

COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022

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Committee Secretary
Transport and Resources Committee
Inquiry into Coal Mining Industry Safety
Parliament House
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**IDEMITSU AUSTRALIA SUBMISSION: INQUIRY INTO THE COAL MINING SAFETY AND
HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022**

Dear Secretary

Thank you for the opportunity to make a submission to the Committee on behalf of Idemitsu Australia.

In our view the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 ('the Bill') in its current form will significantly increase the level of difficulty associated with engaging well-trained, experienced and qualified persons to undertake statutorily mandated roles in Queensland coal mines.

Changes of this kind, which have been developed without intensive and detailed industry consultation, will create risks. To avoid these risks continuing to arise, Idemitsu Australia stands ready to participate in tripartite (employee representative, government and industry) consultation aimed at continuing improvement of coal mine safety. We are concerned that the Bill is the result of an insufficiently broad process of consultation not representative of industry, which represents a negotiated industrial outcome rather than a package of genuinely safety focused improvements.


We are however concerned that amendments contained in the Bill will lead to unintended consequences, including measures that will increase the risk of fatality and serious incidents in Queensland coal mines by making it so much harder to engage well-trained, experienced and qualified persons to undertake statutory roles.

Further, Part 2 of the Bill which imposes employment restrictions for statutory roles, is scheduled to commence on 25 November 2022. This provides very limited time for the coal mining industry to adjust systems and processes to ensure compliance with the new requirements.

Please note that Idemitsu Australia supports the submission of the Queensland Resources Council to the inquiry.

We look forward to the Committee's deliberations and we would be pleased to provide any further information or assistance to the Committee as required.

Best regards


Steve Kovac
CEO
Idemitsu Australia



Idemitsu Australia Pty Ltd submission

TRANSPORT AND RESOURCES COMMITTEE INQUIRY INTO THE COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022

ABOUT IDEMITSU AUSTRALIA

Idemitsu Australia has been in Australia for 40 years and Queensland for 30 years.

We are a proud Queensland producer and exporter of energy resources to customers in Japan and elsewhere.

As a company we are conscious to ensure we create opportunities and a legacy for the communities where we operate.

In all our operations worldwide, we practice the simple philosophy established by our founder, Sazo Idemitsu, of 'respect for human beings'. This is underpinned by the core values of our Australian business:

We put people first – We look after each other as a close-knit team seeing work as a growth opportunity.

We do what we say we'll do - We are committed to operating with integrity and staying true to our word.

We are always improving - We never stop learning and are always challenging ourselves to do our best.

OUR BUSINESS AND OUR FUTURE IN AUSTRALIA

Our corporate headquarters is based in Brisbane.

Idemitsu Australia operates the Boggabri and Muswellbrook coal mines in New South Wales, and the Ensham Mine in Central Queensland. Across our operations we employ approximately 1,600 direct employees and contractors.

In February this year Ensham Mine achieved 663 hectares of Progressive Rehabilitation Certification.

We also operate the Nogoa Pastoral Company in Queensland, primarily farming cattle, with some dry land farming initiatives, in a Joint Venture with a Queensland farming family.

In line with the heritage of our parent company Idemitsu Kosan, as one of the best-known fuel retailers in Japan, in 2012 Idemitsu acquired Freedom Fuels, now one of the leading independent fuel importers and wholesalers in South East Queensland, distributing quality liquid fuels through bulk terminal and retail operations along the East Coast of Australia.

In line with the ongoing global energy transition, Idemitsu Australia is well progressed towards the delivery of green energy into the Australian grid, and the production of green hydrogen and ammonia in both New South Wales and Queensland for local use and for export. At Muswellbrook in a joint venture with AGL, Idemitsu Australia is developing a large-scale Pumped Hydro Energy Storage. Idemitsu has also partnered with the Port of Newcastle and Macquarie Group's Green Investment Group to study the feasibility of export and bunkering of green hydrogen and ammonia at the Port of Newcastle.

Finally, Idemitsu Australia is undertaking investment in the development of Australia's critical minerals resources, with a first investment into Critical Minerals Group which is developing the Lindfield Vanadium and High Purity Alumina project near Julia Creek.

Idemitsu is a company delivering for today and investing in tomorrow, for a sustainable future.



INTRODUCTION

Idemitsu Australia wishes to share with the Committee our particular concerns with respect to proposals set out in the Bill which in our view will increase the risk of fatality and serious incidents in Queensland Coal Mines.

Concerns include:

- A proposed 12-week limit on the employment of contracted persons in certain statutory roles, including in cases of illness or unscheduled departure;
- Inadequate genuine consultation and partnership between employee representatives, the government and industry in relation to proposed amendments; and
- An inadequate period for implementation with commencement of employment restriction provisions from 25 November.

Our submission to the Committee's recent Inquiry into Coal Mining Industry Safety in Queensland provided extensive feedback in relation to the work of the Board of Inquiry (BoI) in consideration of the impact of contracted labour on safety outcomes. In particular we noted that the BoI recognised a lack of research and evidence on this topic in Queensland. Further the BoI Report does not appear to reflect on the impact of contracted arrangements to fill statutory roles specifically, as opposed to circumstances where those positions are employed directly. We would encourage research on this topic, jointly commissioned on a tripartite basis, between employee representatives, the government and resources sector companies.

As also set out in our recent submission to the Committee, in drawing on the analysis of the Brady Review around the continued incidence of fatalities in the sector during its review period, Idemitsu Australia is of the view that it is of critical importance to implement measures which will embed safety practices in the culture of mining organisations. This is a more effective and preferable approach to the imposition of arbitrary and potentially unsustainable limits on the use of contracted labour for statutory roles.

Our views on these matters are squarely founded on the protection and safety of our people.

For the avoidance of doubt, Idemitsu Australia supports the following statement as set out in the Brady Review, which notes the great improvements in Queensland mine safety since the introduction of then new mine safety legislation in 1999.

However, while the 1999 legislation has made significant progress, it has been insufficient to reduce fatalities to zero in the long term. What is now required is a new approach to reduce the number of fatalities further.¹

Idemitsu Australia stands ready to work with employee representatives and government to develop a new approach for the continued improvement of safety in Queensland coal mines.

¹ Brady Review, page 21



SPECIFIC ISSUES REGARDING LEGISLATIVE CHANGES

Employment restrictions for statutory position holders

The Bill proposes to restrict the employment of Site Senior Executives (SSEs), UMMs, VOs, OCEs, ERZCs, Mechanical Engineering Managers (MEMs) and Electrical Engineering Managers (EEMs). In the case of SSEs, UMMs and VOs, they are only permitted to be employed by the coal mine operator, an associated entity or an entity that employs or otherwise engages 80% or more of the coal mine workers at the coal mine (or a separate part of it).

In the case of OCEs, ERZCs, MEMs and EEMs the same restrictions on employment arise, minus the ability of persons in these statutory positions to be employed by an "associated entity". There does not appear to be any safety and health basis for this additional restriction to be placed on these statutory position holders.

A minor concession is made, which permits the engagement of persons outside of these employment arrangements for up to 12 weeks in circumstances where the relevant statutory position holder has either vacated their position or is temporarily absent from duty.

Idemitsu Australia is very concerned about the practical implications of these amendments. The recruitment in particular of SSEs, UMMs and VOs within the industry is extraordinarily challenging. There are simply not enough people in the industry who are qualified, capable, willing and able to fill these positions.

It is even more difficult for smaller operators, such as Idemitsu Australia, who do not have a ready-made pool of employed statutory position holders in place across multiple mines, ready to step-in and fill these positions where a position is temporarily vacant or once an office has been vacated.

It has been our experience that recruitment processes (inclusive of notice periods) for a new permanent SSE or UMM can take at least six to nine months. The 12-week concession as proposed is wholly insufficient in these circumstances, resulting in the operation being put on care and maintenance during the gap period of employment, with impacts on continuity of employment.

We note that in Part 1 of the Queensland Coal Mining Board of Inquiry report at page 67, the Coal Mining "Chief Inspector Newman noted that there was also a time lag in finding inspectors with the timeframe for replacement typically five to six months." There may be an argument that this is in part due to lower wages available to public sector employees within the inspectorate. It should however also be noted that employees quite regularly seek to move to a public sector role utilising their certifications, with a view to seeking a work environment that some perceive to involve lower levels of responsibility and overall stress. Further, as demonstrated by our own experience of long delays in appointing persons to statutory roles, extremely limited availability of well-trained, experienced and highly qualified personnel simply cannot be overcome by higher pay. Overall, in line with Mr Newman's testimony and with Idemitsu Australia's experience, there are very long delays in appointing appropriately trained, experienced and qualified persons to these roles.

Further, the SSE or UMM roles at a coal mine are safety critical roles. Such appointments must be taken seriously and should not be rushed. The effect of the Amendment Bill will be to apply time pressure on coal mine operators to appoint an SSE, UMM or VO, and in extraordinarily tight labour market conditions this will not result in the best candidate being selected because of the unrealistic time frames the Bill imposes, leading to poorer health and safety outcomes.

Idemitsu Australia is strongly of the view that a 12-week limit on the use of sub-contractors to fill statutory roles on mine sites will have a detrimental impact on mine safety and outcomes and create an unnecessary burden and risk with respect to continuity of mining operations.



We also note that the Bill provides for an amendment to the CSMH Act to enable direct employment of the SSE, UMM and VO statutory position holders by associated companies/joint ventures. According to the Explanatory Notes, "*This provides coal mine operators with greater flexibility to engage SSEs, UMMs or VOs from a broader pool of employees across its different operations and joint venture companies, without the need to restructure individual employment arrangements each time. It also facilitates access to a potentially larger pool of eligible appointees across a coal mine operator's different operations and joint venture companies.*"

This reasoning places into stark contrast the very distinct problem that these amendments create for small or single mine operators like Idemitsu Australia, because we simply do not have a "broader pool of employees across different operations and joint venture companies" within Queensland.

While these amendments will clearly be welcomed by multi-site operators, they simply highlight the distinct additional disadvantage to be experienced by single site operators as a result of the Bill.

We also have fundamental questions about the underlying data and evidence being used to justify these employment restrictions on grounds that they will improve safety. It is unclear to us that it has been proven that, where statutory roles are filled through contracted or labour-hire arrangements, that this has a negative impact on safety in the workplace. Our view of the data is that in respect of statutory roles, the level of training and experience, of the position holder and also of their supervisor, will have a much greater impact on safety outcomes than what manner of contract was used to engage their professional services.

For reasons set out in this submission, placing restrictions on the employment of well-trained, experienced and qualified persons to undertake statutorily mandated roles is in our view, at odds with an intent to improve safety outcomes at Queensland coal mines. The proposed amendments unnecessarily constrain the labour market for these experienced and well-trained individuals.

BROADER WORKFORCE ISSUES

In order for a Queensland coal mine to operate in a compliant manner there must be on-site an SSE and in the case of an underground, an Underground Mine Manager and an ERZ Controller in each designated ERZ working area.

As most in the industry are aware, there is already a very limited supply of well-trained, experienced and appropriately qualified persons available to take on these roles. For example, despite higher levels of pay, increased responsibility for statutory roles make these positions unattractive to many mine workers. They are concerned at the level of personal responsibility and liability that they will bear. They fear being prosecuted and the risk this entails to them and their livelihood. Potentially even to their freedom.

It is also the case that the ranks of more highly credentialed statutory roles have a high and increasing age profile. With natural attrition from these roles through retirement, or those making career changes, it is highly likely that workforce shortages will further increase.

In these circumstances it is rational for management to contract-out the sourcing and appointment of these persons through subcontract arrangements, including labour hire.

How the amendments actually reduce safety for Queensland mine workers

We are greatly concerned that the proposed amendments will actively detract from coal mine worker safety.

In our view, the safest workforce for a coal mine will be drawn from an experienced and well-trained industry workforce which is of a sufficient size and availability to adequately fill all roles available. This must include a sufficient supply of workers who are able to take on roles which have become available



due to illness or an unscheduled departure. This pool of available workers ought to either come from the general population of skilled mine workers, or from engagement via subcontracted arrangements, including labour hire companies.

In its current form the Bill makes the latter pool available for only a short 12-week period for most coal mine operators. This means that a statutory role must be filled within 12-weeks by engaging a credentialed worker who is either unemployed or who is able to be attracted from another coal mine operator.

The fundamental issue here is a lack of available well-trained, experienced and appropriately qualified persons to take on statutory roles in an unscheduled way. The pool of unemployed workers credentialed for statutory roles, is extremely small; while attracting credentialed persons from one coal mine operator to another is simply a negative sum game for the coal mining sector.

We provide several potential 'solutions' a coal mine operator might utilise, where it is not possible to fill a statutory role within the 12-week period. We consider these are illustrative of how the 12-week time limit, if implemented, will be a very bad outcome for workers and will actually reduce coal mine safety:

1. *Closure until the role is filled* - This is a highly undesirable result of the 12-week limit on engagement of subcontract/labour hire personnel to fill statutory roles.
2. *Elevate a newly credentialed individual into the role* – A 12-week employment restriction on subcontract/labour hire employment under the Bill, may result in an undesirable situation where a person is elevated into a role in haste, with a less than desirable period of training, transition and supervision. The WA Fatality Review noted the importance of well-experienced supervisors (see below).
3. *Identify individuals in the organisation who are credentialed but who no longer work or no longer wish to work in a statutory role* - This scenario draws on the issue that statutory roles have become increasingly unattractive for many mine workers, relative to less well remunerated roles, but which do not require high levels of responsibility and involve lower levels of pressure and stress. In the event that an organisation is unable to otherwise find a credentialed person to take on a statutory role, they might ask a credentialed person to step into a statutory role for a period of time, in order to remain compliant with legislative requirements.
4. *Ask persons within the organisation to take on multiple roles* - Where an unscheduled vacancy has arisen, it may be necessary for the organisation to optimise or maximise the rostering of individuals who have certification for statutory roles, while remaining within required occupational health and safety requirements.

This is in no way intended to be an exhaustive list, but indicates a number of undesirable 'solutions' for engaging persons appropriately credentialed to undertake statutory roles in Queensland coal mines. Each of these scenarios clearly illustrate that the requirement to directly employ a statutory role within a 12-week period, which will often simply be impossible, may see coal mine operators in a position to either close down mining operations or resort to solutions which are compliant, but which are patently less desirable than using the services of an appropriately credentialed person supplied by a subcontract/labour hire company.

Safety regulation should actually be focused on maximising the number of well-trained, experienced and qualified individuals. The Brady Review noted Western Australian statistics which indicated a higher incidence of fatalities where a worker is under the supervision of someone in the first year of their role.²

² Brady Review page 30



"The WA Fatality Review also highlighted major deficiencies in supervision. From analysis of the 52 fatalities which occurred during this time period, it was found that '44 per cent of fatal accidents occur under the supervision of a person in their first year in the role, with 6 per cent in the first month'. The WA Fatality Review further found that almost 'a quarter of fatalities involved a supervisor in their second and third year in the role' and overall '68 per cent of fatalities occurred during the supervisor's first three years in the role'.

The WA Fatality Review recommended in its Areas for Improvement that the 'training of supervisors is regarded as a key issue in accident prevention'.

These paragraphs provide insight into the importance of well-trained and experienced supervisors holding statutory roles in coal mines. A fundamental concern with respect to legislation placing strict limits on the use of contracted persons in statutory roles is that this will significantly limit the number of well trained and experienced persons available to fill these roles, particularly in the case of an unscheduled departure or absence.

In our view, the primary and most critical issue from the perspective of mine safety is to be able to identify and engage well-trained, experience, and qualified personnel, howsoever they might be engaged into employment. Whether the person is directly employed by the coal mine operator, or whether they are engaged under a sub-contracted relationship, should not be the primary consideration when establishing the framework required for the safest possible work environment.

The requirement to directly employ statutory roles will create a tighter labour market for well trained, experience and qualified workers. In the event a coal mine operator is faced with the prospect of mine closure or standing down teams, there will be an increased likelihood that less well-trained and less experience individuals will be appointed to statutory roles, provided they are appropriately credentialed to hold a statutory role, enabling the mine to be compliant.

We are concerned that in circumstances where contracted statutory roles are no longer permitted to be appointed by the coal mine operator – for example where a contracted person has been in that role for 12-weeks; and where there is an extremely tight labour market for experienced, well-trained and appropriately qualified statutory roles, as is currently the case - then we believe there is a strong chance that implementation of the legislation will actually increase risks associated with lack of training and experience.

It is our view that government policy ought to be maximising the ability of coal mine operators to engage suitably trained, experienced and qualified persons to statutory roles, in the best interests of coal mine safety. In turn, a sufficiently large, available workforce of persons who will be able to fill these roles, will benefit safety outcomes.

Unfortunately, the legislation maximises the barriers around engaging persons into statutory roles, potentially resulting in companies closing mines or production or contemplating solutions to overcome those barriers, which are likely to be less optimal in terms of safety.

CULTURE AND LEADERSHIP

Idemitsu Australia is focused on the fundamental issues around mine safety and measures to continually improve safety for our workers.

While each company and workforce is different, it must always be a core responsibility of leaders to set a company culture which places safety at the forefront of all considerations.

In Idemitsu Australia's view, while Queensland's mine safety regime has provided much improved outcomes since its implementation in 1999, it suffers a number of shortcomings.



The Brady Review identifies a number of these including a high reliance on administrative control responses to incidents. These controls, the Review argues, are the least effective form of intervention.

The Review also notes the tendency to a "drift into failure."³ An implication of this is that "Despite the best of intentions, complex systems can 'gravitate back to a certain level of risk acceptance, even after interventions make it safer.' If applied to the mining industry, this suggests the industry will gravitate towards higher levels of risk acceptance over time, even after intervention by, for example, the Regulator, shareholders or public opinion."⁴

If it is accepted that Brady's "drift into failure" hypothesis is correct, then the roles of culture and leadership should be, more than ever, placed at the centre of efforts to improve mine safety and to reduce fatalities to zero.

Culture however can neither be legislated nor can it be instructed. It is however the only force within any organisation which is adaptable, responsive, and agile enough to overcome any acceptance of a certain level of risk, if such an acceptance can indeed be made out on the facts.

It is critical that every Queensland coal mine maintains a vigilance towards safety and is responsive to the "combination of banal, commonplace, everyday factors, that combined in such a way to cause a fatality."⁵

Much work has been done across many different organisations and circumstances to consider the role of culture in organisations, including frameworks which can be implemented to maximise specific desirable outcomes.

CONSULTATION WITH THE SECTOR

Idemitsu Australia considers that it is the right time for employee representatives, government and industry to come together to work to develop and implement reforms for improved safety outcomes.

Government processes have in recent times provided limited opportunity for genuine tripartite consideration of potential reforms. This has been coupled with an approach favouring legislative intervention, which will introduce new complexities and will have a negative impact on mine safety.

We would suggest more genuine and ongoing efforts to improve safety – not through the blunt instrument of legislative intervention and direction - but by ensuring that safety culture is embedded in operational practice on a day-to-day basis, including through organisational frameworks like High Reliability Organisation.

.../ENDS.

³ Brady Review p 59.

⁴ Brady Review p 63.

⁵ Brady Review p 70.