COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL 2022

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Transport and Resources Committee

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Dear Committee

The Mining and Energy Union Queensland District (MEU) is the largest union in the coal mining sector in Queensland and is the principal union with coverage of workers performing all roles within the sector. The Union has represented coal mine workers since 1908 on all matters related to employment, with a particular focus on health and safety matters in the coal sector.

The MEU is the union which covers and has most members undertaking the roles of ERZC & OCE within the Queensland coal mining industry. There are several MEU officer holders who hold as a minimum a 3rd class certificate of competency and other relevant statutory compentices recognized by the coal mining sector. The MEU also was a part of the stakeholder consultation group set up with QRC, RSHQ to consider these legislative amendments.

The MEU welcomes the opportunity to contribute to the Committee's Bill to provide for some exceptions to direct employment requirements under the Coal Mining Safety and Health Act 1999 (the CMSH Act) for coal mining statutory positions into coal mining industry safety. The MEU is eager to contribute our extensive knowledge of safety issues in the industry in any way possible.

The MEU notes that the original intent of the legislative change was to ensure that Statutory officials were to be directly employed by the mine operator. The basis of this legislative change was to ensure that the statutory officials role was focused on safety and not other matters, such as production. This intent was one supported by the industry.

However, the latest draft Bill only seeks to undermine the original intent of legislative change and places coal mine workers at risk.

The following submission will address the specific concerns that the Union has with the proposed Act changes and will also provide further detail and evidence to why the MEU doesn't believe the Bill will improve health and safety outcomes in its current format.

Mining & Energy Union Submission:

The MEU believes it's essential to provide some context and overview of the position we take on this matter. The MEU was and remains a staunch advocate of proposed legislation change in this area and believes that the core role of a statutory official particularly in the roles of OCE's & ERZC's had changed to the point it was more focused on production and financial matters not the "Safety & Health" of Coal Mine Workers.

In particular, the Union has long highlighted the concerns about the trend of mine operators employing statutory officials on precarious and often lucrative independent or third-party contract arrangements. This practice places statutory officials in an ongoing dilemma of having to consider the effect of performing their core function of safety and health vs detriment to their business through decreased the productivity operations at the coal mine.

In the Union's lived experience, the arrangement of indirectly employed Deputies in underground mines was being prioritised in production areas over permanent Deputies employed directly by the mine. It was the MEU's view that persons in statutory positions that are employed directly by the mine operator have the best platform to adequately perform their core role as an official for safety and health as they would be free from the opposing forces of business considerations that affect an individual contractor or third-party employer. The legislative change that stamped out this practice was widely welcomed by the Union and its members. The MEU acknowledges that the change to direct hire did create some logistical issues required refinement and change. Through the *Tripartite Statutory Positions Working Group*, the Union and other key stakeholders worked through these issues and this working group made several key findings in order to resolve these issues.

However, the new proposed changes have seen significant alterations that move away from original intent of the legislative change and do not meet the findings and agreed positions of the working group, as outlined in their final report. In particular, the MEU raises the following concerns about the operation of the proposed legislation:

Allow the site senior executive (SSE), underground mine manager (UMM) and ventilation officer (VO) statutory positions to be employed by an associated entity.

The MEU does not support this proposed change contained within the draft Bill. The MEU has provided its position on the possible manipulation and abuse of this type of clause. The wording in the proposed Bill would allow for a multi site employer to create an associated entity which directly employs safety and health staff that could then be used at all their operations where required. Such a practice would undermine the intent of the proposed legislation and allow employers to build in KPI's which are production and industrial in nature and not based on safety at the mine.

Such a practice would circumvent the basis for the legislation and would in fact reduce the OHS outcomes. Employers could also use "associated entities" to reduce or evade liability in the event of an incident. There are no obstacles or restrictions to the employer creating an entity of this type there is nothing which acts as a deterrent if it were permitted. The MEU recommends that only the coal mine operator, and not any associated entity, be permitted to hire all statutory officials.

Provide that the direct employment requirements do not apply in circumstances where there is a temporary absence or vacancy in the relevant statutory role of not more than 12 weeks cumulative duration (i.e., a temporary absence or vacancy cannot comprise multiple 12-week periods).

The MEU does not support the use of exemptions for this purpose. The CMSHA 1999 does not allow for exemptions, and the proposed amendments will water down the provisions of the Act. Creating a mechanism for "exemptions" under the Act, requires an unnecessary degree of regulatory oversight to ensure that the use is being used in a permissible way.

A better way to manage such matters would be for the coal mine operator to employ a person in a role as a fixed term arrangement for the period. The fixed term arrangement ensures that the intent of the original legislation is maintained, and any shortfall of statutory officials is managed.

Both the MEU and the RSHQ agreed in the final report that companies, especially larger multi-mine operations, have built-in contingency for absences such as annual leave and personal leave. Particularly for OCE's and Deputies where the site requires a number of these positions to operate. combining the existing provision with fixed term contracts allows for coverage of absences of statutory positions where there are a limited number of qualified persons on site, as well as long-term absences due to illness, injury, or long service leave.

The proposed legislation discourages coal mines to provide continual training of CMW's in statutory positions such as OCE's and ERZCs, but rather plays to their short-term focus of having the ability to turn on and off statutory positions on an as needed basis. This narrow-minded view is detrimental to safety of the mine and industry. Ideally, as some are already doing, mines should have a training scheme that provides a continual pipeline of statutory officials with any excess performing other roles until required.

If we consider ERZCs ("Deputies"), there are currently 1,314 QLD qualified ERZCs for around 13 underground mines that are in various size, stages of mine life and coal production. The largest 6 mines require around 40 Deputies to operate, other smaller mines can require much less. It is estimated there are probably 4 – 5 times the number qualified Deputies than required for the industry to operate. Excess Deputies are either engaged as surplus Deputies to cover absences, in other positions on mine sites, or not currently engaged in the industry. Planned annual leave or short term sick leave should easily be catered for within the mine employment structure.

Long term absences due to illness/injury/LSL is relatively rare. It is easily envisaged that there would be minimal requirement to engage external Deputies to cover any absence and, to the extent that the odd occasion arises where one may be required, there is nothing preventing external Deputies being engaged on existing enterprise agreements on temporary fixed term arrangements.

*Current number of QLD Statutory Ticket Holders (source BOE October 2022)

	>30	30-39	40-49	50-59	60-69	70-79	Total
1CC	0	4	19	33	95	65	216
2CC	1	11	38	74	90	41	255
DEP	11	112	253	350	347	241	1,314
OCE	0	52	151	206	270	242	921
1MM	0	25	40-49	92	152	118	436
SSE	0	99	273	256	128	37	793

It is a false argument to state that a statutory ticket holder, whether permanent or contractor, will perform to the same level of safety standard. If this is true, it needs to be asked:

- Why are all Deputies/OCE's not paid the same, especially within contract arrangements?
- Why has there been an evolution to have contract statutory officials over represented at mines, particularly for underground in higher risk production areas?

- Why are contract statutory officials in production areas often paid excessively when compared to other contract or even permanent statutory officials?
- The above points are true even during recent industry downturns, where there were excess Deputies/OCE's available in the industry.

When considering the above, it is easy to understand that individual contract arrangements for Deputies/OCE's provide a system that prevents them from focusing on safety. They also have to consider how any safety decision may impact production, and ultimately their income. Reprisal action for statutory ticket holders who place safety over production is a common complaint that MEU members make when asked about their role. Permanent statutory ticket holders who place safety over production are often moved to other roles or non-production areas of the mine. Contractors can be easily removed from the mine altogether, without reason or reasonable notice. There are several examples where contract statutory holders are less inclined to interrupt production by performing their statutory safety role. It is common knowledge in the industry that contract Deputies/OCE's are "less safe". There has been acknowledgment of this fact in the desire to change of legislation to counter this problem.

Consider the example where at an underground operation, several production Deputies were employed on contract arrangements for around $200 per hour and paid for 14 hours per shift, well in excess of any other deputy on site. Several permanent Deputies made repeated complaints to management about their repeated failure of statutory responsibilities. Management took no action to address these issues, but instead took action in the fact that the complainants received uncharacteristically poor performance appraisals that year. Eventually one of the contract Deputies was removed from site for instructing coal mine workers to perform an unsafe activity resulting in a HPI that exposed several coal mine workers to an extremely hazardous situation.

These issues have been ventilated by the MEU in the past and were the basis for the original legislative change. The Union brings these issues to the attention of the committee again because the issue with the legislation as proposed is that not only does it completely miss the intent of the legislation it opens the door to allow these practices to re-enter the coal mining industry. The drafting, as currently provided, allows too many loopholes and will be open to abuse, allowing the very problems to that original legislation sought to stamp out, return to the industry.

For example, one loophole with s.59A (as well as s.60A), as written, is that it entitles the SSE to appoint a statutory official for a period of 12 weeks for each absence occasion. However, there is no requirement for any appointment to be for the length of the absence, other that it must be "during the absence." It is arguably permissible under s.59A that an SSE could appoint a statutory official for a period of 12 weeks on the basis that a permanent statutory official was absent for a single day. The OCE or deputy would be appointed "during the absence" but as there is no obligation for that appointment to cease once the absence finishes, the appointment could continue for a period of up to 12 weeks. The SSE could then continually appoint and reappoint the statutory official upon any new single day absence that occurs without the need to directly employee them. It is easy to envisage a mine with 40 plus statutory officials to be legally able to engage several contractors on a continuous basis in order to cover "absences." The appointed statutory official's position would then be reliant on the SSE's discretion in order to continue their appointment.

Provide an exception to the direct employment requirements which would allow a person to be appointed to a statutory position by a contractor company if the contractor company employs at least 80 per cent of coal mine workers at an entire coal mine.

Again, the CMSHA 1999 does not allow for exemptions, and the use of exemptions is not supported by the MEU. The intent of the changes to the Act was to reinforce the fact that safety and health officials were employed by the mine operator for the purpose of ensuring safety and health and not production. By allowing contractor companies, who have no control over the Safety Health Management System and are

primarily concerned with meeting production targets, to employ an officials will undermine the basis for the amendments.

A further concern about the amendment is the wording that *"an entity employs or otherwise engages 80% of the coal mine workers at the surface mine or separate part of the mine."* The target of 80% of coal mine workers is arbitrary and not based on any recommendations, principles, or academic research. It appears to have been set only to allow some mine operators an ability to contract out of their safety and health obligations at the mine site to contracting companies, whose primary concern is production targets and not safety and health. As stated, the basis for these amendments is stop such a practice.

As part of the *"Tripartite Statutory Positions Working Group"* final report, the group made four solutions to resolve the issue of contractors, none of these solutions were taken up by the draft legislation. The closes possible solution outlined was allowing contractors to employ their own statutory officials, but this was rejected as a solution by both the RSHQ and the MEU because such a solution does not ensure consistency of operations, accountability and exposes the statutory officials to reprisal from their employer if their decisions have a negative impact on productivity. The matter of an 80% threshold for employing statutory officials was never raised nor discussed by the working group and there is no agreement for such a proposal.

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

Further issues with the current proposal, is that it is unclear how or when one is to determine when the 80% threshold has been met and who will be responsible for monitoring this percentage. The proposed legislation claims to have tightened this exemption by reference to the *"80% of coal mine workers at the coal mine"* but this is incorrect. Firstly, the exemption refers to an entity that "employs or otherwise engages 80%" but make no effort to define what "engages" means. Engaged could refer to other contractors performing work at the coal mine who were sub-contracted by the original contractor. For eg, a mine operator may contract out the production to a contractor. This contractor could then sub-contract out further work at the mine. In this scenario the first contractor may only employ 60% of the coal mine workers at the mine but because they "otherwise engage" the subcontractor and its workers, they have 84% of the coal mine workers and are able to employ statutory officials at the mine. In this scenario the contractor has no responsibility over either the safety at the mine or control over those subcontracted coal mine workers. These issues are outlined in the following examples:

> Example One: Any of the large BHP surface mines could have OCE's employed by BMA responsible for certain parts of the surface mine, then you could have Thiess or other contractors who have a part of the mine also using OCE's under a different arrangement. It is unclear who is "engaging" who and could allow for BHP Operational Services to provide OCE's which they cannot do now.
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> Example two: Curragh mine in which there are 3 distinct parts of the mine- the current Coal Mine Operator (Coronado), a contractor (Thiess operations) & Mining Pro (Labour Hire Company). In this scenario, the operator, Thiess and Mining Pro could arrange for Thiess to have over 80% of coal mine workers and employ its own statutory officials in place at a mine. This is unworkable.

Further issues with these provisions and providing exemptions under the CMSHA is that exemptions must be regulated, and the number of exemptions place a significant and unnecessary regulatory burden on the regulator in order to ensure that the exemptions are genuine. There is still no guidance as to who RSHQ

is to monitor and regulate how and when the 80% threshold is met and would be open to abuse by contractors.

The MEU considers that the exemption to hire OCE and ERZ statutory officials for contractors who employ 80% of coal mine workers at the mine to be a dangerous and impracticable legislative change that should be removed and that only coal mine operators should be responsible for the hiring of these statutory roles.

Other concerns that the MEU raised about the ability of contracting companies to be exempted from this obligation include the fact that the exemption could result in conflicting SHMSs at the mine or part of the mine and would create conflicting issues with the role of the OCE's as outlined above.

Remove the requirement on a company to directly employ an SSE where the only activities of the company or an associated entity are exploration activities.

The MEU does not support this proposed legislative change on the basis that there should not be exemptions permitted in the Act.

Removal of the change to s.105 of the Regulations

One of the key matters for the MEU support of the employment of statutory officials as direct employees was to ensure that they could speak up without the fear of reprisal and undertake their role devoted to the OHS requirements of the role. This has been lost in the proposed Bill and in fact as currently drafted with the other proposed changes would see the risk to coal mine workers health and safety risk increase.

To remove any doubt and ensure a focus solely on the OHS requirements, the MEU has repeatedly submitted that the legislation must stipulate that OCE's & Deputies cannot be directed or be required to perform production (non-safety & health) responsibilities and duties.

As a result of these previous submissions, the first draft legislation contained a proposed change the regulations at s.105 "*Open cut examiners responsibilities and duties."* However, we note that this change has now been removed and the MEU has yet to receive an explanation as to why this was removed. The MEU believed this proposed legislative change was important and assisted in ensuring that the role of the OCE was one focused on OHS and not production.

The MEU believes the additional wording captured below needs to be included in the Bill:

> *105 Open-cut examiner's responsibilities and duties—*
>
> *Act, s 59 For section 59(3)(a) of the Act, the following responsibilities and duties are prescribed for an open-cut examiner for a surface mine excavation—*
>
> *(a) Responsibility and* ***have control of activities in or around the excavation*** *for the safety and health of persons in or around the excavation during mining activities.*

(b) duties relating to the main responsibility mentioned in paragraph (a).

(c) secondary responsibilities conferred on the open-cut examiner under the mine's safety and health management system.

(d) secondary duties conferred on the open-cut examiner under the mine's safety and health management system ***must be of a safety and health requirement only***

Further matters:

The MEU does not support the view by some of the stakeholders that the proposed Bill would impact the industry's ability to consistently supply coal and, as a result, would affect the financial viability and sustainability of their businesses. There has been no evidence provided or data which supports this type of scaremongering from the employers and others.

The MEU highlights that the Queensland coal sector is currently experiencing record profits and coal prices, and this will continue for a period of time.

The Bill focus needs to be on the health and safety impacts of those who work in the Queensland coal mining sectors and not corporate structures or purported red tape in implementing changes. There are certain aspects where the MEU believes the proposed Bill in does not meet those requirements and the objects of the Act.

The view put forward by some that the Bill is needed to ensure coal mining industry companies have practical ways of implementing direct employment requirements that do not disrupt current corporate structures and employment arrangements is a false argument. There is currently no need for the draft legislation as any difficulties an employer claims to face can be overcome with proper planning and the use of fixed term contracts. Instead, the proposed changes will allow employers to again push production and industrial considerations into the statutory roles of the OCE and ERZC at the expense of core safety matters. These changes will be to the detriment of their employees and other coal mine workers.

We also note that since the introduction of the *Coal Mining Safety and Health Act 1999 (QLD)* & its associated regulations that both pieces of legislation have not contained or allowed for exemptions. The MEU's view is that there is no rational basis for introducing exemptions now and that doing so waters down the legislative objects of the Act. The MEU does not support any exemptions being given in the current proposed legislation.

The proposed legislation must ensure that persons in statutory positions have a strong platform to perform their safety & health roles to a higher standard and separate from production, business or other personal considerations and the MEU does not support the proposed legislative change as they do not reach this standard.

Yours Faithfully

Stephen Smyth
CFMEU District President