Resources Safety and Health Legislation Amendment Bill 2024

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QRC Submission

To Queensland Parliament's
Clean Energy Jobs, Resources & Transport
Committee

Submission *Resources Safety and Health Legislation Amendment Bill 2024*.

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QUEENSLAND resources COUNCIL

Introduction

About the Queensland Resources Sector

The QRC welcomes the opportunity to make a submission on the Resources Safety and Health Amendment Bill 2024 (Amendment Bill).

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.

In the context of this submission, it is important to acknowledge the resources sector's contribution to Queensland. The resources industry is a key driver of the Queensland economy and one of the State's largest export earners. In 2022 – 2023, the Queensland Government received $18.1 billion in royalties alone from the resources sector, with a total of $116.8 billion contributed to the Queensland economy.

The Queensland resources sector directly and indirectly employs over 532,000 persons largely in high paying roles, with a considerable proportion of those roles located within rural, remote, and regional areas of this state.

In 2022-23 Queensland's resource industry collectively:

- supported one in six Queensland jobs;
- contributed one in every four dollars to the State economy;
- generates around 82% of the value of Queensland exports (https://www.treasury.qld.gov.au/queenslands-economy/economic-dashboard/);
- supported more than 15,919 local Queensland businesses;
- contributed to more than 1,427 charities and local sports clubs; and
- all from just 0.1 per cent of Queensland's land.

https://www.qrc.org.au/wp-content/uploads/2023/11/2023-Economic-Contribution-Statewide.pdf

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 cooperate and share information, research and learnings. It is in this context that the QRC provides this submission.

Summary of QRC's Key Issues and Recommendations

Key Issue:

Consultation

Recommendation:

- QRC seeks a minimum of 12 weeks of meaningful consultation on matters that materially affect the resources sector.

Key Issue:

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

Recommendation:

- To avoid disruption to business continuity, the QRC is strongly of the view that the transitional requirements at Clause 100 should be amended to defer the requirement for the SMM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the SMM.
- In the case of MEM and EEM positions, it is recommended that where an MEM or EEM holds Registration as a Professional Engineer with the Board of Professional Engineers Queensland, Clauses 25 and 29 should be amended to omit the requirement to hold a certificate of competency issued by the Board of Examiners. The requirement for MEMs and EEMs to hold a practising certificate should be maintained in the Amendment Bill to ensure these positions have current industry practice.

Key Issue:

Surface Mine Managers (SMM), mechanical engineering manager (MEM) and electrical engineering manager (EEM) to be direct employees

Recommendation:

- Clause 25 at s.58A(13) (a) & (b) of the Amendment Bill should be omitted as these requirements relate to employment conditions, not safety and health considerations. They have the potential to adversely affect business continuity in situations where there are labour shortages. As a minimum and to correct the previous oversight, s.58A (13) (b) should be amended to allow an EEM or MEM to be employed by "an associated entity of the coal mine operator".
- Similar requirements for acting SMM, MEM and EEM positions should be omitted from the Amendment Bill for the reasons outlined above or acting SMM, MEM and EEM positions.

Key Issue:

Safety critical roles at or near the mine site

Recommendation:

- Should the amendment be recommended by the Committee, Clause 9 should be amended to omit "located at or near the mine site" and align the Clause with the New South Wales requirement, see section 133 of the Work Health and Safety (Mines and Petroleum Sites) Regulation 2022 (NSW). The Regulation requires an individual nominated to exercise a statutory function at the mine to be "readily available to exercise and is capable of exercising the statutory function".

Key Issue:

Remote Operating Centres

Recommendation:

- Amend the definition of remote operating centre in Clause 102 Schedule 3 and Clause 231 Schedule 2 to state "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.

Key Issue:

ROC Worker

Recommendation:

- Amend the definition of ROC worker in Clause 102 Schedule 3 and Clause 231 Schedule 2 to state a "ROC worker" means an individual who carries out the activities of controlling and monitoring mining operations at a remote operations centre.

Key Issue:

Critical Controls

Recommendation:

- That Recognised Standard 2 and the draft Recognised Standard 24 be redrafted to ensure that the definition is consistent with the definition of critical controls in Clause 100 prior to the commencement of the Amendment Bill.

Key Issue:

Publication of Information (Public Statements)

Recommendation:

- It is recommended that Clauses 96 and Clause 225 be omitted from the Amendment Bill and that the Minister establish a high-level tripartite committee to consider and make recommendations on a framework for the staged release of information involving investigation outcomes, serious accidents and high potential incidents.

- As a minimum should the amendments proceed unamended, the QRC seeks a commitment from the Minister to establish a high level tripartite working group to develop guidelines for the release of information.

Key Issue:

Definition of Employer for the purposes of the offence of Industrial Manslaughter

Recommendation:

- The amendments to the definition of "employer" at Clauses 16, 111, 112 and 163 of the Amendment Bill which broaden the types of entities that can be categorised as "employer" for the purposes of the industrial manslaughter provisions should be reconsidered on the basis that:
    - failure to have a clear definition of employer for the purposes of the industrial manslaughter provisions is likely to cause considerable uncertainty over who the definition can potentially apply to on a mine site and may result in a reluctance by workers to progress into statutory positions or other management roles in the resources sector;
    - the offence of industrial manslaughter should consistently be applied to duty holders across Queensland workplaces irrespective of whether they are a mining workplace or general industrial workplace to provide certainty to duty holders i.e. treat all Queensland duty holders consistently; and
    - the issue of concurrent duty holders or consultation between duty holders has not been addressed in the Amendment Bill. This should be addressed through amendments at the Consideration in Detail stage of the debate, if the decision of the Government is to proceed with the definition of employer in Clauses 16, 111, 112 and 163 as presently drafted.

Key Issue:

Labour hire agencies, contractors and service providers

Recommendation:

- The definition of contractor in Clause 102 (Schedule 3) and Clause 231 (schedule 2) in the Amendment Bill be amended to disaggregate the definition of contractor into the components i.e., contractor and labour hire worker definitions.

Key Issue:

Directive to give report to the Chief Inspector

Recommendation:

- The power for the Chief Inspector to issue a directive as set out in Clauses 54 and 189 is an overreach of regulatory supervision and these Clauses should be omitted from the Amendment Bill.

Key Issue:

Industry Safety and Health Representative or District Worker Representative may issue a Directive

Recommendation:

The current wording in Clause 54 (s.163) and Clause 189 (s.160) of the Amendment Bill should be amended to require an ISHR or DWR to consult a person who has a safety and health obligation in relation to the mine before issuing a Directive to cease mining operations.

Key Issue:

Disqualification process for Industry Safety and Health Representatives (ISHR) or District Worker Representatives (DWR)

Recommendation:

- The Amendment Bill should be amended to insert a transparent disqualification process where the representative is not performing the representative's functions satisfactorily. In this regard the disqualification process set out in the national model Work Health and Safety Act 2011 see s.138 -s.140 should be considered as the basis for drafting.

Key Issue:

Board of Examiners

Recommendation:

- Clause 61 should be omitted from the Amendment Bill unless a clear understanding can be provided of the circumstances in which this Ministerial power could be used.
- The transitional arrangements at Clause 100 should be amended to defer the requirement for the SMM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the SMM.
- As outlined above the QRC recommends that where an MEM or EEM holds Registration as a Professional Engineer with the Board of Professional Engineers Queensland, Clauses 25 and 29 should be amended to omit the requirement to hold a certificate of competency issued by the Board of Examiners. The requirement for MEMs and EEMs to hold a practising certificate should be maintained in the Amendment Bill to ensure these positions have current industry practice.
- If the QRC recommendation to omit the requirement for MEMs and EEM to hold a certificate of competency is rejected, as a minimum Clause 100 should be amended to defer the requirement for the MEM and EEM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the MEM and EEM certificates of competency.
- The new section 186(1)(a) in Clause 100 should apply from the date of commencement of the Amendment Bill.

Key Issue:

Commencement of offence proceedings

Recommendation:

- Clauses 87, 130 and 216 of the Amendment Bill should be amended to introduce a three-year time limit for the conduct of an investigation.

Key Issue:

Material unwanted event

Recommendation:

- The definition of "material unwanted event" should be omitted from Clause 102 and consideration should be given to introducing a definition of a "Critical" control which, when absent, would likely lead to a fatality or multiple fatalities.

QRC's Submission on the Resources Health and Safety Amendment Bill 2024

Consultation

The QRC would like to acknowledge and thank Minister for Resources and Critical Minerals, the Hon Scott Stewart MP, for listening to our concerns in relation to the additional certificate of competency for site senior executives by omitting this proposed new certificate requirement from the Bill. Also, for not proceeding with the proposed amendment related to establishing site safety and health committees as the current arrangements for workers to report concerns and be consulted on changes are sufficient. Finally, our concern that the definition of 'critical controls' was too broad, has also been addressed.

On 27 September 2023, Resources Safety and Health Queensland (RSHQ) released the consultation package of proposed amendments to the Resources Safety Legislation. This was the culmination of an extensive period of regulatory reform, elements of which have their origin in the Brady Review, 6 February 2020, the Board of Inquiry, 31 May 2021, followed by the release of various discussion papers.

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 would come with a default 12-week minimum structured consultation period, consistent with the Office of Best Practice Regulation's guidelines.

The QRC is disappointed that the 12-week period of consultation has not been strictly adhered to throughout the processes that have led to the development and drafting of the Amendment Bill. In the case of the consultation on this Bill, the QRC received an email advising of the release of the outcomes of the Decision Regulatory Impact Statement (DRIS) and the exposure draft of the Amendment Bill on 27 September 2023, with a call for submissions by 27 October 2023.

This was an inadequate period for the QRC to consult its members, collect feedback on the outcomes of the Decision Regulatory Impact Statement (DRIS) as well as the Amendment Bill and co-ordinate the drafting of the QRC submission. While a request was made to extend the time for lodgement of the submission to 24 November 2023, an extension was only granted until 10 November 2023.

The tabling of the Amendment Bill on 18 April 2024 with a 2 May 2024 due date for submissions, although later extended to 7 May 2024 at QRC's request, is a further demonstration of inadequate time being provided for consultation on matters of material importance to the resources sector. Since then, the Parliamentary Committee has advised that the due date for submissions is now 10 May with a report back date to parliament of 7 June 2024. In addition to concerns about the lack of time for genuine consultation, the absence of underpinning evidence to explain government policy positions especially in terms of how changes contribute to improved safety outcomes, has been of concern to QRC. The rationale for the urgency in progressing the Amendment Bill on this timeline has not been explained.

The QRC Is strongly of the view that there is insufficient time for the QRC, resource companies and the Clean Economy Jobs Resources and Transport Parliamentary Committee itself, to fully consider the implications of the provisions in the Amendment Bill, especially given the public hearing is scheduled to take place on Monday 13 May.

Recommendation

- QRC seeks a minimum of 12 weeks of meaningful consultation on matters that materially affect the resources sector.

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

Clause 25 of the Bill amends the Act to introduce additional requirements for the management of surface mines. This includes the requirement for the SSE to appoint a person to be the surface mine manager for the mine to control and manage the mine together with new certification requirements to demonstrate competency for surface mine manager (SMM), mechanical engineering manager (MEM) and electrical engineering manager (EEM) roles.

With respect to the introduction of the SMM, no justification for the mandatory introduction of the role of SMM has been made and may place an additional burden on an SSE without any corresponding safety and health benefit.

Under the new certification requirements, the SMM, MEM and EEM must hold a certificate of competency and a practising certificate required by the Board of Examiners. Clause 100 defers the requirement for the SMM, MEM and EEM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the commencement of the Amendment Bill.

The QRC is concerned that a five-year transitional period for the commencement of the certification requirements could have significant implications for business continuity. This was the case when the new certification requirements for ventilation officers were introduced. In this instance, legislation was passed requiring all ventilation officers to have a certificate of competency, without any recognition of prior learning i.e. all existing ventilation officers were required to undertake training and be assessed for a certificate of competency issued by the Board of Examiners. A three-year transition period was provided for, which ended on 17 November 2022. It took nearly 12 months for the course to be developed and accredited, then COVID-19 broke out and state borders closed. There was also a lack of qualified assessors to assess the applicant's technical abilities. Unsurprisingly, companies had a difficult time getting certificated ventilation officers in place by the required date. Further, at the time the Amendments commenced (17/11/2022), there was no additional availability of Ventilation Officers in Queensland which had the potential to see the short-term closure of mines due to absence. This shortage of certificated ventilation officers remains an ongoing issue for companies.

The QRC maintains the requirement for MEM and EEM positions to hold a certificate of competency issued by the Board of Examiners is unnecessary and duplicates existing professional standards requirements, see Clauses 25 and 29. In Queensland, practising

engineers must be registered to carry out professional engineering services. The registration of engineers in Queensland ensures they meet benchmarked education, training, professional conduct and competency standards. The existing registration requirements also provide for a legislative framework to protect against poor practice.

Recommendation

- To avoid disruption to business continuity, the QRC is strongly of the view that the transitional requirements at Clause 100 should be amended to defer the requirement for the SMM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the SMM.
- In the case of MEM and EEM positions, it is recommended that where an MEM or EEM holds Registration as a Professional Engineer with the Board of Professional Engineers Queensland, Clauses 25 and 29 should be amended to omit the requirement to hold a certificate of competency issued by the Board of Examiners. The requirement for MEMs and EEMs to hold a practising certificate should be maintained in the Amendment Bill to ensure these positions have current industry practice.

Surface Mine Managers (SMM), mechanical engineering manager (MEM) and electrical engineering manager (EEM) to be direct employees

At Clause 25 s.58A(13)(a) the Site Senior Executive can only appoint an SMM if the person is an employee of the coal mine operator, an associated entity of the coal mine operator, or an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine. Clause 25 s.58A(13)(b) requires the Surface Mine Manager to appoint an MEM or EEM only if the person is an employee of the coal mine operator or an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine but does not allow employment of a person as an MEM or EEM by an "associated entity of the coal mine". This serves to perpetuate, rather than correct, the inconsistency in employment arrangements across statutory positions which arose when amendments were made in 2022 to allow all statutory positions other than EEM and MEMs to also be employed by an associated entity. This inconsistency was an oversight in the drafting, rather than intentional and needs to be corrected.

The QRC throughout the limited consultation process has sought justification on safety and health grounds for the need for any restrictions on employment arrangements, without success.

Recommendation

- Clause 25 at s.58A(13) (a) & (b) of the Amendment Bill should be omitted as these requirements relate to employment conditions, not safety and health considerations. They have the potential to adversely affect business continuity in situations where there are labour shortages. As a minimum and to correct the previous oversight, s.58A (13) (b) should be amended to allow an EEM or MEM to be employed by "an associated entity of the coal mine operator".

- Similar requirements for acting SMM, MEM and EEM positions should be omitted from the Amendment Bill for the reasons outlined above or acting SMM, MEM and EEM positions.

Safety critical roles at or near the mine site

The QRC does not agree with the proposed amendment to Section 41 of the CMSHA requiring an SSE or acting SSE to be "located at or near the coal mine" when performing duties of the SSE, unless they are temporarily absent, if absence is for not more than 14 days.

Should the amendment be recommended by the Committee, Clause 9 must be clarified as to what does "near" mean – e.g. 10 or 100 kilometres from the mine site? To provide clarity for SSEs, the QRC requests the Parliamentary Committee to consider recommending that Clause 9 be amended to omit "located at or near the mine site" and align the Clause with the New South Wales requirement, by inserting a clause which requires the position holder to "be readily available to exercise the function".

Recommendation

- Should the amendment be recommended by the Committee, Clause 9 should be amended to omit "located at or near the mine site" and align the Clause with the New South Wales requirement, see section 133 of the *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* (NSW). The Regulation requires an individual nominated to exercise a statutory function at the mine to be "readily available to exercise and is capable of exercising the statutory function".

Remote Operating Centres

A remote operating centre (ROC) as defined, is located off the mine site. A ROC may occupy a facility or occupy part of a facility, such as a company head office. Where the ROC occupies part of the facility, workers other than workers associated with the operation of the ROC may be present within the same facility (i.e. it is their normal place of work).

The definition of remote operating centre in Clause 102 Schedule 3 and Clause 231 Schedule 2 may create confusion by potentially capturing workers, other than workers associated with the operation of the ROC but present in the same location who are not intended to be captured.

Recommendation

- Amend the definition of remote operating centre in Clause 102 Schedule 3 and Clause 231 Schedule 2 to state "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.

ROC Worker

As drafted, the definition of "ROC worker" in Clause 102 Schedule 3 and Clause 231 Schedule 2 "means a person who works at a remote operating centre for a mine" is broad and has the potential to capture any person who works at a facility that is a ROC even if they do not have

direct involvement in making decisions about operations at the mine or do not remotely operate plant or equipment under the direction of the SSE.

Recommendation

- Amend the definition of ROC worker in Clause 102 Schedule 3 and Clause 231 Schedule 2 to state a "ROC worker" means an individual who carries out the activities of controlling and monitoring mining operations at a remote operations centre.

Critical Controls

The requirements for critical controls to be incorporated into the safety and health management system principal hazard management plans, at Clauses 6, 15, 33, 34, 231 and the Dictionary at Clause 100 are supported. However, the QRC is concerned that the definition of critical controls in the draft Bill differs from the definitions in both Recognised Standard 2 and draft Recognised Standard 24.

Recommendation

- That Recognised Standard 2 and the draft Recognised Standard 24 be redrafted to ensure that the definition is consistent with the definition of critical controls in Clause 100 prior to the commencement of the Amendment Bill.

Publication of Information (Public Statements)

As outlined in the QRC submissions to the Consultation Regulatory Impact Statement and Decision Regulatory Impact Statement, the QRC strongly supports the sharing of information to improve safety and health outcomes. The QRC also acknowledges the essential role Resources Safety and Health Queensland plays in disseminating information on fatalities, HPIs (high potential incidents) and serious incidents which inform company decision-making to mitigate safety risks. While acknowledging the importance of information sharing to improve safety and health outcomes, the potential scope of publication of information as set out in Clause 96 and Clause 225 of the Amendment Bill, is strongly opposed.

Rather than changes to support the regulator's ability to share safety learnings and trends with the industry, with a view to preventing incidents and serious accidents and to improve safety and health outcomes for resources sector workers, Clauses 96 and 225 provide detailed information to be released publicly without any caveat around what is released or how that information will be used. When/if information is shared, the purpose must be to improve safety and health outcomes through education and risk mitigation. Clause 96 is inconsistent with the recommendations of the Brady Review and the advice of Professor Andrew Hopkins. There needs to be a total rethink to ensure timely information is available and shared with the industry to improve safety and health outcomes. In this context, the QRC proposes that Clauses 96 and Clause 225 be omitted from the Amendment Bill while a high level tripartite committee is established to recommend to the Minister a way forward including the development of Guidelines for Information Release and Sharing.

The QRC would encourage the Parliamentary Committee to review the approach taken by the Australian Transport Safety Bureau (ATSB) to the release of information. In the case of the

fatal helicopter collision on the Gold Coast on 2 January 2023, a Preliminary Report was released on 8 April 2024, some 14 weeks after the fatal incident. The report provided factual information that investigators established during the investigation's early phase in order to provide timely information to the industry and the public. An Interim Report was then released on 2 February 2024, some 13 months after the fatal incident. The Interim Report provided details of the factual information established in the investigation's evidence collection phase. Again, this report is geared at providing timely information to the industry and the public. The Interim Report contains no analysis or findings, as these will be detailed in the investigation's Final Report, which is yet to be completed.

The QRC is supportive of the approach taken in this ATSB investigation as it ensured that the industry and the public had access to factual information on this incident involving multiple fatalities in a timely manner. It also enabled the industry to respond to the factual information in both the Preliminary and Interim Reports in advance of the investigation being finalised.

In the case of the New South Wales Resources Regulator, they do not investigate all matters reported to them as they adopt a risk-based approach to ensure finite resources are applied where the seriousness of alleged misconduct and risk of harm is greatest. The NSW Regulator exercises discretion in determining whether resources will be committed to a formal investigation or take other action. This may include, where appropriate, undertaking a causal investigation to enable a quick and full understanding of the causes of safety incidents and the publication of corresponding lessons to reduce the likelihood of recurrence. Causal investigations are only considered where there is a clear need to communicate early learnings.

The Minister stated in his Explanatory speech (page 1220), that "*To be clear, the bill does not introduce new powers for such identification; this authority already exists within the current legislation in relation to enforcement activities. The bill simply clarifies that this also extends to serious accidents and high potential incidents.*" The QRC acknowledges that the authority exists within the current legislation in relation to instances where enforcement activities have been undertaken. However, Clauses 96 and 225 extend the release of information, for example, to instances immediately after a serious accident or high potential incident has occurred rather than after an investigation by the regulator. Clauses 96 and 225 provide for the release of information on:

- the total number of accidents or incidents that happened in a particular period;
- a description of an accident or incident, including, for example, where and when an accident or incident happened;
- the name of a coal mine at which an accident or incident happened;
- the operator of a coal mine at which an accident or incident happened;
- the injuries or deaths that occurred in an accident or incident; and
- any other information about the accident or incident the Minister, CEO or chief inspector considers appropriate.

The QRC is concerned that these proposed amendments may 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 Clause 96 s.275AC (4) and Clause 225 s.254C(4) no liability is incurred by the State or any other person for the publication of, or anything done for the purpose of publishing, information under this section in good faith. The QRC is of the view that this provision has the potential to see resource companies "named and shamed" without ever being prosecuted for a breach of the Act or Regulations. Clauses 96 and 225 should be omitted from the Amendment Bill.

Recommendation

- It is recommended that Clauses 96 and Clause 225 be omitted from the Amendment Bill and that the responsible Minister establish a high-level tripartite committee to consider and make recommendations to the Minister on a framework for the staged release of information involving investigation outcomes, serious accidents and high potential incidents.
- As a minimum should the amendments proceed unamended, the QRC seeks a commitment from the Minister to establish a high level tripartite working group to develop guidelines for the release of information.

Definition of Employer for the purposes of the offence of Industrial Manslaughter

The Bill amends the definition of "employer" in the various mining safety Acts at Clauses 16, 111, 112 and 163 of the Amendment Bill to broaden the types of entities that can be categorised as "employer" including for the purposes of the industrial manslaughter provisions.

The current definition in the *Coal Mine Safety and Health Act 1999* (see s.48A) specifies that an employer, executive officer of a corporation, or the holder of an executive position who makes or takes part in making, decisions affecting all, or a substantial part, of the employer's functions commits an offence if person's conduct causes death or if it substantially contributes to a death. While understanding the intent of the amendment, the QRC is concerned that the broadening of the definition of employer in this way has the potential to create further confusion and uncertainty. The definition of employer in the Amendment Bill now includes operators, holders, labour hire companies, contractors or any other person who employs/engages or "arranges" for a worker to perform work. Further, where multiple entities are responsible for the death of a worker through their criminal negligence, multiple entities may be found to be liable for industrial manslaughter.

When the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 introduced the offence of "industrial manslaughter" into the various mining safety Acts it was made clear that the offence was aimed at the most senior levels in a company. That is, where an employer or senior officer's conduct causes the death, and the employer or senior officer is negligent about causing the death. The definition of employer as amended will create confusion.

The new definition of "employer" will have the effect of expanding the entities captured by the industrial manslaughter offence under the Amendment Bill and will not align with the types of entities captured by the industrial manslaughter offence in the *Work Health and Safety Act 2011* (Qld) (WHS Act) that applies to other Queensland workplaces. The definition

of "employer" in the Amendment Bill will go further and capture a broader range of entities than those captured by the offence under the WHS Act, because:

- the industrial manslaughter offence under the WHS Act applies to a "person conducting a business or undertaking" (PCBU). For a PCBU to commit the offence of industrial manslaughter, a worker must have died (or was injured and later died) "*in the course of carrying out work for the business or undertaking*". Accordingly, the industrial manslaughter offence will apply to any individual or corporation that is carrying on a business and for which a worker is carrying out work. It is necessary to prove that the worker was carrying out work for the PCBU at the time of the incident; and
- while the offence under the WHS Act could capture labour hire agencies, principals, contractors, subcontractors or any other PCBU for which a worker is performing work, it will not necessarily capture a person or entity that merely "arranges" for a worker to perform work, such as a recruitment agency. An entity that only "arranges" for a worker to perform work may not be captured by the general offence if it cannot be proven that the worker was carrying out work for the entity. This is distinguished from the proposed position in the Amendment Bill. The new definition of employer in the Amendment Bill will capture any person who arranges for a worker to perform work. The industrial manslaughter offence under the Amendment Bill does not require a worker to be carrying out work for that particular person, but only requires the worker to be carrying out work at a site / carrying out a particular activity.

It is unclear why the policy rationale for application of the offence of industrial manslaughter to entities under the Amendment Bill does not align with the types of entities captured by the industrial manslaughter offence under the *Work Health and Safety Act 2011*.

A further concern for the QRC, is that unlike the WHS Act, the Amendment Bill does not contain any provisions dealing with concurrent duty holders or consultation between duty holders. These two concepts which are contained in the WHS Act are key to ensuring duty holders understand their obligations in circumstances where there are multiple duty holders. The WHS Act provides for the situation in which more than one person concurrently holds the same duty (see section 16) and provides that each person "*must discharge the person's duty to the extent to which the person has the capacity to influence and control the matter*". This is an important element of the WHS Act and clarifies the extent of a person's duty under the Act and provides certainty to duty holders as to their responsibility and liability. The Amendment Bill is expanding the offence to a broader range of duty holders, some of which will not have extensive control or influence over the day-to-day operations at sites, without providing guidance to duty holders as to the extent of their obligations and how these obligations will interact with the obligations of other duty holders.

The QRC considers that the issue of concurrent duty holders or consultation between duty holders should be addressed through amendments at the Consideration in Detail stage of the debate.

Recommendation

- The amendments to the definition of "employer" at Clauses 16, 111, 112 and 163 of the Amendment Bill which broaden the types of entities that can be categorised as

"employer" for the purposes of the industrial manslaughter provisions should be reconsidered on the basis that:

- failure to have a clear definition of employer for the purposes of the industrial manslaughter provisions is likely to cause considerable uncertainty over who the definition can potentially apply to on a mine site and may result in a reluctance by workers to progress into statutory positions or other management roles in the resources sector;
- the offence of industrial manslaughter should consistently be applied to duty holders across Queensland workplaces irrespective of whether they are a mining workplace or general industrial workplace to provide certainty to duty holders i.e. treat all Queensland duty holders consistently; and
- the issue of concurrent duty holders or consultation between duty holders has not been addressed in the Amendment Bill. This should be addressed through amendments at the Consideration in Detail stage of the debate, if the decision of the Government is to proceed with the definition of employer in Clauses 16, 111, 112 and 163 as presently drafted.

Labour hire agencies, contractors and service providers

The Amendment Bill at Clause 102 (Schedule 3) and Clause 231 (schedule 2) introduce a broad definition of "contractor" that includes all types of employment arrangements including a person contracted to carry out work at a mine, provide a service to a mine and a person contracted to provide workers to a mine including labour hire agencies. In addition, the SSE at the mine has a new obligation to report the occurrence of injury, high potential incidents or proposed changes at the mine that may affect the safety and health of contractors, to the agency that supplied those workers. Significantly, the definition does not make a distinction 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 significantly, potentially skew incident and injury rate data.

The QRC asserted a consistent position in our submissions to the Consultation Regulatory Impact Statement and Decision Regulatory Impact Statement that it is important to distinguish 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 specialist 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 and be trained on the mine's safety and health management system.

The QRC continues to maintain that the definition of 'contractor' in the Amendment Bill 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.

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

Recommendation

- The definition of contractor in Clause 102 (Schedule 3) and Clause 231 (schedule 2) in the Amendment Bill be amended to disaggregate the definition of contractor into the components i.e., contractor and labour hire worker definitions.

Directive to give report to the Chief Inspector

Clause 54 (s.167) and Clause 189 (s.164) provide the chief inspector with the ability to give a directive to a person who has a safety and health obligation to provide 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 the power to determine, by approval, whom 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.

The power for the Chief Inspector to issue a directive as set out in Clauses 54 and 189 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).

The QRC is strongly of the view that it is inappropriate for a person who has a safety and health obligation to be required to undertake investigatory functions for the regulator, even if these reports are not admissible in evidence.

Recommendation

- The power for the Chief Inspector to issue a directive as set out in Clauses 54 and 189 is an overreach of regulatory supervision and these Clauses should be omitted from the Amendment Bill.

Industry Safety and Health Representative or District Worker Representative may issue a Directive – move up

The Amendment Bill in Clause 54 (s.163) and Clause 189 (s.160) introduces a new power to allow an Industry Safety and Health Representative (ISHR) and a District Worker Representative (DWR) to require the suspension of mining operations in all or part of the mine where a risk from coal mining operations is at an unacceptable level or may reach an unacceptable level. Further, a directive to suspend mining operations may be given orally or by notice, see s.169(CMSH Act) and s.166 (MQSH Act). Where a directive is given to a person orally, the directive must be confirmed by notice given to the person as soon as reasonably practicable after the directive is given.

The QRC is concerned that the test to direct mining operations to cease by an ISHR or DWR 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. The vague notion of "may reach an unacceptable level" of risk has the potential to result in the suspension of mining operations in situations where an inspector is required to intervene and withdraw a directive, on the basis that 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 (the equivalent being a mine operator) in the first instance and attempting to resolve the matter through an issue resolution process.

The QRC believes the current wording in Clause 54 (s.163) and Clause 189 (s.160) should be amended to require an ISHR or DWR to consult a person who has a safety and health obligation in relation to the mine before issuing a Directive to cease mining operations. Further, the ISHR or DWR should be required to issue any Directive by notice specifying the action required under the Directive and the grounds for the directive.

Recommendation

- The current wording in Clause 54 (s.163) and Clause 189 (s.160) of the Amendment Bill should be amended to require an ISHR or DWR to consult a person who has a safety and health obligation in relation to the mine before issuing a Directive to cease mining operations.

Disqualification process for Industry Safety and Health Representatives (ISHR) or District Worker Representatives (DWR)

If Parliament decides that ISHRs and DWRs are to be given 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 or DWR where their powers were used inappropriately. The Acts only provides the power to the Minister to end the appointment of an ISHR or DWR if the Minister considers the representative is not performing the representative's functions satisfactorily, see s.112 of the CMSH Act and s.110 of the MQSH Act. It is important that where an ISHR is considered not to be performing the representative's functions satisfactorily they are shown due process.

The QRC considers the Bill should be amended to insert a transparent disqualification process where the representative is not performing the representative's functions satisfactorily. In this regard, the QRC suggests the Parliamentary Committee consider the disqualification process set out in the national model *Work Health and Safety Act 2011* see s.138 -s.140. Section 138 states:

(1) The following persons may apply to the authorising authority for a WHS entry permit held by a person to be revoked:
   (a) the regulator;
   (b) the relevant person conducting a business or undertaking;
   (c) any other person in relation to whom the WHS entry permit holder has exercised or purported to exercise a right under this Part;
   (d) any other person affected by the exercise or purported exercise of a right under this Part by a WHS entry permit holder.

(2) The grounds for an application for revocation of a WHS entry permit are:
   (a) that the permit holder no longer satisfies the eligibility criteria for a WHS entry permit or an entry permit under a corresponding WHS law, or the Fair Work Act or the *Workplace Relations Act 1996* of the Commonwealth; or
   (b) that the permit holder has contravened any condition of the WHS entry permit; or
   (c) that the permit holder has acted or purported to act in an improper manner in the exercise of any right under this Act; or
   (d) in exercising or purporting to exercise a right under this Part, that the permit holder has intentionally hindered or obstructed a person conducting the business or undertaking or workers at a workplace.

(3) The applicant must give written notice of the application, setting out the grounds for the application, to the person who holds the WHS entry permit and the union concerned.

Recommendation

- The Amendment Bill should be amended to insert a transparent disqualification process where the representative is not performing the representative's functions satisfactorily. In this regard the disqualification process set out in the national model *Work Health and Safety Act 2011* see s.138 -s.140 should be considered as the basis for drafting.

Board of Examiners

The Amendment Bill at Clause 61 provides the Minister with the power to give the Board of Examiners a written direction about a matter relevant to the performance of its functions under the Act if the Minister is satisfied it is necessary, and in the public interest, to give the direction. However, the direction cannot be about issuing, renewing, or otherwise amending, suspending or cancelling a Board qualification. The QRC is confused as to why this Clause has been inserted into the Amendment Bill and the Explanatory Notes to the Bill do not provide any guidance or examples of the circumstances in which this Ministerial power would be used.

The QRC is of the view that Clause 61 should be omitted from the Amendment Bill unless a clear understanding of the circumstances in which this Ministerial power could be used.

The QRC continues to be concerned in relation to the capacity of the Board of Examiners to manage the workload generated by the various 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. In view of the problematic introduction of the Ventilation Officer certificate of competency, the QRC is seeking an assurance from the Government that external resources will be made available to develop the additional certificates of competency.

The QRC is advised that the new certification requirements for SMM, MEM and EEM to hold a certificate of competency will require the Board of Examiners to assess up to an estimated 400 applicants for these certificate classes within a five-year transition period. This is a massive feat that is unlikely to be realised especially given courses will need to be developed around the competency requirements which, given the VO experience, will not be fast. This is a further reason why the QRC is seeking the transitional requirements at Clause 100 to be amended to defer the requirement for the SMM, MEM and EEM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the SMM, MEM and EEM certificates of competency.

It is unclear in Clause 100, which relates to the deferral of the requirement for the Board of Examiners to include a person who has expertise in the assessment of competencies, why this new section 186(1)(a) does not apply until the day that is 2 years after the commencement. The QRC is of the view that an expert in the assessment of competencies will play a critical role in the roll-out of the new certificates of competency and the reviews of competencies in the existing certificates of competency. The new section 186(1)(a) should apply from the date of commencement of the Amendment Bill.

Recommendation

- Clause 61 should be omitted from the Amendment Bill unless a clear understanding can be provided of the circumstances in which this Ministerial power could be used.
- The transitional arrangements at Clause 100 should be amended to defer the requirement for the SMM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the SMM.

- As outlined above the QRC recommends that where an MEM or EEM holds Registration as a Professional Engineer with the Board of Professional Engineers Queensland, Clauses 25 and 29 should be amended to omit the requirement to hold a certificate of competency issued by the Board of Examiners. The requirement for MEMs and EEMs to hold a practising certificate should be maintained in the Amendment Bill to ensure these positions have current industry practice.
- If the QRC recommendation to omit the requirement for MEMs and EEM to hold a certificate of competency is rejected, as a minimum Clause 100 should be amended to defer the requirement for the MEM and EEM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the MEM and EEM certificates of competency.
- The new section 186(1)(a) in Clause 100 should apply from the date of commencement of the Amendment Bill.

Commencement of offence proceedings

At Clauses 87, 130 and 216 of the Amendment Bill a proceeding for an offence 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. Currently, the mining safety Acts require an offence to be commenced 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.

These amendment in effect, remove any time limit for the conduct of an investigation, which on 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 the regulator takes three years to complete their investigation, it may be five years before the commencement of a prosecution. Should the obligation 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 to have investigated a potential breach and for proceedings to be commenced, is perverse.

This open-ended time for the regulator to investigate has the potential to have an adverse impact on obligation holders and workers who are being investigated for a potential breach of the mining safety and health legislation as well as the families of injured workers awaiting an investigation outcome.

It is unreasonable to have the potential for 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.

Recommendation

- Clauses 87, 130 and 216 of the Amendment Bill should be amended to introduce a three-year time limit for the conduct of an investigation.

Material unwanted event

At Clause 102 (Schedule 3) a "material unwanted event", at a coal mine, is defined *as an unwanted event in relation to which the potential or real consequence to safety or health exceeds a threshold defined by the coal mine operator as warranting the highest level of attention*. The QRC is concerned that this definition is wordy and open to interpretation and will create more confusion than clarity. For example, the words "warranting the highest level of attention" are open and will be subject to debate. The definition also establishes the coal mine operator as setting the threshold in the Safety and Health Management System rather than the Site Senior Executive.

Recommendation

- The definition of "material unwanted event" should be omitted from Clause 102 and consideration should be given to introducing a definition of a "Critical" control which, when absent, would likely lead to a fatality or multiple fatalities.