



CLEAN ECONOMY JOBS, RESOURCES AND TRANSPORT COMMITTEE

Members present:

Ms KE Richards MP—Chair
Mr PT Weir MP
Mr BW Head MP (virtual)
Ms JE Pease MP (virtual)
Mr TJ Watts MP (virtual)

Staff present:

Dr A Ward—Committee Secretary
Dr K Kowol—Assistant Committee Secretary

PUBLIC BRIEFING—INQUIRY INTO THE RESOURCES SAFETY AND HEALTH LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Friday, 24 May 2024

Brisbane

FRIDAY, 24 MAY 2024

The committee met at 3.51 pm.

CHAIR: Good afternoon. I declare open this final public briefing for the committee's consideration of the Resources Safety and Health Legislation Amendment Bill 2024. My name is Kim Richards. I am the member for Redlands and chair of the committee. I would like to acknowledge the traditional owners of the land on which we meet and pay my respects to elders past, present and emerging. In this country we are very fortunate to have two of the world's oldest continuing living cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all now share. With me here at the table is Pat Weir, the member for Condamine and deputy chair. Via videoconference we have Mr Bryson Head, the member for Callide; and Ms Joan Pease, the member for Lytton. Via teleconference we have Mr Trevor Watts, the member for Toowoomba North. Mr Les Walker, the member for Mundingburra, is a late apology.

This briefing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I remind witnesses that intentionally misleading the committee is a serious offence. You have previously been provided with a copy of instructions to witnesses so we will take those as read. I also remind any members of the public that they may be excluded from the briefing at the discretion of the committee. I remind committee members that departmental officers are here to provide factual or technical information. Questions seeking an opinion about policy should be directed to the minister or left to debate on the floor of the House.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and the chair's direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I ask everyone to please turn their mobile phones off or to silent mode.

DJUKIC, Mr Robert, Acting Chief Executive Officer, Resources Safety & Health Queensland

LE ROUX, Mr Jacques, Chief Inspector of Coal Mines, Resources Safety & Health Queensland

CHAIR: Welcome. I invite you to make a brief opening statement. Then we will have some questions for you.

Mr Djukic: Thank you for the opportunity to again appear before the committee to assist with its inquiry of the bill. I will keep my statement short so we can move on to questions, but I would like to take the opportunity to briefly address some of the points that we have heard in some of the evidence that stakeholders have put to the committee during its consideration of the bill.

In relation to consultation, many of the concepts and proposals have been developed over an extended period and were first announced and socialised with stakeholders in late 2022. In addition to a regulatory impact statement process, the release of an exposure draft of the bill and several forums and stakeholder meetings, the tripartite safety and health advisory committees provided advice to the minister on the bill, including advice on the proposals as outlined in the decision regulatory impact statement and on the exposure draft of the bill. The tripartite advice was considered and resulted in certain proposals not continuing, including the new certificates of competency for site senior executives as recommended by the board of inquiry. For the remaining new certificates of competency in the bill for surface mine managers and electrical and mechanical engineering managers at coalmines, there is a five-year transitional period upon commencement to comply with those provisions. Commencement is by proclamation. That can take into account the implementation work by the Board of Examiners and the Coal Mining Safety and Health Advisory Committee to settle on competencies and examinations.

During the development of the bill it was originally proposed to clarify obligations for workers in remote operating centres, or ROCs, that may give instructions to onsite workers in a supervisory role. However, industry feedback explicitly advised us that remote operating centres do not give instructions or control or direct operations. Rather, they provide information to sites and monitor operations. Feedback was also received about the definition being too broad and that it would apply to other offsite office areas. This feedback was considered and changes were made to the bill based on that industry feedback to remove the proposed supervisory role and address concerns about the definition being too broad. A worker at a remote operating centre interacting with onsite personnel is of a non-supervisory nature. Providing information such as alerting an operator to an equipment alarm or notifying of a requirement of an approved mining plan or emergency response plan is not prohibited by the provisions of the bill as those things would amount to providing information, not giving instruction.

The bill makes minor changes to address the board of inquiry's findings in relation to industrial manslaughter. In particular, the board was concerned that the definition of 'employer' could mean that the industrial manslaughter offence may not apply in certain circumstances where a coalmine operator employed a worker through labour hire or contract arrangements. I also note that the bill's introduction of enforceable undertakings cannot apply in relation to any incident that relates to a workplace fatality or circumstances that would amount to industrial manslaughter. The bill requires that RSHQ develop and publish guidelines on accepting enforceable undertakings, and development of the guideline will include consultation with stakeholders.

Lastly, I would like to address concerns that the amendments in the bill will result in RSHQ naming and shaming industry through publication of incident data. At no stage in their development have these provisions advanced a policy of naming and shaming. The purpose of the change is to promote learning and improvement—and we have had a lot of calls from industry and a lot of interest in that—not to expose industry to criticism or affect its reputation. To drive down the incidents of fatalities in the workplace, industry must be genuinely open about what is working and what is not. This is an important aspect of a mature reporting culture that seeks understanding to prevent incidents.

RSHQ already publishes high-level safety performance data for each mine and quarry and has done so for a number of years. These are not league tables but are provided in the interests of transparency. Identifiable information about incidents is not routinely released by RSHQ unless it is in the public interest to do so—for example, in the context of major or catastrophic events. Sharing of identified information may also be required in the public interest where it adds context or value to insights or learnings being shared. RSHQ will develop guidance material on the operation of these provisions, again in consultation with stakeholders. Thank you, Chair. That is all I had by way of an opening statement. We are happy to take your questions.

CHAIR: Thank you. Deputy Chair?

Mr WEIR: I will start with the clause 87 amendment, which is to extend the time limit to two years for the investigation of an incident. I believe there is no end timeframe, so it is unlimited timeframe. Why has that been changed? Why has that been extended to two years?

Mr Djukic: The way that the new provisions have been drafted is framed on what is fairly standard across legislation. For example, those limitation periods that appear in the bill are the same as what is currently in the Work Health and Safety Act and the petroleum and gas act. The current provisions are quite unwieldy in the way they are drafted. This is a simpler way of determining the limitation period. It is calculated simply on the time when the Work Health and Safety Prosecutor becomes aware that an offence may have been committed.

Mr WEIR: How does that compare with other states?

Mr Djukic: Again, this is the same drafting as is in the Work Health and Safety Act which is what applies in other states—the model work health and safety law.

Mr WEIR: It is the same as in New South Wales?

Mr Djukic: That is my understanding, yes.

Mr WEIR: Are there cases now where this will change the date?

Mr Djukic: If I understand your question, this will not have retrospective effect, no.

Mr WEIR: It will only be for any instances that happen from this day forward?

Mr Djukic: From commencement, yes.

Mr WEIR: You were talking about upskilling. It has been estimated that about 400 position holders will have to have a new certificate of competency. That is done by the Board of Examiners. There have been some questions around how the Board of Examiners are going to process those, given my understanding that they are already busy.

Mr Djukic: Perhaps in a moment I will ask Jacques if he has anything to add, but just to provide some context, the functions to which the new certificates of competency apply are existing functions and positions. For example, electrical engineering managers or mechanical engineering managers are already statutory positions with statutory obligations and they must hold competencies that have been set by the advisory committee. To be operating in those positions they will already hold those competencies and must be able to show that they hold those competencies. By the Board of Examiners having a certificate of competency that these people will have to hold, it means that they will be subject to continuing professional development. The work that is involved for the Board of Examiners to implement these changes—it has formed part of their forward work program and is accounted for. Jacques, is there anything you would add?

Mr le Roux: I think you cannot look backwards going forward. We have made quite a few changes to the Board of Examiners—online exams as an example, a more modern way of doing it—which will really expedite the processes. As Rob said, these are existing positions which also take into account existing skills, like doing a forward folio. That will expedite the process then to advance a lot of tickets in the front end and then implement processes where we have already been in consultation with other jurisdictions like New South Wales to not redesign the wheel. Making sure there is mutual recognition is a big part. There are a lot of people in our industry in those roles that already have mutual recognition which would give it a kick forward as well. We know we had lessons out of introducing the ventilation officers ticket and we certainly take that into account going forward, that you do not look backwards going forward. That is why these positions, as Rob said, already exist; it is just a matter of how we get them stuck down to have CPD, that we actually have a track of who is in these roles, and it increases the competency in the industry.

Mr WEIR: Once this has progressed through, any new ones that are taking up those roles will already have achieved that as they go through and get certified.

Mr le Roux: Initially we see a period where we will probably utilise existing competencies of people in the role which will be cut off and then we will have a more long-term strategy, obviously, with the qualifications required and then doing the examination online, specifically law exams specific to that topic, to make sure they are listed and then in a BOE which then allows us to have CPD for their continued professional development.

CHAIR: Relating this back to my experience with the Board of Architects, it becomes a requirement for the CPD. The board is actually aligning to other professional fields?

Mr le Roux: One hundred per cent, Chair.

Mr HEAD: The five years starts from the enactment of the legislation rather than when the Board of Examiners officially signs off on the competency. In theory, if there are a couple of hiccups and the Board of Examiners takes a couple of years then it cuts into the time it takes for those people in those positions to be signed off; is that correct?

Mr le Roux: That is correct, yes.

Mr Djukic: That is correct. I think there are two things I would add to that. The transitional period will start from commencement, which is on proclamation, so we have some scope to set a proclamation date that accommodates that—but, again, the competencies largely have already been set. There is a piece of work for the Board of Examiners to do to ensure it fits within the Board of Examiners' framework, but the competencies substantially have been set and are operational today by the Coal Mining Safety and Health Advisory Committee.

Mr HEAD: Thank you for that clarity. In the initial briefing I asked in relation to other jurisdictions and where some of this legislation came from. To quote Ms Anderson, in relation to the SSEs needing to be located at or near the mine, it was referred to that RSHQ drew on New South Wales legislation, where there are similar provisions. My understanding of the New South Wales regulation you are referring to there is that it specifically talks about the need for the SSE to be readily available, not at or near a mine. Can I please seek some clarity on whether it is the department's view that that is the same clause for your definition, because there have certainly been a lot of questions around what 'at or near the mine' will be? Can I please have clarity on that and clarity on where you are drawing it from?

Mr Djukic: Certainly. I think there has perhaps been some confusion, a bit of conflation, of issues here. A number of the new certificates of competency will mirror what is in New South Wales. The notion of the SSE being at or near the mine is not a new concept. The current definition of a site senior executive is described—and I am paraphrasing—as ‘the most senior person at the mine who is located at or near the mine’. That terminology, ‘at or near the mine’, is in current legislation and has been there since 1999, when the legislation was first implemented. It has not, until this time, caused any confusion that we are aware of. No-one has raised any confusion about that construction until prior to this process. That is not something that is being introduced by this bill. That is existing.

Mr HEAD: Perhaps what did cause some confusion is that that provision was being spoken about and there was comment made that that was drawn from New South Wales. Has RSHQ got a further definition on what ‘at or near the mine’ will be as part of that? Is that something you are able to share?

Mr Djukic: As we have had no cause to take action in respect of an SSE being in conflict with that provision, it is not something we have had to devise a definition for previously. I understand that it has been raised at this committee as a point of confusion, but that is something new that has never been raised with us previously. The short answer to your question is: no, we do not have a definition beyond the plain meaning of it.

CHAIR: When that term was originally defined back in 1999, there were not remote operating centres.

Mr Djukic: That is correct, but an SSE is not part of the remote operating centre.

CHAIR: So it should not have an impact?

Mr Djukic: Yes.

Mr le Roux: I think an important point is the 14 days as well. It is not expected that he is there. The 14 days specified means he can go on weekends and he can go on holidays, but generally he is at or near the mine. He is not working from Brisbane or from Western Australia; he is actually at or near the mine.

Mr WEIR: Do you think people were not aware of this clause or it was not fully understood, because it has been mentioned by a number of people? If there is no alteration, why the reaction?

Mr Djukic: Whereas currently it exists in the definition of a site senior executive, the alteration in the bill is that it makes it clear that it is the operator’s obligation specifically to ensure the site senior executive is at or near the mine. The terminology is not new; it is just that it is now framed explicitly in an operator’s obligation to ensure the site senior executive is at or near the mine, subject to those temporary absences that Jacques just mentioned.

Mr HEAD: In relation to the publication of information, HPIs may be getting reported as part of that. The Brady review notes that HPIs are a good thing because it shows that people are actually actively monitoring potential risks or hazards at a site. Is there not potential that by releasing HPIs specifically, rather than perhaps investigations or reportable incidents or more serious incidents, companies that are being proactive and have good safety culture—when those figures are released the wider public could pick up figures and see that HPIs are actually increasing as part of that report—could suffer damage to their reputation or the mine site’s reputation when they actually have a good safety culture?

Mr Djukic: That probably gives me a good opportunity to explain how these provisions might be used. As you said, yes, Dr Brady recommended and encouraged the reporting of high-potential incidents as learning opportunities. How we envisage using these provisions to enable us to publish details of high-potential incidents is, for example, where a mine has investigated a high-potential incident and implemented controls to address whatever issues were at play in the high-potential incident. We can share that as best practice with the industry generally for its benefit. It is not intended that in doing that we would necessarily name the mine. I should say that it is not intended we would not name the mine; we would be focusing on the corrective action or the relevant information about the high-potential incident itself for the purposes of learning.

Mr HEAD: That is helpful, thank you.

CHAIR: With regard to the industrial manslaughter provisions, I am wondering why that was not considered as part of this bill.

Mr Djukic: Sorry, Chair?

CHAIR: In the response from RSHQ, the Work Health and Safety Prosecutor’s recent review of industrial manslaughter provisions under the Work Health and Safety Act 2011 was not considered.

Mr Djukic: Sorry, yes. The regulatory impact statement process predated, I understand it, that review by Work Health and Safety.

Mr WEIR: When you mentioned the ROC before, does that mean you are proposing an amendment to the bill to clarify that situation for those offsite ROCs?

Mr Djukic: When we consulted on draft legislation in October/November last year, we took feedback from industry at the time and amended the draft, which has now been introduced. That feedback we took in consultation has already been incorporated into the bill. To put it another way, the bill reflects the feedback, the concerns, that were explicitly raised by industry.

Mr WEIR: The ones onsite that work in the control room: they come under the Coal Mine Safety and Health Act?

CHAIR: We went and visited the ROCs with BHP Mitsubishi Alliance, who were working specifically on the port, so not necessarily with the coalmine. What is the differentiation of the jurisdiction, if your command station is the port up in Gladstone?

Mr Djukic: Safety and health at ports does not fall under the Coal Mining Safety and Health Act; it falls under the Work Health and Safety Act. Your obligations in respect of the workers at the port are set by the Work Health and Safety Act.

CHAIR: It is not captured by this?

Mr Djukic: That is correct, yes.

Mr HEAD: Can I seek further clarity as far as the publication of information is concerned. In your opening statement you did refer to what has been called the naming and shaming clause. RSHQ intends that that clause, as far as the release of information, will not, unless necessary, identify the operator.

Mr Djukic: That is right.

Mr HEAD: Is that what you just said?

Mr Djukic: That is right, yes.

Mr HEAD: With regard to the contractors and defining them, when it comes to contractors there are various forms of contractors. There is labour hire; there are consultants in various forms. I worked on a mine site where half the geology team was working for a consulting firm and the other half was working for a labour hire agency—doing the exact same job, side by side. Was there consideration given to further defining consultant work from labour hires from other contractors as part of that?

Mr Djukic: The important part of those amendments and their intent—again, it is something that was ventilated in the board of inquiry—is about ensuring that whatever kind of contracting organisation you are employed by that organisation will have the same obligations to you. They must meet the same standard in protecting your safety, irrespective of who they are—whether they call themselves labour hire or contractor or consultancy. Generally, the obligation of a contractor so defined is to ensure their systems with the site senior executive ensure the systems are integrated so that the workers they are supplying to the site are appropriately onboarded and inducted into the site's safety and health management system. For that reason, no, we did not identify any reason to further define those types of contractors because the intent was ensuring they were all meeting the same level.

Mr HEAD: Would it perhaps have been easier to have all personnel working at a mine site rather than having to define a contractor specifically? I am curious now as to what that thought process was. Having worked at some mine sites for contractors, you have to be onboarded through the mine.

Mr Djukic: That is right and that is, in fact, essentially what the legislation does. It says that the contractor must work with the site senior executive to ensure that onboarding is effective by ensuring they give them their safety management systems and they integrate it into the site's safety and health management system.

Mr WEIR: The MEU raised an issue with the wording around the supervisor appointed to 'implement and monitor'. They suggested 'apply and monitor'. What are your thoughts on that? What were their concerns?

Mr Djukic: From a legislative drafting point of view, 'implement and apply' would essentially mean the same things. 'Implement' is, I think, more drafting language consistent with other language used in the act, but implementing the safety and health management system effectively means doing it. A supervisor, like anyone else, has that responsibility.

Mr WEIR: I do not have their explanation in front of me.

CHAIR: You have captured the essence of their concern and I think that addresses it.

Mr HEAD: Will the changes to this legislation increase litigation against SSEs or CEOs or does the RSHQ think this is just defining or clarifying what is already there?

CHAIR: It is pretty hard to speculate on that.

Mr Djukic: I could not say, I am afraid.

CHAIR: There being no further questions, I thank you very much for your time today. We really appreciate it. There were no questions taken on notice. I declare this public briefing closed.

The committee adjourned at 4.22 pm.