COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022

Submission No: 1

Submitted by: Stuart Vaccaneo

Publication: Making the submission and your name public

Attachments: No attachment

Submitter Comments:

Submission to Queensland Parliament Transport and Resources Committee

Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

By Stuart Vaccaneo

21st October 2022

CONTENTS PAGE

To Qld Parliamentary Transport and Resources Committee.

Re: Draft Amendment to Coal Mining Act Employing Statutory Officials

SUMMARY

This legislation is arguably the most retrograde piece of Legislation ever introduced into the Queensland Parliament in relation to any sort of strengthening Corporate Responsibility or "Direct Duty of Care" for Mine Workers Safety and Health.

It has demonstrably made the situation even more loose and open ended than it has ever been since Coal Mining Safety and Health Legislation was first introduced in Queensland in 1925.

It will not change any of the current situation adverse situations it supposedly seeks to remedy and will in fact allow for all the current different ways OCE's and ERZC's are currently employed if not more.

The 2022 tabled bill does the exact opposite of the claims of Minister Stewart in his introductory speech to Parliament.

It now for the first time will directly allow for the SSE not to be employed by the Operator at all.

The 80% rule is a complete and utter piece of a deliberately confected legal quagmire.

It needs to be removed from the Bill altogether.

All that is happening is that the mistakes of the past are being repeated with the inevitable death and injuries that flow.

There are some circumstance I have known where collieries are let out by contract, which I consider a bad system*. The colliery proprietor lets it out to some contractors, to work the coal and deliver it at so much per ton. I have seen cases where those contractors, not being men of any capital, have only looked to get as much coal as they possibly could, and have ruined the colliery ; they have been sparing of the timber ; but where a mine is well conducted by the proprietors themselves. with an under-ground foreman, I have seen some exceedingly well-timbered mines; I think those are sorts of cases of real neglect where any accidents to any extent occur in that way.*

A serious evil prevails an the "Batty" or contractor system, by which certain parts of the work are sublet. The object of the contractors is, consequently, to save at all hands, regardless either of the lives of the people or of le permanent interests of the mine; and it too frequently happens, that as soon as a contract price is fixed, the proprietor or his agent pays no more attention to the concern till a new bargain is to be made.
*In the meantime, the workmen have no one to complain to; the contractor is their master; and as the setting of timber and other processes are left in a great measure to themselves, if an accident happens by a fall or an indiscreet use of the lamp, it is either attributed to carelessness on the part of the collier, or pronounced to be accidental death. The contractors, besides, are generally connected, directly or indirectly, with shops and public-houses, by which the wages of the workmen are intercepted, and gross injustice and oppression ensue_*

1849 (613) Report from the Select Committee of the House of Lords appointed to inquire into the best means of preventing the occurrence of dangerous accidents in coal mines; and to report thereon to the House; together with the minutes of evidence, and an appendix and index thereto

Queensland has managed to bring itself back to the situation in England in the 1800's as noted in this 1849 Report of a Select Committee of the House of Lords when the Masters and Servants Act of 1823 was the only general workplace law in place

SUBMISSION POINTS

1) No requirement I can find for a temporarily appointed Site Senior Executive to have the pre-requisites required to be appointed as a full time Site Senior Executive.

2) Complete Reversal of Palaszczuk Government Policy as of March 2020 "require that statutory office holders are employees of a mine operator."

3) Does not address the Unintended Negative Consequences of the Interpretation and Application of the current Legislation by one of the Major Mining Companies (BMA) under which they now employ all full time OCE's.

4) There is now not even a requirement that the Mine Operator employ the Site Senior Executive unless they want to with the introduction of the 80% rule.

5) Changes made in the draft Bill takes what are currently 18 easily understood words "appoints a person under the subsection only if the person is an employee of the coal mine operator" and turns it into wording incomprehensible to 99% of Coal Mine Workers when read in full

6) Introduces completely new Terms into the CMSHA such as "associated entity" and by extension other terms such as "control", "entity" and "asset" through reference to 50AAA the Corporations Act "Associated Entity. None of these are currently defined in the CMSHA though BMA/BHP makes extensive use of the term Asset within its Safety and Health Management system

I would conditionally support the reference to Section 50AAA of the Corporations Act "Associated Entity", but only if there are with some clear changes both removal and addition of clauses and references

1) The inclusion of a direct Reference to Section 50 AA of the Corporations Act "Control"
2) Also, that all terms referenced in Sections 50 AA and 50AAA are also called into Reference and have definitions for the Coal Mining Act. For example, "Asset", "Control" and "Influence"
3) All references to the 80% be removed in totality.
4) The associated entity clause be extended to OCE's.

If correctly introduced with appropriate legislation this would address a number of fundamental level accountability failures that include

- Ensure that the situation at the time Mr Daniel Springer was killed at BMA Goonyella Riverside Mine in 2017, is even more clearly spelled out as illegal and make the relevant Senior Officers of the Parent Company and /or associated entity directly accountable for any similar breaches.

- The issues identified during the Grosvenor Inquiry was the issue Corporate Governance concerning the officers of Parent Companies and their Obligations under the Coal Mine Act and made the comment. *The legislation should be cast in terms that remove any doubt that this is so.*

- Bring Legislation clearly into line with sentiments from the Moura No 2 Inquiry comments on Legislation

  "Responsibility implies authority and those with highest authority inevitably have the greatest responsibility, both to form rules and to ensure that they are complied with."

- Current safety accountability issues regarding the Asset and its Officers with BMA Coal Mines in Qld would be made clear, where now according to the Chief Inspector of Coal Mines the "Asset" and its Officers cannot be held accountable.

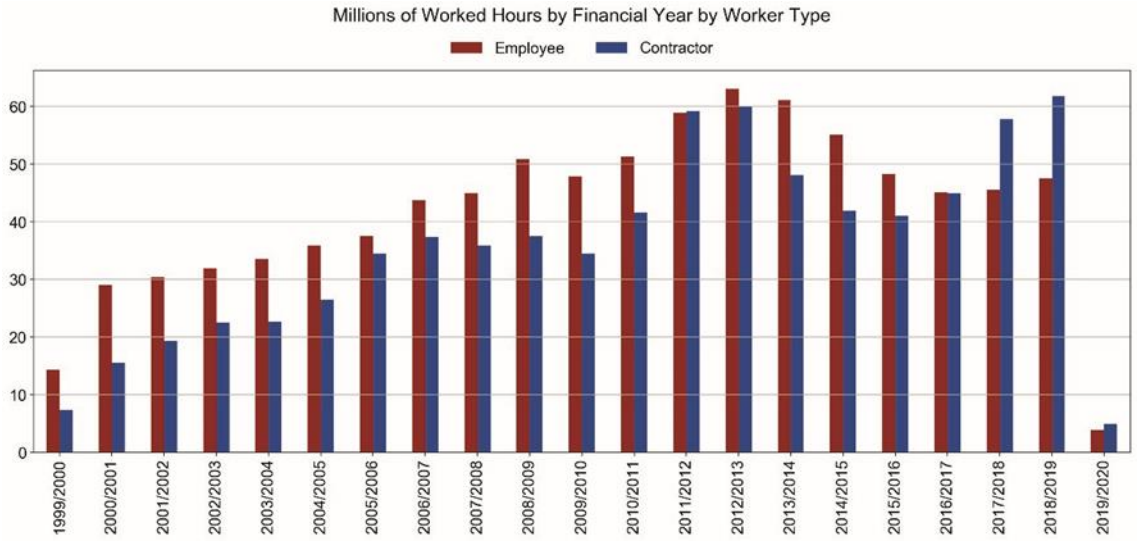
"Why wasn't pit preparation dewatering prioritised before operation in this instance?"
"There is mandate to keep trucks running to meet production targets."
"There is an asset requirement to have this mandate."

- Chief Inspectors Current Interpretations of what an "Asset and its Officers can and cannot be held accountable for safety and health on a Queensland Coal Mine" would be withdrawn and a legally correct Interpretation be included in the Legislation and the Explanatory notes

- Ensure that the employment contracts of Statutory do not release or attempt to release associated entities or Assets from direct Safety and Health Obligations held under the Coal Mining Act

Below is a chart of permanent versus contractor millions of hours worked as referenced in the Brady Heywood Review.

Any person who is shocked that the vast majority of workers killed being contractors just does not understand mining and its history



Insanity is defined as doing the same thing over and over and expecting a different outcome. While the percentage of work performed by contractors increases so will the number of people killed.

The recent history of contractors as mine Operators being a prime example of why it is a bad idea. Graham Dawson was killed at the Crinum Mine while they were recovering the conveyor drift to access the coal seam.
Not one tonne of coal was ever mined.

Now the contractor Metarock/Mastermyne has declared force majeure and forfeited the contract BHP/BMA walked away from the old Crinum mine in about 2005 after doing a study about partial extraction.

Metarock could not even recover the drifts without killing someone

Not one tonne of coal mined.

Dear Committee.

Changes made in the draft Bill takes what are currently 18 easily understood words "*appoints a person under the subsection only if the person is an employee of the coal mine operator*" and turns it into wording incomprehensible to 99% of Coal Mine Workers when read in full.

It totally undermines and indeed totally reverses both the intent and wording of the 2020 Legislation it amends.

This is a Complete Reversal of Palaszczuk Government Policy in March 2020 "require that statutory office holders are employees of a mine operator.

The 2022 tabled bill does the exact opposite of the claims of Minister Stewart in his introductory speech to Parliament.

It now for the first time will directly allow for the SSE not to be employed by the Operator at all.

The 80% rule is a complete and utter piece of a deliberately confected legal quagmire.

It needs to be removed from the Bill altogether.

If a single employer makes up over 80% of the Mineworkers and are in the words of the Explanatory Notes "The De-facto Operator" it is because the Mining Companies have been gaming the system.

It would be logical for the employer of the 80% plus to be appointed as the Operator and then they directly employ the SSE and all other Statutory Officials and of course easily comply with the current legislation.

It is both a blatant and deliberate measure to insulate both the actual Operator and its parent company and officers from most Legal obligations at all except as the Holder.

It is totally contrary to both the wording and intent of the Legislation for the last 22 years.

Further it undermines the Recommendation about Corporate Governance from the Grosvenor Inquiry totally to the point of utter irrelevance.

Chapter 6 – Corporate governance
Finding 74
If a parent company of an operator company holds obligations under section 39 of the Act, officers of the parent company would have the obligation under section 47A of the Act to exercise due diligence to ensure that the parent company complied with its obligations under section 39. The legislation should be cast in terms that remove any doubt that this is so.

Recommendation 17
RSHQ takes advice as required and, if necessary, takes steps to amend the Act to clearly reflect that a parent company holds obligations under section 39.

The history of Statutory Positions being full time employees of the Owner/Operator and mandatory recognised Statutory competencies/tickets has its genesis in the English Coal Mining Act of 1872.

26. Every mine to which this Act applies shall be under the control and daily supervision of a manager, and the owner or agent of every such mine shall nominate himself or some other person (not being a contractor for getting the mineral in such mine, or a person in the employ of such

contractor) to be the manager of such mine, and shall send written notice to the inspector of the district of the name and address of such manager.
A person shall not be qualified to be a manager of a mine to which this Act applies unless he is for the being registered as the holder of a certificate under this Act.

Direct employment of Statutory Officials has been a requirement under Coal Mine specific Legislation in Qld since the first Act in 1925.

Regarding the employment of OCE's and ERZC's in particularly, it has only been the active INDUSTRIAL manipulations of the Coal Mining Companies that have created the current situation with Statutory Officials not being permanent employees.

All to get them on Staff Individual Workplace Agreements or employed by contractors or as a subcontractor.

This has been going on since the early 2000's starting with the Oaky No 1 Mine run by Xstrata (now Glencore. They offered wage rises to leave the Union negotiated Enterprise Agreement) and sign the Staff agreement.

The main driver as I said was Industrial not Safety. To get them out of the Production and Engineering Award coverage, the Union negotiated Enterprise Agreement as well as the representation and disciplinary procedure benefits that flow from being covered by the Enterprise agreement as well as the industrial resources of the Mining Union

It is a situation entirely of their own making and not hard to solve.

The fix is an Industrial one and it is only a matter of the mining companies changing an Industrial philosophy and mindset.

Only someone with a complete ignorance of the history of the Coal Mining Industry could honestly believe and state the following

Representatives of the coalmining industry raised with me challenges to implementing the direct employment requirements. Industry stated that requirements would have the potential to impact their ability to consistently supply coal and, as a result, would affect the financial viability and sustainability of their businesses.

Any decision maker that falls for the centuries old excuse that doing so will "Ruin the industry" has no understanding of the mining industry.

My submission is broken into several but related issues which are spelt out it in a rough order of shortness of explanation.

It in no way reflects the seriousness of each issue.

1) No requirement I can find for a temporarily appointed Site Senior Executive to have the pre-requisites required to be appointed as a full time Site Senior Executive.

2) Complete Reversal of Palaszczuk Government Policy as of March 2020 "require that statutory office holders are employees of a mine operator."

3) Does not address the Unintended Negative Consequences of the Interpretation and Application of the current Legislation by one of the Major Mining Companies (BMA) under which they now employ all full time OCE's.

4) There is now not even a requirement that the Mine Operator employ the Site Senior Executive unless they want to with the introduction of the 80% rule.

5) Changes made in the draft Bill takes what are currently 18 easily understood words "*appoints a person under the subsection only if the person is an employee of the coal mine operator*" and turns it into wording incomprehensible to 99% of Coal Mine Workers when read in full

6) Introduces completely new Terms into the CMSHA such as "**associated entity**" and by extension other terms such as "**control**", "**entity**" and "**asset**" through reference to 50AAA the Corporations Act "Associated Entity. None of these are currently defined in the CMSHA though BMA/BHP makes extensive use of the term Asset within its Safety and Health Management system

One of the most respected analyses of Mining Disasters is written by Professor Michael Quinlan in his book
Ten Pathways to Death and Disaster: Learning from Fatal Incidents in Mines and Other High Hazard Workplaces by Michael Quinlan

Quinlan when *discussing Internal government processes, interest groups and the corrosion of reform* states on page (pg 212)

Once findings and recommendations are handed down the next hurdle is the extent to which the government agrees to implement all or some of the recommendations.

A range of factors can affect this, including

- *the lapse of time (usually a year or more has passed since the incident),*
- *the level of community pressure, the government's own policy agenda and the implementation process itself in terms of those given input, transparency, time-lines etc.*
- *Ministerial and Cabinet approval for substantial legislative change is commonly subject to intense lobbying by influential interest groups seeking to block or water down the legislation in a discreet fashion.*
- *Such activity is seldom reported.*

On the other hand, those in favour of the change will need to scrutinise the regulatory drafting to ensure the legislation will actually achieve its purpose.

Key appointments to legislative oversight bodies and within the public sector can act as either lubricants or sources of friction with regard to the reform process.

The legislative drafting can be critical.

Even seemingly minor revisions can have significant effects. Equally critical is the provision of adequate infrastructure like inspectorate resourcing and strategic direction to implement the changes.

Even when regulatory change is successfully introduced powerful interest groups often seek to influence its implementation, to lobby their political representatives to reverse legislation or undermine its enforcement, or to refashion the laws years later when the heat has gone out of the debate

1) **No requirement I can find for a temporarily appointed Site Senior Executive to have the pre-requisites required to be appointed as a full time Site Senior Executive.**

2) **Complete Reversal of Palaszczuk Government Policy as of March 2020 "require that statutory office holders are employees of a mine operator."**

This is a Complete Reversal of Palaszczuk Government Policy in March 2020 *"require that statutory office holders are employees of a mine operator.*

What a complete change in direction by the ALP State Government from 2 years ago as outlined in Report No. 46, 56th Parliament State Development, Natural Resources and Agricultural Industry Development Committee March 2020.

This represents a complete 180-degree change in official State Government policy.

https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2020/5620T472.pdf

The issue is discussed in detail in Section 2.3 starting on page 28.

The position of the ALP State Government in 2020 was quite clear.

In response to matters raised by stakeholders in relation to the provisions in the Bill requiring statutory office holders to be employees of the mine operator, DNRME stated:

… it is a matter of government policy to require that statutory office holders are employees of a mine operator. There will be a twelve-month transitional period before statutory officer holders will be required to be an employee of a mine operator. The intent is to ensure that statutory office holders can make safety complaints and raise safety issues without fear of reprisal or impact on their employment.[1]

[1] Department of Natural Resources, Mines and Energy, correspondence dated 6 March 2020, p 34.

Well, something has sure changed.

Surely there must be a documented and justified process that has allowed these complete changes in Government Policy from those articulated in writing to the Parliamentary Committee in 2022.

3) Does not address the Unintended Negative Consequences of the Interpretation and Application of the current Legislation by one of the Major Mining Companies (BMA)

Ever since the Mines had opened the position of Open Cut Examiner was part of the Production and Engineering workforce collective agreement, its wage and skills structure.

This automatically entitled them to the safety and industrial representation and protection provided under the Production and Engineering Award and Enterprise Agreement in place

BMA essentially made a take it or leave it offer to its full time OCE's to sign a staff contract if the wanted to remain a full time OCE.

They were told that the only reason this was occurring was due to the changes to the Act and they had no choice but to offer new staff positions of Open Cut contracts.

"As you are aware recent changes to the Coal Mine Safety and Health Act 1999 (CMSH Act) require all persons carrying out certain safety and health responsibilities and duties under the CMSH Act to be employed by the Coal Mine Operator for the relevant asset

Currently you are employed by BHP Coal Pty Ltd (Current Employer).

As part of the Restructure we are offering you employment with BM Alliance Coal Operations Pty Limited, 096412752, the Coal Mine Operator for BMA sites (New Employer)

It came with a new job title of Open Cut Overseer with additional duties and responsibilities as mandated by the new employer under a Staff contract.

I take particular notice how they do not refer to the Coal Mine instead the name it "the Asset"

All done under the pretence of directly employing them as per the 2020 changes to the Act.

They were told that if they refused to sign the new Staff Contracts they would not and could not ever be utilised as an OCE on shift ever again.

They would only be redeployed as a Production Worker into whatever position best suited the needs of the operation on a shift by shift basis.

BMA were successful in my view, because no one challenged BMA in court.

BMA actions were clearly not the intent of the original legislation change as detailed in the parliamentary committee report.

The wording of the Consultation Draft seems to favour the position that BMA have in my view illegally forced on the OCE's.
For whatever reason uniquely out of all positions the draft would apply to the OCE provisions does not have a subclause that allows employment by an associated entity.

I would argue that this provision has been changed uniquely to benefit BMA by not allowing the OCE's they forced onto Staff Contracts to revert to being employed by the associated entity that employs the full time and other Production and Engineering Workers, the same entity they were employed under till faced with the employment ultimatum from BMA.

It seems to be deliberately designed to prevent any full time BMA OCE's seeking for their employment to be part of the Collective Union Agreement and underpinned by the Federal Award and its coverage, as well as the industrial benefits of being in the Union

Ex OCE's who sign the Staff Contracts get additional Duties and Responsibilities including to the Asset

Additional Duties and Responsibilities

h) promote and protect the interests of the Company and the Asset always giving it the full benefit of your knowledge, expertise and skill and not knowingly do anything which is to its detriment

i) in all dealings on behalf of the Company and the Asset and any Group Company observe the standards of honesty and truthfulness as reasonably expected by management

j) account to the Company and the Asset for any benefit directly or indirectly received by you or any associate in respect of any business transacted, or to be transacted by or on behalf of the Company or any Group Company

l) keep Company management properly and regularly informed regarding the conduct of the business of the Company and the Asset, including any material issue within your knowledge affecting the Company and the Asset and any conflicts of interest, whether or not involving you

m) promptly disclose to the Company management any serious misconduct or wrongdoing within the Company or the Asset (including your own)

Oddly when it comes to Safety and Health the term "the Asset" is conspicuous by its absence

k*) co-operate with the Company and Group in complying with their obligations on health and safety*

5) Changes in the Consultation draft takes 18 easily understood words "*appoints a person under the subsection only if the person is an employee of the coal mine operator*" and turns it into wording incomprehensible to 99% of Coal Mine Workers when read in full

For the first time the new Draft legislation calls up the Corporations Act and in particular Section 50 AAA "Associated Entity".

Given the title and wording of Section 50AA "Control" I would assume that Section 50AA Control has not been included quite deliberately.

Whatever 50AAA means, 50AA is crucial to how 50AA is supposed to mean, be interpreted and implemented.

The concept of control is implicit in the reasons for the existing provisions words of "only if the person is an employee of the coal mine operator"

I am sure the deliberate omission of any reference to 50AA is to the advantage of the Coal Mine Operator not the Coal Mine Worker

I would confidently state that the QRC and the Mining Companies have been almost totally successful in derailing the process and outcomes and getting a lot more than they wanted over 2 years ago.

I can quite easily argue that the draft provisions have given the Mining Companies even greater ability to not directly employ the Statutory Officials than existed at any time since 1999.

I would confidently bet that these clauses could be used in any existing Coal Mine in the State to never directly employ any Statutory Official unless the Operator wanted to.

If the draft new wording is introduced how much more corrupted and removed from the intention can the whole situation become.

The existing requirements for employing Statutory Officials typically read like the one for Underground Coal Mines.

The coal mine operator for the underground mine must ensure that a site senior executive required to appoint a person under subsection (2) or (4), or an underground mine manager required to appoint a person under subsection (8), (9) or (10), appoints a person under the subsection ***only if the person is an employee of the coal mine operator.***

The wording "***only if the person is an employee of the coal mine operator***" is twelve easily digested words.

What is to be gained by changing them to the draft words?

Total and utter confusion is about all, and essentially do what they think the words can be stretched to apply to?

6) Introduces completely new Terms into the CMSHA such as "*associated entity*" and "*entity*" and "asset

The changes to the employment provisions of Statutory Officials is typically close to the following

(a) for an appointment under subsection (2), (4) or (8) —

(i) the coal mine operator; or

(ii) an associated entity of the coal mine operator; or

(iii) an entity that employs or otherwise engages 80% or more of the coal mine workers at the mine; or

However, the new legislation calls up Section 50AAA the Corporations Act "Associated Entity.

"associated entity" which is defined as "has the meaning given by the Corporations Act, section 50AAA."
"entity" which has no referred to definition
"associated entity" under section 50AAA introduces other terms never used or defined in the Coal Mining Legislation. Words, terms and definitions for "affairs", "interest" and "asset".
DRAFT_Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 – Consultation version (002)

No sane person could think these words would make the employment relationship easier to understand, comply to, and enforce.

Trying to understand exactly what the changes meant, I looked up Section 50AAA.

I am not even going to try and explain what it means. I am not a Federal Court Judge.

By the time I got halfway through 50AAA, I was more than confused.

I do not truly understand why these terms are to be introduced and what it all means.

CORPORATIONS ACT 2001 – SECT 50AAA
Associated entities

(1) One entity (the associate) is an associated entity of another entity (the principal) if subsection (2), (3), (4), (5), (6) or (7) is satisfied

(2) This subsection is satisfied if the associate and the principal are related bodies corporate.

(3) This subsection is satisfied if the principal controls the associate.

(4) This subsection is satisfied if:

(a) the associate controls the principal; and

(b) the operations, resources or affairs of the principal are material to the associate.

(5) This subsection is satisfied if:

(a) the associate has a qualifying investment (see subsection (8)) in the principal; and

(b) the associate has significant influence over the principal; and

(c) the interest is material to the associate.

(6) This subsection is satisfied if:

(a) the principal has a qualifying investment (see subsection (8)) in the associate; and

(b) the principal has significant influence over the associate; and

(c) the interest is material to the principal.

(7) This subsection is satisfied if:

(a) an entity (the third entity) controls both the principal and the associate; and

(b) the operations, resources or affairs of the principal and the associate are both material to the third entity.

(8) For the purposes of this section, one entity (the first entity) has a qualifying investment in another entity (the second entity) if the first entity:

(a) has an asset that is an investment in the second entity; or

(b) has an asset that is the beneficial interest in an investment in the second entity and has control over that asset.

CORPORATIONS ACT 2001 – SECT 50AA
Control

(1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

(2) In determining whether the first entity has this capacity:

(a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and

(b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

(3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

(4) If the first entity:

(a) has the capacity to influence decisions about the second entity's financial and operating policies; and

(b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members; the first entity is taken not to control the second entity.

Conditional Support only with addition and removal of subclauses

I would conditionally support the reference to Section 50AAA of the Corporations Act "**Associated Entity**", but only if there are with some clear changes both removal and addition of clauses and references

1) The inclusion of a direct Reference to Section 50 AA of the Corporations Act "**Control**"
2) Also, that all terms referenced in Sections 50 AA and 50AAA are also called into Reference and have definitions for the Coal Mining Act. For example, "Asset", "Control" and "Influence"
3) All references to the 80% be removed in totality.
4) The associated entity clause be extended to OCE's.

If correctly introduced with appropriate legislation this would address a number of fundamental level accountability failures that include

- Ensure that the situation at the time Mr Daniel Springer was killed at BMA Goonyella Riverside Mine in 2017, is even more clearly spelled out as illegal and make the relevant Senior Officers of the Parent Company and /or associated entity directly accountable for any similar breaches.

- The issues identified during the Grosvenor Inquiry was the issue Corporate Governance concerning the officers of Parent Companies and their Obligations under the Coal Mine Act and made the comment**. "***The legislation should be cast in terms that remove any doubt that this is so."*

- Bring Legislation clearly into line with sentiments from the Moura No 2 Inquiry comments on Legislation
  Responsibility implies authority and those with highest authority inevitably have the greatest responsibility, both to form rules and to ensure that they are complied with.

- Current safety accountability issues regarding the Asset and its Officers with BMA Coal Mines in Qld would be made clear, where now according to the Chief Inspector of Coal Mines the **"Asset"** and its Officers cannot be held accountable.

"Why wasn't pit preparation dewatering prioritised before operation in this instance?"
"There is mandate to keep trucks running to meet production targets."
"There is an asset requirement to have this mandate."

- Chief Inspectors Current Interpretations of what an "Asset and its Officers can and cannot be held accountable for safety and health on a Queensland Coal Mine" would be withdrawn and a legally correct Interpretation be included in the Legislation and the Explanatory notes

- Ensure that the employment contracts of Statutory do not release or attempt to release associated entities or Assets from direct Safety and Health Obligations held under the Coal Mining Act

1) Ensure that the situation at the time Mr Daniel Springer was killed at BMA Goonyella Riverside Mine in 2017, is even more clearly spelled out as illegal and make the relevant Senior Officers of the Parent Company and /or associated entity directly accountable for any similar breaches.

There is no more fundamental breach that can be made that for the Operator to have a more senior person on site than the SSE. Yet this was exactly what BMA did.

RSHQ decided that there was no need at all to prosecute the Operator.

The only reason it became public was because it was part of the RSHQ Investigation Report provided to the Coroner.

The investigation revealed evidence to suggest that the appointed SSE at Goonyella Riverside mine was not the most senior officer employed who has responsibility for the coal mine as required by section 25 of the Coal Mining Safety and Health Act 1999.

Evidence given by the maintenance manager showed that he did not report to the SSE but to the General Manager of Goonyella Riverside mine.

The only reason there was a Coroners court was despite not prosecuting anyone RSHQ decided there was sufficient public interest to have a Coroners Inquiry.

If not for the Coroners Court no one besides RSHQ and BMA would ever have known about this flagrant egregious breach

DNRM decision not to prosecute

84. DNRME advised at the conclusion of the investigation they would not proceed with a Prosecution in relation to the incident and requested an Inquest be conducted in the public interest.

2) GROSVENOR INQUIRY Report 1

https://www.coalminesinquiry.qld.gov.au/__data/assets/pdf_file/0009/1621197/Part-I-Report-FINAL-redacted-with-ISBN.pdf

Relevant Findings and Recommendations on the Corporate Governance from the Grosvenor Inquiry are below.

Chapter 6 – Corporate governance
Finding 74
If a parent company of an operator company holds obligations under section 39 of the Act, officers of the parent company would have the obligation under section 47A of the Act to exercise due diligence to ensure that the parent company complied with its obligations under section 39. The legislation should be cast in terms that remove any doubt that this is so.

Recommendation 17
RSHQ takes advice as required and, if necessary, takes steps to amend the Act to clearly reflect that a parent company holds obligations under section 39.

Chapter 7 – Industrial Manslaughter
Findings
Finding 81
As the explanatory notes to the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 (Qld) suggest, the intention of Parliament in extending industrial manslaughter provisions to the Act was to strengthen the safety culture in coal mining and to ensure consistency in how deaths of workers on work sites are treated.
Finding 82
If the Board's interpretation of the definition of employer is correct, the amendments to the Act may not reflect Parliament's intention as to who should be liable to prosecution under Part 3A of the Act.
Recommendation
Recommendation 25:
RSHQ takes advice as required, and if necessary, takes steps to amend Part 3A of the Act so that it reflects Parliament's intention with regard to:
a. strengthening the safety culture in coal mining and ensuring consistency in how deaths of workers on work sites are treated; and
b. who should be liable to prosecution.

3) MOURA No 2 Legislation Comments while general in nature

LEGISLATION
Several matters were raised during the hearings with a view to the Inquiry influencing the shaping of proposed new coal mining legislation for Queensland. The Inquiry, because of the limited information presented on the subject, wishes to do no more than make some comments in this regard.

The concept 'duty of care' is sound and should be promulgated by any new legislation. It rightly puts onus on every person in the work environment to take reasonable care to ensure their own safety and health and to not endanger the safety and health of others. However, the concept does not lead naturally to the conclusion that all persons are (or can be) equally responsible for safety, even for their personal safety. Responsibility implies authority and those with highest authority inevitably have the greatest responsibility, both to form rules and to ensure that they are complied with.

The Inquiry rejects the proposal (in one of the submissions to it) that the position of registered mine manager be dispensed with. The Inquiry believes that there has to be one person in overall authority at the mine who has a 'duty of care' to ensure that adequate rules and safeguards are in place and are being complied with. Safety must remain the highest priority at a mine, with all other activities subordinate to it. Conflicts of interest must always be resolved in favour of safety and this requires one person at the mine who has overall authority. Accordingly the position of mine manager, having essentially the same role as it has today, should continue. An underground coal mine needs a manager no less than a ship or an airliner needs a captain.

The requirement to appoint a statutory mine manager should not prevent or frustrate mine owners from making such other appointments as they see fit to deal with production, commercial and other matters, so long that it is clearly understood that such persons are subordinate to the mine manager.

4. ASSET influence in BMA Operations as identified during ICAM Investigation into High Potential *PDM OPERATOR and DOZER INUNDATED WITH WATER on the 9th July 2018*

In this incident a dozer when working in water ended up in water and mud, The operator was trapped in the flooded cab that came up to his chest level before being rescued by his immediate work mate who swam out and eventually smashed the impact resistant cabin glass to rescue him before the cab potentially became completely submerged and the operator drowned

This incident was initially reported as resulting in a finger injury.

The operator never returned to work due to the impact of his near drowning.

The word “Asset” being introduced is particularly concerning due to an Interpretation given by the Chief Inspector about what the “Asset” can and cannot do, when it is not even referred to anywhere in the Current Act.

The Interpretation from the Peter Newman CIOCM of the Asset and what it can and cannot do, was already hugely problematic and in my view totally incorrect, illogical and against the wording and intent of the Current Act.

BMA refers to the Asset almost continually (eg BMA Asset President)

This particular investigation exposes the extent of the problem with other corporate associated entities than the Operator having operational mandates and requirements that are imposed on the Management of the Mine.

In the 44 page Investigation Report provided to the Mines Inspectorate mentions the Asset 10 times when deciding on contributing factors to why the incident occurred. These include

There are a number Official Answers from the On-Site Peak Downs Mine (PDM) Management that list why the pit water was not effectively controlled.
WAN (Work as Normal), WAI (Work as Intended), SWI (Safe Work Instruction)

The most direct are on page 29 of 44

Why- The water was not management effectively throughout the duration of the dig
Why- No controls or triggers to prioritise the removal of water over other mining activities

WAN - It is common practise at PDM for a dozer operator to push coal in water
WAI – PDM SWI Excavator Operator Operations states water shall be managed by installing effective drainage in all benches and in pits and should be prioritised before mining operations commencing

"Why wasn't pit preparation dewatering prioritised before operation in this instance?"

"There is mandate to keep trucks running to meet production targets."
"There is an asset requirement to have this mandate." (page 29 of 44)

The Asset is mentioned another 9 times as follows in order through the document

- *It is understood that the reason for multiple SWI's is that the Asset Level Document BMA ALD Operations Execution mandates this."*
- *"The asset has not communicated an acceptable standard for response and control for operating (eg. mining) in water"*
- *"BHP's Assets and Functions have comprehensive approaches to the undertaking of safe work".*
- *"The asset has not provided clear guidelines for the requirements and accountabilities of water management through BMA coal mine planning or PDM's SHMS*
- *"It is understood that the reason for multiple SWI's (Safe Work Instructions) is that the Asset Level Document: BMA ALD Operations Execution mandates this"*
- *"The asset has not provided clear guidelines for the requirements and accountabilities of water management through BMA coal mine planning or Peak Downs Mine's SHMS".*
- *The Asset Level Document: BMA ALD Operations Execution was last reviewed in 2014. There is an opportunity to review the requirements written into this document and update as required.*
- *There is not clear overarching guidance from the asset on management of water in mining areas.*
- *Ensure all Asset Level Document: BMA (ALD) mandated SWI's are tracked for competence/familiarisation in LMS.*

Key findings
Organisational Factors for Processes and Systems
The asset has not provided clear guidelines for the requirements and accountabilities of water management through BMA coal mine planning or Peak Downs Mine's SHMS

The mining operations team manages water in the Peak Downs mining area when required. The determination of the location and dimensions of the water management trenches are at the discretion of the Supervisor and/or Operators. The requirement for water management is not detailed on the mine plan that is signed off by the mining Supervisor or Superintendent prio r to work commencing. In addition, the sequence of mining is at the operator's discretion and therefore it is possible for machinery to continue mining whilst managing water at the face.
The ICAM team considered that these factors, combined with a specific strategy at the time of the event to optimise the mining of coal*, could have contributed to the dozer operating in water and the event occurring.*

The process of development, monitoring and review of mining SWIS which related to trenching within the SHMS was not adhered to
There were four Safe Work Instructions (SWIs) within the Peak Downs mining processes that provided direction to water management and trenching. ***It is understood that the reason for multiple SWIs is that the Asset Level Document: BMA ALD Operations Execution mandates this****. An SWI for excavator operation had not been reviewed within five years (although the document required a two yearly review) and the team noted Varying differences between the SWIs regarding trench development, operation, communication of trench changes and prioritisation of water management.*
The asset has not communicated an acceptable standard for response and control for operating (eg. mining) in water
The expected standard for conducting mining operations in water is not clear. Machinery operators can operate in water at Peak Downs without applying the risk assessment process and necessary controls as outlined in the PDM Procedure Working in and Around Water, In any case, this procedure is unclear as to when it is appropriate to operate in water, and the necessary response and controls in varying water levels. This has potential to result in inadequate direction and understanding of water management and an acceptance to operate without prioritising the removal or man agement of water.

Recommendations
Processes and systems
OF: The asset has not provided clear guidelines for the requirements and accountabilities of water management through BMA coal mine planning or Peak Downs Mine's SHMS

1. Define and document the process for who is accountable for all water management within mining sequences and how it will be applied. Management of Change is to be undertaken, including communication to all relevant stakeholders, and develop a verification method for ensuring this is embedded.

It is important to note that while findings have been made in respect of contributing organisational factors it does not imply that the operations are unsafe or that BHP's safety systems are ineffective. BHP's Assets and Functions have comprehensive approaches to the undertaking of safe work. However, as this Report indicates, there are areas which require more focus, and the improvement of our systems, processes and culture is a continuous process.

BHP/BMA COAL STRUCTURE

The best as I can determine is that

Mr James Palmer was listed in the Structure as the Asset President at the time of this incident. Mr Mauro Neves has the position now.

Appears that BHP through the Corporate Entity BHP Coal Pty Ltd is the Holder through Mr Palmer/Neves.

According to the BHP/BMA website it appears they are stating that BMA is the Operator through its duly registered corporate entity.

I cannot ascertain who the Operator is. It could be Mr Palmer, or a company or someone he has nominated under Sections including, but not limited to Sections 40 and 41 under the Coal Mining Act 1999.

"BMA owns and operates mines in the Bowen Basin, Queensland, Australia.

Queensland Coal comprises the BHP Mitsubishi Alliance (BMA) and BHP Mitsui Coal (BMC) assets in the Bowen Basin in Central Queensland, Australia" *https://www.bhp.com/media-and-insights/image-gallery/locations-and-operations/bma-australia-basin*

4) <u>Chief Inspectors Current Interpretations of what an "Asset and its Officers can and cannot be held accountable for safety and health on a Queensland Coal Mine" would be withdrawn and a legally correct Interpretation be included in the Legislation and the Explanatory notes</u>

Despite the 10 times the Asset is mentioned in the mandatory safety investigation sent to RSHQ and then twice in the Recommendations, Peter Newman the CIOCM says that there is nothing wrong with the Asset and what instructions it issues.

As I told Mr Newman both in writing and to his face, any person answering a question in this way in the Written and Oral Law Examinations would instantly fail.

I note Mr Newman openly stated he had not sought any Legal Advice before he answered my complaint.

I also note that Mr Newman has never held any Statutory Position in a Queensland Coal Mine under the CMSHA 1999 until his appointment to Chief Inspector.

He was working in NSW for the vast majority of this time and acting under the NSW Coal Mining Legislation

Key Concern 4 – It is claimed that BMA has certain mandates such as "There is mandate to keep trucks running to meet production targets", and "There is an asset requirement to have this mandate", which is believed to be a formal admission that "Production before Safety" mandate exists.

Results/Comments-

- *This is the assertion of the complainant not a formal admission of Production before Safety as they assert. It may reflect the business requirements but is not exclusive of the Health and Safety of Coal Mine Workers.*

Key Concern 5- BMA/BHP has created some sort of Entity outside the Coal Mining Act that by its own admission is issuing Directions to the Peak Downs Mine and therefore the SSE about how the Site Safety and Health Obligations are to be discharged. Such Directions unless issued by a least the Coal Mine Operator are in direct contravention of the Coal Mining Act. Further, there is no mention anywhere of the Asset being the Coal Mine Operator.

Results/Comments-

- *BMA have an appointed Operator under the Coal Mining Act, an appointed SSE as required under the Act and a Management Structure with persons in that structure being appointed to those roles, all having responsibility and accountability to ensure the provisions of the Coal Mining Act and Regulations are implemented for their operations. Only these persons are able to give directions at the site under the requirements of the Coal Mining Act and Regulations.*
- *A business owner or representative, not having an appointed role under the legislation, is not precluded from making other operational and business decisions that may impact the mine, where those decisions do not impact the Health and Safety of CMW's, and/or contravene the obligations of the Coal Mine Operator, SSE or other statutory officials from discharging their duties under the Coal Mining Act and Regulations.*
- *The Coal Mine Operator is an appointed role under the Coal Mining Act. This does not preclude an organisation referring to Assets within their organisation or as some businesses have appointing personnel to roles within their business organisation, having accountability for the business performance of certain Assets. Such terms include Asset President, VP Coal Assets etc.*
- *As discussed with you in November in 2019 and later in January 2020, many organisations refer to their Mine, CHPP, or other production entity as an Asset. It is not uncommon to use this reference in an organisational sense. It is not mentioned in this sense in the Coal Mining Act or Regulation, however, this does not preclude its reference by an organisation. It is those appointed under the Coal Mining Act and Regulations, as previously described, that carry the responsibility and accountability, to give Directions as they relate to Health and Safety matters.*

Yours in Safety
Stuart Vaccaneo