiting workers in respect of projects approved after 30 June 2009 (as per the proposed section 131C amendment to the Anti-Discrimination Act 1991 (Qld) (AD Act)) will apply to us in respect of our Daunia and Caval Ridge Mines, despite the 100% FIFO approval.

The design of, and our investment in these two mines was based on the ability to source labour based on the Government approvals enabling 100% FIFO. As a consequence we invested in good faith in the necessary infrastructure needed to support this model.

The retrospective obligations in the Bill are inconsistent and incompatible with the significant operational and infrastructure investment we made in reliance on these approvals, and undermine the way that we are able to operate and use that infrastructure.

We understand there is a view that 100% FIFO models should not be entertained again in the future. We are happy to support this outcome, but this change in rules should apply to new projects only and should be made clear to new investors in this state – it should not apply retrospectively to those who have already invested here in good faith.

This Bill, if passed, should apply to projects approved from the assent of this Bill onwards.

B. Uncertainty resulting from broad power given to Coordinator General

A significant uncertainty in the Bill is the extent of the Coordinator General's powers to state conditions to manage the social impact of a project (s. 11). This conditioning power, read in conjunction with the other provisions of the Bill, is not subject to any specific limitation or any appeal process.

This framework, creates uncertainty and has the potential to significantly delay projects until the social impact has been addressed. Operating and making investment decisions in the current market is already difficult. Under such uncertainty, our ability to make critical strategic decisions about our investments in projects is adversely impacted.

The Bill should include specific limitations on the Coordinator General's power to state conditions.

C. Extent of potential liability under the discrimination obligations

There are three concepts in the Bill which combined, have the potential to result in absurd outcomes.

First, owners and principal contractors have joint and several liability in relation to discrimination offences (see proposed s 131C(6) of the AD Act). Second, the Bill introduces a reverse onus in relation to discrimination (see proposed s 131F of the AD Act). Third, the Bill does not include any defence in respect of the discrimination obligations.

It is not appropriate for joint and several liability to be imposed through legislation. The current provisions stand to unsettle our existing contractual relationships with our commercial counterparties. Further, applied together with the reverse onus and absence of any defence, owners such as BHP Billiton may be found liable for acts completely outside their control and influence.


For instance, BHP Billiton will be held liable for a decision made by a principal contractor or agent to not offer work to a particular worker (in breach of the proposed legislation). This finding will be made despite BHP Billiton going to extraordinary lengths to ensure against the introduction of an unlawful reason into decisions. Further, without being privy to the intent of relevant decision makers, BHP Billiton will be unable to discharge the reverse onus of proof.

These provisions completely ignore the practicalities and necessities of commercial and contractual relationships. It would be prudent and consistent with the remainder of the AD Act provisions to remove the joint and several liability and introduce a 'reasonable steps' defence to prevent any absurd outcomes.

We thank the Committee again for the opportunity to provide further submissions in respect of the Bill.

Kind Regards.

Yours sincerely



Rag Udd
Asset President



5 September 2016

Mr Barry Broe
Coordinator-General
Department of State Development
PO Box 15009,
City East, Queensland 4002

Dear Mr Broe

RE: Strong Sustainable Resource Communities Bill

As you are aware, BHP Billiton has a strong interest in this legislation and in 2015 we actively participated in both the Parliamentary Inquiry and the Independent Panel's investigations into 100% FIFO operations in Queensland.

We have now considered the draft Bill being prepared by your department and have identified a number of issues that are extremely concerning to us, as the largest employer in Queensland's mining sector.

Although there are a number of drafting and policy issues that concern us, (we attach a summary document using the feedback template provided by your officers) it is the retrospectivity of proposed changes to our existing project approvals that concern us most.

In particular, the introduction of measures that impact the operation of projects for which approvals were granted seven years ago is offensive and ill considered.

It is clear that our Caval Ridge and Daunia mines are the target of these changes.

Having received clear conditions from the Government of the day, BHP Billiton's Board approved a multi-billion dollar investment in Queensland based on those agreements. This Bill, if enacted as it stands, makes our operation of these mines, under our existing approval, unlawful.

This is an outcome that represents clear sovereign risk to our company's investments in Queensland.

Our company acknowledges that the current Government received a mandate to ban further '100%' FIFO mines in Queensland. Our acceptance of this principle is evidenced by the conditions we have agreed with the Office of Coordinator General for our proposed Red Hill Mine.

However, we do not agree that the Government has a mandate to unwind the approvals that we have already invested under.

BHP Billiton operates nine mines and the Hay Point Coal Terminal in Queensland. We provide jobs for over 11,000 Queenslanders and in FY 2016 we spent over \$3.4 billion on Queensland provided goods and services.

Of our total workforce, around 7% or 800 people have commute workforce arrangements in place from Brisbane and Cairns, to the two mines we have specifically set up and structured as FIFO operations. These mines were established with the full agreement of the Government of the day, and are now also achieving our highest female and indigenous participation rates.

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Existing workers as well as new entrants to the mining sector in Central Queensland are free to seek roles at our seven other mines in the Bowen Basin which are operated on a 'residential' basis – that is, those employees and contractors live in the local community.

We strongly urge the Government to remove the retrospective elements of this Bill and amend the date of 30 June 2009 to present day or assent of the Bill.

We have not previously experienced this level of risk to our operations and future investment in this State and we trust that the Government will deliver on its policy mandate without causing unnecessary damage to our business in Queensland.

I am available to discuss our concerns in person or via telephone if you wish to.

Yours sincerely



Rag Udd
Asset President