

## INQUIRY INTO COAL MINING INDUSTRY SAFETY

**Submission No:** 13  
**Submitted by:** Scott Leggett  
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**Submitter Comments:**

Public Submission

I wish to make and feel I need to make this public submission as a practicing statutory official working in a substantive coal mining operation within the Bowen Basin.

The last time I made a public submission it was decided that I should be classed as "Name Withheld" so to be protected from potential reprisals. This I will talk to this in further detail later.

*On 18 August 2022 the Legislative Assembly agreed to a motion that the Transport and Resources Committee inquire and report on current practices and activities of the coalmining industry.*

*The terms of reference are:*

*That the Transport and Resources Committee (the Committee) inquire into and report to the Legislative Assembly by 16 February 2023 on:*

1. *The current practices and activities of the coal mining industry to cultivate and improve safety culture, within its corporate structures and on-site among workers, with particular reference to actions taken and changes/measures implemented in response to the Board of Inquiry's findings and recommendations relating to:*
  - (a) the impact of coal production rates on safety risk management;*
  - (b) industry's use of coal production-related and lag safety indicator-related bonuses and incentives to workers and executives, and their impact on the management of safety risk;*
  - (c) accurate, fulsome and timely identification, classification and reporting of, and effective responses to, incidents and failures of risk controls;*
  - (d) the appropriateness and potential safety impacts of the use of labour hire; and labour hire workers' roles in on-site safety, at coal mines; and*
  - (e) on-site safety, generally; and ensuring appropriate measures to address process safety and personal safety separately.*

The current practices and activities of the coal mining industry to cultivate and improve safety culture, within its corporate structures and on-site among workers, with particular reference to actions taken and changes/measures implemented in response to the Board of Inquiry's findings and recommendations relating to:

**A. The Impact of coal production rates on safety risk management.**

I am yet to see any positive changes to practices or activities of the coal mining industry (CMI) to improve the safety culture, within its corporate structures etc other than lip service or feel-good motherhood statements like *Safety First* and *Zero Harm*.

Actions speak louder than words, now what I and others see firsthand shift to shift at the coal face is quite the opposite, every week I see the mining industry looking for ways to increase production and as a coal mine worker (CMW) myself I also want to be as productive as possible but not at the expense of our health and safety.

The coal mining industry is actively looking for ways to undo, reword or otherwise bastardise the "Objects" of the Coal Mining Act and Regs or worse by further reducing prescription of the Coal Mining Safety and Health Act and Regs (CMSHA & R) that have been written in blood over many years with the intent of preventing recurrence of incident and or accident, while ensuring risk is As low as Reasonably Achievable (ALARA) and within acceptable limits.

This is what risk based legislation was suppose to be about, how have we got it so wrong?

The coal mining industry is now that fixated on more production at the lowest cost possible the last bits of fat have been well and truly removed from the stone, its only the blood that's now left.

By this I mean the cheapest or easiest way to increase production while reducing costs are now by removing the controls that have been put in place over many years to prevent injury or accident.

I have called it out in past submissions, called it out to industry in what ever forums are willing to listen or are open to conversations, but it falls of deaf ears as its NOT what the CMI wants to hear, its not the easy path, why should they have to work through the problem when they can just work around it? This is honestly their attitude.

The main issue of production pressures/rates on risk management is that risk is incrementally increased in order to increase production.

Example: the company I work for have introduced a number of operating systems that are used to find ways to increase production which ultimately have reduced or totally removed safety controls that were put in place because of incidents in past.

The biggest joke of it all is they will use "ZERO HARM" as the justification for the change. We haven't hurt someone doing this task for 20-30yrs so the likelihood and consequences are now very low and are used to remove or the justification to remove the controls that were put in place 20-30yrs.

Now this isn't just a one off scenario, one of the processes at my site is called "Challenge Change" and there is currently no less than 25 items on the wall that are up to be changed, of these currently 11 have direct impact on health and safety or outright breach current legislative requirements if changed.

I'm up for change, there is always advancement in technology and methodology that may bring the change but it must be measured and considered, if we are going to change or remove a control, we must ensure the risk is still managed and acceptably controlled by other means, or that the technological or methodological change controls or removes the hazard we are protecting against, this is not what happens currently and my site would not be alone, this is an industry issue that is out of control.

Risk management and risk control are plainly looked at production inhibitors by the CMI, especially by those who sit comfortably safe in their air-conditioned offices or tucked away safe and sound in the beds at night.

The actual people who form the CMI positions you described in the terms of reference aren't exposed to anywhere the amount of actual physical harm or detriment that the general CMW is each and every shift.

- When was the last time you heard of an CIOM losing their legs in a crushing injury when the wall come in?
- When was the last time you hear that a HR manager fell asleep behind the wheel of a dump truck at 4am in the morning?
- When was the last time you heard that the CEO of the RSHQ was drowned when his dozer rolled into mud?
- When was the last time you heard that the Asset President and the company board members were blown apart or severely burn when a flammable and or combustibile atmospheric mixture ignited in their workplace?

**B. industry's use of coal production-related and lag safety indicator-related bonuses and incentives to workers and executives, and their impact on the management of safety risk;**

This one I doubt you will get bugger all meaningful commentary on, seriously we all know what the problem is, we all know how to fix it. Safety should not have money attached in anyway shape of form, this needs to be legislatively called out, prescribed, monitored, and reviewed regularly.

There are so many ways its being done currently, eg lag indicators could be the number of field leadership talks out in the field, then that's tied to your bonus. How many quality field leadership talks are undertaken? I'd say less than 1-2% while people would be exceeding the number, they require to achieve bonus, end up with quantity not quality = Worthless

What is the actual use of it other than, look, see the boxes are ticked, bonus please

You can always tell when its management appraisal time or near end of year for production targets, or month end even for that matter, the old snatch and grab monster for coal comes out, stupid plans are approved, corners are cut, real time pressure put on people and individuals to do things vastly different just to get that little bit extra that little bit quicker.

**“\$\$\$SHOW ME THE MONEY\$\$\$”**

**C. accurate, fulsome and timely identification, classification and reporting of, and effective responses to, incidents and failures of risk controls.**

First, I have to admit I have noticed an increase in safety alerts from RSHQ, this is refreshing but sadly the last positive comment I have in this space.

As a statutory official I obviously have numerous conversations with people from a vast number of CMI bodies, levels of management and CMW's at the face.

I am for ever arguing or insisting on requirements to accurately, fulsomely, classify and reporting of, and effective responses to, incidents and failures of risk controls. This is daily, when I challenged the front-line supervision on it I'm told a lot "we have been directed to challenge your position".

As I follow this up the food chain, yes, its correct, they are. Senior management and or the business itself has lost its corporate memory, they don't understand why certain things were in place or why there are certain requirements.

Senior management will conduct investigations without the relevant parties required, will send through watered down information to regulatory bodies as they know that goes unquestioned, or it will be under reported, information relating to other incidents from sister mines aren't shared, corrective outcomes aren't implemented or monitored and audited over longer periods.

Forget raising it with the RSHQ, the inspectors are clearly that understaffed its not funny, they push it back to the site SSHR to fix, who to their credit try their best but are way out gunned on site and don't have support from anywhere else.

Some of the inspectors haven't worked in the relevant work environment, this has been evident on a number of occasions, or when issues are found issue things like "recommendations" since when is it "recommended" to fix a risk exposure? Additionally, recommendations don't exist under our legislation, directives do, so why not direct the mine/person etc to fix the problem? Funnily enough they are called "directives" and they do already exist. But hey that involves coming to the mine site.

Example: my mine site has a major incident where a service truck rolls over, seriously injuring the CMW, whole scenario is an absolute cluster, scene released unchecked by an inspector, a few days later a light vehicle is involved in a very serious roll over on site and again incident scene released unchecked by an inspector. 2 very serious incidents involving people and equipment that could have caused multiple fatalities annnnnnd nothing.

I guess we can't have production inhibited by safety now could we.

In short, the answer for industry especially the Coal Mine Operators (CMO's) to be able to maintain increases in production, while removing risk management controls can only tell the rest of industry they are kicking goals if they don't report, under report or any mixture they need to in order to achieve their KPI bonus.

Reporting is attached to bonus, but here's the kicker a lot of the time, you need to actively report X amount of hazards each day/week/month/year to get % of bonus but you may lose bonus if you have High Potential Incidents (HPI), serious accidents or number of other incidents.

Here we go again, "\$\$\$SHOW ME THE MONEY\$\$\$"

**D. *the appropriateness and potential safety impacts of the use of labour hire; and labour hire workers' roles in on-site safety, at coal mines; and***

The Labor hire and precarious employment arrangements are still in play and growing strongly, with only greater numbers of Labour Hire employees now than ever before.

As for the legislative changes that were passed "***for the Mineral and Energy Resources and Other Legislation Amendment Bill 2020***", in relation to statutory ticket holders the CMI has been given time extension on time extension to comply, build residual into there systems, train, attract and or retain but have chosen not to do any of it other than wait out the time frames and call the regulators bluff.

BHP on the other hand thought you bewdy and took the opportunity to change from one employment arrangement type that offered their Open Cut Examiners (OCE'S) job security and better protection from reprisal to another precarious employment arrangement by using the MERLA bill to ensure all OCE's were removed off Collective Bargained employment arrangements onto individual staff contracts.

Now there is the draft "***Coal Mining Safety and Health and Other Legislation Amendment Bill 2022***" that's doing the rounds of the CMO's but not the broader community, I can't find it on any web site, have no ability to talk for or against any of the points in this draft and I am horrified on what the implications of these changes can and will mean.

The broader everyday coal miner has no idea at all that this is in play.

Clearly again it appears those in positions of political influence, in regulatory bodies or part of the wider CMI demand its only those who sit safely in airconditioned offices away from all the harm mining has to offer is allowed to draft, consider, be privy to or even be aloud to talk to proposed changes to the legislation that protects my life at work.

Some of these proposed changes are clearly drafted by CMO's, who don't wish to have to comply to legislation, but rather just starve it out over time. Over 2 yrs. they have had to be able to conform but rather than comply let's just change the legislation.

To allow Labour hire roles in any compacity flies in the face of what the original legislative changes were about. After all what are the objects of the Act again?

***E. on-site safety, generally; and ensuring appropriate measures to address process safety and personal safety separately***

Total Joke, if anyone submits otherwise id ask the committee to look at who it is that is submitting the submission and ask the question could it be agenda driven!

The level of supervision I have seen is nothing short of horrifying, in this I mean inexperienced supervision, inexperienced new to industry supervision that ticks a box so certain sectors of the mining industry can achieve their diversity aspirational target.

I'm serious when I say I have to deal with the consequences of when a person one day was a hair dresser, a chief, or HR specialist and within a couple of months are running a crew of coal miners down in pit dealing with advancing faces, seam gases, spontaneous combustion, highwall/low wall geotechnical hazards while having production pressures pushed down from above to achieve their Short Range Forecast SRF.

How can any of this term of reference even come close to achieve any positive outcome when the entire platform which it is based is not only broken but it's in total disarray.

Again, these aren't new issues.

Others and I have raised these in past, these have been recommendations out of many inquiries like the Moura Inquiries, any number of past Warden Inquiries and what ever happens with them? I'll tell you what. Bloody nothing.

If the members of the Transport and Resources Committee are fair dinkum about inquiring into and reporting back to the Legislative Assembly on the terms mentioned above, I challenge you to come spend time with me outside of my work, come spend time with me in my place of employment and I will show you firsthand, you will hear it firsthand from other CMW's.

I can write submission after submission but it means nothing unless you committee members can walk in our shoes, look though our eyes and breath what we breath.

These CMI have limitless budgets and resources to be able to sell their point or even change legislation.

**My thoughts**

Above I mentioned that I gave submissions to the "for the Mineral and Energy Resources and Other Legislation Amendment Bill 2020"and was contacted and informed that my name would best be withheld for fear of reprisals against myself. This was done and from memory I'm on the HANZARD record as #15 "name withheld".

Yes, I chose to speak to my submissions when the public consultation meetings occurred, again I was warned before the hearings started about my submissions, maybe I was naive in thinking the system would protect me, the greater good would prevail, in all seriousness i believed that in order for my words to be taken seriously I should stand with them and not behind them and on that night I did.

Now a short time later when I raised safety concerns with senior management from the company I work with, I'm challenged on doing so, warned, and threatened.

Then again not long after that I cease operations in parts of the mine due to safety and non-compliance issues, which I'm immediately challenged on but explain the situation and requirements to the supervisors.

As soon as I'm back into service I'm confronted with a phone conversation (which I had put on speaker phone) of the most vial nature from a manager off site threating my employment, making wild unfounded accusations, giving a statutory official technical direction etc, all in front of witnesses both my end and his.

Long story short, I suffer a workplace injury as a result and oh doesn't the ride get bumpy from there.

- the company I work for is a self-insurer, so everything gets very hard very quick.
- I make complaints internally within the company I work for, no support offered to me from the business other than support from personal friends.
- A major international law firm is engaged by the company I work for to investigate the matter, they investigate, and find my allegations substantiated.
- The company contracted to look after workers comp matters is also engaged and investigate my claim. They eventually accept my complaint once my lawyer gets involved and finds collusion between the 2 companies trying to get witness statements changed.
- I make complaints to the RSHQ under section 257 AA.
- I also made complaints to industry Safety and Health Representatives, who investigated and as a result requested that RSHQ prosecuted those involved.
- RSHQ have my complaint for nearly 2 and a half years, then eventually say they won't prosecute, they won't give me my file and will need to apply through Right to Information (RTI) in order to see what was.
- The message this sends to everyone is if you speak up about safety you will be a target, you will face reprisal and there is nothing you can do about it.

More importance is given to production than it is too safety, incentives and indicators have monetary values attached so their value is compromised as is personal safety and risk management as a result.

identification classification and reporting of incidents and accidents is done in such ways as to mislead industry bodies, bend statistical data, protect managerial or individual bonuses or enhance a false corporate image. HPI's classifications are always challenged in the hope of reducing the incident rating and reporting requirements.

Incident investigation process aren't followed, information is left out, you name it, I have seen it done and repeatedly.

Labour Hire have only increased in numbers, are absolutely too scared to speak up, will have their employment ended if they do. Labor Hire in safety related roles on site is and will be at the absolute detriment to the CMW's health and safety on site. Sadly, they will allow unsafe things to continue or certain incident ratings are lowered or worse not reported at all for fear of losing their jobs and being black band from other sites.

### **Recommendations**

1. The Coal Mining industry needs the re-introduction of the Wardens Inquiry to investigate the root causes and causative factors around a workplace fatality and serious accidents.
2. RSHQ needs to be investigated independently.
3. All CMW's need to be made aware of any potential legislation changes, included in forums to do with changes and recommendations right from the beginning, could be done similarly to jury duty.
4. Any changes or proposed changes to legislation should first be measured against the "objects of the Act", so a few questions need to be asked first and they could determine if the proposed goes any further.
5. Industry needs to increase inspectors' numbers and remuneration in order to attract better candidates, further convenience needs to be imposed on inspectors when they leave their roles so as to not being able to be employed into managerial/corporate roles within the companies they had just been overseeing.
6. Section 275 of the Act needs to be written more clearly and investigators given proper training into what its true interpretation is.

### Appendix

- Below are emails I sent to various ministers and other persons on the 16<sup>th</sup> March and 29<sup>th</sup> March 2022
- Definition of "OBJECTS OF THE ACT"
- Lastly is a copy of my submission I had made previously,



Dear decision makers or persons of influence,

I'm writing to you not only as a concerned coal mine worker (CMW) myself but also as an extremely concerned parent.

I have 2 stepsons; one works at Anglo Americas Moranbah North Coal Mine and the other works at Anglo Americas Grosvenor Mine. The latter was due to start back the next shift after the Grosvenor Mine explosion that has forever changed the lives of so many.

We all watched the inquiry go about its business in the hope that finally the complicity within the industry was not only going to be highlighted but accountability was also going to be measured out.

To say I was mortified when it was released that there was to be no prosecutions is an understatement. I watched as my better half dry reached at the kitchen sink as the reality of what this meant for her son's health and safety at work sunk in.

In all honesty how can this be? The only reasoning that makes any sense is that there was a dirty deal done between Anglo America and Resources Safety & Health Queensland (RSHQ). One that prevented either side having to hold the other to account for their own shortcomings.

Honestly nothing else makes sense.

It was shown and proven that both parties were well aware of many gas exceedance high potential incidents (HPI's) leading up to that fateful day, worse still the Site Senior Executive (SSE) that was in charge at Grosvenor when the explosion occurred had sent emails explaining that the gas at Grosvenor Mine was at uncontrollable levels. The inquiry showed this.

I'm a qualified SSE myself, am fully versed in the obligations that come with it and yet that SSE isn't even spanked with a wet cabbage leaf!

Inspectors under oath and under cross examination admitted receiving Form 1 A reports and notifications of gas exceedances that fell within the explosive ranges for Methane (CH<sub>4</sub>) and yet couldn't leave the office to attend a mine site that was exposing CMW's to unacceptable levels of risk, again the wet cabbage leaf is thrown into the compost bin.

We were having a family BBQ the other night and cutting coal while we were at it (talking work), when the latest gas exceedance HPI's that resulted in evacuations at both Moranbah North and Grosvenor mines became the topic of conversation. Gas levels again within the explosive ranges to the point of poisoning the sensors.

To be honest, I lost it, my beer ended up against the fence, if this isn't an epiphany, I don't know what is. To give some context to my emotion, I know Pike River, I have personally spoken to parents of those who died, and one conversation sticks in my mind like a bad nightmare is where there was a Bbq the weekend before, where several of the men were talking about the gas levels at Pike River Mine and not going back down the next week. I don't need to explain what happened the next week do I, it's sadly now etched in blood in Australasian mining history.

I believe its undisputable that both Moranbah North and Grosvenor mines have recorded more explosive gas mixture HPI's than any other mine in Qld if not Australia and continue to do so, but why/how? Well for me to answer that quite simply, it's because they can, there is no recompense.

As the President of the Moranbah Miners Memorial Committee, I felt compelled last year to make a speech where I explained how the Miners Memorial come to be and about a presentation I gave to Moranbah apprentices at that memorial site and the impact that had on me.

Below is an extract of my speech.

*As a result of the discussions held that day, I realised our job wasn't complete and as was stated, "we don't want this to be a work in progress, we want it to be completed and the only way to truly say we have achieved this is when we don't add another name to these sandstone blocks before us".*

*Now, those words rocked me to say the least and hence this speech tonight and it goes without saying that the reason we are gathered here is out of respect and care.*

*I look out at you all, who are gathered here this evening and I see people from all walks of life.*

*I see people of political influence, I see management, I see union officials, I see people from regulatory bodies and hard-working coal miners and each and every-one of you, myself included are decision makers or people of influence in one form or another.*

*So, I ask of you all, to look at this Miner's Memorial and their families present here today and ask each of you to make a silent commitment to our fallen comrades and their families.*

*I ask, when the time comes for you to make decisions that may influence the health and safety of coal mine workers that you will commit to making the right decisions which in turn will contribute towards making this Miner's Memorial a finished project.*

*I know I will.*

I took note of who was there, yes there were people of political influence (Hon Scott Stewart MP & Dale Last MP), management (Various companies but namely 2 from Anglo America), union officials, representatives from regulatory bodies and hardworking CMW's.

From what I can see it's only the coal miner at the coal face that is trying to do anything, but where does he go and what can he do when the supreme decision makers have abandoned them?

How could they look at the families as I asked in my speech and make a commitment, albeit silent, and not follow through with it?

Is it cowardice? Is it corruption? Or is it just too hard?

Anything else is only an excuse!

I too am a CMW, I'm also an Open Cut Examiner (OCE), a qualified SSE and a father, I have written submissions about health and safety for legislative change that have had my name removed for fear of reprisal, I then publicly stand too and for them.

I challenge mining companies and ensure the health and safety of CMW's comes first where I work.

Yes, reprisal have come my way and those are still not dealt with by the RSHQ.

So, who is looking after us?

Who actually gives a damn about my sons or my family and I?



When is the RSHQ going to be cleaned out of the old rotten dead wood and replaced with those who have real courage to lead, make change and enforce accountability?

When are our politicians going to grow a set and ensure the most import thing that comes out of a mine is the COAL MINER?

When are we going to bring back the "Warden's Inquiry" and give it all the real teeth it deserves?

When is the CMSH Act and Regs going to be revisited? but not by the current sycophants that sit on the Advisory Council or Board of Examiners who have slowly but surely been embedded into those positions over time.

When are fallen Coal Miners and their families going to get justice?

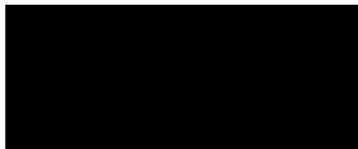
Or is the answer simply NO, no you're not going to get that because coal miners are nothing more than "Coal Face Cannon Fodder".

How long is it going to take before our family pictures are shaken off the walls and the windows in the township of Moranbah are rattled and shattered from a catastrophic explosion in one of our underground mines?

What family or community deserves this?

I'll eagerly wait for your reply.

Yours Sincerely

A large black rectangular redaction box covering the signature area.

29th March 2022

Dear all,

Well what can I say?

16th March 2022 I write to you all about my concerns the in email below and letter attached.

Friday the 25th March 2022 Gavin Fentwell leaves for work, a nightshift at Anglo Americas Moranbah North coal mine.

Gavin Fentwell suffers horrific injuries at work that night and doesn't get to come home to his loved ones.

His family, workmates and first responders will never be the same again.

At 6pm the Miners Memorial Committee convened at the Town Square in Moranbah to light a miners lamp for Gavin before the sun goes down so the Miner who looks over our past miners eternal light can also look over Gavin so he is not alone once the darkness of night takes over.

Hundreds of people turned out with short notice to pay respect, mourn and support those who have been affected.

Members of Gavin's crew and close mates were there, I won't try and described it for you because the likes of you would never understand it.

So how is it, I voice my concern to you all and I get next to nothing of a reply from you all? I'm sorry the odd read receipts and generic thank you's for your email don't count nor does it cut it.

The only exception was Dale Last, the member for Burdekin, he took the time to actually reply and for that I thank you again but let's see what you can do Dale, my fingers are crossed.

What does it take to get action out of the rest of you?

The industry kills miners, we then burn multiple miners and then we are back to killing miners. How long do you think it will be before we kill multiple miners again?

You know, like the Moura's, Pike Rivers and Mount Mulligans to name only a few.

Seriously! Please tell me that's not what it's going to take before any of you get off your arses, put down your caramel lattes and cappuccinos and actually do what you are suppose to do?

Our communities are angry, our work mates are angry and our families are gutted that those who can help us have decided to desert us.

5 miners badly burnt and tortured, board on enquiry found unacceptable levels of risk, that amongst other issues of breaches of the Act and Regs and all this equals no prosecution, why?

I don't want to hear that "their was little likely hood of prosecution" which replaces the older excuse of "it's not in the public interest to pursue".

I note that the department will recommend to prosecute a family owned quarry, which they should if the haven't discharged their obligations but will they go after the big miners? Of course not.

Well then why not?

- Might not get offered a better paying job at one of those mines when they leave the RSHQ.
- They use to work as management for those companies before coming to the RSHQ.
- Might get identified that they hadn't discharged their own obligations diligently.
- We will have to fight against a multinational miners war chest and teams of legals.
- These miners will fund campaigns against us at upcoming elections.

None of this is lost on myself or the community I am a part of.

As I said in my previous email, one of my step sons was due to be the next shift in after the Grosvenor mine incident, as shocking as it is to say, he dodged a bomb.

My other step son was on the nightshift preceding the incident at Moranbah North mine. So in essence he's also dodged a bullet.

When are you all going to actually give a fuck about mine safety to actually fix what needs to be fixed, hold to account those who are responsible and clean out the RSHQ once and for all and replace them with those willing to do the role justice?

I remember the day when an inspector would come to site, the management would panic, they were not only feared but also respected.

These days it's get out the cream biscuits and good coffee.

Christ I've even seen my ex General Manager get up and state he doesn't have time for this and I walk out of a meeting, zero respect given.

In short if none of you want to do anything or actually take the time to understand the problem you are not only part of the problem you actually condone the death and murder of coal miners.

As far as I'm concerned you all now blood on your hands.

The saying that's getting around our pits is, we are nothing but coal face cannon fodder is very true and it's the likes of you all that are lining up those cannons to be directly at me and mine.

With this memorial we remember those who went to work in the Moranbah coal mines and never came home; our mates whose lights were extinguished in the rock and the dust;

We also honour the lives of all of those workers we've lost on our roads, in our camps and from coal related diseases;

Every tragic death brings this community to its knees.

With this memorial we show our heart felt support for the families, loved ones, mates and work crews they left behind.

We give our gratitude to the members of Mines rescue; they sign up for a job that none of us want to think about.

We show our respect to coal miners past and present.

Because no-one knows the dangers of this industry like the people who face it every shift.

And no-one knows it like the people who wait for their loved ones to come home from work.

It could be any one of us and yet it is all of us, standing side by side in unity, with pride and with sadness.

Our grief ebbs and flows over time, but it runs as deep as the coal seams beneath our feet.

Those words are our Remembrance, this is what is read out each year at our annual miners memorial ceremony as well as when we light a lantern when a miner has been killed at work.

I have also attached a copy of my submission for the Submission for the Mineral and Energy Resources and Other Legislation Amendment Bill 2020 also for your consideration.

Do you know whats been done with that? Next to nothing except delays, company bastardising it and found loop holes to work around it and one things for sure is no one in the coal mining industry has been held to account under it.

I have made it home from another shift, my 8yr old daughter gave me a cuddle and asked, "did anyone die last night daddy" . all I could do was squeeze her tight to hide my tears, and tell her everythings alright

Hence this email, I lied to my daughter, as everything is not alright.

Regards

Scott Leggett

[REDACTED]

### **Division 3 Objects of Act**

#### **6 Objects of Act The objects of this Act are**

(a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and

(b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and

(c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation

Regards

Scott Leggett

[REDACTED]

[REDACTED]



Submission for the Mineral and Energy Resources and  
Other Legislation Amendment Bill 2020



Scott Leggett

[Redacted]  
[Redacted]  
[Redacted]



## **Background**

I'll start off by saying thank you to those of you who have started to listen to those who's health and safety is most affected within the coal mining industry, us the coal mine workers.

Now I'll give some context on who I am. My name is Scott Leggett and I'm a generational coal miner, I have been working within the Coal Mining Industry since 1992 in a vast range of capacities that include mechanical, construction, production and health and safety. I hold an extensive arrange of operating competencies and qualifications up to and including Open Cut Examiner and Site Senior Executive.

So in a nutshell I'm a 45yr old CMW (coal mine worker) who has been at the coal face for 28yrs and counting, I have seen things that can't be unseen, I have seen boundaries pushed and our legislation bastardised by those unqualified to interpret in the name of productivity or self-interest, I have seen people's livelihood's manipulated and threatened in the name of productivity, self-interest and corporate greed.

Ill try and keep this submission as short as I can but given the topic and what it means to me personally and to the thousands of other CMW's in QLD it will be hard as there is a lot to cover but for this exercise ill keep it to a small number of big ticket items, so please take the time to read and understand each item as I go through them, I'd be more than happy to meet and discuss this submission in person if given notice.

I will talk to the open cut mining side of things as this is where my knowledge and history is cemented and where my demonstrated skill and knowledge has been measured and tested.

Ill treat s54 & s59 as one in the same as both proposed amendments are the same.

## **Topics;**

### **Proposed Amendments**

Division 2	Amendments relating to statutory office holders
4	Amendment of s 54 (Appointment of site senior executive)
6	Amendment of s 59 (Additional requirements for management of surface mines).
Division 3	Amendments relating to other matters
11	Insertion of new pt 3A
	Part 3A Industrial manslaughter
	48A Definitions for part
	48B Exception for the Criminal Code,
	48C Industrial manslaughter—employer
	48D Industrial manslaughter—senior officer.

## Submission

I submit that by in large I agree with all proposed amendments, although not perfect or airtight I applaud the Introduction of this bill by Hon A Lynham MP on 04/02/2020.

After being approached at my place of employment to give opinion on the opposition of these proposed changes I feel I MUST write this submission to the positive as I have now been made aware there is a push to oppose this from behind closed doors, what a disgusting attribute these companies and faceless people carry, for me if you are against this change come out and say it publicly as you do in private.

Section 59 of CSMH Act currently states;

### **59 Additional requirements for management of surface mines.**

A site senior executive must appoint a person holding an open cut examiner's certificate of competency to carry out the responsibilities and duties prescribed under a regulation in 1 or more surface mine excavations.

And when the proposed is past the below will be added

*(2) The coal mine operator for the surface mine must ensure that the site senior executive appoints a person under subsection (1) only if the person is an employee of the coal mine operator. Maximum penalty—500 penalty units*

This is a great step in the right direction, although it is still open to bastardisation by the CMO as they can still directly employ people under an arrangement employment options eg casual, fixed term etc.

The intent of this amendment must stay, strengthen even further if possible, I can't stress on this enough.

Currently contract or labour Hire OCE's are being exploited, pushed and used. These people carry a large responsibility when it comes to health and safety in or around the excavation during mining activities in and around the excavation.

I have personally worked alongside them and been one on a couple of occasions, now let me tell you this, being the contract OCE employed by a third party (labour hire company) is a horrid place to be, you don't have protection from reprisal for making health and safety decisions, don't for one minute try and say there's protection under 274 or 275AA of the Act as history in that space will talk for its self, how many prosecutions have ever been laid under that section?

Many a Labour Hire OCE has been told your services are no longer required then moved onto the next mine, then when they have dig again, get the same again and again.

I'm thankful I am directly employed as an OCE but each day I work with some that aren't, I challenge them on decisions they make and get there horror stories of being made unemployed for discharging their obligations, once they know they are relatively safe with us they start making the "tough calls" again and that's putting safety ahead of production, how sad is it when this is the commentary used now days?

It is without doubt that I can say that the right decisions about health and safety are made a lot more often by those who are directly employed.

Now some will also write submissions opposing these new changes and for that they are entitled but I implore that when you read those you take the time and ask yourself why have they?

Now I know that companies aren't going to like this because they will lose a layer of separation which will mean they will have to deal with the OCE's directly and in turn might just find themselves face prosecution under 274/275AA as it will be easier to prove. So with that in mind CMO's have a level of self interest for this legislation to be squashed, quietly and behind closed doors.

Also Labour Hire companies are going to write submissions that this will impact their business and livelihoods, and yes it will, but to what extent? Now one of the contract OCE's I work with gets \$130+ per hour (sorts his own super etc), the Labour hire company gets \$20-25 per hour as he's hired to site for \$150-\$155 per hour, that's \$20 per hour min for literally zero overhead and running cost, maybe a few hrs work to invoice the company each week.

I know of one person who only contracts out a team of OCE's and SSE's does so on his iphone while traveling Australia in his mobile-home making what would be millions of dollars for essentially minimal overhead and only has to jockey them around various mine sites.

Let me crystal ball their submissions, these amendments aren't required because it will damage our businesses and there is current legislation to deal with it. If SSE's or OCE's aren't fulfilling their obligations, then there is provision to remove their statutory tickets and or prosecute.

Yes this is 100% correct, but how narrow minded is that? Warranted yes when shit has happened or could have happened, after the fact, it's alike to shutting the gate after the horse has bolted or taking away his ticket after someone is crippled or dead.

Again how many times has this been done?

This argument that I have already been told from the company I work for is nothing short of bullshit and screams nothing other than pure self-interest.

These amendments are front end, these will encourage OCE's to discharge their obligations in a professional manner to achieve the objects of the act.

An OCE's roles and responsibilities are vast and varied s104-109 from CSMH Regs;

- 104 Presence of, and access to, open-cut examiner
- 105 Open-cut examiner's responsibilities and duties—general
- 106 Inspecting surface excavations
- 107 Reducing unacceptable level of risk
- 108 Role in developing and reviewing safety and health management system
- 109 Giving technical directions to open-cut examiner

This is by no means an exhaustive list of roles and responsibilities, if you search open cut examiner throughout the act and regs you'll find a plethora of additional requirements, and to think if you were the OCE and you were employed via a labour hire company where the very reality of your job is 90% made up of telling people they can't do certain things, must stop doing certain things, they must investigate certain things, must include OCE's in certain things, must ensure certain things happen.

It only takes 1 person to pick up a phone and say that person is no longer required, that simple

So the question the committee needs to consider when reading all submissions and considering the proposed amendments, do they meet or align with the objects of the act?

Will an OCE/SSE being directly employed by the CMO help to achieve the objects of the Act?

## **6 Objects of Act**

The objects of this Act are

- (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
- (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and
- (c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation.

This is further supported by the proposed amendments 48D Industrial manslaughter—senior officer. Which will take care of the back end.

So, in short, as decision makers, what message are you going to send?

For me, I ideally hope its one that paints a picture of – We will ensure your classification of employment can't be used as a tool of influence, we will ensure that we maintain protections for those decision makers who make the correct health and safety “tough calls” but if you do not heed those protections offered and discharge ones obligations prescribed then you will be looking down the barrel of 20yrs.

I Know how the above works in reality has I live and breath it every shift, I have done so for 28yrs but have seen the industry change in this field since the large scale introduction of casualised workforces especially in statutory positions.

I have and will continue to make the “tough calls”, I have shut down my entire mine site on no less than 4 occasions, I had to stand forward and explain my decisions and reasons why to the highest levels of management, which I'm comfortable in doing as I have protections under this legislation as well as other industrial instruments.

I shut down sections of the mine, ensure compliance to our SHMS, ensure we maintain a documented auditable system and discharge my obligations from s104 to s109 regularly and always meet a robust questioning as to why and how have I made the decisions I have made,

I face a more robust questioning or investigation than the incident at hand does, but as mentioned I can maintain this position because of the protections offered with my employment classification and the industrial instrument protections that fall on the back of it.

Please help us holders of statutory tickets discharge our obligations without fear by ensuring these proposed legislation amendments go through without being watered down to appease industry.

Remember we are real people at the coal face, we have families and they want us to come home.

It's in the public's best interest for these amendments to be made, if it's not in the public's best interest that I return home from work then I don't know what is.

### **Further Amendments required**

#### **Submission two**

As a result of a review of legislation after the Moura disaster in 1986 we went to a *risk based legislation*, this I believe has served us well until now.

We haven't had a multiple fatality since we changed legislation, but I truly believe we are only one more fatality away from one.

I could go get any number of statistical reports or tools used to measure the likelihood of this but won't as it's commonly accepted that X amount of near misses lead to an incident, X amount of incidents lead to injury, X amount of injuries lead to a fatality and X amount of single fatalities lead to multiples.

What I'm alluding to is our risk based legislation has had its day and has served us well for over 30 years and before it totally fails us we need to review it and make change, I'm aware of the reports that the government has sanctioned and read them both, again I won't waste this opportunity in dissecting them as they fall short on the realities of what happens at the coal face, were conducted away from the coal face and those at the coal face had little to no input.

Yes they were done by academics and I'll leave it at that, application and interpretation are wonderful things.

Below are extracts currently under our CSMH Act

Division 1 Control and management of risk

#### **29 What is an acceptable level of risk**

(1) For risk to a person from coal mining operations to be at an acceptable level, the operations must be carried out so that the level of risk from the operations is—

- (a) within acceptable limits; and
- (b) as low as reasonably achievable.



- (2) To decide whether risk is within acceptable limits and as low as reasonably achievable regard must be had to—
- (a) the likelihood of injury or illness to a person arising out of the risk; and
  - (b) the severity of the injury or illness.

### **30 How is an acceptable level of risk achieved**

- (1) To achieve an acceptable level of risk, this Act requires that management and operating systems must be put in place for each coal mine.
- (2) This Act provides that the systems must incorporate risk management elements and practices appropriate for each coal mine to—
- (a) identify, analyse, and assess risk; and
  - (b) avoid or remove unacceptable risk; and
  - (c) monitor levels of risk and the adverse consequences of retained residual risk; and
  - (d) investigate and analyse the causes of serious accidents and high potential incidents with a view to preventing their recurrence; and
  - (e) review the effectiveness of risk control measures, and take appropriate corrective and preventive action; and
  - (f) mitigate the potential adverse effects arising from residual risk.
- (3) Also, the way an acceptable level of risk of injury or illness may be achieved may be prescribed under a regulation.

These intertwined with others have served us well but are being bastardised to push production.

Now this I will try an explain in simple laymen terms and I apologies for war stories but this is where the proof lays.

Management and coal mine operators etc have all looked at the Act and Regs as being over prescriptive and even say openly that they are restrictive.

Of course they are and so they should be, they have a mitigating effect, well they should prevent history from repeating.

Now what I have seen first hand in the last 10yrs but is now a snowballing effect in the last 5yrs is managements ability to circumvent the intent of the Act and Regs especially in relation to the management of risk and whats ALARA (As Low As Reasonably Achievable).

The last 5yrs at my mine I have seen large scale incremental increases is risk, this is done through amendment to policy and procedures on site.

#### Example 1

We stopped hot-seating loaded trucks in the late eighties due to people being struck by material falling off trucks, also had uncontrolled movement of loaded trucks at park up areas.

Now recently through risk assessment processes its now decided that the risk is now acceptable to hot-seat loaded trucks, no change in tech- knowledge, no additional controls other than words on paper. In short its an incremental increase in risk.

Example 2

We use to conduct full and proper machine defect inspections at the start of shift or immediately after taking control of it, this was to ensure safety of components and functions.

Again recently through risk assessment processes it is now deemed acceptable to do them later in the shift when machine gets refuelled, later fuel tanks are enlarged so only need fuel once every 24hrs so now these inspections are only getting done once every 24hrs instead of at the start of every 12hr shift, again no new tech, no additional controls other than words on paper, another incremental increase in risk

Now imagine this applied to hundreds of processes, each one is done as a production gain, saves 10mins here and 10 mins there, not one of these has reduced risk at all.

How is it done you ask?, simple really, Section 10 of the CSMH Regulation below is used, I left out the last half as its not of point but please feel free to find and examine yourself.

## 10 Developing standard operating procedures

- (1) The site senior executive **must ensure the following steps are taken in developing standard operating procedures for managing and controlling hazards at the mine—**
  - (a) the site senior executive **must consult with a cross-section of the mine’s coal mine workers involved in carrying out a task under the proposed standard operating procedure to identify the hazards associated with the task and ways of controlling the hazards;**
  - (b) the site senior executive **must prepare a draft standard operating procedure and give a copy of it to the coal mine workers with whom the site senior executive consulted;**
  - (c) **if the coal mine workers agree with the draft standard operating procedure, the site senior executive must prepare it as the final standard operating procedure;**
  - (d) if the coal mine workers do not agree with the draft standard operating procedure—
    - (i) for a disagreement that is not about a legal or technical matter—the site senior executive must decide the disagreed matter and prepare the final standard operating procedure; or
    - (ii) for a disagreement that is about a legal or technical matter—the site senior executive must—
      - (A) obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter; and
      - (B) after consulting with the workers about the information or advice, prepare a further draft standard operating procedure and give a copy of it to the workers; and

(C) if the workers disagree with the further draft—decide the disagreed matter and prepare the final standard operating procedure;

(e) the site senior executive must include the final standard operating procedure in the mine’s safety and health management system.

So what happens is the cross section gets formed and the amendment draft version of the procedure the company wants is given to the **cross-section of the mine’s coal mine workers involved in carrying out a task under the proposed standard operating procedure, they then risk assess it** as per section 29 up above giving **regard must be had to—(a) the likelihood of injury or illness to a person arising out of the risk; and (b) the severity of the injury or illness.**

Sounds cool yeah? Well actually its flawed, most of the cross sections these days are that inexperienced they don’t know why we stopped doing it years earlier, or they are contract/casual labour and if they speak against it they get the call they are no longer required.

Gets worse, even if disagreed matter (non consensus) items are put in they very rarely get a reply as required.

- (i) (ii) for a disagreement that is about a legal or technical matter—the site senior executive must—
  - (A) obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter; and
  - (B) after consulting with the workers about the information or advice, prepare a further draft standard operating procedure and give a copy of it to the workers; and
  - (C) if the workers disagree with the further draft—decide the disagreed matter and prepare the final standard operating procedure;

So company decides it can increase production by changing a “restrictive” safety procedure, develop the words they need, give a copy to those affected with little to no input into the words, get them to risk assess it, if the management facilitator gets them to agree bingo mission accomplished, if disagreed matters arise they either just ignore them if they can or ask them to remove them or will lie about the **obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter**, or will just accept the risk based on its as low as reasonably achievable.

As Low As Reasonably Achievable – how can this change to process like in the examples given above possibly be ALARA when we are incrementally increasing risk by taking away current controls, only to gain an increase in productivity?

What can or should be done?

Firstly we need recognise that there is a problem with our risk based legislation, industry will deny it as they have found a way to work around it rather than work through it as it was designed to do.

Secondly we need to come up with a remedy to rectify these issues, for me these needs to be in a form of active *risk reduction strategies* to dynamically counter act the increasingly large amounts of *incrementally risk increased exposures* that have now and are still being entrenched into SHMS's state wide.

Point being, It's internationally recognised that you can't keep using the same investigations tools forever without change as humans being the ever intuitive and cunning creatures we are we will find a way to work around the system, hence why we change investigation tools and methods.

Why would we not apply the same mentality to our risk based legislation? The objects of the acts states we must.

## 6 Objects of Act

The objects of this Act are

- (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
- (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and
- (c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation

It then goes further and tells us how to do it.

## 7 How objects are to be achieved

The objects of this Act are to be achieved by—

- (a) imposing safety and health obligations on persons who operate coal mines or who may affect the safety or health of others at coal mines; and
- (b) providing for safety and health management systems at coal mines to manage risk effectively; and
- (c) making regulations and recognised standards for the coal mining industry to require and promote risk management and control; and
- (d) establishing a safety and health advisory committee to allow the coal mining industry to participate in developing strategies for improving safety and health; and
- (e) providing for safety and health representatives to represent the safety and health interests of coal mine workers; and
- (f) providing for inspectors and other officers to monitor the effectiveness of risk management and control at coal mines, and to take appropriate action to ensure adequate risk management; and
- (g) providing a way for the competencies of persons at coal mines to be assessed and recognised; and
- (h) requiring management structures so that persons may competently supervise the safe operation of coal mines; and
- (i) providing for an appropriate coal mines rescue capability; and
- (j) providing for a satisfactory level of preparedness for emergencies at coal mines; and

- (k) providing for the health assessment and health surveillance of persons who are, will be or have been coal mine workers; and
- (l) establishing the office of Commissioner for Mine Safety and Health.

But yet we refuse to see and address the reality of it and that makes me ask myself why. The only reasons I can come up with are as an industry our regulatory bodies have become complicit in what they do, some of this I believe is deliberate, mischievous and rife with self-interest while the rest is just naive or uneducated, by uneducated I mean industrially dumb and not from the coal face.

## **Supervision**

### **Submission 3**

This is another where ambiguity needs to be removed and some very clear legislation word smithing to step out exactly who a supervisor is.

For me section 26 of the act isn't specifically clear, sounds it when read as written but application of it muddies the water.

#### **26 Meaning of supervisor**

A *supervisor* at a coal mine is a coal mine worker who is authorised by the site senior executive to give directions to other coal mine workers in accordance with the safety and health management system.

Example – Shotfirers, OCE's, trainer assessors etc are now appointed as supervisors as they give directions to other CMW's in accordance with the SHMS's.

For me their needs to be a separation of sorts, should Shotfirers, OCE's, trainer assessors etc require some additional competency as they do give direction? Absolutely, S1 S2 S3 and G2 or relevant parts there of that suit their job description or that are relevant to their positions.

Fact - Workers get sacked for refusing to follow "a reasonable request".

Anyone who can issue such a "reasonable request" and then commence disciplinary action is a Supervisor.

Currently within the company I work for and I know it's the same at other mines, those I have mentioned above are appointed as supervisors but aren't called out in the management structure as required in section 55.

Hence why their needs to be some clear wording or better still appointment as a supervisor only for those who meet the requirements I've suggested above or the alike.

#### **55 Management structure for safe operations at coal mines**

- (1) The site senior executive for a coal mine must—
  - (a) develop and maintain a management structure for the coal mine in a way that allows development and implementation of the safety and health management system; and
  - (b) document the management structure.



Maximum penalty—40 penalty units.

(2) The document must state—

- (a) the responsibilities of the site senior executive; and
- (b) the responsibilities and competencies required for senior positions in the structure; and
- (c) the names of the persons holding the senior positions and their competencies; and
- (d) the name of the person who is responsible for establishing and implementing a system for managing contractors and service providers at the coal mine; and
- (e) the competencies required, and the responsibilities, for each other supervisory position at the mine.

Maximum penalty—40 penalty units.

(3) For subsection (2)(b), an inspector may by notice given to the site senior executive declare a position to be a senior position.

(4) For each supervisory position mentioned in subsection (2)(d), the site senior executive must also keep a record of the names and competencies of each person authorised to carry out the responsibilities of the position.

Section 56 is where the ambiguity and or misinterpretation lays.

### 56 Competencies of supervisors

A site senior executive must not assign the tasks of a supervisor to a person unless the person—

- (a) is competent to perform the task assigned; and
- (b) if there is a safety and health competency for supervisors recognised by the committee, has the relevant competency.
- (c) Maximum penalty—100 penalty units.

Lets look at (a) and (b) separately.

- (a) is competent to perform the task assigned; **and**

The way I interpret this, the supervisor should have the demonstrated skill and knowledge to supervise all people under their supervision to ensure the safety and health of those persons and others who maybe affected.

Example – if the supervisor is supervising the blast crew then the supervisor should be a qualified shotfirer or if supervisor is in charge of pre-strip then the supervisors should hold or have held the majority of the skill sets in that area.

This isn't the reality in our industry now and as an OCE myself I find myself doing their jobs for them, I have raised complaints with management and department alike and these have fallen on deaf ears or told I'm wrong because they hold S1 S2 S3 and G2, for me this is where management and certain inspectors are wrong, they all forget about the word **AND**.

If they don't know how to actually do the inherent tasks of the roles they are supervising how can they know if somethings unsafe or being done wrong, a lot goes unseen or just becomes production driven.

- (b) if there is a safety and health competency for supervisors recognised by the committee, has the relevant competency.

Simply this is S1 S2 S3 and G2 as recognised by the committee.

So to summarise what I believe the intent for supervisors is, it is that the supervisor must be able to perform the tasks they are supervising (competence means **Competence for a task at a coal mine is the demonstrated skill and knowledge required to carry out the task to a standard necessary for the safety and health of persons.**) **and** has the relevant competency which is S1 S2 S3 and G2 and as such the SSE must only appoint those to supervisory roles who hold those attributes.

There simply is no other competency for supervisors and the above is being abused to the point we now have supervisors who are looking after large crews and have only been in the industry for a very few years or in charge of work groups for which they have never worked in.

Its horrifying to think the person who's job it is to give your direction isn't capable of giving you advice when you come across issues or can't identify the inherent hazards of certain jobs because they have never performed them themselves.

This needs to change ASAP, I bet when you look at the majority of fatalities and or serious injuries from the last 5yrs there will be gaps in this space.

Trainer assessors is pretty much the same, the vast majority of labour hire companies now push to get their employees put through as trainer assessors, why? They get paid more and that means more to the labour hire company.

So you now have green people training green people while being supervised by others who cant do the job they are supervising, scary to think hey.

Would you want your father, son, wife or daughter exposed to this?

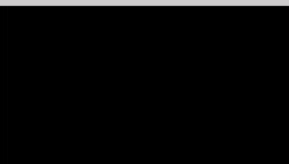
Well if you have family or friends in the mining industry in QLD at the moment there is a very high probability that's exactly what they are exposed to everyday.

Section 56 needs to be re worded to reflect that the supervisors can actually do the tasks or have the majority of the skill sets and competency of the task that they are assigned to supervise as well as hold the relevant competency to be a supervisor S1 S2 S3 and G2.

But again it will be interesting to see what happens when it's their conduct through their act's or omission's to perform an act and that leads to the death of a person.

Thankyou for taking the time to read my submissions and as I said before im more than willing to sit down with who ever to discuss anything mentioned above.

Yours In Safety



Scott Leggett

