

Mineral and Energy Resources and Other Legislation Amendment Bill 2020

Statement of Compatibility

FOR

Amendments during consideration in detail to be moved by the Honourable Dr Anthony Lynham MP

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

In accordance with section 38 of the *Human Rights Act 2019*, I, Dr Anthony Lynham, Minister for Natural Resources, Mines and Energy, make this statement of compatibility with respect to the amendments to be moved during consideration in detail of the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (the Bill).

In my opinion, the amendments to be moved to the Bill are compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Amendments

The amendments during consideration in detail:

- Implement the fourth, fifth and ninth recommendations of the State Development, Natural Resources and Agricultural Industry Development Committee (the Committee) report on the Bill (Report number 46, 46th Parliament);
- Correct a drafting error identified in the *Resources Safety and Health Queensland Act 2020*; and
- Correct minor drafting errors in the Bill, including changing the commencement date for certain water-related provisions from proclamation to assent.

Human Rights Issues

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

In my opinion, the human rights relevant to the amendments to be moved to the Bill are:

- Right to life (section 16);
- Property rights (section 24)
- Right to privacy and reputation (section 25)
- Right to liberty and security of person (section 29).

These human rights are relevant to the amendments relating to statutory office holders (amendments 2 and 3) and the penalty for reprisal offences (amendments 4 and 5).

The other amendments to be moved are minor and administrative in nature and human rights are not engaged by these amendments. As such, no further analysis of these amendments under the HR Act is required.

Statutory office holder requirements (amendments 2 and 3)

In response to the Committee's fourth recommendation, amendments 2 and 3 extend the period for compliance with the requirement in the Bill that statutory office holders be an employee of a coal mine operator from 12 to 18 months.

The human right that is relevant to the statutory office holder requirement amendments is:

- Right to life (section 16).

The right imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life, including for example criminal law and law enforcement provisions. This extends to requiring authorities to put in place measures that would protect an individual whose life is being put at risk by another's criminal activity.

Amendments 2 and 3 extend the period before which statutory office holders will be protected as an employee of a coal mine operator and feel safe to raise safety issues without fear of reprisal or impact on their employment. The Committee has recommended these changes in response to stakeholders concerns about being able to meet the original timeframes proposed.

While these amendments will delay the added protections which arise through the employment status of the office holder, the right to life is already protected through existing reprisal offence provisions, which protect workers and those who raise safety complaints. As the right to life is protected there is no need to undertake further assessment under section 13 of the HR Act.

Penalty for reprisal offences (amendments 4 and 5)

In response to the Committee's fifth recommendation, amendments 4 and 5 amend the Bill to increase the maximum penalty for reprisal offences in the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* to align with the maximum penalty in the *Work Health and Safety Act 2011* for similar offences.

The human rights that are relevant to the penalty for reprisal offences amendments are:

- Right to life (section 16);
- Property rights (section 24);
- Right to privacy and reputation (section 25); and
- Right to liberty and security of person (section 29).

Property rights

This right protects the right of all persons to own property and provides that people have a right not to be arbitrarily deprived of their property.

The existing penalties for reprisal offences in the *Coal Mining Safety and Health Act 1999* and the *Mining and Quarrying Safety and Health Act 1999* are proposed to be increased from 40 penalty units to 1,000 penalty units. The increased maximum penalties align with the maximum

penalties in the *Work Health and Safety Act 2011* for similar offences. Any fine imposed would only be after the hearing of the charge before a court. Therefore increasing the maximum monetary fine, in these circumstances, does not limit the property right.

Right to life, right to security of person, and right to privacy

The right to life, right to security of person, and the right to privacy are also relevant to amendments 4 and 5, which increase the maximum penalty for existing reprisal offences.

The right to life imposes substantive and procedural obligations on the State to take appropriate steps and adopt positive measures to protect life, including for example effective criminal law and law enforcement provisions. The right to security of person means that all reasonable steps must be taken to ensure the physical safety of those who are in danger of physical harm; it includes bodily and mental integrity, or freedom from injury to the body and mind. The right to privacy protects the individual from all interferences and attacks upon their privacy, family, home, correspondence and reputation. This includes protection of an individual against interference with their physical integrity.

The purpose of increasing the maximum penalties for reprisal offences is to ensure that workers feel safe to make safety complaints without fear of reprisal action being taken against them. The increased penalties will deter reprisal action being taken. Increased reporting of safety complaints will also improve the safety culture of the workforce.

The increased reprisal offence maximum penalties will create stronger protection for the rights of workers and those who make safety complaints by increasing the maximum penalties that may be imposed against a person charged with a reprisal offence. As a result this will promote and protect the human rights to life, security of person, and privacy.

As human rights are protected rather than limited by the amendment, no further assessment under section 13 of the HR Act is required.

Conclusion

In my opinion, the amendments to be moved to the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 are compatible with human rights because they do not limit a human right in accordance with section 13 of the Act.

The Honourable Dr Anthony Lynham
MINISTER FOR NATURAL RESOURCES, MINES AND ENERGY