Parliamentary Committees

Strong and Sustainable Resource Communities Bill 2016

Report No. 42, 55th Parliament
Infrastructure, Planning and Natural Resources Committee

March 2017

Infrastructure, Planning and Natural Resources Committee

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The committee thanks all those who briefed the committee, provided submissions and participated in its inquiry, particularly those who travelled a long way to attend the committee's regional public hearings.

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Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Strong and Sustainable Resource Communities Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles to it, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The bill proposes to implement recommendations the committee made in its report on fly-in, fly-out and other long distance commuting practices in Queensland. It is heartening for the committee to see evidence of the value of Parliamentary committee work.

If enacted, the bill will positively impact on many regional communities. It will mean that residents of communities in the vicinity of large resource projects will benefit from the operation of those projects.

The committee was originally required to report on the bill by early February 2017 but, at the request of the committee, the Committee of Legislative Assembly varied the reporting date. The committee appreciated this extension because it provided time for the committee to travel to some of the areas in which this bill will impact most – Mount Isa, Emerald, Middlemount, Moranbah, Mackay and Rockhampton.

On behalf of the committee, I thank those individuals and organisations who lodged written submissions on the bill or gave evidence to the committee at a public hearing – the committee's examination of the bill benefitted from your contribution. I would particularly like to acknowledge those who had to travel considerable distances to participate in the committee's hearings.

In addition, I would like to thank the departmental officials who briefed the committee; Hansard staff; the committee's secretariat; the Technical Scrutiny of Legislation Secretariat; and my fellow committee members.

I commend the report to the House.

Jim Pearce MP
Chair

March 2017

Abbreviations

AD Act	*Anti-Discrimination Act 1991*
ADCQ	Anti-Discrimination Commission of Queensland
AMWU	Australian Manufacturing Workers' Union
AWU	The Australian Workers' Union
bill	Strong and Sustainable Resource Communities Bill 2016
BMA	BHP Billiton Mitsubishi Alliance
CFMEU	Construction, Forestry, Mining and Energy Union
department	Department of State Development and the Department of Natural Resources and Mines
DEHP	Department of Environment and Heritage Protection
DNRM	Department of Natural Resources and Mines
DSD	Department of State Development
EIS	environmental impact statement
ETU	Electrical Trades Union
EP Act	*Environmental Protection Act 1994*
FIFO	fly-in, fly-out
FLP	fundamental legislative principles
FW Act	*Commonwealth Fair Work Act 2009*
IR Act	*Industrial Relations Act 1999*
ISP	Independent scientific panel
LGAQ	Local Government Association of Queensland
LSA	*Legislative Standards Act 1992*
Minister	Hon Dr Anthony Lynham, Minister for State Development and Minister for Natural Resources and Mines
OQPC	Office of the Queensland Parliamentary Counsel
proposed Act / SSRC Act	proposed Strong and Sustainable Resource Communities Act
QRC	Queensland Resources Council
RSCA	Recruitment and Consulting Services Association
UCG	Underground coal gasification
SDPWO Act	*State Development and Public Works Organisation Act 1971*
SIA	social impact assessment

SLC	Scrutiny of Legislation Committee
SSRC	Strong and sustainable resource communities
the committee	Infrastructure, Planning and Natural Resources Committee

Recommendations

The committee recommends the Strong and Sustainable Resource Communities Bill 2016 be passed.

The committee recommends the definition of 'nearby regional community' in the Strong and sustainable Resource Communities Bill 2016 be amended to omit the '100km radius' and leave to the discretion of the Coordinator-General with the input of local government, unions and other stakeholders.

The committee recommends the definition of 'nearby regional community' in the Strong and Sustainable Resource Communities Bill 2016 be amended to make it clear that the Coordinator-General may decide that a town with a population of 200 people or less is a 'nearby regional community'.

The committee recommends the scope of the Strong and Sustainable Resource Communities Bill 2016 be amended to cover all resource projects in the vicinity of a nearby regional community, regardless of the size of the resource project or the date of its commencement.

The committee recommends that the prohibition in clause 6 of the Strong and Sustainable Resource Communities Bill 2016 on 100 per cent fly-in fly-out workers for large resource projects that have a nearby regional community be amended, with appropriate transitional provisions, to extend its operation to:

- all resource projects, regardless of size
- all current resource projects as well as all future resource projects.

The committee recommends that clauses 8 and 19 of the Strong and Sustainable Resource Communities Bill 2016 be amended to apply to all resource projects that have a nearby regional community, regardless of the size of the resource project or the date of its commencement.

The committee recommends that clause 9(4) of the Strong and Sustainable Resource Communities Bill 2016 be amended to require the Coordinator-General to make a guideline stating the details that must be included in a social impact assessment.

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of three government and three non-government members.

At the time the bill was introduced in the House, the committee's areas of portfolio responsibility were:

- Infrastructure, Local Government and Planning and Trade and Investment
- State Development, Natural Resources and Mines
- Housing and Public Works.[1]

On 14 February 2017, the committee's portfolio responsibilities were amended. The committee is now responsible for the following portfolio areas:

- Transport, Infrastructure and Planning
- State Development, Natural Resources and Mines
- Local Government and Aboriginal and Torres Strait Islander Partnerships.[2]

The committee also has oversight responsibility for the Family Responsibilities Commission.

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill in its portfolio area to consider:

- the policy to be given effect by the legislation, and
- the application of fundamental legislative principles to the legislation.

1.2 The referral

On 8 November 2016, Hon Dr Anthony Lynham, Minister for State Development and Minister for Natural Resources and Mines, introduced the Strong and Sustainable Resource Communities Bill 2016 (the bill) in the Legislative Assembly.[3] The bill was referred to the committee, with a reporting date of 9 February 2017.[4] On 29 November 2016 the reporting date was extended to 7 March 2017 to enable the committee to conduct regional consultation on the bill.[5]

1.3 The committee's inquiry process

On 11 November 2016, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 12 December 2016. The committee received 23 submissions (see Appendix A).

On 30 November 2016, the committee held a public briefing with officers from the Department of State Development and the Department of Natural Resources and Mines (see Appendix B). The committee held public hearings in Brisbane (6 February 2017), Emerald (8 February 2017),

1 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 18 February 2016).
2 Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 14 February 2017).
3 Queensland Parliament, Record of Proceedings, 8 November 2016, pp 4263-4265.
4 Queensland Parliament, Record of Proceedings, 3 November 2016, pp 4146-4149.
5 Queensland Parliament, Record of Proceedings, 29 November 2016, p 4635.

Middlemount (9 February 2017), Moranbah (9 February 2017), Mackay (10 February 2017), Rockhampton (10 February 2017) and Mount Isa (24 February 2017) – see Appendix C.

Copies of the submissions, the transcripts of the briefing and hearings, tabled papers, and responses to the questions taken on notice at the briefing and hearings are available from the committee's webpage.[6]

1.4 Policy objectives of the bill

The objectives of the bill are:

- to ensure that residents of communities in the vicinity of large resource projects benefit from the operation of the projects[7] by requiring the owners of, or proponents for, large resource projects:
    - to prepare a social impact assessment for the projects
    - to employ people from nearby regional communities
    - not to discriminate against residents from nearby regional communities when employing for the projects
- to prohibit certain activities including *in situ* gasification of coal and oil shale.[8]

1.5 Estimated cost for government implementation

The explanatory notes advise that additional costs will be incurred within the Office of the Coordinator-General as a result of the enhancement of the social impact assessment function. Regarding the expected cost to the Anti-Discrimination Commission Queensland, the explanatory notes state:

> *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.*[9]

1.6 Government consultation

With respect to FIFO practices, the explanatory notes state that there was 'extensive and comprehensive consultation with stakeholders in the community on the State's proposed approach'.[10] The Minister elaborated:

> *The Office of the Coordinator-General consulted with stakeholders on the strong and sustainable resource communities framework in June and July 2016. This consultation was conducted on the draft strong and sustainable resource communities policy document, the draft social impact assessment guideline and a summary of the proposed bill.*[11]

An exposure draft of the bill was available for stakeholder comment from 17 August to 5 September 2016.[12] The government consulted with local governments and key stakeholders on the draft bill.[13]

6 See www.parliament.qld.gov.au/ipnrc.
7 Strong and Sustainable Resource Communities Bill 2016, s 3(1).
8 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 2.
9 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 2.
10 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 6.
11 Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4261.
12 Department of State Development, public briefing transcript, Brisbane, 30 November 2016, p 2.
13 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 6.

The Queensland Government did not conduct community consultation prior to its decision to prohibit underground coal gasification and *in situ* gasification activities.[14] The response of the mining community to the Queensland Government's decision is provided in part 2.2 of this report.

1.7 Should the bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the bill be passed. The committee recommends the Strong and Sustainable Resource Communities Bill 2016 be passed.

Recommendation 1

The committee recommends the Strong and Sustainable Resource Communities Bill 2016 be passed.

[14] Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 6.

2 Examination of the bill

The objectives of the bill are:

- to ensure that residents of communities in the vicinity of large resource projects benefit from the operation of the projects[15]
- to prohibit certain activities including *in situ* gasification of coal and oil shale.[16]

2.1 Benefitting local residents in the vicinity of large resource projects

The bill is a key means by which the Queensland Government intends to implement the Strong and sustainable resource communities (SSRC) policy.[17] The SSRC policy intends to achieve:

- a more effective balance of workforce accommodation arrangements for each project
- more community and stakeholder engagement
- effective local business and industry content
- enhancement of health and community wellbeing.[18]

On introducing the bill in the House, Hon Dr Anthony Lynham, Minister for State Development and Minister for Natural Resources and Mines (the Minister), tabled a copy of the draft policy and advised:

> *The Office of the Coordinator-General consulted with stakeholders on the strong and sustainable resource communities framework in June and July 2016. This consultation was conducted on the draft strong and sustainable resource communities policy document, the draft social impact assessment guideline and a summary of the proposed bill.*[19]

The bill addresses recommendations made by the committee in its *Inquiry into fly-in, fly-out and other long distance commuting work practices in regional Queensland report* which was tabled in October 2015, and recommendations made by an independent FIFO review panel in its July 2015 *Review Report: An independent review of existing, predominantly fly-in fly-out resource projects in Queensland*.[20]

With respect to its aim of ensuring that residents of communities in the vicinity of large resource projects benefit from the operation of the projects, the bill has four key objectives:

1. to prevent the future use of 100 per cent FIFO for operational works on large resource projects near regional communities

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15 Strong and Sustainable Resource Communities Bill 2016, s 3(1).

16 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 2.

17 Strong and sustainable resource communities (SSRC) – Draft policy framework, p 1, http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2016/5516T2016.pdf . The SSRC policy is also intended to be implemented by the EIS social impact assessment process: Strong and sustainable resource communities (SSRC) – Draft policy framework, p 1.

18 Public briefing transcript, Brisbane, 30 November 2016, p 1.

19 Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4261.

20 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 1; Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4260. The committee's report and the government's response to it are available at http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2015/5515T1302.pdf and http://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2016/5516T381.pdf. The FIFO review panel's report and the government's response to it are available at http://statedevelopment.qld.gov.au/resources/report/fifo-review-report.pdf and http://statedevelopment.qld.gov.au/resources/report/government-response-to-fifo-review-panel-report.pdf.

2. to prohibit discrimination against locals during the recruitment processes of new workers on large resource projects and enable FIFO workers to move into the local community if they choose
3. to prescribe the social impact assessment process for large projects
4. to ensure that the social impact assessment of social impacts of resource projects are consistent under both the *State Development and Public Works Organisation Act 1971* (SDPWO Act) and the *Environmental Protection Act 1994* (EP Act).[21]

With respect to the objective of the bill, the Mayor of Isaac Regional Council, Councillor Anne Baker, stated:

> *… Clearly, the future of our towns and those in the vicinity of large resource projects is in the hands of this bill. We fundamentally support the intent of the bill …*
>
> *When we read the objective of the bill we were genuinely moved. We felt for the first time in a long time that the state government and our communities were on the same page. To be clear, for the objective of this bill to read 'to ensure that residents of communities in the vicinity of large resource projects benefit from the operation of those projects' was and remains very encouraging for us.*[22]

Prohibiting 100 per cent fly-in fly-out workforces

Clause 6 prohibits owners of large resource projects employing a workforce for the operational phase of the project that comprises 100 per cent fly-in fly-out (FIFO) workers, if there is a nearby regional community.[23] The prohibition only applies to projects approved after the Bill is enacted.[24]

Schedule 1 of the Bill defines the following key terms:

- *large resource project* – a resource project (primarily mining, gas and petroleum projects) for which an environmental impact statement (EIS) is required under the EP Act or the SDPWO Act
- *operational phase* – the period from the start to the end of production of coal, a mineral or petroleum for the project
- *FIFO worker* – a worker who travels to the project by aeroplane, or another means (eg by car or bus), from a place that is not a nearby regional community for the project to work on the operational phase of the project
- *nearby regional community* – a town, the name of which is published on the department's website under proposed section 13, that has a population of more than 200 people, any part of which is within:
  - a 100km radius of the entrance to the project that is closest to the town's boundary, or
  - within a greater or lesser distance from the project decided by the Coordinator-General and notified in writing by the Coordinator-General to the owner of the project.[25]

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21 Department of State Development, public briefing transcript, Brisbane, 30 November 2016, p 1.

22 Public briefing transcript, Moranbah, 9 February 2017, p 1.

23 Large resource projects are defined as resource projects for which an EIS is required: Strong and Sustainable Resource Communities Bill 2016, schedule 1. EIS means an environmental impact statement under the *Environmental Protection Act 1994* or the *State Development and Public Works Organisation Act 1971*: Strong and Sustainable Resource Communities Bill 2016, schedule 1.

24 Department of State Development, public briefing transcript, Brisbane, 30 November 2016, p 2; Department of State Development, correspondence dated 13 January 2017, p 5.

25 Strong and Sustainable Resource Communities Bill 2016, schedule 1; Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 8.

Clause 12 provides that the Coordinator-General may, as part of the EIS for the project, prohibit the owner of a large resource project from employing a 100 per cent FIFO workforce for the construction phase of the project.[26] The explanatory notes state:

> *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.*[27]

The name of each nearby regional community for a large resource project, the date that the operational phase started for the project, the name of the owner of the project and whether the prohibition on 100 percent FIFO workers also applies to the construction phase, would be published on the department's website.[28]

Clause 7 provides that the prohibition on 100 per cent FIFO workers is an enforceable condition under s 157A of the SDPWO Act for large resource projects. The maximum penalty for non-compliance with an enforceable condition would be 1665 penalty units ($202,963.50) which is over $1 million for a corporation.[29]

Stakeholder comments and department's response

The LGAQ, and other submitters, considered that more ambitious measures were required to achieve the objective to ensure that regional communities in Queensland in the vicinity of large resource projects benefit from those projects.[30] Such submitters considered that the prohibition on 100 per cent FIFO workers was flawed.[31]

Stakeholders contended that a project owner could comply with the requirement by employing only one person for the local community.[32] The Anti-Discrimination Commission of Queensland (ADCQ) clarified that if one person was employed locally at a mining operation:

> *Technically they would comply with that provision which says they cannot have 100 per cent FIFO. They would still be bound by the discrimination provisions when they do recruitment. When they are recruiting they cannot refuse to recruit someone because they are a local resident. They can't advertise in a way that will disadvantage local residents, and for someone who is at that time working FIFO who wants to be a local resident, they cannot terminate that person's employment.*[33]

Given that the 100 per cent FIFO requirement 'only applies to future projects approved after the Bill is enacted',[34] some submitters suggested amending the provision to include more large resource projects.

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[26] The Coordinator-General may, pursuant to cl 12, nominate a large resource project as a project for which a person employed during the construction phase of the project is defined as a worker.

[27] Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 11.

[28] Strong and Sustainable Resource Communities Bill 2016, schedule 1; cl 13.

[29] Department of State Development, correspondence dated 13 January 2017, p 11.

[30] See, for example, Ms Simone Talbot, Manager, Advocate, Infrastructure, Economics and Regional Development, LGAQ, Public Hearing Transcript, 6 February 2017, p 1.

[31] See for example, Lock the Gate Alliance, submission 5, p 1; Australian Manufacturing Workers' Union, submission 7, p 3; Construction, Forestry, Mining & Energy Union, submission 19, p 2.

[32] See, for example, Isaac Regional Council, public briefing transcript, Moranbah, 9 February 2017, p 2; Construction, Forestry, Mining & Energy Union, submission 19, p 2.

[33] Anti-Discrimination Commission Queensland, public hearing transcript, Brisbane, pp 29-30.

[34] Department of State Development, correspondence dated 13 January 2017, p 5.

Lock the Gate Alliance submitted that the prohibition should apply to large resource projects which are currently in operation, with transitional arrangements put in place for projects to move from FIFO to local workers.[35] Isaac Regional Council also sought amendment of clause 6 to include existing projects as well as future projects, noting that the prohibition in clause 6 will not apply to projects in the Bowen Basin, such as Goonyella Riverside, Middlemount Coal and Peak Downs.[36] The Local Government Association of Queensland (LGAQ) considered that the prohibition should apply to projects that have yet to commence at the time the Bill is passed, such as the Carmichael Project, as well as projects that commence an EIS in the future.[37]

Other suggested amendments aimed at improving the Bill's effectiveness included:

- amending the definition of FIFO worker to include all professions and occupations for which there are more than 20 employees on the project[38]
- stipulating a maximum of 25 per cent FIFO workers[39]
- undertaking an assessment of the regional labour market before setting targets for FIFO workers[40]
- establishing a 'hierarchy of employment' – requiring large project owners, in the first instance, to recruit local people and if positions not filled, people for the regions and finally the rest of Queensland[41]
- requiring a preference for workers in local communities, with FIFO workers as the exception and ensuring regular monitoring of compliance, including trade unions reporting any suspected breaches[42]
- amending the prohibition to require a project owner to ensure its workforce, or a discernable part thereof, is not comprised of FIFO workers at any stage of the project.[43]

The Recruitment & Consulting Services Association Ltd (RCSA) contended that the prohibition on 100 per cent FIFO workers should apply only to workers directly employed by the project owner.[44] The RCSA further argued that employers should retain the ability to source and hire workers based on skills, experience and expertise, otherwise project owners may be unable to engage the workforce required for a project.[45]

The department advised that the prohibition on 100 per cent FIFO workers was introduced 'to further encourage project proponents to consider opportunities for local and nearby regional communities to benefit from the project.'[46] The explanatory notes comment on its likely impact:

> *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*

[35] Lock the Gate Alliance, submission 5, p 3. See also AWU, submission 18, p 1; AMWU, submission 7, p 4.
[36] Public briefing transcript, Moranbah, 9 February 2017, p 2.
[37] Local Government Association Queensland, submission 11, p 22.
[38] Electrical Trades Union of Employees Queensland, submission 12, p 4.
[39] Lock the Gate Alliance, submission 5, p 3. See also the following submissions that suggested targets: David Sweetapple, submission 3, p 6; Maranoa Regional Council, submission 8, p 15.
[40] Maranoa Regional Council, submission 8, p 16.
[41] See for example, Electrical Trades Union of Employees Queensland, submission 12, p 4.
[42] Australian Workers' Union, submission 18, pp 1-2.
[43] Construction, Forestry, Mining & Energy Union, submission 19, p 3.
[44] Recruitment & Consulting Services Association Ltd, submission 23, p 6.
[45] Recruitment & Consulting Services Association Ltd, submission 23, p 7.
[46] Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 8.

> *employed. Nonetheless, this provision provides a clear statement to the industry. The SIA [Social Impact Assessment] 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.*[47]

In its response to the issues raised in submissions, the department further clarified how the prohibition is intended to operate:

> *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.*[48]

Definition of nearby regional community

Certain submitters, including the Queensland Resources Council (QRC) and the Australian Mines and Metals Association (AMMA), raised concerns that the proposed definition of *nearby regional community* was problematic. They considered that the definition did not take into account issues such as road safety and fatigue resulting from local workers commuting 100km to work.[49] The AMMA recommended that the Bill be amended to require the Coordinator-General to: consider road safety, fatigue and commuting time when determining a nearby regional community; publish an exposure draft of proposed nearby regional communities; and consult with Worksafe Queensland and the Department of Transport and Main Roads.[50]

The department commented:

> *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*

[47] Strong and Sustainable Resource Communities Bill 2016, explanatory notes, pp 8-9.

[48] Department of State Development and Department of Natural Resources and Mines, correspondence dated 13 January 2017, pp 3-4.

[49] Queensland Resources Council, submission 4, appendix 1, p 4; Australian Mines & Metals Association, submission 9, p 11.

[50] Australian Mines & Metals Association, submission 9, pp 10-11.

> *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.*[51]
>
> *…*
>
> *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.*
>
> *…*
>
> *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.*[52]

Councils and trade unions, however, considered that the definition should be extended to regional communities which are up to 150km or 200km from a large resource project. Alternatively they suggested that decisions about which communities should be deemed nearby regional communities should be left to the discretion of the Coordinator-General in accordance with guidelines and in consultation with local government.[53]

The department advised that the Coordinator-General's discretion to specify a greater or less distance than 100km will ensure that decisions about which nearby regional communities are subject to the bill are based on the circumstances of each situation and ensure that 'the best outcomes are achieved in each case.'[54]

Isaac Regional Council recommended that 'any reference to the kilometre threshold be deleted'[55] because they did not consider it appropriate to exclude any workers based on where they live.

> *Section 19 reflects on the relevance of the kilometre threshold in relation to a nearby regional community. To be honest, once we start talking and debating or making reference to a threshold that defines eligibility, this debate becomes completely unstuck. It is simply not appropriate, it is certainly not Australian at all to exclude any workers based on where they live. There is no sense in an arbitrary line where a person can be discriminated against just because they are on the wrong side of that line.*

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51 Department of State Development, correspondence dated 13 January 2017, p 6.

52 Department of State Development, correspondence dated 13 January 2017, p 10.

53 See for example, Ms Kirsten Pietzner, Principal Adviser, Resources and Regional Development, LGAQ, Public Hearing Transcript, 6 February 2017, p 2. The Construction, Forestry, Mining & Energy Union, for example, advocated for the distance to be increased to 200km: Construction, Forestry, Mining & Energy Union, submission 19, p 4. See also, Mackay Regional Council, which advocated for increasing the distance from the project to 150 kilometres because of the benefits it would bring to Mackay and towns within the Bowen Basin: Public hearing transcript, Mackay, 10 February 2017, p 2.

54 Department of State Development, public briefing transcript, Brisbane, 30 November 2016, p 2.

55 Public hearing transcript, Moranbah, 9 February 2017, p 2.

> *This debate has always been about choice. History shows us that when people are provided the opportunity to make their own living decisions, enough will choose to live where they work which, in turn, provides growth and sustainability opportunities for the already established communities. Our proposed suggestion is that any reference to the kilometre threshold be deleted.*[56]

Maranoa Council suggested that the Coordinator-General should be given the discretion to include towns with a population smaller than 200 as nearby regional communities, especially those that are geographically well positioned to house resident workers.[57]

The explanatory notes explain the reason for the minimum size of 200 people:

> *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 individuals living between nominated localities and the project would be captured by clause 6 and the anti-discrimination provisions.*[58]

Definition of large resource project

Mackay Regional Council expressed concern about the definition of 'large resource project':

> *On the threshold of large, the definition is obviously very important. If we had our dream world, we would probably say it should be able to apply to all projects, because one of the issues that we have been consistently raising for the last decade or so is the cumulative impacts. It is not necessarily whether a project is large, medium or small that dictates the impact it has on a community like Mackay. A small or medium project at the wrong time, that is ill advised in terms of timing or that comes on the back of another large project can have significant impacts. That is why cumulative impact is something that we bang on about all the time, because no one project causes us a problem, but when you put them all together they can.*[59]

Extending definition of worker to include construction and decommissioning

Isaac Regional Council advocated for extending the application of clause 6 to include the construction and decommissioning phases. The Council commented that these phases 'can potentially offer local employment opportunities for lengthy periods of time and should … be subjected to prohibition of 100 per cent fly-in fly-out.'[60]

In response to stakeholder suggestions that the prohibition on 100 per cent FIFO should be extended to the construction and decommissioning phases, the department advised:

> *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.*

56 Public hearing transcript, Moranbah, 9 February 2017, p 2.
57 Maranoa Council, submission 8, pp 13-14.
58 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 8.
59 Public briefing transcript, Mackay, 10 February 2017, p 6.
60 Public briefing transcript, Moranbah, 9 February 2017, p 2.

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.[61]

Prohibiting discrimination against local residents in recruitment processes

In its October 2015 report, *Fly-in, fly-out and other long distance commuting work practices in regional Queensland*, the committee recommended that the Queensland Government consider amending the *Anti-Discrimination Act 1991* (AD Act) to include location as a prohibited ground of discrimination. The intent of the recommendation was to ensure that all workers are provided a choice of where they live for work.[62]

Part 3, Division 3 of the bill contains clauses 18 to 20 which would insert a new Chapter 5B into the AD Act – Discrimination against residents of regional communities (complaint).

The anti-discrimination requirements in the bill apply to projects approved since 30 June 2009 but only to future recruitment processes.[63]

Proposed new s 131C of the AD Act prohibits an owner or principal contractor from discriminating against:

- a resident of the nearby regional community when recruiting workers for the project, or
- a worker by terminating the worker's employment because the worker is, or becomes, a resident of the nearby regional community and chooses to travel to the project other than as a FIFO worker.

An owner or principal contractor is taken to discriminate against a resident of the nearby regional community if the owner or principal contractor is recruiting workers for the project and the resident is not offered work on the project, or is disadvantaged in the recruitment process for the project, because of being a resident of the nearby regional community.[64]

If the principal contractor contravenes new s 131C, both the owner and the principal contractor are jointly and severally liable for the contravention, and a proceeding under the AD Act may be taken against either or both of them.

It is for the complainant to prove, on the balance of probabilities, that the respondent (ie the owner or principal contractor) contravened a provision of new Chapter 5B (Discrimination against residents of regional communities (complaint)).[65]

If a complaint about discrimination under new Chapter 5B alleges that:

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61 Department of State Development, correspondence dated 13 January 2017, p 4.

62 Infrastructure, Planning and Natural Resources Committee, *Fly-in, fly-out and other long distance commuting work practices in regional Queensland*, Report 9, October 2015, recommendation 16.

63 Public briefing transcript, Brisbane, 30 November 2016, p 2.

64 New s 131C.

65 Strong and Sustainable Resource Communities Bill 2016, cl 19 (proposed new s 131E).

- the complainant was not offered work during recruitment for a large resource project because the complainant was a resident of a nearby regional community for the project, or
- the complainant's employment on a large resource project was terminated because the complainant was, or became, a resident of a nearby regional community for the project and chose to travel to the project other than as a FIFO worker,

it is presumed the action was taken for the alleged reason, unless the respondent proves otherwise.[66]

The explanatory notes state the reversal of the onus of proof is justifiable because:

> *… 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).*[67]

If the Bill is enacted, a person (the complainant) may lodge a complaint with the ADCQ. If the ADCQ accepts the compliant, it will notify the resource company and commence a conciliation process.[68] If the complainant is dissatisfied with the outcome of the conciliation process, the person may be given leave by the ADCQ to take the matter to the Queensland Civil and Administrative Tribunal.[69]

The ADCQ provided some guidance in its submission as to how it would interpret disadvantage with respect to the bill.

> *The three types of discrimination provided for in the Bill all arise because the person is a local resident, or in the case of a worker, becoming a local resident. This goes to the reason for the disadvantage or conduct.*
>
> *For a claim of disadvantage in a recruitment process because of being a local resident, the nexus between the disadvantage and being a local resident should be apparent on the facts. For example: an advertisement that limits applications to residents of a nominated city, or a requirement to travel at the applicant's expense for interview to nominated city. If applications have to be uploaded to a website and the area doesn't have adequate internet coverage; that might be a disadvantage. If interviews are conducted by videoconference and there are no videoconference facilities in the area, that might be a disadvantage.*[70]

The Minister stated:

> *It is only right that local workers get an opportunity to be considered for these jobs and are not discriminated against because they are local residents. They should be allowed to live in the local community if they so choose.*
>
> *To minimise any unintended consequences, the grounds for discrimination apply only to those large resource projects that have been subject to an environmental impact statement assessment report since 30 June 2009 and to proposed projects going through an environmental impact statement process now or in the future. Banning 100 per cent FIFO workforces on future projects will mean that proponents will be required to employ people from nearby regional communities to work on projects, where possible, and help protect resource worker health and wellbeing.*[71]

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66 Strong and Sustainable Resource Communities Bill 2016, cl 19 (new s 131F).
67 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 14.
68 Department of State Development, correspondence dated 13 January 2017, p 11.
69 Department of State Development, correspondence dated 13 January 2017, p 11.
70 Anti-Discrimination Commission Queensland, submission 6, pp 7-8.
71 Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, pp 4260-4261.

Under clause 8 of the bill, it is an offence for an owner to:

- advertise for workers for a project in a way that prohibits residents of the nearby regional community for the project from applying for the positions, or
- otherwise state, in any way in a document, that residents of the nearby regional community for the project are not eligible to be workers for the project.

The owner is taken to contravene the provision whether it is the owner, a related body corporate of the owner, or an agent of the owner or related body corporate that does the advertising or stating.

The maximum penalty for the offence would be 400 penalty units ($48,760). The explanatory notes state, that as in practice, the owner of a large resource project will be a corporation, the maximum penalty for a corporation may be equal to five times the amount (approximately $244 000 for a corporation).[72]

Stakeholder comments and department's response

The ADCQ stated that it was consulted during the development of the bill and it considers the bill, as drafted, achieves the policy objectives of the government whilst being workable from the perspective of the Commission. The ADCQ notes the bill would introduce three new types of unlawful discrimination, which differ from the types of discrimination currently in the AD Act:

- disadvantaging a local resident in the recruitment process (it is expected that 'disadvantage' would take its ordinary meaning)
- not offering work to a person because the person is a local resident
- dismissing a worker because they are or become a local resident and choose to travel to the project other than as a FIFO worker.[73]

QRC questioned whether the purpose and intent of the AD Act would be trivialised by the amendments in the bill, which it considers inconsistent with the purpose of the AD Act.[74] It also expressed the view that the bill does not contemplate the current practice of companies transferring staff across operational sites and companies.[75]

Maranoa Regional Council expressed support for the proposed amendments to create residential location as a basis for discrimination.[76] Isaac Regional Council considered that clause 8 should be amended to prohibit advertising which stops workers living in the broader region from applying, and clause 19 should be extended beyond recruitment to other employment activities and apply to all existing projects.[77]

The ADCQ clarified the application of the discrimination provisions as follows:

> *… the discrimination provisions are very limited in those three aspects: the advertising, the recruitment and terminating someone who wants to stop being FIFO and become a local resident. It does not extend into the work relationship and the terms of work that a local resident, for example, might be offered. Some of the people who have made submissions, generally the unions and the councils, are saying that it should extend to that. This bill does not do that. It does not prevent a company from using the existing accommodation—*

[72] Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 9; *Penalties and Sentences Act 1992*, s. 181B; Department of State Development, correspondence dated 13 January 2017, p. 11.
[73] Anti-Discrimination Commission Queensland, submission 6, pp 5-6.
[74] Queensland Resources Council, submission 4, p 2.
[75] Queensland Resources Council, submission 4, attachment 1, p 3.
[76] Maranoa Regional Council, submission 8, p 13.
[77] Isaac Regional Council, submission 2, pp 9, 11, 12.

> *requiring the local worker who has been employed to stay on site for the duration of the time that they are on shift.*[78]

The Construction, Forestry, Mining and Energy Union (CFMEU) gave evidence that mining companies are currently advertising positions that are 100 per cent FIFO out of Townsville:

> *I was out in that regional community last week. I spoke to several people in the Dysart community. Everybody that I spoke to—everybody—knew somebody who was unemployed and was unable to get a job in that mine as a result of the advertising which was 100 per cent FIFO only out of Townsville. This is an issue that is still going on, it is prevalent, it is serious and that is why the union will persist in its submissions that it needs to be stamped out. As Mr Hughes has said, this union is not against FIFO; we are about choice and we are about ensuring there is a choice for people about where they live and where they wish to commute to work.*[79]

Retrospectivity

Several submitters questioned the retrospective application of the bill and considered it would undermine investment decisions made on the basis of approvals granted after 30 June 2009.[80] BMA submitted that its design of, and investment in, its Daunia and Caval Ridge 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.*[81]

QRC stated:

> *The reality is that, if a company sits down with the sovereign government of a state, signs an agreement and that agreement at some point down the track is broken, that signals to investors more so than the company—but certainly to the company as well—that there is a sovereign risk issue here in Queensland that did not exist five years ago. That is, a government signs an agreement and breaks it. In a world where one of the big multinational mining companies such as BHP or Rio has a choice of which country to invest in—they do not just look at Australia; they look at all the places around the world where they have investments—anything that creates an uncertainty in their investment or sovereign risk profile is detrimental to us attracting that investment here.*
>
> *Retrospectivity is a separate issue. With respect to the agreement in relation to Daunia and Caval Ridge which was 100 per cent FIFO and which was signed by the government and ratified by the succeeding government, the company is now being asked to unwind that agreement retrospectively. There would be no argument from anyone on this issue were this government to decree that all mining positions issued going forward were to be a mix of local and FIFO.*[82]

The Electrical Trades Union commented on statements regarding the proposed amendments on advertising and sovereign risk to companies:

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78 Anti-Discrimination Commission Queensland, public hearing transcript, Brisbane, p 30.

79 Public hearing transcript, Brisbane, 6 February 2017, p 6.

80 Queensland Resources Council, submission no 4, p 1; Queensland Law Society, submission no. 16, p 1.

81 BHP Billiton Mitsubishi Alliance, submission 21, p 2.

82 Public hearing transcript, Brisbane, 6 February 2017, p 20.

> *There is a bit of commentary around the place on this, and terms like sovereign risk have been thrown in there. For projects like the ones you are describing I would say a couple of things. Firstly, there has always been, before this bill existed and for all projects of this type, an expectation that there will be an employment benefit to this state. You do not need a bill for that. I think if you apply common sense to it that expectation holds true for local communities. I bring that up to respond to the idea that there is some kind of sovereign risk that is suddenly jumping out as a result of this legislation. I think what is trying to be achieved here with this legislation sits within the normal purview of governments and parliaments going about their business and exercising their duties on behalf of the people of this state. There are no mining leases getting cancelled here, which would be sovereign risk in any sensible definition of it.*[83]

QRC expressed concern that companies which have complied with the approvals provided by government and the legislation may now be penalised and at risk of litigation.[84]

The Mayor of Isaac Regional Council said that she considered there was no sovereign risk posed by the retrospective amendments; the risk was that unless the 2009 date was removed or closed, then the mines that have been operating over 40 years will move to FIFO operations.[85]

The ADCQ clarified the application of retrospectivity as follows:

> *One of the other issues I would like to address is the issue of retrospectivity. The bill does not apply to conduct before the legislation commences. It is said to have a retrospective effect because it will apply to future recruitment at projects that were approved for 100 per cent FIFO. Refusing to hire someone because they are local or terminating a worker who wants to live locally will be prohibited once the bill becomes legislation. That gives rights to individuals rather than taking away rights and human rights.*[86]

In response to the issues raised around retrospectivity, the department advised that 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 department explained that the mid-2009 date was selected because this is around the time that mining and gas project proposals completing their EIS began to be subject to a more comprehensive SIA process. Projects after this date were required to prepare a social impact management plan which included workforce accommodation proposals.[87]

The Coordinator-General clarified the bill's position on retrospectivity as follows:

> *Let me clarify the facts first of all. The 100 per cent FIFO prohibition only applies to future projects that are not approved yet. The new social impact assessment guideline only applies to new projects that are not approved yet. Those two elements are obviously not retrospective. The element they are talking about is the anti-discrimination provision. That only applies to future recruitment—it is not talking about past practices—of operational workers for projects that have been approved since 30 June. I am not a lawyer but I personally do not believe that it is retrospective. It depends on how you define the term. That is just one element of the bill that has an impact on projects already approved. I would add that for those projects their approval conditions are not changing. I am not going back into those projects changing the approval conditions. They are all the same.*
>
> *Now we have, if it is passed, a new act that has an anti-discrimination provision. You heard the arguments earlier about location being grounds for discrimination. It does not even mean*

[83] Public hearing transcript, Brisbane, 6 February 2017, p 16.
[84] Queensland Resources Council, submission no 4, attachment 1, p 3.
[85] Public hearing transcript, Moranbah, 9 February 2017, pp 6, 9.
[86] Public hearing transcript, Brisbane, 6 February 2017, p 29.
[87] Department of State Development, correspondence dated 13 January 2017, p 5.

> *that employers or proponents have to hire a person from the nearby regional community. They just simply have to be given a fair opportunity. They cannot advertise in a way that says, 'You must be from Townsville to apply.' It is not even mandating that they should employ a person. It is simply giving people fair opportunity who live in a nearby regional community, if there is one, to apply for that project. …*
>
> *If the bill is passed, Caval Ridge and Daunia do come into play for the Anti-Discrimination Act provisions, because they have been approved since 2009. If that proponent advertises a new job, a new recruitment, the provisions in the bill would say that they cannot discriminate against someone who lives in a nearby regional community, which for that project would be Moranbah, Clermont or Dysart from memory. It is not telling them that they have to give someone a job. It is saying that they cannot discriminate against and they cannot advertise in a way that precludes people from those towns from applying for a job. They can still choose the best person based on the person they want. That is what it means.*[88]

*The Coordinator-*General also responded to concerns raised by QRC relating to sovereign risk and the example of one company who had invested $200-plus million into camps and other infrastructure:

> *In terms of the accommodation camp they have built, we have not changed the approval conditions. The 100 per cent FIFO prohibitions do not apply to them because they have never really been through an approval. The new social impact assessment guideline does not apply to them. The only thing that applies to them is the new Anti-Discrimination Act provision which says that on those projects if they recruit for a new worker—a new recruitment—they must not discriminate against locals. It is not even telling them they have to employ a local. … We are not forcing them to employ that person. It is just giving them equal opportunity. I think the facts and evidence would have to be put forward to demonstrate the case of why they think that investment is all of a sudden not maximised.*[89]

The department advised that the bill provides equal opportunities for locals to be considered for jobs. With respect to hiring practices, the bill would not prevent an employer from offering employment to someone from outside the local community, or a FIFO worker, with superior skills, experience or qualifications. It further advised that the current practice of internal transfers within companies would not be captured by the discrimination and advertising discrimination provisions in the bill.[90]

Reverse onus of proof

The ADCQ notes that the reverse onus of proof is required because the reason why a person was not recruited, or why their position was terminated may not be within their knowledge, but the person who made the decision will know. The ADCQ cannot accept a complaint about discrimination unless there is a sufficient link between the evidence provided and the complaint. The reverse onus of proof will allow the ADCQ to accept those complaints which could otherwise have been dismissed. It will also encourage owners and principal contractors to ensure that their recruitment processes are transparent and that they clearly communicate the reasons for a person not being offered a position, or being dismissed.[91]

Some submitters raised concerns with the reverse onus of proof placed on owners and principal contractors. The Queensland Law Society stated that the reverse onus of proof is unworkable, unjust and a departure from well-established rule of law principles. Additionally, it considered that the drafting of the clause is too wide and may lead to frivolous and unsubstantiated claims. Respondents will not be in a position to discharge the reverse onus when it is not the party making the relevant

88 Public hearing transcript, Brisbane, 6 February 2017, pp 38-39.
89 Public hearing transcript, Brisbane, 6 February 2017, p 42.
90 Department of State Development, correspondence dated 13 January 2017, pp 11-12.
91 Anti-Discrimination Commission Queensland, submission 6, pp 7-9.

decision about employment. It believes that a defence of taking reasonable steps is needed in the bill and suggested additional consultation on the development of a thorough guideline on what reasonable steps a respondent is expected to take to ensure that they will not be exposed.[92]

QRC considered that reverse onus of proof 'flies in the face of existing commercial and contractual relationships.'[93]

The department echoed the advice of the ADCQ that the reversal of the onus of proof is required because job applicants or employees are not in a position to know the intent of the decision maker:

> *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).*[94]

The department noted that reverse onus of proof currently applies under the *Fair Work Act 2009* (Cth) and in the *Industrial Relations Act 2016* (Qld).[95]

In response to submitters' concerns around the joint and several liability of the owner and principal contractor, the department advised that 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.[96]

Social impact assessment for large resource projects

With respect to social impact assessment (SIA), the explanatory notes state:

> *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.*[97]

Clause 9(3) states that the SIA must provide for the following in relation to the project:

- community and stakeholder engagement
- workforce management
- housing and accommodation
- local business and industry procurement
- health and community well-being.

The bill enables the Coordinator-General to make a guideline about these matters, stating the details that must be included in an SIA and publish the guideline on the department's website.[98]

The Coordinator-General advised that the requirement for a workforce plan 'is critical and aimed at delivering the government's policy preference that proponents should prioritise local recruitment and provide choice for workers to live near where they want to work.'[99]

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92 Queensland Law Society, submission 16, p 3.
93 Queensland Resources Council, submission 4, p 2.
94 Department of State Development, correspondence dated 13 January 2017, p 17.
95 Department of State Development, correspondence dated 13 January 2017, p 17.
96 Department of State Development, correspondence dated 13 January 2017, p 17.
97 Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 7.
98 Strong and Sustainable Resource Communities Bill 2016, cl 9(4).
99 Department of State Development, public briefing transcript, Brisbane, 30 November 2016, p 2.

The guideline 'contains a range of administrative and procedural changes to resource project consultation, assessment, monitoring, reporting and compliance.'[100]

> *The Coordinator-General's revised draft social impact assessment guideline is specifically referenced in the bill and will now be a mandatory requirement for large resource projects. It includes administrative and procedural changes to resource project assessment, monitoring and reporting processes. The social impact assessment guideline requires that each proponent demonstrate that it has considered workforce recruitment from the local community first and from the regional community or the relocation of workers into the region as a second preference. Areas within Queensland with high unemployment and socioeconomic disadvantage should be considered third followed by other areas within Queensland.*[101]

In preparing the SIA, the owner or proponent must consult with the local government for the area in which the resource project is situated.[102]

The Coordinator-General may, as part of the EIS for a project, state conditions to manage the social impact of the project. Under clause 11 of the bill, the stated conditions are enforceable under section 157A of the SDPWO Act. The Coordinator-General would be responsible for enforcing the conditions.[103] Neither the Land Court nor the Planning and Environment Court has jurisdiction in relation to the stated conditions.[104]

> *The bill will provide the Coordinator-General with a head of power to state approval conditions to manage potential social impacts for resource projects in the environmental impact statement evaluation report under the State Development and Public Works Organisation Act 1971 or the Environmental Protection Act 1994. This will enable a more comprehensive and consistent approach to the management of social impacts of resource projects across regions. The social impact assessment process will also further encourage resource companies to provide local businesses with access to project supply chains and maximise opportunities to build resource communities that attract and retain workers and, most importantly, their families.*[105]

Stakeholder comments and department's response

BMA submitted that the Coordinator-General's power to state conditions to manage the social impacts of a project, alongside other provisions in the bill, 'creates uncertainty and has the potential to significantly delay projects until the social impact has been addressed.' The entity recommended that the bill should include specific limitations on the Coordinator-General's power to state conditions.[106]

Conversely, the LGAQ sought the widening of the requirement to undertake an SIA to more projects, with local governments able to apply to the Minister for a project to undertake an SIA.[107]

The department provided the following information in response to issues raised in submissions about conditions on social impacts:

[100] Department of State Development, public briefing transcript, Brisbane, 30 November 2016, p 2.
[101] Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4261.
[102] Strong and Sustainable Resource Communities Bill 2016, cl 9(5).
[103] Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 10.
[104] Strong and Sustainable Resource Communities Bill 2016, cl 11(4).
[105] Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4261.
[106] BHP Billiton Mitsubishi Alliance, submission 21, p 2.
[107] Local Government Association of Queensland, submission 11, p 2.

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.[108]

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.[109]

The department advised further about the SIA process relating to fatigue management:

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.

…

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.[110]

Committee comment - provisions relating to resource communities

The committee supports the objective of the bill to ensure that residents in the vicinity of large resource projects benefit from the operation of the projects. During our inquiry on this bill and our

[108] Department of State Development, correspondence dated 13 January 2017, pp 12-13.
[109] Department of State Development, correspondence dated 13 January 2017, p 13.
[110] Department of State Development, correspondence dated 13 January 2017, pp 5-6.

earlier inquiry into *fly-in, fly-out and other long distance commuting arrangements in Queensland*, we heard from individuals and organisations who support mining but want mine workers to have the choice of where they live. We recognise that the FIFO lifestyle suits many workers and their families but it does not suit everyone and some people want to live in resource communities near their work. As we heard from witnesses in Middlemount, more people living in a town means more income for the businesses, better services and a greater choice of subjects for students at the schools.

The committee was pleased to hear support expressed for the bill at each of the committee's regional hearings. We recognise, though, that while the bill is supported by the majority of stakeholders, it does not do everything that stakeholders want.[111] Isaac Regional Council, for example, advocated for changes to the bill prohibiting employers from requiring local workers to live in camps.[112] With matters such as these, we encourage the department to take these concerns on board and continue to work with stakeholders to see if there are ways to address them.

The committee also recognise the concerns that mining stakeholders have about the bill but we are of the view that the proposed changes will not have as great an impact on their operations as they envisage.

We consider that the suite of measures in the bill – the prohibition on 100 per cent FIFO for large resource projects, together with the requirement for social impact assessment, the power of the Coordinator-General to state conditions to manage the social impact of large resource projects, the offence of advertising in a way that prohibits residents of nearby communities applying, and the prohibition on discrimination against persons in nearby regional communities - will return more jobs to regional areas. However, we are of the view that the bill can be even better.

Recommendation 2

The committee recommends the definition of 'nearby regional community' in the Strong and sustainable Resource Communities Bill 2016 be amended to omit the '100km radius' and leave to the discretion of the Coordinator-General with the input of local government, unions and other stakeholders.

The committee notes that the Coordinator-General has power to decide that a town within a greater or lesser distance of 100km from the large resource project is a 'nearby regional community' but that, as currently worded, the Coordinator-General is unable to decide that a town with a population of less than 200 people is a 'nearby regional community' even though the explanatory notes indicate that the Coordinator-General may make such a decision. The committee understands that the department is aware of this drafting error. We recommend that the bill be amended to make it clear that the Coordinator-General can decide a regional community that has a population of less than 200 people is a 'nearby regional community'.

[111] See, for example, Lock the Gate Alliance, submission 5; Local Government Association of Queensland, public hearing transcript, Brisbane, 6 February 2017, p 1.

[112] Public hearing transcript, Moranbah, 9 February 2017, pp 2-3.

Recommendation 3

The committee recommends the definition of 'nearby regional community' in the Strong and Sustainable Resource Communities Bill 2016 be amended to make it clear that the Coordinator-General may decide that a town with a population of 200 people or less is a 'nearby regional community'.

The committee recommends that the scope of the bill be extended to cover all resource projects in the vicinity of a nearby regional community, regardless of size or date of commencement.

Recommendation 4

The committee recommends the scope of the Strong and Sustainable Resource Communities Bill 2016 be amended to cover all resource projects in the vicinity of a nearby regional community, regardless of the size of the resource project or the date of its commencement.

The committee recommends that the prohibition in clause 6 of the bill on 100 per cent FIFO workers for large resource projects that have a nearby regional community be amended, with appropriate transitional provisions, to extend its application to:

- all resource projects, regardless of size
- all current resource projects as well as future projects.

Recommendation 5

The committee recommends that the prohibition in clause 6 of the Strong and Sustainable Resource Communities Bill 2016 on 100 per cent fly-in fly-out workers for large resource projects that have a nearby regional community be amended, with appropriate transitional provisions, to extend its operation to:

- all resource projects, regardless of size
- all current resource projects as well as all future resource projects.

The committee recommends that clauses 8 and 19 be amended to apply to all resource projects that have a nearby regional community, regardless of size or date of commencement, not just those large resource projects for which either of the following has happened, after 30 June 2009:

- the Coordinator-General has notified the report evaluating the EIS
- the chief executive has given the report evaluating the EIS.

Recommendation 6

The committee recommends that clauses 8 and 19 of the Strong and Sustainable Resource Communities Bill 2016 be amended to apply to all resource projects that have a nearby regional community, regardless of the size of the resource project or the date of its commencement.

The committee recommends that clause 9(4) of the bill be amended to require the Coordinator-General to make a guideline stating the details that must be included in an SIA. At present, the clause provides that the Coordinator-General *may* make a guideline. We consider it is essential that details be provided about the matters to be included in an SIA.

Recommendation 7

The committee recommends that clause 9(4) of the Strong and Sustainable Resource Communities Bill 2016 be amended to require the Coordinator-General to make a guideline stating the details that must be included in a social impact assessment.

The committee understands the concerns of some submitters regarding the reverse onus of proof, but we are satisfied that the provision is needed to give legislative effect to the committee's bipartisan recommendation regarding 'post code discrimination' in our report on *fly-in, fly-out and other long distance commuting work practices in regional Queensland*; we note that the provisions are similar to those in other federal and Queensland industrial relations legislation, and are necessary to remove discrimination against local residents.

The committee is pleased to note that the Department of State Development and the Department of Justice and Attorney-General have committed to undertaking a post-implementation review of the proposed Act within two years of the bill being enacted.[113]

2.2 Prohibiting underground coal and oil shale gasification

The bill proposes to prohibit *in situ* gasification of coal (underground coal gasification (UCG)) and *in situ* gasification of oil shale.

Underground coal gasification

UCG is a process of converting coal to gases and liquids at the coal seam using controlled partial combustion.[114] It can be used to obtain energy from coal seams 'that are otherwise low grade and/or too deep to economically exploit by more traditional open cut or underground coal mining methods.'[115] The UCG process releases about 90 per cent of the available energy, compared to conventional open-pit technology which releases about 60 per cent.[116]

To undertake UCG, wells are drilled into the coal seam and oxidants (oxygen or air) and steam are injected into the wells to fuel the underground gasification process. Gasification generally occurs at temperatures between 900°C and 1200°C. The resulting gases are brought to the surface via a production well.[117]

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113 Department of State Development, correspondence dated 13 January 2017, p 12.

114 Department of Natural Resources and Mines, 'Underground coal gasification', 10 November 2016. Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, p 4. *In situ* gasification of oil shale uses similar processes to extract the mineral: Strong and Sustainable Resource Communities Bill 2016, explanatory notes, p 2.

115 Queensland Independent Scientific Panel for Underground Coal Gasification (ISP), *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 13.

116 Queensland Independent Scientific Panel for Underground Coal Gasification (ISP), *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 13.

117 Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, p 4; Queensland Independent Scientific Panel for Underground Coal Gasification (ISP), *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 13.

The Syngas that is produced is principally composed of 'carbon dioxide, hydrogen, carbon monoxide, methane, nitrogen, steam and gaseous hydrocarbons.'[118] It can be used for 'fuel for power generation, chemical feedstock, gas to liquids fuel conversion or fertiliser'.[119]

Pilot projects

Three trial UCG projects have been undertaken in Australia, all in Queensland.[120] The project at Hopeland, near Chinchilla, began operating in 1999;[121] the Dalby project commenced operations in 2008;[122] and the Kingaroy project began operating in March 2010.[123]

Linc Energy went into voluntary administration on 15 April 2016.[124] Former executives of Linc Energy face up to five years in prison, and the company faces maximum fines of over $8 million, if they are found guilty of the environmental charges laid against them in relation to the pilot project at Hopeland.[125] The Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, the Hon Steven Miles MP, said that the investigation of Linc Energy 'is the largest and most expensive case ever handled by the … Department of Environment and Heritage Protection.'[126]

In December 2012, the operator of the Dalby project at Bloodwood Creek, Carbon Energy, was fined $60,000 and its executive officer was fined $2,000 for two breaches of a condition of an environmental authority and failing to notify the Department of Environment and Heritage as soon as practicable, following an investigation in 2010.[127] The Dalby project ceased operation in March 2012.[128]

In 2013, Cougar Energy, the operator of the Kingaroy project, pleaded guilty to three breaches of the EP Act relating to the rupture of a production well shortly after the commencement, which resulted in the contamination of groundwater with benzene and toluene. The company was fined $75,000 but no conviction was recorded.[129]

[118] Queensland Independent Scientific Panel for Underground Coal Gasification (ISP), *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 13.

[119] Queensland Independent Scientific Panel for Underground Coal Gasification (ISP), *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 13.

[120] Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, pp 4, 5.

[121] Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, p 5.

[122] Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, p 5.

[123] Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, p 5.

[124] 'Linc Energy goes into voluntary administration', *Courier Mail*, 15 April 2016, online.

[125] Jamie McKinnell, 'Five Linc managers on breach charges', *Courier-Mail*, 15 November 2016.

[126] Minister for State Development and Minister for Natural Resources and Mines, Hon Dr Anthony Lynham, and Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, Hon Steven Miles, 'Underground coal gasification banned in Queensland', media release, 18 April 2016.

[127] Minister for Environment and Heritage Protection, Hon Andrew Powell MP, 'Carbon Energy fined for releasing contaminated water', media release, 6 December 2012.

[128] Queensland Ombudsman, *The underground coal gasification report: an investigation into the approval and oversight of the Kingaroy underground coal gasification project*, September 2012, p 5.

[129] Minister for Environment and Heritage Protection, Hon Andrew Powell MP, 'Cougar Energy fined $75,000 for breaching Environmental Protection Act', media release, 24 September 2013.

Independent Scientific Panel report

In July 2013, the Newman LNP Government released the final report on the underground coal gasification pilot trials prepared by an independent scientific panel (ISP).[130] The ISP report considered the technical and environmental aspects of UCG technology in the trial UCG projects being conducted by Linc Energy and Carbon Energy.

The ISP came to the following overall conclusions:

- *Underground coal gasification could,* in principle*, be conducted in a manner that is acceptable socially and environmentally safe when compared to a wide range of other existing resource-using activities.*
- *The ISP is of the opinion that for commercial UCG operations in Queensland* in practice *first decommissioning must be demonstrated and then acceptable design for commercial operations must be achieved within an integrated risk-based framework.*[131]

Based on these conclusions, the ISP made three overarching recommendations.[132] In summary:

- recommendation 1 - the Queensland Government permit Carbon Energy and Linc Energy to continue their trial, with the aim of determining whether the self-cleaning cavity approach is environmentally safe
- recommendation 2 – a planning and action process be established to demonstrate decommissioning
- recommendation 3 – until successful decommissioning is demonstrated, no commercial facility should be established.[133]

UCG ban

In April 2016, the Queensland Government banned UCG as government policy.[134] Regarding the reason for the legislative prohibition, Hon Dr Lynham MP, Minister for State Development and Minister for Natural Resources and Mines and Hon Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and Great Barrier Reef, stated in a joint press release:

> *The Palaszczuk Government has carefully considered the results of trials at two UCG pilot projects undertaken to establish the commercial and environmental viability of this potential industry …*

[130] The panel comprised:
- Professor Chris Moran, Sustainable Minerals Institute, The University of Queensland
- Professor Joe da Costa, School of Chemical Engineering, the University of Queensland
- Em. Professor Chris Cuff, C&R Consulting, Townsville Queensland.

[131] Queensland Independent Scientific Panel for Underground Coal Gasification, *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 12.

[132] It also made eight specific recommendations.

[133] Queensland Independent Scientific Panel for Underground Coal Gasification, *Independent Scientific Panel report on underground coal gasification pilot trials*, June 2013, p 12.

[134] Hon Dr Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines, and Hon Steven Miles MP, Minister for Environment and Heritage Protection and Minister for National Parks and Great Barrier Reef, 'Underground coal gasification banned in Queensland', media release, 18 April 2016.

> *The Government has concluded that with the potential impacts of UCG activities and the issues associated with the trial projects to date, the risks of allowing UCG projects to grow to commercial scale are not acceptable and outweigh the foreseeable benefits.*
>
> *…*
>
> *The ban will also apply to the in situ underground gasification of oil shale.*[135]

Hon Dr Lynham MP provided further explanation:

> *… In 2009, the Queensland government established a process for three companies to undertake limited UCG trials to establish the commercial and environmental viability of this potential industry. The government was always going to consider whether this technology was appropriate for Queensland after the completion of the trial process.*
>
> *As a part of this process, an independent scientific panel produced a report on the UCG trial. While the panel 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, particularly in relation to potential commercial scale UCG projects. This uncertainty, along with the issues associated with the trial projects to date, has led the government to the decision that the potential issues of allowing projects to grow to commercial scale are simply not acceptable.*[136]

The bill enables the existing UCG projects to 'carry out activities necessary for environmental rehabilitation, and the decommissioning and removal of plant and equipment related to carrying out UCG activities'.[137] The Department of Environment and Heritage Protection will monitor the environmental rehabilitation.[138]

Stakeholder comments and department's response

Lock the Gate expressed its support for the bill's provisions in relation to UCG as follows:

> *We wholeheartedly support the provisions outlined in Part 3 Division 3, in section 29, putting the ban on underground coal gasification into effect and its provision for automatic commencement.*[139]

QRC expressed a contrary view:

> *QRC does not support the explicit ban of UCG in Queensland, an innovative industry where great progress was being made specifically by the company Carbon Energy.*[140]

QRC added:

> *When the Government made the announcement earlier this year, former Australian Chief Scientist, Robin Batterham, publicly condemned the decision and questioned whether it is politics that determines the outcomes of innovation or is a sound base of science and technology a better driver.*[141] *Batterham went on to talk about how one of three trial projects has made huge progress and had met all of the Independent Scientific Panel's*

[135] Hon Dr Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines, 'Parliament considers underground coal gasification ban', 8 November 2016.
[136] Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4261.
[137] Hon Dr Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines, 'Parliament considers underground coal gasification ban', 8 November 2016.
[138] Queensland Parliamentary Debates, Record of Proceedings, 8 November 2016, p 4261.
[139] Lock the Gate, submission 5, p 1.
[140] Queensland Resources Council, submission 4, p 2.
[141] Robin Batterham, '*Ex-Chief Scientist lashes Qld UCG ban'* (16 May 2016), Energy News.

> *recommendations. QRC agrees with Batterham's statements that the Queensland Government, although proud of its innovation agenda on one hand, stifles world leading innovation in the resources sector on another.*[142]

QRC also expressed disappointment that consultation had not been undertaken in regards to the bill's provision relating to UCG. QRC stated that the ban was an 'unexpected announcement of another commodity ban without the release of the triggering evidence can only raise concern for business confidence and investment in this state.'[143]

In response to QRC's position on the banning of UCQ and its concerns about the impact of the ban on innovation in the resources sector, the department advised the following:

- *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.*[144]
- *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.*[145]

Dr Cliff Mallett[146] also expressed support for the UCG industry in his submission and summarised his position by stating that a 'truer representation' of the industry was as follows:

> a. *The independent scientific panel agreed UCG had been carried out acceptably*
> b. *A new requirement for environmental rehabilitation was recommended and the panel concluded its work*
> c. *Successful rehabilitation plans have been demonstrated by at least some participants*
> d. *Commercial scale UCG cannot be verified if it is not permitted to demonstrate the capability, and there is no reason to think the application of proven underground mining methods will not work for large scale UCG*

[142] Queensland Resources Council, submission 4, p 2.

[143] Queensland Resources Council, 'UCG ban rises concern for investment: statement by QRC Acting Chief Executive Greg Lane', https://www.qrc.org.au/media-releases/ucg-ban-raises-concern-investment/.

[144] Department of State Development, correspondence dated 13 January 2017, p 20.

[145] Department of State Development, correspondence dated 13 January 2017, p 20.

[146] Dr Mallett's professional roles have included: Company founder and technical director of Carbon Energy; Director, International UCG Research Centre, China University of Mining and Technology, Xuzhou; Chairman, UCG Association 2013-15, the London based international UCG industry association; CSIRO: 30 years research into mining technology; acting 2004-6 Chief of Division of Exploration and Mining; Executive manager QCAT Pullenvale; Project leader for UCG research 1996-2006.

e. *No significant environmental harm has been shown at two UCG sites and it is premature to judge the outcome of investigations at the third site.*[147]

Dr Mallett concluded:

> *There is no evidence to suggest that a UCG industry would pose environmental risk which could not be managed by existing regulation as applied to industrial and mining projects. However standards and protocols for UCG operation are yet to be developed which could guide specific regulation of a UCG industry in large commercial projects. In the light of the huge potential for a UCG industry, the logical step is not to ban the industry, but to develop the requisite national standards for UCG, and encourage development to prove UCG can deliver the prospective benefits safely. No one wants to see the situation as occurred at Kingaroy in the UCG pilot program, where a proven UCG technology project failed because known procedures to ensure production wells were constructed properly, were not implemented. This can be avoided if comprehensive listing of operational standards for UCG projects is available, and regulated to be adhered to in all projects. Each project would be required to demonstrate that they were operating in a way that guaranteed they would achieve the standard's objectives.*[148]

In response to Dr Mallett's submission, the department reiterated its comments regarding the conduct of trials being on a limited scale to determine if UCG could operate within Queensland's strict environmental guidelines and that the ISP Report on the UCG Pilot Trails, while open to the possibility that the UCG concept was feasible, found insufficient scientific and technical information to reach a final conclusion.[149] The department also provided the following specific responses relating to Dr Mallett's submission:

- *The State made it very clear to the proponents from the outset that these were strictly trial projects, and their outcomes would determine whether they could advance to a commercial scale of operation. The government's intention was always to consider whether this technology was appropriate for Queensland after the completion of this trial process.*
- *…*
- *The panel* [Independent Scientific Panel] *believed that neither company (Linc Energy and Carbon Energy) had completed a burn of sufficient duration to create a final cavity of the dimensions that are expected under a commercial process and that until this is done it is difficult to come to a final conclusion regarding the technology. Given this situation, the panel believed it would be pre-emptive to consider commercial scale operations. However, it did express the view that "the gasifiers currently operating should be permitted to continue until a cavity of significant dimensions is available for full and comprehensive demonstration."*[150]
- *In relation to the trial projects, the Department of Environment and Heritage Protection (DEHP) is currently prosecuting Linc Energy for wilfully and unlawfully causing serious environmental harm. This case is the most expensive ever handled by the State's environmental regulator, with the Minister for Environment and*

147 Cliff Mallett, submission 15, p 14.
148 Cliff Mallett, submission 15, p 14.
149 Department of Natural Resources and Mines, correspondence received 17 February 2017.
150 From Independent Scientific Panel Report on Underground Coal Gasification Pilot Trials available at https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0006/990555/isp-underground-coalgas-pilot-trials.pdf accessed 15 February 2017.

Heritage Protection and Minister for National Parks and the Great Barrier Reef describing it as the "biggest single pollution event in Queensland's history."[151]

- *In 2011, DEHP shut down Cougar Energy after benzene and toluene was detected in nearby water bores. Cougar Energy could not demonstrate to the environmental regulator and the Queensland Government's Independent Scientific Panel that it could recommence its operations without an unacceptable risk of causing environmental harm.*
- *Whilst Carbon Energy received correspondence dated 19 July 2016 from the Queensland Chief Scientist that indicated it had completed the requirements of the Independent Scientific Panel process, it is noted that the project operated on a limited trial scale and significant uncertainty exists about the impacts that may manifest in moving to a commercial scale operation.*
- *The issues associated with two of these three trial projects to date, and the uncertainty about commercial scale operations highlighted by the Independent Scientific Panel, led the Queensland Government to the decision that the potential risks of allowing UCG projects to grow to commercial scale were not acceptable.*[152]

DNRM concluded by stating that the proposed amendments to the *Mineral Resources Act 1989* were in accordance with the government's policy position 'to prohibit mineral (f) activities (including UCG and in situ oil shale gasification) in Queensland.'[153]

Committee comment – prohibition of all mineral (f) activity in Queensland

The committee is satisfied with the department's response to the concerns raised by QRC and Dr Mallett in relation to the banning of UCG in Queensland. The committee supports the proposed amendments to the *Mineral Resources Act 1989* to prohibit mineral (f) activities, including UCG and *in situ* oil shale gasification in Queensland.

[151] From http://www.abc.net.au/news/2016-09-26/linc-energy-gives-queensland-government-millions-ucg/7878428 accessed on 14 February 2017.

[152] Department of Natural Resources and Mines, correspondence received 17 February 2017, pp 1-2.

[153] Department of Natural Resources and Mines, correspondence received 17 February 2017, p 2.

3 Compliance with the *Legislative Standards Act 1992*

Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

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

The committee examined the application of FLPs to the bill.

Potential FLP issues

The committee identified potential breaches of FLPs in clauses 9 and 11.

Administrative power

Clause 11

Section 4(3)(a) of the LSA provides that legislation ensures rights, obligations and liberties of individuals dependent on administrative are sufficiently defined and subject to appropriate review.

Summary of provisions

Clause 11(1) applies to a large resource project for which either of the following happens:

(a) a proponent makes a public notification about the draft EIS for the project under the State Development and Public Works Organisation Act 1971, section 33(1);

(b) a proponent publishes an EIS notice for the project under the Environmental Protection Act 1994, section 51(2)(b).

Pursuant to clause 11(2) the Coordinator-General may, as part of the EIS for the project, state conditions to manage the social impact of the project.

Clause 11(4) provides that neither the Land Court nor the Planning and Environment Court has jurisdiction in relation to conditions stated under subsection (2).

Potential FLP issues

Clause 11(2) extends the Coordinator-General's power to state approval conditions for a resource project pursuant to an EIS under the EP Act. Currently, the Coordinator-General is only able to state conditions under an EIS for a project under the SDPWO Act.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined. The *OQPC Notebook* states, 'Depending on the seriousness of a decision made in the exercise of administrative power and the consequences that follow, it is generally inappropriate to provide for administrative decision-making in legislation without providing criteria for making the decision'.[154]

It may be argued that the broad power afforded to the Coordinator-General potentially breaches section 4(3)(a) of the LSA which provides that legislation has sufficient regard to the rights and liberties of individuals if it is sufficiently defined and subject to appropriate review.

[154] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15.

The OQPC Notebook provides that the appropriateness of a limitation on delegation depends on all the circumstances including the nature of the power, its consequences and whether its use appears to require particular expertise or experience.[155]

The former Scrutiny of Legislation Committee (SLC) took issue with provisions that did not sufficiently express the matters to which a decision-maker must have regard in exercising a statutory administrative power.[156]

In their submission to the committee, the QLS expressed concern in relation to the power afforded to the Coordinator-General under clause 11 and in particular the lack of guidelines in relation to the power to be exercised. The QLS submitted:

> *This conditioning power is not subject to any specific limitation and the Society is of the view that a power which is not constrained by guideline will be too broad and impossible for Government and industry alike to appropriately manage and comply with. The Society also notes that the existing powers of the Coordinator-General in administering the State Development and Public Works Organisation Act 1971 are wide-ranging, and relate to the planning, delivery and coordination of large-scale infrastructure projects. Section 11(4) of the SSRC Bill also appears to remove the ordinary appeals process.*
>
> *The objects of the SSRC do not provide any guidance on this issue given that they do not only relate to encouraging employment of people from nearby regional communities, rather ensuring that residents "benefit from the operation of the projects".*
>
> *This framework is uncertain and has the potential to significantly impact investment opportunities for the State. If the broad Coordinator-General power is to remain, the Society suggests that Government and industry will benefit from further conversation to gain clarity for stakeholders, and potentially also preparing a statutory guideline.*[157]

The committee notes that pursuant to clause 11(4) the Planning and Environment Court and the Land Court do not have jurisdiction in relation to the conditions stated by the Coordinator-General under clause 11(2). The QLS have queried whether clause 11(4) removes ordinary appeal rights in relation to a decision by the Coordinator-General under section 11(2).

The committee notes that the explanatory notes advise the following with regard to clause 11:

> *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*

[155] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 33.

[156] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 15; citing Scrutiny Committee Annual Report 1998-1999, para 3.10.

[157] Queensland Law Society, Submission No.16, p 2.

under this Act for projects in the same way that this process is currently administered for other conditions under the SDPWO Act.[158]

The committee sought advice from the department regarding the extension of power afforded to the Coordinator-General pursuant to clause 11 and the concerns raised by the QLS in relation to clause 11(4). The department provided the following advice in regard to the Coordinator-General's power to state conditions:

Clause 11 of the SSRC Bill provides that the Coordinator-General may, as part of the EIS for the project, state conditions to manage the social impact of the project.

The Coordinator-General's existing powers under the State Development and Public Works Organisation Act 1971 *(SDPWO Act) allow him to state conditions to manage the social impacts of a project. In accordance with section 54B of the SDPWO Act, the Coordinator-General may impose conditions on declared 'coordinated projects' (previously 'significant projects'). This power has been used by the Coordinator-General since 2009 to address potential social impacts of resource projects*.

Since 2010, the Coordinator-General has provided advice to the Department of Environment and Heritage Protection and project proponents on social impact assessments (SIAs) prepared as part of the environmental impact statement (EIS) process under the Environmental Protection Act 1994 *(EP Act). However, no conditions have been stated on social impact matters for projects assessed under the EP Act. Therefore, under current circumstances, two mining projects with similar social impacts could be regulated differently under the SDPWO and EP Acts. Section 11 of the SSRC Bill unifies the SIA process and the regulation of potential social impacts under both Acts.*

Clause 11 of the Bill responds to the Infrastructure Planning and Natural Resources Committee Recommendation 1 that the SIA process for major projects be prescribed by legislation and Recommendation 1 of the Government's FIFO review panel that legislation be enacted to extend the SIA processes and social impact regulation under the SDPWO Act to resource activities assessed under the EP Act.

Consequently, the SSRC Bill creates an integrated and consistent approach to the management of social impacts of resource projects, without significant changes to the SDPWO and EP Acts.

Clause 9 of the SSRC Bill specifies the required elements of the SIA, enables the Coordinator-General to make a Guideline stating the details that must be included in the SIA. The draft SIA Guideline tabled with the introduction of the Bill to Parliament has been subject to wide consultation since May 2016. The Guideline clearly describes the requirements of SIA and the framework within which the Coordinator-General may state conditions and subsequently ensure compliance. The Guideline includes most elements of SIA used in previous non-statutory Coordinator-General's SIA Guidelines.[159]

The department also provided advice regarding clause 11(4) which provides that neither the Land Court nor the Planning and Environment Court has jurisdiction in relation to conditions stated under subsection (2):

Clause 11.4 of the SSRC Bill states that neither the Land Court nor the Planning and Environment (P&E) Court has jurisdiction in relation to stated social conditions. Social conditions imposed by the Coordinator-General are currently not subject to the jurisdiction of the Land Court or P&E Court. The SSRC Bill does not constrain appeal rights because these

[158] Explanatory notes, p 10.

[159] Department of State Development, Office of the Coordinator-General, correspondence dated 14 February 2017.

> *rights are not currently available for conditions on social impacts imposed by the Coordinator-General under the SDPWO Act. Therefore, the SSRC Bill merely maintains the status quo in relation to appeals.*[160]

Committee comment

The committee is satisfied that the department has justified the bill's proposed amendments to the Coordinator-General's power to state conditions under the EP Act. The committee is also satisfied that the bill does not propose any new amendments to the status of appeals in the Land or Planning and Environment Courts.

Onus of proof

Clause 19

Section 4(3)(d) of the LSA provides that sufficient regard be given to ensure that the onus of proof is not reversed in criminal proceedings without adequate justification.

Summary of provisions

Clause 19 inserts new section 131F - *Reason for action to be presumed unless proved otherwise*.

Section 131F(1) provides that the section applies if a complaint about discrimination under the chapter alleges that:

> *(a) the complainant was not offered work during recruitment for a large resource project because the complainant was a resident of a nearby regional community for the project; or*
>
> *(b) the complainant's employment on a large resource project was terminated because the complainant was, or became, a resident of a nearby regional community for the project and chose to travel to the project other than as a fly-in-fly-out worker.*

Pursuant to section 131F(2), it is presumed the action mentioned in subsection (1)(a) or (b) was taken for the alleged reason, unless the respondent proves otherwise.

It is usually the case that the evidentiary onus is on the complainant to prove an alleged offence. Section 131F(2) reverses the onus of proof by providing that a section 131F(a) or (b) is taken to have occurred, unless the respondent proves otherwise. It may be the case that a respondent will have to expend considerable resources to verify a claim made by a complainant.

The effect of the provision is a breach of section 4(3)(d) of the LSA which provides that legislation should not reverse the onus of proof in criminal proceedings without adequate justification.

Legislation should not provide that it is the responsibility of an alleged offender in court proceedings to prove their innocence. 'For a reversal to be justified, the relevant fact must be something inherently impractical to test by alternative evidential means and the defendant would be particularly well positioned to disprove guilt'.[161] Generally, the former SLC opposed the reversal of the onus of proof.[162]

The committee notes that the explanatory notes address the reversal of the onus of proof as follows:

> *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*

[160] Department of State Development, Office of the Coordinator-General, correspondence dated 14 February 2017.
[161] Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 36.
[162] Alert Digest 2002/4, p 27, para 10.

> *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).*[163]

The committee notes that the explanatory notes refer to the *Fair Work Act 2009* (Cth) to justify the clause. Pursuant to section 361 (Reason for action to be presumed unless proved otherwise) of the *Fair Work Act 2009* (Cth), the burden of proof is placed on the employer in relation to action taken against an employee.

The committee sought the department's further comment on its justification, as required by section 4(3)(d) of the LSA, for the reversal of the onus of proof as contained in section 131F.

The department provided the following response:

> *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.*
>
> *The reversal is justifiable as a job applicant cannot be in a position to discover the intent of the potential 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 Commonwealth* Fair Work Act 2009 *(FW Act).*
>
> *The reverse onus of proof provisions in the SSRC Bill are modelled closely on similar recent amendments to the* Industrial Relations Act 1999 *(IR Act) which were assented by the Queensland Parliament on 9 December 2016. Those IR Act provisions were, in turn, largely modelled on the FW Act provisions.*
>
> *The Department refers the Committee to the High Court decision in Board of Bendigo Regional Institute of Technical and Further Education v Barclay [2012] HCA 32, which is the authority on how the reverse onus is discharged under the FW Act. That decision shows the onus is not unduly onerous for an employer to discharge. The decision indicates that direct testimony by the decision maker of the reasons for taking the action, which is accepted as reliable, is sufficient to discharge the burden (if there is no contradictory evidence or proven objective facts for treating the decision maker's evidence as unreliable).*[164]

Committee comment

The committee is satisfied with the department's justification for the reversal of the onus of proof as contained in section 131F.

Clause 19

Section 4(3)(g) of the LSA provides that sufficient regard be given to ensure that the rights, obligations and liberties of individuals not be adversely affected retrospectively.

Summary of provisions

The committee notes that new section 131C applies retrospectively and creates an obligation on owners and/or principal contractors of resource projects approved after 30 June 2009 not to discriminate against residents of regional communities when recruiting workers for a project. This has

[163] Explanatory notes, p 5.

[164] Department of State Development, Office of the Coordinator-General, correspondence dated 14 February 2017.

the potential to affect mining projects where approval has previously been given for the operation of 100 per cent FIFO workers.

The retrospective application of section 131C potentially breaches section 4(3)(g) of the LSA which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

QLS expressed concern about the provision in their submission:

> *The proposed retrospective application of the SSRC Bill undermines the investment made on the basis of existing approvals granted after 30 June 2009 and introduced uncertainty which the Society submits is not justified (for example: the Caval Ridge and Daunia mines and associated infrastructure developed and operated by the BHP Billiton Mitsubishi Alliance).*
>
> *Retrospective laws imposing obligations and creating offences (particularly when these are also on a strict liability basis) make the law less reliable and less certain and increase investment risk.*[165]

The explanatory notes comment on the section as follows:

> *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 (social impact assessment) 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.*[166]

The explanatory notes also address the issue of joint and several liability:

> *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.*[167]

The QLS have expressed concern that the concept of joint and several liability is to be imposed by legislation in relation to discrimination offences as provided by section 131C(6).[168]

In regard to retrospectivity, the department provided the following response to the FLP concerns raised in relation to this clause:

> *The SSRC Bill does not apply to conduct before the legislation commences.*
>
> *The provisions are not retrospective in nature. The effect of the words 'after the commencement' means that the obligations on the project owner only apply after its commencement as law. Only after the commencement of those provisions must the owner*

[165] Queensland Law Society, Submission no.16, p 1-2.
[166] Explanatory notes, Strong and Sustainable Resource Communities Bill 2016, p 13.
[167] Explanatory notes, Strong and Sustainable Resource Communities Bill 2016, p.5.
[168] Queensland Law Society, Submission no.16, p.2.

> *not discriminate against the residents of a nearby regional community when recruiting workers for the project. Also, the obligation on the owner to not terminate the employment of an existing FIFO worker only applies after the commencement of the provisions*.[169]

The department also responded to issues raised regarding industry impacts:

> *The provisions apply only to new recruitment. The new section 131C does not prevent resource companies or their agents from engaging a new worker in accordance with any selection criteria it chooses, provided that those criteria are not discriminatory (e.g. because job applicants are resident of a nearby regional community). All laws have the effect of modifying behaviour. That is the purpose of legislation.*[170]

Committee comment

The committee notes the department's view that the provisions are not 'retrospective in nature' and that the provisions will only apply to new recruitment. The committee is satisfied with the department's responses regarding the retrospective operation of new section 131C.

Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

[169] Department of State Development, Office of the Coordinator-General, correspondence dated 14 February 2017.
[170] Department of State Development, Office of the Coordinator-General, correspondence dated 14 February 2017.

Appendices

Appendix A – Submitters

Sub #	Name
1	Trent Deverll
2	Isaac Regional Council
3	Sweetapple Company Pty Ltd
4	Queensland Resources Council
5	Lock the Gate Alliance
6	Anti-Discrimination Commission Queensland
7	Australia Manufacturing Workers Union
8	Maranoa Regional Council
9	Australian Mines & Metals Association
10	Mackay Regional Council
11	Local Government Association of Queensland
12	Electrical Trades Union
13	Cloncurry Shire Council
14	United Fire Fighters Union Queensland
15	Carbon Energy
16	Queensland Law Society
17	Queensland Council of Unions
18	The Australian Workers' Union
19	CFMEU - Mining and Energy Division
20	Central Highlands Regional Council
21	BHP Billiton Mitsubishi Alliance
22	FACE Network
23	Recruitment and Consulting Services Association

Appendix B – Witnesses at the public briefing

Brisbane – 30 November 2016

Department of Natural Resources and Mines

- Mr Lyall Hinrichsen, Executive Director, Land and Mines Policy
- Mr Marcus Rees, Director, Land and Mines Policy
- Ms Anita Bellamy-McCourt, Land and Mines Policy

Department of State Development and Office of the Coordinator-General

- Mr Barry Broe, Coordinator-General
- Mr Matthew Grant, Director, Office of the Coordinator-General

Appendix C – Witnesses at the public hearings

Brisbane – 6 February 2017

- Ms Kirsten Pietzner, Principal Adviser, Resources and Regional Development, Local Government Association of Queensland
- Ms Simone Talbot, Manager, Advocate, Infrastructure Economics and Regional Development, Local Government Association of Queensland
- Mr Mitch Hughes, Senior Vice President, Construction, Forestry, Mining and Energy Union
- Mr Chris Newman, Legal Officer, Construction, Forestry, Mining and Energy Union
- Dr John Martin, Research and Policy Officer, Queensland Council of Unions
- Mr Lance McCallum, Mr Lance, National Policy Officer, Electrical Trades Union
- Mr Peter Ong, Acting Secretary, Electrical Trades Union, Queensland and Northern Territory
- Mrs Judy Bertram, Deputy Chief Executive, Director, Community and Safety, Queensland Resources Council
- Mr Ian Macfarlane, Chief Executive, Queensland Resources Council
- Ms Katie-Ann Mulder, Director, Resources Policy, Queensland Resources Council
- Mr Kevin Cocks, Anti-Discrimination Commissioner, Anti-Discrimination Commission Queensland.
- Ms Julie Ball, Principal Lawyer, Anti-Discrimination Commission Queensland
- Mr Martin Klapper, Chair, Mining and Resources Law Committee, Queensland Law Society
- Ms Christine Smyth, President, Queensland Law Society
- Mr Barry Broe, Coordinator-General, Office of the Coordinator-General, Department of State Development
- Mr Lyall Hinrichsen, Executive Director, Land and Mines Policy, Department of Natural Resources and Mines
- Mr Marcus Rees, Director, Land and Mines Policy, Department of Natural Resources and Mines

Emerald – 8 February 2017

- Ms Lisa Caffery, Director, Central Highlands (Qld) Housing Company
- Mr Michael Parker, Acting Chief Executive Officer, Central Highlands Regional Council
- Mr Chris Brodsky, Representative, Mining and Energy Division, CFMEU
- Mr Victor Cominos, President, Emerald Chamber of Commerce
- Ms Mary Herwin, Private capacity

Middlemount – 9 February 2017

- Ms Christine Glasson, Private capacity
- Ms Carole Gray, Private capacity
- Mr Alex Korol, Private capacity
- Ms Shelley Korol, Private capacity
- Mr John Lui, Private capacity

Moranbah – 9 February 2017

- Councillor Ann Baker, Mayor, Isaac Regional Council
- Councillor Gina Lacey, Division 3, Isaac Regional Council
- Mr Gary Stevenson, Chief Executive Officer, Isaac Regional Council
- Councillor Kelly Vea Vea, Division 5, Isaac Regional Council
- Mr Ken Ingrey, Private capacity
- Ms Kim Sinclair, Private capacity

Mackay – 10 February 2017

- Mr Gerard Carlyon, Director, Development Services, Mackay Regional Council
- Mr Philip Grobler, Principal Planner, Strategic Planning, Mackay Regional Council
- Mr Graham Sauney, Private capacity
- Mr Stephen Lowrie, Private capacity

Rockhampton – 10 February 2017

- Mr Neville Ferrier, Mayor, Banana Shire Council
- Mr Raymond Geraghty, Chief Executive Officer, Banana Shire Council
- Mr Rick Palmer, Manager, Economic Development, Rockhampton Regional Council

Mount Isa – 22 February 2017

- Cr Joyce McCulloch Mayor McCulloch, Her Worship The Mayor of Mount Isa
- Mr Michael Kitzelmann, Chief Executive Officer
- Cr George Fortune
- Mr Ben Milligan, Chief Executive Officer
- Mr Dane Swalling, Deputy Mayor
- Mr Glen Graham, Chief Executive Officer, Mount Isa to Townsville Economic Zone
- Mr Brett Moore, Operations Manager, Hardrok Engineering
- Ms Kristy Moore, Administration, Hardrok Engineering
- Mr Danny Ballard, Private capacity
- Mr Craig Scriven, Private capacity
- Mr Glen Ashmore, Leichhardt Accommodation
- Ms Sabina Knight, Rural & Remote Health
- Ms Virginia Mayo, Kalkadoon People
- Mr Frank King, Private capacit

Statement of Reservation

Ann Leahy MP
Member for Warrego

Mary Westcott
Acting Research Director
Infrastructure, Planning and Natural Resources Committee
Parliament House
George Street
BRISBANE Q 4000

03 March 2017

Dear Ms Westcott

The LNP Members of the Infrastructure Planning and Natural Resources Committee wish to make the following Statement of Reservations and concerns regarding the Strong and Sustainable Resources Communities Bill 2016.

The LNP Members recognise that the SSRC legislation has significant issues despite taking the Palaszczuk Government nearly 2 years to development. The volume and consistency of stakeholder criticism of the proposed SSRC legislation is highly unusual and shows the inexperience of the Palaszczuk Government.

Nevertheless, the LNP recognises that resource communities and local governments who have been impacted by significant impacts of resources projects need a stronger social impact assessment framework to manage the impacts resources projects and ensure Queensland has strong vibrant communities that are attractive for resources workers and their families to live, work and play.

The LNP does not support 100% FIFO resource projects. This has been a consistent and longstanding policy of the LNP. The LNP are putting regional Queenslanders first and want to see opportunities be provided to locals.

The Committee was advised of mines Daunia and Caval Ridge that were approved by the Bligh State Government as 100 per cent FIFO.

1 Sovereign Risk concerns

The Committee heard concerns from the Resources Council in relation to how the legislation will increase the sovereign risk for companies in Queensland.

Mr Macfarlane: The reality is that, if a company sits down with the sovereign government of a state, signs an agreement and that agreement at some point down the track is broken, that signals to investors more so than the company—but certainly to the company as well—that there is a sovereign risk issue here in Queensland that did not exist five years ago.

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The LNP understands that retrospectivity changes can increase sovereign risk however, the approval of 100 per cent FIFO mines by the Bligh Government was out of step with community expectations and disadvantages regional Queenslanders.

2 Reverse onus of proof and retrospectivity

The Committee heard from a number of submitters, concerns in relation to the provisions in the bill that reverse the onus of proof and retrospectivity and discrimination.

Ms Smyth: These three issues are: one, the retrospective application of the legislation which is in section A of our submission; two, the residence as a ground of discrimination, which is issue B of the submission; and three, the reversal of the onus of proof in issue C of the submission.
Mr Klapper: Reversal of onus of proof by itself is a pretty serious step. Creating a new ground of discrimination that has nothing to do with, say, the International Labour Organization's convention on trade union membership, other international conventions or giving effect to them on discrimination based on matters such as age and so on to create a new ground of discrimination for the purpose of seeking a legislative outcome of a specific kind does not sit well in terms of the legislative process from a pure legal perspective.
Retrospectivity can be put in the same category. You have three issues here which, from a purely theoretical legal perspective, are combined to achieve the result. If you are asking me, and I think you are, can that result be achieved in another way, yes, may be.

Under Questioning from LNP Members the Coordinator-General advised how many projects were affected by the retrospective provisions of the legislation.

Ms LEAHY: How many other projects are there that have had an EIS approved since 2009?
Mr Broe: There are about 40.
Ms LEAHY: About 40 projects?
Mr Broe: Yes. There are about 15 coordinator projects and about 30 in EHP.

Mayor Joyce McCulloch of the Mount Isa City Council also raised concerns about the reverse onus of proof.

Additionally, the governing legislation has proposed a reverse onus of proof which means the mining companies are considered guilty until they prove they are innocent of breaching legislation more specifically around the employment recruitment process of employing local residents versus FIFO employees. That is quite a severe change in the legislation and goes against the basic principles of the judicial system in Australia where you are innocent until proven guilty. This must be adequately addressed to ensure the rights and liberties of those concerned.

3 100% FIFO definition

Local Governments raised the manner in which the definition is written for 100% FIFO. The definition is written in the negative and is open to abuse.

The LGAQ and the Mount Isa City Council both commented on the negativity of the definition of the 100% FIFO prohibition.

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Ms Pietzner stated: the bill is really written as 'there is a prohibition on 100 per cent FIFO'. It is written in the negative, I guess: 'This is something you are prohibited from doing.' It is not written in the positive: 'This what you need to do in order to meet that prohibition.'
We think it would be better if the bill was worded to say that the Coordinator-General must impose conditions on what a company needs to do to employ people from regional areas and if a company meets those conditions then they have met the prohibition on 100 per cent FIFO. Then it is very clear what a company has to do in order to meet that prohibition. At the moment, the way that it is drafted, we think it is left open to 'you could employ two people and you have met the prohibition on 100 per cent FIFO'.

The LNP Committee members believe this is a far better way to achieve the objective which the bill seeks to undertake.

4 Local Government consultation

Many communities often feel the negative impact of large scale FIFO. This includes issues surrounding stress on community services and escalated infrastructure maintenance, contributions to the local economy, housing availability and affordability, lifestyle and safety issues and FIFO worker and family impacts.

The LGAQ advised more needs to be done to achieve a genuine partnership with local government, including requiring better consultation with local government than that currently provided for in the bill. Resource projects make substantial demands on council assets and services as well as significantly affecting land use in and around towns.

Councillor Dane Swalling, Deputy Mayor, Cloncurry Shire Council outlined to the Committee these *three benefits—jobs, infrastructure and business opportunity—will only be obtainable by genuine collaboration between the mining company and local government with the outcomes enforceable by the state. A suitably structured and enforceable social impact assessment process can deliver these outcomes.*

Disappointingly the Cloncurry Shire Council had never met the Coordinator General or observed the monitoring role the position is to undertake – they advised *"We do not have any evidence of that."*

5 Social Impact Assessment

Under the LGAQ's approach, both current and future projects would be required to have a social impact management plan that is regularly updated to take account of the actual impacts of a project over the life of that project. To achieve this objective, the LGAQ calls on the state government to work with local government, the resources sector and stakeholders to develop a transition plan that ensures that all resource projects have a social impact management plan in place by 31 December 2020.

Ms Talbot: We need to take the opportunity presented by this bill to put adaptive management of social impacts at the heart of resources policy and legislation.
The failure of the current social impact management process becomes even more evident when you consider the cumulative effects of several projects operating in the same region at the same time. While it is mandatory for resource projects to have an environmental authority that sets out

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requirements for managing project impacts on the environment, there is no equivalent requirement to manage project impacts on residents and communities.

This is an interesting suggestion from the LGAQ, however it needs to be balanced with the advice from the Resources Council.

Mr Macfarlane: You would be hard pressed to find another industry in Queensland or Australia more regulated than the resources sector. There is no question that regulation has its place to protect the environment and to assess the social and economic impacts on local communities, but this bill goes one step further and prescribes workforce arrangements that would limit the flexibility necessary to respond to the cyclical nature of business and in particular the commodity market and its fluctuations.

6 Operational and construction phases of projects

When asked - do you think that there is a need for the bill, as some of the submitters have said, to apply during the construction phase and not just during the operational phase?

Mr Kitzelmann: It is critical that it continues, that the bill is applicable from the beginning to the end of life of operations. The construction phase is going to give a much wider spread across all of the different service providers in a community than it may be for operating underground, for example. It is going to provide a much more equal diversification of the workforce into the local community if it goes from the beginning to the end of a mine.

Mr Milligan: it is not just about the mines; there are all those supporting businesses, whether it is logistics or some those specialist mining-type contractors that also could quite potentially be based locally, rather than FIFO. I think what Greg is getting to is that those sorts of impact assessments need to consider some of the other supporting-type industries, people or businesses to make sure it is not just about the mine; it is about the mine and everything else that supports that operation.

There was suggestion that the Social Impact Assessment process should become involved in procurement from local businesses and supporting businesses and contractors.

7 Ban on Underground Coal Gasification

The LNP Members of the Committee wish to make it clear they fully support the ban on Underground Coal Gasification.

The LNP Members wish to thank the Committee for the opportunity to raise these concerns.

Yours faithfully

Ann Leahy MP
Member for Warrego

Tony Perrett MP
Member for Gympie

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