QUEENSLAND RESOURCES COUNCIL SUBMISSION

Resources Safety and Health Legislation Amendment Bill 2023

10 November 2023

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QUEENSLAND resources COUNCIL

About the Queensland Resource Sector

The Queensland Resources Council (QRC) is the peak representative organisation of the Queensland minerals and energy sector. QRC's membership encompasses minerals and energy exploration, production and processing companies, and associated service companies, both technical and professional.

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. Where work related injury occurs, the resources sector is committed to effecting timely and appropriate return to work arrangements. The resources sector 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 Queensland resources sector directly and indirectly employs over 450,000 persons largely in high paying roles, with a considerable proportion of those roles located within rural, remote, and regional areas of this state corresponding to the location of our energy sources and commodity groups.

QRC's latest annual economic contribution data details the resource industry's ubiquitous spending across Queensland down to the postcode level. The 2021-22 data shows that Queensland's resource industry collectively:

- supported one in six Queensland jobs;
- contributed one in every four dollars to the State economy;
- generates around 85% of the value of Queensland exports;
- supports more than 14,300 local Queensland businesses; and
- contributes to more than 1,400 charities and local sports clubs.

Consultation

On 27 September 2023, Resources Safety and Health Queensland (RSHQ) released its consultation package of proposed amendments to the Resource Safety Acts and Regulations (the consultation package). The consultation package included:

- Information paper – proposed amendments to the Resources Safety Acts
- Draft Resources Safety and Health Legislation Amendment Bill 2023 (Amendment Bill)
- Draft Resources Safety and Health Amendment Regulation 2023 (Amendment Regulation)
- Indicative reprint of *Coal Mining Safety and Health Act 1999*
- Indicative reprint of *Explosives Act 1999*
- Indicative reprint of *Petroleum and Gas (Production and Safety) Act 2004*
- Indicative reprint of *Mining and Quarrying Safety and Health Act 1999* (not available with the initial release of the consultation package but added later)
- Feedback template form.

The consultation package did not include a policy position response to the advice requested from and provided by the Coal Mining Safety and Health Advisory Committee

(CMSHAC) nor the indicative reprint of the *Mining and Quarrying Safety and Health Act 1999*. The QRC would welcome the opportunity to comment on any changes to the Amendment Bill resulting from the CMSHAC advice prior to the Bill being tabled in Parliament.

The QRC and its members valued the Queensland Government's previous 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.

The QRC is disappointed that the 12-week period of consultation has not been adhered to throughout the development and drafting of the Amendment Bill and Amendment Regulation. In the case of the current period of consultation, the QRC received an email advising of the release of the Amendment Bill and Amendment Regulation on 27 September 2023, with a call for submissions by 27 October 2023.

This was an unreasonable time period for the QRC to consult its members, get feedback on the outcomes of the Decision Regulatory Impact Statement (DRIS), the first release of the Amendment Bill and co-ordinate the drafting of this submission. To allow sufficient time for this to occur, the QRC requested an extension for lodgement of the submission to 24 November 2023. On 16 October 2023, the QRC was subsequently advised through a broadcast email from RSHQ of an extension until 10 November 2023.

In addition to concerns about the sufficiency of the time provided for consultation to occur, the adequacy of explanation for and underpinning evidence of government policy positions is unclear. The Information Paper states "*This consultation process is an opportunity for stakeholders to provide feedback about whether the consultation drafts align with the intended policy objectives, without revisiting the approved policy position.*" The QRC is strongly of the view that the Amendment Bill should be opened for further consultation on the policy positions that were rejected without explanation, as well as addressing the concerns once again raised with RSHQ at a meeting on 10 October 2023 relating to clarity around definitions and legislative issues.

The resources sector remains committed to supporting the development of high-quality, evidence-based safety and health legislation that prevents physical and psychological harm arising from exposure to hazards at work. In good faith, the QRC and its members committed significant resources to consider and draft submissions to the Queensland Government's Consultation Regulatory Impact Statement "*Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement*" (CRIS) on 21 November 2022. In the case of the QRC, the submission was drafted following extensive consultation with member companies. The QRC and its members also committed resources and drafted submissions on the subsequent DRIS "*Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement*."

Many of the issues/concerns raised by the QRC and the resource companies in submissions have not been addressed in the Amendment Bill, with no explanation in the DRIS as to why they were rejected. The QRC continues to have real concerns about the intent and genuine nature of the engagement and any willingness to fully examine the impact of these proposed policy changes on the resource sector.

Key Issues with the Amendment Bill

1. ***Competency requirements for critical safety roles***

The QRC is seeking:

- the rationale for introducing the requirement for an underground Site Senior Executive (SSE) to have a 1st Class Certificate of Competency including how this will improve health and safety outcomes on site
- a transition period for an underground SSE to have a 1st Class Certificate of Competency inserted into the Amendment Bill
- a transition period for a surface Mechanical Engineering Manager (MEM) to be inserted into the Amendment Bill
- clarification of whether the Board of Examiners (BoE) has the authority to register Electrical Engineering Managers (EEMs), MEMs (Mechanical Engineering Manager) and Surface Mine Managers (SMMs) for the Practising Certificate scheme if they do not hold a certificate of competency issued by the BoE
- future consultation on the membership and revised business processes of the BoE in introducing the additional certificates of competency

Site Senior Executive

The *Coal Mining Safety and Health Act 1999* (CMSH Act) makes existing provision for the "*Coal Mining Safety and Health Advisory Committee" (CMSHAC)* as one of its functions to establish competencies qualifying a person to perform duties. If there is a concern with the adequacy of current competencies of persons performing tasks, this should be referred to CMSHAC.

The DRIS (Decision Regulatory Impact Statement) does not justify on safety grounds the reasons for requiring the SSE (Site Senior Executive) at an underground coal mine to hold a first-class certificate of competency. The DRIS, in providing an examination of fatal events over the past four years, offers no evidence to show that these incidents would have been prevented if additional certificates of competency had been held.

The role of an SSE and an Underground Mine Manager (UMM) are two fundamentally distinct roles, both of which contribute to safety and health outcomes at the mine. Incident causation is multifactorial and increased certification alone will not improve safety and health outcomes.

The importance of the role of leadership and workplace culture in ensuring a safe and healthy workplace cannot be ignored. While technical competencies are a critical consideration, the importance of quality leadership skills in these senior leadership positions cannot be underestimated if a safety culture is to be driven across a mine site. As drafted, the Amendment Bill will require companies operating underground mines to:

- employ two first class mine certificate of competency holders; or
- decide whether to have the SSE also take on the role of UMM which, depending on the complexity of the mine operations, has the potential to make a mine less safe given the demands of both roles.

As outlined in our previous submissions the QRC is concerned that this requirement will work against the interests of companies without any clear evidence of beneficial safety

outcomes, as a requirement for two first class certificate of competency holders in place at an underground mine has the potential to create conflicts and understandable tensions over decision making.

The QRC maintains there should be a clear delineation between the business and technical roles. The case for change has not been made.

Further, Clause 222 requires the SSE at an underground coal mine to hold a first-class certificate of competency, but the Amendment Bill fails to provide a transition period for this new requirement which has the potential to create significant business continuity risks.

Certification requirements - surface mine manager (SMM), mechanical engineering manager (MEM) and electrical engineering manager (EEM) roles

In introducing the new certification requirements to demonstrate competency for surface mine manager (SMM), mechanical engineering manager (MEM) and electrical engineering manager (EEM) roles, the Amendment Bill has constructed two new subdivisions at Clauses 28 and 32:

- Subdivision 2 Surface mines; and
- Subdivision 3 Underground mines.

Legacy Issue for EEM and MEM

The Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 which was Assented to on 21 November 2022, introduced the requirement for key management roles to be direct employees of the coal mine operator **or an associated entity**, or an entity that employs 80% or more of the coal workers at a coal mine. Previously these senior positions had to be employed directly by the CMO. However, the arguments for allowing all other statutory positions to be employed by an associated entity or an entity that employs 80% or more of the coal workers at a coal mine apply equally to EEM and MEM positions. The omission of EEM and MEM positions from the 21 November amendments was an oversight which QRC is seeking to be corrected in these current amendments.

Confusion for Explorers

In developing the Amendment Bill 2022 (assented to on 21 November 2022) the Government acknowledged the practical difficulties for the exploration sector in implementing a requirement for senior management positions to be direct employees. In recognition of this, the direct employment provisions did not apply *if the only coal mining operations at the coal mine or the separate part of the surface mine are exploration activities under an exploration permit, mineral development licence or mining lease*.

In many cases exploration activities do not include electrical work, or surface mining work, so an EEM is not needed but an MEM may be needed as the drill rigs are large mechanical devices. As a result, the failure to reference explorers in the Amendment Bill has created confusion for the exploration sector as it is not clear if the EEM and MEM management roles will be required to be the direct employees.

Consistent with existing Government policy the QRC is seeking a similar exemption to the one agreed by the QRC and Government in the Coal Mining Safety and Health and Other

Legislation Amendment Bill 2022 for the management roles of EEM and MEM, where they involve exploration activities.

Restrictions on Employment of SMMs, EEMs and MEMs

At Clause 28 s.58A the SSE must appoint an SMM to manage and control risks and under (s.12) (a) the person cannot be appointed unless the person is an employee of the coal mine operator or an associated entity, or an entity that employs 80% or more of the coal workers at a coal mine. As the DRIS does not provide justification for the need to specify employment arrangements that are unrelated to safety and health outcomes, s.12 (a) in Clause 28 should be omitted from the Amendment Bill.

In the case of the EEM (s.58A (9)) and MEM (s.58A (10)) the employment arrangements are further limited by (s.12) (b) where these roles must be an employee of the coal mine operator or an entity that employs 80% or more of the coal workers at a coal mine. That is, there is no capacity for "an associated entity of the coal mine operator" to employ an EEM or MEM.

As mentioned above, MEMs and EEMs were the only statutory positions not covered by the direct employment amendments in the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022. This was clearly an oversight at the time. In terms of the DRIS and the Amendment Bill, there has been no consultation with industry on s.12 (b) in Clause 28 which has the potential to create substantial business continuity risks.

Again, the DRIS does not provide any justification on safety and health grounds for the need for this further restriction on employment arrangements. Clause 28 s.12(b) should be omitted from the Amendment Bill or aligned with s.12 (a). As a minimum s.58A (12) (b) should be amended to allow an EEM or MEM to be employed by "an associated entity of the coal mine operator"

Similar arguments apply to acting appointments under s.58B (5) which should be omitted from the Amendment Bill.

Capacity of the Board of Examiners

The Amendment Bill does not provide a transition period for an underground SSE to have a 1st Class Certificate of Competency. This poses a significant business continuity risk for companies which must be corrected in the next version of the Amendment Bill. This would appear to be an oversight. Further, the Bill provides that the additional requirements for EEMs, MEMs and SMMs do not commence until five years after commencement. That is, they are not required to hold a certificate of competency until the expiry of the transitional provision or a practicing certificate until 10 June 2025.

At a meeting on 6 October 2023, RSHQ advised the QRC that the new requirement for EEMs, MEMs and SMMs to hold a practising certificate issued by the Board of Examiners (BoE) will only require the individual to register for the practising certificate scheme, the BoE will then issue a practising certificate and the individual can then commence CPD (Continuing Professional Development) activity within the Practising Certificate scheme. However, it is still unclear if the BoE has the power to register EEMs, MEMs and SMMs for the Practising Certificate scheme if they do not hold a certificate of competency issued by the BoE.

The QRC continues to be concerned about the capacity of the BoE to manage the workload generated by these additional requirements for certain workers to hold a certificate of competency and the additional workload relating to the introduction of the expanded Practising Certificate scheme by 10 June 2025.

The BoE will require external resources to develop the additional certificates of competency. Additionally, membership of the BoE will have to be increased to include members with appropriate competencies such as EEM, MEM and SMM. As the CMSH Act states that to be a member of the BoE a person must be the holder of a certificate of competency, this means that at least initially, the BoE will have to have members who do not necessarily hold the requisite new certificates of competency.

Transition Periods

There does not appear to be a transition period in the Amendment Bill for the Surface MEM, which needs to be addressed in the next version of the Amendment Bill.

The transitional arrangements in the Amendment Bill will not allow sufficient time for relevant workers to be trained, assessed for competency and certificates issued by the BoE.

In the case of the SMM certificate of competency, the transitional provisions in the Amendment Bill provide for a five-year period for commencement. However, there is no course available for SMM certificate of competency, the competencies have not been developed and there are no certificated examiners to assess competency.

Given these deficits, it is doubtful that five years will provide sufficient time to develop competencies, appropriate training courses, train workers, assess their competency, get the required on-the-job experience, and issue certificates of competency. One only needs to look back to the time it took to develop the training and certification package for ventilation officers to recognise the potential for failure. A more realistic transitional period within the Amendment Bill should be a minimum of 7 to 10 years.

Clause	Statutory Position	Transition
330	Surface Mine Manager	5 years after commencement
330	Electrical Mine Manager (surface)	5 years after commencement
330	Mechanical Engineering Manager (surface)	5 years after commencement
330	Acting Surface Mine Manager	5 years after commencement
331	U/G Electrical Engineering Manager	5 years after commencement
331	Acting Electrical Engineering Manager	5 years after commencement
332	U/G Mechanical Engineering Manager	5 years after commencement
332	Acting U/G Mechanical Engineering Manager	5 years after commencement

Co-operation between RSHQ, BoE and industry

It cannot be assumed that all workers who have been performing these senior roles in the past will willingly take steps to gain the proposed new certificate of competency. With the present, fierce competition for labour and serious skill shortages across all

industry sectors, these skilled workers have a range of employment options. Given the age profile of many incumbent workers in these roles, many others may choose to retire rather than undertake further training and certification. The recent experience with Ventilation Officer training demonstrated that the process of adding additional certification can be slower than expected for a range of reasons.

Should these certification amendments progress, it will be important if maximum take up is to be achieved and disruption to the operation of companies to be minimized, that training arrangements are flexible and strongly supported by relevant stakeholders including RSHQ, BoE, unions, and industry.

2. ***Site Safety and Health Committee***

The QRC:

- does not support the establishment of a site safety health and safety committee within in the Amendment Bill
- supports that consultative arrangements at a mine site are determined by the SSE in consultation with the workforce and then documented in the Safety and Health Management System.

Clause 50 in the Amendment Bill inserts a new Part 7A requiring the establishment of a safety and health committee for a mine on the request of a site safety and health representative or at the direction of the chief inspector. It then sets out the membership, functions, times of meetings, proceedings and for minutes to be made available.

This proposed amendment reflects how far the CMSH Act has departed from its former central tenet. The CMSH Act received assent in 1999 with the focus on the Safety and Health Management System to drive a safety and health culture at the mine site and manage risk, in recognition that no two mines are the same. It recognised that the risks at each mine are unique and cannot be managed in a one size fits all environment.

The QRC and its members recognise the benefits of good consultative arrangements on mine sites but do not see the need to have the current arrangements formalised through a "one size fits all" approach. The *Work Health and Safety Act 2011* (WHS Act) recognises that committees are not appropriate for all workplaces, noting the discretion given to an inspector under s.76(6) WHS Act to determine that a committee should not be established. In view of this, the QRC does not support the inclusion of Clause 50 in the Amendment Bill.

The QRC is of the view that the consultative arrangements at a mine site should be determined by the SSE in consultation with the workforce and then documented in the Safety and Health Management System. The QRC notes there are well established provisions existing within the current legislation with respect to consultation at the mine site, and in addition to those consultative mechanisms, any person, including workers have an existing ability to contact the regulator and the union at any time to raise concerns about safety and health at the mine site.

The QRC also notes that the Information Paper advises the Minister has sought advice from CMSHAC on the proposal for the site safety and health committee.

Clause 50 drafting concerns

There are issues with the drafting of the site safety and health committee provisions within the new Part 7A (Clause 50). For example:

- there is no mechanism for dealing with disputes over the size and composition of the committee
- the proposed functions are materially and unreasonably broader than the more limited functions of such a committee under s.77 WHS Act
- the proposed committee functions at 50 s.107C are broad and unlimited and include the review of injuries, illnesses, and incidents, undertake inspections, consider matters referred by the site safety and health representative and to help resolve safety and health issues; and
- in s. 107D it is further proposed that committee members decide when they will meet (without limit); and
- in s.107G(b) must be paid their 'normal pay' for time spent performing their functions on the committee.

This effectively empowers an uncontrolled and unqualified body to meet as frequently as they choose, to act as paid safety officers and further permits them to undertake functions for which they were not employed and not necessarily qualified to do.

Unsurprisingly, no equivalent provisions exist for such committees under the WHS Act, and there is no sound basis for taking this approach in the resources industry.

3. ***Powers of industry safety and health representatives***

The QRC considers the proposed amendment should be omitted and replaced with:

(b) to enter any part of a coal mine at any time to carry out the representative's functions, following notice of the proposed entry is given to the SSE or the SSE's representative.

The Amendment Bill proposes at Clause 52 s.119(1)(b) an amendment to allow an Industry Safety and Health Representative (ISHR) to enter any part of a coal mine at any time to carry out without notice the representative's functions. No policy justification has been given for this change.

While the QRC acknowledges that ISHR's are trained and have the appropriate certification to enter mine sites there may be situations where it is not appropriate. For example, where the SSE, UMM and senior managers are dealing with a high potential incident (HPI). Further, it is essential that an SSE and senior managers at the mine have knowledge of who is in the mine and where they are located.

4. ***Information Sharing – naming and shaming***

The QRC:

- supports the sharing of deidentified information which informs decision making to mitigate safety and health risks.
- does not support the publication of information as currently outlined in the clauses outlined within the section *Information sharing to improve safety* of the *Information paper for consultation draft of RSHLA Bill.*

As outlined in the QRC submission to the CRIS and DRIS, the QRC strongly supports the sharing of information and acknowledges the role RSHQ plays in disseminating information on fatalities, HPIs (high potential incidents) and serious incidents which informs decision making to mitigate safety risks. As acknowledged in the Brady Review, this information can be used as a tool for harm prevention and is a means to educate the wider industry and to build public confidence in the safety of the industry.

While acknowledging the importance of information sharing to improve safety outcomes, the publication of information outlined within the section *Information sharing to improve safety* of the *Information paper for consultation draft of RSHLA Bill* is strongly opposed.

Rather than simplifying the existing legislative provisions as stated in the Information Paper, the clauses provide for detailed information to be released publicly without any caveat around what is released or how that information will be used. The QRC is concerned that these proposed amendments could result in detailed information being released at the early stage of an investigation, which is subsequently found to be incorrect. There is no right to remedy or to seek redress for the affected company, as for example under s.275AC of the CMSH Amendment Bill:

> (4) No liability is incurred by the State or any other person for the publication of, or for anything done for the purpose of publishing, information under this section in good faith.

The rationale behind the need to specify what information can be released has not been explained and the QRC and its members were not consulted on the need for this specificity. The QRC is of the view that this provision has the potential to see resource companies named and shamed without ever being prosecuted for an incident.

5. ***Power to give Directives***

The QRC contends:

An **ISHR (Industry Safety and Health Representative)** should only be provided with the power to issue a directive to suspend mining operations in all or part of the mine, where the ISHR:

- has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's safety or health, emanating from the risk at a mine that is at an unacceptable level,
- has consulted a person who has a safety and health obligation in relation to the mine and the matter is not resolved, and

- issues a directive in writing to a person who has a safety and health obligation in relation to the mine.

Additionally in consultation with employer and union stakeholders, develop for **ISHR**:

- a transparent, clearly documented process be developed and published for the disqualification of an ISHR where their powers were used inappropriately.
- this process to incorporate procedural fairness.

In the case of the chief **inspector**, an inspector, or an inspection officer the CMSH Amendment Bill at s.163 (1) should read:

(1) A directive may be issued under this section if the chief inspector, an inspector, or an inspection officer has a reasonable concern[1] that the risk from coal mining operations at a coal mine is at an unacceptable level.

S.163 (1) (b) is not required as the CMSH Act provides mechanisms to identify, report and mitigate risk before it reaches an unacceptable.

S.167 should be omitted as the chief inspector has an existing power as part of performing inquiries and investigations to take into or onto a coal mine any persons (including experts) that they might reasonably require for exercising their powers including the furnishing of expert advice or a report.

Similarly, in relation to the MSH Amendment Bill at S160 (1) (b) is not required and S164 should be omitted.

The Amendment Bills make provisions for an authorized official to give directives under certain conditions. An authorized official is defined as the chief inspector, inspector, inspection officer or industry safety and health representative.

Industry Safety and Health Representative

The Amendment Bills make provision for a new power to allow an Industry Safety and Health Representative (ISHR) to issue a directive to require a person who has a safety and health obligation to suspend mining operations in all or part of the mine. The directive can be issued to a person orally or by notice if the ISHR believes a risk from mining operations is:

(a) at an unacceptable level; or
(b) **may** reach an unacceptable level.

The QRC is concerned that the test to stop work by an ISHR is ambiguous as the directive can be issued verbally and on the basis that a risk from mining operations "**may** reach an unacceptable level." Any significant risk can reach an unacceptable level if risk mitigation strategies are not put in place. This vague notion of "may reach an unacceptable level" of risk has the potential to result in the suspension of mining operations in situations where

[1] Reasonable concern being a reasonable belief of significant risk of harm to a worker or others arising from a work activity.

an inspector is required to intervene and withdraw a directive, where the safety and health issues are being appropriately addressed through risk mitigation strategies and the suspension results in considerable cost to the mine operator.

In the national model Work Health and Safety Laws a Health and Safety Representative (HSR) may direct workers to cease work if the representative has a reasonable concern that to carry out the work would expose the worker to a serious risk to the worker's health or safety, emanating from an immediate or imminent exposure to a hazard. Further, the HSR must not give a direction to cease work unless the matter is not resolved after consulting about the matter with the person conducting the business or undertaking (equivalent being a mine operator) and attempting to resolve the matter through an issue resolution process.

Disqualification process ISHRs

If it is determined that ISHRs are to be provided with this new power to suspend mining operations in all or part of a mine then there needs to be a more transparent, clearly documented process to disqualify an ISHR where their powers were used inappropriately. The Acts only provides the power to the Minister to end the appointment of an ISHR if the Minister considers the representative is not performing the representative's functions satisfactorily.

It is important that where an ISHR is considered not to be performing the representative's functions satisfactorily they are shown due process.

In this regard the QRC considers that the disqualification process in the national model Work Health and Safety Laws (Subdivision 4A) be reviewed by RSHQ to draft a more transparent disqualification process and then consult the QRC and union representatives on the form of words.

Inspectors

In addition to an ISHR, an authorized official is defined as being the chief inspector, inspector, or inspection officer. As stated above, the QRC does not support the ISHR having the power to give such a directive. Unlike an ISHR, public sector employees are bound by various Acts, including the *Public Sector Ethics Act 1994* and the *Public Sector Act 2022* which place obligations on public sector employees to ensure independence, transparency, and impartiality in the conduct of their duties, in giving advice and making decisions. This should not be taken to imply that ISHRs conduct themselves contrary to public sector principles but that public sector employees are legally required to adhere to them. Therefore, section 163 (1) for example should read:

(1) A directive may be issued under this section if the chief inspector, an inspector, or an inspection officer has a reasonable concern[2] that the risk from coal mining operations at a coal mine is at an unacceptable level.

Section163 (1) (b) is not required as the CMSH Act provides mechanisms to identify, report and mitigate risk before it reaches an unacceptable level as does the MSH Act.

[2] Reasonable concern as previously defined

Directive to give report to chief inspector

In s.167 (CMSH Amendment Bill) and s.164 (MSH Amendment Bill), the chief inspector may give a directive to a person who has a safety and health obligation to give a report about various matters, including risks arising out of operation, the safety of plant, buildings or structures and a serious accident or high potential incident. Under this provision, the chief inspector is to determine the scope of the report and has power to determine, by approval, who the report must be provided by.

In effect, this creates the ability for the chief inspector to require a coal mine to pay for expert reports that the chief inspector may wish to have regarding operational matters at coal mines. There is no limit as to the number of directives that may be issued or the cost to be incurred.

This directive is an overreach of regulatory supervision.

The inspectorate is the entity charged with conducting any relevant inquiries and investigations and has an existing power as part of performing those inquiries and investigations to take into or onto a coal mine (or other place) any persons (including experts), equipment and materials they might reasonably require for exercising their powers (see s.139(3)(e) CMSH Act).

It is inappropriate for a coal mine to be required to undertake investigatory functions for the regulator, even if such reports are not admissible in evidence.

6. ***Definition of Contractor***

The QRC:

- does not support the amendment of the definition 'contractor' to incorporate service providers and labour hire agencies.
- supports retention of the current definition.

The Amendment Bills amend the definition of "contractor" to be non-exhaustive and include an entity that provides a service, performs work, or provides labour to a coal mine. Under the definition, there will be no distinction made between large scale, long term contractors and small single one off labour hire or service providers. The intention to eliminate the distinction between contractor, service provider and labour hire companies will result in confusion and potentially skew incident and injury rate data.

The QRC has consistently argued in the lead up to the CRIS and in our submission to the CRIS and DRIS that it is important to understand the distinction between labour hire workers and contractors, as labour hire workers work under the control of the host, while contractors perform short/long term and specialised tasks/projects.

Contracting covers a broad range of situations from the large, sophisticated contractors who may have a contract to operate a mine with their own permanently employed workforce in specialist statutory positions, through to the contractors who are engaged for specified or short durations such as contractors to maintain draglines at the mine site. While both can be characterised by a contract, they are vastly different to labour hire employment and cannot be grouped together when assessing safety risks.

While labour hire workers are integrated into the mine's workforce, contractors and their workers are not. For example, a contractor undertaking a longwall move will have management and control of the project, and management and control of their workers and any specialist contract workers they engage. This is quite different from the labour hire workforce who will work alongside permanently employed workers, be dressed in the same uniforms, be trained on the mine's safety and health management system.

The QRC maintains that 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. There are a range of reasons to disaggregate the definition of contractor into the components i.e., contractor and labour hire worker definitions rather than maintain a broad definition. It does not follow that an aggregated definition is required to determine the "level of control over the work environment," in fact the opposite can be argued.

The QRC is strongly of the view that a specific safety and health obligation should be imposed on labour hire agencies to ensure they are required to meet the same standard of care in respect to their workers.

Importantly, to have safety data disaggregated as contract workers or labour hire also provides the opportunity to analyze safety performance by employment type.

7. ***Remote Operating Centres***

The QRC proposes an alternative definition for a Remote Operating Centre:

- A Remote Operating Centre *is a facility, or part of a facility, geographically separate from a coal mine, that is primarily used for controlling and monitoring coal mining operations at a coal mine in real time*.
- A Remote Operating Centre *is a facility, or part of a facility, geographically separate from the mine, that is primarily used for controlling and monitoring mining operations at the mine in real time*.

The Amendment Bill defines a ROC very broadly by specifying "*a facility located away from the mine that receives ongoing information about (coal) mining operations at the mine that is used for making decisions about and giving instructions for operations at the mine*."

This definition will arguably pick up all corporate and head offices of a coal and metalliferous mine operator.

At the meeting with RSHQ on 8 October 2023 the broad nature of the definition of a ROC was discussed. The QRC was asked to provide a form of words for consideration that could narrow the definition while maintaining the policy intent of the Amendment Bill. The QRC suggests the following definition:

A Remote Operating Centre *is a facility, or part of a facility, geographically separate from a (coal) mine, that is primarily used for controlling and monitoring (coal) mining operations at a (coal) mine in-real time.*

8. ***Commencement of offence proceedings***

The QRC is strongly opposed to an unbounded timeframe for the completion of an investigation and referral to WHS Prosecutor.

Under the mining safety and health Acts a proceeding for an offence must start within one year after the commission of the offence, or six months after the offence comes to the complainant's knowledge but within three years after the commission of the offence.

Accordingly, proceedings for an offence are time limited and must commence three years after the commission of the offence. In the Amendment Bills a proceeding for an offence against the mining safety and health Acts is to commence two years after the offence first comes to the knowledge of the complainant.

The complainant is now defined as the Work Health and Safety (WHS) Prosecutor.

This provision in effect, removes any time limit for the conduct of an investigation, which upon completion is then referred to the WHS Prosecutor for consideration of proceedings. The WHS Prosecutor will then have two years to decide on whether to proceed with a prosecution.

It is conceivable that if RSHQ takes three years in which to complete their investigation, it may be five years before the commencement of a prosecution. Should the duty holder then decide to apply for an enforceable undertaking, the timeline between incident / risk occurrence and the application of any sanction is further extended.

The Amendment Bill in not imposing any time limitation period on the regulator (RSHQ) to have investigated a potential breach of the mining safety and health Acts and for proceedings to be commenced is perverse. This open-ended time for RSHQ investigations has potential to have an adverse impact on employers and workers who are being investigated for a potential breach of the mining safety and health Acts as well as the families of injured workers awaiting an investigation outcome. It is unreasonable to have the potential for a prosecution hanging over a mine operator, statutory position holder or worker indefinitely.

Arguably the purpose of a timely investigation, prosecution and application of sanctions is to provide specific and general deterrence of the circumstances that gave rise to the incident reoccurring at the same or like workplaces. The absence of any time limit within which the investigation occurs potentially reduces the deterrence impact.

It is for RSHQ and the WHS Prosecutor to put in place the necessary administrative and procedural arrangements to ensure that potential breaches of the mining safety and health Acts are investigated, and proceedings commenced in a timely manner.

ENDS