

Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Scott Stewart, Minister for Resources make this statement of compatibility with respect to the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022.

In my opinion, the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 (the Bill) primarily implements two Queensland Government priorities:

1. Safety and health – to provide for exceptions to direct employment requirements for coal mining statutory positions; and
2. Resources – to enable implementation of a key action in the draft Queensland Resources Industry Development Plan (QRIDP), as well as several housekeeping amendments to a number of Acts in the Resources portfolio to address operational issues and correct clerical errors.

The key safety and health and resources changes in the Bill are as follows:

Safety and health

The amendments in the Bill provide some exceptions to direct employment requirements under the *Coal Mining Safety and Health Act 1999* (the CMSH Act)—which provides the legislative framework for worker safety and health in Queensland coal mines— for coal mining statutory positions which come into effect on 25 November 2022, when the transitional period ends.

On 25 May 2020, the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* (the MEROLA Act) amended the CMSH Act to require that a person must be an employee of the operator of a coal mine to be appointed to a safety critical statutory position at the coal mine (the direct employment requirements). The changes included in the Bill are needed to ensure coal mining industry companies have practical ways of implementing the new requirements that do not unreasonably disrupt their current corporate structures and employment arrangements.

The Bill amends the CMSH Act to:

- Allow the site senior executive (SSE), underground mine manager (UMM) and ventilation officer (VO) statutory positions to be employed by an associated entity of

a coal mine operator. A definition of ‘associated entity’ would be included in the CMSH Act.

- Provide that the direct employment requirements do not apply in circumstances where there is a temporary absence or vacancy in the relevant statutory role of not more than 12 weeks cumulative duration (i.e., a temporary absence or vacancy cannot comprise multiple 12-week periods).
- Remove the requirement on a company to directly employ an SSE where the only activities of the company or an associated entity are exploration activities.
- Provide an exception to the direct employment requirements which would allow a person to be appointed to a statutory position by a contractor company if the contractor company employs at least 80 per cent of coal mine workers at an entire coal mine.

Resources

The Bill also includes several amendments to other legislation within the Resources portfolio as follows:

- Amend the *Mineral Resources Act 1989* to implement a framework to defer rent for specific new economy minerals mining leases.
- Amend the compliance provisions to remove the requirement for resource authority holder agreement to a monetary penalty for non-compliance under the *Geothermal Energy Act 2010* (GE Act), the *Greenhouse Gas Storage Act 2009* (GHG Act) and the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).
- Minor amendments to reflect the consequential renumbering of provisions in the GE Act and the GHG Act and to correct a provision heading and an error in the *Mineral and Energy Resources (Common Provisions) Act 2014*.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)

The proposed amendments in the Bill could be considered to engage the right to life (section 16) and freedom of expression (section 21) provided for under the *Human Rights Act 2019*.

The clauses of the Bill that are relevant to these rights are:

- Clauses 4 to 13, which amend the direct employment requirements for statutory office holders under the CMSH Act to ensure coal mining industry companies have practical ways of implementing the new requirements which come into full effect on 25 November 2022. The direct employment requirements provide a framework to support holders of statutory roles so can make safety complaints, raise safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.
- Clauses 15 to 19, 29 and 30 of the Bill, which relate to the removal of the requirement for a non-compliant resource authority holder to agree to the imposition of a monetary penalty instead of the taking of any other type of noncompliance action may potentially be relevant to the freedom of expression right.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Safety and health – Amendments to the CMSH Act

The provisions in the Bill for requirements for statutory office holders, potentially engage the right to life.

(a) The nature of the right

Everyone has the right to life and has the right not to be arbitrarily deprived of life (section 16). The right imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life, including, for example effective criminal law and law enforcement provisions. This protective obligation extends to requiring authorities to put in place measures that would protect an individual whose life is being put at risk by another's criminal activity. The amendments in the Bill relating to direct employment requirements promote the right to life protected by the *Human Rights Act 2019* and do not limit any rights.

The Bill promotes the right to life by ensuring that coal mining industry companies have practical ways of implementing the direct employments requirements and that holders of statutory roles can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

(c) The relationship between the limitation and its purpose

The amendments in the Bill promote the right to life, they do not limit it.

(d) Whether there are less restrictive and reasonably available ways to achieve the purpose

Not applicable.

(e) The balance between the importance of the purpose and the importance of preserving the human right

Not applicable.

(f) Any other relevant factors

Nil.

Resources – Amendments to the P&G Act, GE Act and the GHG Act

Clauses 15 to 19, 29 and 30 of the Bill which relates to the removal of the requirement for a non-compliant resource authority holder to agree to the imposition of a monetary penalty instead of the taking of any other type of noncompliance action may potentially be relevant to the freedom of expression right.

(a) The nature of the right

Section 21 of the *Human Rights Act 2019* provides that a person has the right to hold an opinion without interference and seek, receive, and express information and ideas.

The Bill proposes to amend the P&G Act, the GE Act, and the GHG Act to remove the requirement for a non-compliant resource authority holder to agree to a monetary penalty instead of the taking of any other noncompliance action.

(b) The nature of the purpose of the limitation

These amendments may be viewed as engaging the freedom of expression right by removing the ability of persons (including companies) to express themselves.

(c) The relationship between the limitation and its purpose

The P&G Act, the GE Act, and the GHG Act contain procedural fairness provisions for taking noncompliance action and rights of appeal against a Ministerial decision regarding noncompliance. These provisions give adequate protection for the rights and liberties of individuals. As such, the amendments do not limit freedom of expression.

(d) Whether there are less restrictive and reasonably available ways to achieve the purpose

There are no less restrictive and reasonable ways available to achieve the purpose.

(e) The balance between the importance of the purpose and the importance of preserving the human right

The procedural fairness provisions for taking noncompliance action and rights of appeal against a Ministerial decision regarding noncompliance give adequate protection for the rights and liberties of individuals

(f) Any other relevant factors

There are no other relevant factors.

Conclusion

In my opinion, the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

The Honourable Scott Stewart
MINISTER FOR RESOURCES