Speech By

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MEMBER FOR CONDAMINE

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COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Mr WEIR (Condamine—LNP) (4.31 pm): I rise to make a contribution to the debate on the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 as the LNP's shadow minister for natural resources, mines and energy. On 25 May 2020, the former minister for natural resources, the Hon. Anthony Lynham, introduced the Mineral and Energy Resources and Other Legislation Amendment Act 2020. The bill sought to amend the Coal Mining Safety and Health Act 1999 to require that the person to be appointed to a safety-critical statutory role at a coalmine is an employee of the coalmine operator.

This bill further proposes amendments to the resources acts, including the Mineral Resources Act 1989, to implement a framework to defer specific critical minerals mining leases. It also amends the Petroleum and Gas (Production and Safety) Act 2004, the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009 to amend compliance provisions to remove the requirement for resource authority holder agreement to a monetary penalty for noncompliance.

While the committee recommended the bill be passed, the committee raised concerns that the consultation which preceded the tabling of the bill left various issues surrounding the direct employment provisions under the CMSH Act unresolved. This was in large part because this bill at its introduction was declared an urgent bill and the committee only had three weeks to table their report. This raises the question: why did this bill suddenly need to become urgent? Let's be clear: the government has had close to two years to get this right. The only reason this bill is urgent is that the minister has not been able to resolve this issue for almost two years. The minister has left it until one month out before the deadline of 25 November 2022 to introduce this bill. Because of that, the minister has had no choice but to label this bill urgent, giving the parliamentary committee a mere few weeks to consider such a serious issue. It raises the question: was the minister trying to avoid scrutiny or was the minister just incompetent?

There is no doubt that the limited time frame has drastically reduced the number of submissions received, and the inadequate opportunity for consultation through the few public hearings conducted meant a reduction in comments obtained. The consequences from a lack of consultation are serious and wide-reaching, with the Mining and Energy Union saying in its submission that 'the MEU doesn't believe the bill will improve health and safety outcomes in its current format'. The MEU goes on to say the 'bill only seeks to undermine the original intent of legislative change and places coal mine workers at risk'.

As I touched on at the start of my contribution, there are significant concerns with the direct employment requirements this bill sets out to achieve. At the time this bill was first introduced almost three years ago, the intention was to ensure that holders of statutory roles at coalmines can make safety complaints, raise safety issues or provide assistance to an official in relation to a safety issue without

fear of reprisal or impact on their employment. The direct employment requirements were passed on 25 May 2020, with an 18-month transitional period which would have ended on 25 November 2021. I would like to touch on the submission made by the QRC, which states—

While it has been suggested that the increasing use of contractors is leading to a dilution or fragmentation of safety responsibility at mine sites, this is not supported by evidence and is offensive to contractors that they cannot employ their own statutory position holders.

The fact this minister is ramming through a bill that is not evidence based tells this House all we need to know. This is a government that has given up on consulting and given up on acting in Queensland's best interests.

The explanatory notes state that towards the end of the transitional period industry flagged challenges with implementing the requirements. In response, the duration of the transitional period was extended until 25 November 2022 to allow time for industry, with unions and the government, to seek to identify solutions to the challenges raised by industry.

I was the deputy chair of the committee when the original bill was introduced in 2020 and stated in my speech at the time the challenges that this section of the bill would face. The complex ownership structure of many mines and the fact that industry was not consulted on this significant amendment were always going to cause delays in implementation. Now here we are having a third attempt at the implementation of this particular section. A tripartite working group was established by the Commissioner for Resources Safety & Health at the Minister for Resources' direction in late 2021 to try to resolve this issue. However, the explanatory notes state—

... challenges to implementing these requirements have arisen relating to corporate and operational structures, unplanned short-term absences, economic viability for low-risk operations (exploration activities) and situations where a contractor is substantially responsible for the mine operations.

Does this sound familiar?

Given the number of issues that are not fully resolved in this bill, there are grounds for the committee to be given an extended time to understand how these issues could be resolved. This is why the opposition members would like to see the date extended until 25 November 2023. I therefore table an amendment to be circulated in my name that seeks to amend part 2 of the bill for the date to be extended from 25 November 2022 to 25 November 2023.

Tabled paper: Coal Mining Safety and Health and Other Legislation Amendment Bill 2022, proposed amendments by Mr Pat Weir MP 1857.

I understand given the standing orders of this House that I am unable to move this amendment during consideration in detail given that it falls under the same question rule. Therefore, I would like to place this amendment on the public record now for the benefit of the minister and members of this House. Given the very limited time for industry to adjust systems and processes to ensure compliance with the new requirements, an extension is critical.

The draft legislation in its present form fails to detail the process for when appropriate statutory position roles cannot be filled due to these new requirements. This raises serious safety concerns, so if the government practise what they preach they would incorporate my amendment. We know it is becoming increasingly embarrassing for this government; however, this embarrassment will only increase if these issues are unresolved at the passing of this bill.

Other amendments proposed in the bill will allow limited exceptions to the direct employment requirements under the CMSH Act. It proposes to enable direct employment of coalmine senior site executive, SSE, underground mine manager, UMM, and ventilation officer, VO, statutory position holders by associated entities. The bill also provides exemptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for SSEs, UMMs and VO statutory positions. Additionally, the bill provides similar exemptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for open-cut examiner, OCE; explosion risk zone, ERZ, controller; electrical engineering manager, EEM; and mechanical engineering manager, MEM, statutory positions.

We heard the minister talk about 12 weeks. There were proposals for it to be longer and/or shorter, and the minister is comfortable with 12 weeks. Given what we have heard, 12 weeks is fine if it is a planned absence. If it is not, if someone falls ill or someone is injured, to find a statutory office holder in 12 weeks to suddenly fill a position on a mine will present serious challenges for those mines.

The bill further proposes to provide exemptions to the direct employment requirements for entities which employ at least 80 per cent of the workers at a coalmine. The MEU submits that the 2020 amendments were to ensure that statutory role holders were focused solely on safety. This is broadly consistent with advice from RHSQ, which states—

The objective of the direct employment requirements is to ensure that holders of statutory roles at coalmines can make safety complaints, raise safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.

RHSQ submits that the proposed amendments will allow limited exceptions to the direct employment requirements while still achieving the safety intent of the 2020 legislative amendments.

The tripartite working group established by the Commissioner for Resources Safety & Health met periodically and received written submissions and face-to-face presentations from impacted stakeholders. In February 2022 the working group presented its report to the minister.

The QRC and MEU submit that some provisions of the tabled bill do not reflect the agreed outcomes of the working group. For example, the QRC submit that the bill's provision to allow direct employment exemptions for an entity who employs or engages at least 80 per cent of workers on a coalmine site did not come from the consultation process. It raises the question: if it did not come from the consultation process, where did it come from? This goes back to why it has not worked in the original bill. The MEU is opposed to any exemptions for the direct employment requirements contained in the CMSH Act.

The committee notes that the consultation process was not successful in resolving significant gaps between the positions of the various members of the tripartite working groups on certain issues and that the tabled bill might not reflect the consensus position of the working group with respect to certain issues.

QRC and Idemitsu Australia additionally stated that the implementation timeline for the bill, if passed, will create structural and contractual difficulties for the industry and has the potential to create significant disruption in the workplace. These requirements will serve to reinforce serious skill shortages currently faced by the industry. QRC submits that industry should be given an additional six months before the bill commences. The MEU raised concerns about how the exceptions to the direct employment provisions will be monitored and penalties for noncompliance enforced. There is still no guidance as to whom RSHQ is to monitor and regulate, and when the 80 per cent threshold is met would be open to abuse by contractors.

Concerns were also raised about RSHQ's capacity to monitor the implementation of the amendments. In response, the RSHQ have advised that it 'will monitor the implementation of the direct employment requirements'. The committee recommends clarification by the minister as to which body will enforce compliance with the exceptions to direct employment provisions. I acknowledge that the minister did address that but some questions are still left. If a contractor has 80 per cent of the employees at a mine, I assume that includes everyone down to the cook because the minister said it is not just the mine site. If some section of the mine is contracted out to another employment company, does that immediately drop it below 80 per cent? I would appreciate further clarity on the detail of the bill.

The bill proposes amendments to the CMSH Act to enable direct employment of the SSE, UMM and VO statutory position holders by associated companies and joint ventures. This would provide coalmine operators with greater flexibility to engage SSEs, UMMs or VOs from a broader pool of employees across its different operations and joint venture companies without the need to restructure individual employment arrangements each time. The MEU is opposed to this amendment on the basis that it would allow for practices which would undermine the intent of the legislation. The MEU recommends that only the coalmine operator and not any associated entity be permitted to hire all statutory officials.

Some submissions queried why the associated entity exception does not include the role of OCE and/or ERZ controller, EEM and MEM roles. QRC states that not including the EEM and MEM roles in the associated entity exception creates additional burden on operators if these positions cannot be shared across company sites. That is in part because of the shortage of SSEs. The committee notes that the application of the associated entity exception to the direct employment requirements for EEM and MEM roles appears to be an issue that was not resolved during consultations and may require further consideration by the minister. The committee recommends the minister further consider the application of the associated entity exception to the direct employment requirement for EEM and MEM roles.

The bill proposes further amendments to the CMSH Act to provide exceptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for the SSE, OCE, UMM, ERZ controller, EEM, MEM and VO statutory positions. This change provides coalmine operators some latitude for covering unplanned short-term absences or vacancies for a statutory position so a person who is not an employee can act temporarily in the role.

QRC submits that the 12-week exception to the direct employment requirements is too short for filling a vacancy. Idemitsu Australia submitted that recruitment in the industry is challenging as there are not enough people in the industry to fill the positions of SSEs, UMMs and VOs and that the 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. For example, the MEU submits—

> It is arguably permissible under s.59A that an SSE could appoint a statutory official for a period of 12 weeks on the basis that a permanent statutory official was absent for a single day.

The MEU goes on to say—

> Adequate training by industry for these safety-critical statutory roles, in the lead up to this legislation being enacted, seems to have been insufficient.

I cannot emphasise enough how short we are of these critical roles. They are very, very short and in high demand.

The CMSH Act is also proposed to be amended by the bill to provide exceptions to the direct employment requirements for entities which employ at least 80 per cent of the workers at a coalmine. This change means the SSE, OCE, UMM, ERZ controller, electrical engineering manager, mechanical engineering manager and VO statutory positions at such a coalmine can be directly employed by the entity—for example, a large contractor company, major service provider et cetera—which also employs the vast majority of the mine's workers.

The QRC queries where the 80 per cent exception originated and states there is not a major contractor in Queensland which the 80 per cent exception would apply to. The QRC went on to say this requirement was not discussed at any time in the working group established by the minister. The minister named some mines that he contends does fill that. I still question how that figure was arrived at. The QRC contends that major contractors often undertake specialist work and therefore should also be able to engage their own statutory position. The QRC and member companies are concerned these requirements will create a disconnect between the statutory position holders and the shift crew, which has the potential to have a significant adverse effect on safety.

The MEU does not support the use of exceptions. It submits that the CMSH Act does not allow for exceptions, that the target of 80 per cent of coalmine workers is arbitrary and not based on any recommendations, principles or academic research and that this exception was never raised nor discussed by the working group and there is no agreement for such a proposal. The committee is concerned that the various members of the tripartite working group remain significantly far apart on this specific exception to the direct employment requirements, and the 80 per cent threshold may require further consideration by the minister. The committee recommends the minister revisit the percentage threshold for the exception for direct employment requirements for entities who employ at least 80 per cent of workers at a coalmine.

The bill proposes amendments to the CMSH Act to provide that the requirement to directly employ an SSE does not apply for a coalmine operator whose only coalmining operations for the coalmine are exploration activities. This is a good amendment. The change will mean that a company undertaking exploration activities, and that is not involved in other aspects of coalmining operations, would have greater flexibility in relation to appointing an SSE. The QRC and Peabody Energy submit that this exception should also apply to coalmine operators whose only coalmining operations are rehabilitation, care and maintenance activities, given the infrequent nature of the work.

The proposed amendments will support implementation of a key action in the Queensland Resources Industry Development Plan that the government will develop and implement a framework to allow the Minister for Resources to defer the first year of rent for specific critical minerals mining leases. The Association of Mining and Exploration Companies is supportive of the rent deferral proposal and implementation and supports the change in terminology from 'new economy minerals' to 'critical minerals'. In terms of the amendment schedule which lists critical minerals, AMEC submits that the minister should consider including phosphate, which it states is a critical fertiliser mineral used by the agricultural industry. AMEC submits there are significant phosphate deposits being developed in the North West Minerals Province and sees it as an opportunity for the Queensland government to use its supply reliability as an investment attraction mechanism and consequently facilitate the development of phosphate in Queensland. I reinforce that view. Phosphate is incredibly important to agriculture.

A fundamental principle of the resources acts is that resource companies seeking to explore and produce the state's resources must coexist with other landholders. This is supported by the compliance provisions in the petroleum and gas act, the GE act and the GHG which state that a monetary penalty may only be made where the holder has agreed to the requirement being made. The effect of these sections is that a resource authority holder may be able to negotiate the terms of any monetary penalty that might be proposed by a relevant official and delay the resolution of a coexistence matter for an indefinite period. The explanatory notes state—

> The current provisions are inconsistent with the MRA and limit the department's ability to regulate and take action for breaches of the Land Access Framework and obligations and conditions of a resource authority.

The proposed amendments will remove the requirement for holders to agree to the monetary penalty, limiting their ability to delay enforcement action. These amendments will not limit rights of resource authority holders with notice provisions, providing an opportunity for natural justice and any decision being appealable to the Land Court of Queensland. I fully support that amendment.

This bill may have sound intent; however, it has significant flaws in the detail. It is an approach that is becoming all the more common by this third-term Labor government and a Premier and ministers who have given up listening and consulting. Too embroiled in integrity crises, the Premier and her ministers have all but given up on service delivery and make a mockery of governing in Queensland's best interests. As many submitters have identified, the government has failed to consider feedback and has unnecessarily rushed these amendments when it has had 18 months to consult and draft meaningful legislation. The fact that there is such strong opposition from industry and unions shows this draft legislation is ill thought out and has significant unintended consequences. The safety of mine workers should not be put at risk because of the ineptitude of this government.

Workplace safety is something that I am sure we all feel strongly about. Many of us have friends and relations who work in the mining industry. I certainly do, including my son who has worked in a number of mine sites. I come from an industry which, unfortunately, has a workplace record much worse than the mining industry—that is, agriculture. I have attended the funerals of school mates, friends and fathers of friends who have been killed in farm place work accidents, including one only recently. I know the families that have been left behind. I have seen the impacts that these families will carry for the rest of their lives. Indeed, I myself had occasion to be transported to the hospital emergency department in Toowoomba by ambulance after a workplace accident.

Every worker has the right to expect to finish their shift and go home to their families safe and sound, so I support the intent of this bill and the LNP will not be opposing it. My concerns are with the bungled implementation and very poor consultation process. I fear that, due to leaving the introduction of this bill until it had to be rushed through the committee process, we will once again be in this House debating amendments to fix the unresolved issues with this legislation.