


To: Committee Secretary
State Development, Natural Resources and Agricultural
Industry Development Committee
Parliament House
George Street
Brisbane Qld 4000

From: Xcoal Mining Pty Ltd

Mr. Aaron Curtis


Re: Submission to the Mineral and Energy Resources and Other Legislation Amendment Bill 2020

To whom it may concern,

Please accept the following submission to the parliamentary commission regarding the proposed **Mineral and Energy Resources and Other Legislation Amendment Bill 2020 introduced by the Honourable Anthony Lynham MP on the 4th February 2020.**

Specifically, the section that refers to the following: *“The Bill amends the Coal Mining Safety and Health Act 1999 to clarify that only persons who are employees of a coal mine operator may be appointed as certain statutory office holders. “*

Firstly, I would like to congratulate the Minister in taking a pro-active stance about improving the Safety and Health of Mine workers in Queensland. As someone that has worked in the Underground Coal mining Industry for the past twenty (20) years it is evident that significant changes need to be made in the industry or the rate of fatalities will continue to trend at current levels.

I have reviewed the Amendment bill and the three stated priorities;

- 1) Improving safety culture in the resources sector through introducing industrial manslaughter provisions and requiring that persons appointed to critical safety statutory roles for coalmining operations must be an employee of the coalmine operator.
- 2) Legislative changes that support ongoing reforms to the mine rehabilitation and financial assurance laws.
- 3) Amendments to improve the regulatory efficiency of the resources sector.

I would like the opportunity to express some concerns, in order of priority:

The bill proposes to amend the Coal Mining Safety and Health Act 1999 in order to protect the safety and health of workers by requiring that persons appointed to critical safety statutory roles for coalmining operations must be an employee of the coalmine operator.

From reviewing the explanatory notes I am assuming that the intent of this amendment is to give people engaged in the statutory roles a sense of security that would encourage them to raise safety issues without fear of reprisal. In my opinion this is an overly simplified view on the reality of the work place. Often, the fear of reprisal is more a reflection of the following;

- A cultural norm within our industry that fosters an ‘us against them’ mentality
- An insecurity about their own ability to perform a task

- The nature of an industry that has inherent ‘boom and bust’ cycles

Enacting legislation that requires people to be employed by the operator will not change either the points I have raised or the assumption made by the Minister. I say this with confidence because our legislation already has a number of protections that are in place to protect people from reprisal within the Coal mining industry. The Coal Mining Safety and Health Act 1999, has a section that specifically addresses protection from reprisal - **Part 17 General 275AA Protection from reprisal** (please see below)

275AA Protection from reprisal

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person—

(a) has made a complaint, or in any other way has raised, a coal mine safety issue; or

(b) has contacted or given help to an official in relation to a coal mine safety issue. Maximum penalty—40 penalty units.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) A contravention of subsection (1) is a reprisal or the taking of a reprisal.

(4) A ground mentioned in subsection (1) as the ground for a reprisal is the unlawful ground for the reprisal.

(5) For the contravention to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

(6) This section does not limit or otherwise affect the operation of the Public Interest Disclosure Act 2010, chapter 4, part 1 in relation to reprisals.

(7) In this section— coal mine safety issue means an issue about the safety or health of a person or persons while at a coal mine or as a result of coal mining operations.

*This is not the only form of legislative protection that is already in place within the Coal mining Act 1999. **Sections 273** – Withdrawal of persons in case of danger, **Section 274** – Where coal mine worker exposed to immediate personal danger and **Section 275** Representation about safety and health matters all address health and safety concerns in the workplace and the individuals rights.*

Our legislation also engages people specifically to ensure people are protected and encouraged to raise Safety and Health issues. These people are Industry safety and health representatives and site safety health representatives (definitions from the Act below)

Section 27 Meaning of industry safety and health representative *An industry safety and health representative is a person who is appointed under section 109(1) to represent coal mine workers on safety and health matters and who performs the functions and exercises the powers of an industry safety and health representative mentioned in part 8, division 2.*

Section 28 Meaning of site safety and health representative *A site safety and health representative for a coal mine is a coal mine worker elected under section 93 by coal mine workers at the coal mine to exercise the powers and perform the functions of a site safety and health representative mentioned in part 7 division 2.*

I do not claim to be an expert in legislation surrounding the Fair Work Act, however that legislation (Fair work Act) also protects people, whether engaged by the Operator or a Contractor, from adverse action due to raising a safety issue.

Therefore, in my opinion, any changes to employment terms would have no positive impact on the reporting culture of individuals in the workplace (statutory or non-statutory positions). In my view, forcing people to be employees of the Operator would have a negative impact on safety and health within our industry by;

- Forcing a number of high achieving statutory officials to leave the mining industry
- Encouraging a complacency within statutory roles due to the removal of competition in the workplace
- Increasing the number cost of engaging statutory people by the Operator and therefore potentially exposing the industry to **less** statutory officials
- Removing a component of financial reward for being a statutory official and therefore discouraging future generations of statutory officials
- Creating a false sense of 'progress' within the department and public perception (Parliament) that this step would make a difference and better programs or initiatives not undertaken (opportunity loss)

Therefore, I **strongly oppose** the bill to amend the Coal Mining Safety and Health Act 1999 in order to protect the safety and health of workers by requiring that persons appointed to critical safety statutory roles for coalmining operations must be an employee of the coalmine operator.

In regards to improving safety culture in the resources sector through **introducing industrial manslaughter provisions**. I think that this is a poor form of motivation to improve a Safety culture within an industry. The industry already has a number of penalties for non-compliance and in the case of a fatality, the Statutory leaders are already confronted with investigations and subsequent court proceedings.

In my opinion, changing the safety culture requires five things;

- 1) The industry (a tripartite agreement) through the Department to have a **clear vision and plan** to make necessary change. This requires planning, resources and reviews.
- 2) Changes in a safety culture require **open and engaged communication**. This can be achieved by open consultation between all parties within the industry that encourages communication beyond the message, encourages ideas and removes barriers.
- 3) All three groups within the industry need to **lead by example** by removing the politics. A change in behaviour from the Department, Industry and workers will change the behaviours of all individuals involved in the industry
- 4) **Accountability** to ensure each one of the groups are doing as they say, and finally
- 5) **Training** – the mining and resources industry and the associated legislation is complex. The industry should strive for greater education and training of those people that are statutory safety leaders in the industry.

Changing a culture is difficult and requires substantially more effort than just increasing the size of the penalty imposed on non-compliance within the industry. It will take an agreement by all

representatives within the industry to work together for a common goal of a creating a safe and sustainable industry

Please accept this submission in good faith and if you require any further information or clarification on any of the points made above please do not hesitate to contact me on [REDACTED]

Yours Sincerely,

Aaron Curtis

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