

Strong and Sustainable Resource Communities Bill 2016

Explanatory notes for

Amendments moved during consideration in detail by The Honourable Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines

and

Amendments moved by the Member for Nanango, Deb Frecklington MP

For details on which amendments were agreed to, see the Queensland Parliament's Record of Proceedings (Hansard) for Thursday 24 August 2017, page 2541.

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Strong and Sustainable Resource Communities Bill 2016

Explanatory Notes

For

Amendments to be moved during consideration in detail by The Honourable Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines

Title of the Bill

Strong and Sustainable Resource Communities Bill 2016 (the Bill).

Objectives of the amendments

The objective of the amendments is to clarify elements of the Bill and to respond to recommendations made by the Infrastructure, Planning and Natural Resources Committee (the Committee) in Report No. 42 (55th Parliament) tabled on 7 March 2017, following the inquiry on the Bill. The amendments extend the 100 per cent fly-in, fly-out (FIFO) prohibition and the anti-discrimination provisions in the Bill to large resource projects to ensure nearby regional communities benefit from these projects.

There are also technical amendments proposed in order to improve the operation of the Bill and to address a number of stakeholder concerns. The amendments are consistent with the scope and intent of the Bill as publicly consulted.

Achievement of the objectives

The objectives of the amendments will be achieved by:

- extending the prohibition of 100 per cent FIFO workforces to all existing and future large resource projects with a nearby regional community, regardless of when the project was approved (i.e. no longer limited to future projects that publicly notify an environmental impact statement (EIS));
- expanding the definition of a large resource project beyond those with an EIS, to include projects with an environmental authority and 100 or more workers;

- requiring the owner of a large resource project that contravenes the 100 per cent FIFO prohibition to submit an operational workforce management plan (OWMP) to the Coordinator-General;
- providing the Coordinator-General with the power to approve the OWMP and state conditions on it or on the project that relate to the OWMP;
- providing for the Coordinator-General to make a guideline for an OWMP;
- providing a transitional period for proponents to meet the 100 per cent FIFO restriction;
- applying the anti-discrimination provisions in the Bill to all existing and future large resource projects to ensure discrimination does not occur against local workers in future recruitment (i.e. no longer limited to projects with an EIS publicly notified since 30 June 2009);
- amending the recruitment hierarchy that was in the draft social impact assessment (SIA) guideline and elevating its importance by including it in the Bill itself;
- providing that the Coordinator-General must make a guideline to state the details which must be included in a SIA;
- ensuring Coordinator-General stated conditions made under the legislation are enforceable;
- requiring the Coordinator-General to decide, as part of an EIS evaluation, if the provisions of the Bill apply to construction workers for a project along with the operational workforce;
- providing the Coordinator-General with investigative powers to administer and monitor compliance with the Bill;
- amending the radius in the definition of a nearby regional community to 125 kilometres and clarify the point from which the radius is measured; and
- clarifying that the Coordinator-General may decide to include towns of less than 200 people as a nearby regional community.

Alternative ways of achieving policy objectives

There are no alternative ways to achieve the policy objectives.

Estimated cost for government implementation

There are increased implementation costs for government and there are likely to be increased costs to the Anti-Discrimination Commission Queensland associated with the amendments.

Consistency with fundamental legislative principles

The amendments extend the prohibition on 100 per cent FIFO workforces and the anti-discrimination provisions to all large resource projects in Queensland. These provisions may be considered retrospective legislation in that resource projects with existing 100 per cent FIFO arrangements in place could be affected. However, the anti-discrimination provisions are prospective from the commencement of the Bill, applying to future recruitment. The prohibition on 100 per cent FIFO workforces comes into effect after a transition period to allow the owner of a large resource project time to comply with the prohibition.

The amendments provide the Coordinator-General with investigation powers in order to administer the Bill. These investigative provisions could be considered wide-ranging without a prescribed formal process (i.e. show cause notice and appeal rights). The Coordinator-General's investigations, however, would be limited to matters necessary to administer the Bill, for instance to determine compliance with the 100 per cent FIFO prohibition.

The amendments provide the Coordinator-General with the discretion to decide a project with less than 100 workers is a large resource project. This discretion will improve practical implementation of the Bill, enabling the Coordinator-General to have an appropriate degree of flexibility to determine a project with an operational workforce fluctuating around 100 workers to be a large resource project.

Consultation

The issues raised in submissions to the Committee have been considered by the government in preparing these amendments.

Notes on Provisions

Amendment 1

Amendment 1 amends clause 6 of the Bill to extend the prohibition on 100 per cent FIFO workers to all large resource projects that have a nearby regional community. The amended clause 6 will start to apply to large resource projects six months after the initial publication of the project on the Department of State Development's website under clause 13 of the Bill. This transitional period will allow large resource projects sufficient time to transition their workforce arrangements and to comply with the prohibition.

In conjunction with this amendment, Amendment 12 also expands the definition of a large resource project.

These two amendments together partially respond to Recommendations 4 and 5 made by the Committee.

Amendment 2

Amendment 2 replaces clause 7 of the Bill to change the intent of the provision.

The amendment enables the Coordinator-General to require the owner of a large resource project that contravenes the 100 per cent FIFO prohibition to prepare an OWMP.

Prior to requiring a large resource project to prepare an OWMP, the Coordinator-General would investigate and request relevant information from the owner on workforce arrangements to determine whether there has been a contravention of the 100 per cent FIFO prohibition. The Coordinator-General's request for information on workforce arrangements is supported by the investigative powers proposed for inclusion in the Bill by Amendment 10.

If, following an investigation, the Coordinator-General is satisfied that the large resource project has contravened the 100 per cent FIFO prohibition the Coordinator-General may require an OWMP. Where an OWMP is required, the Coordinator-General would issue a requirement notice that specifies the matters to be addressed. The requirement notice may reference a guideline for an OWMP.

The owner of the large resource project would be required to submit an OWMP to the satisfaction of the Coordinator-General in accordance with the requirement notice within three months (this period may be extended by the Coordinator-General). An offence is committed if an OWMP is not submitted within the time specified.

The Coordinator-General may approve the OWMP with conditions. Conditions may be required on an approved OWMP to ensure compliance with the legislation. Where the OWMP does not comply with the requirement notice, the OWMP may be approved and conditioned to comply with the requirement notice, the guideline for an OWMP and the 100 per cent FIFO prohibition.

The owner of a large resource project must consult with the relevant local government on the preparation of the OWMP. This amendment provides an opportunity to support local employment and transition a large resource project with a 100 per cent FIFO workforce towards a more appropriate balance between FIFO and local employment.

The OWMP provides the mechanism for an owner to provide justification for their use of 100 per cent FIFO. For example, if the owner wants to provide evidence that local labour does not exist to meet the specific needs of their project. The Coordinator-General would consider such information in deciding whether to approve the OWMP and under what conditions.

Amendment 3

Amendment 3 amends clause 8 of the Bill to extend the offence provision relating to advertising to all large resource projects that have a nearby regional community. This provision operates in conjunction with the amendments to the *Anti-Discrimination Act 1991* (AD Act) and together, these are referred to as the anti-discrimination provisions.

The anti-discrimination provisions will apply to a large resource project with a nearby regional community once its details are published under clause 13. The anti-discrimination provisions will apply to future recruitment.

This amendment partially responds to Recommendations 4 and 6 made by the Committee.

Amendment 4

Amendment 4 amends clause 9 of the Bill to ensure recruitment of workers occurs from a hierarchy of priority areas provided for in the workforce management considerations of the SIA. The areas are listed in order of priority.

Recruitment from local and regional communities are the first priority areas in the list. These would include the local and regional communities defined for the project. The second priority is to recruit workers who will live in the regional communities for the project.

Amendment 5

Amendment 5 amends clause 9 of the Bill to ensure that the Coordinator-General makes a SIA guideline stating the details that must be included in a SIA. This clarifies the intent that the Coordinator-General must have a SIA guideline to support the requirements of SIA.

This amendment responds to Recommendation 7 made by the Committee.

Amendment 6

Amendment 6 amends clause 11 of the Bill to clarify that the Coordinator-General may, as part of the EIS evaluation for the project, state conditions to manage the social impacts of the project.

Amendment 7

Amendment 7 amends clause 11 of the Bill to ensure that social conditions stated by the Coordinator-General for large resource projects subject to an EIS under the *State Development and Public Works Organisation Act 1971* (SDPWO Act), will be enforceable.

The amendment also ensures a process exists for a proponent to request a change to a Coordinator-General condition stated under clause 11 of the Bill for large resource projects subject to an EIS under the SDPWO Act.

Amendment 8

Amendment 8 amends clause 11 to ensure part 7A of the SDPWO Act remains applicable. Reference to part 7A in this clause ensures the Planning and Environment Court has jurisdiction for Coordinator-General condition enforcement matters.

Amendment 9

Amendment 9 amends clause 12 of the Bill to require the Coordinator-General to decide, as part of the EIS evaluation for a project, whether to include or exclude the construction phase, so that a person employed during the construction phase for a project is a ‘worker’ for the purposes of the Bill. Amendment 9 ensures that during the EIS evaluation the Coordinator-General makes a decision under this clause.

Amendment 10

Amendment 10 inserts a new clause to provide the Coordinator-General with investigative powers to administer and enforce the Bill.

It is intended that the Coordinator-General may require the owner of a large resource project to provide relevant information regarding operational workforce arrangements or any matter in the Bill.

This amendment is necessary in order for the Coordinator-General to be able to monitor compliance with the Bill, for example, the 100 per cent FIFO prohibition; the anti-discrimination provisions and the SIA implementation.

If the owner of a large resource project fails to submit the relevant information required by the Coordinator-General, a maximum penalty of 400 penalty units will apply.

Amendment 11

Amendment 11 amends clause 19 of the Bill to extend the amendments to the AD Act to all large resource projects that have a nearby regional community. This provision operates in conjunction with the amendments to clause 8 (offence provision relating to advertising) and together, these are referred to as the anti-discrimination provisions.

The anti-discrimination provisions will apply to a large resource project with a nearby regional community once its details are published under clause 13. The anti-discrimination provisions will apply to future recruitment.

This amendment partially responds to Recommendations 4 and 6 made by the Committee.

Amendment 12

Amendment 12 amends the definition of a ***large resource project*** in schedule 1 (dictionary) of the Bill.

The amendment expands the definition of large resource project to include a resource project that holds a site-specific environmental authority; and has, or is projected to have, an operational workforce of 100 or more workers.

The Coordinator-General would have discretion to decide that a project with less than 100 workers is a large resource project. This discretion would provide flexibility to the Coordinator-General to ensure practical implementation.

It is not intended that the legislation apply to all resource projects in Queensland, regardless of their size. This expanded definition of a large resource project would capture operational resource projects that are of a sufficient scale to be considered large. These provisions would apply to large resource projects that may not have been subject to an EIS due to their commencement date (pre-2009 projects).

The expanded 100 per cent FIFO prohibition and the anti-discrimination provisions apply to all large resource projects with a nearby regional community (including those that have commenced operation). The SIA provisions apply only to future large resource projects that have a publicly notified EIS.

This amendment supports the amendments that partially respond to Recommendations 4, 5 and 6 made by the Committee.

Amendment 13

Amendment 13 amends the definition of a ***nearby regional community*** in schedule 1 (dictionary) of the Bill.

The amendment alters the radius in the definition from 100 kilometres to 125 kilometres.

The amendment clarifies that the main access to a large resource project would be the point from which the radius is measured. A large resource project can occupy a large area and may have several access points. Measuring radii from various access points to a nearby regional community would be difficult to administer. The registered access point identified in the mining lease application is taken to be the main access to the large resource project.

The definition is also amended so that the Coordinator-General's decision to include or exclude a town as a nearby regional community applies to town size as well as distance from the project. The amendment ensures that the Coordinator-General is able to decide to include a town with a population of 200 people or less as a nearby regional community for a large resource project. This part of the amendment responds to Recommendation 3 made by the Committee.

Amendment 14

Amendment 14 removes the definition reference to the ***Planning and Environment Court*** in schedule 1 (dictionary) of the Bill, as provided for in the *Acts Interpretation Act 1954*.

Strong and Sustainable Resource Communities Bill 2016

Explanatory Notes

For amendments to be moved during consideration in detail by the Member for Nanango, Deb Frecklington MP

Short title

The short title of the Bill is the *Strong and Sustainable Resource Communities Bill 2016* (the Bill).

Policy objectives and the reasons for them

The objectives of the LNP's amendments are to ensure:

- Prohibit 100% Fly in Fly out workforces during construction and operation for large resource projects proximate to nearby regional communities.
- Ensure local communities are consulted as part of the social impact assessment for large resource projects.

Achievement of policy objectives

The LNP's policy objectives are achieved by amending the Bill:

- Explicitly prohibiting 100% fly in fly out workforces during construction and operation of large resource projects proximate to nearby regional communities.
- Enshrining as a minimum requirement that the proponent or owner of a large resource project undertakes consultation with the local community within the local government area of the location of the large resource project as part of the social impact assessment.

Alternative ways of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives other than amending the Bill.

Estimated cost for government implementation

There are no significant cost impacts of these amendments on the government.

Consistency with fundamental legislative principles

The amendments are consistent with the fundamental legislative principles.

Consultation

The LNP has developed these amendments from stakeholder and community feedback from the Committee process.

Consistency with legislation of other jurisdictions

There are unique arrangements in each jurisdiction for the matters addressed in these amendments.

Notes on provisions

Clause 1 amends clause 3 of the Bill – Object of Act

Clause 1 expands the object of the Act to ensure that residents of communities in the vicinity of large resource projects benefit from the construction and operation of the project. Presently this object only relates to operation.

Clause 2 amends clause 6 of the Bill – Prohibition on 100% fly-in fly-out workers for large resource projects

Clause 2 expands the prohibition of 100% fly-in fly out workers for large resource projects to include the construction phase not just operation.

Clause 3 amends clause 9 of the Bill – Requirement for owner of, or proponent for, large resource project to prepare a social impact assessment

Clause 3 ensures that communities within the local government area where a proposed large resource project is situated must be consulted through the social impact assessment.

Clause 4 removes clause 12 of the Bill – Coordinator-General may nominate large resource project for which persons employed during construction phase are workers for this Act.

Clause 4 removes clause 12 of the Bill so that it is no longer discretionary for the prohibition on 100% fly-in fly-out workers to apply to the construction phase of large resources projects proximate to nearby regional communities. By expanding the prohibition of 100% fly-in fly-out workers to the construction phase in various other sections in other amendments, this Clause is no longer required.

Clause 5 amends clause 13 of the Bill – Publication of details of nearby regional communities and large resource projects

Amends clause 13 so that the dates of both the construction and operational phase of large resources projects is published by the Coordinator-General on the department's website.

Clause 6 amends clause 13 of the Bill – Publication of details of nearby regional communities and large resource projects

This removes the semi-colon at the end of subsection 13(d) which is no longer required because 13(e) is being omitted.

Clause 7 amends clause 13 of the Bill – Publication of details of nearby regional communities and large resource projects

This omits section 13(e), which is no longer needed due to amendment 4 listed above.

Clause 8 amends clause 14 - Owner of large resource project must advise Coordinator-General of particular matters

This amendment removes the existing section requiring the owner of large resources project must notify the Coordinator-General of the start phase of operation of a project and replaces this section

with a requirement that the owner of a large resources project must notify the Coordinator-General of the start phase of construction and operation of a project.

Clause 9 amend Schedule 1 (Dictionary)

Inserts a definition for the construction phase of a large resource project.

Clause 10 amend Schedule 1 (Dictionary)

Expands the definition for fly-in fly-out worker to include the construction phase of the project.

Clause 11 amend Schedule 1 (Dictionary)

Inserts a new definitions for worker to mean a person employed, or to be employed, to perform work during the construction or operational phase of the project.

Clause 12 amends the Long Title

Amends the long title of the Bill to include construction.