

INQUIRY INTO COAL MINING INDUSTRY SAFETY

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Dear Mr King,

The Mining and Energy Union Queensland District (MEU) is the largest union in the coal mining sector 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 welcomes the opportunity to contribute to the Committee's inquiry into coal mining industry safety. While some of the inquiry's terms of reference engage more deeply with the obligations and responsibilities of employers, the MEU is eager to contribute our extensive knowledge of safety issues in the industry in any way possible.

Inquiry into coal mining industry safety

The MEU notes the significant media and political attention that has been devoted to safety in the coal industry in the wake of numerous fatalities and serious incidents at coal mining worksites in recent years. The explosion at Grosvenor underground mine, which was predominantly staffed by labour hire workers and contractors, drew special attention to the relationship between secure work and safety. Industrial arrangements, terms and conditions

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of employment, and safety and health measures are not separate issues – they are deeply connected. Employment arrangements have a profound impact on safety and health at work, particularly in high hazard industries such as coal mining. It is critical that the association between employment arrangements and health and safety outcomes is fully acknowledged so that meaningful changes can be made in the interests of the safety and health of coal mine workers.

There is no doubt that the events at the Grosvenor Mine on the 6th of May 2022 changed the approach of numerous employers, with many reconsidering the employment arrangements they have in place for labour hire workers and contractors. Nonetheless, some employers continue to base their employment models on outsourcing and contracting, which, in our experience, leads to coal mine workers being fearful of raising health and safety issues in their workplaces. Indeed, the impact of insecure employment on the willingness of workers to raise safety concerns was recognised in findings 85, 86, 88, and 89 of the Coal Mining Board of Inquiry held in response to the serious accident at Grosvenor mine.¹

The MEU is deeply concerned about the safety impacts of the insecure employment models that coal industry employers continue to pursue, and we raised these concerns in our submissions to the Grosvenor Board of Inquiry. Our key concerns are:

- The employment insecurity created by labour hire arrangements is inherently dangerous and poses risks to safety and health in the coal mining industry.
 - Both mine operators and labour hire organisations refuse to acknowledge these inherent risks that are created through labour hire arrangements, and their impacts on safety and health – instead, they promote a self-serving view that all workers in the coal industry are safe because they work under the same systems and health and safety processes.
 - The failure to acknowledge the health and safety risks of labour hire arrangements means that such risks cannot be managed effectively through existing regulatory requirements. Organisations and individuals can only effectively manage risk if that risk is acknowledged and understood. Operators and labour hire organisations consistently choose production and profitability over acknowledging the risks involved in labour hire arrangements and arising from job insecurity.
- Furthermore, labour hire employment models are designed to achieve productivity while purporting to provide flexibility to workers – in reality, the flexibility is enjoyed by the employer, with limited benefit to the workers. For labour hire workers, ‘flexibility’ is simply a euphemism for job insecurity.
- Labour hire employment models are similarly designed to avoid unionisation, collective bargaining, permanent employment, and industrial arrangements that would otherwise require operators to abide by fair and proper enterprise bargaining processes.

1. The current practices and activities of the coal mining industry (including coal mine operators and their senior management and associated corporate entities; contractor/labour hire

¹ Queensland Coal Mining Board of Inquiry Report Part II, May 2021.

companies and their management; and the Queensland Resources Council) to cultivate and improve safety culture, within its corporate structures and onsite 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;

The view that good health and safety performance leads to reduced production is unfortunately widespread in the industry. This flawed view stands in the way of developing workplace cultures that genuinely put safety first. We hear from some in the industry that 'safe production' is needed – that certainly is not a term or view the MEU shares.

Balancing safety and production has always been a challenge in the industry. Coal mine workers consistently say that, despite companies' corporate commitments to 'safety first' principles, the reality on the ground is that production is always the priority. There is no doubt that coal production rates will be affected if the standards or OHS requirements are not in place, not applied, or not understood by those responsible for their implementation.

The 2018-19 Annual Inspectorate Report clearly indicated that the issue of contract and labour hire workers is known, and is of concern, to the Inspectorate. Professor Quinlan referenced the following statement from that report:

"Contractor management has also been a long-term concern for the inspectorate. With an industry-wide move towards greater use of labour hire workers and contractors, we are growing increasingly concerned about how safety and health management systems at mines and quarries are accommodating this change and whether labour hire workers and contractors are being afforded the same level of safety as permanent employees."

Professor Quinlan pointed out that both Australian and International IOSH studies as to effective worker representation in the coal industry identified the following:

"...fear of contract workers to raise OHS issues, the greater production/performance pressures contractor were under and their job insecurity which was seen to have a chilling effect on their engagement in OHS activities and problem solving..."

"...In sum, available evidence consistently indicates that the growing use of contract labour weakens safety representatives in mining..."

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;

The application of and use of bonuses linked to lag safety indicators, such as Lost Time Injury, Incident Rate (days without an LTI) and, more recently, HPIs, are flawed. The approach for decades in the mining sector was to reward those who didn't have an LTI or report an incident.

Rewards were offered, including tools, trips, eskies, etc, to those who managed not to get hurt or report an incident. These rewards were offered to workers. There is evidence that workers will hesitate to report injuries, return to work when not in a fit condition, and feel pressured by the employer to return to work to avoid a LTI – this occurs even on occasions in which the worker is on his or her rostered days off and the employer knows the worker is injured, but wants them fit to work prior to their roster starting again.

The use of HPIS in any performance appraisal or incentive scheme can only have a negative effect on the desire to report such events. This would counteract the intent of a High Reliability Organisation to overreport rather than underreport. Also, downgrading the severity of incidents reduces the ability to learn from the incident due to the reduced requirements on the investigation process to determine causes and corrective actions from both internal SHMS processes, and potentially excludes external investigations or involvement from inspectors and ISHR's.

Furthermore, the use of safety metrics such as LTIs or HPIS for assessing the performance of contracting companies incentivises these companies and employees to downgrade incidents or, alternatively, not report them at all.

At the senior management and corporate level, rewards based on safety performance often come in the form of bonuses. Industry employers would be better placed to provide examples of the arrangements to the Committee. However, it is clear that incentive bonuses linked to production drive the approaches taken towards safety and production management for those in senior positions.

Professor Quinlan's review included the following excerpt as to the purported identical treatment of contractor workers and employees:

"Attempts to improve safety for subcontractor employees by creating uniform regulations and management systems to cover all workers will not remedy the fact that organisations deliberately enter subcontracting arrangements precisely because they offer productivity advantages. These benefits for business translate into precarious work arrangements, which in turn mean that subcontract employees have different experiences of work."

Appropriate safety performance bonuses, entirely separate from production bonuses, might have a role to play. For example, bonuses for ceasing production in unsafe conditions and the reporting of management overreach.

- Unilateral bonus schemes that are not subject to negotiation and inclusion in enterprise agreements should be prohibited.
- The use in production bonuses of lag indicators, and other criteria including LTI components, that have the potential to discourage reporting of safety incidents and injuries should be prohibited.

The use of production bonuses that have the potential to comprise in excess of twenty percent of overall remuneration should be prohibited.

Formulas used by companies to calculate executive bonuses usually include adjustments for safety performance, but these deductions can often be negligible in comparison to the scale of overall remuneration. For example, at Anglo-American, money is deducted from executive bonuses based on number and cause of fatalities, any repeated safety failures, and the number of HPIs.

Yet, in a year which saw four tragic deaths at Anglo American's operations, including one at Queensland's Moranbah North mine, the company reduced its executive bonuses for 2019 by only 8%.² After the company recorded two fatalities across its global operations during 2020, on top of the serious incident at Grosvenor, and recorded one further fatality in 2021, executive bonuses each year were reduced by just 3.5%.³ For the CEO of Anglo, a 3.5% reduction in 2021 represented just A\$148,000 of his eventual A\$4.1 million bonus.⁴

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

Employers are better placed to provide evidence and data in relation to these matters. However, in the MEU's view, there are serious issues with reporting under Schedule 1 Diseases for section 198(6) of the Act section 13A (Coal Mining Safety & Health Act 1999)

In recent times, the MEU have seen employers fail to provide accurate and timely reporting under the requirements of the Act. The requirements relate to coal mine workers who have been diagnosed with Chronic Obstructive Pulmonary Diseases or CWP. Most of the coal mine workers affected are either labour hire or contractors. The employers, through their nominated doctors, avoid, in any way possible, acknowledging or accepting that coal mine workers' conditions and diagnoses are workplace-related.

There are other examples relating to the legislative requirements for the SSE to report to an ISHR any High Potential Incidents.

Example 1 - an SSE actively trying to downgrade an incident from a HPI to NRI, even after the advice from an inspector that the incident was an HPI. It must be asked what is the motivation for an SSE to oppose an Inspectors view that such an incident be reported as an HPI?

Example 2 - a methane exceedance above 2.5% occurred at an UG mine development face. The SSHR queried the UMM why the event was not reported as an HPI, who asserted it was not. After advice from an ISHR, the SSHR then wrote a MRE under section 99(5) of the Act. The SSE

² Anglo American Integrated Annual Report 2019.

³ Anglo American Integrated Annual Report 2020; Anglo American Integrated Annual Report 2021.

⁴ Amounts converted from Great British Pounds, using the exchange rate on 31 December 2021.

then reclassified the incident as an HPI. The mine up to that date had several previous HPI methane exceedances for the year reported as HPI's under Schedule 1C (10). This example that involves methane exceedances has particular relevance to the Grosvenor event. Again, what is the motivation to under report, particularly after several similar incidents at the mine?

d. the appropriateness and potential safety impacts of the use of labour hire; and labour hire workers' roles in onsite safety, at coal mines; and

There are a number of aspects which applies to this particular matter. The following applies to the questions posed. We also propose recommendations to ensure CMW's speak up without the fear of reprisal and threat.

- There should be a statutory requirement that workers employed by labour hire companies or as contractors who are indistinguishable from employees of the host company be deemed to be employees of the host company. Casual work in production and engineering roles in the coal mining industry should be prohibited.
- Employment arrangements in the coal mining industry should be subject to significant regulatory requirements, including:
 - (a) Ensuring labour hire workers are engaged on terms and conditions no less favourable than those of permanent directly employed workers.
 - (b) A prohibition of the use of fixed term and task employment in excess of a period of 12 months.
 - (c) Limitations on the use of labour hire workers to ensure that such use does not account for more than 20 per cent of the workforce at any coal mine.
 - (d) All coal mining underground production mines production sections cannot contain personal who are labour hire in roles of supervisors, miner drivers or shearer operators in the longwall. They must be employed directly.
 - (e) All coal mining surface mines production equipment including but not limited to the following Dragline, Shovels & Excavators operators must be directly employed and cannot be labour hire.
- Enhanced protections against reprisal should be introduced including clarification that the protections apply to threats to take reprisal action, a shifting onus of proof similar to s 361 of the FW Act, an increase in penalty units to 300, and prohibitions on the holding of statutory positions for those who contravene the CSMH Act by taking reprisal action

- A separate dispute mechanism should be included in the CSMH Act providing that a worker, or their representative, may seek relief from reprisal action:
 - (a) In a timely and efficient manner that is not cost prohibitive.
 - (b) That requires assessment based on a shifting onus of proof, requiring the alleged to disprove the presumption that reprisal action has been taken.
 - (c) That requires assessment as to whether reprisal has been taken based on objective facts.
 - (d) That provides for remedies including interim reinstatement, reinstatement, and compensation for loss
- Enhanced auditing and OHS management requirements (and clarification of obligations on labour hire providers) should be included under the CSMH Act. Specific and targeted programs should be developed and implemented by the regulator to address the issue of contractor management to ensure compliance.
- Coal mine workers should be provided with absolute confidence that they are able to remove him or herself with immediate safety issues that might arise in the workplace. Section 274 of the CSMH Act should be amended to ensure that such confidence exists. The word “immediate” should be removed from section 274 of the CSMH Act. The penalties in section 274(2) of the CSMH Act should be increased to 300 penalty units. Section 274(4) of the CSMH Act should be amended to require notification to an SSHR and ISHR prior to any request of direction for another worker to undertake the relevant task.

All possible measures should be taken to achieve the objective of coal mine workers engaged to perform production and engineering activities being employed by the mine operator, and for the most part, on a full-time permanent basis. The only exception to this should be for genuine short-term requirements for labour and specialised.

- e. onsite safety, generally; and ensuring appropriate measures to address process safety and personal safety separately.*

Ineffective risk management tools, procedures, and processes are major concerns in this area. If risk management is not done well from the beginning, coal mine workers are automatically put at risk.

Frequently, supervisors assigned to manage the work of coal mine workers lack experience, which has implications for the safety of the workers on site. Similarly, some statutory officials focus too much on production at the expense of their occupation health and safety responsibilities.

Other Matters for Consideration:

The MEU believes there are other matters that need to be considered which the TOR's have not been identified.

Compliance

It may also be that, despite having the statutory responsibility, the SSE and other safety management personnel do not in reality have the same management control of workers who are not employees of their company especially if there are supervisory personnel either on site or giving directions to the labour hire employees. The CFMMEU submits that further consideration of these issues should occur.

Further enforcement action:

- (a) Corporate decision making and OHS compliance, and
- (b) Behavioural safety programs that undermine or weaken representative participation structures, and
- (c) The use of production bonus schemes, and
- (d) Ensuring appropriate management control by persons holding statutory responsibilities.

Employment Arrangements

Professor Michael Quinlan research has shown that in summary, the research indicates that these work arrangements, and studies of labour hire fit into this broader pattern, and are associated with:

- Higher incidence/frequency of injuries, including fatalities
- Poorer physical and mental health (including susceptibility to bullying and drug use)
- Poor knowledge of and access to regulatory employment rights and less willingness to raise OHS concerns.
- Contract labour/subcontracting has contributed to a number of disasters in high-hazard workplaces like chemical factories, refineries, oilrigs, aviation and shipping.

Government inquiries and reports have demonstrated that overall, the result of this review of government inquiries, investigations and audits was consistent with the research evidence, and provided some additional insights into the effects of job insecurity/vulnerability on incident reporting and disorganisation associated with contract labour use contributing to serious accidents.

Professor Quinlan summarised risk factors, as examples only, in the mining context into categories of Economic/Reward Pressures, Disorganisation, and Regulatory failure.

Examples of the problems that arise within these categories are given, including:

- (a) economic pressures leading to increased production and safety compromises.
- (b) fears related to job insecurity impacting the behaviour of workers that compromise safety.
- (c) the transfer of hazardous activities to contractors.
- (d) financial pressures being compounded by performance-based regimes including bonuses.
- (e) training deficiencies and poor supervision.
- (f) ineffective procedures and communication.
- (g) increased demands on regulator/inspectorate resourcing resulting from interorganisational chains of responsibility.
- (h) the weakening of legislative participative mechanisms resulting from precarious work arrangements.

The adequacy or otherwise of skills, knowledge and experience in coal mining in Queensland.

- Factors relevant to the use of labour hire and contractors include, inexperience, poor induction, training and supervision and poor knowledge of legal rights and obligations
- Coal mine workers should be specifically trained as to the lessons from previous fatalities and disasters. Quinlan recommended that such lessons become a central part of industry training at all levels.
- The MEU submits that all coal mine workers should also receive specific and timely education as to incident and safety reporting, their obligations under the CMSHA 1999.
- The competencies recommended to be obtained in induction training by Recognised Standard 11 should be mandatory and included in the CSMH Regulations.

Induction training should also mandatorily include, where not already included training in relation to incident and safety reporting, fatalities and disasters, obligations under the CMSHA, the role of SSHRs and ISHRs, protection from reprisal (including as to enhanced protections) and the ability to refuse unsafe work.

All coal mine workers should receive additional training as to the importance of safety and incident reporting, the history of coal mining disasters, the ability to refuse to perform dangerous work, and the role of the Inspectorate, SSHRs and ISHRs.

The Mining & Energy Union Queensland District believe that an important aspect of the Grosvenor BOI is the implementation of the recommendations out of the inquiry. The failure in the past has been the delay or non-implementation of recommendations out of previous mining accidents or disasters.

The MEU wishes to be heard further on this matter and will attend the relevant hearings as required to undertake this.

Signed on behalf of the Mining & Energy Union Queensland District



Stephen Smyth
MEU District President