

# QRC Submission

**Submission to RSHQ on the consultation draft of the Coal  
Mining Safety and Health and Other  
Legislation Amendment Bill 2022**

22 August 2022

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## Introduction

The Queensland Resources Council (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 QRC is extremely concerned that the Government has failed to consult the industry on four key matters included in the draft Amendment Bill or consult the working group established by the Minister to consider and provide advice on the implications and operation of certain provisions of the draft Amendment Bill. In addition to the failure to consult, there has been no explanation of the policy objectives for these matters, which if legislated, will have a significant impact on coal mining companies and workers. They have not been the subject to any form of cost benefit analysis nor has there been any supporting evidence demonstrating that these matters will result in improved safety outcomes.

Specifically, these matters are as follows:

1. Underground Mine Managers (UMMs), Open Cut Examiners (OCEs), Ventilation Officers (VOs) and Explosive Risk Zone Controller (ERZ Controllers) can only undertake duties associated with the role as prescribed in the legislation, and not be involved in activities relating to "the production of coal";
2. disengagement of safety from production;
3. the requirement for an entity to employ or otherwise engage 80% or more of the coal mine workers at a mine in order to directly employ their statutory position holders; and
4. the transition provisions in the proposed new section 324 of the Act will cancel the appointment of some statutory officers made in good faith and in accordance with the Minerals and Energy Resources and other Legislation Amendment Act 2020 (Qld) (MERLA Act).

In absence of any consultation on these matters in the Amendment Bill and the failure to provide Explanatory Notes, the companies consulted by the QRC are at a loss to understand the policy intent of these provisions or the safety imperatives they seek to address.

## **1. Activities relating to “the production of coal”**

The draft Amendment Bill in prohibiting UMMs, OCEs, VOs and ERZ Controllers from being involved in activities relating to “the production of coal” provides only limited guidance on what this means for the day-to-day activities of particular statutory positions. For example, in the case of:

- ERZ Controllers - the draft Bill specifies controlling activities in 1 or more explosion risk zones or other duties given to the person under the mine's safety and health management system; and
- OCEs – their responsibilities and duties are limited to responsibilities and duties prescribed by regulation for the surface mine excavation. Clause 16 of the draft Amendment Bill goes on to amend the Regulation which currently expressly allows OCEs to have other duties.

These definitions fail to take account of the practicalities associated with work at an operating coal mine, where safety office holders are highly experienced workers who train and lead other workers and supervise certain aspects of mining operations.

While the QRC strongly opposes progression of the Amendment Bill as currently drafted, if the Government intends to ignore industry's concerns, then it is essential that the Explanatory Notes to the Bill are comprehensive and are of sufficient detail to provide certainty for companies.

## **2. Disengagement of Safety from Production**

In addition to the lack of clarity around a definition of work activities involving the production of coal, there has been no business case or evidence to support objectives of separating the safety and production functions for statutory position holders. In fact, this proposal would seem to clearly diminish health and safety outcomes at mines.

The QRC is strongly of the view that:

- the mid to long-term effectiveness of the statutory positions will be reduced and then lost where the holder does not maintain current and regular experience in coal production duties; and
- there are real benefits in having shift crews supervised by highly trained individuals who have a statutory duty to ensure safety at a mine.

Having an OCE also undertake coal production or supervisor duties is commonplace not only in Queensland, but around Australia. A Panel Deputy (ERZ Controller) is an effective role, the primary function is to ensure the safety and health of coal mine workers, while also effectively carrying out supervisory duties. The draft Amendment Bill as drafted will require coal mining companies to change certain roles to take account of the changed duties and responsibilities. For example, each shift crew at a mine may require a production supervisor as well as an ERZ Controller or OCE, and depending on the situation, either could be responsible for directing the shift crew.

Safety duties and responsibilities are intimately intertwined in all aspects of coal mining, including the production of coal. The notion that a statutory position holder safety office holder cannot be involved in such a fundamental aspect of coal mining will undermine the fundamental principles around safety that the industry has been working so hard to entrench in its workforces.

The separation of safety duties from production has been attempted at various times in the past without success. In the case of the Crinum Mine it changed its organisational structure in the early 2000's to separate the statutory responsibilities for the supervision of a production team from the production related responsibilities for its underground production units. This was short lived and ultimately led to increased levels of risk as well as reduced operational efficiencies. The primary cause for the lack of success was the confusion created by having two employees responsible for the same group of workers in the production team. Unsurprisingly, divided responsibilities and accountabilities led to inferior outcomes.

### **3. Entity Employs Greater Than 80% of Workers on Site**

The draft Amendment Bill allows where an entity (contractor) who employs or otherwise engages greater than 80% of workers on site, to employ the statutory office holders in their own right. If the contractor employs or otherwise engages less than 80% of workers on site, the statutory position holders will be employed by the CMO or an associated entity. It is unclear where this provision came from as it was not proposed or discussed at the working group established by the Minister to consider and provide advice on the implications and operation of the provisions. There is not a major contractor in Queensland who is not the CMO who would employ or otherwise engage greater than 80% of workers on site, so the purported exception is, in effect, useless.

This requirement ignores the fact that major contractors are an integral part of Queensland's coal mining industry and provide a wide range of services to mine sites and operate safely. This provision has the potential to diminish safety as specialist contractors such as those involved in shotcreting or longwall moves will be unable to provide statutory positions for full-service contracts for operations where they do not employ or otherwise engage greater than 80% of workers on site. These specialist contractors will now be subject to direction of statutory position holders employed by the CMO or an associated entity who is unlikely to have the specialist knowledge or understanding of the risks and exposures related to the work.

The QRC is not aware of any other similar occupational health and safety laws in Australia that purport to regulate and restrict the identity of the employer in the same way and considers that the Clauses containing this requirement exceed the authority of the Objects of the Act contained in Division 3 of the Coal Mining Safety and Health Act 1999 (CMSH Act). The provision in imposing an employment obligation, does not deal with a health and safety matter or provide a way of monitoring the effectiveness and administration of provisions relating to safety and health.

#### **4. Transitional provisions**

The transition provisions in the proposed new section 324 of the draft Amendment Bill have the potential to cancel the appointment of statutory officers made in good faith on the MERLA Act.

Even without the problems of the significantly tight labour market, companies will be faced with situations where high performing statutory position holders elect:

- to take on production roles and vacate their statutory duties; or
- to vacate their production duties to perform the statutory roles.

Companies will be required to employ a significant number of additional workers (production supervisors) or statutory position holders or both. It is likely that many statutory position holders will be reluctant to undertake a role solely focused on statutory safety duties. Companies advise that most workers in this position want to lead a crew, there is no rational reason for preventing them from doing this and indeed it generally enhances their ability to improve safety outcomes.

In either case it will be leaving companies only 10 weeks to source, recruit, select, on-board and assign large numbers and “in demand” skills both of which are essential to health and safety. That is not likely to be possible.

#### **Comment on Specific Clauses**

In **Clauses 4, 5, 7, 8, 9, 10 and 11** omit “an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine or the separate part of the surface mine”, for the reasons outlined above.

In **Clauses 7, 8, and 10** omit “do not include the production of coal from the mine”, for the reasons outlined above.

In **Clause 4** 54(5A) the exemption of explorers should be extended to all statutory position holders working at mines in care and maintenance. This is on the basis that the risk profile for “care and maintenance” activities is significantly different from a mining operation, statutory position holders are not required fulltime and as a result, the negative impact of a requirement that these position holders are required to be engaged by the CMO, would be extremely high.

Mines that solely undertake rehabilitation have small crew sizes, minimal amounts of equipment operating, normally on day shift only and can either be completed inhouse or contracted out.

In any case the primary function of the OCE is the health and safety of the workers on site and their statutory responsibilities such as inspections are their primary function. These responsibilities do not normally cover a full day and as such they would potentially undertake the following activities:

- operate equipment in the course of training an CMW;
- operate pumps to manage water levels; and
- assist the team with activities such as refuelling, operational functions such as installing a stop or give way signs, install or clean delineators or production duties.

For one coal miner with two operations in care and maintenance, this poses significant obstacles for their business. While never working alone, the OCE's are regularly involved in "production" activities such as pump work, infrastructure maintenance, supervising statutory inspections such as electrical and fire systems, etc. For the company to exclude these activities from the work schedule of an OCE would necessitate hiring additional employees to supervise the production activities with the OCE involvement limited. Activities under care and maintenance are irregular at best and sometimes only require one day per week.

The other operation engages a local ex-employee as the OCE on an as needs basis. No work is undertaken without a statutory inspection being carried out by the OCE. However, the requirements for site works can be sparse at times. This requirement is not a full-time position and should the implications be to engage them on a full-time basis, there would be significant cost implications to retain these workers for no purpose.

In **Clause 7** 59(a)&(b) the rationale for treating Open-Cut Examiner (OCE) differently to the statutory positions of Site Senior Executive (SSE), Ventilation Officer (VO), Underground Mine Manager (UMM) and ERZ Controller. These statutory positions can be employed by either the CMO, an associated entity an entity that employs or otherwise engages 80% of the coal mine workers at the surface mine or separate part of the mine, while the OCE can only be employed by the CMO or an entity that employs or otherwise engages 80% of the coal mine workers at the surface mine or separate part of the mine.

The decision not to allow OCEs to be employed by an associated entity is strongly opposed by the QRC and its members as it fails to recognise employment arrangements are determined in many instances by the complexity of ownership structures of coal companies such as joint venture vehicles. If these positions are not able to be employed by an associated entity, companies will have to consider moving their OCEs to a new CMO employing entity if this is indeed possible.

If the decision is to proceed with Clause 7 of the Amendment Bill as drafted, then the Explanatory Notes which have not been circulated with the consultation draft of the Amendment Bill, should clearly set out why the statutory position of OCE is being treated differently to other statutory positions and how this relates to a safety outcome.

**Clause 7** should be amended by inserting 61(4)(b) from Clause 10 into Clause 7.

**Clause 8** Imposes an obligation on a CMO to do certain things. The CMO has no required qualifications under legislation and should not be giving safety direction to anybody onsite. This creates uncertainty and undermines the SSE being the most senior position onsite. The CMO should ensure the SHMS is in place and effective. The CSMH Act specifies that no person can give technical direction to an UMM unless the person has a qualification that is equal to the UMM's and in the proposed amendments the Coal Mine Operator has to ensure the duties and responsibilities to a UMM's direct reports (ERZ controllers). This undermines the role of the UMM.