

**Queensland Parliament – Infrastructure,
Planning and Natural Resources Committee**

**Strong and Sustainable Resource
Communities Bill 2016**

Australian Mines & Metals Association (AMMA)

December 2016



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 97 years, AMMA's membership spans the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resource industry is an attractive and competitive place to invest and do business, employ people and contribute to our national well-being and living standards.

The resource industry is and will remain a major pillar of the national economy, and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2015-16 the value of Australian resource exports were \$157.1 billion. This is projected to increase to \$232 billion in 2020-21¹. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Approximately 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserve.

AMMA members across the resource industry are responsible for significant level of employment in Australia. The resources extraction and services industry directly employs 222,300 people. Adding resource-related construction and manufacturing, the industry directly accounts for 4 per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, are employed as a result of the resource industry.

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¹ Office of the Chief Economist – Resources and Energy quarterly publication

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INTRODUCTION

1. AMMA welcomes the opportunity to provide this submission to the Infrastructure, Planning and Natural Resources Committee on the Strong and Sustainable Resource Communities Bill 2016 (the SSRC Bill).
2. AMMA has taken the opportunity to respond in this submission to both the SSRC Bill and Social Impact Assessment (SIA) Guideline (the Guideline) as they work hand-in-hand, but reserves the right to provide further input during any subsequent latter consultation processes on the Guideline.
3. This submission adds to extensive previous input from AMMA on the matters addressed in the SSRC Bill, including the following submissions:

Fly in, fly out and other long distance commuting work practices in regional Queensland inquiry (May 2015):

http://www.amma.org.au/wp-content/uploads/2015/06/201505_AMMA_submission_Response_to_the_Fly_in_fly_regional_Qld.pdf

SIA Guideline (Sept 2016):

http://www.amma.org.au/wp-content/uploads/2016/12/20160601_AMMA_feedback_Coordinator_General_SIA_guideline_Queensland.pdf

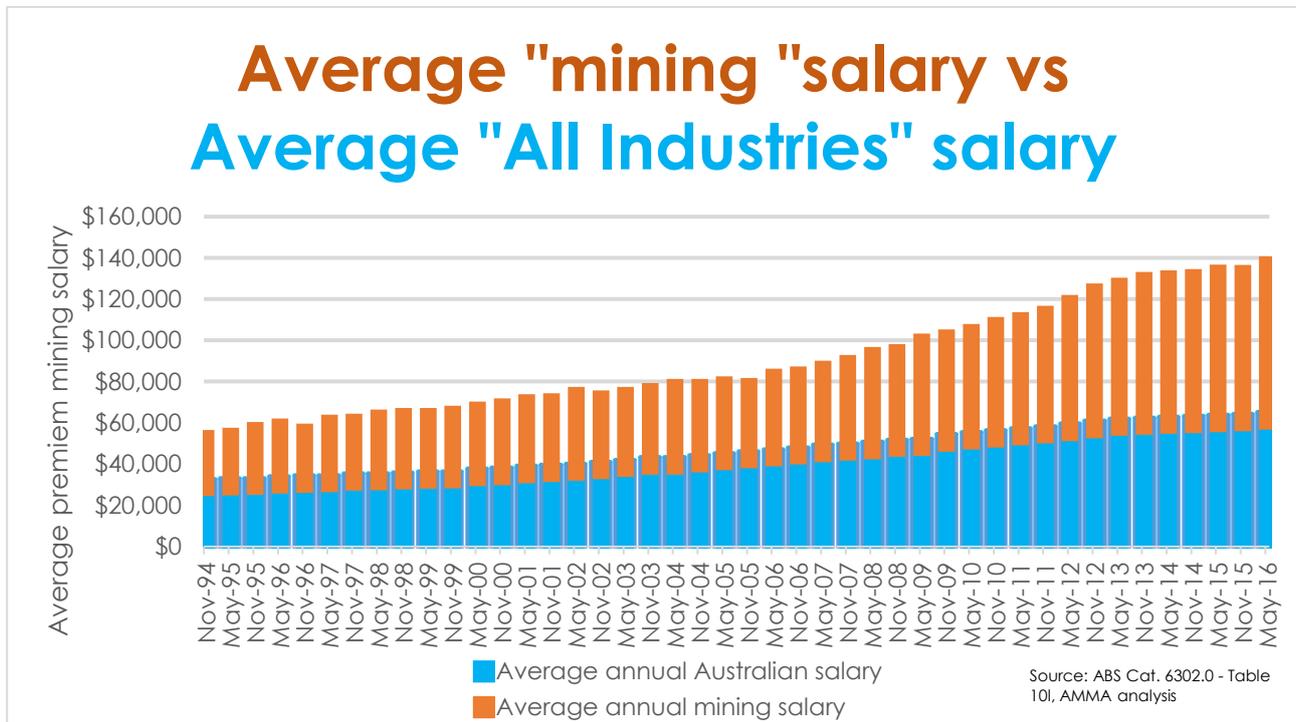
Exposure Draft – SSRC Bill (Sept 2016):

http://www.amma.org.au/wp-content/uploads/2016/12/20160905_AMMA_submission_SSRC_Bill_Coordinator_General.pdf

4. The object of the proposed legislation, according to section 3(1) of the SSRC Bill, is to “ensure that residents of communities in the vicinity of large resource projects benefit from the operation of the projects”.
5. According to the Australian Bureau of Statistics (ABS)², the Queensland resource industry employees 61,100 people with 97% of the workforce in full-time employment. At a time of negative growth in gross domestic product (GDP), which is reflective of higher unemployment and fewer full-time jobs, the high concentration of full-time mining jobs cannot be taken for granted.

² ABS Cat 6291.0.55.003 Labour Force, Australia, Detailed, Quarterly: Table 05. Employed persons by State, Territory and Industry division, August)

- According to the ABS³, those employed in the mining industry are, on average, the highest earning workers in the country.



- As noted by KPMG, the Queensland resource sector plays an important role in contributing to the overall success of the national resource sector:

In 2013-14, the Queensland Resource sector Gross Value Added contribution was 21% of Australia's GDP (or \$32.5billion)⁴

- The residents in Queensland communities also play a crucial role in contributing approximately 20% of the ~50% value of all Australian exports that come from the Australian resource sector, underpinning the strength of Australia's foreign exchange rate.
- In short, the objective of the proposed legislation (that residents of communities in the vicinity of large resource projects benefit from the operation of the projects) is already met without imposing additional legislation and regulation.
- The industry has maintained consistently that the SSRC Bill and the associated guideline are unnecessary, and are a potentially very damaging over-reaction to unique and isolated developments during the peak of the mining investment 'boom'.

³ ABS Cat 6302.0 - Average Weekly Earnings, Australia, May 2016

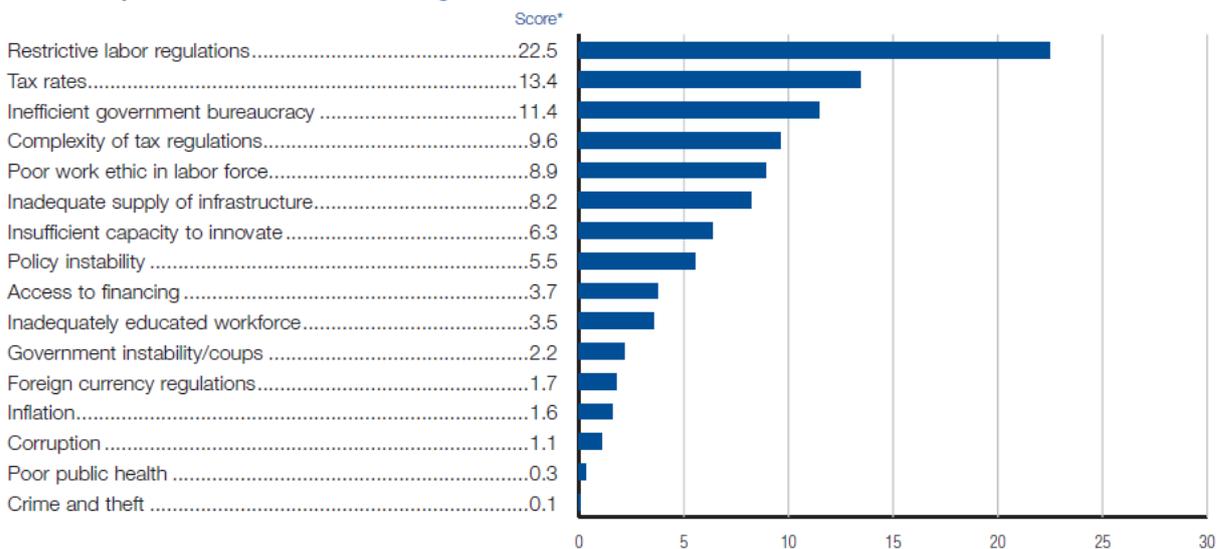
⁴ [http://www.amma.org.au/wp-content/uploads/2015/03/KPMG WR and the competitiveness of the Australian resources sector.pdf](http://www.amma.org.au/wp-content/uploads/2015/03/KPMG_WR_and_the_competitiveness_of_the_Australian_resources_sector.pdf)

11. The industry is also very concerned about the retrospective application of the SSRC Bill. This is a serious, significant and avoidable sovereign risk issue for Queensland, and if implemented as proposed, will negatively impact Queensland's credibility and investor attractiveness as a place to do business, invest and create jobs. We strongly recommend that retrospective application (ie the proposed 2009 trigger date) of the Bill is removed.
12. Queensland's resource employers again call on the Queensland government to not pursue this course of action and to not seek to legislate further in this area.
13. However, if the Queensland government is committed to a course of action the industry does not support (the SSRC Bill), how this is executed will impact on the perception of Queensland as a place to invest and do business.

Australia/Queensland as a place to business

14. Investment in Australia's resource sector is impacted not only by the price of a given commodity but also by a range of other factors. According to the most recent World Economic Forum's Global Competitiveness report, the most problematic factors for doing business in Australia are as follows⁵:

The most problematic factors for doing business



* From the list of factors, respondents were asked to select the five most problematic for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

15. According to a Fraser Institute survey of international mining executives⁶:
 - a. Queensland is regarded as an increasingly less favourable destination to invest (see table 1); and

⁵ http://www3.weforum.org/docs/gcr/2015-2016/Global_Competitiveness_Report_2015-2016.pdf

⁶ Fraser Institute Annual Survey of Mining Companies: 2014 – Published 24 Feb 2015

- b. Queensland government policies⁷ are regarded as less internationally competitive – which is a discouraging sign for domestic and foreign investment into the state (see table 2).

Table 1: Investment Attractiveness Index

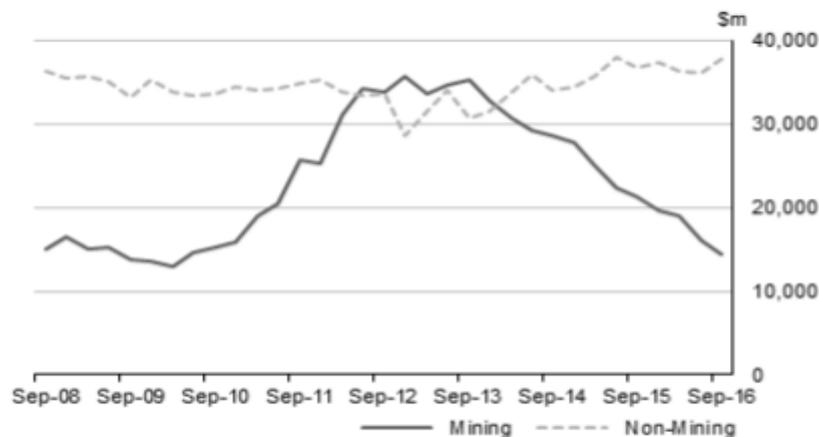
| | | Score | | | | | Rank | | | | |
|-----------|--------------------|-------|------|-----------|-----------|-----------|--------|--------|-----------|-----------|-----------|
| | | 2014 | 2013 | 2012/2013 | 2011/2012 | 2010/2011 | 2014 | 2013 | 2012/2013 | 2011/2012 | 2010/2011 |
| Australia | New South Wales | 58.9 | 63.0 | 52.1 | 58.3 | 60.2 | 51/122 | 39/112 | 50/96 | 47/93 | 45/79 |
| | Northern Territory | 68.5 | 74.7 | 68.7 | 72.4 | 68.1 | 31/122 | 17/112 | 22/96 | 21/93 | 29/79 |
| | Queensland | 71.5 | 73.5 | 68.3 | 71.0 | 69.2 | 27/122 | 21/112 | 23/96 | 23/93 | 26/79 |
| | South Australia | 75.1 | 73.8 | 71.6 | 77.4 | 74.0 | 10/122 | 20/112 | 17/96 | 12/93 | 18/79 |
| | Tasmania | 65.3 | 63.5 | 49.8 | 54.2 | 64.0 | 39/122 | 36/112 | 58/96 | 60/93 | 35/79 |
| | Victoria | 51.2 | 59.5 | 51.0 | 42.8 | 48.1 | 66/122 | 43/112 | 53/96 | 82/93 | 68/79 |
| | Western Australia | 82.0 | 85.3 | 78.0 | 82.6 | 80.2 | 5/122 | 1/112 | 4/96 | 5/93 | 7/79 |

Table 2: Policy Perception Index

| | | Score | | | | | Rank | | | | |
|-----------|--------------------|-------|-------|-----------|-----------|-----------|--------|--------|-----------|-----------|-----------|
| | | 2014 | 2013 | 2012/2013 | 2011/2012 | 2010/2011 | 2014 | 2013 | 2012/2013 | 2011/2012 | 2010/2011 |
| Australia | New South Wales | 67.00 | 64.68 | 56.36 | 62.44 | 68.17 | 31/122 | 39/112 | 44/96 | 32/93 | 20/79 |
| | Northern Territory | 69.21 | 81.84 | 68.52 | 81.54 | 62.18 | 26/122 | 13/112 | 22/96 | 11/93 | 27/79 |
| | Queensland | 66.13 | 74.34 | 62.83 | 65.51 | 52.77 | 33/122 | 24/112 | 32/96 | 28/93 | 38/79 |
| | South Australia | 76.00 | 82.02 | 75.46 | 75.20 | 75.04 | 10/122 | 11/112 | 20/96 | 19/93 | 11/79 |
| | Tasmania | 70.20 | 73.38 | 54.05 | 64.77 | 61.32 | 27/122 | 27/112 | 49/96 | 30/93 | 28/79 |
| | Victoria | 59.74 | 68.82 | 65.99 | 52.11 | 56.89 | 44/122 | 33/112 | 24/96 | 44/93 | 31/79 |
| | Western Australia | 84.91 | 90.31 | 79.32 | 81.48 | 70.63 | 10/122 | 6/112 | 15/96 | 12/93 | 17/79 |

- 16. In short, Queensland's mining sector is already becoming less internationally competitive in the eyes of the mining executives that control and/or influence the allocation of international mining investment capital.
- 17. The Australian mining industry, including the Queensland mining industry, is also in the midst of depression-like mining investment conditions. According to the latest national accounts, mining investment (in current price seasonally adjusted terms) "fell for the twelfth consecutive quarter" (down 10.6%). Never before since this data has been collected (from September 2000) has there been 12 consecutive downturns in mining investment.⁸

MINING AND NON-MINING INVESTMENT, Current prices: Seasonally adjusted



⁷ A composite index that measures the effects of government policy on attitudes toward exploration investment
⁸ [www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/534F4DE62327CDD3CA258081001563AF/\\$File/52060_sep%202016.pdf](http://www.ausstats.abs.gov.au/ausstats/meisubs.nsf/0/534F4DE62327CDD3CA258081001563AF/$File/52060_sep%202016.pdf). P11.

18. The SSRC Bill would simply add further regulation to this already unfavourable convergence of conditions in which Queensland is under considerable scrutiny from investors concerned about the costs, timeliness and practicality of doing business in this state / country.

Red tape and compliance

19. The SSRC Bill and associated guideline will add another layer of bureaucracy, red tape, costs and delays at a time when mining companies can least afford it; as they recalibrate from a prolonged and suppressed period of falling commodity prices.
20. For example, the prescriptive requirements disclosed under section 9 of the SSRC Bill: "Requirement for owner of, or proponent for, large resource project to prepare a social impact assessment" in practice will add to the level of detail (regulatory red tape) when preparing an environmental impact statement (EIS), and to the costs and time necessary to navigate what is already a difficult process.
21. It is of concern that any major resource jurisdiction would seek to add to the already high cost and complexity of doing business, and neither the SSRC Bill nor the Guideline will do anything to advance the competitiveness of Queensland as a destination for resource investment.

What to make of this

22. The conclusion which should be drawn from the preceding, and from a dispassionate consideration of the state of the industry and Queensland's place in it, is that there could not be a worse time to impose the speculative, retrospective and uncertain regulation that is the SSRC Bill and Guideline.
23. However, if the Bill and Guideline are to proceed, the government should be scrupulous in identifying concerns and addressing them, and should commit to minimising the negative impacts of the legislation, and to trying to meet the concerns of industry.
24. Acting on the critique in this submission, and AMMA's previous submissions, and amending the SSRC Bill and guideline as we recommend would go a substantial distance to alleviating the concerns the proposed legislation and guideline would create.

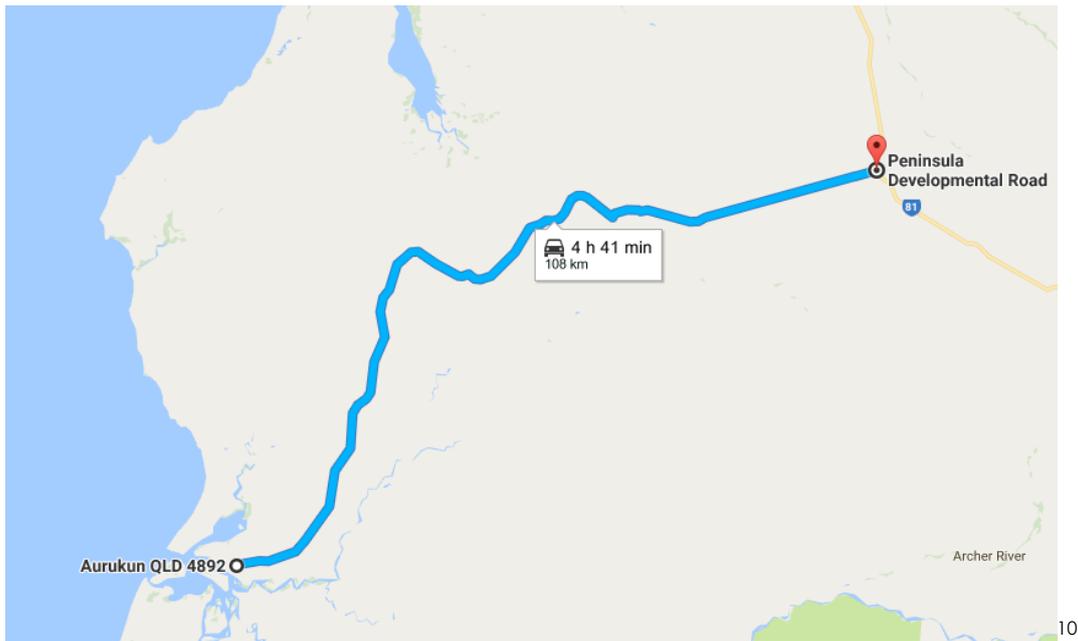
SAFETY AND FATIGUE

25. Employers are particularly concerned at the impact of the Bill and Guideline for the safety of employees and the community. This concern arises in relation to the following:
 - a. Road safety and occupational health and safety (OHS) risks arising from the fatigue of regular long distance commuting on country roads.
 - b. The recruitment of suitably qualified and experienced employees able to work safely (see below under Workforce Management Plans).

Road safety

26. The manner in which the Bill seeks to prohibit the use of 100 percent FIFO operations within 100km of a community as small as 200 people is set to create new, unnecessary and elevated safety risks, particularly in the area of road safety and fatigue.
27. The thinking in the Bill seems to be that anyone can practically and safely commute to and from work up to 100km each way, each working day, and can do so after extended shifts of heavy work.
28. This assumption also seems to have been made without regard to the additional dangers created by unlit, often unsealed roads in rural and regional Queensland.
29. Resource employers do not agree with this assumption and are very concerned that serious additional road safety risks will be created by the proposed legislation and guideline.
30. For example, and quite feasibly given various previous exploration discoveries, a future large resource project may be operated around the Aurukun region in Queensland.
31. Aurukun falls within the Bill's proposed "nearby regional community" definition as there is a local population greater than 200 within a 100km distance of (what would be) a large resource project.
32. According to Census data, the Aurukun region has a population of 1,194⁹ people.
33. If an employee lived 99km inland from the project close to Aurukun, it would take that employee an average journey travel time of over 4 hours and 17 minutes to drive one way to work (noting that 108kms = 4h41min).

⁹ <http://www.aurukun.qld.gov.au/shire-profile/our-culture/census-data/>



34. In the above example, the mine might be quite close to Aurukun, but someone could seek to commute using the powers in a future SSRC Act from any point within a 100km radius.
35. Many daily work shifts for mine sites are 12 hours.
36. So after driving four hours and 17 minutes to work (likely on unsealed roads at high speed (110km/h), and with dangers created by animals and the rising / falling sun), an employee would work on/with heavy equipment, more than likely outside at an average annual temperature in Aurukun of 26.7 degrees Celsius¹¹ with typical highs in the +35 degree Celsius range.
37. Then, after completing now 16 hours and 17 minutes of work and travel, the employee will have to drive home again, in the conditions previously described, perhaps with added dangers due to darkness on unlit roads. So this adds another four hours and 17 minutes to the individual's day (or vice versa on other shifts).
38. A "local" employee being granted preferential access to such work, and able to assert such a right under anti-discrimination law (as proposed under the SSRC Bill) could have a 20 hour and 34 minute working / commuting day. Which if you allow 26 minutes a day to eat breakfast and dinner, see your family etc. would allow the individual an average three hours sleep on each working day.
39. Given that many mine rosters are 7 days on 7 days off, in the course of a 7-day working shift (over 6 nights), this employee would only manage 18 hours sleep.

¹⁰ <https://www.google.com.au/maps/dir/Aurukun+QLD+4892/-12.9462378,142.4059029/@-13.1567029,142.021759,10.07z/data=!4m9!4m8!1m5!1m1!1s0x69964da2a9604a27:0x400eef17f20d830!2m2!1d141.7280661!2d-13.3572661!1m0!3e0>

¹¹ <http://en.climate-data.org/location/437100/>

40. The point of the preceding example is that fatigue is obviously a serious risk, and that the assumptions regarding the practicality of commuting that underpin the SSRC Bill must be revisited.
41. Driver fatigue is a serious issue and correlates to road fatalities and serious injury.

Fatalities: 1 January 2010 to 31 December 2015 and Year to Date to 31 August 2016

Table 5: Fatalities by characteristic

| Behaviour / Characteristic: Fatalities as a result of crashes | 2010 | | 2011 | | 2012 | | 2013 | | 2014 | | 2015 | | Variation in 2015 from 2014 | | Variation in 2015 from the 2010 to 2014 Avg | | Year to Date to 31 August 2016 | | | |
|--|------|---|------|---|------|---|------|---|------|---|------|-------|--------------------------------|-------|---|--------|-----------------------------------|-------|-----|---|
| | no. | % | no. | % | no.* | % | no. | % | | |
| 1 January 2010 to 31 December 2015 and Year to Date to 31 August 2016 | 249 | | 269 | | 280 | | 271 | | 223 | | 243 | | - | | 20 | 9.0% | -15 | -6.0% | 161 | - |
| All fatalities | 249 | | 269 | | 280 | | 271 | | 223 | | 243 | | - | | 20 | 9.0% | -15 | -6.0% | 161 | - |
| Involving speeding drivers/riders | 55 | | 48 | | 59 | | 47 | | 65 | | 62 | 25.5% | -3 | -4.6% | 7 | 13.1% | 39 | 24.2% | | |
| Involving drink drivers/riders | 50 | | 56 | | 45 | | 64 | | 43 | | 57 | 23.5% | 14 | 32.6% | 5 | 10.5% | 28 | 17.4% | | |
| Fatigue related crashes (involving drivers/riders) | 30 | | 41 | | 48 | | 41 | | 31 | | 28 | 11.5% | -3 | -9.7% | -10 | -26.7% | 26 | 16.1% | | |

42. Simply driving on regional roads also increases risks to safety. Looking at the following and recalling the much larger population of the Brisbane region, the risks of road fatality or serious injury are much higher when driving on regional roads.

Table 2: Fatalities by Police Region

| Police Region | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|---------------|----------------------------|------|------|------|------|------|
| | Year to Date to 4 December | | | | | |
| Northern | 28 | 40 | 33 | 35 | 47 | 39 |
| Central | 87 | 104 | 89 | 64 | 62 | 68 |
| Southern | 59 | 53 | 76 | 62 | 64 | 60 |
| South Eastern | 42 | 39 | 32 | 24 | 29 | 21 |
| Brisbane | 32 | 24 | 25 | 27 | 28 | 37 |

Note:

Figures are preliminary.

Where Police Region was known.

* Figures are rounded to the nearest whole number.

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Table 8: Hospitalised Casualties by Police Region

| Police Region | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 |
|---------------|-------|-------|-------|-------|-------|-------|
| Northern | 902 | 864 | 867 | 908 | 883 | 798 |
| Central | 1,428 | 1,486 | 1,552 | 1,701 | 1,499 | 1,332 |
| Southern | 1,162 | 1,244 | 1,297 | 1,246 | 1,237 | 1,162 |
| South Eastern | 1,070 | 1,057 | 1,046 | 1,128 | 1,043 | 989 |
| Brisbane | 1,937 | 1,736 | 1,776 | 1,936 | 1,637 | 1,524 |

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¹² <http://www.tmr.qld.gov.au/Safety/Transport-and-road-statistics/Road-safety-statistics.aspx>

¹³ <http://www.tmr.qld.gov.au/Safety/Transport-and-road-statistics/Road-safety-statistics.aspx>

43. An individual seeking to drive unrealistic times and distances to and from their home to a mine under an SSRC Act would, of course, not just be a danger to themselves and their passengers, but also other road users.

Workplace safety

44. Employers are also concerned that employees working long shifts and driving for many hours to and from work will place their safety, and that of fellow workers and the community, at risk when they are at work.
45. An employee fatigued from driving excessive distances poses a significant safety risk. With heavy machinery typically in operation, the likelihood that an individual's fatigue levels may create a safety incident (or accident) rises significantly.
46. Australian resource companies will always prioritise safety as the most important part of operating their business.
47. In doing so, they don't need contradictory legislation and guidelines cutting across their efforts to manage safety, and imposing unduly fatigued employees upon them, creating additional risks.
48. Of course, this is not the intended effect of the SSRC Bill, but it is a likely unintended outcome of the Bill and Guideline as drafted, and this needs to be fixed or we fear additional risks and accidents will result.
49. In correspondence attached to this submission, AMMA has been informed that:

The distance and town size criteria in the Bill are subject to the discretion of the Coordinator-General. The Coordinator-General has advised me that factors he might consider in deciding whether to include or exclude towns or communities might include worker safety, road travel conditions, the capacity of the town to supply appropriately skilled labour, any unique requirements of the project and existing practices for the provision of labour from the town into the project area.

50. With respect, this does not provide sufficient certainty in relation to such critical safety concerns. Changes are needed in the legislation and guideline.

Recommended approaches

51. If the Bill / Guideline are to proceed, they need to be amended to ensure that:
- There is an absolute discretion for an employer to refuse to employ someone if the distance / duration of their proposed commute is excessive, and in the assessment of the employer will raise undue risks of fatigue or incapacity to work safely.
 - The Coordinator General (CG) must take into account road safety and the practicality and impacts of likely road commuting on employees, fatigue, road safety, fitness and readiness to work, safety at work etc. in determining

that any town is a 'nearby regional community' for the purposes of the SSRC Bill in relation to any particular project / development.

- c. The CG must exclude a particular town / region from those listed as proximate to a resource development where regular commuting cannot be undertaken safely, or in the absence of the CG being satisfied that both work and commuting can be undertaken safely, or where fatigue considerations will inherently arise from the proposed commuting distance / time.
 - d. The CG must publish an exposure draft of any list of nearby towns for the purposes of the SSRC Bill / guideline, upon which the project proponent can provide feedback, to address issues such as workplace safety and safe commuting.
 - e. Both Worksafe Queensland and the state Department of Transport and Main Roads should be consulted in compiling any list of nearby towns for the purposes of the SSRC Bill / guideline. These agencies should also be asked to address any seasonal factors impacting on roads and reliability of proposed commuting arrangements.
 - f. In relation to proposed new Chapter 5B of the Qld Anti-Discrimination Act 1991 (Part 3 of the SSRC Bill), the Qld Anti-Discrimination Commission should be obliged to take into account an employee's proposed daily commute and the reasonableness of an employer's refusal to engage them on the basis of foreseeable fatigue / incapacity to work safely.
 - g. The CG / Anti-Discrimination Commission should also be obliged to take into account seasonal factors, including changes in road conditions which could render someone's commute unsafe during particular periods.
52. Finally, a number of the preceding concerns may be alleviated, at least in part, by reducing the proximity requirements in the definition of a nearby regional community from 100km to 30km.
53. AMMA therefore specifically recommends that:
- a. The radius set out in Schedule 1 of the SSRC Bill, for the purpose of defining a nearby regional community, be reduced to a more practical figure such as 30km.

WORKFORCE MANAGEMENT PLANS

54. EIS requirements are a longstanding and well understood process. However, at issue in the current proposals is adding significantly to the detail required, and making this a more complex, time consuming and expensive process to navigate for investors looking to inject money and generate jobs in Queensland.
55. One of the additional requirements under the Guideline is the preparation and lodgement of a significantly expanded Workforce Management Plan (WMP) by a project proponent (or any existing operator that may be drawn into this system).
56. The WMPs as sketched out in the draft guideline raise a number of practical concerns, which need to be addressed lest there be unintended consequences.

Skills, fit, employability and productivity

57. A particular area of concern is the proposed order of priority for employment in s.3.4.2 of the Guideline, which would require a WMP to address:

In order of priority, a commitment and strategies for recruiting and training personnel from:

- *local and regional communities*
- *recruitment to the regional community*
- *recruitment from priority areas, such as areas of high unemployment and socio-economic disadvantage*
- *recruitment from other areas of Queensland*

58. This lacks an obvious and essential qualification, namely that any employee needs to have the qualifications, experience and skills to work safely and productively in the position in question. Also vital is an appropriate cultural fit into the respective organisation. On its face, the WMP requirements in the draft guideline would oblige a resource employer to hire anyone from the local community, regardless of their experience, qualifications or capacity to work safely. This cannot be the intended effect.
59. In workplace relations and anti-discrimination law, qualifications and details cannot be allowed to 'go without saying' and employers cannot trust that the outcomes will be obvious or the sensible. These things must be made clear in writing.
60. The concerns that originally gave rise to this whole exercise were claims that experienced mining employees living near mines were not being hired. If that is the concern or 'wrong' that the SSRC Bill and Guideline seek to 'right' in future, there should be no difficulty with including appropriate qualifiers clarifying that we are talking about a level playing field only for suitably experienced and qualified people.

61. At the end of this section, AMMA proposes alternative wording to address these concerns.

Diversity

62. The resource industry has an unwavering commitment to increasing diversity, particularly in the employment of women and indigenous Australians.
63. AMMA is concerned that the proposed SSRC legislation and guideline will create a damaging collision with the diversity commitments and organisational values of resource industry employers.
64. On its face, the proposed prohibition on "discrimination" based on where someone lives, and a proposed preferential order of hiring under the accompanying guideline, threatens to undermine the efforts of the industry to pursue a more diverse and contemporary employment profile, more reflective of the community in which it operates.
65. The SSRC Bill appears set to create scenarios in which an 'employer' would be forced to:
- a. Hire a profile of local employees who may be statistically more likely to be white, middle-aged and male, even where the employer may have invested substantial time, effort and resources to into diversifying the employee profile across their business, in particular to employ more women and indigenous employees.
 - b. Grant preference in employment to local white males over, for example, FIFO'ing existing female employees or doing repeat business with an indigenously owned and operated contracting company.
66. Resource employers want to be particularly clear and direct on this point. The industry will not countenance going backwards in our efforts to diversify our workforces, and should not be forced by the guideline to deny employment opportunities to women and indigenous Queenslanders.
67. We respect and appreciate the feedback from the Minister's office that the intended effect is not to displace employer diversity efforts ([Appendix A](#)). However, it appears to us that as drafted that is exactly the impact the proposed guideline could have. We also acknowledged that the Minister has stated that there is no legal requirements to preferentially employ locals in the Bill, our concerns with the provisions as drafted nonetheless remain.
68. The draft Guideline makes clear that a project proponent's WMP must provide for (emphasis added):

- *in order of priority, a commitment and strategies for recruiting and training personnel from:*
 - *local and regional communities*
 - *recruitment to the regional community*
 - *recruitment from priority areas, such as areas of high unemployment and socio-economic disadvantage*
 - *recruitment from other areas of Queensland.*
69. It may not have been the intention of the drafters to create an old-fashioned preference clause, but that is how it reads. It reads like a direction to come up with a plan that will see an employer hire cohort (a), then and if no (a), then (b) and if no (b) then (c) etc. and in no case is either skill, experience or diversity mentioned.
70. As drafted, the current SIA Guideline would thereby jeopardise the diversity inroads the industry has made, and if left unchanged the SSRC Bill and SIA guideline will either not be complied with or threaten to re-entrench a 1960's "blokey culture" in which white males dominate.
71. We say this on the basis that:
- a. The local profile of qualified and experienced mine employees in regional Queensland is statistically more likely to be white, male and middle aged, and frankly to reflect the traditional non-diverse workforce resource employers have been seeking to diversify.
 - b. The female and indigenous employees that resource employers want to fly in and continue to work with are going to largely be those we know, have trained and worked with elsewhere. It is almost axiomatic that the majority of the new, more diverse resource workforce is going to live in areas other than those in which new projects are being opened up.
72. This appears an area that has not been sufficiently thought through and one which should be amended in any final guidelines.

Alternative wording – Guideline:

73. Whilst AMMA and its members in no way support a preference or priority arrangement being a requirement for WMPs, if it is to proceed, it might be less damaging in the following form:

Project proponents must lodge a workforce management plan that includes:

...

Strategies for recruiting and training suitably qualified, skilled and experienced personnel, able to work safely, productively and in accordance with company processes and procedures from, as appropriate:

- *local and regional communities*
- *recruitment into the regional community*
- *areas of high unemployment and socio-economic disadvantage*
- *other areas of Queensland*
- *Non-traditional demographics for resource employment, including but not limited to women and indigenous Australians, regardless of where they reside.*

Alternative wording – Anti-discrimination

74. The Bill's proposed amendment to s.131C(2) of the Qld Anti-Discrimination Act 1991 should also be amended from the formulation contained in Part 3 of the SSRC Bill as follows:

- (2) The owner or principal contractor must not—
 - (a) discriminate against a suitably qualified, skilled and experienced resident of the nearby regional community, who is able to work safely, productively and in accordance with company processes and procedures when recruiting workers for the project; or
 - (b) discriminate against a suitably qualified, skilled and experienced worker, who is able to work safely, productively and in accordance with company processes and procedures, by terminating the worker's employment because the worker is, or becomes, a resident of the nearby regional community and chooses to travel to the project other than as a fly-in fly-out worker.

OTHER MATTERS

The Bill's impractical community size provisions

75. A community of 200 people is very small. It is in fact a micro community, and in the Australian vernacular will often not even be a "one pub town".
76. In addition to the problems caused by the excessive 100km radius for the definition of a 'nearby regional community', AMMA is concerned about the validity of the data being relied upon at such a small scale. Many purported <500 person micro communities may have very different resident numbers than those last formally measured.
77. Such small communities may also have so few persons of working age as to make their inclusion in these requirements impractical and irrelevant.
78. We welcome the indication that the CG will publish a list of nearby towns for each project to which the anti-discrimination provisions will apply; this will be a useful clarification.
79. However, the definition of a 'nearby regional community' in Schedule 1 to the SSRC Bill should also be amended to a more sensible and practical threshold figure such as 1,000 persons, which is still a comparatively tiny community / labour market. To do otherwise risks a very impractical approach and an unduly complex system to administer.

Anti-discrimination

80. The Qld Anti-Discrimination Act 1991 is a major piece of protective social legislation. It reflects the moral values of Queenslanders opposing racism, sexism, and prejudice based on the fundamental attributes listed in s.7 of the Act.
81. The preamble to the Anti-Discrimination Act 1991 makes clear the fundamental nature of the Act and its protection of "fragile freedoms".
82. Shoehorning the concerns giving rise to the SSRC Bill into existing anti-discrimination machinery risks trivialising and detracting from the operation of some of the most fundamental non-criminal protections enshrined in Queensland legislation.
83. We ask the Committee to consider how the new role for the Anti-Discrimination Commission (ADCQ) will impact on its vitally important work in enforcing the Anti-Discrimination Act 1991 (Qld), and in particular eliminating discrimination based on the various attributes listed in s.7 of that Act.
84. We query whether the government has sought feedback from the Anti-Discrimination Commissioner as head of the ADCQ, and from the Queensland Law Society and key users of the ADCQ, regarding considerations such as:

- a. The impact on the operation of the ADCQ of grafting a new complaint mechanism onto its areas of responsibility, separate from its consideration of complaints alleging discrimination based on one or more of the attributes prohibited under the Anti-Discrimination Act 1991.
 - b. The impact of the proposed new jurisdiction on timelines for hearing matters under the 1991 Act (i.e. how will this impact on the existing core business of the ADCQ).
 - c. Any additional resources that the ADCQ will require to apply this new jurisdiction.
85. The Committee and the Parliament should not progress the proposed new jurisdiction for the Anti-Discrimination Commission unless and until it can be satisfied in relation to the above matters.

Advertising

86. As it currently reads under Subsection 8 (2) of SSRC Bill, as noted below, an organisation can be fined up to \$48,760 for an intracompany or an intercompany transfer, if they do not advertise the position locally.
87. In the resource industry, transitioning (or promoting) employees is not only critical for an employee's development (skill-set and experience) and career advancement, it is also an integral element of an employer's workforce capability strategy, to attract, retain and reward employees; with the trade-offs being higher productivity, greater knowledge sharing, innovation and development, etc.
88. Under Section 8 of the SSRC Bill:
- “Offence relating to advertising or document about recruitment for large resource project” subsection (2)
- The owner must not—
- (a) advertise positions for workers for the project in a way that prohibits residents of the nearby regional community for the project from applying for the positions; or
 - (b) otherwise state, in any way in a document, that residents of the nearby regional community for the project are not eligible to be workers for the project.
- Maximum penalty—400 penalty units.
89. It is recommended that the SSRC Bill includes appropriate qualifiers that limit the reach of this subsection to externally advertised roles only.

Union consultation requirements

90. Section 3.3.5 of the Draft Guideline indicates that:

3.3.5 Unions

Relevant Unions may be requested to provide information and data to support the social baseline assessment. The unions may also:

- *review the proponent's SIA and assess potential impacts on local government services and make a submission to the Coordinator-General or DEHP delegate, as appropriate*
- *engage with proponents on strategies to mitigate potential impacts on workers*
- *represent employee groups.*

91. The Fair Work Act 2009 (Cth) provides a comprehensive code of rights and powers for unions, particularly in relation to the representation of employees. A new project is likely to be subject to an enterprise agreement or greenfields agreement entered into under that Act, and unions will enjoy the rights attached to this (under what remains almost entirely the Act as drafted by Labor when last in government federally).

92. It is unnecessary and inappropriate to attempt to accord unions any role beyond their rights and powers under the Fair Work Act 2009.

93. Employers are particularly concerned at any obligation for project proponents to "engage with (unions) on strategies to mitigate potential impacts on workers". The Fair Work Act gives unions extensive powers to engage with employers to represent employees at all stages of projects, literally from conception to closure.

94. Trying to impose some parallel or additional requirements under the SSRC / Guideline risks inconsistency and confusion.

95. An employer may also in future be able to pursue an argument that the Fair Work Act 2009 (Cth) covers the field in this area and that, constitutionally, Queensland legislation cannot impose any additional requirements in regard to mitigating impacts on employees.

96. The wording used here is also unclear. Are the "potential impacts on workers" restricted to the direct employees of a particular project? If not, they certainly should be.

97. AMMA would be pleased to provide any further information or answer any further questions from the committee in support of this submission.

APPENDIX A



Office of the Hon Dr Anthony Lynham MP
**Minister for State Development and
Minister for Natural Resources and Mines**

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30 NOV 2016

Mr Scott Barklamb
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Dear Mr Barklamb

I refer to your letter of 18 October 2016 to the Honourable Dr Anthony Lynham MP, Minister for State Development and Minister for Natural Resources and Mines about the draft Strong and Sustainable Resource Communities (SSRC) Bill and the Coordinator-General's Social Impact Assessment (SIA) Guideline. Dr Lynham has asked that I respond on his behalf.

The SSRC Bill was introduced to the Queensland Parliament on 8 November 2016. I understand that you have been in contact with the Office of Coordinator-General (OCG) and have been provided with web links to the Bill and related material. The Bill has now been referred to the Infrastructure, Planning and Natural Resources Committee (IPNRC), which is scheduled to report back to Parliament on 9 February 2017. The IPNRC has invited submissions on the Bill until 12 December 2016.

There is also ongoing opportunity for AMMA to provide further comment to OCG on the SIA Guideline until February 2017.

The objective of the SSRC Bill is to support regional communities to benefit from the operation of nearby large resource projects. This includes equal opportunity for locals to be considered for jobs. The Bill would not prevent an employer from deciding to offer employment on the basis of skills, experience and qualifications.

While the supporting SIA Guideline does seek to prioritise opportunities for local and regional employment as part of the impact assessment of proposed resource projects, that is a collaborative process with the proponent and there is no legal requirement to preferentially employ locals in the Bill.

I note your concern that local employment priorities may compromise increased workforce diversity achieved in some recent fly-in, fly-out (FIFO) operations. Equal opportunity for locals and workforce diversity are not mutually exclusive objectives and the SIA process requires proponents to consider both. The draft SIA Guideline also asks proponents to pursue training and development strategies for vulnerable groups, women, people with disability and Indigenous people.

The distance and town size criteria in the Bill are subject to the discretion of the Coordinator-General. The Coordinator-General has advised me that factors he might consider in deciding whether to include or exclude towns or communities might include worker safety, road travel conditions, the capacity of the town to supply appropriately skilled labour, any unique requirements of the project and existing practices for the provision of labour from the town into the project area.

To provide greater certainty, the Coordinator-General will publish the list of towns and projects for which the anti-discrimination provisions apply.

If you require any further information, please contact Mr Matt Grant, Director, Coordinated Project Delivery, Office of the Coordinator-General, Department of State Development, on 3452 7473 who will be pleased to assist.

Yours sincerely



Paul Woodland
Chief of Staff