Speech By

Hon. Scott Stewart

MEMBER FOR TOWNSVILLE

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COAL MINING SAFETY AND HEALTH AND OTHER LEGISLATION AMENDMENT BILL

Second Reading

Hon. SJ STEWART (Townsville—ALP) (Minister for Resources) (4.06 pm): I move—

That the bill be now read a second time.

I thank the Transport and Resources Committee for its expeditious consideration of the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022. I note the committee tabled its report on Friday, 4 November. The bill strengthens the safety and health culture in our resources sector through the facilitation of direct employment requirements, which require a person who is an employee of the coalmine operator to be appointed to certain statutory positions. These requirements ensure that holders of statutory roles at coalmines can make safety complaints, raise safety issues or help officials in relation to a safety issues without fear of reprisal.

Last month on Triple M radio, Queensland Resources Council Chief Executive Ian Macfarlane said—

Safety is never good enough and we work in an environment of constant improvement, until every person can go home at the end of every shift.

I agree with Mr Macfarlane's comments and welcome them. Our government wants to enable and empower workers to do the right thing and to not feel impeded by their employment status when it comes to matters of safety. Every worker deserves to go home to their loved ones at the end of their shift. I am sure that everyone in this House would agree with that. Last week I was at the Moranbah Miners' Memorial and heard directly from families who have lost loved ones in the resources industry. Individually and collectively, we must do all we can to make the necessary changes to keep our workers safe. This bill addresses issues raised by industry in relation to these requirements, which were first introduced into legislation in May 2020, while upholding the intent of the original legislation.

The bill will allow limited exceptions to the direct employment requirements and will ensure that responsibility for safety is not fragmented across multiple employers. The coalmining safety and health legislation establishes the coalmine operator as the ultimate source of accountability for safety on a coalmine. That is the core of the legislative framework. Those who undertake coalmining operations must ensure the safety and health of workers who are exposed to the hazards of their operations.

The coalmine operator is responsible for implementing key safety and health systems and management structures. The direct employment requirements ensure the coalmine operator's responsibility for these structures remains intact. We cannot have accountability fragmented across multiple companies with their own structures, systems and cultures as it can lead to silos of risk. The amendments will allow coalmine operators that only undertake exploration activities to appoint a site senior executive, or SSE, through another employer. Industry advocated for this amendment and I listened. This is what good governments do. It will provide greater flexibility for junior and mid-tier companies where these activities have a lower risk profile.

The amendments will also allow contract companies which are responsible for substantially whole-of-mine operations to employ all statutory position holders for that operation. This allows the employment of a senior site executive and all statutory position holders in the management structure under the mine's safety and health management system. Through this change, the one entity, such as a contract company responsible for a whole-of-mine operation, will remain substantially responsible for safety at the coalmine. These amendments will allow operators to engage statutory position holders from external sources for temporary absences of no more than 12 weeks. This provides flexibility for covering unplanned long-term absences. Once again, industry advocated for this amendment and I listened to them.

Lastly, the amendments will allow the direct employment of the site senior executive, underground mine manager and ventilation officer statutory position holders by associated companies and joint ventures. This provides coalmine operators with greater flexibility to engage those senior position holders from a broader pool of employees across its different operations and joint venture companies without the need to restructure individual employment arrangements each time.

This bill is also delivering a key action from this government's Queensland Resources Industry Development Plan, which I released in June. Our Queensland Resources Industry Development Plan outlines the government's 30-year vision for our resources sector. Action 10 commits government to develop and implement a framework allowing for a deferral of the first year's rent for specific critical minerals mining leases. This allows proponents to redirect funds towards their project during a time when cash flow is important. To give effect to this, the bill amends the Mineral Resources Act 1989 to introduce a framework to allow the Minister for Resources to defer the first year's rent for a mineral that is prescribed in the Mineral Resources Regulation 2013 and in circumstances where the proponent can prove that funds saved from the deferral will be utilised towards startup costs for the project. The Department of Resources will provide clear guidance materials to assist applicants.

The Palaszczuk government is 100 per cent committed to growing and diversifying our resources sector. By deferring the first year's rent for eligible critical minerals projects, we are sending an important signal to explorers, investors and the industry as a whole that Queensland is serious about the continued development of our critical minerals sector. The sector has certainly welcomed and supported this. In fact, at our recent ministerial advisory group meeting for the Queensland Resources Industry Development Plan in Townsville, Association of Mining and Exploration Companies Queensland Director Sarah Gooley said that 'initiatives like that by the Queensland government show that they are willing to do business differently and that they are keen to work in partnership with the industry to develop solutions that are going to help accelerate development of these minerals'.

I now turn to the committee's report on the bill and some of the issues raised by stakeholders during the committee process. Firstly, I welcome the committee's recommendation 1, that the bill be passed. The committee recommended in recommendation 2 that I clarify which body will enforce compliance with the exceptions to the direct employment provisions. Resources Safety & Health Queensland will be the body responsible for that compliance.

The committee recommended in recommendation 3 that I further consider the application of the associated entity exception to the direct employment requirements for the electrical engineer manager and the mechanical engineer management roles. I will speak to that a little later. The committee also recommended that I revisit the percentage threshold for the exception for direct employment requirements for entities that employ at least 80 per cent of workers at a coalmine. Resources Safety & Health Queensland will monitor the coalmining industry's implementation of the provisions with a view to identifying any challenges it has with meeting those requirements.

The committee made a fifth recommendation—that the explanatory notes be amended to identify a greater number of issues regarding fundamental legislative principles. The explanatory notes have been amended to reflect potential issues of fundamental legislative principles for clause 12 of the bill, which inserts new section 324 in the Coal Mining Safety and Health Act 1999. The committee was satisfied that improvements in managing the safety and health of workers from the bill's direct employment requirements justify the potential impact of the new provisions.

The committee recommended that the statement of compatibility be amended to include a discussion regarding the engagement of the right to property under clause 12 of the bill. Changes have been made to the statement of compatibility to include further discussion on the engagement of the right to property. The committee was satisfied that the amendment would not impact on the enjoyment of the right to property and was compatible with human rights.

During the committee process some stakeholders raised concerns about the consultation period. To be clear, these amendments were developed following the ongoing, yearlong consultation process with stakeholders. The direct employment requirements were passed on 25 May 2020, with an 18-month transition period which would have ended on 25 November last year. However, it was

unfortunately towards the end of the transition period that industry outlined its challenges. In response, further amendments were made by the government to extend the duration of the transitional period, until 25 November this year, to allow time for industry to articulate those challenges to implementation and, with unions and Resources Safety & Health Queensland, to identify solutions. This was primarily achieved through the tripartite working group established by the Commissioner for Resources Safety & Health Queensland in late 2021. I take this opportunity to thank Commissioner Kate du Preez for her work in chairing this group and all of the members for their work.

In February this year, the working group presented its report to me. Following consideration of the working group's advice and possible solutions, Resources Safety & Health Queensland spent the following months working with industry to formulate refined recommendations, which were communicated with the Queensland Resources Council and the Mining and Energy Union. Further, my office and I have worked closely with industry and the union throughout this time, with numerous meetings and correspondence as well. For example, I and my office met, spoke with or received correspondence from the Queensland Resources Council at least 19 times outside of the tripartite process established. For those opposite to claim that there was no consultation is wrong. We will always consult and we will always engage, but having your say does not mean getting your way. Further consultation with industry stakeholders and the union occurred on the draft consultation bill. The government has tabled an erratum to the explanatory notes to the bill which clarifies that this consultation occurred in mid-August this year.

The direct employment requirements are to commence on 25 November this year. This has given industry 2½ years to ready itself for these amendments. The exceptions in this bill to the direct employment requirements need to commence simultaneously to ensure industry can comply with the requirements. Industry has sought a further six-month transition period to implement the changes contained in this bill. However, the bill does not impose further requirements; rather, it provides limited exceptions to the direct employment requirements. These come into full effect on 25 November this year. Further delaying the bill, or the commencement of the direct employment requirements, is not considered warranted and would be impractical for industry, giving them less flexibility.

During the committee process, stakeholders also raised concerns about the basis for the exception for a contractor company that employs 80 per cent or greater of its workers at the coalmine. This exception would allow a person to be appointed to a statutory position—such as SSE, open-cut examiner, underground mine manager, explosion risk zone controller, electrical engineering manager, mechanical engineering manager or ventilation officer—by a company such as a contractor company if the company employs or engages at least 80 per cent of the workers at the entire coalmine. To be clear, this would apply in limited instances where a contractor company may be responsible for all aspects of coalmining operations or be substantially responsible for the whole mine's operations but is not appointed the coalmine operator.

Some stakeholders, such as the Queensland Resources Council, stated during public hearings that they are not aware of any contractors in Queensland that could currently meet the 80 per cent threshold. I believe the QRC have tried to misrepresent the situation during this consultation process, particularly during the 25 October public hearing so let me clarify this for the sake of the House. There are contractor companies that are operating mines that show they are capable of meeting this 80 per cent threshold. I am advised by Resources Safety & Health Queensland that, according to information provided by the resources industry itself, there are currently 11 open-cut mines and one underground mine where a contracting company employs or engages over 80 per cent of the workers at the mine in a full-service contract. For the record these mines are Lake Vermont and Sonoma operated by Thiess; Meandu, Commodore and Broadmeadow East operated by BUMA; Broadlea, Baralaba and Kogan Creek operated by Golding; Bluff operated by MACA; Isaac Plains operated by EPSA; Byerwen operated by Macmahon; and Cook Colliery operated by Mastermyne.

While currently at these mines, these contractor companies are also appointed as the coalmine operator, this amendment would enable these companies to employ the SSE and other statutory positions even if they were not appointed as operator, provided they continue to employ or engage at least 80 per cent of the workforce. In these circumstances, a statutory official undertaking their duties and employed by the contractor responsible under the single health and safety management system will be responsible for the health and safety of the workforce, whatever its make-up, under their full-service contract.

In the case of contract companies not meeting the 80 per cent threshold, this exception would not apply and the default requirement of the statutory officials being an employee of the coalmine operator, or associated entity of the operator in relation to the SSE, underground mine manager or ventilation officer, would apply. If contractor companies continue to have a general ability to employ their own statutory positions without a requirement that they employ a minimum threshold of workers at the mine, this would be contrary to the intent of the changes made in May 2020.

Both operators and contractors have legal obligations to ensure the mine operates under a single safety and health management system as developed by the SSE to ensure there is no conflict or disconnect. Ensuring only contractors responsible for whole-of-mine, or substantially whole-of-mine, operations may employ statutory position holders will minimise disconnects between the contractor practices and that of the mine's safety and health management system. The direct employment requirements only strengthen against a potential disconnect or conflict, fortifying mines' management structures, and it ensures they are unified within one management structure, under the single safety and health management system.

As the tripartite working group did not reach a consensus on how to address the issue of contractor companies, the government determined an option between the two non-consensus options. This new option was put to stakeholders and included in the consultation draft bill. Further feedback on the consultation draft bill resulted in the exception being tightened further now only applying where a contractor company engages 80 per cent or more of workers across the entire coalmine rather than within a separate part of a surface mine as originally drafted. This change will facilitate the operation of full-service contracts for whole-of-mine operations whether or not the contractor is the appointed coalmine operator. Companies will demonstrate their compliance with these amendments through the data they routinely provide to RSHQ on employee numbers. I am advised RSHQ audits a random sample of companies each year to verify worker numbers.

This is not about making a distinction between contractor and labour hire companies. It is certainly not about saying certain types of companies are better than others when it comes to safety. It is about ensuring a central point of accountability for safety and the employment of these roles. This is critical to protecting the safety and health of coalmine workers, regardless of who their employer is.

Concerns were also raised by stakeholders in relation to temporary absences or vacancies of up to 12 weeks exception for an SSE, open-cut examiner, underground mine manager, explosion risk zone controller, electrical engineering manager, mechanical engineering manager and ventilation officer statutory positions. Some submissions contended that this was not long enough, proposing a minimum of six months would be needed to fill a vacancy and other submissions did not support the exception at all, concerned that this created a loophole that could potentially be exploited. The 12-week period provides more flexibility than current arrangements which only provide for temporary absences. It will assist with unplanned absences or vacancies in statutory roles resulting from resignations, long-term sickness or injury and statutory position holders taking long service leave.

During the committee process, some stakeholders raised concerns about not all statutory positions being covered by the associate entity exception, particularly the underground electrical engineering manager and underground mechanical engineering manager statutory positions, which they thought should be included. Other stakeholders did not support the exception at all. The tripartite working group only reached a consensus that the associated entity exception would apply to an SSE, underground mine manager and ventilation officer.

The bill provides for direct employment of the SSE, UMM and VO by associated companies or joint ventures. This enables engagement of statutory officers from a broader pool of employees across a coalmine operator's diverse operations and joint venture companies, without the need to restructure individual employment arrangements each time.

Some stakeholders did not support the exception to directly employ an SSE by a coalmine operator whose only coalmining operations are exploration activities. However, some industry stakeholders wanted the exception extended for mines in care and maintenance. This was not raised during the tripartite working group consultation by industry or their peak bodies. The advice RSHQ, the independent regulator, has given me is there is not the same level of risk between care and maintenance work and exploration activities. Mines that are in care and maintenance such as North Goonyella, Minerva and Eagle Downs are operations that have a large footprint and have higher associated risks. Exploration has a smaller footprint and limited operations and therefore has a lower risk.

The current provisions in the bill are balanced and give flexibility to a company that is undertaking exploration activities and is not involved in other aspects of coalmining operations in appointing an SSE. This benefits junior and mid-tier companies that may find it uneconomical to directly employ an SSE provided they are undertaking exploration activities and are not the operator or associated entity of an operating coalmine.

Some stakeholders raised concerns about not proceeding with amendments requiring a safety focus only for statutory roles for an open-cut examiner, ventilation officer or ERZ controller. This issue was originally raised when some mines sought to address the direct employment requirements by

combining duties prescribed under the legislation for safety with coal production related tasks such as operating production equipment like loaders, dump trucks, excavators, draglines and underground longwall and development equipment.

One of the issues raised by stakeholders was to ensure those positions avoid conflict between the safety duties and responsibilities with competing production priorities. Where there is potential for holders of these safety positions to be conflicted by production priorities, it risks their ability to effectively discharge their safety functions. In turn, this puts workers at an unacceptable risk.

The draft consultation bill circulated to industry stakeholders involved proposed amendments for these coalmining statutory positions to have a sole safety focus. However, through the feedback received on the draft bill, it has been identified that this matter needs further consideration with industry. I will ask a working group from industry and the unions to further examine this issue and to provide further advice in relation to it. Production being prioritised over safety was a key finding of the board of inquiry into the Grosvenor mine explosion and it is an important matter I would like considered further.

I table the government's response to the committee's report. I also table an erratum to amend the explanatory notes and an erratum to amend the statement of compatibility.

Tabled paper: Coal Mining Safety and Health and Other Legislation Amendment Bill 2022, explanatory notes: Erratum (second) 1854.

Tabled paper: Coal Mining Safety and Health and Other Legislation Amendment Bill 2022, statement of compatibility with human rights: Erratum 1855.

Tabled paper: Transport and Resources Committee: Report No. 25, 57th Parliament—Coal Mining Safety and Health and Other Legislation Amendment Bill 2022, government response 1856.

The Queensland government is committed to supporting the development of critical minerals projects to facilitate the development of low-emissions technologies needed to reduce emissions. To give effect to this, the bill amends the Mineral Resources Act 1989 to introduce a framework to allow the Minister for Resources to defer the first year's rent for specific critical mineral mining leases in circumstances where the proponent can prove that the funds saved from the deferral will be utilised towards startup costs for the project. The department will provide clear guidance materials to assist applicants. This will deliver on action 10 of the Queensland Resources Industry Development Plan. The framework will ensure that rent is not a barrier to economic critical minerals projects and will enable proponents to redirect funds towards their projects during a time that is critically cash-flow dependent and to deliver an improved chance of success.

The committee made the recommendation that the explanatory notes be amended to identify a greater number of issues in its discussion of consistency with fundamental legislative principles. For example, several potential issues of fundamental legislative principle were not identified including clause 23, inserting new section 291 in the Mineral Resources Act 1989.

As part of the drafting process, the Department of Resources did consider whether to include appeal rights—however decided not to. The policy intent is to support the growth of critical mineral mining projects and to remove rent as a barrier to establishing these projects. Therefore, if the criterion in section 291(1) is met then the minister must give the rent deferral. In the event that the minister refuses a request to defer the first year's rent, the applicant retains the right to seek a judicial review of the minister's decision. This is consistent with the review mechanisms for other decisions in the Mineral Resources Act 1989. Additionally, whilst not specifically set out in the provision, as part of the department's administrative decision-making process the applicant would be afforded a natural justice process prior to the decision being made.

The bill also amends the compliance provisions in the Petroleum and Gas (Production and Safety) Act 2004, the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009 to remove the requirement for resource authority holder agreement to a monetary penalty instead of taking any of the other types of noncompliance action under these acts. The ability of the Department of Resources to take proportional and visible compliance actions against authority holders is vital to ensuring the ongoing integrity of the state's resources framework. These amendments will allow the department to operate as an efficient and effective regulator that operates in the public interest. Resource authority holders must be afforded a natural justice process before a decision is made, and then they have the ability to appeal if they remain aggrieved.

The bill also contains minor amendments to correct drafting errors in the Mineral and Energy Resources (Common Provisions) Act 2014 and renumber notes in certain provisions in the Geothermal Energy Act 2010 and the Greenhouse Gas Storage Act 2009 after removing the requirement for holder agreement to a monetary penalty. I commend the bill to the House.