

Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

Erratum to Statement of Compatibility

Title of the Bill

The Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 (the Bill).

Reason for Erratum

To implement recommendation number 6 of the Transport and Resources Committee report which provides that the Statement of Compatibility be amended to include a discussion of the engagement of the right to property resulting from clause 12 of the Bill.

Statement of compatibility

On page 2, under the ‘**Human rights relevant to the Bill (Part 2, Division 2 and 3 *Human Rights Act 2019*)**’ section.

1. Replace the first paragraph with new paragraph as shown:

The proposed amendments in the Bill could be considered to engage the right to life (section 16), freedom of expression (section 21) and the right to own property (section 24) provided for under the *Human Rights Act 2019*.

2. Under the paragraph beginning with Clauses 4 to 13 and ending with “on their employment” insert the new paragraph as shown:
 - Clause 12, which inserts new part 20, division 10 (Transitional provisions for *Coal Mining Safety and Health and Other Legislation Amendment Act 2022*).

On page 3, under the heading ‘**Safety and health – Amendments to the *CMSH Act***’ insert a sub-heading “*Right to Life*”.

On page 3 under “(f) Any other relevant factors. Nil.” insert the below additional information.

Right to own property

Clause 12, new section 324 in the Bill, potentially engages the right to own property.

- (a) The nature of the right

Section 24 of the HR Act provides that a person has a right to own property alone or with others. Further a person must not be arbitrarily deprived of their property, in the sense that it

must not be capricious, unpredictable, or unjust or otherwise disproportionate to the legitimate aim that is sought.

Clause 12 inserts a number of new sections aiming to add certainty and clarity regarding how the existing arrangements are to be transitioned into the new requirements. As part of the transitional matters in clause 12, new section 324 provides that a person in a particular statutory role (i.e. an SSE for a coal mine or a person who held an appointment under former section 59(1), 60(2), (4), (8), (9) or (10) or 61(2)) on 25 November 2022 and could not be appointed under the ‘new appointment provisions’ as identified in subsection (4) (i.e. is not an employee of a relevant entity for the position) will no longer hold a valid appointment for that statutory role and the State will not be liable for the payment of any compensation for the loss of the appointment. That is, for not retaining their monetary livelihoods/employment, after the transitional period.

(b) The nature of the purpose of the limitation

Protecting the safety and health of workers is a key responsibility of government and is consistent with a free and democratic society based on human dignity, equality, and freedom. The reason for the limitation on human rights is to enable industry to effectively transition into the direct employment requirements. The amendments in the Bill provide greater flexibility and exceptions to the direct employment requirements that were brought into force by the MEROLA Act and commence on 25 November 2022. The effective transition into the new requirements will facilitate compliance with the requirements which in turn will ensure that the safety objectives of those amendments under the MEROLA Act are given effect, which were to ensure that holders of such statutory roles at coal mines can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

Additionally, industry has benefited from a 2.5 transitional period applying to these requirements. This is considered to be sufficient time for industry to ensure those statutory positions are transitioned into direct employment and also sufficient time for prior notice if the person was potentially losing their position.

(c) The relationship between the limitation and its purpose

The transitional provisions under clause 12 are designed to ensure that the exceptions to the direct employment requirements are properly given effect on commencement, which in turn ensures that the safety objectives of those requirements can be achieved. The exceptions are necessary to provide greater flexibility and facilitate industry compliance with the direct employment requirements when they commence. The direct employment requirements ensure that holders of such statutory roles at coal mines can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

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

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

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

On balance, the importance of the safety and health of coal mine workers outweighs any limitations imposed on the right to property of those in safety critical position. The transitional provisions, including section 324, allow for effective transition to the exceptions to the direct employment requirements which in turn facilitates implementation and compliance with those requirements whilst preserving the safety objectives of the direct employment requirements. The direct employment requirements which now include greater flexibility by providing for a range of entities being able to directly employ a coal mine worker are vital for the well-being and safety of the operations, and are reasonable and justified.

(f) Any other relevant factors

Nil.