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

27 February 2020

RE: Mineral and Energy Resources and Other Legislation Amendment Bill 2020

State Development, Natural Resources and Agricultural Industry Development Committee
Industry submission

Dear Committee Secretary,

Please find attached Kestrel Coal Resources (Kestrel) submission in relation to proposed changes to the MEROLA (2020), specifically:

- Required employment status for statutory positions; and
- Additional penalty capacity of industrial manslaughter beyond Criminal Code.

Executive summary

Kestrel is committed to the health and safety of our people and our industry, and has a proactive approach to ensuring we are operating at best practice.

It is the opinion of Kestrel that the proposed changes in terms of employment status of statutory officials and the introduction of manslaughter provisions is a fundamentally flawed direction if the intent is to truly improve the safety performance of the industry.

In relation to proposed amendments in employment status for statutory positions:

- Employment status of statutory roles in no way impacts the capacity of the individual to undertake their duties in accordance with a company SHMS and/or regulatory requirements of the position.
- It presents a completely unnecessary pressure on all businesses competing for a limited skills pool.
- The proposal of placing regulatory controls on employment relationships lacks any relevance to modern employment practices.
- Employment status has no bearing for a person managing for their own personal liability.
- Government has not consulted with industry for this proposal in any meaningful way, and therefore significantly undermines integrity associated with the intent of improving the safety of the industry.

In relation to proposed amendments to introduce industrial manslaughter legislation:

- There is adequate existing capacity for criminal charges in the Queensland Criminal Code.
- The proposal:
 - Lacks any evidence that such legislation would in any way change the safety performance of the industry.
 - Unconscionably targets safety performance to a single individual. The proposed amendment in other acts is directed towards executives, not further loading existing statutory roles.
 - Will directly influence the capacity of the industry to attract and retain suitably qualified and capable individuals to take on the significant burden of statutory responsibility.

Introduction

Kestrel Coal Resources operates Kestrel mine, a metallurgical underground coal mine north of the regional community of Emerald in the Central Highlands of Queensland. Kestrel mine has operated since 1992, and has an expected mine life post 2050. Kestrel Coal Resources is the operator of the mine with 80% ownership of the asset, and Mitsui Kestrel Coal Investment Pty Ltd owns 20%.

From the outset, Kestrel has set out to deliver positive, transformation change to the business: stewardship of the people, land and resources we interact with, effective safety from the coal face, and increased efficiency in production of resources. Kestrel looks to create a modern, inclusive and responsible culture focussed on continuous improvement.

Kestrel is proactively moving both independently and as part of industry to adapt and continuously improve safety systems. For 2020, Kestrel is investing significantly for increased efficacy in safety performance and controls through the following programs:

- Visible leadership programs, including leadership for all supervisors.
- Transition of fatality management into a cohesive program for principal and critical risk based on effective critical controls.
- Innovation investment for greater engineering controls.
- Ongoing update of SHMS and training materials to improve effective learning, planning, content and readability of our system, in addition to legal requirements.
- Real-time personal dust monitors, which record video and results, and report direct to surface.
- Tracking of leading indicators and analysis to identify causal factors.
- Improving grass roots skills and tools in risk management.

In order to achieve the highest level of safety performance, Kestrel seeks to employ the most capable individuals available to fill statutory and leadership functions in the business. We do not see employment conditions to be a barrier to getting the best people for the job.

Specific concerns: Dictation of employment status for statutory positions

Current arrangements at Kestrel employ contractors in several statutory roles at different times including: Underground Mining Manager, Ventilation Officer, Deputies and Supervisors.

In relation to the proposed amendment where employment status for statutory roles is dictated under law, we offer the following:

1. By dictating employment status as a requirement for safe operation, it is implied that having contractors in statutory roles introduces an unacceptable level or risk, or directly contributes to major incidents. This implication is not supported by any data. Rather, there is an existing requirement on engagement of contractors to agree to and work under the company's SHMS, allowing all people to work under a shared system.
2. The proposed Amendment places unreasonable risk and pressures on a mine in a limited pool and market for skills. The coal industry is already challenged for skills in a highly specialised industry in regional communities. Kestrel selects the most capable statutory people to be part of our business, who may choose to work as a contractor or an employee. It is not the role of a government to dictate employment status where it does not change in any way the capacity of the individual to perform their statutory duties.
3. The proposed Amendment lacks relevance to current and modern work practices to be able to flexibly respond to situations. Instead, it seeks to influence and change the nature of how workforces are constructed, and peoples choices in who they work for.
4. Under existing regulation, by nature statutory roles are personally responsible outside of company obligations. Employment status has no influence on people managing their own personal liability.
5. Government has an obligation to consult with industry and stakeholders for proposed changes to legislation as part of their own Guide to Better Regulation and Legislation Handbook. However there has been no material consultation undertaken for this proposed Amendment. This is an unacceptable approach to legislative change.
6. There is existing protection from reprisal regulation (s275AA), a cornerstone of freedom to speak out on safety concerns without fear of any adverse action.
7. There are multiple *existing* methods of reporting safety concerns:
 - Whistleblower capacity required for every business, explicitly for the purposes of anonymous reporting.
 - Inspectorate anonymous tip lines.
 - Appointment of SSHR at every site, who may be either employees and/or contractors.
 - Real-time and statutory monitoring and reporting of physical work conditions.
 - Anonymous culture reporting at sites such as 'Mate Safe'.
 - Risk assessments conducted with a cross-section of the workforce.
 - Workplace culture surveys.

Specific concerns: Industrial manslaughter

Kestrel is in full support of obligations for healthy and safe operation, and duty of care.

In relation to the proposed Amendment to include Industrial Manslaughter as a consequence for coal statutory people we offer the following significant concerns:

- Reasoning of why additional measures are required in addition to existing path for criminal charges through the Queensland Criminal Code where a statutory/responsible person has been negligent, or their action or inaction has led to the death of a person.
- The drafted sections are directly lifted from a different Act (Work Health and Safety 2011) and placed into the Coal Mining regulation, which has entirely different content and scope. In WHSA (2011), the penalty is attached to executives in an organisation as key decision makers, not statutory site people. There is also a lack of fit and cohesion for effectiveness for application in coal legislation.
- The proposal unconscionably targets a single individual for sole responsibility within a company with massive penalty, without demonstrated contribution to improved safety performance.
- Lacks response for necessary improvements and clarification in key areas which would demonstrably improve clarity and responsibility for safety performance in the existing legislation, including:
 - Definition of "acceptable level of risk".
 - Scope & responsibilities for SHMS.
 - How this relates to duty of care obligations.



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