

**COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022**

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*Resourcing Queensland's future*

21 October 2022

Committee Secretary  
Transport and Resources Committee  
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Dear Committee Secretary

Please find attached a submission from Queensland Resources Council (QRC) to the Queensland Parliament's Transport and Resources Committee Inquiry into Coal Mining Industry Safety.

Should you have any queries regarding this submission, please contact:

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Yours sincerely

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**Chief Executive**

# QRC Submission

## Submission to the Transport and Resources Parliamentary Committee on the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

21 October 2022

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## Introduction

The Queensland Resources Council (QRC) welcomes the opportunity to make a submission to the Transport and Resources Parliamentary Committee on the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 (the Amendment Bill).

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. The QRC works on behalf of its members to ensure Queensland's resources are developed profitably and competitively, in a healthy, safe, socially responsible and environmentally sustainable way.

The Queensland resources sector is committed to continuous improvement in all areas of work health and safety and follows a best practice, risk-based approach to managing risks of work-related injury and disease. The resources industry recognises that there is no competitive advantage in safety and acknowledges the importance of continuing to co-operate and share information, research and learnings.

The QRC and its members are appreciative of the Hon Scott Stewart MP, Minister for Resources, in listening to the industry's concerns and revisiting direct employment amendments for statutory position holders that were previously passed by the Queensland Parliament. The challenges to implementing the provisions without change were significant as they had the potential to disrupt mining operations and financial viability as well as the safety and sustainability of the industry. However, the rigidity in the commencement date of 25 November 2022 will create structural and contractual difficulties for the industry. The tight implementation timetable for the Amendment Bill has the potential to create significant disruption in the workplace and these requirements will serve to reinforce serious skill shortages currently faced by the industry. Accordingly, the industry should be given an additional six months before the Amendment Bill commences.

The QRC maintains 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 operators and serve to diminish, rather than improve safety standards. For example, the Amendment Bill places unnecessary restrictions on coverage of planned and unplanned absence (e.g. illness or resignations) in statutory roles where contract statutory position holders can only be used for a maximum of 12 weeks. However, it is well recognised that there is a long lead time to recruit senior statutory position holders in the industry which extends well beyond 12 weeks. This was acknowledged by the Chief Inspector when he advised of the difficulties in recruiting mines Inspectors as part of his evidence to the Grosvenor Board of Inquiry (BOI) (Part 1 page 67):

**3.23 Chief Inspector Newman confirmed there was also a time lag in finding inspectors, with the timeframe for replacement being typically five to six months.<sup>199</sup> There have been five Chief Inspectors in the last ten years and they have faced the same difficulty with resourcing.<sup>200</sup> This is a concerning turnover rate.**

While there continues to be a number of concerns generally with the Amendment Bill, there are three particular issues with the Amendment Bill that the QRC considers require amendment:

Entity to directly employ greater than 80% of the workers on site in order to directly employ their own statutory position holders;

The technical positions of Electrical Engineering Manager and Mechanical Engineering Manager should have employment arrangements consistent with Site Senior Executives, Underground Mine Managers and Ventilation officers; and

The requirement to directly employ statutory position holders should not apply for a Coal Mine Operator whose only coal mining operations for the coal mine are rehabilitation, care and maintenance activities.

#### **1. Entity to employ greater than 80% of workers on site**

The Amendment Bill allows where an entity (contractor) who employs or otherwise engages greater than 80% of workers on site, to employ the statutory office holders in their own right. If the contractor employs or otherwise engages less than 80% of workers on site, the statutory position holders will be employed by the Coal Mine Operator (CMO) or an associated entity.

It is unclear where this requirement came from as it was not discussed in the working group established by the Hon Scott Stewart MP, Minister for Resources, which was established in December 2021 and reported to the Minister at the end of January 2022. The working group which was chaired by the Commissioner for Resources Safety and Health Queensland, was established to consider and provide advice on the implications and operation of the direct employment provisions. Currently, there is not a major contractor in Queensland who is not the CMO, who would employ or otherwise engage greater than 80% of workers on site, so the suggested exception is, in effect, a prohibition. Also, a number of existing mining companies operating in Queensland would not meet this requirement.

While it has been suggested that the increasing use of contractors is leading to a dilution or fragmentation of safety responsibility at mine sites, this is not supported by evidence and is offensive to contractors that they cannot employ their own statutory position holders. The Coal Mine Safety and Health Act 1999 (CMSH Act) ensures a robust framework for managing safety and health issues on mine sites. For example, under the management structure provisions of s.55 of the CMSH Act contract statutory position holders report to the Underground Mine Manager (UMM) in the same way as all employed statutory position holders at the mine site. Safety at mines is the primary responsibility of the Site Senior Executive and this is ensured through a Site Safety and Health Management System.

The reality is that contractors have been a significant player in Queensland's mining industry for many years. For example, Thiess, a large contractor in Queensland mining industry, played a central role in the mining start-up in the Bowen Basin. The 80% threshold also has the potential to impact investment in Queensland. Private equity investors may shy away from investment where they are required to hand over control by engaging a CMO to operate the mine rather than engaging contractors.

A range of situations currently exist around contractual arrangements including contractors who:

- Are the CMO and provide a range of services and employ statutory position holders either directly or under contract;
- Are not the CMO but provide a range of services and employ statutory position holders either directly or under contract; and
- Specialise in particular activities such as longwall moves or development work, and directly employ their own statutory position holders to supervise the crew.

The Amendment Bill ignores the fact that major contractors are an integral part of Queensland's coal mining industry and provide a wide range of services to mine sites and operate safely. This provision has the potential to diminish safety as specialist contractors such as those involved in shotcreting or longwall moves will be unable to provide statutory positions for full-service contracts, for operations where they do not employ or otherwise engage greater than 80% of workers on site. These specialist contractors will now be subject to direction/supervision of statutory position holders employed by the CMO or an associated entity who is unlikely to have the specialist knowledge or understanding of the risks and exposures related to the specialised work activity.

Set out below are some examples where resource companies have or will use specialised contractors where it is in the best interest of safety that these contractors are able to engage their own statutory position holders. These examples also demonstrate the complexity that will be introduced to the work environment if the proposed requirement for an entity to employ greater than 80% of the workers on site in order to employ their own statutory position holders is implemented:

- **Longwall moves:** This work will normally require additional labour and supervision to complete over a period of 4-12 weeks. Additional supervisors may be required due to the complexity and number of working areas for this fixed term;
- **Roof bolting:** This can vary in intensity, but programs can run for extended periods with contracts issued on fixed or variable rates. Cases where the work is being carried out in close proximity to the mines working faces will normally be under the supervision of permanent statutory ERZ controllers. Where the work is not in the near vicinity of the working areas and requires additional supervision, a dedicated contractor with their own statutory position holders will be engaged for the work;
- **Gate Road Development:** Operational needs may arise where supplementary gate road development capacity is necessary for a short period, for example, the establishment of a tailgate gate road in a new mining area of an existing mine. An existing mine operates three fully employed gate road development teams but to purchase equipment and employ persons for a 4th unit for a short period is cost prohibitive. The body of work is fully contracted out to a specialist contractor. The best outcome on a performance, leadership, safety and cost basis is that the statutory supervision is provided by the contractor. The contract ERZ Controller would report to the UMM as per all employed ERZ Controller under the Management Structure provisions of s.55 of the CSMH Act and hold the same obligations.
- **Supplemental Bord and Pillar Mining:** At an existing mine operation, conditions may create the scenario where additional tonnage is to be mined by Bord and Pillar methods for a short-term period. A specialist contractor is engaged for the task as they possess the specialised equipment, personnel, and experience to conduct the mining service, when the mining company does not. The best outcome from a performance, leadership, safety and cost basis is that the statutory position holders are provided by the contractor. The contract ERZ Controller would report to the UMM in the same way as all other ERZ Controller employed at the mine site under s.55 of the CSMH Act and hold the same obligations.
- **Underground Mine Construction:** A company is expanding and constructing a new Underground Mine. The company takes on the role of the CMO as it intends to operate the mine long-term under an owner/operator/employer model. The construction site has many work fronts to get the mine operational. This will include surface civil construction, services construction, buildings, mechanical/electrical/fluid infrastructure, and underground mine entries. The underground mine entry drifts will be contracted out as standalone contract. This will be for specialised drift drivage using face cut and bolt practices, or similar. The drift drivage contractor will provide the drift ERZ Controller statutory positions;
- **Opencut Operations:** A private equity company has a small opencut operation that swings between care and maintenance and producing coal based on the external business factors. The open cut is additional tonnage to the company operated underground mines. As the open cut is

a short-term operation only, it will be contracted out to a specialist open cut mining company. The private equity company is appointed as CMO but will have the contract company appoint all other statutory position holders for the opencut mining operations. This may include the SSE, EEM and OCE roles; and

- **Underground VCD Services:** A specialist task at most underground mines is the installation of Ventilation Control Devices (VCD). This includes the sealing of mining panels after the completion of extraction operations. Construction of panel seals is an activity that is undertaken in a limited period of time, with lengthy periods between each panel sealing where the service is not required. It is common to dedicate an ERZ Controller to sealing operations to ensure the risks are managed appropriately for that limited period of time.

The QRC is not aware of any other similar occupational health and safety laws in Australia that purport to regulate and restrict the identity of the employer in the same way. This requirement, in imposing an employment obligation, does not deal with a health and safety matter or provide a way of monitoring the effectiveness and administration of provisions relating to safety and health.

This requirement will lead to a reduction in safety by creating avoidable safety risks. A contractor who is not the CMO and employs less than 80% of workers on site will no longer be able to directly employ their own statutory position holders for the contracted work, while a CMO who employs just 20% of workers on site will be able to do so. Contractors, including specialist contractors, will be supervised by the CMO's statutory position holders, which has the potential to create competing priorities and work cultures, reduce expertise in these areas of complex work, create confusion and create avoidable safety risks. The importance of workplace culture was a key issue of the Brady Inquiry and especially High Reliability Organisation (HRO) theory.

In summary, in the case of contractors who are not the CMO, the Amendment Bill will require specialist contracting companies to operate under the direction/supervision of statutory position holders employed by the client. The QRC and member companies are concerned that rather than strengthening the health and safety culture, these requirements will create a disconnect between the statutory position holders and the shift crew which has the potential to have a significant adverse effect on safety. RSHQ safety data does not demonstrate poorer safety performance over time for contractors compared with resources companies in Queensland which indicates that these significant restrictions on the way contractors are able to employ statutory position holders, are unwarranted.

The requirements should be amended to allow contracting entities to have their own statutory position holders where they directly employ them. This position is consistent with the government's policy intent for the direct employment of these key safety position holders and treats these significant contractors in a consistent manner with coal mining companies.

## **2. The technical positions of Electrical Engineering Manager and Mechanical Engineering Manager should have employment arrangements consistent with Site Senior Executives, Underground Mine Managers and Ventilation Officers.**

In the Explanatory Notes to the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 (pages 1 & 2), it states "The exceptions to direct employment requirements included in the Bill are needed to ensure coal mining industry companies have practical ways of implementing the direct employment requirements that do not unreasonably disrupt their current corporate structures and employment arrangements". The QRC is of the view that without further amendments the Amendment Bill's stated objectives will not be achieved.

The Electrical Engineering Manager (EEM) and Mechanical Engineering Manager (MEM) appointments are single technical position appointments with single point obligations and accountabilities. The EEM and MEM positions sit within the legislated requirements of the Management Structure in s.55 of the CMSH Act and Recognised Standards 22, in a similar way to the

appointed statutory positions of Site Senior Executive (SSE), Underground Mine Manager (UMM) and Ventilation Officer (VO). Under the CSMH Act, the appointment of EEMs and MEMs must also be formally notified to RSHQ in a similar way to the notification of appointments to the statutory roles of SSE, UMM and VO processes. As a consequence, the accountability of EEM and MEM is aligned with SSE, UMM and VO roles rather than with ERZ Controllers or OCE roles. This is primarily because there are shared accountabilities in mines held by ERZ Controllers and OCE's on multiple shifts and in multiple areas.

In the Amendment Bill, EEMs and MEMs are grouped with ERZ Controllers and OCEs, as under the Amendment Bill they must be appointed by the coal mine operator or an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine. The EEM and MEM are critical senior roles in the management structure of a coal mine and are currently a skill in demand across the resources sector. Some companies have current employment arrangements for EEM and MEM roles that are similar to SSE, UMM and VO roles. For example, an EEM is directly employed by a company's head office and works across two of the company's coal mines on a part-time basis.

Under the Amendment Bill each mine would need to directly employ the EEM on a part-time basis, as Clause 8 does not allow for the EEM and MEM roles to be engaged by an associated entity of the coal mine operator. This could result in a range of situations where companies could be burdened with accounting/taxation issues where the EEM spends more time at one mine than the allocated hours to address operational need. A further example relates to a situation where an EEM is directly employed at an underground coal mine, but the company also 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.

In summary, without amendment to Clauses 8, 9, and 13 in the Amendment Bill to allow the EEM and MEM roles to be directly employed by the coal mine operator for the mine or an associated entity of the coal mine operator, there is likely to be unreasonable disruption to company corporate structures, employment arrangements. Given the accountabilities are similar to the SSE, UMM and VO roles, the QRC considers that this was an oversight in drafting and recommends that Clauses 8, 9, and 13 be amended to allow the EEM and MEM roles to be directly employed by the coal mine operator for the mine or an associated entity of the coal mine operator.

The requirement to directly employ statutory position holders should not apply for a Coal Mine Operator whose only coal mining operations for the coal mine are rehabilitation, care and maintenance activities.

Companies in Queensland have a number of closed mines where rehabilitation 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. It may be difficult to directly engage statutory position holders to take on these roles. For example, a contractor is engaged to undertake rehabilitation at part of the mine that is closed and in care and maintenance. The part of the mine in care and maintenance is located a substantial distance from the current operations, but still on the mining lease. In this instance the contractor is engaged to manage all aspects of the part of the mine in care and maintenance including the provision of some statutory position holders.

Mines in care and maintenance should be excluded from the proposed amendments 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 situations.



In conclusion, the QRC respectfully submits that the Transport and Resources Committee recommends the following amendments to the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022:

- The tight implementation timetable for the Amendment Bill warrants a six-month lead in time. The Amendment Bill has the potential to continue to create significant disruption in the workplace and these requirements will serve to reinforce serious skill shortages currently faced by the industry.
- To better ensure the safe supervision of the work undertaken by specialist contractors, the requirement for an entity to directly employ greater than 80% of the workers on a mine site in order to directly employ their own statutory position holders should be omitted from the Amendment Bill. The requirement should be replaced with a new provision allowing contracting entities to have their own statutory position holders where they directly employ them;
- The technical positions of Electrical Engineering Manager and Mechanical Engineering Manager should be able to be directly employed by the coal mine operator for the mine or an associated entity of the coal mine operator, in order to minimise unreasonable disruption to company corporate structures work activity; and
- Coal Mine Operators whose only coal mining operations for a closed mine are rehabilitation, care and maintenance activities should be treated in the same way as Explorers. Coal Mine Operators should be exempt from the requirement to directly employ their statutory position holders given the infrequent nature of the work.