

MVSA SUBMISSION OF THE MINERAL AND ENERGY RESOURCES AND OTHER LEGISLATION AMENDMENT BILL 2020



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Who we are

The Mine Ventilation Society of Australia (MVSA) was founded in 2012 by Australian mine ventilation practitioners, who share a common passion, dedication, and commitment to ensure a safe and healthy work environment for fellow Underground mine workers. The formation of the MVSA was inspired by the need to improve ventilation practices across Australasia, to share valuable knowledge, implementing innovative techniques, utilising a wealth of world-wide knowledge and experience the MVSA has to offer.

Our Vision

Ventilation is for everybody working in underground mining, tunneling and resources industry. It is, therefore, our vision that best ventilation practices are communicated and implemented in all underground operations across Australia in a consistent manner. The MVSA's vision is to assist the mining, tunneling and resources industry in continuous improvement and management in ventilation practices which would also lead to improved safety and productivity. Growth in the number of members increases our strength as a Society to make positive changes. The MVSA is for all mine, tunneling and resources industry ventilation practitioners, industry partners and persons sharing our visions and goals.

Our Mission

In order to meet our Vision, the MVSA needs to reach out to the mining, tunneling and resources Industry Partners such as Tertiary Education Institutes, Mining Departments, and Suppliers. It is further the mission to:

- Participate in committees or areas where ventilation plays a fundamental role.
- Review ventilation related Guidelines, Codes of Practices, Ventilation training material, and Legislation.
- Inform the industry of new ventilation practices and technical aspects.
- Mentoring ventilation practitioners who have limited knowledge and experience in the ventilation discipline.
- Education through mentoring, conferences, forums and participation.
- Grow from strength to strength. By providing active support and commitment from all MVSA members, we will create a positive impact on the industry. Positive change is only made by drawing from each other's strengths and communication.

Our Values

The MVSA ultimately serves our fellow underground mine workers to ensure and maintain a safe and healthy working environment. Having this as our core focus we need to:

- Respect the view of all members and industry partners with regards to ventilation and provide feedback.
- Seek continuous improvement in all ventilation aspects
- Share our knowledge and experience
- Act in a professional manner

Submission

The Mine Ventilation Society of Australia welcomes the opportunity to make a submission to the inquiry into the Mineral and Energy Resources and Other Legislation Amendment Bill 2020.

The changes/inserts proposed in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 focuses on multiple acts and regulations. The MVSA oppose the imposition of liability of manslaughter until such time that negligence has been proven against the employer. We are deeply concerned about the imposition of manslaughter to any representative of the employer. These proposed changes should be voiced in an open public forum to consult with a wide range of leading industry practitioners and representatives to ensure that any changes and their impacts are clearly understood and achievable by industry.

The proposed changes to the Acts will have a direct impact on the Mine Ventilation fraternity and is the focus of this submission:

- Coal Mining Safety and Health Act 1999
- Mining and Quarrying Safety and Health Act 1999

The three main changes (which is applicable to both abovementioned Acts) in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 are:

- Section 61 (3A) which is a new clause. This clause states “Also, the coal mine operator for the underground mine must ensure that the underground mine manager appoints a person under subsection (2) only if the person is an employee of the coal mine operator. Maximum penalty—500 penalty units; and

NOTE: Section 61 (3A) refers to the appointment of a Ventilation Officer

In Reference to Section 61 (3A), The mine operator / employer is obligated to ensuring that their employee, whether they be a direct employee, or a sub-contractor is a competent practitioner capable of obtaining the qualification and relevant experience in order to perform the duties and hold the statutory position.

- Section 61A (5) which is a new clause. This clause states “Also, the coal mine operator for the underground mine must ensure the underground mine manager appoints a person under subsection (3) only if the person is an employee of the coal mine operator. Maximum penalty—500 penalty units; and

NOTE: Section 61A (5) refers to the absence of a Ventilation Officer.

In reference to Section 61A (5), The mine operator / employer is still obligated to ensuring that their employee is a competent practitioner as in Section 61 (3A). However, in the absence of the residing practitioner, then the new legislation would expect the operation to have more than one employed Ventilation Officer to cover during any absence. This would cause the operation to employ more than one practitioner onsite or engage a sub-contractor to remain compliant.

- Part 3A – Industrial Manslaughter. This section imposes manslaughter charges on the employer, senior executives and any representative defined under section 261 of the Coal Mining Safety and Health Act 1999 and section 240 of the Mining and Quarrying Safety and Health Act 1999 liable.

NOTE: Part 3A – Industrial Manslaughter refers to the representatives of the employer, more specifically the role of a Ventilation Officer.

In reference to Part 3A – Industrial Manslaughter. The proposed bill will not protect the representatives / employees of the employer. It is felt by some practitioners within the fraternity that the proposed changes will create a negative impact in its current state if the liability of responsibility is transferred onto employees.

It is the MVSA's view that any changes to the legislative framework should have a positive impact on the industry. With adequate feedback and consultation from industry representatives to collectively guide the outcome so that a management framework / structure is produced to provide positive outcomes. This would enable industry to increase employee's confidence in the regulatory framework and indicate that their health is at the forefront.

The proposed bill requires collective and collaborative support from industry representative partners, this would include engagement from the coal and metal / quarrying industry practitioners. This would enable a framework in organisations to ensure transparency, accountability and a clear line of communication between accountable and responsible representatives of that organisation. This is a critical aspect currently lacking support in the Acts.

It is also important that representatives of the organisation are given clear guidelines to which enables the representatives to demonstrate compliance to the proposed bill for auditing purposes.

The proposed bill should enable clear lines of communication that assists industry with the leverage to representatives appointed under the Acts, to ensure the safety and health of employees is considered first in any decision-making process.

The representatives appointed under the Acts need to be provided with the support framework whereby they can conduct their duties without any fear, victimisation or prejudice in the working environment. This would better promote a collective and supportive industry with guidelines that can be clearly followed.

Addendum 1 – Changes and Inserts in the Mineral and Energy Resources and Other Legislation Amendment Bill 2020

The Queensland Government seeks to Amend several Bills. This document will focus on sections which relates to the Mine Ventilation discipline. More information can be found here: <https://www.parliament.qld.gov.au/work-of-committees/committees/SDNRAIDC/inquiries/current-inquiries/1MEROLAB2020>

Table 1 below list the changes to be implemented:

Table 1 – Comparison between Coal Mining Safety and Health Act 1999 and the new Amendment Bill 2020

Priority as listed by the QLD Government: Safety and Health			
Applicable Acts:			
<ul style="list-style-type: none"> Coal Mining Safety and Health Act 1999 Mining and Quarrying Safety and Health Act 1999 			
Coal Mining Safety and Health Act			
Coal Mining Safety and Health Act 1999		Amendment Bill Section	
Section	Extract	New/Section	Proposed
None	No provision	Section 61 – Insert (3A)	Also, the coal mine operator for the underground mine must ensure that the underground mine manager appoints a person under subsection (2) only if the person is an employee of the coal mine operator. Maximum penalty – 500 penalty units.
Section 61 (5)	The underground mine manager must not appoint a person as ventilation officer at more than 1 mine at the same time unless the chief inspector gives the manager notice that the chief inspector is satisfied the person can effectively carry out the duties of the ventilation officer at the mines. Maximum penalty for subsection (5)—200 penalty units.	Section 61 Subsection 5	Section 61(5), penalty, ‘for subsection (5)’— omit
None	No provision	Section 61A – Insert (5)	Also, the coal mine operator for the underground mine must ensure the underground mine manager appoints a person under subsection (3) only if the person is an employee of the coal mine operator. Maximum penalty—500 penalty units.
None	No provision	Division 9 - Insert	Transitional provisions for Mineral and Energy Resources and Other Legislation Amendment Act 2020:

		<p><i>employer</i>, for a coal mine, means a person who employs or otherwise engages a coal mine worker.</p> <p><i>executive officer</i>, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.</p> <p><i>senior officer</i>, of an employer for a coal mine, means—</p> <p>(a) if the employer is a corporation—an executive officer of the corporation; or</p> <p>(b) otherwise—the holder of an executive position (however described) in relation to the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions.</p> <p>(2) For this part, a person's conduct causes death if it substantially contributes to the death.</p> <p>48B Exception for the Criminal Code, s 23 The Criminal Code, section 23 does not apply in relation to an offence against this part.</p> <p>48C Industrial manslaughter—employer</p> <p>(1) An employer for a coal mine commits an offence if—</p> <p>(a) a coal mine worker—</p> <p>(i) dies in the course of carrying out work at the coal mine; or</p> <p>(ii) is injured in the course of carrying out work at the coal mine and later dies; and</p> <p>(b) the employer's conduct causes the death of the coal mine worker; and</p> <p>(c) the employer is negligent about causing the death of the coal mine worker by the conduct.</p> <p>Maximum penalty—</p> <p>(a) for an individual—20 years imprisonment;</p> <p>or</p> <p>(b) for a body corporate—100,000 penalty units.</p> <p>(2) An offence against subsection (1) is a crime.</p>
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			<p>48D Industrial manslaughter—senior officer (1) A senior officer of an employer for a coal mine commits an offence if— (a) a coal mine worker— (i) dies in the course of carrying out work at the coal mine; or (ii) is injured in the course of carrying out work at the coal mine and later dies; and (b) the senior officer’s conduct causes the death of the coal mine worker; and (c) the senior officer is negligent about causing the death of the coal mine worker by the conduct. Maximum penalty—20 years imprisonment. (2) An offence against subsection (1) is a crime.</p>
Section 255 (1)	A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate.	Section 255 (1) – insert after “this Act”	A prosecution for an offence against this Act other than an offence against part 3A is by way of summary proceedings before an industrial magistrate.
None	No provision	Section 255 (9A) – insert	Nothing in this section affects the ability of the director of public prosecutions to bring proceedings for an offence against this Act.
None	No provision	Section 255 (10) – insert	definition serious offence—(aa) an offence against part 3A; or paragraphs (aa) and (b)
<i>Mining and Quarrying Safety and Health Act</i>			
Mining and Quarrying Safety and Health Act 1999		Amendment Bill Section	
Section	Extract	New/Section	Proposed
None	No provision	New point after part 3 – Insert Part 3A	<p>Industrial manslaughter</p> <p>45A Definitions for part (1) In this part— conduct means an act or omission to perform an act. <i>employer</i>, for a mine, means a person who employs or otherwise engages a worker in relation to operations at the mine.</p>

		<p><i>executive officer</i>, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.</p> <p><i>senior officer</i>, of an employer for a mine, means—</p> <p>(a) if the employer is a corporation—an executive officer of the corporation; or</p> <p>(b) otherwise—the holder of an executive position (however described) in relation to the employer who makes, or takes part in making, decisions affecting all, or a substantial part, of the employer's functions.</p> <p>(2) For this part, a person's conduct causes death if it substantially contributes to the death.</p> <p>45B Exception for the Criminal Code, s 23 The Criminal Code, section 23 does not apply in relation to an offence against this part.</p> <p>45C Industrial manslaughter—employer (1) An employer for a mine commits an offence if—</p> <p>(a) a worker—</p> <p>(i) dies in the course of carrying out work at the mine; or</p> <p>(ii) is injured in the course of carrying out work at the mine and later dies; and</p> <p>(b) the employer's conduct causes the death of the worker; and</p> <p>(c) the employer is negligent about causing the death of the worker by the conduct.</p> <p>Maximum penalty—</p> <p>(a) for an individual—20 years imprisonment;</p> <p>or</p> <p>(b) for a body corporate—100,000 penalty units.</p> <p>(2) An offence against subsection (1) is a crime.</p> <p>45D Industrial manslaughter—senior officer (1) A senior officer of an employer for a mine commits an offence if—</p> <p>(a) a worker—</p>
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			<p>(i) dies in the course of carrying out work at the mine; or</p> <p>(ii) is injured in the course of carrying out work at the mine and later dies; and</p> <p>(b) the senior officer's conduct causes the death of the worker; and</p> <p>(c) the senior officer is negligent about causing the death of the worker by the conduct.</p> <p>Maximum penalty—20 years imprisonment.</p> <p>(2) An offence against subsection (1) is a crime</p>
Section 255 (1)	A prosecution for an offence against this Act is by way of summary proceedings before an industrial magistrate.	Section 234 (1) – insert after “this Act”	A prosecution for an offence against this Act other than an offence against part 3A is by way of summary proceedings before an industrial magistrate.
None	No provision	Section 234 (9A) – insert	Nothing in this section affects the ability of the director of public prosecutions to bring proceedings for an offence against this Act.
None	No provision	Section 234 (10) – insert	definition serious offence—(aa) an offence against part 3A; or paragraphs (aa) and (b)