

Resources Safety and Health Legislation Amendment Bill 2024

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* (HR Act), I, Scott Stewart MP, Minister for Resources and Critical Minerals make this statement of compatibility with respect to the Resources Safety and Health Legislation Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill amends the *Resources Safety and Health Queensland Act 2020* and the following legislation known as the ‘Resources Safety Acts’:

- the *Coal Mining Safety and Health Act 1999* (CMSHA);
- the *Explosives Act 1999* (Explosives Act);
- the *Mining and Quarrying Safety and Health Act 1999* (MQSHA); and
- the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

Amendments under this category are proposed to facilitate the growth in HRO behaviours within the resources sector. HRO behaviours focus on identifying incidents that are precursors to serious accidents and fatalities and then using this information to identify and act on existing hazards to remove them. To achieve this the legislation will amend the Resources Safety Acts to:

- Ensure critical controls are incorporated into safety and health management systems required under the CMSHA for coal mines and the MQSHA for mineral mines and quarries.
- Include additional competency requirements under the CMSHA for key safety critical roles for coal mines and for those left in charge during absences of these roles.
- Support the existing framework for continuing professional development (CPD) under the CMSHA and MQSHA, by introducing compliance and enforcement provisions.
- Improve data and incident reporting and information sharing by amending the Resources Safety Acts, including the removal of lost time injuries as a safety indicator, providing for an extension for up to 12 months for a report in relation to an incident to be provided, increased penalties for failure to report and supporting the transition to a new web-based incident reporting system.

2. Modern regulatory enforcement

Amendments under this category will modernise existing regulatory enforcement powers under the Resources Safety Acts by:

- Introducing enforceable undertakings to allow the regulator to enter into binding agreements in situations where specific improvements to safety and health management are required. This will align with similar enforceable undertaking provisions in the *Work Health and Safety Act 2011* (WHS Act).
- Broadening court order provisions to enable sentencing to be tailored to the situation, achieving a better balance between increasing compliance, improving safety outcomes and deterrence. The broadened court orders proposed will align with those available under the WHS Act.
- Refining and improving directive powers across the Resources Safety Acts.

3. Contemporary legislation

The proposed amendments under this category will:

- Clarify provisions regarding labour hire agencies, contractors and service providers and their safety and health obligations under the CMSHA and MQSHA.
- Refine the industrial manslaughter provisions to ensure they apply to whomever employs/engages or arranges for a worker to perform work and whose negligent conduct caused the death of a worker (and a senior officer of such an entity).
- Clarify that obligations to manage risks extend to off-site remote operating centres for mines by amending the CMSHA and MQSHA to ensure the site's safety and health management systems address risks from remote operating centres and remote operation of plant and equipment; and establish clear obligations and requirements applying to persons at these centres who give information on which site-based operational decisions are made.
- Require site senior executives to be located at or near the mine site.
- Amend provisions relating to the Board of Examiners to ensure these are contemporary and align with the government's approach to boards, including providing for the appointment of an independent chairperson and a board member with demonstrated expertise in the assessment of competence, and enabling the Minister's control and direction of the board for appropriate matters.

4. Consistency of Resources Safety Acts

The proposed amendments under this category will:

- Align the court jurisdiction for prosecutions. Proceedings would be heard under the Magistrates Court system ensuring the appeal rights under that court apply.
- Allow for consistent timeframes for the commencement of prosecutions, namely that they can be commenced within two years after the offence comes to the notice of the complainant (that is, the WHS prosecutor).
- Enhance protection from reprisals by prescribing appropriate and consistent penalties for reprisal offences under the Explosives Act and P&G Act to align with the CMSHA and MQSHA, as well as providing a clear definition of 'detriment' across the Acts.

- Ensure consistent board of inquiry offence provisions that are compatible with human rights, and that the associated penalties are commensurate with the level of seriousness of the offence.
- Ensure that the penalties for obstruction of inspectors, officers or representatives are consistent by aligning the other Resources Safety Acts with penalties under the P&G Act.
- Provide consistent penalties in the MQSHA for failing to provide help to site safety and health representatives and committees, aligning with a comparable penalty under this Act for failing to establish a site safety and health committee when requested.

5. Operational and minor amendments

The proposed amendments under this category will:

- Improve the explosives security clearance regime under the Explosives Act including by removing duplicate requirements across comparable regimes that also impose security screening standards (for example, employees of licensed weapons dealers).
- Address ambiguity in the P&G Act relating to the gas device approval authority scheme.
- Allow for broader disclosure of information to entities administering a law about safety and health.
- Address inconsistent powers of inspectors, particularly in relation to requiring a person to provide personal details (such as their name and residential address).
- Introduce new offence provisions relating to giving notice about explosives import or export activities.
- Amend the P&G Act to empower inspectors and authorised officers to compel someone to answer questions or provide information; however, the Act will provide appropriate safeguards depending on the circumstances.
- Refine notification requirements for prescribed diseases in the Coal Mining Safety and Health Regulation 2017 and Mining and Quarrying Safety and Health Regulation 2017.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 HR Act)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights that are relevant to the Bill are:

- Recognition and equality before the law (section 15 of the HR Act)
- Right to life (section 16 of the HR Act)
- Freedom of movement (section 19 of the HR Act)
- Freedom of expression (section 21 of the HR Act)
- Peaceful assembly and freedom of association (section 22 of the HR Act)
- Property rights (section 24 of the HR Act)
- Privacy and reputation (section 25 of the HR Act)
- Right to liberty and security of person (section 29 of the HR Act)
- Fair hearing (section 31 of the HR Act)
- Rights in criminal proceedings (section 32 of the HR Act).

Promotion of the right to life and right to liberty and security of person generally

Several amendments in the Bill aim to improve the safety and health of workers in Queensland's resources sector, which are considered throughout this statement of compatibility. These amendments promote both the right to life (section 16 of the HR Act) and the right to liberty and security of person (section 29 of the HR Act). The right to life protects the lives of all persons and includes the right not to be arbitrarily deprived of life. It imposes positive obligations on the State to take appropriate steps and adopt positive measures to protect the health and safety of its citizens. The right to security of the person similarly places a positive obligation on the State to take appropriate steps to ensure the physical safety and health of those who are in danger of physical illness or harm.

Amendments that engage human rights but do not limit any of these rights

Definition of labour hire, contractor and service provider

These amendments engage the right to recognition and equality before the law (section 15 of the HR Act), right to life (section 16 of the HR Act) and right to freedom of expression (section 21 of the HR Act), but it does not limit them. Instead, it enhances these rights by explicitly ensuring safety and health obligations for all types of employment arrangements under the CMSHA and MQSHA. This provides a positive social impact for workers who are employed on a contractual basis, including those recruited through labour hire agencies. This may also foster a work culture that encourages workers to report safety and health incidents and concerns without fear of reprisal, further promoting human rights.

Industrial manslaughter

These amendments engage the right to recognition and equality before the law (section 15 of the HR Act) as it will ensure that all relevant individuals are appropriately captured by industrial manslaughter provisions in the Resources Safety Acts—such as employers of labour hire agencies, contractors and service providers. However, these amendments do not promote or limit this human right as it is simply a clarifying amendment.

Court jurisdiction for prosecutions

These amendments engage the right to a fair hearing (section 31 of the HR Act) but it does not promote or limit the human right. This proposal will change the court jurisdiction for prosecutions for summary offences (under the CMSHA and MQSHA) from an Industrial Magistrate to the Magistrates Court instead. Both jurisdictions and their appeal pathways facilitate proceedings in courts that are competent, independent and impartial.

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 of the HR Act) ***Right to recognition and equality before the law (section 15 of the HR Act)***

(a) the nature of the right

The right to recognition and equality before the law recognises that every person is equal before the law and is entitled to equal protection of the law without discrimination. This right upholds the principle of equality and is relevant where a law has a disproportionate impact on people who have an attribute or characteristic.

Various provisions of the Bill may limit this right, as set out below.

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

The amendments relating to competency for key safety critical roles may limit the right to recognition and equality before the law by requiring individuals in key safety critical roles to hold relevant certificates of competency, this may create a barrier to employment for individuals who cannot attain or maintain these certificates. In a similar vein, the amendments relating to CPD will enforce the existing CPD schemes under the CMSHA and the MQSHA, which could create a barrier to employment for individuals who cannot comply with the CPD requirements. These amendments could result in denying these individuals equal opportunities and recognition in their profession.

3. Contemporary legislation

The amendments relating to ensuring site senior executives are located at or near the mine site will limit this human right as it ensures site senior executives are physically present at the mine site, which imposes a burden on them compared to other employees who are not subject to the same restrictions. This could result in unequal treatment of individuals in the workplace, which is inconsistent with the principles of recognition and equality before the law.

5. Operational and minor amendments

The amendments relating to explosives security clearance could inadvertently limit this human right for employees of security sensitive authority holders who are required to hold a security clearance under the Explosives Act for having unsupervised access to an explosive of their employer. This is because by exempting certain employees of licensed weapons dealers from security screening requirements under the Explosives Act, it creates unequal treatment under the law as employees of other security sensitive authority holders will still need to obtain an explosives security clearance to have unsupervised access to an explosive as part of their job.

The amendments relating to notification of prescribed diseases limits this human right as it lawfully enables the disclosure of specific personal information about mine and quarry workers, without necessarily requiring their consent.

(b) nature of the purpose of the limitation imposed by the Bill if enacted, including whether it's consistent with a free and democratic society based on human dignity, equality and freedom

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

The amendments relating to competency for key safety critical roles will require that individuals hold relevant certificates of competency to obtain (or retain) key safety critical roles in mines. For the amendments relating to CPD, the purpose of the limitation is to deter non-compliance to ensure holders of a practising certificate maintain current working knowledge of the Queensland mining safety legislative framework, as well as currency of contemporary practices in managing hazards, and their controls in a mining environment.

The competency requirements contained in the above amendments are also consistent with frameworks for other professions in Australia, such as health practitioners, lawyers, teachers and engineers, that are implemented to ensure ongoing competency. Such requirements are consistent with a free and democratic society based on human dignity, equality and freedom.

3. Contemporary legislation

The amendment under this category requires site senior executives for a coal mine to be located at or near the mine site as part of their employment, except for stated exceptions. Site senior executives are essential for the safe operation of a mine and supervision of workers, and it is important that they are located on the mine site. This is a proper purpose and is considered consistent with a free and democratic society based on human dignity, equality and freedom.

5. Operational and minor amendments

The amendments relating to explosives security clearance will streamline regulation and reduce unnecessary burden on employees of licensed weapons dealers, by removing duplicate security screening requirements imposed on them under the Explosives Act. This amendment will apply to an employee of a licensed weapons dealer who hold a security sensitive authority, provided the employee is a qualified weapons employee, and applies only in the context of having unsupervised access to an explosive as part of their work for the licensed weapons dealer. The differential security clearance requirements for qualified weapons employees of a licensed weapons dealers versus employees of other security sensitive authority holders is consistent with a free and democratic society based on human dignity, equality and freedom because it removes a duplicative requirement (and the associated costs) for this cohort without reducing safety outcomes.

For the amendments relating to notification of prescribed diseases, the purpose of the limitation is to ensure RSHQ receives accurate information about specific disease occurrences across the mining and quarrying industry in Queensland. This information supports RSHQ to protect the health and safety of workers, which is a responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

The amendments relating to competency for key safety critical roles, will require those in such roles to have the necessary competencies to protect the safety and well-being of themselves and others. By upholding these competency standards, the proposal contributes to maintaining a safe and secure working environment.

For the amendments relating to CPD, implementing, and enforcing, mandatory CPD requirements is necessary to bolster and update the mining safety and health competency of those who hold practising certificates because these individuals have a direct, ongoing influence on the safety and health of mine workers.

3. Contemporary legislation

For the amendments that ensure that site senior executives are located at or near the mine site, this will provide for the safe operation at a mine and ensure there is adequate supervision to prevent harm to workers from accidents or incidents occurring.

5. Operational and minor amendments

The amendments relating to explosives security clearance removes red tape and unnecessary regulatory burden without reducing explosives safety and security outcomes. It also provides a cost-savings benefit to this cohort whilst remaining cost neutral for the Queensland Government.

For the amendments relating to notification of prescribed diseases, these changes facilitate accurate and timely notification of prescribed diseases by site senior executives, which improves RSHQ's ability to monitor disease occurrence in the industry and develop regulatory responses, ultimately contributing to the prevention of future diagnoses.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

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

For the amendments relating to competency for key safety critical roles, the information released is not available from other sources, other than the prospective worker. The information released confirms the accuracy of any information provided by the prospective worker about holding a particular certificate of competency. Also, the amendments have been considered in a manner that is not overly burdensome or exhaustive and has undergone a cost-benefit analysis. Additionally, these amendments were informed by recommendations from the Coal Mining Board of Inquiry and Brady Review, which both made a number of findings and recommendations for preventing ongoing fatalities in coal mine sites.

For the amendments relating to CPD, the information released is not available from other sources, other than the prospective worker. The information released confirms the accuracy of any information provided by the prospective worker to, for example, operators, site senior

executives or underground mine managers about holding a particular practising certificate prior to appointment to key safety critical roles at mines. Also, these amendments intend that the human rights identified above are only limited if an individual cannot meet the ongoing CPD requirements, or for more serious reasons, outlined by the Board of Examiners' Practising Certificate Scheme. This proposal is also consistent with existing CPD regimes in Queensland and interstate.

3. Contemporary legislation

For the amendments ensuring that site senior executives are located at or near the mine site, this will provide exceptions that allows them to be off-site for a certain period, such as when they're temporarily undertaking off-site duties or when they are absent from duty.

5. Operational and minor amendments

For the amendments relating to explosives security clearance, exemptions for qualified weapons employees employed by licensed weapons dealers are considered the least restrictive and reasonably available way to achieve its purpose since this cohort is already subjected to rigorous security requirements, including continuous monitoring in relation to criminal history and domestic violence, under the *Weapons Act 1990* (the *Weapons Act*). The security clearance exemption is only possible for this cohort because a qualified weapons employee must hold a current licence under the *Weapons Act* if they have access to weapons as part of their job. As there are no comparable requirements for employees of other security sensitive authority holders, the removal of duplicate screening requirements under the explosives security clearance regime for other employees (including those holding a weapons licence) is not possible.

The amendments relating to notification of prescribed diseases will be subject to existing laws that protect the personal information provided to RSHQ. For example, personal information that is collected, managed or disclosed by RSHQ is subject to the privacy principles set out in the *Information Privacy Act 2009*.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

The amendments relating to competency for key safety critical roles are fair and balanced. The importance of the safety and health of coal mine workers (through measures ensuring the competency of those in key safety critical roles at coal mines) outweighs any limitations imposed on the human rights of those in key safety critical roles and is reasonable and justified. These amendments also promote other human rights, such as the right to life—for example, it will ensure that those in relevant key safety critical roles have the necessary competencies to protect the safety and wellbeing of themselves and others. By upholding these competency standards, these amendments contribute to maintaining a safe and secure working environment.

The amendments relating to CPD are consistent with existing CPD regimes for other professions in Australia (such as health practitioners, lawyers, teachers and engineers), that are implemented to ensure ongoing competencies and prevent professional misconduct. These amendments also promote other human rights, such as the right to life—for example, it will

ensure the ongoing mining safety and health competency of those in key safety critical roles who have a direct, ongoing influence on the safety and health of mine workers. The limitation is fair and balanced.

3. Contemporary legislation

For the amendments that ensure site senior executives are located at or near the mine site, any limitation is fair and balanced because it is essential to ensure the safety and health of workers and the public. Site senior executives are crucial for the safe operation of a mine and the supervision of workers. Allowing these roles to be undertaken off-site could potentially compromise the safety and health of workers and the public. Therefore, it is reasonable and necessary to mandate that site senior executives must be physically present at the mine site as part of their employment, except in certain circumstances where exceptions apply. This balances the right of individuals to work in their chosen profession with the right to life and safety of workers and the public. These amendments also promote the right to life by furthering the safety and health protections afforded to workers at a mine. A site senior executive can also only become subject to a monetary penalty if they breach the requirements of the legislation.

5. Operational and minor amendments

The amendments relating to explosives security clearance are fair and balanced because the current security screening requirements under the Explosives Act play a crucial role in maintaining public safety. This proposal aims to make minor administrative amendments that eliminate redundant requirements for a specific cohort that are already subject to equally stringent security screening under the Weapons Act. Therefore, this proposal represents the least restrictive and reasonably available approach to achieving its purpose while still ensuring community safety. These amendments also enhance other human rights, such as the right to property and right to privacy and reputation by removing duplicative and unnecessary security screening requirements under the Explosives Act for employees of licenced weapons dealers; and ensuring that a person's biometric information collected by RSHQ (that is, in relation to a security clearance) is lawfully destroyed once it is no longer necessary to be retained.

For the amendments relating to notification of prescribed diseases, the impact of limiting this human right by mandating the disclosure of specific personal information about mine and quarry workers is outweighed by the benefits of collecting and analysing this information—for example, for developing regulatory responses and contributing to the prevention of future diagnoses. The accurate and timely notification of prescribed diseases (for mine and quarry workers) enables RSHQ to better understand disease occurrence across the industry, leading to more effective prevention strategies. This ultimately promotes better health outcomes and improves the overall safety and well-being of current (and former) mine and quarry workers.

Freedom of movement (sections 19 of the HR Act)

(a) the nature of the right

The right to freedom of movement protects the right of every person within Queensland to move freely within the State. This right means that public entities cannot act in a way that

would unduly restrict freedom of movement throughout Queensland, but it is subject to compliance with regulations legitimately made in the public interest.¹

The right to freedom of movement is also relevant where laws allow a public entity to cordon an area and control movement within that area placing a positive obligation on the State to take appropriate steps to ensure the physical safety of those who are in danger of physical harm.

Various provisions of the Bill may limit these rights, as set out below.

2. Modern regulatory enforcement

The amendments relating to court orders and directives may limit these rights if, for example, a court issues an injunction order, or an authorised official issues a directive (such as a directive to suspend operations), which prevents workers from accessing a specific area in their work environment, for example, because a risk in the work environment is at (or may reach) an unacceptable level which places workers in danger of physical harm.

3. Contemporary legislation

Requiring site senior executives to be located at or near the mine site will limit the human right to freedom of movement.

(b) nature of the purpose of the limitation imposed by the Bill if enacted, including whether it's consistent with a free and democratic society based on human dignity, equality and freedom

2. Modern regulatory enforcement

For the additional court orders, injunction orders can include measures that restrict access to specific areas that present a serious risk of harm, such as cordoning off an area and preventing workers from accessing that area.

In relation to directives, the purpose of the limitation on these rights are to protect the safety and health of mine workers. The powers of an authorised official are discretionary. Directives that prevent workers from accessing a specific area is only expected to be issued where the risk associated with mining operations may reach an unacceptable level or is already at an unacceptable level.

The amendments under this category will modernise regulatory enforcement under the Resources Safety Acts, which ensures that RSHQ can adequately protect the safety and health of workers. This is a key responsibility of government and is consistent with a free and democratic society.

3. Contemporary legislation

The purpose of the amendment under this category will be to require site senior executives to be physically located at or near the mine site as part of their employment, except for stated exceptions. Site senior executives are essential for the safe operation of a mine and supervision of workers, and it is important that they are located at the mine site. This is a proper purpose

¹ *DPP v Kaba* [2014] VSC 52 [100].

and is considered consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

2. Modern regulatory enforcement

Court orders will enhance deterrence, encourage meaningful action by an offender, be more targeted, and allow the court to impose proportionate responses, thus enhancing safety outcomes consistency across Queensland's resource sector.

Directives are a crucial tool for the regulator to ensure that individuals (and their organisation) take necessary action to protect the safety and health of persons at mines and persons who may be affected by mining operations. The potential limitation on an individual's right to freedom of movement therefore helps to achieve this purpose as a directive assists in protecting the safety and health of persons at mines and persons who may be affected by mining operations.

3. Contemporary legislation

The amendments requiring site senior executives to be located at or near the mine site will provide for the safe operation at a mine and ensure there is adequate supervision to prevent harm to workers from accidents or incidents occurring.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

2. Modern regulatory enforcement

For court orders, it is also noted that the amendments are intended so that only the courts can decide to make an order, or combination of orders, that limit a person's freedom of movement and right to liberty and security of person if it considers these types of orders will have the best remedial or deterrent effect for that case. The person subject to the court order (or court orders) made may subsequently have appeal rights if they are dissatisfied with the court's decision. Also, a person only becomes subject to these orders if they are successfully prosecuted, because they breached safety and health laws under the Resources Safety Acts.

For directives, there are no less restrictive and reasonably available ways to achieve the purpose of these amendments in the Bill. There are a number of safeguards in the Bill which lessen the extent of any potential limitation on the right to freedom of movement. A person may apply to the chief inspector for a review of the directive issued by an industry safety and health representative, district workers' representative, inspection officer or inspector. Further, the CMSHA and MQSHA allow the person to subsequently appeal to the Industrial Court against the chief inspector's review decision for the directive.

3. Contemporary legislation

The amendments requiring site senior executives to be located at or near the mine site will provide exceptions that allows them to be off-site for a certain period, such as when they're temporarily undertaking off-site duties or when they're absent from duty.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

2. Modern regulatory enforcement

For the amendments to court orders, whilst the amendments limit some human rights it's also noted that the amendments promote other human rights under the HR Act, such as the right to life—as it intends to deliver more tangible future safety outcomes when an offender is prosecuted under the Resources Safety Acts. The amendments also ensure greater consistency across safety and health legislation, as the amendments are consistent with the WHS Act (which is largely consistent with national work health and safety laws) and NSW and WA resources safety and health legislation. Achieving consistency with other legislation improves human rights through better aligned laws that are working towards the same goals and standards.

For directives, the need to protect the safety and health of mine workers is considered to outweigh any potential impact on freedom of movement and property rights. Any potential limitation on these rights is undertaken under an established legislative framework. These amendments also promote other rights such as the right to life—for example, it will improve a key compliance and enforcement tool and reduce risks associated with mining operations, and therefore aim to protect workers from harm (including fatalities). The amendments also promote the right to a fair hearing and rights in criminal proceedings, as they ensure that a report given to the chief inspector under a directive is not admissible as evidence against the site senior executive, or any other coal mine worker or mine worker mentioned in the report, in any criminal proceedings other than proceedings about the falsity or misleading nature of the report.

3. Contemporary legislation

For the amendments that require site senior executives to be located at or near the mine site, the limitations to these human rights are fair and balanced because it is essential to ensure the safety and health of workers and the public. Site senior executives are crucial for the safe operation of a mine and the supervision of workers. Allowing these roles to be undertaken off-site could potentially compromise the safety and health of workers and the public. Therefore, it is reasonable and necessary to mandate that site senior executives must be physically present at the mine site as part of their employment, except in certain circumstances where exceptions apply. This balances the right of individuals to work in their chosen profession with the right to life and safety of workers and the public.

Freedom of expression (section 21 of the HR Act)

- (a) the nature of the right

The right to freedom of expression protects the right of individuals to hold and express their opinion. Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for everyone's self-fulfilment. This right could be relevant to laws, policies, acts or decisions that compel someone to provide information (for example, a subpoena).

5. Operational and minor amendments

The Bill will amend the P&G Act, providing inspectors and authorised officers with powers to compel someone to answer questions or provide information for stated purposes under the Act. By requiring a person to provide information, the amendments could limit a person's freedom of expression, which may include a right not to impart information.²

(b) nature of the purpose of the limitation imposed by the Bill if enacted, including whether it's consistent with a free and democratic society based on human dignity, equality and freedom

5. Operational and minor amendments

The purpose of the limitation is to ensure that key witnesses to an incident are obliged to assist inspectors and authorised officers who are investigating the incident. In a free and democratic society, the appropriate use of such powers helps maintain a balance between individual rights and the collective interest in the enforcement of laws that aim to protect the safety and health of workers.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

5. Operational and minor amendments

The amendment will ensure that inspectors and authorised officers can overcome potential obstacles from an individual whilst investigating incidents, such as non-cooperation due to fear of self-incrimination. However, the Bill explicitly provides safeguards to the individual depending on the circumstances—that is, if the questions:

- Do not relate to an *incident* as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse—for example, because complying with the requirement would incriminate the individual or make them liable to a penalty.
- Do relate to an *incident* as defined under the P&G Act, then the individual must comply with the requirement but the Act provides an assurance that any answers or information provided cannot subsequently be used against that individual for an offence under this Act (unless the answers or information provided was false or misleading).

The powers and safeguards provided by these amendments to the P&G Act will lead to better investigations that can prevent the reoccurrence of serious harm to workers.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

5. Operational and minor amendments

There are no less restrictive and reasonably available ways to achieve the purpose. Importantly, these coercive powers are accompanied by appropriate statutory protections to the individual. For example, if the requirement to answer questions or provide information does not relate to an *incident* as defined under the P&G Act, then it is a reasonable excuse for an individual not to

² *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

comply with the request to answer questions or provide information if complying with the request might incriminate the individual or make them liable to a penalty. Otherwise, if the requirement relates to an *incident* under the P&G Act, then the individual must comply with the requirement but the Act will provide an assurance that the answers or information provided cannot subsequently be used against that person in proceedings for an offence. As noted by Coroner MacKenzie in the inquest into the death of Gareth Leo Dodunski, it is critical that such coercive powers and the protective indemnities are seated in precise terms in legislation.³

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

5. *Operational and minor amendments*

The proposed amendment strikes an appropriate balance between safeguarding human rights and enhancing the effectiveness of investigations. The identified limitations on the right to freedom of expression is reasonable and demonstrably justifiable as it is appropriately accompanied by statutory protections for individuals. The amendments also enhance the protection of other human rights under the HR Act, such as the right to life, as the amendments provide an effective investigative tool when investigating complex matters which can prevent the reoccurrence of serious harm. Finally, the amendments will also enhance rights in criminal proceedings as the Bill explicitly provides safeguards to the individual depending on the circumstances—that is, if the questions:

- Do not relate to an *incident* as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse—for example, because complying with the requirement would incriminate the individual or make them liable to a penalty.
- Do relate to an *incident* as defined under the P&G Act, then the individual must comply with the requirement but the Act provides an assurance that any answers or information provided cannot subsequently be used against that individual for an offence under this Act (unless the answers or information provided was false or misleading).

Property rights (section 24 of the HR Act)

(a) the nature of the right

Property rights protect the right of all persons to own property and provide that people have a right to not be arbitrarily deprived of their property. Property is likely to include all real and personal property interests, including money. Property can also include a person's position of employment and the remuneration earned from that position.

Various provisions of the Bill may limit property rights, as set out below.

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

The amendments relating to critical control management may limit this right as safety and health obligation holders could face penalties under the CMSHA and the MQSHA if they fail to fulfil

³ *X7 v Australian Crime Commission* [2013] HCA 29.

their obligations related to critical controls. Overarching safety and health obligations already exist, and requirements related to critical controls have been included as aspects of the safety and health obligations related to ensuring effective safety and health management systems.

The amendments requiring additional competencies for key safety critical roles may also limit property rights by affecting an individual's ability to continue in their current position of employment in a key safety critical role or to obtain future employment opportunities in these roles.

The amendments relating to CPD may limit property rights, as they include requirements that a certificate of competency or site senior executive notice holder also hold a practising certificate to remain in their key safety critical roles at mines. Appointments to these roles may also end if a practising certificate is suspended or cancelled by the CEO, if the underlying certificate of competency is suspended or cancelled due to a contravention of a safety and health obligation, or offence related to mining safety, or if only the practising certificate is suspended or cancelled if the required CPD is not completed. These amendments will also limit this right as they will allow for the suspension or cancellation of an individual's practicing certificate if their CPD requirements have not been completed, or for more serious reasons. This could result in the individual losing their existing position of employment.

Amendments relating to improved data and incident reporting by operators may limit property rights as the existing financial penalties will be increased.

2. Modern regulatory enforcement

The Bill will introduce a framework for enforceable undertakings, which can limit the human right to property by requiring individuals to undertake actions that rectify past wrongdoing, often incurring financial costs.

The Bill will expand the range of court orders available to the court upon conviction for a contravention. Some of these orders may limit the right to property by imposing monetary penalties or by making orders that require a person to take actions, such as undertaking a paid training course. The amendments can also limit this right where a court makes relevant orders, such as the forfeiture of property, or the cancellation or surrender of a person's certificate, authority or licence.

The amendments to directives provisions may limit property rights by requiring individuals to undertake actions to comply with a directive, often incurring financial costs.

3. Contemporary legislation

The amendments relating to remote operating centres may limit property rights by imposing a financial penalty on the site senior executive if they fail to discharge their statutory obligations that relate to remote operating centres.

The Bill will also require site senior executives and acting site senior executives to be located at or near the mine site as part of their employment, except for stated exceptions. This may limit property rights by affecting an individual's ability to continue in their current position of employment as a site senior executive or to obtain future employment opportunities in these roles.

4. Consistency of Resources Safety Acts and 5. Operational and minor amendments

The Bill also inserts several new penalties and increases the maximum penalty for several existing provisions. Some of the increased penalties are for the purpose of ensuring consistent maximum penalties across the Resources Safety Acts.

Penalty provisions may limit the right to property financially by imposing monetary penalties.

(b) nature of the purpose of the limitation imposed by the Bill if enacted, including whether it's consistent with a free and democratic society based on human dignity, equality and freedom

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

Introducing critical controls as part of existing safety and health obligations will assist in ensuring there is an effective safety and health management system at a mine. Requirements for critical controls to be part of safety and health management systems will help prevent and/or mitigate serious incidents affecting workers and assist safety and health obligation holders to satisfy those obligations. Breaches of safety and health obligations may result in the prosecution of the obligation holder and the imposition of a monetary penalty.

Requiring competencies for key safety critical roles will improve the mining safety and health competency of people who have a direct, ongoing influence on the safety and health of mine workers. However, the amendments limit the right to property by introducing additional offence provisions related to the engagement of those in key safety critical roles, and through certificate of competency requirements for those who hold these roles. The right to property may also be limited if a person breaches an offence provision and becomes subject to a monetary penalty, or if a worker in a key safety critical role does not gain a certificate of competency within the transitional period. The offence provisions are necessary to deter non-compliance by obligation holders, and to achieve improved standards by requiring certificates of competency for those in key safety critical roles at coal mines. The certificate of competency requirements will therefore help to ensure the competency of those workers in roles that are critical to the safety and health of other coal mine workers.

Amendments related to CPD also impose a limitation on human rights of those in key safety critical roles, because, if the holder of a practising certificate has not completed the required CPD or has committed a serious contravention of a safety and health obligation, or offence related to mining safety, they will not be able to fulfil their role. The purposes of the practising certificate requirements are therefore to bolster and ensure the mining safety and health competency of people who have a direct, ongoing influence on the safety and health of mine workers remains up to date. The compliance and enforcement provisions are necessary to deter non-compliance, and to support improved ongoing standards of competency through CPD for those in key safety critical roles at coal mines.

The amendments for improved data and incident reporting by operators can subject an individual to a higher monetary penalty by increasing the maximum penalties for failing to report accidents or incidents. This recognises the fundamental importance of reporting safety and health incidents to inform the activity of the regulator as well as affording resources operators an opportunity to learn from other operations to allow them to take steps to avoid a similar occurrence at their own site.

All the above amendments aim to further the protection of safety and health for resources workers, which is a key responsibility of government and therefore consistent with a free and democratic society based on human dignity, equality, and freedom.

2. Modern regulatory enforcement

The use of enforceable undertakings, as well as the prospect of their imposition, will require individuals (and their organisation) to undertake committed actions aimed at ensuring a safer work environment, often at a financial cost.

Some of the new court orders may subject an individual to a financial penalty or loss. These orders include the forfeiture of property, or the cancellation or surrender of a person's certificate, authority or licence, or any associated fine for non-compliance with an order.

In relation to directives, the purpose of the potential limitation on a person's property rights is to ensure that the risks associated with mining operations are reduced to an acceptable level.

The amendments under this category will modernise regulatory enforcement under the Resources Safety Acts, which ensures that RSHQ can adequately regulate obligations to protect the safety and health of workers. This is a key responsibility of government and is consistent with a free and democratic society.

3. Contemporary legislation

For remote operating centres, the Bill will amend the CMSHA and MQSHA so that the existing safety and health obligations for safety and health management systems on the operator and the site senior executive of a mine will also capture remote operating centres. The Bill will also impose statutory obligations on remote operating centre workers for various safety and health obligations that already exist under the CMSHA and MQSHA. These amendments are necessary because the activities of remote operating centres have the potential to adversely affect the safety and health of workers physically located at the mine.

The Bill will require site senior executives to be located at or near the mine site as part of their employment, except for stated exceptions. Site senior executives are essential for the safe operation of a mine and supervision of workers, and it is important that they are located on the mine site.

The purpose of these amendments under this category is protecting the safety and health of workers, which is consistent with a free and democratic society based on human dignity, equality and freedom.

4. Consistency of Resources Safety Acts and 5. Operational and minor amendments

The amendments under these categories will provide new (or increased) monetary penalties for various penalty provisions. These penalties are justified as they act as a deterrent against non-compliance that jeopardises safety and health in the working environments that are regulated by the Resources Safety Acts.

Importantly, individuals only become subject to these penalties if they contravene a provision in the Resources Safety Acts. Also, they would only receive the maximum penalty where their conduct is egregious to the point that the relevant court determines that the maximum penalty

is warranted. As such, the penalties are not arbitrary, and are therefore consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

Requiring critical control management under the CMSHA and the MQSHA responds to recommendations to improve risk management through critical controls by both the Coal Mining Board of Inquiry⁴ and the Brady Review.⁵

Safety and health obligations related to an effective safety and health management system including critical controls do not arbitrarily deprive a safety and health obligation holder of their property unless there are breaches of safety and health obligations related to critical controls.

The competency of those in key safety critical roles at coal mines is essential for the safety and health of coal mine workers. The offence provisions and requirements for certificates of competency do not arbitrarily deprive an obligation holder of their property.

The ongoing competency of those in key safety critical roles at mines is essential for the safety and health of mine workers. The requirements for some workers to have practising certificates, and the possibility of the suspension or cancellation of practising certificates for not completing CPD requirements, or for more serious reasons including contraventions of safety and health obligations, do not arbitrarily deprive workers of their property.

While the Bill simplifies the process of reporting by supporting an electronic reporting system, the increased maximum penalty will also deter non-compliance. This will ensure that organisations improve data and incident reporting, which in turn will support the regulator's activities and enable resources operations to have access to timely and relevant data and incident reporting information to improve safety and health outcomes for their workers.

2. Modern regulatory enforcement

Implementing enforceable undertakings offer flexibility to achieve a greater range and variation of outcomes that can lead to lasting improvements within the organisation and more broadly across the resources sector.

Court orders will enhance deterrence, encourage meaningful action by an offender, be more targeted, and allow the court to impose proportionate responses, thus enhancing safety outcomes consistency across Queensland's resource sector.

The costs of complying with a directive issued to address risk associated with mining operations may limit an individual's property rights. However, by addressing this risk, the

⁴ A Board of Inquiry established on 22 May 2020 to investigate the serious accident that occurred at Grosvenor mine on 6 May 2020, and various high potential incidents involving longwall-related exceedances of methane that occurred in the Queensland coal mining industry between 1 July 2019 and 5 May 2020.

⁵ A review of all fatal accidents in Queensland mines and quarries from 2000 to 2019 by forensic structural engineer Dr Sean Brady.

potential limitation helps to achieve the purpose of protecting the safety and health of persons at mines and persons who may be affected by mining operations.

3. Contemporary legislation

Ensuring remote operating centres are integrated into the safety and health management system of a mine will support safe mining operations by requiring any associated risks to be identified and controlled.

For site senior executives to be located at or near the mine site, this proposal will also allow for the safe operation at a mine and ensure there is adequate supervision to prevent harm to workers from accidents or incidents occurring.

4. Consistency of Resources Safety Acts and 5. Operational and minor amendments

The new (and increased) penalties proposed under these categories focus on enhancing deterrents across the Resources Safety Acts and these amendments are all aimed at promoting a safer work environment— some examples include:

- Deterring the unlawful behaviour of retaliating against workers who report genuine safety related issues in their workplace.
- Discouraging and penalising the act of assaulting, obstructing, or impeding an inspector or public officer from performing their statutory functions and powers, which will ultimately protect workers' safety and health.
- Removing an anomaly in the MQSHA to ensure proper support for site safety and health committees, which are a forum for management and workers to come together to identify opportunities to rectify (sometimes systemic) safety and health issues.
- Addressing inconsistent powers of inspectors, particularly in relation to requiring a person to provide personal details (such as their name and residential address).
- Encouraging improved compliance with notification requirements for explosives import or export activities, which will help promote worker and community safety by ensuring inspections of explosives consignments by RSHQ can be scheduled and conducted in a timely manner.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

There are no less restrictive and reasonably available ways to achieve the purpose for the amendments under this category.

The amendments relating to critical controls focus on existing safety and health obligations under the CMSHA and MQSHA. It incorporates explicit provisions that focus on critical controls to prevent serious harm occurring in mines, thus reinforcing these existing obligations.

For the amendments relating to competency for key safety critical roles, the amendments have been considered in a manner that is not overly burdensome or exhaustive and has undergone a cost-benefit analysis. Additionally, these amendments were informed by recommendations

from the Coal Mining Board of Inquiry and Brady Review, which both made a number of findings and recommendations for preventing ongoing fatalities at coal mines.

The amendments for CPD intend that the human rights identified above are only limited if an individual cannot meet the ongoing CPD requirements, or for more serious reasons, outlined by the Board of Examiners' Practising Certificate Scheme. These amendments are also consistent with existing CPD regimes in Queensland and interstate.

In relation to improved data and incident reporting by operators, these amendments strike an appropriate balance between encouraging reporting by simplifying the process and deterring non-compliance by increasing the financial penalty.

2. Modern regulatory enforcement

Enforceable undertakings will be voluntary in nature and will not be an admission of guilt by the company or an individual giving the undertaking. The proposal will also allow enforceable undertakings to be (voluntarily) initiated by the individual rather than RSHQ only. However, RSHQ has the discretion as to whether the undertaking will be accepted.

For the amendments to court order provisions, it is intended that only the courts can decide to make an order, or combination of orders, that limit a person's right to property if it considers these types of orders will have the best remedial or deterrent effect for that case. The person subject to the court order (or court orders) made may subsequently have appeal rights if they are dissatisfied with the court's decision. Also, a person only becomes subject to these orders if they are successfully prosecuted, because they breached safety and health laws under the Resources Safety Acts.

For directives, there are a number of safeguards in the Bill which lessen the extent of any potential limitation on a persons' property rights. An authorised official must hold the requisite belief about the level of risk before issuing an acceptable level of risk directive. Also, a person may apply for a review of a directive issued by an industry safety and health representative, district workers representative, inspection officer and inspector to the chief inspector. Further, the CMSHA and MQSHA allow the person to subsequently appeal to the Industrial Court against the chief inspector's review decision for the directive.

3. Contemporary legislation

For the amendments relating to remote operating centres, site senior executives and remote operating centre workers will only become subject to a potential penalty if they commit the offence (that is, fail to discharge their statutory obligations relating to safety and health), and to the maximum penalty where their conduct is particularly egregious that the relevant court determines that the maximum penalty is warranted.

For site senior executives to be located at or near the mine site, there are a number of exceptions which will lessen the extent of any potential limitation on an individual's property rights. These exceptions will allow individuals in these roles to be off-site for less than 14 days, such as when they're temporarily undertaking off-site duties. There is no less restrictive way to achieve the purpose of these amendments in the Bill.

4. Consistency of Resources Safety Acts and 5. Operational and minor amendments

There are no less restrictive and reasonably available ways to achieve the purposes for the amendments identified under both these categories, which all relate to new (or increased) penalty provisions. As similarly noted above for remote operating centres, an individual will only become subject to a potential penalty if they commit the offence, and to the maximum penalty where their conduct is particularly egregious that the relevant court determines that the maximum penalty is warranted.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

For the amendments relating to introducing critical control management, the potential limitation to property rights is considered fair and balanced, as an obligation holder will only be potentially subject to penalties if they fail to fulfil the critical control aspect of existing safety and health obligations under the CMSHA and the MQSHA. Introducing requirements for critical controls will enhance existing risk management procedures.

It is also noted that, whilst the critical control amendments may limit property rights, the amendments in turn strengthen the protection of other human rights enshrined in the HR Act. This includes the right to life, as the amendments will help prevent serious harm in hazardous mining working environments regulated under the CMSHA and the MQSHA, and knowledge of critical controls will be included in the statutory safety and health obligations of individuals in key safety critical roles under these Acts. This will improve risk management and support the aims of the CMSHA and MQSHA to protect the safety and health of persons at mines, through requiring risk to safety and health to be at an acceptable level. On balance, the importance of protecting the safety of mine workers through additional critical control requirements outweighs any limitations imposed on the right to property of those who breach a safety and health obligation and is reasonable and justified.

For the amendments relating to competency for key safety critical roles, the importance of the safety and health of coal mine workers (through measures ensuring the competency of those in key safety critical roles at coal mines) outweighs any limitations imposed on the right to property for those individuals in these roles and is reasonable and justified. Also, these amendments will promote other human rights, such as the right to life—for example, it will ensure that those in relevant key safety critical roles have the necessary competencies to protect the safety and wellbeing of themselves and others. By upholding these competency standards, these amendments contribute to maintaining a safe and secure working environment.

For the amendments relating to CPD, the importance of the safety and health of mine workers (through measures supporting the competency of those in key safety critical roles at mines) outweighs any limitations imposed on the right to property of those required to have practising certificates to remain in employment in key safety critical roles and is therefore reasonable and justified. Also, these amendments will promote other human rights under the HR Act, such as the right to life—for example, it will ensure the ongoing mining safety and health competency

of those in key safety critical roles who have a direct, ongoing influence on the safety and health of mine workers.

For the amendments relating to improved data and incident reporting by operators, the limitation to property rights is significantly outweighed by the benefits to the right to life, as it intends to deter non-compliance with existing requirements for data and incident reporting (that help improve safety and health outcomes for workers). These amendments also promote other human rights under the HR Act, such as the right to life—for example, it will incentivise the collection of important safety and health information for dissemination throughout the resources industry using an electronic incident reporting system. This seeks to improve data and incident reporting, which will support the regulator’s objectives and ensure that all organisations have access to timely and relevant data and incident reporting information that will improve safety and health outcomes for their workers.

2. Modern regulatory enforcement

Enforceable undertakings, including their publication, are justifiable measures in promoting safer work environments, even if they impose financial or reputational costs on individuals and their organisations. Workplace safety is a fundamental right of employees, and their employers (as well as those in key safety critical roles) are obligated to ensure employees work in safe environments. These amendments also promote other human rights under the HR Act, such as the right to life—for example, it will enhance safety and prevent harm to workers, as enforceable undertakings are designed to address non-compliance through prevention and remediation. Enforceable undertakings could provide operators with the opportunity to share the lessons that can be learned from an incident. The limitations to the right to property are justified in this context, as the benefits of enhanced safety far outweigh the costs of compliance with enforceable undertakings.

For the amendments to court orders provisions, whilst the amendments limit some human rights, the potential limitations to these rights are fair and balanced as amendments promote other human rights under the HR Act, such as the right to life—as it intends to deliver more tangible future safety outcomes when an offender is prosecuted under the Resources Safety Acts. The amendments also ensure greater consistency across safety and health legislation, as the amendments are consistent with the WHS Act (which is largely consistent with national work health and safety laws) and NSW and WA resources safety and health legislation. Achieving consistency with other legislation improves human rights through better aligned laws that are working towards the same goals and standards.

For the amendments relating to directives, the need to protect the safety and health of mine workers is considered to outweigh any potential impact on property rights. Any potential limitation on these rights are undertaken through an established legislative framework. These amendments also promote other human rights, such as the right to life—for example, it will improve a key compliance and enforcement tool and reduce risks associated with mining operations, and therefore aim to protect workers from harm (including fatalities).

The amendments to directives provisions also promote rights in criminal proceedings and the right to a fair hearing, as it ensures that a report given to the chief inspector under a directive is not admissible as evidence against the site senior executive, or any other mine worker or

remote operating centre worker who provides information mentioned in the report, in any criminal proceedings other than proceedings about the falsity or misleading nature of the report.

3. Contemporary legislation

For the amendments relating to remote operating centres, the limitation to property rights (to site senior executives and remote operating centre workers) is significantly outweighed by the benefits to the right to life, as they intend to support better safety outcomes. The amendments require the site senior executive to ensure that the safety and health management systems address risks from remote operating centres and remote operation of plant and equipment. Remote operating centre workers, who give information or operate plant or equipment from off-site locations, are also subject to safety and health obligations under the CMSHA and MQSHA. Particularly given that the information they provide has the potential to affect the safety and health of mine workers. These amendments promote the right to life by furthering the safety and health protections afforded to those mine workers. Also, site senior executives, mine operators and remote operating centre workers can only become subject to a monetary penalty if they breach the requirements of the legislation.

The amendments requiring site senior executives to be located at or near the mine site is fair and balanced because it is essential to ensure the safety and health of workers and the public. Site senior executives are crucial for the safe operation of a mine and the supervision of workers. Allowing these roles to be undertaken off-site for a substantial period of time could potentially compromise the safety and health of workers. Therefore, it is reasonable and necessary to mandate that site senior executives must be physically present at the mine site as part of their employment, except in certain circumstances that apply. This balances the right of individuals to work in their chosen profession with the right to life and safety of workers.

4. Consistency of Resources Safety Acts and 5. Operational and minor amendments

Any limitation to human rights in the amendments under these categories are fair and balanced as they enhance the protection of other human rights under the HR Act, such as the right to life and right to liberty and security of person. Some of the amendments also promote other human rights.

Similarly, the amendments relating to consistency in penalties for failing to provide help to site safety and health representatives and committees also promote freedom of expression, the right to peaceful assembly and freedom of association. The right to peaceful assembly and freedom of association under section 22 of the HR Act protects the right of individuals to gather for a common purpose or to pursue common goals. Site safety and health committees are examples of assemblies. Only peaceful assemblies are protected, not those which involve violence. Section 22 of the HR Act includes preparing for and conducting of the assembly and protects the organisers and the participants. The right to freedom of association extends to all forms of association with others—for example, members of a site safety and health committee. These amendments intend to deter the potential obstruction of site safety and health committees exercising statutory functions under the MQSHA, which aim to rectify safety and health issues.

Several of the amendments also ensure that there is greater consistency across safety and health legislation in Queensland, particularly with the WHS Act. Achieving consistency with other

legislation improves human rights through better aligned laws that are working towards the same goals and standards.

Privacy and reputation (section 25 of the HR Act)

(a) the nature of the right

The right to privacy and reputation protects individuals from unlawful or arbitrary interferences. The scope of the right is intentionally broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally, protecting the individual against interference with their physical and mental integrity.

This right protects the privacy of people in Queensland from 'unlawful' or 'arbitrary' interference. The notion of arbitrary interference extends to lawful interferences, which are also unreasonable, unnecessary, or disproportionate.

Various provisions of the Bill may limit the right to privacy and reputation, as set out below.

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

Those in key safety critical roles requiring certificates of competency will be subject to having information about the status of their certificates of competency released through the register of the Board of Examiners under section 193A of the CMSHA. The collection and management of this information limits the right to privacy and reputation.

The Bill amends section 193A of the CMSHA to provide that information held on the register (other than the contact details of the individual) can be released to any person or agency. A person's privacy may therefore be limited to the extent that personal information is released from the register.

These amendments may also limit this right by ensuring that coal mine operators, site senior executives and underground mine managers can check whether a prospective employee has the required certificate of competency before appointing them to a key safety critical role at a coal mine, limiting their right to reputation gained from participating in certain employment.

For the amendments relating to CPD, those in key safety critical roles requiring practising certificates will be subject to having information about the status of their practising certificates released through the register of the Board of Examiners under section 193A of the CMSHA and section 185 of the MQSHA. The collection and management of this information limits the right to privacy and reputation.

Under section 193A of the CMSHA and section 185 of the MQSHA, information held on the register other than the contact details of the individual can be released to any person or agency. Information released will include whether the person has a practising certificate. A person's privacy may be limited to the extent that personal information is released from the register.

The amendments may also limit this right as individuals in key safety critical roles, and therefore requiring practising certificates, will be subject to having their information (about the status of their certificates) collected, managed and disclosed by the Board of Examiners. The ongoing CPD requirements for practicing certificates may also lead to individuals losing their

existing position in a key safety critical role, impacting their reputation gained from participating in certain employment.

Amendments relating to information sharing to improve safety may limit the human right to privacy and reputation, as the proposal will publicise information about safety incidents that could draw attention to individuals, particularly those in key safety critical roles who are responsible for the safety and health of workers.

2. Modern regulatory enforcement

Enforceable undertakings may limit the right to privacy and reputation as these undertakings will be published on the RSHQ website, which will identify an individual's (and their organisation's) wrongdoing as well as the measures that will be taken to rectify it.

For the amendments relating to court orders, the introduction of adverse publicity orders to the Resources Safety Acts may limit this right as it can draw public attention to an individual's particular wrongdoing and the measures taken by them (or their organisation) to rectify it. For instance, the court may order an offender to publicise the offence or notify a specified person (or specified class of persons) about the offence, or both.

5. Operational and minor amendments

Amendments relating to disclosure of information will amend the RSHQ Act, CMSHA, MQSHA and Explosives Act to broaden the departments and agencies which the CEO or the chief inspector may communicate information to better enable disclosure of information with government agencies responsible for administering safety and health laws, rather than limiting to particular types of health and safety, such as a law about mining or explosives etc. These amendments will support an information sharing safety culture and address the current limitations whereby the Acts do not allow sharing of information with non-resources agencies, even where the information could assist in achieving safety and health outcomes for workers and the community.

For the amendments addressing inconsistent powers of inspectors to require a person to provide personal details, this limits the right to privacy and reputation as individuals will be explicitly required to provide their residential address, unless the person has a reasonable excuse for being unable to comply with the requirement. Currently, the Explosives Act allows a person to provide their business or postal address as an alternative.

Amendments relating to notification of prescribed diseases will require stated individuals to notify inspectors and industry safety and health representatives that a worker has been diagnosed with a reportable disease. This limits the right to privacy and reputation as it lawfully enables the disclosure of specific personal information about mine and quarry workers—that is, their name, date of birth and the reportable diagnosis), without necessarily requiring the worker's consent.

For the amendments that compel someone to answer questions or provide information, this will provide inspectors and authorised officers under the P&G Act with powers to require an individual to answer questions or provide information for stated purposes under the Act. These powers can limit this right as it can require someone to provide information that they might otherwise have chosen to keep private.

(b) nature of the purpose of the limitation imposed by the Bill if enacted, including whether it's consistent with a free and democratic society based on human dignity, equality and freedom

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

For the amendments relating to competency for key safety critical roles and CPD, a person's privacy may be limited to ensure that coal mine operators, site senior executives, and underground mine managers are able to check whether a prospective employee has the required certificate of competency before appointing them to a particular key safety critical role at a coal mine.

This limitation is essential so that obligation holders can check before appointing a worker and rely upon the information to ensure compliance with their mine safety and health obligations to avoid committing an offence. Information being collected and released is necessary to ensure compliance with coal mining safety and health obligations. The collection and sharing of personal information about certificate of competency holders does not arbitrarily interfere with privacy and is essential and necessary for ensuring those appointed to particular safety critical positions at coal mines have the required certificate of competency.

The amendments relating to information sharing to improve safety will clarify RSHQ's ability to publish information about high potential incidents and serious accidents in the public interest. These amendments support the recommendations in the Brady Review, which identified the importance of the regulator facilitating the collection, analysis, identification and dissemination of data from industry as a key recommendation to informing learnings and future strategic direction for safety and health approaches of the industry. Sharing safety information can also provide transparency and confidence to the public that safety and health in the resources sector is being appropriately managed and regulated and that workers are being protected.

The above amendments are therefore consistent with a free and democratic society based on human dignity, equality, and freedom.

2. Modern regulatory enforcement

Publicising enforceable undertakings and the compliance history of an organisation is intended to deter non-compliance whilst also being used as an education tool for other organisations. For court orders, adverse publicity orders will limit the right to privacy and reputation but can be an effective deterrent for an individual. The purpose of these measures is to draw public attention to their wrongdoing and measures taken by them to rectify it, which will promote shared learnings and result in meaningful changes for safety and health outcomes, which is consistent with a free and democratic society.

5. Operational and minor amendments

The purpose of amendments relating to disclosure of information is to support an information sharing safety culture, to mitigate or avoid safety and health risks and improve safety and health outcomes for workers and the public. The disclosure of information will promote shared learnings and result in meaningful changes for safety and health outcomes, which is consistent with a free and democratic society.

For the amendments relating to inconsistent powers of inspectors to require a person to provide personal details, the purpose of the limitation is to ensure that individuals disclose their name and residential address to an inspector exercising a power to ask for this information under a Resources Safety Act.

For the amendments relating to notification of prescribed diseases, the purpose of the limitation is to ensure RSHQ receives accurate information about specific disease occurrences across the mining and quarrying industry in Queensland. This information supports RSHQ to regulate the protection of workers' health and safety, which is a responsibility of government and is consistent with a free and democratic society based on human dignity, equality and freedom.

For the amendments that compel someone to answer questions or provide information, the purpose of the limitation is to ensure that key witnesses to an incident are obliged to assist inspectors and authorised officers who are investigating the incident. In a free and democratic society, the appropriate use of such powers helps maintain a balance between individual rights and the collective interest in enforcing legal obligations and ensuring the safety and health of workers.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

For the amendments relating to competency for key safety critical roles and CPD, the collection and release of personal information through the Board of Examiners' register is lawful for particular purposes. It is not arbitrary, and it outweighs any limitation on the right to privacy and reputation of those appointed to key safety critical roles. It enables the sharing of essential personal information relevant to compliance and coal mining safety and health matters. Therefore, it is reasonable and justified.

For the amendments relating to information sharing to improve safety, the overall intent of this proposal is to enable information sharing that will promote shared learnings across industry to result in meaningful changes for safety and health outcomes.

2. Modern regulatory enforcement

Implementing enforceable undertakings offer flexibility to achieve a greater range and variation of outcomes that can lead to lasting improvements within the organisation and more broadly across the resources sector. Publishing enforceable undertakings and the compliance history of an organisation is intended to deter non-compliance whilst also being used as an education tool for other organisations.

Court orders will enhance deterrence, encourage meaningful action by an offender, be more targeted, and allow the court to impose proportionate responses, thus enhancing safety outcomes consistency across Queensland's resource sector.

5. Operational and minor amendments

For the amendments relating to disclosure of information, the potential limitations to a person's right to privacy and reputation enables improved disclosure of information with government

agencies responsible for administering safety and health laws. This will achieve the purpose of greater safety and health outcomes for workers and the community.

The amendments addressing inconsistent powers of inspectors to require a person to provide personal details mandates the explicit disclosure of an individual's residential address to reduce potential challenges in serving a court summons at a later stage.

The amendments relating to notification of prescribed diseases facilitates accurate and timely notification of prescribed diseases by site senior executives, which improves RSHQ's ability to monitor disease occurrence in the industry and develop regulatory responses, ultimately contributing to the prevention of future diagnoses.

For the amendments to the P&G Act to compel someone to answer questions or provide information, this will ensure that inspectors and authorised officers can overcome potential obstacles from an individual whilst investigating incidents, such as non-cooperation due to fear of self-incrimination. However, the Bill explicitly provides safeguards to the individual depending on the circumstances—that is, if the questions:

- Do not relate to an *incident* as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse—for example, because complying with the requirement would incriminate the individual or make them liable to a penalty.
- Do relate to an *incident* as defined under the P&G Act, then the individual must comply with the requirement, but the Act provides an assurance that any answers or information provided cannot subsequently be used against that individual for an offence under this Act (unless the answers or information provided was false or misleading).

The powers and safeguards provided by these amendments to the P&G Act will lead to better investigations that can prevent the reoccurrence of serious harm to workers.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments under this category.

For the amendments relating to competency for key safety critical roles, information released is not available from other sources, other than the prospective worker. The information released confirms the accuracy of any information provided by the prospective worker about holding a particular certificate of competency. Also, the amendments have been considered in a manner that is not overly burdensome or exhaustive and has undergone a cost-benefit analysis. Additionally, these amendments were informed by recommendations from the Coal Mining Board of Inquiry and Brady Review, which both made a number of findings and recommendations for preventing ongoing fatalities in coal mine sites.

For the amendments relating to CPD, the information released confirms the accuracy of any information provided by the prospective worker to, for example, operators, site senior executives or underground mine managers about holding a particular practising certificate prior to their appointment to key safety critical roles at mines. Also, these amendments intend

that the human rights identified above are only limited if an individual cannot meet the ongoing CPD requirements, or for more serious reasons, outlined by the Board of Examiners' Practising Certificate Scheme. This proposal is also consistent with existing CPD regimes in Queensland and interstate.

It is also noted that the above amendments are subject to existing laws that protect an individual's information that they provide to the Board of Examiners. For example, the CMSHA and the MQSHA both prevent the board from disclosing the individual's contact information to any person or agency. Also, an individual's information that is collected, managed or disclosed by the board is subject to the privacy principles set out in the *Information Privacy Act 2009*.

The amendments relating to information sharing to improve safety, the release of personal information will only occur in circumstances where it is in the public interest and prioritises safety outcomes, as well as minimising risks to workers and the public.

2. Modern regulatory enforcement

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments under this category.

The amendments introducing enforceable undertakings are not overly restrictive to the right to privacy and reputation. Importantly, these undertakings will be voluntary in nature and will not be an admission of guilt by the individual giving the undertaking, and therefore do not arbitrarily affect that individual's reputation. The proposal will also allow enforceable undertakings to be (voluntarily) initiated by the individual rather than RSHQ only. However, RSHQ has the discretion as to whether the undertaking will be accepted.

The amendments to court order provisions are intended so that only the courts can decide to make an order, or combination of orders, that limit a person's right to privacy and reputation (such as an adverse publicity order) if it considers these types of orders will have the best remedial or deterrent effect for that case. The person subject to the court order (or court orders) made may subsequently have appeal rights if they are dissatisfied with the court's decision. Also, a person only becomes subject to these orders if they are successfully prosecuted, because they breached safety and health laws under the Resources Safety Acts.

5. Operational and minor amendments

There are no less restrictive and reasonably available ways to achieve the purpose of the amendments under this category.

For the amendments relating to disclosure of information, as well as the amendments relating to notification of prescribed diseases, they will both be subject to existing laws that protect the personal information that is provided to RSHQ. For example, personal information that is collected, managed or disclosed by RSHQ is subject to the privacy principles set out in the *Information Privacy Act 2009*.

The amendments relating to inconsistent powers of inspectors to require a person to provide personal details have been drafted in a way to ensure the limitation on privacy and reputation is engaged only to the extent necessary. The amendments allow an inspector to require the

individual to state their name and residential address only. Further, the Bill provides a safeguard so that the person is not liable to a penalty (for failing to provide their name and address) if they have a reasonable excuse. The amendments also ensure this requirement is consistent across the Resources Safety Acts.

For the amendments that compel someone to answer questions or provide information, these coercive powers are accompanied by appropriate statutory protections to the individual. For example, if the requirement to answer questions or provide information does not relate to an *incident* as defined under the P&G Act, then it is a reasonable excuse for an individual not to comply with the request to answer questions or provide information if complying with the request might incriminate the individual or make them liable to a penalty. Otherwise, if the requirement relates to an *incident* under the P&G Act, then the individual must comply with the requirement, but the Act will provide an assurance that the answers or information provided cannot subsequently be used against that person in proceedings for an offence.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

1. Facilitating the growth in high-reliability organisation (HRO) behaviours

For the amendments relating to competency for key safety critical roles, the collection and release of personal information through the Board of Examiners' register is lawful. It is not arbitrary, and it outweighs any limitation on the right to privacy and reputation of those appointed to key safety critical roles. It enables the sharing of essential personal information relevant to compliance and coal mining safety and health matters. These amendments also promote other human rights, such as the right to life—for example, they will ensure that those in relevant key safety critical roles have the necessary competencies to protect the safety and wellbeing of themselves and others. By upholding these competency standards, these amendments contribute to maintaining a safe and secure working environment.

For the amendments relating to CPD, the importance of the safety and health of mine workers (through measures supporting the competency of those in key safety critical roles at mines) outweighs any limitations imposed on the right to property of those required to have practising certificates to remain in employment in key safety critical roles and is therefore reasonable and justified. These amendments also promote other human rights, such as the right to life—for example, they will ensure the ongoing mining safety and health competency of those in critical safety positions who have a direct, ongoing influence on the safety and health of mine workers.

For the amendments relating to information sharing to improve safety, the potential limitations to this human right are fair and balanced, as they enable effective information sharing to improve safety and health outcomes and prevent risks to workers and the public. As identified by the Brady Review, sharing safety information allows this information to be utilised as a tool for harm prevention and a means to educate the wider industry. These amendments also promote other human rights, such as the right to life—for example, it will enable information sharing that will promote shared learnings across the resources industry, resulting in meaningful changes for safety and health outcomes.

2. Modern regulatory enforcement

Enforceable undertakings, including their publication, are justifiable measures in promoting safer work environments. Workplace safety is a fundamental right of employees. Employers (as well as those in key safety critical roles) are obligated to ensure employees work in safe environments. These amendments also promote other human rights, such as the right to life—for example, it will enhance safety and prevent harm to workers in dangerous work environments, as enforceable undertakings are designed to address non-compliance through prevention and remediation. Enforceable undertakings will provide operators with the opportunity to share the lessons that can be learned from an incident. The limitations on the right to privacy and reputation are justified in this context, as the benefits of enhanced safety far outweigh the costs of compliance with enforceable undertakings.

Whilst the amendments to court order provisions can limit the right to privacy and reputation, it's also noted that the amendments promote other human rights under the HR Act, such as the right to life—as it intends to deliver more tangible future safety outcomes when an offender is prosecuted under the Resources Safety Acts. The amendments also ensure greater consistency across safety and health legislation, as the amendments are consistent with the WHS Act (which is largely consistent with national work health and safety laws) and NSW and WA resources safety and health legislation. Achieving consistency with other legislation improves human rights through better alignment of laws that are working towards the same goals and standards.

5. Operational and minor amendments

The amendments relating to disclosure of information balance rights of privacy and reputation with the requirement to share safety and health information with law enforcement agencies and government agencies to mitigate or avoid safety and health risks. The amendments will provide for better information disclosure between health and safety regulators to improve safety and health outcomes for workers and the community.

For the amendments relating to inconsistent powers of inspectors to require a person to provide personal details, this limitation is fair and balanced as it only limits the right to the extent necessary. Importantly, an individual's right to privacy and reputation is only impacted (that is, they are only required to state their name and residential address) if an inspector reasonably believes that the individual committed an offence under a Resources Safety Act. These amendments also provide for greater consistency across the Resources Safety Acts. Achieving consistency with other legislation improves human rights through better alignment of laws that are working towards the same goals and standards.

For the amendments relating to notification of prescribed diseases, the impact of limiting these human rights by mandating the disclosure of specific personal information is outweighed by the benefits of collecting and analysing this information—for example, for developing regulatory responses and contributing to the prevention of future diagnoses. This ultimately promotes better health outcomes and improves the overall safety and well-being of current (and former) mine and quarry workers.

Also, the amendments uphold the right to privacy and reputation by eliminating redundant information disclosure requirements under the CMSHA and MQSHA, which enhance the protection of an individual's personal information.

The amendments to the P&G Act that compel someone to answer questions or provide information strike an appropriate balance between safeguarding human rights and enhancing the effectiveness of investigations. The identified limitations on the right to privacy and reputation is reasonable and demonstrably justifiable as it is appropriately accompanied by statutory protections for individuals. The amendments also enhance the protection of other human rights under the HR Act, such as the right to life, as the amendments provide an effective investigative tool when investigating complex matters which can prevent the reoccurrence of serious harm. Finally, the amendments will also enhance rights in criminal proceedings as the Bill explicitly provides safeguards to the individual depending on the circumstances—that is, if the questions:

- Do not relate to an *incident* as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse—for example, because complying with the requirement would incriminate the individual or make them liable to a penalty.
- Do relate to an *incident* as defined under the P&G Act, then the individual must comply with the requirement, but the Act provides an assurance that any answers or information provided cannot subsequently be used against that individual for an offence under this Act (unless the answers or information provided was false or misleading).

Fair hearing and Rights in criminal proceedings (sections 31 - 32 of the HR Act)

(a) the nature of the right

A person charged with an offence has the right to a fair hearing in criminal trials. The concept of a fair hearing is concerned with matters of procedural fairness, rather than substantive fairness in relation to the merits of a particular decision. This right may be limited where a law, policy or decision impacts the way that witnesses give evidence.

A person charged with an offence also has a right to minimum guarantees about how they will be treated and how criminal proceedings will be conducted. Section 32(2)(c) of the HR Act protects the right for persons to be tried without unreasonable delay.

4. Consistency of Resources Safety Acts

The Bill will increase the current timeframe for commencing proceedings under the CMSHA, the Explosives Act and the MQSHA, which may limit these rights as it could extend the timeframe before being prosecuted, making it possible that evidence and recollections from witnesses will be harder to obtain or recall after a long period of time has lapsed.

(b) nature of the purpose of the limitation imposed by the Bill if enacted, including whether it's consistent with a free and democratic society based on human dignity, equality and freedom

4. Consistency of Resources Safety Acts

Increasing the timeframe for commencing proceedings promotes fairness and due process by ensuring that, when serious accidents occur in working environments regulated by RSHQ, the Resources Safety Acts allow sufficient time to obtain the necessary evidence to commence proceedings. Ensuring a sufficient timeframe for commencing proceedings safeguards the rights of both the accused and any victims as it allows reasonable time for RSHQ to identify and assess

the alleged breaches and further the public interest by providing a consequence for legally wrong conduct that has potential safety, financial or social impacts. This amendment is therefore consistent with a free and democratic society based on human dignity, equality and freedom.

- (c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

4. Consistency of Resources Safety Acts

By increasing the timeframe for commencing proceedings under the CMSHA, the Explosives Act and the MQSHA, it is expected that more robust investigations will lead to more successful prosecutions, which will provide a deterrent to future actions and will improve safety and health outcomes. It also ensures that there is greater consistency across safety and health legislation in Queensland, as the proposed timeframe is consistent with the P&G Act and the WHS Act.

- (d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

4. Consistency of Resources Safety Acts

There are no less restrictive and reasonably available ways to achieve the purpose. The existing timeframes for commencing proceedings are set out in the Resources Safety Acts and can only be changed through legislative amendments. It is also noted that the proposal will only extend the timeframes (for commencing proceedings under the CMSHA, the Explosives Act and the MQSHA) to the same limitation period under the P&G Act and the WHS Act.

- (e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

4. Consistency of Resources Safety Acts

On balance, the limitation on the human rights identified above is justified as the amendments provide the least restrictive and reasonably available way to achieve the dual purposes of ensuring more robust investigations as well as improving safety and health outcomes. The limitation is also balanced by ensuring the extended timeframe is no longer than the same timeframes provided for in the P&G Act and the WHS Act. The amendments will also enhance the protection of other human rights under the HR Act, such as the right to life.

Conclusion

In my opinion, the Bill is compatible with human rights under the HR Act because the amendments either:

- do not limit any human rights; or
- limit human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

SCOTT STEWART MP
Minister for Resources and Critical Minerals

© The State of Queensland 2024