

## INQUIRY INTO COAL MINING INDUSTRY SAFETY

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Transport and Resources Committee  
Inquiry into Coal Mining Industry Safety  
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**IDEMITSU AUSTRALIA SUBMISSION: INQUIRY INTO COAL MINING INDUSTRY SAFETY**

Dear Secretary

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

Idemitsu Australia raises in this submission a number of issues related to broader coal mine safety practices, systems and outcomes.

In making our submission we have included reference to recent government consultation processes related to draft changes to Queensland's coal mine safety arrangements.


In our view the Consultation Draft Amendment Bill circulated to industry in August 2022 had the potential to make fundamental changes to systems aimed at protecting workers. Changes of this kind, which have been developed without intensive and detailed industry consultation will create risks. To avoid these risks continuing to arise, Idemitsu Australia stands ready to participate in tripartite (employee representative, government and industry) consultation aimed at continuing improvement of coal mine safety.

We are however concerned that the current approach, including specific proposed changes to Queensland's coal mining safety legislation, will lead to unintended consequences, including measures that:

- Will make coal mines in Queensland less safe;
- Reduce the available workforce of appropriately trained, experienced and credentialled individuals willing and able to take on senior, statutory and safety roles within Queensland mines; and
- Emphasise a culture of blame which makes it harder for "bad news" to flow freely, in turn making it more difficult and less likely for organisations to be able to access valuable information needed to diagnose where systems aren't working. This is very much at odds with the High Reliability Organisation concept as enunciated by Dr Sean Brady.

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

Best regards



Steve Kovac  
CEO  
Idemitsu Australia



## Idemitsu Australia Pty Ltd submission

### QUEENSLAND PARLIAMENTARY INQUIRY INTO COAL MINING INDUSTRY SAFETY

#### INTRODUCTION AND ABOUT IDEMITSU AUSTRALIA

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

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

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

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

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

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

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

#### OUR BUSINESS AND OUR FUTURE IN AUSTRALIA

Our corporate headquarters is based in Brisbane.

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

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

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

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

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

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

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



## INTRODUCTION AND SUBMISSION STRUCTURE

Idemitsu Australia's response seeks to assist the Committee's Inquiry into Coal Mining Industry Safety in Queensland.

Our submission includes consideration and coverage of the Government's proposed implementation of changes to the requirements and systems which govern coal mine safety in Queensland. A Consultation Draft of the Coal Mine Safety and Health and Other Legislation Amendment Bill 2022 was circulated by the Minister for Resources in August of this year.

Idemitsu Australia wishes to share with the Committee our particular concerns with respect to proposals set out in the Consultation Draft which includes amendments which in our view will make Queensland Coal Mines **less safe**.

Concerns relating to amendments relate to matters responsive to paragraphs 1(d) and 1(e) of the Inquiry's Terms of Reference and include:

- A proposed 12-week limit on the employment of contracted persons in certain statutory roles, including in cases of illness or unscheduled departure;
- A proposal to prohibit certain statutory roles (Open Cut Examiners in Surface Mines, and Ventilation Officers and ERZ Controllers in Underground Mines) from having responsibilities and duties related to the production of coal from the mine;
- A proposal to make the coal mine operator responsible for day-to-day management of the responsibilities and duties of OCEs and ERZCs at the mine;
- Inadequate genuine consultation and partnership between employee representatives, the government and industry in relation to proposed amendments; and
- An extremely short and inadequate period for implementation of any amendments, potentially within weeks of the passage of the legislation.

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

We have also provided responses to paragraphs 1(b) and 1(c) of the Inquiry's Terms of Reference.

In drawing on the analysis of the Brady Review around the continued incidence of fatalities in the sector during its review period, Idemitsu Australia is of the view that it is of critical importance to implement measures which will embed safety practices in the culture of mining organisations. This is a more effective and preferable approach to the imposition of arbitrary and potentially unsustainable limits on the use of contracted labour for statutory roles. This section is responsive to paragraph (e) of the Terms of Reference.

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

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



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

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

## **SPECIFIC ISSUES REGARDING LEGISLATIVE CHANGES**

Idemitsu Australia considers it a key and fundamental principle that the mine environment requires that leadership roles which have direct responsibility for safety (SSE, OCE, ERZ controllers, VOs and Underground Mine Managers (UMMs)) must be clearly delineated in simple, straightforward and 'crystal-clear' language. Further those who hold statutory roles must have autonomy and authority in respect of the discharge of their responsibilities.

The successes of legislative changes to Queensland mine safety legislation since 1999 have, we believe, arisen because there is clear delineation of authority on the mine site and in mining operations and activities.

The SSE is a statutory role that is ultimately charged with responsibility for the safety of the mine and has effective authority bestowed on them to ensure that they are able to do all things required to ensure the mine is a safe workplace.

Other statutory role holders within the mine operate under the authority of the SSE.

At present there is absolute clarity in these arrangements, which are well understood in the sector. This is a critical design feature of the operational and safety framework in place in Queensland coal mines and any attempt to dilute this level of clarity, for example by creating overlapping responsibilities or placing responsibilities in the hands of those who do not properly understand the mine environment and current operations, must be avoided at all costs.

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

### **Proposed prohibition on OCEs, VOs and ERCZs being involved in the production of coal**

This potential prohibition will compromise safety and health at coal mines. The Consultation Draft of the Coal Mine Safety and Health and Other Legislation Amendment Bill 2022 proposes that Open Cut Examiners (OCEs) (for Surface Mines), and Ventilation Officers (VOs) and ERZ Controllers' (ERZCs) (for Underground Mines), responsibilities and duties do not include "the production of coal from the mine".

These statutory positions are currently primarily focussed on safety and health, and the existing law sensibly permits the holders of these positions to be involved in production activities as well.

The Consultation Draft of the Amendment Bill's proposed prohibition in this regard fails to take account of the practicalities of coal mining, and the long-held recognition that it is in fact beneficial to, and at times necessary for safety and health, for OCEs, VOs and ERZCs to be leaders of coal mine workers involved in production.

The proposed prohibition will have the effect of removing the significant supervisory experience and expertise these statutory position holders inevitably bring to a coal mine from critical decision making, mentoring, and training persons under their charge. This includes supervising and mentoring coal

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<sup>1</sup> Brady Review, page 21



mine workers in the proper safety risk management processes to identify risks that less experienced and competent coal mine workers will simply not appreciate.

Further, the Consultation Draft of the Amendment Bill provides no guidance about the meaning of "the production of coal from the mine". The difficulty is that production and safety are necessarily intertwined. The inevitable confusion that will follow can only serve to compromise safety and health at coal mines.

The proposed amendments create at best a situation requiring ongoing communication and coordination between two persons who are both 'in-charge' of the site, one from a safety perspective and the other responsible for supervision of production. We believe however that separating these responsibilities into two roles will give rise to conflict over decision making and/or the potential for both persons to 'stand back' from decision making in the expectation that a particular matter is within the control of the other. In the fluid underground coal mining situation, this potential causes Idemitsu Australia grave concerns for our people.

We set out below a practical explanation of the issues that will inevitably arise, using the example of the ERZC statutory position.

#### *Working Example – ERZCs*

Currently, ERZCs have responsibility to supervise underground crews of Coal Mine Workers (CMWs), which we understand from our employees to be the most attractive aspect of the role. In the absence of these supervision responsibilities, it is likely that the role will become less attractive to potential recruits, particularly in circumstances where it takes two years of study to be certified as an ERZC versus three days to obtain the basic qualifications required to be a production supervisor.

If these provisions of the Consultation Draft Amendment Bill is enacted, it is to be expected that many ERZCs will relinquish that role and seek to become production supervisors instead. As production supervisors, they would have responsibilities for running the crew, but without the attendant statutory obligations of an ERZC. This is likely to result in a shortage of ERZCs in the industry.

It is our firm view that ERZCs must have health and safety as the core of their responsibilities and duties as well as the supervision of CMW involved in production. ERZCs need a detailed practical understanding of how safe mining operations will be impacted by their decisions. The more time that passes in a split supervisory system in which ERZCs are prohibited from having responsibilities and duties for the production of coal, the more remote and disconnected each ERZC's practical operational experience will be. This will inevitably, over time, lead to poor safety and health decision making due to lack of knowledge and/or understanding.

These provisions in the Consultation Draft Amendment Bill will result in:

- the ERZC statutory position becoming unpopular and difficult to recruit for;
- each production crew requiring a separate production supervisor, who the crew would report to on a day-to-day basis. Conflicts in instructions from production supervisors and ERZCs with respect to safety and health matters are inevitable, as are gaps in addressing safety and health matters as production supervisors and ERZCs each assume the other has responsibility for a particular matter and overlooks it;
- mines such as Ensham Mine having to employ an additional 25-30 production supervisors to allow the mine to keep operating. We estimate that an additional 25 production supervisors will represent a recurrent \$6.25 million annual cost to the business; and
- the production supervisors could not report to ERZCs. Instead, they would need to report to production superintendents. Meanwhile, the ERZCs would report to the Underground Mine Manager (UMM). This would place unnecessary pressure on senior positions at the



mine, such as UMMs, as a result of having to reconcile safety and health information from both production superintendents and ERZCs. This will eventually lead to the UMMs becoming Statutory Safety Compliance Managers who are disconnected from the day-to-day operations, with the potential to lead to poor safety and health outcomes.

It should be noted that the proposed arrangements have been unsuccessfully trialled in the past by at least two Queensland coal mines and were subsequently abandoned. There are many within the industry who will attest to the imperative for the safety and health function to be "owned" by the same persons who are responsible for the operations of a coal mine. This necessarily means that they are the person responsible for the production of coal.

In the present case however, the Government is not trialling or testing arrangements in a manner which they could easily be reversed if found to be unsuccessful, or unsafe.

They will be locked-in by legislation.

### **Duties imposed on Coal Mine Operator, which should be with the SSE or UMM**

The Consultation Draft Amendment Bill requires that:

- the coal mine operator for the surface mine or the separate part of the surface mine must ensure the responsibilities and duties of the OCE for the surface excavation:
  - are limited to responsibilities and duties prescribed by the CSMH Regulation for the surface mine excavation; and
  - do not include the production of coal from the mine; and
- the coal mine operator for the underground mine must ensure the responsibilities and duties of an ERZC:
  - are limited to the following -
    - controlling activities in 1 or more explosion risk zones;
    - other duties given to the person under the mine's SHMS; and
  - do not include the production of coal from the mine.

The effect of this is that the coal mine operator is given responsibility for day-to-day management of the responsibilities and duties of OCEs and ERZCs at the mine. In our view, this is not appropriate because:

- it is contrary to section 25(1) of the CSMH Act and undermines the SSE's role and responsibilities;
- the CMO does not have the qualifications or responsibility to give directions to coal mine workers. In practice such directions are given by the SSE;
- a CMO's primary responsibility under the CSMH Act is to ensure the SHMS is in place and effective. It is not the CMO's responsibility to supervise or manage coal mine workers, other than the SSE; and
- the CSMH Act states that a UMM cannot be given a technical direction unless the person has the equal or same level of qualification. Despite this, the proposed amendments ensure that the CMO directs ERZCs. This undermines the role of the UMM.

As a practical matter the CMO is an owner, corporate entity or executive, generally remote from the on-site operations and not in the best or most appropriate position to directly monitor and ensure compliance and operational requirements. Rather the CMO's role is to set in place systems and operations (in particular, the Safety and Health Management System), while facilitating a culture and



providing authority to personnel to ensure that those systems are effective and that operations are compliant.

The CMO will regularly spend time on-site, meet with workers, review systems with the support of their corporate and on-site teams. By these actions the CMO ensures ongoing proper functioning systems and operations.

In our view a system which moves allocated responsibilities to a distant CMO, while alleviating on-site personnel from holding these responsibilities, will create a lack of accountability which will, again, lead to a less safe environment and worse safety outcomes.

### **Employment restrictions for statutory position holders**

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

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

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

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

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

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

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

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

We also have fundamental questions about the underlying data and evidence being used to justify these employment restrictions on grounds that they will improve safety. It is unclear to us that it has been proven that where statutory roles are filled through contracted or labour-hire arrangements, that





this will result in a less safe workplace. Our view of the data is that in respect of statutory roles, the level of training and experience, of the position holder and also of their supervisor, will have a much greater impact on safety outcomes than what manner of contract was used to engage their professional services.

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

### **BROADER WORKFORCE ISSUES**

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

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

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

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

### **How the amendments actually reduce safety for Queensland mine workers**

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

In our view, the safest mining workforce will be drawn from a well-trained workforce which is of a sufficient size and availability to adequately fill the roles available. This must include a sufficient supply of workers who are able to take on roles in the event of illness or an unscheduled departure. This pool of available workers can either come from the general population of skilled mine workers, or they can be engaged through labour hire companies on a subcontracted arrangement.

The provisions of the legislation effectively make the latter pool available only for a short 12-week period for most coal mine operators. This means that a statutory role must be filled within 12-weeks by engaging a certified worker who is either unemployed or who is able to be attracted from another coal mine operator.

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

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



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

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

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

*"The WA Fatality Review also highlighted major deficiencies in supervision. From analysis of the 52 fatalities which occurred during this time period, it was found that '44 per cent of fatal accidents occur under the supervision of a person in their first year in the role, with 6 per cent in the first month'<sup>43</sup>. The WA Fatality Review further found that almost 'a quarter of fatalities involved a supervisor in their second and third year in the role' and overall '68 per cent of fatalities occurred during the supervisor's first three years in the role'.*

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

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

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

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<sup>2</sup> Brady Review page 30



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

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

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

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

### **A safety red flag?**

We note a potential red flag with respect to Queensland coal mine safety at the 2022 Queensland Mining Industry Health and Safety Conference recently held at the Gold Coast.

It has been Idemitsu Australia's experience that Queensland mine safety case studies have been regularly shared at previous mine safety conferences. It was notable that no Queensland cases however were shared this year. A credible explanation for this is, in our view, that Queensland mine operators were not willing to share incidents due to a system which emphasises prosecution and punishment, rather than accountability and continuous improvement.

### **BOARD OF INQUIRY REPORT**

Idemitsu Australia has considered the Queensland Coal Mining Board of Inquiry's (BoI's) Report<sup>3</sup> in light of the proposal to restrict **the employment of statutory position holders**.

While on our reading, the Report does not directly make statements or recommendations relevant to contracted labour appointed to these roles, the report does make a number of comments in respect of how safety outcomes are affected by the presence of contracted labour.

Our comments therefore primarily relate to Chapters 11, 12 and 13 of the BoI Report.

### **Impact of labour-hire arrangements generally and specifically labour-hire statutory officers' roles on mine safety and worker wellbeing**

At page 378 of the Board of Inquiry Report it is noted that "There has been only limited research into whether the use of labour hire and contract labour has affected occupational health and safety

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<sup>3</sup> Queensland Coal Mining Board of Inquiry Report, 2021



outcomes in Australian and New Zealand mining." It is likely that research on the impact on safety of contracted employees undertaking statutory roles is even more limited.

At page 384 the Board of Inquiry Report acknowledges that "There has been limited research into how organisations can minimise safety risks associated with labour hire and contract work."

Given these circumstances it would be of greatest value at this time to commission and undertake the independent research required to properly understand:

- a) whether there are safety impacts due to the presence of contracted holders of statutory roles at Queensland coal mines; and
- b) work to implement measures which will minimise any safety risks associated with labour hire and contract workers holding statutory roles.

This is likely to include a range of measures such as requiring labour hire firms to actively ensure their workers are briefed on and take advantage of any complaints mechanisms, and to actively work to empower their employees to speak up in relation to safety concerns.

In our view these actions are absolutely required if it is genuinely believed and can be demonstrated that certain contracted workers either experience penalisation where they have spoken up about safety concerns or where they believe this would be a consequence of speaking up. There is frankly no place in the Queensland coal mining sector for this kind of behaviour to be allowed. According to the BoI Report, the 2007 NSW Mine Safety Advisory Council commissioned report *Digging Deeper*, where labour-hire employees provided evidence that they would be penalised for speaking up about safety concerns.

We do however note that the NSW report is around 15 years old and that mine safety philosophy and practice has come a long way in that time. That said, it is critical that all mine workers, including contracted employees, have confidence to raise safety concerns without fear of reprisal. We know from research and practice that this is the surest way to save lives and to prevent injuries.

According to the BoI Report, (page 384) Professor Quinlan who assisted the BoI "considers that a large and well-constructed study of safety in the Australian coal mining industry, with a particular focus on the impact of labour hire and contract work, would be very valuable."<sup>4</sup>

## TERMS OF REFERENCE PARAGRAPHS 1(B) AND (C)

### **1(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.**

Idemitsu Australia's Ensham Mine operations and maintenance EA workforce does not have lag safety indicator-related bonuses and incentives.

The workforce however does have a Production Reward Scheme which has an "...underlying basis to maintain production levels through flexibility of work skills, continuous operations of production units and in consideration of the competitive environment in which we operate."

The scheme is in two parts:

1. A fixed fortnightly payment
2. A quarterly payment based on coal railed during the quarter.

While these arrangements provide an extrinsic reward for a generally productive workplace, the rate of productivity in our operations is primarily determined by the productivity of our capital equipment,

<sup>4</sup> BoI page 384



particularly continuous miner equipment, and the steady rate at which a bord and pillar mine is able to operate. While the steady rate of production maybe impacted by external factors such as water, geology, machine maintenance, etc, there is little that an individual worker can or will do to "force" the pace of operations.

Rather our incentives and culture encourage our people to work as a team, in safety and production.

Our bonuses have been developed and implemented with an intent and in a manner which does not result in production being preferenced over safety.

Lead indicators such as site audits & Critical Controls audits are included in our staff and executive Short Term Incentive Payments (STIP) KPI measures for 2022/23.

**1(c): accurate, fulsome and timely identification, classification and reporting of, and effective responses to, incidents and failures of risk controls.**

Idemitsu Australia strongly agrees with Bol **Finding 89** that, "Coal mines must be vigilant to address the perception that labour hire workers and contractors might jeopardise their ongoing employment by raising safety concerns."

Idemitsu has a highly effective *Hazard / Incident Investigation and Reporting Standard* in place which requires accurate, fulsome and timely identification, classification and reporting of all hazards and incidents, including failure of risk controls.

Strong and clear language stating and reinforcing the importance of workers raising and reporting safety concerns, without fear of reprisal, is well documented throughout the organisation's induction and onboarding procedures. Continuous improvement of the site induction process ensures relevant legislative requirements are included in the induction processes.

Idemitsu Australia consistently reinforces the importance of workforce involvement in safety, and we actively seek learnings which will improve our safety systems.

**Obligations on labour hire companies to ensure a safe workplace**

The Bol made a range of findings in respect of responsibilities for reporting in relation to workplace incidents (eg findings 92, 93 and 94).

Idemitsu Australia is of the view that these issues should be governed by the Safety and Health Management System (SHMS) which should place the responsibility for reporting in the hands of a single accountable party, ie the SSE.

This avoids the potential for artificial distinctions between 'labour hire' and other contracted employees delivering for example maintenance or other services on-site, to become subject to confusing and unclear reporting requirements.

Consistent with this there should be a single SHMS incident reporting methodology applied for all coal mine workers, rather than different methods of reporting for sub-categories of coal mine workers.

A single responsible party for reporting incidents also supports the authority and accountability of the SSE. If the SSE is not satisfied with the level of reporting or with the response to an incident, they are in a position to refer the matter to the inspectorate for investigation.



### Actively promoting a safety culture

**Recommendation 19** of the BoI Report recommends that coal mines regularly review site induction procedures to ensure all workers are fully informed, including in relation to reporting of safety concerns, and providing in effect psychological safety around actively considering safety.

Idemitsu Australia does this by recognising the importance of being able to meet obligations around the reporting of safety concerns by all coal mine workers, without fear of reprisal and this is documented throughout the organisation's induction and onboarding procedures. Continued development of the site induction process ensures relevant legislative requirements and workforce involvement remain steadfast.

As part of Ensham's implementation:

- Scripting utilised throughout Ensham's induction process ensures elements specific to legislative requirements around obligations are covered.
- Induction scripting states and reinforces the requirement to report all incidents and near misses.
- Ensham training department monitors and confirms that all new workers at the mine are fully informed, throughout all onboarding processes, of the importance to report any safety concerns without fear of reprisal.
- The '100% I Will Take 5' initiative and subsequent presentation further approaches the area of reporting safety concerns, with the re-iteration of supervisors being fully supportive of concerns raised.

We do note however the impact of external factors on the ability of companies to actively promote a safety culture. Consistent with the concept of High Reliability Organisations, "bad news" must flow freely to enable organisations to gain access to the information which will enable systems and practices to be continuously improved.

Unfortunately, increased penalties being imposed on individuals and organisations promote the exact opposite behaviours of self protection, secrecy and non-cooperation in order to avoid self incrimination.

High Reliability Organisational theory encourages failure to be brought forward, rather than for someone to simply be blamed.

We note in particular the work of Dr Vicky Comino and her paper, *Regulating for a Culture of High Reliability*<sup>5</sup>, which states that "regulators in this space should have a secondary but vital supportive role, where crucially they must work with industry in the drive to encourage a culture of high reliability".

Dr Comino says that the regulators role is "to remove any unnecessary 'requirements that obstruct progress towards high reliability'" and regulators "need to be consistent, clear and transparent" and that concerns about "governance (including accountability and risk management systems) and the culture of those regulators" be addressed.

### CULTURE AND LEADERSHIP

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

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

<sup>5</sup> University of Queensland School of Law.



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

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

The Review also notes the tendency to a "drift into failure."<sup>6</sup> An implication of this is that "Despite the best of intentions, complex systems can 'gravitate back to a certain level of risk acceptance, even after interventions make it safer.' If applied to the mining industry, this suggests the industry will gravitate towards higher levels of risk acceptance over time, even after intervention by, for example, the Regulator, shareholders or public opinion."<sup>7</sup>

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

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

It is critical that every Queensland coal mine maintains a vigilance towards safety and is responsive to the "combination of banal, commonplace, everyday factors, that combined in such a way to cause a fatality."<sup>8</sup>

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

We turn then to the High Reliability Organisation Framework as a method of continually improving safety in Queensland coal mines.

### **HRO Organisations**

In light of the Government's consideration of implementing restrictions on the employment of contracted employees into statutory roles, we believe it is important to consider the findings and recommendations of the Brady Review.

Dr Sean Brady recently provided an Industry Briefing, available on the RSHQ website, which includes a useful summary of the key elements of High Reliability Organisations<sup>9</sup>:

#### **HROs look at their systems**

- HRO organisations don't implement off the shelf solutions but consider what's wrong with existing systems and making them better. This process requires sustained commitment.

#### **HROs focus on practices**

- Culture is driven by practices and not just words
- HRO's embed the practices that support the right organisational culture
- HROs remove practices which sabotage the right organisational structure

#### **HROs are driven by leadership**

- HRO principles are about reliability and predictability
- HROs are highly predictable organisations
- Safety is only one outcome of becoming more predictable

<sup>6</sup> Brady Review p 59.

<sup>7</sup> Brady Review p 63.

<sup>8</sup> Brady Review p 70.

<sup>9</sup> <https://www.rshq.qld.gov.au/about-us/resources/industry-leaders-briefing>

**HROs learn how they really work**

- 'Bad news' gives you the valuable information you need to diagnose where your systems aren't working

**HROs ensure bad news is able to flow freely**

- HROs welcome bad news
- HROs act on bad news

The Brady Review undertakes an important discussion of mines as complex systems of behaviours, where safety is an emergent part of a complex system, rather than as a single part of the organisation that can be isolated or pointed to. According to the Brady Review safety is the product of a system made up of a range of competing goals including "production pressures, budget constraints, culture and unions – (which) will all interact to govern the safety on site."<sup>10</sup>

In effect, the establishment of an HRO framework within a coal mine, is intended to set a culture which will provide the best circumstances for positive safety outcomes.

As Dr Brady states, "An analysis of the causal diagrams for individual fatalities show that many of these fatalities are characterised by banal, every-day and straightforward factors, such as a lack of supervision, a lack of training, or a loss of protection." Cultural frameworks aimed at embedding safety practices within mining organisations are in Idemitsu Australia's view, the best response to preventing fatalities, injuries and high potential incidents, and producing a collective state of mindfulness.<sup>11</sup>

Idemitsu has adopted HRO principles and is working towards achieving HRO objectives:

- Ensham engaged the University of Queensland Sustainable Minerals Institute to conduct an independent Safety Diagnostic against the HRO Principles in 2022. As a result an action plan has been developed and is being implemented to support the continual improvement of Ensham's safety journey;
- Ensham proactively participated with Noetic in the HRO study, facilitated through the QRC.

Idemitsu Australia is fundamentally of the view that this is the point at which it is most important for companies, regulators, unions and the government to come together to establish systems of safety which will genuinely enhance both operational day-to-day safety – including how best to embed the concept and functioning of High Reliability Organisations among Queensland coal mine operators.

Unfortunately, there has been limited effective engagement between unions, government and industry over the last twelve months, with a range of legislative measures being proposed or implemented which actively go against the recommendations and implications of the Brady Review – for example, by increasing barriers to the engagement of well-trained and experienced persons to take on statutory roles.

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<sup>10</sup> Brady Review page 65

<sup>11</sup> Brady Review, p 68





## **CONSULTATION WITH THE SECTOR**

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

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

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

.../ENDS.