

QRC Submission

**Submission to the Queensland Government RSHQ Decision
Regulatory Impact Statement *Facilitating High Reliability
Organisation Behaviours in Queensland's Resources Sector
and Modernising Regulatory Enforcement.***

9 August 2023

Introduction

The Queensland Resources Council (QRC) is pleased to make a submission to the Queensland Government on the Decision Regulatory Impact statement "*Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement*" (DRIS).

The QRC is the peak representative organisation of the Queensland resources sector, with a membership that encompasses minerals and energy exploration, production, and processing companies, as well as associated service companies. The QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a safe, socially responsible, and environmentally sustainable way.

The Queensland resources sector is committed to continuous improvement in all areas of work health and safety and follows a best practice, risk-based approach to managing risks of work-related injury and disease. The resources industry recognises that there is no competitive advantage in safety and acknowledges the importance of continuing to co-operate and share information, research, and learnings.

The QRC provided a submission to the Queensland Government on the Consultation Regulatory Impact statement "*Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement*" (CRIS) on 21 November 2022. This submission was drafted following extensive consultation with our members within the resources sector.

The QRC and its members value the Queensland Government's commitment to meaningful engagement and consultation with stakeholders to ensure that any proposed policy or regulatory changes with a material impact on the resources sector come with a default 12-week minimum structured consultation period in accordance with the Office of Best Practice Regulation's guidelines.

Decision RIS

The DRIS outlines a package of proposed legislative changes consistent with the regulatory options in the CRIS and makes recommendations as to whether the proposed changes should be adopted. The QRC was disappointed that many of the concerns raised in our CRIS submission were unaddressed in the DRIS. As a result, this submission reiterates a number of our CRIS concerns.

The proposed changes are stated to seek to improve the sector's health and safety performance to reduce the occurrence of fatalities and serious accidents. The QRC is supportive of policy and regulatory changes which are evidence based and materially reduce the incidence of physical or psychological harm within the sector.

Generally, the DIRS suggests a trend towards a more prescriptive regulatory posture away from the current risk-based approach, and in part, alignment with concepts and terms within the Work Health and Safety framework albeit, in our view, without full consideration of the consequences of such alignment.

In providing comments on the proposed amendments, this submission is structured to reflect those proposals that the QRC does not support (A), supports in part, or supports in principle (B), or due to a lack of supporting detail, position withheld (C).

QRC's support or lack thereof is tempered by the absence of the draft Amendment Bill which would otherwise fully inform our position.

Summary Table of QRC Position

Issue	Not Supported	Supported / Supported in Part / Principle	Withheld
Critical Control Management	X		
Competency requirements for key critical safety roles	X		
Establish a Site Safety and Health Committee	X		
Definition of Labour Hire	X		
Remote Operating Centres	X		
Commencement of offence proceedings		X	
Continuing Professional Development		X	
Improved date and incident reporting by operators		X	
Information sharing to improve safety		X	
Enforceable Undertakings		X	
Contemporary Board of Examiners		X	
Court jurisdiction for prosecution		X	
Improved training for mine workers		X	
Industrial Manslaughter			X
Court Orders			X
Directives			X
Consistent Board of Inquiry Offence Provisions			X
Consistent penalties for obstruction of public officers			X

A. Proposals not supported.

Critical Control Management

The DRIS proposes to amend the mining safety legislation to require critical controls to be identified and monitored as a component of the Safety and Health Management System (SHMS) for coal mines, metalliferous mines, and quarries. Critical control failures would act as a trigger for the SSE to suspend operations until the critical control has been reviewed and effectiveness of controls established. It would also be a requirement to notify RSHQ of the failure of a critical control. RSHQ envisages that the legislation will describe the process to identify the critical controls and the method by which the effectiveness would be measured and monitored based upon the ICMM guide.

QRC position: Amendment to Mining Safety Acts not supported and is better placed within a Recognised Standard or guidance material.

There are existing obligations for the management of risk within the Safety and Health Management System (SHMS). Critical control management (CCM) is an existing integral component of the SHMS. Additionally, Site Senior Executives (SSE) bear the responsibility for risk management and have an existing obligation to suspend operations if the level of risk becomes unacceptable.

Amendment to the Mining Safety Acts is not required with provisions for CCM better situated within a Recognised Standard (RS) as recommended by the Board of Inquiry (BoI) or within guidance material. The benefits of incorporating CCM within a RS such as RS02, allows for tripartite development and flexibility in implementation and modification as technology and processes evolve.

QRC notes, the BoI recommended that critical controls should be in place to prevent catastrophic events such as multiple fatality events, not single fatality risks as suggested by the DRIS, which are controlled by principal hazard management plans.

Competency requirements for key critical safety roles

The DRIS proposes to amend the CMSHA to include requirements for certificates of competency for Underground Electrical Engineering Manager, Underground Mechanical Engineering Manager, Surface Mine Manager and Surface Mechanical Engineering Manager. Additionally, an Underground Coal SSE would require a First Class UMM certificate of competency with Surface Coal Mine SSE requiring a Surface Mine Manager certificate of competency. A person appointed to act as an SSE for an underground coal mine, during an SSE's absence of more than 14 days, will be required to hold a first or second class certificate of competency; and a person left in charge of an underground coal mine when the UMM is absent will be required to hold a first or second class certificate of competency.

QRC position: Requirement for additional certificates of competency is not supported.

The QRC supports an on-going commitment to professional development and training to ensure currency of competency. In particular, that those who make decisions which impact upon the safety and health of others have the necessary knowledge, skills, and competency to do so. This position reflects the BOI recommendation.

The QRC notes that there is no clear evidence demonstrating how the proposed additional certificates of competency will align with High Reliability Organization (HRO) theory and support improved safety and health outcomes.

The requirement for underground SSEs to have a first-class certificate of competency is not supported.

Currently, an SSE notice is granted, based on extensive knowledge of legislation. The SSE is part of the senior management team at an underground coal mine alongside the UMM, who is required to hold a first-class certificate of competency. This proposal introduces the requirement for companies operating underground coal mines in Queensland to either employ two first-class mine certificate of competency holders or have the SSE also assume the UMM role. However, this dual role scenario could potentially compromise safety due to the demands of both positions, and thus a clear distinction between business and technical roles is recommended.

The QRC expresses concern that the proposals may not yield demonstrable safety benefits, and having two first-class certificate of competency holders at an underground mine could lead to conflicts and tensions in decision-making. The introduction of such structural uncertainty through legislative changes may hinder the principles of HRO theory and the continuous development of learning organizations. In line with HRO theory's emphasis on deferring to expertise, the SSE role should be filled by the individual with the highest experience or knowledge to match the unique mining operation risks.

Additionally, based on feedback from members, the transition period of 5 years as suggested within the DRIS is grossly inadequate and should be extended to a more realistic 10 year period.

The DRIS proposes that certain professional engineers, already required to be registered under the Professional Engineers Act 2002 in Queensland, will also need to hold a BoE-issued certificate of competency. These positions include Underground Electrical Engineering Manager, Underground Mechanical Engineering Manager, Surface Mine Manager, and Surface Mechanical Engineering Manager.

The QRC notes that the BoI made findings and recommendations regarding SSE and UMM competencies, however, no similar findings or recommendations for the mentioned professional engineer positions.

The QRC is concerned about the Board of Examiners' (BoE) capacity to implement the proposed amendments successfully. The 2021-22 BoE Annual Report highlighted the limited issuance of certificates, particularly for first and second-class certificates, and raises concerns about the availability of suitable candidates to fill these roles.

The QRC notes factors such as cohort age profile being skewed to older age groups, dropout rate during training, promotions, retirement, and intention to leave the industry sector will impact the issuance of certificates and requires further analysis. Additionally, not all certificate holders are interested or available to assume these roles. The presented data underscores the need for a broader review of the BoE and examination processes before introducing additional occupations that require a certificate of competency. Notably, some certificate holders may no longer hold positions that necessitate these certificates, nor is there incentives for current position holders to undertake supplementary training.

Establish Site Safety and Health Committee

It is proposed to amend the CMSHA to enable a committee-based mechanism for workers and management to discuss safety and health issues related to work sites. Amendments to CMSHA would be modelled on Part 7 MQSHA for site safety and health committees. The Site Safety and Health Committee (SSHC) would be requested by the SSHR and have an equal number of worker representatives and management members.

QRC position: *Not supported.*

There are current well established safety consultative mechanisms in place.

Definition of Labour Hire

The DRIS proposes to amend the definition of 'contractor' within mining safety legislation to be non-exhaustive and include an entity that provides a service, performs work, or provides labour to a coal mine. The intention is to eliminate the distinction between contractor, service provider and labour hire companies and avoid confusion about who is a worker and resulting safety obligation owed.

QRC position: *Not supported.*

The QRC supports clarity and understanding of safety and health obligations of all persons present in the work environment, in particular, those with control of the safety and health of themselves and others.

However, the QRC is opposed to the proposal to define a 'contractor' in a manner that encompasses various employment methods, including labour hire and service providers. The proposal to define a 'contractor' to include all alternative methods of employment including labour hire and service providers will lead to greater confusion as to who holds the safety obligation at the workplace. To avoid this confusion, distinct definitions of contractors and labour hire which are linked back to the duties in the legislation, are required. To not be able to differentiate the safety performance of contractors and labour hire agencies is also problematic.

While all workers have the same obligations under mining safety legislations, the nature of work, reporting and industrial arrangements differ. Similarly, contractors, labour hire companies and service providers are not homogeneous, ranging in size from individual operations to large enterprises (surpassing the size of the client) with highly developed safety and health management systems.

The QRC contends that the proposed amendment is not reflected in the BOI recommendations nor is the proposed change supported by evidence of improved safety and health outcomes. It would also serve to preclude analysis of the safety performance of contractors and labour hire agencies.

Remote Operating Centres

It is proposed to amend legislation to clarify the obligations for Remote Operating Centres (ROC) and ROC workers such as off-site supervisors who give instructions to mine workers at the mine. The amendment would also clarify their role within the SHMS, as well as training and competency requirements. ROC and ROC workers may be located remote to the mine site, including interstate or overseas, or may be located on site but remote to the activity undertaken. RSHQ proposes all off-site supervisors giving directions to a mine worker must have received on-site induction and training prior to giving any directions.

QRC position: *Amendment to Mining Safety Acts not supported and is better placed within a Recognised Standard or guidance material.*

The Mining Safety Acts currently place an obligation on persons who may affect safety and health at coal mines or as a result of coal mining operations (specifically sections control and management of risk; obligations including obligations of others; management structure for the safe operations of coal mines). These obligations apply to all off-site supervisors. The DRIS accepts this. Similar obligations are currently in place the Mining and Quarrying Safety and Health Act 1999 and the Petroleum and Gas (Production and Safety) Act 2004.

The QRC contends that the issue is ROC workers are not necessarily providing independent supervision, rather they may be providing instruction or direction against an agreed set of plans or instructions which were developed at the mine or work site by site management. Those who do give direction 'at the mine' or work site are authorised to do so. The QRC is mindful that automation and technology is continuing to evolve and any policy within this area should provide flexibility and provision for such changes.

The QRC contends that if additional clarification of safety and health obligations for ROCs is required, it can be provided within a RS or through guidance material, education, and training. It does not require legislative amendment. The benefits of incorporating ROCs within a RS allows for tripartite development and flexibility in implementation and modification as automation, technology and processes evolve.

Safety Critical roles located on-site

It is proposed to amend the legislation to provide an obligation on the operator (in relation to an SSE as a safety critical role) and on the SSE (in relation to other safety critical roles) to ensure persons in safety critical roles are located at the mine.

Safety critical roles are defined under the MSHA as SSE and UMM, and under the CMSHA as SSE, UMM, VO, Surface Mine Manager, MEM and EEM. Provision is made for safety critical role absences of not more than seven days for safety critical roles under the CMSHA and 14 days for safety critical role under the MQSHA, although it is unclear if the absence period is defined as consecutive days or days of absence within a designated period.

Generally, it is typical for roles such as SSE, underground mine manager and ventilation officer to be located on-site with an existing requirement for an SSE under s25(1)a of the CMSHA to be located 'at or near the coal mine'. However, it is unclear whether mandating their full-time attendance on-site will increase the positive impact on safety and health outcomes.

QRC position: *Not supported.*

The QRC is constrained in supporting this proposal due to the lack of evidence provided to demonstrate how this will improve health and safety outcomes. There is no debate that persons holding critical safety roles, either substantively or in an acting capacity, should be accessible at all times to provide necessary safety and health instruction. It is unclear how having the person located at the site at all times will increase this level of accessibility.

As with most proposed amendments within the DRIS, it is difficult to provide a more informed response in the absence of the draft Amendment Bill, in particular, the meaning of terms such as 'located on-site.'

B. Proposals partially supported or supported in principle.

While QRC provides partial or in principle support for the following proposals, this is subject to reviewing the wording within the draft Amendment Bill which would otherwise fully inform our position.

Commencement of offence proceedings

DRIS proposes to amend legislation to ensure there are consistent timeframes for commencing prosecutions across all of the Resources Safety Acts. These amendments will provide a time period to commence a prosecution within two years of the offence coming to the notice of the complainant. The complainant is the WHS Prosecutor. This in effect does not place a time limit for the conduct of an investigation by RSHQ. Once the investigation is complete it is provided to the WHS Prosecutor.

QRC position: *Partially supported.*

The purpose of prosecution is for general and specific deterrence to prevent the re-occurrence of the incident or the circumstances that gave rise to the incident. For general and specific deterrence to be effective there needs to be a connection timewise between the incident and the consequences of the incident (prosecution).

It appears that the DRIS is seeking to align current provisions with the Qld WHS Act / model health and safety laws.

The model work health and safety Act from Safe Work Australia contemplates this in section 232 with the commencement of proceedings for an alleged offence within 2 years after the offence first comes to the notice of the regulator, or 1 year after a coronial inquest or other provisions with respect to an enforceable undertaking or category 1 offences.

The Qld Work Health and Safety Act adopted the model laws, substituting 'regulator' for 'WHS prosecutor' upon the establishment of the independent WHS Prosecutor.

Linking the commencement of timeframe to when the offence first comes to the notice of the WHS Prosecutor is problematic, particularly with respect to alleged offences under the Mining Safety Acts. As RSHQ utilises the WHS Prosecutor for the conduct of mining safety prosecutions, it is feasible that the WHS Prosecutor does not become aware of the alleged offence until after the investigation is completed. This in effect results in the RSHQ investigation not being subject to a timeframe for completion.

The QRC contends that not having a legislated two year timeframe from commencement of enquires to finalization of an investigation and laying of a complaint is contrary to HRO principles, health and safety laws, the deterrence effect of prosecution, transparency of government processes and responsible use of public funds.

Continuing Professional Development

The QRC supports legislative changes to support the CPD scheme as an administrative function of the BoE provided the BOE is adequately resourced to undertake the additional functions. Given companies will need to monitor CPD activity of their workforce, rather than engaging third-party auditors there should be recognition that this can be managed in-house by companies with random audits by RSHQ inspectors to ensure compliance.

Improved data and incident reporting by operators

QRC position: Supported in principle.

Information sharing to improve safety

The QRC supports the sharing of deidentified information to inform decision making, to mitigate safety and health risks, to progress safety and health learnings and outcomes for harm prevention, to promote HRO principles and educate the wider industry and community and build confidence in the safety of the resources sector.

The de-identified information can take the form of safety alerts, safety bulletins, industry performance reporting and other hazard and risk materials. This is appropriate as it allows for the timely release of information to the industry on serious incidents which contains enough technical information to enable companies to rely on it for learnings, while the incident may still be subject to investigation by RSHQ.

Consistent with HRO theory and practice, transparency across the industry would be better served by RSHQ working with resources industry on strategies to better share information in a timely manner. This proposal has the potential to see companies named and shamed is inconsistent with HRO theory and principles.

Where a party has not been prosecuted or has been prosecuted and no conviction has been recorded, the QRC understands that it is unlawful to publish identifying details of the alleged offending party.

The QRC supports the greater sharing of safety information to encourage learning and mitigate safety risks. However, it does not support amending the legislation to allow the Minister, CEO, and the Chief Inspector to publish information about the number of HPIs and serious incidents, the mine at which these occurred and the operator for the mine.

The resources industry would be better served by RSHQ working with the industry on strategies to better share safety information in a timely manner.

QRC position: *Supported in principle. The QRC does not support the publishing of the identity of the mine or operator.*

Enforceable Undertakings

The QRC supports the use of enforceable undertakings (EU) as an alternative to prosecution. The QRC supports the use of CMSHAC and MSHAC to assist in the development of policy and processes which support EUs including the determination of which incidents would be eligible for an EU, the quantum of the spend associated with the EU, benefit provisions (workplace, sector wide and community) and establishment of EU priority deliverables and the use of a tripartite committee to make recommendations to the decision maker (Regulator) on whether an EU should be accepted.

QRC position: *Supported in principle.*

Contemporary Board of Examiners

QRC position: *Supported*

Court jurisdiction for prosecution

QRC position: *Supported*

Improved training for mine workers

QRC position: *Supported*

C. QRC position withheld.

The QRC is unable to form a position on the following proposals. This may be due to a lack of supporting evidence, legal advice, or inability to view the draft Amendment Bill prior to submission.

Industrial Manslaughter

The QRC is concerned that in the absence of the wording of the provision within the draft Amendment Bill and legal advice, it is difficult to ascertain what position holders would be subject to charges of industrial manslaughter, what are the elements of the alleged offence and evidence required to prove those elements.

QRC position: *withheld*

Court Orders

The QRC is concerned that in the absence of the wording of the provision within the draft Amendment Bill and associated legal advice, it is difficult to determine the intent of this proposal and its impact on safety and health outcomes.

QRC position: *withheld*

Directives

The QRC is concerned that in the absence of the wording of the provision within the draft Amendment Bill and associated legal advice, it is difficult to determine the intent of this proposal and its impact on safety and health outcomes.

QRC position: *withheld*

Consistent Board of Inquiry Offence Provisions

The QRC is concerned that in the absence of the wording of the provision within the draft Amendment Bill and associated legal advice, it is difficult to determine if any powers of compulsion could be utilised to compel individuals, ensure compliance, gather evidence, and facilitate investigations. Additionally, uncertainties arise regarding safeguards in place to protect the rights of both individuals and organisations.

QRC position: *withheld*

Consistent Penalties for obstruction of public officers

The QRC supports the intent of the proposal but not the current wording.

QRC position: *withheld*