

Resources Safety and Health Legislation Amendment Bill 2024

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2 May 2024

Committee Secretary
Clean Economy Jobs, Resources and Transport Committee
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Dear Committee Secretary

RE: RESOURCES SAFETY AND HEALTH LEGISLATION AMENDMENT BILL 2024

The Mining and Energy Union Queensland District (MEU) is the largest union in the coal mining sector and is the principal union with coverage of workers performing all roles within the sector. The Union has represented coal mine workers since 1908 on all matters related to employment, with a particular focus on health and safety matters in the coal sector. The Union is also the only Union recognised by the *Coal Mining Safety & Health Act 1999* (CMSH Act) and Regulations.

The MEU is the only Union that employs three (3) full time Industry Safety and Health Representatives, elected by the Union's membership, to perform the role in line with the provisions of the CSMH Act and Regulations.

We welcome the opportunity to respond to the *Resources Safety and Health Amendment Bill 2024*. In our submission, we only make comment on matters that we deem necessary.

MEU's primary position is that it opposes any attempt to harmonise legislation in the coal mining industry with other occupational health and safety legislation. This would result in a race to the bottom and undermine the safety and health laws and frameworks that we currently hold up as worldwide best practice. Standalone safety and health legislation for the coal mining industry is a longstanding practice instituted in 1925 in response to the Mount Mulligan disaster, and there is no justification for any deviation from this longstanding principle.

As the proposed amendments do not seek any harmonisation, the MEU supports the legislative review but takes the position that any proposed change needs to ensure that it improve and protects the safety and health of all persons at the coal mines this is the key in any review. To meet this objective the MEU recommends the changes outlined in this submission to further strengthen the amendments.

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Finally, in addition to the below submission, the Mining & Energy Union wants to place on the record its disappointment that the current legislative review did not address the required further reform for the handling and prevention of dust diseases such as CWP and MDLD in the coal mining industry.

The MEU wants to ensure that it's put on the record that the Union shall continue to push for the next stage of these required reforms. All aspects of the government and industry are aware of the further reform and the reasons why these are important in protecting coal mine workers in the state of Queensland. Both the QLD District and the National Office of the MEU shall be addressing these urgent and required reforms with the State Government.

CLAUSE 5 DEFINITION OF SUPERVISOR

Section 26 of the current CSMH Act defines a supervisor as

*“A **supervisor** at a coal mine is a coal mine worker who is authorised by the site senior executive to give directions to other coal mine workers in accordance with the safety and health management system”*

The amendments propose to broaden the scope of duties of supervisors by replacing s.26 with the following definition:

*“A supervisor at a coal mine is a person appointed under section 56 to –
(a) implement and monitor the coal mine’s safety and health management system; and
(b) give directions to other coal mine workers at the coal mine in accordance with the safety and health management system.”*

The MEU raises concerns that the proposed definition exceeds the accepted scope of duties for the majority of supervisory positions. It is accepted that senior supervisors, manager and superintendents have the responsibility to “implement” the coal mines safety health and management systems the bulk of supervisors do not have such responsibility. The proposed amendment increases the scope of duties of supervisors to superintendent/manager level, without justification.

The MEU recommends that the proposed definition of “supervisor” should be consistent with the AQF and recognised Standard 22 for Coal Mining which delineates the duties between Manager, Superintendent and Supervisor.¹ Alternately, the term “implement” should be removed from the draft.

CLAUSE 8 OBLIGATIONS OF PERSONS GENERALLY

The amendments to s.39 have narrowed the scope of persons to whom the obligations under the section apply to.

Currently, s.39 applies to both coal mine workers at a mine as well as “a person who may affect the health and safety of others at a coal mine.”

Whereas the proposed amendments narrow this definition to only the following classes of persons
(a) coal mine worker at the mine; (b) other person at the mine; and (c) ROC worker at the mine.

¹ Recognised Standard 22 “Management Structure for the development and implementation of the Safety and Health Management System”; clause 5.5 Hierarchy of Positions; pg12.

The proposed definition in the amendments includes ROC workers, whom will not be on a mine site, but it excludes any other person whom may have an ability to affect the health and safety of a person at the mine but is not actually on a mine site.

The proposed amended definition is also inconsistent with s.5 of the Act which defines whom the Act applies to.

In order for s.39 to reflect the existing scope of person to whom the obligation applies, as well as consistency with s.5, the MEU recommends that the amendment include a further subsection which states:

“(d) any other person whom may affect the health and safety of others at a coal mine”

CLAUSE 22 COMPETENCIES OF SUPERVISORS

The MEU refers to recommendation 4 of the “Brady Review²” which states:

Recommendation 4: The industry needs to focus on ensuring workers are appropriately supervised for the tasks they are undertaking.

In 32 of the 47 fatalities, the worker was required to be supervised when undertaking the task, i.e., the 32 did not include routine tasks, such as driving. 25 of these 32 fatalities involved inadequate or absent supervision.

17 of the fatalities involved a lack of training or inadequate training for the specific task being undertaken and inadequate or absent supervision.

Not only does absent or inadequate supervision allow tasks to be approached in an unsafe manner, but it also greatly amplifies the consequences of a lack of training or ineffective or unenforced controls.

The MEU notes an anecdotal trend towards coal mine operators hiring supervisors with little to no practical mining or trade experience in order to meet alternative objectives such as self-imposed diversity based targets. Such practices lead to a further increased risk of incidents and fatalities at the mine. The proposed amendments to the competencies of supervisors do not address this concern and allow coal mine operators to continue to appoint supervisors with inadequate experience to perform the role safely and competently.

In order to address this issue, the MEU proposed that subsection 56(2) includes further requirements a person must meet in order to be able to be appointed by an SSE as a supervisor. These requirements must include a minimum requirement of practical experience working as a coal mine worker, the MEU recommends 5 years as a minimum, and that the person be trained and competent to perform any task that they are appointed to supervise.

CLAUSE 36 DISPLAY OF DIRECTIVES REPORT AND OTHER INFORMATION

s.69(1)(b) does not specify which inspection reports of the mine are required to be displayed at the mine. The ISHRs note anecdotally that concerns raised from coal mine workers that inspection reports are often bundled together on a mine site and it can be difficult to ascertain the most recent reports.

² Review December 2019 of all fatal accidents in Queensland mines and quarries from 2000 to 2019; Dr Sean Brady for the Department of Natural Resources, Mines and Energy December 2019.

The MEU considers that the subsection (b) should be amended to clarify that only the most recent inspection reports carried out at the mine from inspectors, inspection officers, authorised officers, ISHRs and SSHRs must be displayed.

CLAUSE 38 ELECTION OF SITE SAFETY AND HEALTH REPRESENTATIVES

The amendments to the election of site safety and health representatives (“SSHRs”) have made a significant departure to the current practices for election of these roles as prescribed in the current regulations. These departures are in some instances either inconsistent or detrimental to the election process in the MEU’s view and should be changed to better current reflect custom and practice.

The first concern is that section 98B has been included as a new subsection (b) which states that an election of a SSHR must be held if *“a coal mine worker for the coal mine, or part of the coal mine, asks the site senior executive for the coal mine, or part of the coal mine, in writing for an election to be conducted by an entity mentioned in subsection 98B(1). (emphasis added)”*

The MEU highlights that the current industry practice allows for a coal mine worker to ask to the Chief Inspector, in writing, for an election to be held. The Chief Inspector then directs either an ISHR on behalf of the MEU or SSE to notify that an election shall be held to elect a new SSHR.

The new section, as emphasised above, requires a CMW to ask to an SSE for an election be held. Not only does this provision deviate from current practice it removes the ability for the MEU to be made aware that an election for a SSHR is to be held and denies the Union an ability to run the election. The new practice also unnecessarily exposes CMWs to potential reprisal action from the coal mine operator.

The MEU recommends that s.98B(b) to amended so that the coal mine worker can make the request to either the SSE or an ISHR on behalf of the MEU for an election to be conducted. Once the request is made to either the ISHR or SSE, they must then inform the party that an election is to be held for one of the reasons alleged and that the other party must assist in the running of that election. The MEU believes that the disputes over the running of the election should be resolved by the Chief Inspector, as per the current Regulations.

Of importance, if the CMW asks that the MEU conduct the election, the Union should have the ability to conduct that election and the SSE must provide the relevant assistance to conduct the election. The second concern that the MEU raises with clause 38 is that subsection 98B(1)(a) and (2) allows for 1 or more involved unions in an election. As the principle Union in coal mining, with includes elected ISHRs, the MEU is the only Union capable of conducting elections on behalf of all coal mine workers for the position of SSHR. Subsection (a) should be amended to reflect this fact and mention the MEU as the specific Union entity capable of running an election.

Finally, the MEU notes the relevant changes at s.93(3) incorporating the term of appointment for an SSHR. The MEU have had a number of issues with persons taking the incorrect view that an SSHR ceases in their role at the expiration of their elected term. This view is incorrect as s.96 and s.97 clearly states that a coal mine worker can only be removed from their role as an SSHR if they are removed by the Minister, resign, stop being a worker at the mine, or are removed from office by a vote of coal mine workers.

Given the number of times that this incorrect view has been raised within the industry, the MEU considers that it would be appropriate for a further amendment to s.93(3) to clarify that although a worker is appointed as an SSHR for a specific term, they remain appointed to that role after the

expiry of their term and can only be removed from the role in accordance with s.96 and s.97 of the Act.

CLAUSE 44 IDENTITY OF THE SITE SAFETY HEALTH REPRESENTATIVE

The MEU disagrees with the amendment to s.107(3). Currently the SSE is required to display the identity of the sites SSHRs in a “*conspicuous positions at the mine in a way likely to come to the attention of workers at the mine.*” The obligation of the subclause is to ensure that the identity of the SSHR, if required, can be readily accessed by coal mine workers. The manner in which this obligation met by the SSE is then left to their discretion.

The proposed change requiring the indemnity to be displayed “*near the mine record, in the crib room*” removes the threshold obligation to ensure that SSHR identify can be readily accessible to coal mine workers but also narrows the manner in which the SSE can exercise their discretion in displaying the identification of the SSE.

The MEU recommends that the wording in subsection (3) be maintained. The MEU does not object to an amendment of subsection (3) to the effect that the wording “*near the mine record, in the crib room*” are also included, as an examples of the manner in which the SSE can meet the obligation under the subsection.

REQUIREMENTS FOR POSITIONS TO BE EMPLOYED BY COAL MINE OPERATOR OR ENTITY THAT EMPLOYS MORE THAN 80% OF CMW’S

The previous amendments to the CSMH Act saw the introduction of exemptions to the requirement for the Coal Mine Operator to hire all statutory positions. The MEU argued against these exemptions at the time, stating that the exceptions were not necessary and foreshadowing that the exemptions would be open to abuse by coal mine operators. The reasons for recent changes to the Act, for the requirement of statutory officials to be direct employees of the mine, should not be forgotten. The MEU strongly opposes any watering down of this provision.

However, since their introduction, the MEU’s concerns have been borne out and the MEU again submits that such exemptions (for eg, the coal mine operators to be able to hire contactors in these roles for not more than 12 weeks) should be removed.

As previously stated, these important statutory safety positions should not be held by contractors. There are industrial instruments to employ them directly if required – such as temporary, fixed term, part time or casual agreements.

As foreshadowed by the MEU, some statutory contractors, in the OCE and ERZ positions particularly, are being hired on a series of rolling contractual arrangements and required to move between coal mines every 12 weeks, replaced by another contractor for 12 weeks. If they were employed directly, for example on a 12 week fixed term, they could be offered another 12 week fixed term employee contract and stay at the mine they are inducted and familiar with. Such arrangements undermine the safety of coal mine workers. By removing these exemptions and requiring operators to hire these employees on a permanent basis.

CLAUSE 135 ENFORCEABLE UNDERTAKINGS

The MEU supports the introduction of enforceable undertakings into the CSMH act as a tool for enforcing compliance with the legislation. However, the MEU raises concerns with the fact that the power to accept enforceable undertakings rests solely with the CEO.

The MEU's concern is that this process does not ensure transparency as one person will be responsible for the decision to accept an undertaking in lieu of taking other more significant action, such as prosecution, for contraventions of the legislation. The MEU has long raised concerns regarding the issue of regulatory capture within the Department of Mines and Natural Resources and giving the power to accept enforceable undertakings to a single person within the department raises the issue once again.

The MEU recommends that in order for enforceable undertakings remain as transparent as possible, a new tripartite committee featuring members of the MEU, regulators and the QRC should be formed to assess and accept any enforceable undertaking under the new legislation.

Yours faithfully



MITCH HUGHES
District President