



# ***TRANSPORT AND RESOURCES COMMITTEE***

**Members present:**

Mr SR King MP—Chair  
Mr LL Millar MP  
Mr BW Head MP  
Mr JR Martin MP  
Mr LA Walker MP

**Staff present:**

Dr J Rutherford—Committee Secretary  
Mr Z Dadic—Assistant Committee Secretary

## **PUBLIC BRIEFING—INQUIRY INTO THE COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022**

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 24 OCTOBER 2022**

**Brisbane**

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### **The committee met at 10.01 am.**

**CHAIR:** Good morning. I declare open this public briefing for the committee's inquiry into the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022. My name is Shane King, the member for Kurwongbah and chair of the committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today and pay our respects to elders past and present. We are very fortunate to live in a country with two of the oldest continuing cultures in Aboriginal and Torres Strait Islanders whose lands, winds and waters we all share. With me here today are: Lachlan Millar MP, the member for Gregory and deputy chair; Bryson Head MP, the member for Callide; James Martin MP, the member for Stretton; and Les Walker MP, the member for Mundingburra. Trevor Watts MP, the member for Toowoomba North, sends his apology as he has other business he has to attend to. He really did want to be here.

On 12 October 2022, the Minister for Resources introduced the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 into the Queensland parliament. The bill was referred to the Transport and Resources Committee and the purpose of today's briefing is to assist the committee with its consideration of the inquiry. The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. As parliamentary proceedings, under the standing orders any person may be excluded from the hearing at the discretion of the chair or by order of the committee.

The committee will not require evidence to be given under oath, but I remind witnesses that intentionally misleading the committee is a serious offence. You have been previously provided with a copy of instructions to witnesses, so we will take those as read. The proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if required. All those present today should note that it is possible you might be filmed or photographed during the proceedings by media and images may also appear on the parliament's website or social media pages. I ask everyone present to turn mobile phones off or to silent mode.

**BARTHOLOMEW, Ms Lana, Executive Director, Georesources Policy, Department of Resources**

**DJUKIC, Mr Robert, Chief Operating Officer, Resources Safety & Health Queensland**

**NEWMAN, Mr Peter, Chief Inspector, Coal, Resources Safety & Health Queensland**

**CHAIR:** I welcome representatives from Resources Safety & Health Queensland and the Department of Resources who have been invited to brief the committee today. I invite you to make a short opening statement, after which committee members will have some questions for you. We request that any answers to questions taken on notice be provided to the committee by 4 pm, Wednesday, 26 October 2022.

**Mr Djukic:** I thank the committee for the opportunity to provide a briefing on the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022. The bill proposes amendments to the Coal Mining Safety and Health Act 1999 administered by Resources Safety & Health Queensland, or RSHQ, as well as amendments to several pieces of legislation administered by the Department of Resources. I will outline the safety and health amendments contained in the bill and my colleague from the Department of Resources, Lana Bartholomew, will outline those relating to the resources portfolio.

Statutory positions for key safety roles for coalmining operations are established under the Coal Mining Safety and Health Act. On 25 May 2020, changes made to the act meant that only persons who were employees of a coalmine operator may be appointed to certain statutory positions. The purpose of these changes, known as the direct employment requirements, is to ensure that holders of statutory roles at coalmines can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

The requirements also aim to ensure that the coalmine operator—the entity ultimately responsible for the coalmine and safety of its workers—remains the central point of responsibility. By directly employing critical safety roles, the coalmine operator’s responsibility for safety is not fragmented across multiple employers. The direct employment requirements come into full effect on 25 November 2022 when the 2½-year transitional period ends. The bill responds to implementation challenges raised by industry concerning the direct employment requirements in their current form. The bill proposes limited exceptions to direct employment requirements to ensure coalmining operations have a practical way to implement the original intent of these requirements without compromising safety outcomes.

The bill introduces four key exemptions to the existing direct employment requirements. The first change introduced by the bill will also enable direct employment of the site senior executive, underground mine manager and ventilation officer statutory position holders by an associated entity of the coalmine operator, which includes related companies and joint ventures. The second change will provide temporary exemptions to the direct employment requirements so that short-term temporary absences or vacancies can be backfilled for up to 12 weeks without needing to be a direct employee. This will apply for the site senior executive, open-cut examiner, underground mine manager, explosion risk zone controller, known as an ERZ controller, electrical engineering manager, mechanical engineering manager and ventilation officer statutory positions. Thirdly, the bill proposes to remove the existing requirement to directly employ a site senior executive for coalmine operators whose only coalmining operations for the coalmine are exploration activities.

The final change to the direct employment requirements introduced by the bill will enable statutory position holders to be employed by an entity that employs or otherwise engages at least 80 per cent of the total number of coalmine workers at a coalmine in its entirety. This will enable the site senior executive, open-cut examiner, underground mine manager, ERZ controller, electrical engineering manager, mechanical engineering manager and ventilation officer statutory position holders at such a coalmine to be directly employed by an entity—such as a large contractor company or major service provider—which also employs the vast majority of the mine’s workers. This change also facilitates the operation of full-service contracts for whole-of-mine operations where the contractor is not the coalmine operator but is substantially responsible for the coalmining operations and is essentially the de facto operator.

Targeted consultation has been undertaken with industry and the unions. A tripartite working group convened by the Commissioner for Resources Safety and Health identified possible solutions to the implementation challenges from the direct employment requirements and provided a report to the minister earlier this year. The working group included representatives from coalmine operators, contractor companies and worker representatives as well as the Queensland Mines Inspectorate.

Resources Safety & Health Queensland subsequently tested refined recommendations for legislative amendments with the Queensland Resources Council and the Mining & Energy Union in early 2022. Targeted consultation on an exposure draft of the coalmining safety and health amendments contained in the bill was undertaken with key stakeholders, including the QRC, the Mining & Energy Union and other tripartite working group members in August 2022. The exposure draft of the bill included a further proposal for the open-cut examiner, ERZ controller and ventilation officer statutory roles to focus on safety matters and not be involved in the production of coal. However, this proposal was subsequently removed from the bill as it was identified that it required some further consideration.

With the committee’s okay, I will hand over to my colleague, Lana Bartholomew, to outline the resources legislation related amendments within the bill.

**Ms Bartholomew:** The bill proposes two key amendments and a small set of minor amendments to the resources acts. Firstly, the bill amends the Mineral Resources Act 1989 to introduce a framework to allow the Minister for Resources to defer the first year’s rent for specific critical minerals mining leases in circumstances where the proponent can prove that the funds saved from the deferral will be utilised towards start-up costs for the project. This will deliver action 10 of the Queensland Resources Industry Development Plan. The framework will ensure that rent is not a barrier to economic critical minerals projects and will enable proponents to redirect funds towards their projects during a time that is critically cash flow dependent and to deliver an improved chance of success.

Secondly, the bill amends the compliance provisions in the Petroleum and Gas (Production and Safety) Act 2004, the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009 to remove the requirement for resource authority holder agreement to a monetary penalty. Currently, a holder agreement to a monetary penalty enables a resource authority holder to negotiate the terms

of a monetary penalty and may delay enforcement action for an indefinite period. These amendments will allow the department to operate as an efficient and effective regulator that operates in the public interest. Importantly, these amendments do not limit rights of resource authority holders, with notice provisions providing an opportunity for natural justice and any decision being appealable to the Land Court of Queensland.

The minor amendments provide for drafting corrections in the Mineral and Energy Resources (Common Provisions) Act 2014 and will renumber notes in certain provisions after removing the requirement for holder agreement to monetary penalties in the Petroleum and Gas (Production and Safety) Act 2004, the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009.

The Department of Resources met with the Queensland Resources Council and the Australian Petroleum Production and Exploration Association, the Association of Mining and Exploration Companies and members of these peak bodies in August 2022 to present and discuss the proposed resources acts amendments. Consultation was also undertaken on the exposure draft in early September 2022. My colleagues and I are now happy to take any specific questions that you may have.

**CHAIR:** I have a question about one of the exemptions where a contractor is substantially responsible for the mine operations. In what percentage of mines in Queensland does that occur?

**Mr Djukic:** As I understand it, there are a small number of mines where the contractor company essentially has a whole-of-mine contract for operations at the mine. That is quite a small number. I do not have the number off the top of my head. I understand there are currently no mines that would fall between 80 and 100 per cent, but again if there are any they would be quite a small number.

**Mr Newman:** It would certainly be less than 15 of the 60-odd mines in Queensland where the contractor is operating the mine basically with all the employees.

**CHAIR:** Has there been any noticeable change since the legislation was introduced in 2020?

**Mr Newman:** There certainly has been a change in terms of the underground sector. There have been two mines where the contractor would fall into this requirement. In the open-cut, no, there has been very little change.

**Mr MILLAR:** I am looking at the lead-in time and stakeholder engagement. Given that this bill was introduced into the parliament earlier this month and we are expected to report back quite soon, what has been the stakeholder engagement? What have been the concerns raised? From your stakeholder engagement, have you had questions around this being rushed and that we need more lead-in time?

**Mr Djukic:** Of course, the direct employment amendments were first made in May 2020 so they have been around, since then, for almost 2½ years. From that time, some industry representatives did raise concerns about those amendments. The minister sought to engage with industry as soon as those were raised with him when he commenced in the parliament. There has been ongoing discussion really over the past 2½ years. Earlier this year, the tripartite working group attempted to resolve some of these issues. There was not full consensus on all of those but certainly engagement occurred there, they provided their advice to the minister and there has been ongoing engagement since then.

**Mr MILLAR:** My question is about this legislation and not about what has been going on in the past. This legislation was introduced earlier this month and we are expected to report back very soon. Given that the employment situation in the mining industry is quite difficult at the moment, as in there are a lot of vacancies, will this put extra pressure on those mines to be able to fill those positions?

**Mr Djukic:** I suppose, to some extent, these amendments will relieve some pressure from the amendments that would otherwise commence at the end of next month, which would effectively have required all operators to employ all of those positions. This will take some of that pressure off by carving out those exemptions for those few categories.

**Mr MARTIN:** Can you share with the committee what feedback companies have provided about their specific concerns about adopting the direct employment requirements since the introduction back in 2020? When did those issues begin to arise, I assume, back in 2020? What advice have companies given the RSHQ about the likely consequences for the industry if the original direct employment requirements were retained?

**Mr Djukic:** Yes, the industry did begin to raise concerns about these provisions immediately on their introduction in 2020. I think probably some of the difficulty has been getting to the real substance of what challenges there would be. Certainly we understand that the provisions will, in some instances, result in some changes to business arrangements and employment arrangements between contractors. What those will be, of course, will depend upon the employing structure of each

mine. We understand that some of the larger companies have effectively implemented all of the original provisions already, prior to the introduction of this bill. There are some other contractor companies particularly, I understand, that have stated to us that it will change the nature of the way that they operate and the way that they deliver their services to mines. What I cannot elaborate on is what particular positions are impacted. We have sought to get this information, but it has proven difficult to get to that level of detail.

**CHAIR:** In the explanatory notes, there are details of the consultation process. The MEU did not support the exemptions and the QRC wanted more exemptions. Is it possible to elaborate on the concerns of both parties?

**Mr Djukic:** I think some of the exemptions are relatively uncontroversial, for example, the exemption for exploration companies. I think that is considered to be fairly straightforward and low risk. Essentially, the MEU preferred the provisions in their original form but acknowledge that there was some difficulty for industry in commencing those. Of course I would defer to industry, who will no doubt have made submissions to the committee, but I think what appears to be the issue that is created or industry is most concerned about is the inability in some circumstances for contractor companies to employ certain statutory positions where they have historically done so. The exemption that would allow associated entities of companies to employ statutory positions again seems relatively uncontroversial. I think it mainly comes down to the contractor issue.

**CHAIR:** Are there any other stakeholders that were consulted that also had similar concerns?

**Mr Djukic:** The main group of stakeholders from industry, aside from the union, were the contractor companies through QRC.

**Mr Newman:** Yes, and the tripartite working group, in fact, took presentations and discussions with those contracting companies.

**Mr HEAD:** The requirement of direct employment of statutory positions will add a significant level of complexity to the industry, making Queensland increasingly unattractive for investment and without bringing a clearly defined improvement in safety standards. Can you please spell out why the government is legislating who can employ these workers? I know you have touched on that in your introduction, but in clearly defined terms it would be appreciated.

**Mr Djukic:** In terms of the member's comments on the impacts on industry and whether it would not have the desired impacts on safety, I cannot comment on that. Government's view is that the major purpose of these is, again, to I suppose relieve any sense that a nonemployee holding a statutory position would in any way be fettered or constrained by fear of reprisal from carrying out their duties to the full extent that they need to. Also, the minister has spoken about wanting to avoid the fragmentation of operations. On the way that the coalmining safety and health legislation was established, in the second reading speech when the bill was debated over 20 years ago, the then minister—paraphrasing now—said something like this legislation puts the responsibility with the industry, which is in the best position to manage risk. Out of that they created the position or the obligations for the coalmine operator, recognising that accountability for safety—the way that the legislative framework has been established—always flows back to the coalmine operator. These amendments really reflect that. They place that responsibility for employing statutory positions with the coalmine operator, again, as I said, ensuring that they are not fragmented, creating fragmentation of risk management and different risk management cultures at one operation. That is my understanding of government's or my explanation of—

**CHAIR:** We do not expect you to comment on policy. We will not ask that of you.

**Mr HEAD:** Further to that, and talking about fragmentation, I am a geologist and have worked in the industry. Do you have a breakdown on how many sites might have different splits of contractor numbers? There might be sites operating under a 30:30:40 or anything like that. Wouldn't any contractor that potentially outnumbers the owning company be better placed to hold more statutory positions, especially if those positions offer direct oversight of their crew?

**Mr Djukic:** The way that these provisions have been drafted is that if the contractor company does hold the vast majority—as in, more than 80 per cent of the workplace—they are viewed as essentially or substantially being in control of the mine. As I said before, you might describe them as the de facto operator so then they would be able to employ those positions. Otherwise, as I said, the legislative framework already requires that the coalmine operator be the central point of accountability for safety. Where there are multiple entities, and there is no general case that contractors—I will start that again. The coalmine operator being the central point of accountability, they are always in control. They always have the obligation to ensure that systems are established and implemented through the various statutory positions, for example. This is just reflecting that.

**Mr WALKER:** Under the proposed amendments, will those who hold statutory roles still have autonomy and authority in respect of the discharge of their responsibilities?

**Mr Djukic:** In a word, yes. The legislation in certain instances, for example, requires that a person cannot, for example, give a direction to an underground mine manager unless they hold a first-class certificate of competency and subject to other qualifications. Yes, those positions will always have independence and autonomy in exercising their functions.

**CHAIR:** I have a quick question for the department in regards to the rent deferral. How would that apply where there is a mix of minerals being mined—some that may be on the critical minerals list and some that may not?

**Ms Bartholomew:** Thanks for that question; it is a good one. We will be working through—once the bill passes, should it pass—some additional guidance material to help support applicants. When you apply for a mining lease, it is my understanding that you apply for a principal mineral that you are going to be pursuing. Our understanding will be that if the principal mineral is a new economy mineral, as defined, then they will be eligible for the rent deferral. Does that make sense?

**CHAIR:** Yes.

**Mr HEAD:** I am not aware of a similar law in Australia with this level of restrictions. Are you aware of any place in the world that might? Is there evidence in the current day that supports the fact that this may improve mine safety?

**Mr Djukic:** I am not aware of any other comparative provisions from other jurisdictions. No, I cannot add anything further to that.

**Mr MARTIN:** Since the direct employment amendments were passed, challenges to implementing these requirements have arisen. Some of the general reasons provided for this include things like short-term absences and economic viability for low-risk operations. Would you be able to provide some more details about those challenges and how different companies have sought to overcome them?

**Mr Djukic:** On the second one about low-risk operations, I think that one is probably summed up in the exploration. That one is dealt with there. On the short-term absences, government has proposed a 12-week temporary absence exemption on the basis that it has determined that is sufficient time for an operator to make arrangements to replace someone who is going to be absent for a period.

**Mr HEAD:** Why are closed mines in care and maintenance being required to directly employ their own statutory position holders, given the infrequent nature of work?

**Mr Djukic:** When the provisions were originally introduced in 2020, they applied to all operations. In the working group and consultation process that followed, exploration companies were specifically raised as something that is low risk and needed to be addressed. Mines in care and maintenance was not raised in that process.

**CHAIR:** Time is about to beat us again but I have a further question for the department. The Resources Council and AMEC support the deferral in principle but recommend, as you said, that you undertake further consultation with industry to ensure the list of critical minerals is fully considered. Can you please explain the time line for those consultations?

**Ms Bartholomew:** I am actually not certain of the answer. However, we will work closely with the QRC and AMEC membership. We did work with them very closely to develop the list of critical minerals that have been identified and we have made a commitment to continue to work with them as we operationalise the legislation, should it be passed.

**CHAIR:** With the draft amendments, you will continue that work?

**Ms Bartholomew:** Absolutely.

**CHAIR:** Time has beaten us. This concludes the briefing. Thank you all for your time. A transcript of these proceedings will be available on the committee's web page in due course. I declare this public briefing closed.

**The committee adjourned at 10.30 am.**