



# Resources Safety and Health Legislation Amendment Bill 2024

**Report No. 7, 57th Parliament**

**Clean Economy Jobs, Resources and Transport Committee**

**June 2024**

## **Clean Economy Jobs, Resources and Transport Committee**

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### **Acknowledgements**

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All web address references are current at the time of publishing.

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## Chair's foreword

This report presents a summary of the Clean Economy Jobs, Resources and Transport Committee's examination of the Resources Safety and Health Legislation Amendment Bill 2024.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

This Bill is an important step forward in improving safety for persons working in the Queensland resources industry. The Committee was able to hear from various stakeholders on the intricacies of the Bill, to better understand and analyse its operation in the context of the industry at large.

In particular, the committee would like to thank and acknowledge the efforts of Michelle and Phil Dodunski, whose son, Gareth, died in a tragic incident while at work in the Queensland resources sector. In the 10 years since Gareth's death, their advocacy for those who have been impacted by deficiencies in the health and safety practices across the resource industry, and the subsequent processes of review and investigation, has been monumental.

While the Committee acknowledges that the scope of this Bill does not appropriately capture reforms which the Dodunski's have advocated for, namely, improvements to the timelines and processes for investigations in the event of fatalities on sites, there is clearly more to be done to support those impacted, their families and loved ones in the wake of serious incidents, to ensure that the process of seeking justice is not unnecessarily traumatic, accusatory, or lengthy.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill. I also thank our Parliamentary Service staff and Resources Safety and Health Queensland.

I commend this report to the House.



Kim Richards MP

Chair

## Recommendations

<b>Recommendation 1</b>	<b>9</b>
The committee recommends that the Bill be passed.	
<b>Recommendation 2</b>	<b>14</b>
The transitional period requiring persons in ‘safety critical roles’ to hold a certificate of competency should expire 5 years after the date the Board of Examiners sets the examinations.	
<b>Recommendation 3</b>	<b>33</b>
That the proposed amendments to section 39 of the <i>Coal Mining Safety and Health Act 1999</i> and section 36 of the <i>Mining and Quarrying Safety and Health Act 1999</i> are reversed to expand the scope of the Bill, while retaining references to remote operating centre workers.	

## Executive Summary

This report provides a summary of the Clean Economy Jobs, Resources and Transport Committee's examination of the Resources Safety and Health Legislation Amendment Bill 2024. A number of important reviews have informed the development of the Bill including:

- a review of all fatal accidents in Queensland mines and quarries from 2000 to 2019 (the Brady Review)
- the 2021 Queensland Coal Mining Board of Inquiry, and
- the Queensland Government's mining industry-wide safety resets in 2019 and 2021.

The principal objective of the Bill is to improve the sector's safety and health performance and reduce the occurrence of fatalities and serious accidents. The Bill also proposes to:

- facilitate the growth in high-reliability organisation behaviours within the resources sector
- modernise regulatory enforcement powers to enhance existing compliance and enforcement tools, such as the directives framework, as well as introduce enforceable undertakings and further court orders
- provide for more contemporary legislation, and
- enhance the operation and administration of the legislation through a range of minor operational amendments.

In its inquiry, the Committee heard from stakeholders across the state and industry. The committee received 8 submissions and held a public hearing in Brisbane on 13 May 2024, at which 5 stakeholders appeared. The Committee also facilitated 2 departmental briefings on 29 April and 24 May 2024, respectively, to assist in gaining a better understanding of the policy underpinning the Bill, and seek clarity on points raised during the consultation process. Based on its examination, the committee recommends that the Bill be passed, with two further recommendations as follows:

- that the transitional period requiring persons in 'safety critical roles' to hold a certificate of competency should expire 5 years after the date the Board of Examiners sets the examinations.
- that the proposed amendments to section 39 of the *Coal Mining Safety and Health Act 1999* and section 36 of the *Mining and Quarrying Safety and Health Act 1999* are reversed to expand the scope of the Bill, while retaining references to remote operating centre workers.

The committee assessed whether the Bill complies with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* and the *Human Rights Act 2019*.

The committee wrote to Resources Safety and Health Queensland (RSHQ) requesting additional information in relation to matters that could potentially have insufficient regard to the rights and liberties of individuals and the institution of parliament. After additional consideration of RSHQ's response, the committee was satisfied that potential limitations to fundamental legislative principles were reasonable and sufficiently justified, and that the Bill is compatible with human rights as outlined in the *Human Rights Act 2019*.

## 1 Introduction

On 18 April 2024, the Hon Scott Stewart MP, Minister for Resources and Critical Minerals, introduced the Resources Safety and Health Legislation Amendment Bill 2024 into the Queensland Parliament. The Bill was referred to the Clean Economy Jobs, Resources and Transport Committee for detailed consideration.

### 1.1 Objectives of the Bill

The principal objective of the Bill is to improve the sector's safety and health performance and reduce the occurrence of fatalities and serious accidents. In addition, the Bill seeks to:

- facilitate the growth in high-reliability organisation (HRO) behaviours within the resources sector
- modernise regulatory enforcement powers to enhance existing compliance and enforcement tools, such as the directives framework, as well as introduce enforceable undertakings and further court orders
- provide for more contemporary legislation, and
- enhance the operation and administration of the legislation through a range of minor operational amendments.

The Bill proposes to amend the following acts, collectively referred to as the 'Resources Safety Acts':

- Resources Safety and Health Queensland Act 2020 (RSHQ Act)
- Coal Mining Safety and Health Act 1999 (CMSH Act)
- Explosives Act 1999 (Explosives Act)
- Mining and Quarrying Safety and Health Act 1999 (MQSH Act)
- Petroleum and Gas (Production and Safety) Act 2004 (P&G Act).

### 1.2 Background

The amendments contained within the Bill have been informed by:

- a review of all fatal accidents in Queensland mines and quarries from 2000 to 2019 (the Brady Review)
- the 2021 Queensland Coal Mining Board of Inquiry, and
- the Queensland Government's mining industry-wide safety resets in 2019 and 2021.

In his explanatory speech, the Minister provided the following context to the Bill:

The proposed amendments cover sections of recommendations 6, 12, 13, 19, 25, 29, 32 and 34 from the Coal Mining Board of Inquiry, amounting to 10 recommendations in total. Extensive consultation has occurred through a consultation and decision regulatory impact statement and on draft legislation with key industry and union stakeholders. The package of legislative reforms aims to improve the sector's safety and health performance to reduce the occurrence of fatalities and serious accidents.<sup>1</sup>

As part of its inquiry, the committee visited BHP Mitsubishi Australia's (BMA) Integrated Remote Operating Centre (IROC) in Brisbane (see Figures 1 and 2 on the next page). At the site visit the committee observed how the IROC provides mine, plant and port monitoring and control of BMA's coal sites and the Hay Point Coal Terminal. Committee members were able to ask questions of the

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<sup>1</sup> Queensland Parliament, Record of Proceedings, 18 April 2024, p 1219.



operators regarding the information they were seeing and how BMA engages with operational staff on site.

**Figures 1 and 2: Site visit to BMA IROC Brisbane**



### **1.3 Legislative compliance**

The committee's examination of the Bill also included assessing its compliance with the Parliament's requirements for legislation as contained in the *Parliament of Queensland Act 2001*, *Legislative Standards Act 1992* (LSA) and the *Human Rights Act 2019* (HRA).

#### **1.3.1 Legislative Standards Act 1992**

The committee's assessment of the Bill's compliance with the *Legislative Standards Act 1992* identified potential issues with Fundamental Legislative Principles (FLPs), which are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'.<sup>2</sup>

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<sup>2</sup> LSA s 4.

The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

We bring the following matters to the attention of the Legislative Assembly, which are examined in further sections of this report.

*1.3.1.1 Potentially insufficient regard to rights and liberties of individuals*

- The provisions requiring a site senior executive (SSE) to notify certain persons as soon as possible after they become aware of a high potential incident, serious accident or death at a coal mine raise issues in relation to penalties and whether they are proportionate to the offence and consistent with other penalties.
- The provisions relating to the failure to comply with court orders raise issues in relation to penalties and whether they are proportionate to the offence and consistent with other penalties.
- The provisions creating an obligation on SSE's to share information with labour hire agencies, contractors and service providers raise issues in relation to penalties and whether they are proportionate to the offence and consistent with other penalties.
- The provisions to protect workers from reprisal action in situations when they raise safety concerns raise issues in relation to penalties and whether they are proportionate to the offence and consistent with other penalties.
- The provisions expanding the powers of an inspector or authorised person to compel a person to answer questions or provide information raise issues in relation to penalties and whether they are consistent with other penalties.
- The provisions introducing enforceable undertakings raise issues in relation to administrative power and natural justice, in particular the right of review or appeal.
- The provisions broadening the types of authorised officials who may give a directive raise issues in relation to administrative power and natural justice, in particular the right of review or appeal.
- The provisions giving the Minister power to give directions to the board of examiners about a matter relevant to the functions of the board of examiners raise issues in relation to the delegation of administrative power.
- The provisions giving inspectors or authorised officers the power to require a person to provide reasonable help raise the issue of appropriate protection against self-incrimination.

*1.3.1.2 Potentially insufficient regard to the institution of Parliament:*

- The provisions giving the board of examiners a function to develop and administer a scheme of continuing professional development (CDP) raise issues in relation to the delegation of legislative power and whether it is subject to the scrutiny of the Legislative Assembly.

**Committee Comment**

In examining this Bill, we wrote to the Department of Resources (department) to further clarify their position on certain issues raised with fundamental legislative principles. On the basis of their response, we are satisfied that these provisions have sufficient regard to the rights and liberties of individuals, and the institution of Parliament, and any limitation is justified in the circumstances.

### 1.3.2 *Human Rights Act 2019*

The committee also considered the Bill's compatibility with the HRA.<sup>3</sup> Any potential limitation on human rights must be reasonable and sufficiently justified.<sup>4</sup> The committee considered the Bill in relation to the following human rights:

- equality before the law<sup>5</sup>
- the right to life<sup>6</sup>
- freedom of movement<sup>7</sup>
- freedom of expression<sup>8</sup>
- freedom of association<sup>9</sup>
- property rights<sup>10</sup>
- the right to privacy and reputation<sup>11</sup>
- the right to liberty and security of the person<sup>12</sup>
- the right to a fair hearing<sup>13</sup>
- criminal procedure rights.<sup>14</sup>

#### **Committee comment**

A statement of compatibility was tabled with the introduction of the Bill.<sup>15</sup> The statement contained a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

We are satisfied that the potential human rights limitations identified in the Bill are reasonable and sufficiently justified.

### 1.4 **Should the Bill be passed?**

The committee is required to determine whether or not to recommend that the Bill be passed.

#### **Recommendation 1**

The committee recommends that the Bill be passed.

<sup>3</sup> HRA, s 39.

<sup>4</sup> HRA, s 13.

<sup>5</sup> HRA, s 15.

<sup>6</sup> HRA, s 16.

<sup>7</sup> HRA, s 19.

<sup>8</sup> HRA, s 21.

<sup>9</sup> HRA, s 22.

<sup>10</sup> HRA, s 24.

<sup>11</sup> HRA, s 25.

<sup>12</sup> HRA, s 29.

<sup>13</sup> HRA, s 31.

<sup>14</sup> HRA, s 32.

<sup>15</sup> HRA, s 38.

## 2 Examination of the Bill

This section discusses key issues raised during the committee’s examination of the Bill. It does not discuss all consequential, minor or technical amendments.

### 2.1 High-reliability organisational (HRO) behaviours

#### 2.1.1 Critical control management

The Bill would amend the CSMH Act and the MQSH Act to integrate critical control requirements within the safety and health management systems (SHMS) for all coal mines, metalliferous mines, and quarries. These amendments are intended to ensure critical controls are clearly and specifically incorporated as a component in the SHMSs, so that there is a clearer focus on their effectiveness in ensuring that the risks to persons are kept at an acceptable level through audits and inspections.<sup>16</sup>

The definition of ‘critical control’ provided by the Bill is:

... a risk control measure for a coal mine—

(a) that is critical to—

(i) prevent a material unwanted event at the coal mine; or

(ii) mitigate the consequences of a material unwanted event at the coal mine; and

(b) the absence or failure of which would significantly increase risk despite the existence of other risk control measures.<sup>17</sup>

Mining company Peabody noted their support for the introduction of critical controls into the legislation, submitting that they were ‘satisfied with the definition of critical controls in the Amendment Bill given it now more closely aligns with the International Council of Mining and Metals (ICMM) definition.’<sup>18</sup>

This ‘critical control’ definition used by the ICMM states:

A control that is crucial to preventing the event or mitigating the consequences of the event. The absence or failure of a critical control would significantly increase the risk despite the existence of the other controls. In addition, a control that prevents more than one unwanted event or mitigates more than one unwanted event or mitigates more than one consequence is normally classified as crucial.<sup>19</sup>

BHP Mitsubishi Alliance (BMA) suggested the following amendments to the proposed definition of ‘critical control’:

A critical control is a risk control measure for a coal mine that is critical to significantly reduce the likelihood of a material unwanted event at the coal mine or mitigate the consequences of a material unwanted event at the coal mine; and the absence or failure of which would significantly increase risk despite the existence of other risk control measures.<sup>20</sup>

In response to the BMA, Resources Safety and Health Queensland (RSHQ) stated the proposed definition ‘is based on the ICMM guides which say that a critical control is crucial to “preventing” the

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<sup>16</sup> Explanatory notes, p 4.

<sup>17</sup> Bill, cl 102 (2), p 110.

<sup>18</sup> Submission 7, p 2.

<sup>19</sup> International Council on Mining and Metals, *Health and Safety Critical Control Management: Good Practice Guide*, 9 April 2015, p 5, [https://www.icmm.com/website/publications/pdfs/health-and-safety/2015/guidance\\_ccm-good-practice.pdf?cb=60007](https://www.icmm.com/website/publications/pdfs/health-and-safety/2015/guidance_ccm-good-practice.pdf?cb=60007).

<sup>20</sup> Submission 8, p 5.

event.’ RSHQ added that ‘use of the ICMM guideline definitions were recommended in industry submissions during consultation on the draft Bill.’<sup>21</sup>

The Mine Managers Association of Australia Incorporated (MMAA) noted their support for the concept of critical controls, however, they submitted that the proposed definition contained in the Bill ‘will cause problems for both compliance and enforcement, and may prove problematic in legal proceedings’.<sup>22</sup> MMAA cautioned that, while the definitions and concepts for critical controls and other supporting terms, such as a ‘material unwanted event’ (MUE) are widely used in industry handbooks, ‘they may not, however, be so easily applied in legislation and should be reviewed.’<sup>23</sup>

In response, RSHQ stated that the definitions of ‘critical control’ and ‘material unwanted event’ that are based upon the ICMM guides, have been voluntarily implemented by a number of coal mine operators.’<sup>24</sup> RSHQ added:

A recognised standard is being developed to assist industry with minimum requirements for critical controls. The inspectorates will also work closely with industry to assist with the implementation of critical controls.<sup>25</sup>

### **Committee comment**

We encourage Resources Safety and Health Queensland to continue working with industry to develop the minimum requirements for critical controls and to assist with their implementation.

#### **2.1.2 Competency certificates and continuous professional development**

The Bill proposes to amend the CSMH Act to strengthen the competency requirements of those persons in particular key safety critical roles at coal mines by requiring persons in those particular roles (known as site senior executives, or SSEs) to hold certificates of competency (COC) issued by the Board of Examiners (the Board, or BoE).<sup>26</sup> The functions of the Board are set out in section 185 of the CSMH Act and section 180 of the MQSH Act.<sup>27</sup>

The Bill also proposes to insert new subsections to establish a power to develop and administer a scheme of continuing professional development (CPD).<sup>28</sup>

The Bill proposes to introduce the new certificates of competency for the following roles:

- electrical engineering manager (EEM) (underground coal mines)
- mechanical engineering manager (MEM) (underground coal mines)
- surface coal mine manager (SMM)
- electrical engineering manager (EEM) (surface coal mine)
- mechanical engineering manager (MEM) (surface coal mine).<sup>29</sup>

At the conclusion of the transitional period, holders of SSE notices or any of the current certificates of competency will not be able to remain in, or be appointed to, key safety critical roles requiring a

<sup>21</sup> RSHQ, correspondence, 22 May 2024, p 21.

<sup>22</sup> Submission 1, p 3.

<sup>23</sup> Submission 1, p 3.

<sup>24</sup> RSHQ, correspondence, 9 May 2024, p 1.

<sup>25</sup> RSHQ, correspondence, 9 May 2024, p 2.

<sup>26</sup> Bill, cl 60 (amends s 185 of the CSMH Act); Explanatory notes, p 45.

<sup>27</sup> CSMH Act, s 184, 185; MQSH Act, s 180.

<sup>28</sup> Bill, cl 60 (amends s 185 of the CSMH Act) and 194 (amends s 180 of the MQSH Act); Explanatory notes, p 11 and 45.

<sup>29</sup> Explanatory notes, p 4.

SSE notice, or certificate of competency, unless they hold both the relevant certificate of competency, or SSE notice, and the associated practising certificate. For those in key safety critical roles requiring new certificates of competency, there will be a 5-year transitional period to obtain both the certificate of competency and associated practising certificate.<sup>30</sup>

According to the explanatory notes, the Bill would amend the CSMH Act to provide for the appointment of an independent chair for the Board and add a new power allowing the Minister to give directions to the Board.<sup>31</sup> This power would be limited to the way in which the Board undertakes administrative operations.<sup>32</sup>

MMAA submitted that they believe SSE's for underground mines should hold a 'first class certificate of competency'.<sup>33</sup> MMAA also believe a surface mine SSE should hold a first-class certificate, but consider the requirement for underground mining environments to hold more significance.<sup>34</sup>

Queensland Resources Council (QRC) submitted:

... the QRC is strongly of the view that the transitional requirements at Clause 100 should be amended to defer the requirement for the SMM to hold a certificate of competency and a practising certificate required by the Board of Examiners until the day that is five years after the Board of Examiners has set the examinations for the SMM.

In the case of MEM and EEM positions, it is recommended that where an MEM or EEM holds Registration as a Professional Engineer with the Board of Professional Engineers Queensland, Clauses 25 and 29 should be amended to omit the requirement to hold a certificate of competency issued by the Board of Examiners. The requirement for MEMs and EEMs to hold a practising certificate should be maintained in the Amendment Bill to ensure these positions have current industry practice.<sup>35</sup>

BMA opposed the introduction of competencies for key critical safety roles, on the basis that it will unnecessarily burden the industry, especially in the context of predicted skills shortages in Queensland's mining industry.<sup>36</sup> Notwithstanding their opposition to the introduction of these competencies, BMA suggested that there is a paucity in information available about how the introduction of certificates of competency will achieve a better standard of training and reduction in incidents on-site across the state.<sup>37</sup> Resultantly, BMA suggests that a 10 year transitional period would allow for flexibility in the development of these competencies, in light of the length of time it has previously taken to produce similar standards of assessment in the industry.<sup>38</sup>

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<sup>30</sup> Explanatory notes, p 4.

<sup>31</sup> Explanatory notes, p 7.

<sup>32</sup> Explanatory notes, p 4, 7; Bill, cls 59-61 (CMSHA, new ss 182A-185A; MQSHA, new s 180A).

<sup>33</sup> Submission 1, p 2.

<sup>34</sup> Submission 1, p 2.

<sup>35</sup> Submission 6, p 2.

<sup>36</sup> Submission 8, p 4.

<sup>37</sup> Submission 8, p 5.

<sup>38</sup> Submission 8, p 5.

Peabody stated their opposition to the requirement for a surface mine manager to have a certificate of competency issued by the Board, and instead noted their preference for the existing structure provided by 'Recognised Standard 22'.<sup>39</sup> Peabody submitted:

There are already mechanisms in place through Recognised Standard 22 that provide adequately for the competencies needed for this and other key safety management roles.

...there is an already small pool of individuals who are eligible to hold existing key critical safety roles requiring COCs. Based on this historical evidence, the effect of the proposed requirement for surface mine managers to hold a COC will create a similar shortage of individuals for surface mine manager roles, bearing in mind that holding this certificate will also be required for acting surface mine managers. Secondly, there are no existing BOE qualifications for surface mine managers. A five-year deferment will not be sufficient time to develop a qualification, and for sufficient numbers of surface mine managers to study for it and complete the examination process.<sup>40</sup>

In response to MMAA's submission, RSHQ said:

During consultation on the draft bill, proposals concerning certificates of competency for SSEs were considered by the Coal Mining Safety and Health Advisory Committee (CMShAC). This is a statutory committee under the Coal Mining Safety and Health Act 1999 (CMSHA) with representatives from industry, unions and RSHQ appointed by the Minister.

CMShAC's advice was that the proposed certificates of competency for underground and surface coal mine SSEs should not be mandatory as the Act already addresses the objective to ensure that key safety critical positions have the appropriate competencies to function effectively in the role. CMShAC also considered that a surface mine manager should hold a surface mine manager's certificate, not the SSE. CMShAC's advice was accepted and additional certificates of competencies for SSEs were not included in the Bill.<sup>41</sup>

RSHQ considers that CPD programs being added to the resource industry allow for increased oversight and tracking of these competencies and are aligned with the professional competencies already required of persons in similar roles. Recognised Standard 22 requires an SSE to determine and state competencies required for positions in the management structure of the mine, including a process to obtain those competencies (for example, in a manner consistent with the Australian Qualifications Framework).

The amendments expand the competencies required for management positions to include those recognised by the CMShAC and Board of Examiners. RSHQ emphasised the need for a recognised standard of competency across the sector, referring to records that identified 6 out of the 9 fatalities in the Queensland coal industry between 2018 and 2022 were related to mechanical engineering activities undertaken with the supervision of a mechanical engineering manager, in the context of both surface and underground mining.<sup>42</sup>

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<sup>39</sup> Submission 7, p 2. See also Resources Safety and Health Queensland, Recognised Standard 22 - Management Structure for the development and implementation of the Safety and Health Management System, August 2021, <https://www.rshq.qld.gov.au/resources/documents/mines-resources/safety-and-health/legislation,-standards-and-guidelines/recognised-standards-coal-mines/recognised-standard-22.pdf>

<sup>40</sup> Submission 7, p 3.

<sup>41</sup> RSHQ, correspondence, 17 May 2024, p 2.

<sup>42</sup> RSHQ, correspondence, 22 May 2024, p 11 citing RSHQ, Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement, Decision Regulatory Impact Statement (Decision RIS), 2023, p 51, [https://www.rshq.qld.gov.au/\\_\\_data/assets/pdf\\_file/0006/1715883/Full-Draft-D-RIS-FINAL.pdf](https://www.rshq.qld.gov.au/__data/assets/pdf_file/0006/1715883/Full-Draft-D-RIS-FINAL.pdf).

RSHQ emphasised that it is the industry's responsibility to ensure that enough staff are trained for 'safety critical roles'.<sup>43</sup> The Board is comprised of inspectors and certificate of competency holders from both the industry, and unions.<sup>44</sup> Persons already employed in safety critical roles need only demonstrate their competency to the Board.<sup>45</sup> For example, RSHQ emphasised that a person who applies for a certificate of competency who already satisfies the legislative requirements would not be disadvantaged by the requirement to obtain a certificate of competency from the Board.<sup>46</sup>

The Board's assessment is proposed to include an interview with a panel of peers, which includes a discussion of how the applicant would manage practical scenarios, principal hazards and catastrophic incidents.<sup>47</sup> Further, a person who holds a relevant certificate of competency (for example, from New South Wales) would be able to apply for mutual recognition of that assessment in Queensland.<sup>48</sup>

RSHQ explained that the functions to which the competency assessments are to be applied already exist, and for a person to hold one of these positions, they must be able to demonstrate and show to the board that they satisfy existing statutory obligations and hold the correct qualifications.<sup>49</sup> These sections may come into effect from proclamation, which allows for flexibility in implementation, notwithstanding that the competencies which will be implemented are substantially operational already.<sup>50</sup>

### **Committee comment**

We acknowledge that Resource Safety and Health Queensland has stated that the commencement of these requirements will be on a date fixed by proclamation, and the 5-year transitional period starts from that date. However, if the examinations are not adequately prepared to be implemented from that date, the time spent developing the competency itself may impact the actual time available for persons to undertake and complete the training.

### **Recommendation 2**

The transitional period requiring persons in 'safety critical roles' to hold a certificate of competency should expire 5 years after the date the Board of Examiners sets the examinations.

### **2.1.3 Compliance and Enforcement**

The Bill proposes to amend the CMSH Act and the MQSH Act to establish a compliance and enforcement legislative framework for the practising certificate scheme. This is to ensure that CPD is completed regularly in accordance with requirements, and to require certificate of competency, or SSE notice holders to also hold a practising certificate to remain in their respective key safety critical roles at mines.<sup>51</sup>

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<sup>43</sup> RSHQ, correspondence, 22 May 2024, p 11.

<sup>44</sup> RSHQ, correspondence, 21 May 2024, p 5.

<sup>45</sup> RSHQ, correspondence, 22 May 2024, p 11.

<sup>46</sup> RSHQ, Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement, Decision RIS, p 61.

<sup>47</sup> RSHQ, Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement, Decision RIS, p 61.

<sup>48</sup> RSHQ, Facilitating High Reliability Organisation behaviours in Queensland's Resources Sector and Modernising Regulatory Enforcement, Decision RIS, pp 51, 61 and 241.

<sup>49</sup> Public briefing transcript, Brisbane, 24 May 2024, p 3.

<sup>50</sup> Public briefing transcript, Brisbane, 24 May 2024, p 3.

<sup>51</sup> Explanatory notes, p 4.



Amendments would include provisions for:

- keeping a register of holders of practising certificates
- the suspension, cancellation, or surrender of a practising certificate
- the impact of a practising certificate being suspended or cancelled, and
- obtaining a practising certificate by providing false information.

MMAA expressed concern in relation to the suspension or cancellation of certificates of competency:

Any contemplation to cancel or suspend a certificate should occur in a timely manner, and preferably within 3 months of any alleged incident warranting such action.

It is the position of the Association that certificates of competency should ultimately only be cancelled by the Board of Examiners or another expert panel of industry stakeholders following recommendations from the CEO, and following the appeals, checks and balances proposed in the legislation. In this way, any suspension or cancellation, that can have a serious impact on an individual's personal circumstances and wellbeing, can be more fully considered by a panel of experts, and not rest with the sole discretion of the CEO.<sup>52</sup>

In the public hearing, MMAA added:

In particular, section 10A gives a very broad remit for the CEO of RSHQ to bring about a cancellation or suspension of a ticket. We have had instances where this process has played out over many years and sometimes up to five or six years. Prolonged or delayed actions, or things seen as disproportionate, or alleged or strongly contested offences do not serve the interests of safety and can place undue stress on the individuals involved.

Further, circumstances such as this can dissuade individuals from taking up these roles at a time when the industry desperately needs more qualified people with statutory certificates. In the case of a prosecution being brought against an alleged offence against the act, there have been amendments contemplated in the amendment bill, but the way we read it an offence may be brought two, four or longer years after the allegation of an offence. The wording of the amendment bill is now that the statutes apply up to two years following the realisation or the view that formed that an offence has occurred.<sup>53</sup>

RSHQ advised:

Part 10A retains the natural justice process inserted into the CMSHA in 2018 which the CEO must follow, as well as appeal rights and applying for a stay of the decision. The natural justice process has timeframes under sections 197B and 197D of the CMSHA.

Limitation of action timeframes for any cancellation or suspension after a CEO becoming aware a holder has been convicted of an offence or for the alternative grounds have not been included in the Bill, nor form part of the existing provisions. Proceedings for offences have time limitations that apply under the legislation.<sup>54</sup>

AngloAmerican estimated that there are 400 positions across industry which will require one of the new certificates of competency.<sup>55</sup> AngloAmerican stated that these qualifications are yet to be developed but acknowledge the transition arrangements. They expressed concern about this task together with the development of the practising certificate regime being a significant undertaking for the Board of Examiners. They suggested careful consideration needs to be given to the capacity and resourcing of the Board of Examiners to carry out this task in the required time and the options

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<sup>52</sup> RSHQ, correspondence, 9 May 2024, p 3.

<sup>53</sup> Public hearing transcript, Brisbane, 13 May 2024, pp 13-14.

<sup>54</sup> RSHQ, correspondence, 9 May 2024, p 3.

<sup>55</sup> Submission 3, p 4.

available to expedite the process, such as adopting the competencies already in use in NSW model, for the Queensland qualifications.<sup>56</sup>

RSQH responded:

Preparation by the Board of Examiners (BOE) is underway for the approximately 400 position holders who each will require one of the five new certificates of competency. This preparation includes the process for finalising the BOE's requirements for the new certificates of competency (for example, years of experience, examination processes), and the competencies for the positions recognised by CMSHAC. This forms part of the BOE's forward work plan and resourcing.

There is a 5 year transitional period from the commencement of the requirements for the new certificates of competency from proclamation.

The BOE is currently considering the competencies required for NSW certificates that are equivalent to the five new Queensland certificates of competency, as a model and to facilitate mutual recognition.<sup>57</sup>

### **Committee comment**

We note the effort that is underway by the Board of Examiners in preparing the 5-year transition to the requirements for the new certificates of competency. This process and the continuing professional development of those in specific mining manager roles is an important step in improving safety standards across the industry.

#### *2.1.3.1 Fundamental legislative principles – delegation of legislative power*

Generally, powers should be delegated only to appropriately qualified officers or employees of the administering department.<sup>58</sup> Further, a power to direct persons and bodies that are required to act with independence in the exercise of their powers and functions is potentially inconsistent with the independence required of their specified role. Any provision that empowers the giving of directions to independent persons and bodies must be considered carefully to ensure that their independence is not prejudiced.<sup>59</sup>

The Bill proposes new sections which vest additional power in the Minister to give directions, if necessary and in the public interest, to the Board, about a matter relevant to the function of the Board.<sup>60</sup> Importantly, the Ministerial power, in this instance, is limited only to issuing directions regarding the administrative functions of the Board.<sup>61</sup>

The Bill proposes to amend the membership of the BOE to require that the BOE also consist of at least one person with demonstrated expertise in the assessment of technical or safety competencies, and a chairperson appropriately qualified to perform the functions of chairperson.<sup>62</sup>

It is appropriate that the Bill enable the BOE to also exercise power in relation to CPD for practising certificates by providing the BOE with the explicit function to develop and administer a scheme for the continuing professional development of holders of certificates of competency or SSE notices.<sup>63</sup> The explanatory notes state that the power of the Minister will be limited to the way in which the

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<sup>56</sup> Submission 3, p 4.

<sup>57</sup> RSHQ, correspondence, 17 May 2024, p 7.

<sup>58</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 33, [https://www.legislation.qld.gov.au/file/Leg\\_Info\\_publications\\_FLPNotebook.pdf](https://www.legislation.qld.gov.au/file/Leg_Info_publications_FLPNotebook.pdf).

<sup>59</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 17.

<sup>60</sup> Bill, cls 59-61 (CMSHA, new ss 182A-185A and MQSHA, new s 180A); explanatory notes, p 4.

<sup>61</sup> Bill, cl 61 (CMSHA, new s 185A; MQSHA, new s 180A).

<sup>62</sup> RSHQ, correspondence, 21 May 2024, p 6.

<sup>63</sup> RSHQ, correspondence, 21 May 2024, p 5.

Board administers its statutory functions and not how it makes decisions regarding notices, certificates or registrations.<sup>64</sup>

RSHQ concluded that there is no other more appropriate body to have these functions.<sup>65</sup>

### **Committee comment**

We are satisfied that the Bill has sufficient regard to fundamental legislative principles with respect to the institution of Parliament and delegations of legislative power.

#### **2.1.4 Improved data and incident reporting**

The Bill proposes to amend incident and accident reporting under all Resources Safety Acts. In most instances, there will be a streamlined reporting process, using an approved form. The purpose of the amendments is to support the development of web-based incident reporting systems, which would allow the SSE to enter information about an incident directly.<sup>66</sup> These amendments seek to improve the capture of information regarding incidents to allow for consistent subsequent analysis and presentation of data to industry, with the view to improve industry management of hazards at other mines.<sup>67</sup>

For example, in circumstances where a serious accident has occurred at a coal mine, oral reporting to inspectors and industry safety and health representatives (ISHRs) is required.<sup>68</sup> Additionally, oral reporting to ISHR's is required for a 'high potential incident' (HPI).<sup>69</sup> Under the Bill, oral reports will be followed by detailed reports—either via the approved form or by notice, depending on the circumstances.<sup>70</sup>

The Bill also proposes to remove the prescribed list of HPIs that require additional information to be reported, to avoid any list acting as a de facto guide on what should be reported.<sup>71</sup> The amendments will be supported by RSHQ incident reporting guidance and enable the Regulator to focus on serious accidents and HPIs and to facilitate the dissemination of the most important safety information to industry.<sup>72</sup>

##### **2.1.4.1 Fundamental Legislative Principle - general rights and liberties of individuals – penalties**

The Bill proposes that an SSE must notify certain persons as soon as possible after they become aware of a serious accident or high potential incident at a coal mine. Some of the notifications must be oral, and others in approved form.<sup>73</sup> The Bill further proposes that an SSE must notify certain persons, also orally and in approved form, if a relevant worker has been diagnosed with a reportable disease.<sup>74</sup> The proposed amendments will align the penalty provisions under the CMSH Act, MQSH Act, and the P&G

<sup>64</sup> Explanatory notes, p 7.

<sup>65</sup> RSHQ, correspondence, 21 May 2024, p 5.

<sup>66</sup> Explanatory notes, pp 48-51; p 97.

<sup>67</sup> Explanatory notes, pp 48-51; p 97-99.

<sup>68</sup> Explanatory notes, p 48. See CMSH Act, s 16. NB: A 'serious accident' includes an accident which results in a fatality.

<sup>69</sup> Explanatory notes, pp 48-49. See CMSH Act, s 17. NB: A 'high potential incident' is an event, or a series of events, that cause, or have the potential to cause a significant adverse effect on the health and safety of a person.

<sup>70</sup> Explanatory note, p 110.

<sup>71</sup> Bill, cl 235 (amends s 706 of the *Petroleum and Gas (Production and Safety) Act 2004*).

<sup>72</sup> Explanatory notes, p 5.

<sup>73</sup> Bill, cls 75 (CMSHA, new s 198) and 206 (MQSHA, new s 195).

<sup>74</sup> Bill, cls 75 (CMSHA, new s 198AA) and 206 (MQSHA, new s 195AA).

Act by increasing the maximum penalty for failing to comply with each of these offences to 100 penalty units.<sup>75</sup>

RSHQ advised that these amendments are aligned with the penalty for contravention of section 38 of the *Work Health and Safety Act 2011* which provides a duty to report notifiable incidents. RSHQ cited the Explanatory notes to justify the increase in penalties for a failure to report, which provide that the increase of penalties is demonstrative of the importance of notification in circumstances where such an incident has taken place, and that information which will be captured through increased reporting can lead to early intervention in preventing serious accidents and fatalities.<sup>76</sup>

### **Committee comment**

The alignment of penalty provisions across the Resource Safety Acts is appropriate and ensures consistency in application. We consider the increase from 40 penalty units to 100 penalty units for failing to comply is justified and has sufficient regard to the rights and liberties of individuals.

#### **2.1.5 Publication of Information**

The Bill would amend the information sharing provisions across the Resources Safety Acts to clarify what information may be publicly shared about an incident or accident. The information may include:

- a description of the accident or incident
- the name of the mine
- the operator of the mine
- the injuries sustained, and
- any other information considered appropriate.<sup>77</sup>

According to the explanatory notes, these changes aim to generate a positive reporting culture.<sup>78</sup> The amendments would be supported by a RSHQ sharing of information policy guide.<sup>79</sup> The analysis of incident data underpins the RSHQ ability to share safety learnings, improvements, trends within the industry, with the intention of improving outcomes for all stakeholders.<sup>80</sup>

AngloAmerican submitted that ‘the proposal to enable the Minister, CEO of RSHQ and Chief Inspector to publish information including not just a description of an incident but the number of HPIs and serious accidents over a period and the name of the coal mine and operator goes further than what is needed to support decision making for better safety outcomes.’ They suggested that the purpose ‘can be achieved by publishing de-identified information to facilitate analysis, education and the identification of trends and mitigating measures’ and suggested deference to the NSW legislation for guidance on drafting.<sup>81</sup>

QRC expressed concern that the proposed amendments may result in detailed information being released at the early stage of an investigation, which is subsequently found to be incorrect.<sup>82</sup> The Bill expressly excludes a right to remedy or redress for the affected operator, as ‘no liability is incurred by the State or any other person for the publication of, or anything done for the purpose of publishing,

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<sup>75</sup> *Penalties and Sentences Act 1992*, ss 5, 5A; Penalties and Sentences Regulation 2015, s 3.

<sup>76</sup> RSHQ response, 21 May 2024, p 1; Explanatory notes, p 12.

<sup>77</sup> Explanatory notes, p 56.

<sup>78</sup> Explanatory notes, p 56, 76, 104, 121; Bill, cls 96 (amends s 275AC(2) of the CSMH Act), 142 (amends s 126C of the Explosives Act), 225 (amends s 254C of the MQSH Act), 261 (amends s 851A of the P&G Act).

<sup>79</sup> Explanatory notes, p 5.

<sup>80</sup> Explanatory notes, p 5, 12, 56.

<sup>81</sup> Submission 3, p 4.

<sup>82</sup> Submission 6, pp 12-13.

information under this section in good faith'.<sup>83</sup> The QRC is of the view that this provision has the potential to see resource companies “named and shamed” without ever being prosecuted for a breach of the Act or Regulations.<sup>84</sup>

RSHQ advised:

The purpose of the change is to promote learning and improvement - and we have had a lot of calls from industry and a lot of interest in that—not to expose industry to criticism or affect its reputation. To drive down the incidents of fatalities in the workplace, industry must be genuinely open about what is working and what is not. This is an important aspect of a mature reporting culture that seeks understanding to prevent incidents.<sup>85</sup>

The explanatory notes state:

The Brady Review highlights the importance of HPI reporting and that this information can lead to early intervention to prevent serious accidents and fatalities. Incident data can be used to identify hazards and determine appropriate controls to minimise harm.<sup>86</sup>

RSHQ added:

To drive down the incidence of fatalities in the industry, industry must genuinely be open about what is working and what is not. This will move the industry towards a more mature reporting culture that seeks understanding to prevent incidents.

The Resources Safety Acts currently contain information sharing provisions which enable the sharing of information that may identify persons where it is in the public interest to do so. The amendments in the Bill are to provide clarification about what identifying information can be shared and in what circumstances it will be shared. Sharing of information by safety regulators that identifies obligation holders is not unusual. RSHQ already publishes high-level safety performance data for each mine or quarry, and reports that identify mine sites in the interests of transparency and shared learnings.<sup>87</sup>

### **Committee comment**

It is important to ensure that industries which contain hazardous operations uphold the highest safety standards to protect personnel and preserve overall industry integrity. An essential part of maintaining and improving safety across Queensland’s resource industries is to hold operators accountable to the standards of the industry. Where an accident or incident takes place, it is in the entire industry’s best interest to share information to avoid similar occurrences in the future.

Where identifiable information is relevant to the purpose and intention of improving safety across the industry, we believe it is reasonable to share identifiable information for certain incidents, in particular serious accidents or catastrophic events.

We are satisfied that public interest disclosure is justified to achieve the stated purpose in the Bill.

#### **2.1.6 Protection from reprisals**

The Bill intendeds to protect workers from reprisal action in situations where they raise safety concerns.<sup>88</sup> The amendments propose to align penalties in the Explosives Act, and the P&G Act, with those already contained in the CMHS Act, and the MQHS Act.<sup>89</sup> The Bill includes a definition of

<sup>83</sup> Bill, cls 96 (amends s 275AC), 225 (amends s 254C(4)).

<sup>84</sup> Submission 6, pp 11-12.

<sup>85</sup> Public hearing transcript, Brisbane, 24 May 2024, p 2.

<sup>86</sup> Explanatory notes, p 12.

<sup>87</sup> RSHQ, correspondence, 22 May 2024, pp 5-6.

<sup>88</sup> Explanatory notes, p 17.

<sup>89</sup> Explanatory notes, p 17; Bill, cls 141 (Explosive Act, new s 141) and 236 (P&G Act, new s 708C).

‘detriment’ to be implemented across the Resources Safety Acts based on the *Public Interest Disclosure Act 2010*.<sup>90</sup>

#### ***2.1.6.1 Fundamental Legislative Principle – general rights and liberties of individuals – penalties***

Penalties should be proportionate to the offence.<sup>91</sup> The explanatory notes state that the amendments expanding the maximum penalty for reprisal action to include the gas, petroleum and explosives industries are justified as those workplaces are considered hazardous working environments.<sup>92</sup>

The Bill proposes to insert a penalty of 1,000 penalty units for failing to comply with these provisions.<sup>93</sup> This aligns with a similar provision in the *Work Health and Safety Act 2011* (WHS Act).<sup>94</sup>

RSHQ advised that the penalty imposed in the amendments is consistent across reprisal provisions for whistleblowers in the CMSH Act, the MQSH Act and the WHS Act. As well, the penalty is not being increased, rather, it is being expanded in its application.<sup>95</sup>

#### **Committee comment**

A person must be assured that any steps taken to raise safety concerns will not lead to personal detriment, otherwise they may not come forward, which could result in serious consequences. The objective of this expansion is to provide meaningful protection to persons who raise concerns about safety at a workplace contained under the operation of the Resource Safety Acts.

We are satisfied that the proposed amendments to offence provisions have sufficient regard to the rights and liberties of individuals and that the penalties are both proportionate, consistent, and relevant to the seriousness of the conduct in question.

## **2.2 Modern regulatory enforcement**

### **2.2.1 Enforceable undertakings**

An enforceable undertaking is a legally binding agreement where a party is obliged to carry out the specific activities outlined in the undertaking.<sup>96</sup> They are common between regulatory bodies and a person, or entity, who has not followed a certain law, or requirement, which they are subject to.<sup>97</sup> The introduction of enforceable undertakings into the Resource Safety Acts aims to provide an alternative to prosecution, with the aim of provisioning timely and effective health and safety initiatives with tangible benefit.<sup>98</sup> However, the Bill does not propose to allow for enforceable undertakings where a contravention of the Resource Safety Acts has resulted in death. The amendments will be supported

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<sup>90</sup> RSHQ, correspondence, 9 May 2024, p 9.

<sup>91</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

<sup>92</sup> Explanatory notes, p 17.

<sup>93</sup> Bill, cls 95 (amends s 275AA of the CMSH Act), 141 (amends s 126A of the Explosives Act), 224 (amends s 254A of the MQSH Act).

<sup>94</sup> WHS Act, ss 104-108.

<sup>95</sup> RSHQ, correspondence, 21 May 2024, p 2.

<sup>96</sup> Resources Safety and Health Queensland, ‘Proposed amendments to the Resources Safety Acts’, Information Paper, September 2023, p 10, [https://www.rshq.qld.gov.au/\\_\\_data/assets/pdf\\_file/0009/1769688/Information-paper-for-consultation-draft-of-RSHLA-Bill-and-Regulation.pdf](https://www.rshq.qld.gov.au/__data/assets/pdf_file/0009/1769688/Information-paper-for-consultation-draft-of-RSHLA-Bill-and-Regulation.pdf).

<sup>97</sup> See for example, FairWork Ombudsman, ‘Enforceable Undertakings’, accessed 27 May 2024, <https://www.fairwork.gov.au/about-us/compliance-and-enforcement/enforceable-undertakings>.

<sup>98</sup> Explanatory notes, p 2, 6.

by RSHQ enforceable undertaking guidelines on the application and decision-making processes, during which RSHQ may consult with any affected parties and/or relevant experts, as required.<sup>99</sup>

### 2.2.1.1 Fundamental Legislative Principles - rights and liberties of individuals – administrative power and natural justice

The explanatory notes explain that the proposed sections align with existing provisions under the WHS Act.<sup>100</sup> Further, amendments will be supported by guidelines on application and decision-making processes during which RSHQ may consult with any affected parties and/or relevant experts as required.<sup>101</sup>

The Bill does not provide for a right of review or appeal for enforceable undertakings, which is justified on the basis that agreement to an enforcement undertaking is voluntary.<sup>102</sup> The explanatory notes further state that natural justice principles will be applied during the development of the enforceable undertaking.<sup>103</sup>

RSHQ advised that the Bill requires the CEO to publish general guidelines relating to the acceptance of enforceable undertakings. Further, the CEO must publish notice of a decision, and their reasons for the same, to ensure transparency of decision-making.<sup>104</sup> RSHQ suggests that the availability of this information will assist a person in deciding whether to offer an undertaking, and on what terms.<sup>105</sup>

#### **Committee comment**

While there is an absence of a right of review or appeal, enforceable undertakings are entered into voluntarily. We are satisfied that any limitation on the rights and liberties of individuals is justified.

We are satisfied that new provisions relating to enforceable undertakings have sufficient regard to the rights and liberties of individuals in the context of administrative power and natural justice.

The Mining and Energy Union, Queensland District (MEU) supported the introduction of enforceable undertakings. However, the MEU did not support the CEO being the sole decision-maker regarding the acceptance of such undertakings, and instead recommended that a tripartite committee be formed to assess and accept any enforceable undertaking that is proposed.<sup>106</sup> The MEU elaborated:

... we believe also that [there] should be a board - a tripartite process - so it is transparent and systematic and applied with consistency through that process. By leaving it in the hands of the CEO we can see trouble with the transparency and consistency in that process because it affects every person onsite. It can be the SSE or a coalmine worker who could be up for this. I know enforceable undertakings does not normally apply to coalmine workers, but there are provisions in there where it can be placed upon them and so it needs to be consistent and transparent. The only way that can happen is through a tripartite board of the regulator, the union and the QRC.<sup>107</sup>

<sup>99</sup> Explanatory notes, p 6.

<sup>100</sup> Explanatory notes, p 6

<sup>101</sup> Explanatory notes, pp 6, 13.

<sup>102</sup> RSHQ, correspondence, 21 May 2024, p 3. See also OQPC, Notebook, p 23 citing Alert Digest No. 1 of 2003, pp. 26-27, paras 20-24. The Scrutiny Committee has found unobjectionable the exclusion from review of decisions under provisions providing for a scheme of enforceable undertakings that was essentially voluntary in nature.

<sup>103</sup> Explanatory notes, p 13.

<sup>104</sup> RSHQ, correspondence, 9 May 2024, p 9; RSHQ, correspondence, 21 May 2024, p 3.

<sup>105</sup> RSHQ, correspondence, 21 May 2024, p 3.

<sup>106</sup> Submission 2, pp 5-6.

<sup>107</sup> Public hearing transcript, Brisbane, 13 May 2024, p 4.

RSHQ responded that the enforceable undertaking provisions and process proposed by the Bill are based on provisions in the WHS Act and are similar to other enforceable undertaking frameworks in use across Australia.<sup>108</sup>

The Bill sets out requirements that RSHQ must publish general guidelines in relation to the acceptance of enforceable undertakings to ensure transparency of decision-making.<sup>109</sup> These guidelines will outline factors to be considered when an enforceable undertaking is proposed. RSHQ will be seeking stakeholder feedback on these guidelines before they are finalised and published.<sup>110</sup> Further, RSHQ may seek expert advice on whether to accept an undertaking.<sup>111</sup>

### **Committee comment**

We are satisfied that the approach proposed in the Bill is appropriate in the circumstances, and that transparency will be sufficient under the proposed publication requirements.

## **2.2.2 Court orders**

The Bill proposes to broaden the court orders available to enhance deterrence, by allowing courts to impose more proportionate and tailored responses to non-compliance, with the aim of providing enhanced safety outcomes.<sup>112</sup> Failure to comply with court orders without a reasonable excuse will attract a maximum penalty of 500 penalty units. This proposed penalty matches the WHS Act where a person, or entity, fails to comply with a court order.<sup>113</sup>

### **2.2.2.1 Fundamental legislative principal - general rights and liberties of individuals – penalties**

The proposed amendments to court orders are intended to achieve improved regulatory harmonisation through consistency with other work health and safety laws.<sup>114</sup> The proposed penalty is the same as the penalty for the same offence in the WHS Act.<sup>115</sup> The consequences of failing to comply with a court order can be grave, and arguably include loss of life.<sup>116</sup>

### **Committee comment**

While the maximum penalty of 500 penalty units is significant, it is in line with current legislation.

We find that provisions relating to failure to comply with court orders have sufficient regard to the rights and liberties of individuals, and any limitation to the same are justified in the circumstances.

## **2.2.3 Court jurisdiction for prosecutions**

The Bill proposes to amend the CSMH Act and the MQSH Act so that the court jurisdiction for summary offences rests with the Magistrates Court.<sup>117</sup> RSHQ advised that having the same court jurisdiction across the Resources Safety Acts allows for a common set of precedents to be established, by having all prosecutions heard under the same jurisdiction.<sup>118</sup> In any event, a Magistrate can continue to apply

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<sup>108</sup> RSHQ, correspondence, 9 May 2024, p 9.

<sup>109</sup> Bill, cls 91 (inserts s 276L into the CSMH Act), 125 (inserts s 123A into the Explosives Act), 220 (inserts s 246L into the MQSH Act), 256 (inserts s 841E into the P & G Act); Explanatory notes, p 6, 13.

<sup>110</sup> RSHQ, correspondence, 9 May 2024, p 9.

<sup>111</sup> RSHQ, correspondence, 9 May 2024, p 9.

<sup>112</sup> Explanatory notes, p 2, 54. Bill, cls 93 (CSMSHA, new ss270A-270I), 135 (Explosives Act, new ss 123H-123P), 222 (MQSHA, new ss 249A-249I) and 255 (P&G Act, new ss 841AB-841AJ).

<sup>113</sup> WHS Act, s 242.

<sup>114</sup> Explanatory notes, pp 6, 13.

<sup>115</sup> WHS Act, s 242.

<sup>116</sup> RSHQ, correspondence, 21 May 2024, p 1.

<sup>117</sup> Bill, cls 68 (amends s 258 of the CSMH Act), 198 (amends s 237 of the MQSH Act).

<sup>118</sup> RSHQ, correspondence, 9 May 2024, p 3.



earlier decisions of an industrial magistrate for past prosecutions under the CMSHA and the MQSHA.<sup>119</sup>

MMAA submitted that RSHQ has not previously indicated an intention to change the court jurisdiction or provided reasons for this proposal.<sup>120</sup>

However, RSHQ responded:

This proposal (and the reasons for this proposal) was communicated to stakeholders in the following:

- Consultation RIS that was publicly available from 23 September to 21 November 2022.
- Decision RIS that was published on 29 May 2023.
- Information paper (which provided a consultation draft Bill), made publicly available from 28 September to 10 November 2023.

MMAA responded to this proposal in the Consultation RIS that they “believe a prosecution under the Act is substantially different to a general Magistrate’s court matter and should remain with the Industrial Magistrate...”. Their response was considered and noted in the ‘Results of consultation section’ in the Decision RIS.<sup>121</sup>

### **Committee comment**

We are satisfied that the proposed amendments are appropriate in the circumstances.

#### **2.2.4 Commencement of offence proceedings**

The Bill makes changes to timeframes for the commencement of offence proceedings across the Resource Safety Acts. For example, the CSMH Act and the MQSH Act, includes a limitation period of within 6 months after the offence comes to the complainant’s knowledge, but within 3 years after the commission of the offence. The *Explosives Act 1999* instead includes a limitation period of within 1 year after the offence comes to the complainant’s knowledge but within 2 years after the commission of the offence.

MMAA indicated that the current timeframe should remain, as matters should be dealt with as quickly as possible.<sup>122</sup>

RSHQ responded that the Bill proposes to amend timeframes for commencing proceedings under the CMSHA, the Explosives Act and the MQSHA to match the existing timeframe in the P&G Act and the WHS Act, thereby establishing a consistent approach across the Resources Safety Acts.<sup>123</sup> Specifically, the Bill sets a uniform timeframe of within 2 years after the offence first comes to the notice of the complainant (that is, the WHS Prosecutor).

<sup>119</sup> RSHQ, correspondence, 24 April 2024, p 8.

<sup>120</sup> Submission 1, p 4.

<sup>121</sup> RSHQ, correspondence, 9 May 2024, pp 3-4.

<sup>122</sup> Submission 1, pp 3-4.

<sup>123</sup> RSHQ, correspondence, 9 May 2024, p 4.

RSHQ noted that ‘having a consistent timeframe for commencing prosecutions across the Resources Safety Acts ensures that sufficient investigations can be undertaken into complex serious incidents, irrespective of whether it occurred in the mining, quarrying, explosives or petroleum and gas industry’.<sup>124</sup> They provided the following:

The proposed legislated timeframes may allow for longer investigations, and this may be needed for some complex investigations into significant offences, but this does not automatically translate into delayed or protracted investigations. RSHQ aims to conduct timely investigations as they provide more contemporary and robust evidence which would be given more weight by a court and enhance the prospect of a successful prosecution. [...] The proposal will ultimately support quality prosecutions and justice for impacted workers and their families.<sup>125</sup>

The committee questioned representatives of RSHQ as to why the change was needed. RSHQ responded:

The current provisions are quite unwieldy in the way they are drafted. This is a simpler way of determining the limitation period. It is calculated simply on the time when the Work Health and Safety Prosecutor becomes aware that an offence may have been committed.<sup>126</sup>

### **Committee comment**

We are satisfied that these amendments are justified and appropriate. However, we note that such investigations should aim to be thorough and transparent, not only expeditious, to avoid any potential breach of fundamental legislative principles or human rights obligations for the parties involved.

During our inquiry we heard from Phil and Michelle Dodunski about their traumatic experience over the last 10 years trying to seek answers about the tragic death of their son, Gareth Dodunski. Gareth was killed while working in the Queensland mining industry in 2013. In our view, the 10-year ordeal that the Dodunski family detailed to us is unacceptable. There are many lessons to be learned from Gareth’s death, which the Dodunski family have helpfully articulated as part of this inquiry, the committee feels strongly that the family’s ordeal in pursuit of what happened to Gareth must not be repeated.

### **2.2.5 Directives**

The Bill would amend the directive provisions under the CMSH Act and the MQSH Act by providing an integrated directive power where risk arising from mining operations may reach an unacceptable level or is at an unacceptable level.<sup>127</sup>

The new provisions provide that a directive may be given by an authorised official, which includes:

- the chief inspector
- any other inspector
- an inspection officer
- an industry safety and health representative (ISHR) for the CMSHA and a district workers’ representative (DWR) for the MQSHA.<sup>128</sup>

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<sup>124</sup> RSHQ, correspondence, 24 April 2024, pp 8-9.

<sup>125</sup> RSHQ, correspondence, 9 May 2024, p 4.

<sup>126</sup> Public hearing transcript, Brisbane, 24 May 2024, p 2.

<sup>127</sup> Explanatory notes, p 6, 14.

<sup>128</sup> Bill, cls 54 (CMSHA, new ss 161-162), 189 (MQSHA, ss 158-159).

A directive can be given to provide an independent report about risks arising out of mining operations; the safety or part or all of any plant, building or structure at the mine; or a serious accident or HPI at the mine.<sup>129</sup>

*2.2.5.1 Fundamental Legislative Principle – rights and liberties of individuals – administrative power and natural justice*

The explanatory notes state that directives are subject to appropriate review and are consistent with the principles of natural justice.<sup>130</sup> The explanatory notes state that the power to issue a directive to suspend operations where risk may reach an unacceptable level already exists in legislation for inspectors.<sup>131</sup> The amendments include safeguards for the exercise of the power by industry safety and health representatives (ISHRs) and district workers' representatives (DWRs).

ISHRs and DWRs ensure the powers are used appropriately, including that:

- (a) they are only used for health and safety purposes
- (b) do not unnecessarily impede production
- (c) their appointment can be ended by the Minister.<sup>132</sup>

The explanatory notes state that while there are existing provisions for review during which a directive can be stayed, a directive to suspend mining operations in all or part of a coal mine cannot be stayed due to the unacceptable level of risk the operations present.<sup>133</sup>

RSHQ clarified that the proposed definition of 'authorised officials' does not extend the types of officials who can give a directive.<sup>134</sup> ISHRs and DWRs can currently give a directive to suspend operations because risk is at an unacceptable level.<sup>135</sup> The purpose of directives is to protect the health and safety of persons at a mine, and who may be affected by mining operations, and directives are subject to review and appeal.<sup>136</sup>

The QRC submitted that the power vested in the Chief Inspector to issue directives to any person with obligations under the CMSH Act and the MQSH Act is an overreach of regulatory supervision.<sup>137</sup> The QRC suggested that the wording of the Bill be amended:

... to require an ISHR or DWR to consult with a person who has a health and safety obligation in relation to the mine before a directive may be issued to cease operations at a mine.<sup>138</sup>

Further, the QRC suggested that with an increase in powers vested in ISHR's and DWR's, the Bill should include a 'transparent disqualification process where the ISHR or DWR is not performing their functions satisfactorily'.<sup>139</sup> The QRC suggested the model set out in sections 138 – 140 of the WHS Act would be appropriate, especially considering its national application.<sup>140</sup>

<sup>129</sup> Explanatory notes, p 6.

<sup>130</sup> Explanatory notes, p 14.

<sup>131</sup> Explanatory notes, p 14.

<sup>132</sup> Explanatory notes, p 14; RSHQ, correspondence, 21 May 2024, p 4.

<sup>133</sup> Explanatory notes, p 14.

<sup>134</sup> RSHQ, correspondence, 21 May 2024, pp 3-4.

<sup>135</sup> RSHQ, correspondence, 21 May 2024, p 3. See for example, CMSH Act, s 167; MQSH Act, s 164.

<sup>136</sup> RSHQ, correspondence, 21 May 2024, p 3-4.

<sup>137</sup> Submission 6, p 4.

<sup>138</sup> Submission 6, p 5.

<sup>139</sup> Submission 6, p 18.

<sup>140</sup> Submission 6, p 18. See for example, WHS Act 2011, s 138-140.

In response to QRC's recommendation to include a new disqualification process where the ISHR or DWR is not performing their functions satisfactorily, RSHQ advised:

The Minister is already provided the power and will continue to have the power to end an ISHR's or DWR's appointment if they are not performing their functions appropriately.<sup>141</sup>

AngloAmerican stated that it does not agree with the extent of the proposed changes which will give ISHRs the power to give a directive to suspend coal mining operations based on a belief that a risk may reach an unacceptable level, which introduces an unacceptable level of ambiguity into the Bill.<sup>142</sup>

AngloAmerican recommended that, notwithstanding other changes in clause 54, the reasonable belief test is appropriate and should be retained.<sup>143</sup> In response to AngloAmerican's concerns, RSHQ advised:

The amendments enable pre-emptive action to be taken without waiting until risk becomes unacceptable. Workers may be more likely to contact an ISHR who can take action independently if needed to ensure workers are protected.<sup>144</sup>

### **Committee comment**

We are satisfied that the purpose of directives are to protect the safety and health of persons at a mine and who may be affected by mining operations.<sup>145</sup>

We are also satisfied that the power to issue a directive in this Bill has sufficient regard to fundamental legislative principles. There are appropriate safeguards in the Bill, as directives can only be issued in specific circumstances and are subject to review and appeal rights. Any limitations on the rights and liberties of individuals may be justified on the basis of the purpose of the powers which are aimed at protecting the safety and health of people involved in mining operations.

## **2.3 Contemporary legislation**

### **2.3.1 Labour hire agencies, contractors and service providers**

The Bill proposes to amend the CMSH Act and the MQSH Act to provide a broad definition of contractor that includes all types of employment arrangements including a person contracted to carry out work at a mine, provide a service to a mine and a person contracted to provide workers to a mine including, for example, a labour hire agency.<sup>146</sup>

According to the explanatory notes, the policy objective is further achieved by an obligation being placed on an SSE to report the occurrence of injury, HPIs or proposed changes at the mine that may affect the safety and health of contractors, to the agency that supplied those workers.<sup>147</sup>

#### ***2.3.1.1 Fundamental Legislative Principle – general rights and liberties of individuals – penalties***

The Bill enforces an obligation on the SSE to inform a contractor, who provides a worker to a mine, with certain information. This information includes injuries or illness that causes the worker to be absent from work, a high potential incident that could cause a significant adverse effect on the worker, or any proposed changes to the mine/coal mine that could affect the safety and health of the

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<sup>141</sup> RSHQ, correspondence, 22 May 2024, p 8.

<sup>142</sup> Submission 3, p 4.

<sup>143</sup> Submission 3, p 4.

<sup>144</sup> RSHQ, correspondence, 17 May 2024, pp 6-7.

<sup>145</sup> Statement of compatibility, pp 10-11.

<sup>146</sup> Explanatory notes, p 6.

<sup>147</sup> Explanatory notes, p 6.

worker.<sup>148</sup> Failure to inform the contractor of this information carries a maximum penalty of 100 penalty units.

The explanatory notes provide that the penalty is proportionate and relevant to the seriousness of the risks being addressed because they aim to ensure the health and safety of all mine workers.<sup>149</sup>

At the public hearing on 24 May, RSHQ clarified that the intent of the amendment was to ensure:

... that whatever kind of contracting organisation you are employed by that organisation will have the same obligations to you. They must meet the same standard in protecting your safety, irrespective of who they are—whether they call themselves labour hire or contractor or consultancy. Generally, the obligation of a contractor so defined is to ensure their systems with the site senior executive ensure the systems are integrated so that the workers they are supplying to the site are appropriately onboarded and inducted into the site’s safety and health management system.<sup>150</sup>

### **Committee comment**

We enquired if perhaps it would be more straightforward to provide a definition of ‘all personnel’, rather than attempt to catch different employment types through prescribed definitions. However, these provisions are consistent with the provisions regarding incident reporting that are discussed above. This consistency is essential to ensure that whether a person is an employee or a contracted worker, they receive the same information on induction, and the same safety measures apply.

The penalties are consistent within the Bill for employees and contractors. The penalty, while large, could be considered justified because the outcomes of safety failures in mines can be serious injury or death.

Based on the consistency and proportionality, we are satisfied that the provisions have sufficient regard to the rights and liberties of individuals.

### **2.3.2 Industrial manslaughter**

As stated in the explanatory notes, the Bill would amend the definitions of ‘employer’ as identified throughout the Resources Safety Acts to ensure that there is clarity on which entity would be subject to ‘industrial manslaughter’ provisions. As was the original intent under the *Mineral and Energy Resources and Other Legislation Amendment Act 2020*, which introduced the concept of ‘industrial manslaughter’, entities have been clearly identified to include an operator, holder, labour hire companies, contractors or any other entity who employs/engages or arranges for a worker to perform work.<sup>151</sup>

The Queensland Council of Unions (QCU) suggested that the Work Health and Safety Prosecutor’s recent review into the scope and application of the industrial manslaughter provisions under the *Work Health and Safety Act 2011* may be relevant to the Resources Safety Acts. QCU specifically referenced consideration to the following matters under the review:

- including the death of bystanders (other persons)
- clarifying that multiple parties in a contractual chain can be charged with the crime
- alternative verdicts.<sup>152</sup>

<sup>148</sup> Bill, cls 76 (CMSHA, new s 199A) and 207 (MQSHA, new s 196A).

<sup>149</sup> Explanatory notes, p 15.

<sup>150</sup> Public hearing transcript, Brisbane, 24 May 2024, p 5.

<sup>151</sup> Explanatory notes, pp 6-7.

<sup>152</sup> Submission 4, p 4.

RSHQ responded noting that the WHS Prosecutor’s review of the WHS Act regarding industrial manslaughter completed in February 2024 was not considered for this Bill, because the release of the regulatory impact statement review process pre-dated the release of the review.<sup>153</sup>

### **Committee comment**

We acknowledge that the timeline has not allowed for consideration of the Workplace Health and Safety Prosecutor’s review of the *Work Health and Safety Act 2011* in the drafting of this Bill. The committee considers that the review should be considered in drafting any Regulations to accompany these amendments.

#### **2.3.3 Remote operating centres (ROCs)**

The explanatory notes define ROCs as a facility located off the mine that monitors mining operations at the mine and does either or both of the following:

- provides information that is used by the SSE or other supervisors at the mine to make decisions about mining operations at the mine but does not give instructions, directions or make decisions about mining operations at the mine; and/or
- remotely operates plant or equipment located at the mine under the direction of the SSE or other supervisors at the mine and under the SHMS.<sup>154</sup>

An ‘operational ROC worker’ is a worker for the mine at an ROC facility that:

- provides information that is used at the mine to make decisions about operations at the mine but does not give instructions, directions or make directions about operations at the mine; and/or
- remotely operates plant or equipment located at the mine under the direction of the site senior executive or other supervisors at the mine and the SHMS.<sup>155</sup>

The explanatory notes state that the Bill would amend the CSMH Act and the MQSH Act to firmly clarify the role of ROC workers and that the SHMS addresses risks from ROCs and remote operation of plant and equipment.<sup>156</sup>

BMA recommended amending the definition of ROC to ‘accurately reflect the work of ROCs and ensure other off-site facilities such as corporate offices are not captured’, providing the following definition:

Remote operating centre is a facility, or part of a facility, geographically separate from a coal mine, that is primarily used for controlling and monitoring coal mining operations at a coal mine in-real time.<sup>157</sup>

BMA also recommended amending the definition of ROC worker ‘to meet the intention of including ROC workers in the legislation and minimise the risk of unintentionally capturing individuals outside of a ROC’, providing the following definition:

ROC worker means an individual who carries out the activities of controlling and monitoring coal mining operations at a remote operations centre.<sup>158</sup>

QRC recommended amending the definition of remote operating centre in Clause 102 and Clause 231 to state that a ‘remote operating centre’ is a facility, or part of a facility, geographically separate from a coal mine, that is primarily used for controlling and monitoring coal mining operations at a coal mine

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<sup>153</sup> RSHQ, correspondence, 17 May 2024, p 7; Public briefing transcript, Brisbane, 24 May 2024, p 5.

<sup>154</sup> Explanatory notes, p 64.

<sup>155</sup> Explanatory notes, p 7.

<sup>156</sup> Explanatory notes, p 7.

<sup>157</sup> Submission 8, p 2.

<sup>158</sup> Submission 8, pp 2-3.

in-real time.<sup>159</sup> QRC also recommended amending the definition of ROC worker to state a ‘ROC worker’ means an individual who carries out the activities of controlling and monitoring mining operations at a remote operations centre.<sup>160</sup>

RSHQ elaborated on the process by which the Bill’s definition was developed:

During the development of the Bill it was originally proposed to clarify obligations for workers in remote operating centres, or ROCs, that may give instructions to onsite workers in a supervisory role. However, industry feedback explicitly advised us that remote operating centres do not give instructions or control or direct operations. Rather, they provide information to sites and monitor operations. Feedback was also received about the definition being too broad and that it would apply to other offsite office areas. This feedback was considered and changes were made to the bill based on that industry feedback to remove the proposed supervisory role and address concerns about the definition being too broad. A worker at a remote operating centre interacting with onsite personnel is of a non-supervisory nature. Providing information such as alerting an operator to an equipment alarm or notifying of a requirement of an approved mining plan or emergency response plan is not prohibited by the provisions of the bill as those things would amount to providing information, not giving instruction.<sup>161</sup>

### **Committee comment**

We understand that the purpose of the amendments surrounding remote operating centres are to clarify associated liabilities and better establish the hierarchy of supervision in relation to liability in the workplace. We are satisfied that the definition of remote operating centre is appropriate in the context of the Bill as a whole, and its interaction with health and safety across the industry.

#### **2.3.4 Safety critical roles at or near the mine site**

The Bill proposes to amend the CMSH Act and the MQSH Act to require the SSE for a mine to be located ‘at or near the mine site’ when performing their duties, unless they are temporarily absent for a period not exceeding 14 days.<sup>162</sup>

The QRC did not support the amendment and suggested the requirement for an SSE should be amended to omit ‘located at or near the mine site’ and align with the New South Wales legislation.<sup>163</sup> This NSW [New South Wales] Regulation requires an individual nominated to exercise a statutory function at the mine to be ‘readily available to exercise and is capable of exercising the statutory function’.<sup>164</sup>

The QRC queried the geographic limitations imposed by the amendment, noting that ‘near’ does not have any prescribed limitation.<sup>165</sup>

RSHQ provided in both their written response, and at the public hearing, that the requirement for an SSE to be ‘at or near’ the mine site is not a new concept, noting that this requirement has been legislated since 1999.<sup>166</sup> Further, RSHQ noted that they are not aware of any previous issues in the clarity of this requirement.<sup>167</sup>

<sup>159</sup> Bill, cls 102 (amends sch 3 – Dictionary of the CMSH Act) and 231 (amends sch 2 – Dictionary of the MQSH Act).

<sup>160</sup> Submission 6, p 3.

<sup>161</sup> Public hearing transcript, Brisbane, 24 May 2024, p 2.

<sup>162</sup> Explanatory notes, p 7.

<sup>163</sup> See for example, *Work Health and Safety (Mines and Petroleum Sites) Regulation 2022* (NSW), s 133.

<sup>164</sup> Submission 6, p 3.

<sup>165</sup> Submission 6, p 10.

<sup>166</sup> RSHQ, correspondence, 22 May 2024, p 3.

<sup>167</sup> Public hearing transcript, Brisbane, 24 May 2024, p 4.

RSHQ clarified that the intention of this amendment was to expand the obligations of an operator to ensure that the SSE is performing their duties ‘at or near’ the site, that is, they are not working remotely.<sup>168</sup> RSHQ further clarified that this requirement applies in the context of an SSE carrying out their role, and the 14-day exception acts to allow for an SSE to be temporarily absent from the site.<sup>169</sup> In the event of an emergency and the SSE is temporarily absent under the exception, there is nothing in the Act or the Bill which would operate to prevent the SSE from providing instructions over the phone.<sup>170</sup>

### **Committee comment**

We accept RSHQ’s position on this amendment and agree that the NSW legislation does not appear to provide any clearer parameters than those in the Bill.

## **2.4 Other issues examined**

### **2.4.1 Site Safety Health Representative election process, term of appointment**

The Bill amends the process to elect which entity would conduct an election for an SSHR, should the SSE and involved union be unable to agree. The proposed process would take up to 45 days. Then, if the coal mine workers cannot make a decision, an appropriately qualified entity would be appointed by the SSE.<sup>171</sup>

RSHQ advised that:

... the Bill provides that if the SSE and the involved union are unable to agree on which entity will conduct an election for an SSHR within 7 days of the election trigger, the chief inspector (as a neutral party) will appoint an appropriately qualified entity. The timelines for SSHR elections will be significantly improved by this change to the process.<sup>172</sup>

The MEU submitted that the election process for SSHRs under the CSMH Act should be changed to better reflect current practice which allows for a coal mine worker to ask the chief inspector, in writing, for an election to be held. The new proposed section requires a coal mine worker to ask an SSE for an election to be held.<sup>173</sup>

The MEU suggested that the amendments remove the ability for unions to be made aware that an election for a SSHR is to be held and denies the union an ability to run the election, which exposes coal mine workers to potential reprisal action from the coal mine operator.<sup>174</sup>

The MEU recommend that section 98B(b) be amended so that the coal mine worker can make the request to either the SSE or an ISHR on behalf of the MEU for an election to be conducted.<sup>175</sup> In addition, if the coal mine worker asks that the union conduct the election, the union should have the ability to conduct that election and the SSE must provide the relevant assistance to conduct the election.<sup>176</sup> The MEU believes that disputes over the running of the election should be resolved by the chief inspector, as per the current regulations.<sup>177</sup>

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<sup>168</sup> Public hearing transcript, Brisbane, 24 May 2024, p 4; RSHQ, correspondence, 22 May 2024, p 3.

<sup>169</sup> Public hearing transcript, Brisbane, 24 May 2024, p 4.

<sup>170</sup> RSHQ, correspondence, 22 May 2024, p 4.

<sup>171</sup> RSHQ, correspondence, 24 April 2024, p 12.

<sup>172</sup> RSHQ, correspondence, 24 April 2024, p 12.

<sup>173</sup> Submission 2, p 4.

<sup>174</sup> Submission 2, p 4.

<sup>175</sup> Submission 2, p 4.

<sup>176</sup> Submission 2, p 4.

<sup>177</sup> Submission 2, p 4.



Further, the MEU suggested that an amendment be made so that the MEU is the only union entity capable of running an election, despite the amendment to subsection 98B(1)(a) and (2) which allows for one or more involved unions to participate in an election.<sup>178</sup>

RSHQ advised that the amendments address stakeholder feedback that this proposed process may result in delays and disagreement. The Bill provides that if the SSE and the involved union are unable to agree on which entity will conduct an election for an SSHR within 7 days of the election trigger, the chief inspector (as a neutral party) will appoint an appropriately qualified entity. The timelines for SSHR elections will be significantly improved by this change to the process.<sup>179</sup>

RSHQ explained that the amendments seek to remove the chief inspector from receiving election requests for SSHRS, but does not remove the ability for unions, like MEU, to be made aware of, or be involved in, those elections.<sup>180</sup> The chief inspector will only become involved where the SSE and union cannot agree on the conduct of the election.<sup>181</sup> They continued:

It does not remove the ability for the MEU to be made aware that an election for a SSHR is to be held, nor deny the union an ability to run the election, as new section 98A(b) states that an election is to be conducted by an entity mentioned in section 98B(1) which includes one or more involved unions. Section 98B(2) then requires that the SSE and any involved union must use all reasonable endeavours during the period of seven days from the request for an election to agree on which of the entities is to conduct the election.

According to section 98B(3) any disagreement between the SSE and any involved union over the running of the election continues to be resolved by the chief inspector, according to the current provisions.

[...]

Section 93(3) follows current section 12O of the CMSHR regarding the term of appointment for an SSHR. The current provision and new section 93(3) provides that at the conclusion of the term of appointment a coal mine worker is no longer a SSHR, unless re-elected for another term. New section 96 sets out how a coal mine worker can cease being a SSHR other than through the expiry of the elected term under new section 93(3).<sup>182</sup>

### **Committee comment**

We are satisfied that the proposed amendments are justified.

We have considered the proposed amendment which would prescribe the Mining and Energy Union as the only union which may conduct an election under this amendment and have concluded that such an amendment would be inconsistent with the Regulations.<sup>183</sup>

#### **2.4.2 Electrical site safety and health representatives**

The Electrical Trades Union (ETU) proposed that a role for electrical site safety and health representative (ESSHR) be created in line with NSW legislation.<sup>184</sup> In response to this suggestion, RSHQ provided:

This proposal is out of scope of the current Bill. The proposal would need to be considered and consulted upon with stakeholders prior to further consideration for legislative amendment.

<sup>178</sup> Submission 2, p 4.

<sup>179</sup> RSHQ, correspondence, 9 May 2024, p 12.

<sup>180</sup> RSHQ, correspondence, 9 May 2024, p 7.

<sup>181</sup> RSHQ, correspondence, 9 May 2024, p 7.

<sup>182</sup> RSHQ, correspondence, 9 May 2024, pp 7-8.

<sup>183</sup> See CMSH Regulations 2017, s 12L.

<sup>184</sup> Submission 5, p 2.

The existing provisions do not prevent a coal mine worker who is an electrical worker to be nominated and elected by other coal mine workers, as a site safety and health representative should there be a vacancy.<sup>185</sup>

### **Committee comment**

We note that the committee is currently conducting an inquiry into the Electrical Safety and Other Legislation Amendment Bill 2024, where consideration of the above amendment may arise and potentially be encapsulated.

#### **2.4.3 Powers to compel under the P&G Act**

The Bill proposes to amend the P&G Act to expand the general powers of an inspector or authorised officer and add new penalties for a person failing to help safety inspectors in the course of their duties when they have entered a workplace.<sup>186</sup> A person will be compelled to provide reasonable help to an inspector, with the penalty for failing to comply attracting a penalty of 100 units.<sup>187</sup>

This amendment follows a Coroners Court of Queensland’s recommendation from the findings of the inquest into the death of Gareth Leo Dodunski handed down on 31 August 2023.

RSHQ noted:

The coroner found that the investigation into that fatality was limited due to the absence of that power. Those powers currently exist under our mining safety and health legislation. This amendment is bringing the petroleum and gas act in line with our other safety and health legislation that applies to coal mines and mineral mines inquiries.<sup>188</sup>

Inspectors and authorised officers investigating incidents under the P&G Act will be empowered to compel someone to answer questions or provide information, even where such information or answers might tend to incriminate the person. However, the Bill explicitly provides a safeguard to the individual depending on the circumstances - that is, if the questions:

- do not relate to an “incident” as defined under the P&G Act, then the individual does not have to comply with the requirement if they have a reasonable excuse—for example, because complying with the requirement would incriminate the individual or make them liable to a penalty; or
- do relate to an “incident” as defined under the P&G Act, then the individual must comply with the requirement, but the Act provides an assurance that any answers or information provided cannot subsequently be used against that individual for an offence under this Act (unless the answers or information provided was false or misleading).

##### **2.4.3.1 Fundamental Legislative Principle – general rights and liberties of individuals – penalties**

Penalties must be proportionate and consistent.<sup>189</sup> The explanatory notes provide the amendments are analogous with provisions in the CMSH Act, MQSH Act and Explosives Act, providing consistency to a wider range of industries.<sup>190</sup> However, a review of the similar provisions for failing to answer a question in the aforementioned Acts list the penalty at 40 penalty, as opposed to 500 units.

The explanatory notes state that the proportionality of the penalty is considered justified as a person not answering a question or assisting an inspector in the course of an investigation could result in

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<sup>185</sup> RSHQ, correspondence, 17 May 2024, p 8.

<sup>186</sup> Bill, cl 245 (P&G Act, new ss 755-756).

<sup>187</sup> Bill, cl 245 (P&G Act, new s 755).

<sup>188</sup> Public briefing transcript, Brisbane, 29 April 2024, p 6.

<sup>189</sup> Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: The OQPC Notebook, p 120.

<sup>190</sup> Explanatory notes, p 19; CMSHA, ss 140, 141; MQSHA, ss 137, 138; Explosives Act, ss 58, 59.

crucial details about the circumstances of an incident remaining undisclosed, and therefore a similar incident may not be prevented in the future.<sup>191</sup>

RSHQ explained that the proposed penalty aligns with similar offences in the P&G Act,<sup>192</sup> which also carries a maximum penalty of 500 penalty units for failing to give information requested by an inspector or authorised officer. RSHQ concluded that the use of the maximum penalty emphasises the importance of cooperation in circumstances where the section might be enlivened, stating:<sup>193</sup>

The proposed penalty strikes a balance between safeguarding an individual's rights and liberties while ensuring effective enforcement. This will ensure that a main purpose of the P&G Act is met, which is: to regulate and promote the safety of persons in relation to operating plant.<sup>194</sup>

### **Committee comment**

We are satisfied that the imposition of a new maximum penalty is justified in the circumstances to which it would apply. We find that these provisions have sufficient regard to the rights and liberties of individuals and that the penalties are both proportionate, consistent, and relevant to the seriousness of the conduct in question.

#### **2.4.4 Obligations of persons generally**

The Bill proposes to amend section 39 of the CSMH Act and section 36 of the MQSH Act. The MEU stated that these amendments narrow the scope of the section by excluding any other person who may have an ability to affect the health and safety of a person at the mine but is not actually on a mine site, despite the inclusion of ROC staff. RSHQ acknowledged that these amendments resulted in unintentional changes to the operation of the sections.<sup>195</sup>

### **Recommendation 3**

That the proposed amendments to section 39 of the *Coal Mining Safety and Health Act 1999* and section 36 of the *Mining and Quarrying Safety and Health Act 1999* are reversed to expand the scope of the Bill, while retaining references to remote operating centre workers.

<sup>191</sup> Explanatory notes, p 19.

<sup>192</sup> P&G Act, s 762.

<sup>193</sup> RSHQ, correspondence, 21 May 2024, p 2.

<sup>194</sup> RSHQ, correspondence, 21 May 2024, p 2.

<sup>195</sup> RSHQ, correspondence, 9 May 2024, p 5.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
1	Mine Managers Association of Australia
2	Mining and Energy Union Queensland District
3	AngloAmerican
4	Queensland Council of Unions
5	Electrical Trades Union
6	Queensland Resources Council
7	Peabody
8	BHP Mitsubishi Alliance

## **Appendix B – Officials at public departmental briefings**

**Monday, 29 April 2024**

### **Resources Safety and Health Queensland**

- Michelle Anderson, Director, Policy and Legislation
- Dean Barr, Executive Director, Occupational Health
- Hermann Fasching, Chief Inspector of Mines and Explosives

**Friday, 24 May 2024**

### **Resources Safety and Health Queensland**

- Jacques le Roux, Chief Inspector of Coal Mines
- Robert Djukic, Acting Chief Executive Officer

## Appendix C – Witnesses at public hearing

**Monday, 13 May 2024**

### **Mining and Energy Union - Queensland District**

- Mitch Hughes, District President
- Jason Hill, Industry Safety and Health Representative
- Steve Watts, Industry Safety and Health Representative
- Chris Newman, Senior Legal Officer

### **Queensland Resources Council**

- Judy Bertram, Deputy Chief Executive
- Julie Nielsen, Director, Health and Safety
- Paul Goldsbrough, Health and Safety Policy

### **Mine Managers Association of Australia Incorporated**

- Andrew Myers, President

### **BHP Mitsubishi Alliance (BMA)**

- Brad Prytherch, General Manager, Integrated Operations

### Individual witnesses

- Phil and Michelle Dodunski

## Appendix D – Abbreviations and acronyms

Abbreviation/acronym	Definition
Board/BOE	Board of Examiners
BMA	BHP Mitsubishi Australia
Brady Review	<i>S Brady, Review of all fatal accidents in Queensland mines and quarries from 2000 to 2019, December 2019</i>
CMSHA	<i>Coal Mining Safety and Health Act 1999</i>
Coal Mining Board of Inquiry	Queensland Coal Mining Board of Inquiry
COC	certificate of competency
CPD	continuing professional development
department	Department of Resources
DWR	district workers' representative
EEM	electrical engineering manager
ESSHR	electrical site safety and health representative
ETU	Electrical Trades Union
Explosives Act	<i>Explosives Act 1999</i>
FLPs	Fundamental Legislative Principles
HPI	high potential incident
HRO	High-reliability Organisation
ICMM	International Council on Mining and Metals
IROC	Integrated Remote Operating Centre
ISHR	industry safety and health representative
MEM	mining engineering manager
MEU	Mining and Energy Union, Queensland District
MMAA	Mine Managers Association of Australia Incorporated
MQSHA	<i>Mining and Quarrying Safety and Health Act 1999</i>
MUE	material unwanted event
NSW	New South Wales
OQPC	Office of the Queensland Parliamentary Counsel
P&G Act	<i>Petroleum and Gas (Production and Safety) Act 2004</i>
QCU	Queensland Council of Unions
QRC	Queensland Resources Council

Resources Safety Acts	<i>Resources Safety and Health Queensland Act 2020, Coal Mining Safety and Health Act 1999, Explosives Act 1999, Mining and Quarrying Safety and Health Act 1999, Petroleum and Gas (Production and Safety) Act 2004</i>
ROC	Remote operating centre
RSHQ	Resources Safety and Health Queensland
RSHQ Act	<i>Resources Safety and Health Queensland Act 2020</i>
SHMS	safety and health management systems
SMM	surface coal mine manager
SSE	site senior executive
WHS Act	<i>Work Health and Safety Act 2011</i>