

Resources Safety and Health Legislation Amendment Bill 2024

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RESOURCES SAFETY AND HEALTH LEGISLATION AMENDMENT BILL 2024

SUBMISSION TO THE CLEAN ECONOMY JOBS, RESOURCES AND TRANSPORT COMMITTEE

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The following abbreviations are used in this submission:

- Amendment Bill – *Resources Safety and Health Legislation Amendment Bill 2024*
- BOE – Board of Examiners
- CMSHA – *Coal Mining Safety and Health Act 1999*
- CMSHR – *Coal Mining Safety and Health Regulation 2017*
- COC – certificate of competency issued by the Board of Examiners.
- DRIS – Decision Regulatory Impact Statement: Facilitating High Reliability Organisation Behaviours in Queensland’s Resources Sector and Modernising Regulatory Enforcement, 2023
- Explanatory Notes – *Resources Safety and Health Legislation Amendment Bill 2024 Explanatory Notes*
- HPI – high potential incident
- ISHR – industry safety and health representative
- RSHQ – Resources Safety and Health Queensland

Where Peabody has provided commentary and submissions about amendments to the CMSHA and CMSHR for which there are similar proposals affecting the Explosives Act and Explosives Regulation, Peabody’s commentary and submissions also apply to the Explosives Act and regulation.

About Peabody

Peabody is a leading international coal producer, with ten mining operations in the United States, and seven in Queensland and New South Wales. Our Queensland operations produce over 5 million tonnes of steel-making coal, soon to increase significantly with the resumption of underground production at our Centurion Mining Complex. Peabody shares the Queensland Government's commitment to ensuring the safety of its people and all Queensland coal mine workers and we are pleased to report that in Q1 2024 we achieved our best ever single quarter start to the year safety results with ten reportable injuries across our global platform.

Consultation

In September 2023, Resources Safety and Health Queensland (RSHQ) released the draft *Resources Safety and Health Legislation Amendment Bill* for consultation. The draft Bill proposed a wide range of amendments to safety and health legislation for the Queensland resources sector. Peabody made a submission to RSHQ during the consultation process. Subsequently, the Amendment Bill was introduced into Parliament on 18 April 2024.

Peabody acknowledges and supports certain amendments made by Resources Safety and Health Queensland in response to industry feedback, in particular the introduction of critical controls into the legislation, the exclusion of SSEs from the requirement to hold additional competencies and the introduction of competencies required by Surface Mine Managers. We are also satisfied with the definition of critical controls in the Amendment Bill given it now more closely aligns with the International Council of Mining and Metals (ICMM) definition. However, we strongly encourage the Committee and RSHQ to consider the urgent need for industry to revise the Recognised Standards, guidelines and guidance notes to ensure they align with any changes to the legislation. This will be a considerable body of work.

Despite the above positive changes Peabody remains deeply concerned about the potential impacts of a series of remaining amendments detailed in the Bill that we believe are highly impractical to achieve in the timeframes provided, will exacerbate current shortages of qualified personnel eligible to hold key safety roles, and will therefore not lead to safer working environments for Queensland mineworkers.

Facilitating the growth in high-reliability organisational behaviours

Surface mine managers

The Amendment Bill makes the role of surface mine manager at a coal mine a mandatory statutory role, and requires this role to have a certificate of competency (COC) issued by the Board of Examiners (BOE). There is a five-year transitional period proposed before this requirement comes into effect.

Peabody is opposed to the requirement for a surface mine manager to have a COC. There are already mechanisms in place through Recognised Standard 22 that provide adequately for the competencies needed for this and other key safety management roles.

Notwithstanding, there are two key issues should this proposal go ahead. Firstly, there is an already small pool of individuals who are eligible to hold existing key critical safety roles requiring COCs. Based on this historical evidence, the effect of the proposed requirement for surface mine managers to hold a COC will create a similar shortage of individuals for surface mine manager roles, bearing in mind that holding this certificate will also be required for acting surface mine managers.

Secondly, there are no existing BOE qualifications for surface mine managers. A five-year deferment will not be sufficient time to develop a qualification, and for sufficient numbers of surface mine managers to study for it and complete the examination process. This concern is supported by the extremely limited number of people who have successfully completed the process for underground mine manager COCs since 2019 – **just two in the last five years** (see **Table 1**). To fill the industry need for people with a surface mine manager’s COC may require more than 130 certificate holders¹.

Table 1: First Class COCs issued for the last 5 years (coal)
(source: BOE annual reports)

Year	Underground mine manager
2018/19	0
2019/20	1
2020/21	1
2021/22	0
2022/23	0
Total	2

Furthermore, recent history has shown that transitional periods for these type of arrangements need to be long enough to allow for a staged implementation. When the new requirement for ventilation officer COCs was introduced, it took a number of years for the qualification to be developed and to implement an assessment program. The new requirements had a three-year transition period which ended on 17 November 2022. It took nearly 12 months for the course to be accredited, then the BOE had a lack of suitably qualified assessors. In their 2021/22 annual report, the BOE stated that only four ventilation officer COCs had been issued prior to 30 June 2022, only four and a half months out from the deadline. By 17 November 2022, there were just sufficient numbers of ventilation officers to avoid shutting down any mines. Only 14 ventilation officers were required to avoid industry disruptions. The industry needs at least 92 surface mine managers (**Table 3**).

¹ The figures that were quoted in the Decision Regulatory Impact Statement (DRIS) accounted for only the minimum number of people occupying statutory roles. In reality, there will also be COC holders who are promoted to other roles, move to other jobs, move interstate, move between mines, are on periods of leave, or leave the industry. Table 3 in this submission shows the number **without** accounting for these factors to be 92. Including an additional allowance of 10% per year to account for these factors increases the number to 138 over five years.

See also further discussion below under *Board of examiners' capacity*.

Electrical and mechanical engineering managers

Peabody supports the implementation of a mechanical engineering manager role for a surface mine; however, the proposed requirements for electrical and mechanical engineering managers to hold COCs are not needed. There are already mechanisms in place through Recognised Standard 22 that provide adequately for the competencies needed for these and other key safety management roles.

Notwithstanding, similar to surface mine managers, the key issues are the already small pool of individuals who are eligible to hold existing key critical safety roles requiring COCs, and the time allowed for transition to the new requirements as previously discussed.

See also further discussion below under *Board of examiners' capacity*.

Undermanagers

Under the current legislative arrangements, undermanagers are required to have a First Class COC (underground mine manager's), Second Class COC, or Third Class COC (deputy's). The Bill proposes to exclude holders of Third Class COCs from being appointed as undermanagers. Peabody is opposed to the exclusion of Third Class COC holders for appointment as undermanagers. Under normal operating arrangements, the underground mine manager will not be in attendance at the mine between working shifts, on rostered days off and, from time to time, for short periods when temporarily on duty elsewhere (e.g. undertaking professional development activities or offsite meetings). However, as for any key management role in any business, the underground mine manager is still available to make key decisions about matters in their portfolio of responsibilities. In these circumstances, supervision of the underground mine on a shift by shift basis by persons holding Third Class COCs is entirely satisfactory.

Should the underground mine manager be absent on leave, only then it is warranted that the person acting in their role hold a first or second COC because the underground mine manager is not available to make key decisions.

Notwithstanding, similar issues with the limited pool of available individuals eligible for existing key critical safety roles requiring COCs also applies to people with Second Class COCs. **Table 2** shows that in the last five years only 24 candidates were issued with a Second Class COC – **an average of 4.8 per year**. To cover a four-panel roster and planned absences, underground coal mines will need at least six Second Class COC holders. For 14 underground coal mines, that will mean 84 Second Class COC holders – **an average of 16.8 per year**.

In reality, the number of required Second Class COC holders will be higher than that estimate, because it does not account for unplanned absences. Should the amendments to the undermanager competency requirements in the Bill proceed, Peabody submits that Third Class COC holders should be permitted to temporarily fill undermanager roles for short-term unplanned absences.

See also further discussion below under *Board of examiners' capacity*.

Table 2: Second Class COCs issued for the last 5 years (coal)
(source: BOE annual reports)

Year	Undermanager
2018/19	2
2019/20	7
2020/21	3
2021/22	4
2022/23	8
Total	24

Board of examiners' capacity

Peabody has significant concerns about the BOE's capacity to process the number of candidates that will be required to fill the roles proposed. It appears the BOE already struggles to access sufficient examiners to meet demands for current COCs. According to Peabody estimates (note that the DRIS was silent on the impact of the changes affecting undermanagers) there will be a requirement for around 400 COCs to be issued over the next five years in addition to the ongoing issuing of existing classes of COCs (see **Table 3**). According to BOE annual reports, 255 COCs were issued over the last five years (see

Table 4). If the proposed amendments are passed, that equates to at least a 163% increase in the number of COCs that will need to be issued. The number of examinations conducted will be significantly higher than that due to the failure rate which averaged 25% in 2022/23.

Furthermore, there are other issues that have not been addressed in the Bill, for example:

- How will surface mine managers be represented on the BOE as there is no existing COC for surface mine managers. How will the first competent person be established?
- How will a sufficient pool of examiners with the new competency be assembled in order to process the large number of new COCs required as, again, there is no existing COC for surface mine managers?
- Similarly, for electrical engineering managers and mechanical engineering managers, how will these roles be represented on the BOE, and how will examination panels be established as there are no existing COCs for these roles?

BOE rules require examiners to hold the competency they are examining. These issues, the time needed to develop training and assessment materials, and the capacity of the BOE to deal with the significant increase in examinations indicates that a successful transition to the new requirements in five years is exceedingly optimistic. In recent history, much less significant changes to COC requirements for ventilation officers were only barely possible under the transitional arrangements estimated to be adequate by RSHQ (a 12% increase for ventilation officers vs 163% for the requirements proposed in the Amendment Bill).

Peabody submits that the transitional period of five years should not commence until the BOE has established the training and assessment materials, and developed the technical assessors required to constitute the examination panels.

**Table 3: Number of new COCs required under proposed amendments
(number of mines source: RSHQ quarterly mining industry number report 31 December 2023)**

Role	Number of mines ²	Number per mine	Allowance for covering absences	Total statutory positions	Assessment
Underground coal mines					
Undermanager	14	4	+50%	84	BOE written and oral exams
Electrical engineering manager	14	2	+0% (already included in the no. per mine)	28	BOE written and oral exams

² Excludes exploration, mine rehabilitation, mine camps, and dragline overhaul sites.

Mechanical engineering manager	14	2	+0% (already included in the no. per mine)	28	BOE written and oral exams
Subtotal				140	
Surface coal mines					
Surface mine manager	46	2	+0% (already included in the no. per mine)	92	BOE written and oral exams
Electrical engineering manager	46	2	+0% (already included in the no. per mine)	92	BOE written and oral exams
Mechanical engineering manager	46	2	+0% (already included in the no. per mine)	92	BOE written and oral exams
Subtotal				276	
Total				416	

Table 4: COCs issued for the last 5 years (coal)
 (source: BOE annual reports)

Year	Underground mine manager	Under-manager	Open cut examiner	Deputy	Ventilation officer	Subtotal
2018/19	0	2	16	14	n/a	32
2019/20	1	7	16	31	n/a	55
2020/21	1	3	16	32	1	53
2021/22	0	4	21	20	3	48
2022/23	0	8	24	17	18	67
Subtotal	2	24	93	114	22	
Total						255

Filling acting statutory roles

The *Mineral and Energy Resources and Other Legislation Amendment Act 2020* introduced requirements for statutory roles at coal mines to be employees of the mine operator (but not a requirement at metalliferous mines and quarries). That is, statutory roles cannot be filled by contractors. Later amendments had to be made to accommodate filling these roles under contract arrangements for periods of up to 12 weeks to address absences due to, for example, holidays and sick leave, or filling vacated positions.

These arrangements have been in place for over 12 months, and experience has shown them to be unsatisfactory. Recruitment for specialist roles from the small pool of individuals who are eligible is often a long and drawn-out process, and 12 weeks is often not sufficient time. The current requirements have the potential to impact on business continuity. For example, the BOE reported 22 holders of a ventilation officer COC at the end of 2022/23 (

Table 4). For each of the underground coal mines in Queensland to have a ventilation officer and a backup to cover for vacancies, 28 certificate holders are required, a current shortfall of six. The way the CMSHA is currently written, a vacancy in that role could be filled **only once** by a contractor for a period of 12 weeks. If the vacancy cannot be filled in that time, underground mining operations would have to cease. Not only would operations need to cease, no person would be allowed underground to provide for inspections, or care and maintenance, until such time as a ventilation officer was recruited. To re-establish underground operations, full mine re-entry processes would need to be implemented with the additional risks to safety and health that type of operation poses. The significant expansion of the number of roles that will be captured by these employment constraints in the Amendment Bill will greatly exacerbate the risk to business continuity across the industry.

Peabody submits that there should be capacity in the CMSHA for extensions beyond the currently allowed 12 weeks, and this would be best achieved by including a provision in the Act broadly allowing for extensions in a way prescribed by regulation. The detail would be in the *Coal Mining Safety and Health Regulation 2017* (CMSHR). This could be an allowance that the 12 weeks may be extended **once** supported by a check against a set of prescribed criteria and keeping the records for inspection, with subsequent extensions subject to approval from RSHQ.

Types of high potential incidents—CMSHA, s 198

The Explanatory Notes state (p.5):

‘Further clarity will be provided through removal of the list of HPIs [high potential incidents] that require additional information to be reported as prescribed under the Coal Mining Safety and Health Regulation 2017 and Mining and Quarrying Safety and Health Regulation 2017. This will ensure that there is reporting of all HPIs as this list has been previously incorrectly used as a de facto list of what HPIs need to be reported. The amendments will be supported by RSHQ incident reporting guidance.’

Peabody does not support the omission of s.13 and Schedule 1C of the CMSHR which this amendment proposes. Peabody submits that substituting the list of prescribed HPIs with another list or vague guidance (*‘The amendments will be supported by RSHQ incident reporting guidance’*) will do nothing to improve reporting. Rather it will create confusion that will lead to under-reporting. Furthermore, Peabody does not support the use of non-regulatory tools to provide for a list of HPIs. Such an arrangement would provide for arbitrary classification of incidents as HPIs without the necessary consultation that prescription by regulation requires.

Peabody recommends that Schedule 1C be amended to move items 1 to 9 under the condition:

‘one of the following incidents that endangers the safety or health of a person—’.

And to provide the following clarification:

'An incident that endangers the safety and health of a person includes an incident which could have caused a serious adverse effect on safety and health if in usual circumstances a person could have been in the vicinity at the time.'

This is a clarification that RSHQ provides in Guidance Note 07 which is poorly promoted to industry.

Modern regulatory enforcement

Directives

The Amendment Bill proposes a new s.163(1) in the CMSHA that reads as follows:

*'(1) A directive may be issued under this section if an authorised official believes a risk from coal mining operations at a coal mine is (a) at an unacceptable level; or (b) **may** reach an unacceptable level'*. Proposed new s.163(2) gives the power to the authorised official to suspend coal mining operations in all or part of the mine if they *'believe'* risk is at an unacceptable level or **may** reach an unacceptable level.

Currently, both mines inspectors and industry safety and health representatives (ISHRs) have the power to suspend operations if they believe risk is **not** at an acceptable level. The Amendment Bill proposes to widen the scope of this power to suspend operations if risk **may** reach an unacceptable level. This is regulatory overreach subject to misuse by individuals seeking to weaponise these powers to progress causes unrelated to a genuine assessment of mine safety risks.

If risk is at an acceptable level, the objects of the CMSHA are being achieved as required by s.6 and, hence, the obligation holders are compliant with the CMSHA. It is incongruous that in circumstances where the obligation holders are compliant with the Act, that a compliance action, which by nature, design, and purpose, exists only to correct **noncompliance** can be taken to suspend operations. There is, by definition, no noncompliance to justify that action.

Inspectors have sufficient powers under the existing s.166 to issue a directive to improve risk control measures if they believe an unacceptable level of risk may occur at some time in the future without that improvement.

The Amendment Bill is silent on any criteria to be applied in determining if risk is, or may reach, an unacceptable level. It merely requires a *'belief'*. This is particularly problematic in relation to *'**may** reach an unacceptable level'*. This is so broad as to afford the authorised official issuing the directive unfettered power. And it is inconsistent with the steps detailed in s.30 of the CMSHA which require analysing and assessing the risk. A *'belief'* does not form part of that methodology.

It is important that the word *'reasonable'* be inserted before the word *'belief'* in this proposed s.163, and in ss.164 to 166 which empower inspectors to issue further specific directives. Otherwise, an interpretation would be open, that an authorised official could issue a directive based on an unreasonable belief. This is a very broad power exercisable by inspectors, and it could have significant consequences when exercised. It is essential that authorised officials understand that they are not permitted to act in circumstances where their belief is arbitrary or unreasonable (for example, because it is contrary to the available evidence or is based on pure speculation or untested assumptions).

There are other instances of the phrase '*reasonable belief*' being used in the CMSHA – see, for example, ss.101(1), 101(3), 143 and 166(1)(a), although the application of '*reasonable*' is inconsistent.

Furthermore, the proposed new directive power to suspend operations if risk **may** reach an unacceptable level is extended to ISHRs. As has already been said, the power itself is regulatory overreach and it is not reasonable that it be assigned at all to any authorised official.

Notwithstanding, ISHRs currently have a power to issue a directive to suspend coal mining operations if they believe risk is not at an acceptable level under s.167 of the CMSHA and, historically, that power has not always been exercised appropriately by ISHRs. There is already an appropriate process in place in s.121 of the CMSHA for ISHRs to escalate any identified safety and health issues to an inspector if required. Expansion of their powers is not warranted.

Given the breadth and potential impact of the power, Peabody submits that there should also be positive obligation on authorised officials to ensure that the scope of any directive under ss.163 to 167, including the action required under it, is no broader than is reasonably necessary to provide for the management of the relevant risk to an acceptable level.

References

Coal Mining Safety and Health Act 1999.

Coal Mining Safety and Health Regulation 2017.

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