

Resources Safety and Health Legislation Amendment Bill 2024

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

Submission on the Resources Safety and Health Legislation Amendment Bill 2024

Thank you for the opportunity to provide a submission regarding the proposed *Resources Safety and Health Legislation Amendment Bill 2024* (**Bill**). This is a joint submission made by BHP Group Limited (**BHP**) and BM Alliance Coal Operations Pty Ltd, in its capacity as manager and agent for the BHP Mitsubishi Alliance (**BMA**).

We are supportive of the Bill's principal policy objectives to improve the sector's safety and health performance to reduce the occurrence of fatalities and serious accidents, facilitate growth in high-reliability organisation (**HRO**) behaviours and generally make resources safety and health legislation contemporary and effective. However, our view is that there are some matters that require further consideration and amendment in order to achieve these objectives, primarily in relation to competencies for key safety critical roles and remote operating centres (**ROCs**).

BHP/BMA is eager to engage with the Committee in relation to these important matters given both BMA's position as the coal mine operator (**CMO**) of five coal mines in Queensland and its unique experience as one of a few CMOs with a ROC in Queensland.

Given our operating context, our submission addresses changes proposed to the *Coal Mining Safety and Health Act 1999* (**CMSH Act**).

Engagement on matters covered in the Bill

BHP/BMA have previously engaged in a number of ways with respect to the proposed changes to legislation which preceded the introduction of the Bill, including submissions made with respect to the Consultation Regulatory Impact Statement (**CRIS Submissions**) and to RSHQ in relation to the previously released consultation *Resources Safety and Health Legislation Amendment Bill 2023* (**2023 Consultation Bill**) (**2023 Submissions**). A copy of the 2023 Submissions and the CRIS Submissions are **attached**.

We acknowledge and appreciate that some changes have been adopted in this Bill following broader consultation. To the extent matters we have previously raised remain unaddressed, we repeat and rely on our 2023 Submissions and CRIS Submissions. In addition, these submissions address the following key matters arising from the Bill:

- Contemporary Legislation:
 - ROCs;
 - Definition of labour hire, contractor, and service provider
- Facilitating HRO Behaviours:

- Competencies, including timeframes for implementation of the changes;
- Critical control management;
- Modern regulatory enforcement:
 - Directives;
 - Time limitations for commencing proceedings; and
- Other matters.

We note that there has been limited time to consider the Bill, and our submission is made in that context.

Contemporary Legislation: Remote Operating Centres

BHP/BMA refers to and adopts our CRIS and 2023 Submissions. We remain of the view that:

- the existing legislative framework is sufficient and there is no need to introduce further provisions into the CSMH Act to address ROCs. Section 39 already adequately caters for workers at ROCs to comply with the CSMH Act and relevant parts of safety and health management systems, along with other duties. BMA has considered these provisions and implemented systems to enable compliance and help ensure the safety and health of workers at coal mines; and
- the Bill risks creating an overly complex legislative framework which does not reflect the role of ROCs and ROC workers and may inadvertently extend the application of the legislation beyond its intended scope.

However, we recognise that the Queensland Government is progressing with the introduction of provisions covering ROCs into the CSMH Act with the policy objective to *clarify the safety and health obligations that apply to managing risks associated with ROCs that are located off the mine site*. To ensure that the provisions of the Bill are practical, balanced and achieve the stated policy objectives, we submit the following recommendations:

Recommendation 1: Amend the definition of “remote operating centre” to accurately reflect the work of ROCs and ensure other off-site facilities such as corporate offices are not captured

We recommend that the definition of “remote operating centre” be:

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 (emphasis added)

Facility or part of a facility

We note that BMA’s ROC for our Queensland operations, is located within the BHP/BMA head office in Brisbane. A “remote operating centre” as currently drafted in the Bill may risk capturing individuals in head offices and similar locations who are not intended to be captured. For example, the definition does not provide for *part* of a facility to be a ROC, so the definition risks the entirety of a facility being considered a ROC if there are individuals that perform this function in a location. “Facility” is not defined in the CSMH Act with many dictionary definitions placing an emphasis on a “building”.

Instructions and directions

The first limb of the proposed ROC definition in the Bill includes the phrase: *“but does not involve persons at the facility giving instructions or directions or making decisions about operations at the mine”*.

We understand from the Parliamentary Briefing of the Bill that the intent of this was to ensure that ROC workers were not enabled to give directions in a supervisory capacity to mine sites. We do not consider that this drafting will meet this intent for the following reasons.

The current drafting does not result in an actual prohibition on giving directions in a supervisory capacity acting from ROCs, contrarily, it creates a carve out, so that if directions were given in a supervisory capacity from ROCs, they would not be captured by the definition.

Secondly, as per our 2023 Submission, ROC workers do not provide instructions to coal mine workers (CMWs) *in the sense used in the definition of “supervisor” in the CMHS Act (emphasis added)*. Section 26 of the CSMH Act provides that:

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.

Proposing a complete prohibition on giving any instructions about operations from ROCs may lead to absurd outcomes. There are many examples of CMWs under the supervisory level and other persons at a mine giving instruction which are distinguished from the instructions or direction issued in a supervisory nature, for example:

- a shovel operator telling a truck driver when to stop and move and where to go for loading;
- emergency services personnel giving direction to workers following a safety incident; and
- a light vehicle operator asking a dump truck to stop while they proceed through an intersection.

Furthermore, examples of ROC workers conveying instructions in accordance with the mine's SHMS which are consistent with the way our ROC operates include:

- a ROC worker asks an operator to investigate/check equipment after receiving a high motor temperature warning;
- a ROC worker notifies an operator of a level 3/critical alarm as per TARP, after the operator reported a fault with the fire suppression system;
- a ROC worker notifies operators to evacuate an area after an emergency response is activated; and
- a ROC worker instructs an operator to attend dump #12 as per the approved 24-hour plan provided by the mine.

The above examples are clearly not supervisory in nature however may be interpreted as "giving instructions about operations". A broad prohibition on giving instructions from ROCs may potentially render ROCs obsolete which is an absurd outcome and clearly not aligned to the Bill's policy objectives.

Specific draft amendments

Further, in relation to the current definition in the Bill:

- "monitoring" and "providing information" that is used by the SSE and other supervisors to make decisions about operations may be too broad and could capture roles performed from head offices and similar locations which are not intended to be captured by the legislation; and
- defined terms have not been used. "Coal mine operations" and "coal mine" should be used instead of "operations" and "mine".

Recommendation 2: Amend the definition of "ROC worker" to meet the intention of including ROC workers in the legislation and minimise the risk of unintentionally capturing individuals outside of a ROC

We recommend that the definition of ROC worker be:

ROC worker means an individual who carries out the activities of controlling and monitoring coal mining operations at a remote operations centre.

The above definition is drafted on the basis that it must be used in combination with the BHP/BMA proposed definition for 'remote operating centre'.

The definition as proposed in the Bill is based on a person *working* at a ROC for a mine. It is too broad and, coupled with the definition of ROC in the Bill, may potentially result in effectively any person who works at a facility that is a ROC being captured by the legislation, even if they do not have any direct involvement with coal mining operations of a relevant coal mine.

Recommendation 3: Do not include a distinction between "operational ROC worker" and "ROC workers"

If the definition suggested by BHP/BMA is adopted, it is not necessary to differentiate between a 'ROC worker' and an 'operational ROC worker'. No justification has been provided for including both.

As drafted, the definition of “operational ROC worker” in the Bill may be too broad and, as noted above in relation to the definition of “ROC worker”, has the potential to also capture many people who are outside the scope of the intention of the changes. Only those workers who are controlling and monitoring coal mining operations should be captured by the definition otherwise it may risk capturing workers beyond the scope intended.

Recommendation 4: Consideration of dual coverage issues

BHP/BMA’s concerns previously raised to Resources Safety and Health Queensland regarding dual coverage issues have not been addressed. For example, under the proposed amendments, workers will be covered by both the **CMSH Act** and *Work Health and Safety Act 2011 (WHS Act)* (which only addresses dual coverage for “a coal mine to which the *Coal Mining Safety and Health Act 1999* applies”).

Recommendation 5: Introduce longer transitional period

If the definitions proposed by BHP/BMA are not adopted, a longer timeframe of 2 years will be required to ensure all workers who may fall within the very broad definition currently utilised in the Bill can be trained and provided relevant information noting that work will need to be completed to assess all those who may be a relevant worker and provide them with relevant information to meet obligations.

Contemporary legislation: Definition of labour hire, contractor, and service provider

The current drafting does not address concerns raised throughout consultation that the distinction between the different types of work arrangements would be lost and safety outcomes could be compromised. We support the QRC’s submission to maintain a distinction between labour hire workers and contractors.

Facilitating HRO Behaviours: Competencies for Key Critical Safety Roles

Recommendation 6: Remove the provisions proposed in relation to competencies for key critical safety roles.

This is because they will create an unnecessary burden for these roles and the impact of these provisions on the impending skills shortages in Queensland’s coal mining industry has not been properly assessed.
The introduction of these provisions will create an unnecessary burden for these roles

There is an existing requirement under the CMSH Act for the SSE to develop and maintain a management structure which determines appropriate responsibilities and competencies for each senior and other supervisory positions in a mine.

BHP/BMA remains concerned that the additional requirements create an additional burden for these roles (where the pool of individuals who are qualified is presently limited) and the timeframe and availability for the competencies required has not been made clear. This impacts on the ability of duty holders to meet these requirements in the timeframes provided.

These changes have not been justified on safety grounds. As a specific example of this, the introduction of the new statutory role and new competency for a surface mine manager (SMM); and the introduction of a new competency and practicing certificate for SMM is still not clear on the information provided. Introducing this requirement for surface mines purely for the purpose of being consistent with underground mines without any specific safety justification relevant to surface mines may place an additional burden on SSEs, other individual duty holders and the industry more broadly who will need to train individuals to meet these requirements. We have set out other examples of our concerns in our earlier submissions (including with respect to electrical engineering managers (**EEMs**) and mechanical engineering managers (**MEMs**)).

The impact of these provisions on the impending skills shortages in Queensland’s coal mining industry has not been properly assessed

A key issue is the potential prerequisite qualification requirements for each competency and whether these will include tertiary qualifications and specific mining experience. We are not aware of any analysis of relevant data on the impact these proposed changes will have. For example, if an engineering degree will be a prerequisite, how many SSEs, EEMs and MEMs do not currently hold this qualification?

Recommendation 7: Introduce a 10-year transitional period for any competency requirements introduced

Notwithstanding our submissions above that competencies for key critical safety roles should be removed in their entirety, we accept that the Queensland Government is progressing towards introducing these.

On this basis and in relation to the transitional period, the Bill contains a 5-year transitional period from commencement of the amendments. However, no information has been provided by RSHQ in relation to:

- what the prerequisite requirements will be for each competency;
- how long it will take for the new competencies to be available following commencement of the amendments (noting the substantial time it took for the development of the Ventilation Officer certificate of competency (**COC**)); and
- how long it will take for an individual to obtain each competency.

These are significant matters which must be known to determine the appropriate transitional period to ensure those in the industry can be appropriately prepared to meet these requirements. Without this information it is not possible to provide meaningful industry consultation in relation to the suggested transitional period. RSHQ has not shared advice received from the Coal Mining Safety and Health Advisory Committee in relation to the amendments with respect to competencies and the timeframes proposed. This advice should be subject to industry consultation.

BHP/BMA continues to submit that a transitional period of 10 years is appropriate given the absence of information available on these key points and the substantial time taken when developing other similar COCs (for example the Ventilation Officer COC). Alternatively, BMA supports the QRC submission that the transitional period should be the day that is five years after the Board of Examiners has set the examinations for the SMM, MEM and EEM certificates of competency.

Facilitating HRO Behaviours: Critical controls

If critical controls are to be included in the CMSHA we suggest the following amendments to the proposed definition:

A critical control is a risk control measure for a coal mine that is critical to significantly reduce the likelihood of a material unwanted event at the coal mine or mitigate the consequences of a material unwanted event at the coal mine; and the absence or failure of which would significantly increase risk despite the existence of other risk control measures.

Modern regulatory enforcement: Directives

BHP/BMA submits that the changes with respect to directives are not necessary and drafting in the current legislation should be retained. However, if this primary submission is not accepted, BHP/BMA submits the following matters ought to be addressed:

- The meaning of the proposed provisions is not clear because they utilise terms that are not defined in the CSMH Act. Defined terms presently utilised in the CSMH Act should form the basis of provisions to minimise uncertainty – for example “acceptable level” and “unacceptable level of risk” are defined in Schedule 3 of the CSMH Act (and section 29). These terms should be utilised (rather than “at an unacceptable level” or “may reach an unacceptable level”).
 - Additional phrasing should be included in the legislation to provide clarity regarding; what is intended by the term “may reach an unacceptable level”, particularly with respect to the ability to suspend coal mining operations. The current phrasing could be interpreted to the effect that an unacceptable level of risk could be reached at any period of time – there is no requirement, for example, that the risk being imminent or immediate or probable. Given the serious and significant nature of the power – namely, suspension of mine operations, this should be defined, particularly for Industry Safety and Health Representatives, who do not presently have a power which is expressed in similar terms; and

- what belief may be held. This ought to be at least a reasonable belief or similar, in line with the present drafting of section 166 of the CSMH Act and the model WHS laws, to ensure the exercise of these significant powers is subject to an appropriate threshold of reasonableness and objectivity.
- With respect to s 163(2)(b), the action in any directive should be directed to either stop risk reaching an unacceptable level of risk or to return risk to an acceptable level, in line with the present provision.

The amendments to section 167 provide the Chief Inspector with a broad ability to require any person who has a safety and health obligation to produce a report on a broad number of matters. The protection for individuals in section 167(4) potentially does not capture all individuals who have a safety and health obligation in relation to a coal mine and could potentially face criminal proceedings as a result of matters arising in a report. This provision should be updated to protect all individual duty holders, including other persons, ROC workers (depending on the final wording of any legislation).

Modern regulatory enforcement: Time limitations

The draft Resources Safety Act proposed to amend the existing limitation period for commencing proceedings for an offence against the CSMH Act to remove references to timeframes after the commission of the offence. The proposed amendments calculate the limitation period by reference to the “notice of the complainant”.

This could create protracted periods of fear and uncertainty for affected individuals in the aftermath of a serious event or fatality and potentially erode the availability and reliability of evidence in relation to any such offences. To maintain the integrity of any proceedings and provide a level of certainty for individuals involved, including witnesses, we submit that the current limitation period is retained. If this submission is not accepted, we consider that any new limitation period should be calculated by reference to the date of the commission of the offence.

Other matters

In relation to specific draft amendments, we make the following comments:

Amended section of CMHS Act	Comments
Section 41 insert duty of CMO—	BHP/BMA repeats our submissions that the existing framework for attendance at the mine site provides the appropriate balance for the discharge of statutory duties for safety critical roles. Under the proposed amendments to this section, the SSE and acting SSE will not be able to FIFO/DIDO. They can only be absent from the location near the mine when their duties or leave (up to 14 days) require them to be absent. Therefore, when rostered on at work and not absent for those reasons (for example on weekends), they must be in the location. The obligation might only be met by appointing additional acting SSEs in an already pressed market for qualified SSEs.
Section 42 (d), omit “at the mine” and insert “for the mine	The amendments extend the SSE obligations to any contractor <i>for</i> the mine whether the contractor is <i>at</i> the mine or not, including to inform contractors not on the mine of any risks to work done by the contractor. Greater particularity is needed for the risks the SSE must inform. The current drafting potentially puts the SSE in the place of the contractor for risks not at the mine and even in the contractor’s business.
Section 69A Current or past coal mine worker entitled to training and assessment report	This is a new obligation on SSEs, with no limit on retrospectivity, to provide training and assessment reports to any CMW on the mine who requests a copy. A sensible time limitation should be included.
Section 93-98 (Election of site safety and health representatives)	Like many other amendments this takes authority away from the SSE for things they have an obligation and consequent liability to do. The SSE should have the power to appoint a qualified balloter either by default or if no agreement is reached in 7 days.
Section 100-107 (assist SSHRs)	

On current drafting multiple SSHRs can make multiple requests for irrelevant documents, so long as they ask in a reasonable way. The drafting should be amended to require both the request itself and the way it is requested to be reasonable.

Conclusion

In summary, it is BHP/BMA's position, for the reasons above, that:

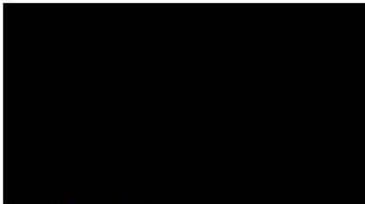
- if the Committee is of the view that ROCs need to be specifically addressed in the CSMH Act, the recommended definitions provided above for ROC and ROC workers are adopted;
- a distinction between labour hire workers and contractors in the CSMH Act is maintained;
- the additional role and competency proposed in relation to a SMM (and acting SMM) are not supported;
- the additional competencies proposed for EEM and MEM (and acting EEM and MEM) are not supported;
- the recommended wording provided above in relation to the definition for "critical control" is adopted;
- if the Committee is of the view that changes to directives are necessary, the matters set out above are addressed;
- the current limitation period in the CSMH Act is retained; and
- the specific drafting amendments above are adopted.

We thank you for the opportunity to provide a submission regarding the proposed legislation.

We remain of the view that our concerns with the Bill as drafted are likely to be addressed if we and other stakeholders can further share our experiences and assist in providing the Committee with a better understanding of the work performed in the coal mining sector and practical matters requiring greater consideration in the Bill.

We appreciate your consideration and welcome the opportunity for further engagement in relation to these important matters.

Yours sincerely,



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