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
Mr TJ Watts MP

Staff present:
Dr J Rutherford—Committee Secretary
Mr Z Dadic—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022

TRANSCRIPT OF PROCEEDINGS

TUESDAY, 25 OCTOBER 2022

Brisbane

TUESDAY, 25 OCTOBER 2022

The committee met at 8.15 am.

CHAIR: I declare open this public hearing for the committee's inquiry into Coal Mining Safety and Health and Other Legislation Amendment Bill 2022. My name is Shane King, 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 Islander people, whose lands, winds and waters we all share. With me here today are Lachlan Millar MP, member for Gregory and deputy chair; Bryson Head MP, member for Callide; James Martin MP, member for Stretton; Les Walker MP, member for Mundingburra; and Trevor Watts MP, member for Toowoomba North.

On 12 October 2022 the Minister for Resources introduced the Coal Mining Safety and Health and Other Legislation Amendment Bill into the Queensland parliament. The bill was referred to the Transport and Resources Committee. The purpose of today's hearing is to assist the committee with its consideration of this bill.

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 previously been provided with a copy of instructions to witnesses, so we will take those as having been 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 it is possible you might be filmed or photographed during the proceedings by media and images may also appear on parliament's website or social media pages. I ask everyone present to please turn your mobile phones off or to silent mode. I also ask that responses to questions taken on notice today, if there are any, be provided to the committee by 4 pm on Wednesday, 26 October 2022.

BERTRAM, Ms Judith, Deputy Chief Executive/Policy Director, Safety and Community, Queensland Resources Council

GOLDSBROUGH, Mr Paul, Manager, Health and Safety Policy, Queensland Resources Council

CHAIR: Welcome. I invite to you make a short opening statement, after which we will have some questions for you.

Ms Bertram: Thank you and good morning. I would like to thank the committee for inviting the Queensland Resources Council to appear today to speak on behalf of our members on the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022. My name is Judy Bertram and I am the deputy chief executive of the Queensland Resources Council. My colleague appearing with me today is Paul Goldsbrough, manager of safety and health policy. The QRC is the peak representative organisation of the Queensland resources sector, with a membership that encompasses minerals and energy exploration, production and processing companies, as well as associated service companies.

At the outset I would like to acknowledge that the final form of the amendment bill includes a number of concessions which Minister Stewart has supported, and we sincerely thank him for listening and responding to the industry's concerns. This does not overcome, however, our members' genuine concerns with the original provisions initiated by a former minister where there was simply no consultation. The original provisions should never have been introduced and passed by parliament.

The premise that the industry does not encourage the workers of coalmine operators, contractors and labour hire to speak up where they consider the work to be unsafe is inaccurate and not supported by evidence. The industry has in place a range of strategies on mine sites to encourage workers to raise their concerns about unsafe work without fear of reprisal.

The suggestion that these amendments are required to reduce fragmentation across mine sites to reduce safety risks for workers is also misleading. The workers of the coalmine operator, contractors and labour hire workers all work under the mine safety and health management system. I would like to table the injury rate and the fatality rate data which demonstrates that, irrespective of who the workers work for, there is very little difference in safety performance across contractors and mine operators particularly. The QRC and its members maintain that the direct employment provisions as drafted are an industrial relations instrument that will add significant complexity to the industry, make Queensland increasingly unattractive to resource companies and serve to diminish rather than improve safety standards. We cannot see an effective way of making them workable.

It is important to understand the distinction between labour hire workers and contractors—namely, labour hire workers work under the control of a host while contractors perform short- or long-term and specialised tasks and projects. While both labour hire and contractors can be characterised by a contract, they are very different forms of employment and cannot be grouped together when assessing safety risks. While labour hire workers are integrated into the mine's workforce, contractors and their workers are not. For example, a contractor undertaking a longwall move—and that is a particularly specialised task—will want to have management and control of the project and management and control of their workers and any specialist contract workers they engage.

QRC members are most concerned that, rather than improving safety at coalmines, the provisions in the amendment bill will lead to a reduction in safety by creating avoidable safety risks. A contractor who is not the coalmine operator and employs less than 80 per cent of workers onsite will no longer be able to directly employ their own statutory position holders for the contracted work. Conversely, and perversely, operators who employ just 20 per cent of workers onsite can employ statutory position holders. Contractors, including specialist contractors, will be supervised by the coalmine operator's statutory position holders. This has the potential to create competing priorities and particularly different work cultures, reduce expertise in these areas of complex work, create confusion and create avoidable safety risks.

The 80 per cent threshold requirement represents a level of government control over workers' lives and employment arrangements that is out of step with modern Australia and incompatible with our industrial relations laws. Governments generally require very good justification before placing legal restrictions on a person's ordinary activities—ordinary things like being able to gain employment, like entering into a mutually agreed contract—but, if justified, action delivered by government is normally proportionate and relevant. It follows that the explanatory notes for a bill should clearly set out the grounds for the desired change and supporting evidence. In this case, the explanatory notes do not provide any justification on safety grounds for the introduction of the amendments and especially the 80 per cent threshold. It simply lacks the evidence for the move.

There is not a mining contracting company operating in Queensland who is not the coalmine operator who can meet this 80 per cent threshold—not one, not even the largest. Contractors are not labour hire. The QRC and its members are seeking an amendment to the bill to enable contractors to directly employ their own statutory position holders in the same way as a coalmine operator or an associated entity is able to.

Electrical engineering manager and mechanical engineering manager are statutory positions that are single-position appointments with single-point obligations and accountability at mines in the same way as the SSEs, the underground mine manager and the ventilation officers. These positions are critical senior roles in the management structure of a coalmine and are currently a skill in demand across the resources sector. Clause 8 in the amendment bill does not allow for these positions to be employed by an associated entity of the coalmine operator. We believe that this is an oversight in drafting. The bill should be amended to allow the EEM and MEM roles to be directly employed by the coalmine operator or an associated entity of the coalmine operator. For example, an EEM is directly employed at an underground coalmine and the company currently requires them to undertake their duties at a related company mine which is in care and maintenance and does not require a full-time EEM. The amendment bill, if passed, will not allow this arrangement to continue. We would question what is the safety imperative in this limitation.

A further amendment to the bill being sought by QRC members relates to closed mines where rehabilitation or care and maintenance work is being undertaken. These closed mines are required to have statutory position holders appointed at the mine site. Given the infrequent nature of the work, these positions are not full-time roles. Mines in rehabilitation or care and maintenance should be excluded from the amendment bill to enable companies, including contractors, to directly employ their statutory position holders, given the infrequent nature of the work. This change will assist the industry to practically implement the direct employment requirements that do not unreasonably disrupt mining operations while ensuring safety in low-risk settings.

The employment restrictions for statutory positions is scheduled to commence on 25 November 2022. This provides very limited time for the coalmining industry to adjust its systems and processes and negotiate agreements to ensure compliance. Consideration should be given to a phased introduction. Committee members, we welcome your questions.

Mr WALKER: I have a point of order. In the document that has been tabled, in the second table, the first column, there is 0.08. Is that correct or is that 0.8, because it does not tally on all workers in that column?

Mr Goldsbrough: Yes, that is correct. It is an error.

CHAIR: Does the committee grant leave for that document to be tabled with the change? Leave is granted. We will go to questions.

Mr WATTS: I want to clarify one point and make sure we have it clearly on the record. At the moment, how many contracting companies in Queensland can meet this threshold as at 24 November?

Ms Bertram: We understand it is none. Even the largest contractor in Queensland is saying that they will never meet it, unless they are the coalmine operator, and that is a different situation. If they are not the coalmine operator, they will not be able to meet the 80 per cent threshold.

Mr WATTS: What will then be the impact, if this is enacted as it is, on operations in Queensland, international contracts, supply and other things?

Ms Bertram: The contracts, depending on how they are written—if they are full-service contracts, not the coalmine operator, and they have statutory position holders in their contract—would need to be renegotiated.

Mr Goldsbrough: You may have a company come in that is just the coalmine operator. It might be a private equity firm. Under this arrangement they would then have to engage the statutory position holders directly, and that is the reference to the disconnect between the workforce and the supervising statutory position holders.

Mr WATTS: In terms of employment normally within the industry—that is a month from now—sourcing those additional staff, training them, orientating them, getting them on the mine site and getting it all operating: is that practicable?

Ms Bertram: That is why we are asking for, if it goes through, a phased period of introduction. Certainly contracts would need to be reviewed. If the statutory position holders are no longer able to be employed, they need to be handed over to the coalmine operator. Then that is obviously disruptive to employment agreements, so there are potentially very serious consequences. The 80 per cent is very difficult to achieve. When you look at the mine operator, if they are not the coalmine operator then they would have people like groundspeople, admin people and security people, so the 80 per cent is difficult. Even though it is meant to be a de facto runner of the whole mine site, it is an arbitrary figure that has been chosen. There is no explanation as to the analysis around what would be the impact of the 80 per cent on existing operations—whether anyone will be able to meet that threshold or how many contracts will be able to meet that threshold. Our information is none. So what does that provision then mean? Should it have been 60 per cent, if you have to have the threshold? We believe that it is a higher level of safety for contractors to be able to employ their own statutory position holders and there should be no prohibition on contractors. If they deem that for a safety reason they need to employ statutory position holders then they should be allowed to, in the same way the coalmine operator or a related entity is able to. It should be coalmine operator or related entity or a full-service contractor.

Mr WATTS: If this is not all able to be achieved by the 24th, what happens to production in Queensland on certain mine sites?

Mr Goldsbrough: If there were a lack of availability of particular statutory position holders, it is possible that if there is a vacancy then the option is to put on a contracting position holder for 12 weeks. If not, if it is within companies, there is the potential for short-term cessation of mines.

Mr MARTIN: I want to ask the QRC about your experience with the consultation process. I understand that since the introduction of the legislation in 2020 there has been a tripartite working group. Can you share with the committee your role in and experience with that?

Ms Bertram: You are right that this did not come in until May or April 2020. At that point, in the second reading speech, the minister at the time, Minister Lynham, indicated that Resources Safety & Health Queensland would work with industry to resolve the difficulties that I think Minister Lynham, at the end of the day, realised there were. There was a period of consultation and then Minister Stewart took over at the end of last year. We certainly had a number of meetings with him. I think Minister Stewart did recognise that there were real issues and that the industry had real concerns with the way in which it had been implemented or the provisions. In December of last year he established a working group that met in January. Because there was such a short time frame, not all of the issues were able to be resolved. There was a report put to the minister at the end of January. The contractor issue was very unresolved in that work.

After that, the minister and QRC and the contractors did work to put a proposal to him. There was a suggestion at one stage about the 80 per cent. More firmly, it was put to us at the end of May2022 about the 80 per cent. We put a number of our concerns back. Until we saw the bill on 12 October 2022, we did not know that that was where it was heading.

We are very thankful to Minister Stewart for listening to our concerns about things like 'related entity'. It would have been totally unworkable without 'related entity'. With its absence, it would be totally unworkable in such a tight labour market for these critical positions if we did not have the ability to cover planned and unplanned absence with contract workers and the industry would have ground to a halt.

The contractor issue, we believe, has not been teased out appropriately. The analysis is just not there as to, as I said before, the impact of the 80 per cent. Why 80 per cent? Why are contractors being treated differently? Some of these contractors in this state are large and sophisticated and employ more workers than many of the mining companies. They talk about contractors having no direct employees. Many of them are employees. One company I think employs 3,000 people. They are sophisticated companies. Their company shirt is a contractor shirt. People do not necessarily aspire to a mining operator's shirt. They have their own company shirt. I think the consultation has been extensive but, especially on the contractor issue, has been disappointing.

Mr Goldsbrough: Could I clarify that within the working group the issue of the 80 per cent threshold for contractors was never raised. That was not a consideration by the working group.

CHAIR: Looking at the existing number of personnel on our mines who are statutory position holders, at the moment we have the right number and everything is operating fine. The statutory position holders are there. That meets the current need. When this comes in, do they have to go and work for another company—

Mr Goldsbrough: At the moment the statutory position holders are senior safety people within a mine site. There are skills shortages across the board. For example, with ventilation officers, if I can be blunt, there is no fat within the industry. We just have enough at the moment. The potential is that if someone gets a medical condition or whatever then it could mean short-term cessation of mines. Mines are working to train people up under the new requirements and they are working with the Board of Examiners on that, but it is certainly fair to say that there is not a lot of capacity. It is a tough game at the moment.

CHAIR: In terms of the contractors you are referring to, these large firms with 3,000 people would have the statutory position holders there?

Mr Goldsbrough: That is correct.

Mr HEAD: Further to the skilled worker shortage, is the 12-week sub period where they can engage a contractor long enough for a company to engage a permanent employee? Does that short 12-week gap create the potential for people with less skills and qualifications to be engaged in the role?

Ms Bertram: We do not believe that the 12 weeks is enough. It is putting on a restriction and a rung where we are not sure what is happening. Twelve weeks is certainly better than nothing. In the previous bill we had no provision for planned and unplanned absence. What we are hearing, relating back to the skills shortage, is that if an SSE resigns to take up another job then their notice period may be three months. If the recruitment starts immediately, the successful candidate, if we can find one, has to give notice, which is likely to be another three months. Chances are they are not necessarily going to be in parallel.

I guess some of the things that concern us are things like sick leave, if someone has a long-term illness. In large companies there may be people who are able to be swung over, but for some of the small- to medium-sized companies these are expensive positions and the industry is not flush with extras. So the ability to cover long-term leave with a 12-week restriction, we believe, is just not appropriate.

Mr Goldsbrough: In our submission we reference a quote from the Chief Inspector of Coal Mines where he indicates that, on average, it takes them approximately six months to recruit a new inspector who generally will have the skills of a statutory position holder. You are looking at a six-month window. We have a 12-month window under this amendment bill.

Mr WATTS: Twelve week.

Mr HEAD: I know that people need the appropriate tickets to become statutory position holders, but could companies look to engage people in those positions who might have the paperwork that says they are able to conduct the job but maybe not the extensive experience, rather than taking their time to employ the correct person for that job in the long term?

Mr Goldsbrough: Yes, it is a real concern of our members. One of the key things with any senior management position is that you want to get a person with the right fit who matches your workplace culture, who is going to encourage safety and provide leadership. They are concerned that they are just going to have to take anyone in order to keep the mine open.

CHAIR: I am not being critical of mining companies or anything, but I cannot understand why there has been no pathway for training these people. You would think that you would want an abundance of them over time. You cannot speak on behalf of all of them, but you are the representative body. What has been the hold-up in training these people?

Ms Bertram: I think these are extremely highly skilled positions. These are positions with enormous responsibility, huge accountability—industrial manslaughter. The way in which the resources acts are written, some of the targets come down to these sorts of statutory position holders more so than under general workplace health and safety law where these sorts of positions do not exist. People are choosing. You look at our demographics. Our statutory position holders are declining and ageing. We were talking to some companies recently. They were talking about the general trend in society to not take on board huge accountability and huge risk. That is going through all society. It takes longer to train some of these people than a doctor.

Mr Goldsbrough: Can I quickly add an example. There was a three-year transition for ventilation officers to become trained. Prior to that legislation passing, they were trained by the companies and all that sort of thing. Then they had to go through a certificate of competency process that was quite rigorous. A number of people, understandably, elected not to do that. That then puts the companies on the back foot and they then have to start to look for people they can train up who are prepared to go away from home to be trained and all those sorts of things.

CHAIR: So no RPL as such. What I am understanding—and correct me if I am wrong—is that there is a lack of desire to take on these roles because of the responsibility?

Ms Bertram: That is one of the issues.

CHAIR: I could not understand because, in preparation, you would be thinking to get as many people trained up as you could.

Mr Goldsbrough: Absolutely.

Mr WALKER: The QRC holds concerns about the amendment bill provision to require a contractor entity to directly employ greater than 80 per cent of the workers onsite in order to directly employ their own statutory position holders. This provision means that if the contractor entity employs less than 80 per cent of workers onsite then the coalmine operators must employ statutory position holders. Can you please elaborate on the QRC's concerns about these provisions?

Ms Bertram: Our concern is the gap. If contractors are able to employ their own statutory position holders then they are in control. They manage. There is a certain workplace culture that is developed. They can do things like train people in reprisal—speak up—and encourage that sort of activity. We believe it is a higher order of safety. It is a much more cohesive unit if you are able to run a particular activity. In many respects, even if they are not the coalmine operator, some of these contractors are very large operators or large deliverers of service so we believe it is a higher level of safety if they can have their own statutory position holders.

Also, we have not spoken about specialist contractors. They come in to do certain activities, and not just for contractors; it is for other mine operators, even when they are the coalmine operator. These are things like longwall moves, shot firing, dragline maintenance. They have a higher order

expertise in these specialist contracting areas than many of the coalmine operators themselves or the contractors themselves so they will never meet the 80 per cent. They will never be able to have their own statutory position holders.

Mr WALKER: Won't these statutory position holders simply go from the contractor to direct employment?

Mr Goldsbrough: They may. That depends on negotiations. You will find that some people may not want to go, at a time in their life when they might have worked for the contractor for 20 or 30 years, to the coalmine operator so they choose just to exit the industry. It will depend on the individual circumstances. Also, what we have found in talking to companies is that there is a disconnect between the workforce and the supervisors. The statutory position holders want to be directly involved with the work group. If they are separated as an employee of the coalmine operator versus the work group over with the contractor, a lot of them will choose just to stay with the work group—and they have made that very clear to us—rather than take on the statutory role with the coalmine operator.

Mr HEAD: The issue of care and maintenance sites being captured under this bill is clearly a concern. Is this a concern that has been raised? Was this raised earlier in the piece though the consultation on this bill?

Ms Bertram: Care, maintenance and rehabilitation probably has not been adequately discussed. It certainly was not a feature in the previous provisions. QRC have raised it a number of times but it is not something that has appeared in the amendment bill. It is a really important issue that we need to ensure gets picked up. It needs to be treated like exploration. It needs to be excluded.

CHAIR: Are there any further questions? Actually, time has beaten us.

Mr WATTS: I have heaps and heaps more questions and I find it unfortunate that the time allowed for this questioning on such a serious issue is too limited.

CHAIR: Member, I can give you one final question and we will go a bit over time.

Mr WATTS: In relation to amendment clauses 8, 9 and 13, there is some commentary in your submission about it being considered an 'unreasonable disruption to company corporate structures, employment arrangements'. Could you give us some guidance as to what you think we should do with clauses 8, 9 and 13?

Mr Goldsbrough: They are the ones related to the electrical engineering manager and the mechanical engineering manager. They do not allow for that person to be employed by a related entity. These are very much like underground mine managers and SSEs. They are one-off positions usually at a mine. They are very senior and very important. By not allowing them to be employed by the related entity, it limits the capacity of the company to move these people around on an as-needs basis when people go on leave or there is sickness or particular issues at a mine. It just takes the flexibility away where they can only be employed by the coalmine operator. We are saying it is appropriate that, because of the nature of that one-off senior position, it should be able to be employed by a related entity as well.

Ms Bertram: It should be treated in the same way as the SSE, the underground mine manager and the ventilation officer. It is something that was not discussed at the working group in January. It was probably an oversight. We would certainly argue that they should be picked up in the same way as the related entity was applied to the other three single statutory positions.

Mr WATTS: If an amendment was put forward that did that, would that quell some of your concerns in that area?

Ms Bertram: Yes.

Mr Goldsbrough: It would be a considerable relief for the industry I think is the appropriate term.

CHAIR: Time has beaten us. Once again, thank you very much for your time.

HILL, Mr Jason, District Check Inspector, Mining and Energy Union

NEWMAN, Mr Chris, Legal Officer, Mining and Energy Union

SMYTH, Mr Stephen, District President, Mining and Energy Union

WATTS, Mr Stephen, District Check Inspector, Mining and Energy Union

CHAIR: Welcome. Thank you for coming today. Would you like to make a short opening statement before we go to questions?

Mr Smyth: Our submission was submitted yesterday afternoon. We had a bit of a delay. We apologise for the lateness of that but we have been quite busy. Our submission really goes to the heart of why we believe the statutory roles need to be ones that are driven through health and safety, not through production. Generally our submission went to the heart of that.

We have been involved in this process for quite a period of time. We were involved back when the former minister, Anthony Lynham, proposed this legislation. We think the legislation has actually driven away from the point that originally was put forward, and we have had two years. We have to remember that this was supposed to come in in November 2020. We have all had two years to prepare for this. We think it is well overdue.

We certainly have concerns with the proposed bill in relation to the fact that it could actually increase the level of risk to mineworkers. I am talking about those who go down the mine each and every day or those in the open-cut, due to the construction of the proposed legislation. I know that time is of the essence, but we could spend all day talking about the union's perspective, our passion and our view on why this is so important.

I should have made the point at the start that our elected officials who are here from the Mining and Energy Union, our safety reps, all come from the coalface. We have all been coalmine deputies; we have been ventilation engineers, so we can talk from the practicality of how the legislation was applied previously, how it has been applied now and why we feel so strongly around the proposed bill and some of the deficiencies we see within that bill. We are very fortunate to have Mr Newman here from our in-house lawyers as well.

That is the overview. As I said, I could go through it word for word but I will not. I am more than happy to elaborate on the main points relating to it. Our focus, as with anything, is about the health and safety of mineworkers. It is about having a bill that does not potentially put those mineworkers at further risk. It is about having a bill that delivers the health and safety outcomes and is not focused on production outcomes. It is about managing and controlling the activities in these workplaces. That is probably it in a nutshell.

CHAIR: We will go to questions.

Mr HEAD: If you had an appropriate amount of time to consider this draft bill, would you have put in a much more thorough and in-depth submission on this to consider some of the amendments?

Mr Smyth: It would have allowed us to put in a bit more detail if time was allowed. I guess we focused in on the key factors and key aspects. We have been involved on this journey for over two years and on the committee with the QRC and the industry. We are well across what the issues are but, like with anything, if you are given more time you take the time to provide more detail if required.

Mr HEAD: Are there things in this draft that you have only seen very recently?

Mr Smyth: No. Like with the QRC and the industry, we have been a part of this journey for a period of time. To go back a step, the bill that was put forward in itself was obviously an issue because of, I guess, the timing, for want of a better word. The content that goes into it, as I have said, we have expressed in our submission. It was certainly brought forward in a rush, particularly the last bill that we are here today to talk about. That is probably a key part for us that we believe required further conversation, discussion and consultation.

Mr Newman: For example, in our submission we refer to some of the potential loopholes in the proposed legislation that we think completely undermine the whole purpose of the original legislation. We have highlighted the fact that sections 59A and 60A are the provisions in relation to the ability for a temporary OCE or deputy to be appointed for a period of time when there is an absence.

When I was working through the legislation, just one of the loopholes I found was that, if there is a temporary absence, the obligation is that the operator or whoever it is if they have 80 per cent can get a contract statutory official for 12 weeks on each absence occasion. The problem with the

legislation is that it does not stipulate the length of the absence. All it says is that it has to cover the absence. Say there is a single day's absence, there is nothing stopping an operator from employing a contract official for 12 weeks and that would be perfectly legal. Again, if you have a large mine with a number of statutory officials, you could just wait again until there is another absence and you appoint again for another 12 weeks and then that keeps on going and going and that would be perfectly legal under this legislation. That is just one example I found after looking at this for a brief period. That completely undermines the whole purpose of the legislation, which is to ensure that these statutory officials are employed full-time by the coalmine operator.

Mr MARTIN: We heard earlier from the QRC that the requirement to transfer statutory roles from contractor to direct employment could actually affect production and might diminish rather than improve safety standards. Could you comment on that?

Mr Smyth: There are a number of operators at the moment that actually operate mines where they are a contractor and they are the statutory holder; they have the statutory officials. They are Commodore Mine, Lake Vermont and Meandu, I believe. Again, this legislation was due to come into effect in November 2020 so there have been two years of planning and activities that have led to this point.

One of the issues the sector has—and we have had it for decades—is a lack of training of statutory officials. It would not matter if you were to wait another 10 years and say we will not put the bill in for 10 years. It is not going to matter because, to be perfectly honest, the effort and work has not gone in to ensure that we had a general supply of open-cut examiners and deputies in that case, because we have had contractors and they just float around from one mine to another mine. There are obviously a number of deficiencies of why we have got to this point, and certainly one of them is a lack of training. Chris might have more to add. It is a challenge, but it is going to be a challenge even if there is an extension of legislation anyway because it has been decades and decades of not training, of not providing those services for those people at the coalface to actually work their way up to become these most important safety roles.

Mr Watts: I have been working underground for 20 years and I am a qualified deputy. I am actually a qualified SSE as well. Over that 20 years I have seen the number of contractors go from 10 per cent of the industry to 50 per cent or even greater. Brady proved that the safety performance over the last 20 years has not improved. In fact, just going on fatalities it has probably got worse in recent times. The key finding out of his report was supervision.

I certainly welcome having statutory officials as permanents. I can tell you what happens in reality in the industry is that contract statutory officials—particularly frontline ones, the OCEs and deputies—are cash-for-comment people. It is a joke in the industry. Everyone knows that they are not as safe as permanent deputies who work for the operator. For example, in my role as a district check inspector, one of my functions is to investigate complaints. The first question I always ask when I get a complaint is 'What did the deputy OCE do about it?,' because the first step in the process is that you should make a safety complaint. I quite often get the response, 'They're a contractor. They don't do anything,' and I totally understand that. There is no further thing for me to say about that.

That's where people are. That's what people in the industry understand what contract deputies and OCEs, how they perform their role. They do not just have the safety and health consideration to think about when they stop something; they also have to think, 'If I am a deputy and I have my own business to contract and be a deputy at this mine and I am stopping operations all the time, how is that going to be in terms of reprisal? In my contract it says I don't have to be given notice to be dismissed and I don't need to be given a reason why.' Contract deputies and OCEs have no platform to be able to do their job to a satisfactory standard.

Mr MARTIN: Stephen, you mentioned training. Do you think direct employment in the future will improve training of these statutory positions?

Mr Smyth: I believe it will because that is what used to happen. In 1994 I was directly employed by a company called Mount Isa Mines and every year they would advertise and offer training for open-cut examiners and deputies and the company would put you through that. What has morphed over the last 10 or 20 years is that it has been easier to go out to the market and get a contract deputy or a contract OCE. They start their own company. Again, I am focusing on the contract deputies and OCEs, but it has been the same with the mine managers and SSEs.

It is not rocket science—if you put a training system in place where you train your own people. We are seeing the trend to that now with a number of mines bringing their own deputies and open-cut examiners through to train them. That is what used to happen. That is where we need to get back to because that will be the key. You have people who come from the coalface and work their way up.

They know that mine best. They know the conditions, they know the hazards and they know how to operate. That is where they need to get back to what we used to have. We have all come through the system and that was how the training occurred.

Mr Newman: That has been borne out by the fact that the majority of mines at the moment are seeking to negotiate enterprise agreements with the union for their deputies and OCEs. They would not be doing that if they were contracting out. They are doing it because they are bringing it in-house and they are training up their own people. They have their own industrial arrangements to do that; otherwise, they would just keep putting them on IFAs and individual contracts.

Mr Hill: Just to clarify, that excuse about not having trained people is actually a crap excuse. They have had two years to know that this legislation is coming in, right or wrong. They have had the ability to train people for the last two years. They should have had pathways and training in there to make sure they were training people anyway. It is not our fault that the industry is short of that. What comes first: production or safety? If they are worried about production, they are not too worried about safety, are they? Safety should come first and then production later. If they do not have the right people now, they will just have to wear the cost because safety is the paramount reason we are here.

Mr Watts: It was actually the overuse of contractors that caused the lack of statutory tickets in the industry. There was a narrow-minded view by operators and mining companies that they could just use contractors and turn people on and off to suit the market. It has bitten them now.

To give an example, in your employment structure you have several people with qualifications. In fact, if we use the example of an SSE, I have an SSE's notice. If I told someone to go and do an SSE ticket, realistically they could probably get one within a couple of weeks. It is not that hard; it is just a three-hour exam and that is it. Some mines have dozens of qualified SSEs onsite. The argument that it takes six months to get an SSE does not sit with me. In reality, it is just not true.

CHAIR: That was what I could not understand. If I was a mine operator—and once again I am not disparaging any of them—I would be wanting these positions and wanting to be training people to hold them. I cannot understand why there is a lack in the industry. I get what you are saying about the contractors having those positions. What would stop them from direct employing—notwithstanding that you said no-one knows the mine like the people who work in that mine—someone who is currently doing that role as a contractor to make them a direct employee? That would surely be an answer.

Mr Smyth: Nothing stops them because once you get a certificate of competency as a deputy, if you are a deputy working at a mine like Moranbah North, you are working in and under the underground mine managers arrangements. You have the safety and health management system. When you are in that mine, if you are a deputy, a contractor or labour hire in that employment, the roles are the same. You wear the same roles and responsibilities, and nothing stops you. If you are good enough to inspect a longwall face today as a contractor, then you are good enough tomorrow to inspect it as a permanent employee. There is no difference. Mining companies may have a preference—we have all been around and there may be good deputies that are better in the longwall than the outlie or the belt line, but at the end of the day they are all appointed and inducted; they work under the same arrangements.

Mr Hill: The difference is the control over the statutory official that the operators have. I will give an example from a few years back. We had a contract deputy in the longwall panel and they were requesting him to do something that was unsafe or get his crew to do something that was unsafe. Because he would not do it, they just walked him offsite. It is easy to control and to deliver. That is the reason the fight is on about who controls what.

Mr Newman: The original legislation was driving that change for training internally. What this proposed legislation does is give them an out. It gives them several outs. That is what our concern is about. We can spend all this time getting the legislation in place and getting the change in the industry going only to give them an out at the last minute.

Mr WATTS: Thank you for the submission, and I understand the time line here is truncated. Your submission states—

> The MEU questions why the government would undertake extension consultation with the industry on this issue and have them produce a document to provide solutions only to ignore this document and the consultation process by introducing legislation that no stakeholder has considered or agreed to?

There is then a comment above that about the matter of the 80 per cent threshold. I take it from that statement—and I guess my question is—that you are unhappy with the timing and the time line that this legislation has been given to get us through this process? Would that be a fair comment?

Mr Newman: Yes, it would be. What that comment is driving at, as was pointed out earlier with the QRC and as we have pointed out in our submissions, is that the tripartite working group did not address the 80 per cent. That never came up. There were a number of solutions put forward, but the 80 per cent was not part of it. As the QRC has just said, it was only after that tripartite working group that they themselves and the contractors met with the minister and came up with the 80 per cent. We were not part of that. The department was not part of that consultation. The first time we heard about it was when the draft legislation came out.

Mr WATTS: My understanding is that they did not hear about the 80 per cent, either.

Mr Newman: They had a discussion about it, though, and there was a discussion about putting a pathway in there that was outside of what was in the tripartite working group.

Mr WATTS: What would you see as a way forward here? My concern is the implications for companies, for the union and for the safety of mine sites, because we are all trying to rush through to a situation that does not seem to be very satisfactory to anybody.

Mr Newman: We would agree with that. There needs to be some further consultation and dialogue on this issue. Our position is quite clear that there should not be an exemption for contractors at all. The mine operator should be the person employing all statutory officials. That has been borne out by all the research; that has been borne out by the previous legislation. If there is enough time in implementation, we have shown that it can and would work. There is no reason for these exemptions. In terms of the exemption as it stands, you could drive a truck through the number of holes, and I have put one example to you already about it. There are several other examples in there about how that system can be manipulated. It will drag us back to a situation we were in before the original legislation was put in place.

There needs to be further extensive consultation about this and we need to move away from this position of having contractors being allowed to employ statutory officials. Certainly the 80 per cent has to go. It is not an agreed position in the industry. Given the amount of consultation that has gone through, we do not understand why it was in there at all.

Mr WATTS: Correct me if I am wrong with this characterisation: you and QRC do not particularly agree, and the minister has tried to jump somewhere in the middle that is unsatisfactory to everybody. Do you think that, given more time, you and QRC could come up with a solution that both parties would be happy with?

Mr Smyth: I think we would land on a majority of it, but I still think we would be apart on some of it. There are still certain aspects of it. In terms of the original legislation where the coalmine operator employs, we are happy with that. There were some hairs around it, but we were happy with that because everyone anticipated that would be the legislation that would go forward. BHP had no problem with it because they just go and form a $2 shelf company and put all the statutory officials in it, which is another issue. We think we could work towards at least a position, although there may still be some outstanding matters around that.

Mr WATTS: At the end of the day, what I would like to see as a legislator—and I cannot speak for my colleagues—is that the mines are safe, our production is efficient and we are one of the world leaders in both safety and production. It just seems to me that this is not satisfying any of that requirement.

Mr Smyth: The other thing with 80 per cent is: how do you regulate it? When you are talking figures, it creates a nightmare to regulate it. Who is responsible for compliance? If it is 80 per cent, does the RSHQ then have to have inspectors going out to these mine sites and auditing and ensuring compliance?

Mr WATTS: Would that make the mine safer compared to other things they could be audited in?

Mr Newman: Exactly. It takes away from their core functions.

Mr Watts: In terms of the exemption to fill someone in with a contractor for 12 weeks, particularly for me and for frontline supervisors, deputies and OCEs, it completely nullifies the whole intent of the legislation. Realistically, a mine that has 40 deputies could satisfy the legislation by having 20 permanents and 20 contractors, because every time a permanent has a sickie or goes on leave it triggers another 12 weeks. There would be nothing stopping the manager from saying to a deputy, 'We need someone to take a day off. Please have a day off so we can keep this bloke for another 12 weeks, another three months.' It is wrong. They got the wording wrong, I am sorry.

Mr WALKER: On the subject of annual leave and the contracting, if you had that many people working in a permanent role and they were on leave, you would have permanent contractors rolling through on a 12-week cycle.

Mr Newman: Yes, that is what we are saying. It is permissible under the legislation because of the way it is drafted. The drafting says that all it needs to do is cover the absence. It does not say for the period of the absence; it just says it needs to cover the absence.

Mr WALKER: It would come down to roster design?

Mr Newman: Yes.

Mr Watts: And your employment structure—any business smartly should cater for people having sick leave and annual leave.

Mr WALKER: I used to design rosters. I was just picking the roster—

Mr Newman: You could quite easily arrange it with leave and coverage. You could put a clause in employment arrangements saying that you must have two days off every six weeks or something like that. You could roster it so that there are constant absences and then that triggers the ability to rehire for a 12-week period because it would be covering the absences.

Mr Hill: The deputies did not have to worry about the 12 weeks being approved under the old act. What was proposed originally was under the old mining act, so I do not know why you would worry about the 12-week period now.

Mr WALKER: Thank you for that. The MEU has advised in its submission that it opposes the amendments contained in the bill and opposes the provision which would allow for the site senior executive, underground mine manager and ventilation officer statutory positions to be employed by an associated entity. The MEU submits that this would allow coalmine operators to create an associated entity which directly employs safety staff that could then be used at all their operations when required. Such a practice would allow employers to build in KPIs which are production and industrial in nature and not based on safety at the mine. Does the MEU have knowledge of this type of practice previously occurring in the Queensland coalmining industry and, if so, can the union provide examples of this?

Mr Smyth: There have been contracting companies set up that provide statutory officials across the sector in the underground. They provide mine managers, SSEs and others. Under the current legislation, the various operators across the Bowen Basin and their arrangements have been set up and linked back obviously to whatever the contract is, without naming them. There is evidence of it. What I am saying is that at the moment a mine can go and employ an underground mine manager who is a contractor, who works for his own contracting company. We know that built into that are KPIs for that person to meet around production and other measures. The other fact is that they are KPIs that sit outside any safety regime or legislation.

There is a trend there where there are certain companies and that is all they do. They are not happy about the proposed legislation because it will put a dent in their arrangements. They offer SSEs, underground mine managers, under managers—the lot right across the sector. Unfortunately, what we have seen—and this happens in the open-cut as well—is a trend whereby these people come in for a short period of time and then go somewhere else. From our perspective and our experience, particularly at underground mines you want a mine manager or a person in those senior roles who obviously has the experience and an understanding of the operations and they are going to be there in place managing those operations.

Whether the other guys have any examples, I do not know. That has been the trend in the industry, and it is the same with the contract OCEs and deputies.

Mr Watts: In terms of the argument that it is too difficult to get the contract arrangements correct, we are talking about getting a few words in black and white correct. These are companies that have fully automated 350-tonne dump trucks and fully automated $300 million longwall machines that they drive from the surface now and they are saying they cannot get a few words in black and white right to satisfy the previous legislation?

Mr HEAD: You did say it could only take a few weeks for someone to get their SSE certificate. If that is the case, could someone with not very much coalface or pit experience be permanently engaged out of desperation by mine operators, which would actually lead to reduced safety outcomes for mineworkers?

Mr Watts: The Board of Examiners is actually fixing that issue. I sit on the Board of Examiners. We are actually bringing in experiential requirements for SSEs that are not in place at the moment. You would have to have the requisite experience. For example, it might be five years experience. We have not nutted it out.

Mr HEAD: Even though people might have five years experience at a site or something, depending on the site and the operation and even the crew and the culture of each site, they might be seeking a particular individual. However, this might mean they are rushing that through and they might have someone that might not fit with that.

Mr Watts: They are not superheroes. There are plenty of people on the mine site who could probably do the job to a very high standard. There would be dozens and dozens of people that have other statutory qualifications such as deputies and under managers if we are talking about underground mines. Certainly with an SSE notice they would be able to do the job in terms of safety. The finance aspect et cetera might be different, but in terms of ensuring the obligations under section 42 of the act, I am sure they would be quite capable.

CHAIR: Time has beaten us. We really appreciate your time. I am sorry that you did not have a great deal of it.

Mr WATTS: I just want to record again that I find it very unsatisfactory that we have not had enough time to ask you questions or give you an opportunity to speak in the way I would have liked.

CHAIR: That is noted.

Mr Smyth: Am I allowed to say something in closing?

CHAIR: Yes, but we are over time.

Mr Smyth: Obviously the submission came through last night. I just want to emphasise—to us it is all important; however, the further matters on the last page I particularly encourage people to read, because that really lays out our position, how we see it and the fact that going back to the core value of health and safety is paramount. The act is about protecting mineworkers from injury and illness. The other matters are the core of our submission as well, the other detail. I just wanted to place that on the record.

CHAIR: Thank you. We appreciate that. I know that the member for Toowoomba North said something about—I am not sure of colleagues, but I think I can speak on behalf of the whole committee when I say that safety and the fact that every mineworker should come out of a mine at the end of the day are paramount. We all agree on that. Thank you very much to everyone who participated today. A transcript of these proceedings will be available on the committee's webpage in due course. I declare this public hearing closed.

The committee adjourned at 9.17 am.