Parliamentary Committees

Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

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Transport and Resources Committee
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Transport and Resources Committee

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Chair's foreword

This report presents a summary of the Transport and Resources Committee's examination of the Coal Mining Safety and Health and Other Legislation Amendment (CMSHOLA) Bill 2022.

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*.

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

I commend this report to the House.

Shane King MP

Chair

Abbreviations

AMEC	Association of Mining and Exploration Companies
APPEA	Australian Petroleum Production & Exploration Association
CMSHOLA	Coal Mining Safety and Health and Other Legislation Amendment Bill 2022
CMSH Act	Coal Mining Safety and Health Act 1999
EEM	Electrical Engineering Manager
ERZ	Explosion Risk Zone controller
GE Act	Geothermal Energy Act 2010
GHG Act	*Greenhouse Gas Storage Act 2009*
HRA	*Human Rights Act 2019*
IRC	Isaac Regional Council
LSA Act	*Legislative Standards Act 1992*
MEM	Mechanical Engineering Manager
MEU	Mining and Energy Union
MRA	*Mineral Resources Act 1989*
OCE	Open Cut Examiner
P&G Act	*Petroleum and Gas (Production and Safety) Act 2004*
QRC	Queensland Resources Council
QRIDP	Queensland Resources Industry Development Plan
RSHQ	Resources Safety and Health Queensland
SSE	Senior Site Executive
SSRC Act	*Strong and Sustainable Resource Communities Act 2017*
UMM	Underground Mine Manager
VO	Ventilation Officer

Recommendations

Executive Summary

The Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 was tabled on 12 October 2022 and referred to the Transport and Resources Committee with a reporting date of 4 November 2022.

As part of its inquiry into the bill the committee called for submissions (with 10 being received), and held a departmental briefing on 24 October 2022 and a public hearing on 25 October 2022.

Resources Health and Safety Queensland (RHSQ) and the Department of Resources provided the committee with a written response to the submissions received.

The committee has made 6 recommendations in its consideration of the bill, with these being listed on page iv of this report.

1 Introduction

1.1 Policy objectives of the Bill

The objectives of the Bill are:

- Safety and health – to provide for exceptions to direct employment requirements for coal mining statutory positions contained in the *Coal Mining Safety and Health Act 1999;* and
- Resources – to enable implementation of a key action in the draft Queensland Resources Industry Development Plan (QRIDP), as well as several housekeeping amendments to a number of Acts in the Resources portfolio to address operational issues and correct clerical errors.[1]

1.2 Background

On 25 May 2020, the *Mineral and Energy Resources and Other Legislation Amendment Act 2020* amended the *Coal Mining Safety and Health Act 1999* (the CMSH Act) to require that a person to be appointed to a safety-critical statutory role at a coal mine is an employee of the coalmine operator.[2] This is known as the direct employment requirements. The objective of the direct employment requirements is to ensure that holders of statutory roles at coalmines can make safety complaints, raise safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.[3]

The direct employment requirements were passed on 25 May 2020, with an 18-month transitional period which would have ended on 25 November 2021. Towards the end of that transitional period, industry flagged challenges with implementing the requirement. In response, the duration of the transitional period was extended until 25 November 2022, to allow time for industry, with unions and the government, to seek to identify solutions to the challenges raised by industry.[4]

A tripartite working group was established by the Commissioner for Resources Safety and Health (RHSQ) at the Minister for Resources' direction in late 2021 to achieve this. The tripartite working group included representatives from coal mine operators, contractor companies and worker representatives as well as the Queensland Mines Inspectorate (representing RHSQ).[5]

The working group met periodically and received written submissions and face-to-face presentations from impacted stakeholders. In February 2022, the working group presented its report to the Minister for Resources. Following consideration of the working group's advice and the possible solutions it identified, RSHQ subsequently tested refined recommendations for legislative amendments with the Queensland Resources Council (QRC) (representing coal mine operators and contractor companies) and the Mining and Energy Union (MEU) (representing workers) in early 2022.[6]

An exposure draft of the coal mining safety and health amendments contained in the Bill was provided to key stakeholders including the MEU and QRC and other tripartite working group members in mid-August 2022.[7] There were further consultations with key stakeholders prior to the tabling of the

1 Explanatory notes, p 1.

2 Statement of Compatibility, p 1.

3 Explanatory notes, p 5.

4 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 3.

5 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 3.

6 Explanatory notes, p 7.

7 Explanatory notes, p 7 and Erratum to Explanatory notes, p 1.

CMSHOLA Bill on 12 October 2022.[8] The Bill was subsequently referred to the Transport and Resources Committee with a reporting date of 4 November 2022.[9]

The Bill amends those provisions related to the direct employment of coal mining statutory positions contained in the CMSH Act which were otherwise due to come into effect on 25 November 2022, when the transitional period was to end.

However, the Explanatory notes state that:

> Since the direct employment amendments were passed, challenges to implementing these requirements have arisen relating to corporate and operational structures, unplanned short-term absences, economic viability for low-risk operations (exploration activities) and situations where a contractor is substantially responsible for the mine operations.[10]
>
> …
>
> The exceptions to direct employment requirements included in the Bill are needed to ensure coal mining industry companies have practical ways of implementing the direct employment requirements that do not unreasonably disrupt their current corporate structures and employment arrangements.[11]

Various submitters have expressed a view that the consultations which preceded tabling of the Bill were insufficient to resolve key issues around the direct employment requirements.

The Bill also proposes amendments to the Resources Acts, including the *Mineral Resources Act 1989* (MRA) to implement a framework to defer specific critical minerals mining leases. It also amends the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act), the *Geothermal Energy Act 2010* (GE Act) and the *Greenhouse Gas Storage Act 2009* (GHG Act) to amend compliance provisions to remove the requirement for resource authority holder agreement to a monetary penalty for non-compliance. The Bill further proposes minor amendments to the GE Act and the GHG Act and the *Mineral and Energy Resources (Common Provisions) Act 2014*.[12]

In August 2022, the Department of Resources met with the QRC, the Australian Petroleum Production and Exploration Association (APPEA), the Association of Mining and Exploration Companies (AMEC) and members of these industry peak bodies to present and discuss the proposed Resources Acts amendments. An exposure draft of the Resources Acts amendments contained in the Bill was provided to the QRC, APPEA and AMEC in early September 2022.[13]

1.3 Should the Bill be passed?

While the committee recommends that the Bill be passed, it notes that the consultations which preceded the tabling of the Bill left various issues surrounding the direct employment provisions under the CMSH Act unresolved.

Recommendation 1

The committee recommends the Coal Mining Safety and Health and Other Legislation Amendment Bill 2022 be passed.

8 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 3.

9 Queensland Parliament, Record of Proceedings, 12 October 2022, p 2606 and p 2610.

10 Explanatory notes, p 1.

11 Explanatory notes, pp 1-2.

12 Explanatory notes, p 2.

13 Explanatory notes, p 7.

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 Amendment of the *Coal Mining Safety and Health Act 1999*

The amendments proposed in the Bill will allow limited exceptions to the direct employment requirements under the CMSH Act. It proposes to enable direct employment of coal mine senior site executive (SSE), underground mine manager (UMM) and ventilation officer (VO) statutory position holders by associated entities.[14]

The Bill also provides exemptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for SSE, UMM and VO statutory positions. Additionally the Bill provides similar exemptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for open cut examiner (OCE), Explosion Risk Zone (ERZ) controller, electrical engineering manager (EEM), and mechanical engineering manager (MEM) statutory positions.[15]

The Bill also proposes to provide exemptions to the direct employment requirements for entities which employ at least 80 per cent of the workers at a coal mine.[16]

The committee notes that various submitters raised global issues with the amendments to the CMSH Act proposed in the Bill. These include:

- a view that the amendments proposed in the Bill are incompatible with the intent of the 2020 amendments to the CMSH Act regarding direct employment of statutory position by a coal mine operator
- a view that the consultations around the direct employment exceptions which preceded tabling of the Bill were inadequate and resulted in amendments in the Bill which do not represent the agreed outcomes of the tripartite working group
- submissions that the Bill represents an industrial relations instrument not in line with the Bill's policy objective of safety and health
- submissions that the timeframe for implementation of the amendments in the Bill is inadequate
- lack of clarity around how the exceptions to the direct employment provisions will be monitored and penalties enforced.

The report will address each of these issues first, given they relate to the suite of specific direct employment exceptions contained in the Bill, which will then be considered individually.

The MEU, Stuart Vaccaneo, and Submitter 8 hold the view that the Bill is incompatible with the original intent of the 2020 amendments to the CMSH Act which legislated direct employment of statutory positions by coal mine operators. The MEU submits that the 2020 amendments were to ensure that statutory role holders were focussed solely on safety. This is broadly consistent with advice from RHSQ that:

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

[14] Explanatory notes, p 2.

[15] Explanatory notes, p 2.

[16] Explanatory notes, p 2.

> The requirements also ensure that the coalmine operator, the entity ultimately responsible for the coalmine and safety of its workers, remains the central point of responsibility. By directly employing critical safety roles, the coalmine operator's responsibility for safety is not fragmented across multiple employers.[17]

RHSQ submit that the proposed amendments will allow limited exceptions to the direct employment requirements while still achieving the safety intent of the 2020 legislative amendments.[18]

On the adequacy of the consultation process and the resultant Bill, RSHQ advised that:

> The tripartite working group was established by the Commissioner for Resources Safety and Health at the Minister for Resources' direction in late 2021...
>
> The working group met periodically and received written submissions and face-to-face presentations from impacted stakeholders. In February 2022, the working group presented its report to the Minister. Following consideration of the working group's advice and the possible solutions it identified, RSHQ spent the following months working with industry to formulate refined recommendations which were tested with the Queensland Resources Council (representing coal mine operators and contractor companies) and the Mining and Energy Union. There was further consultation on a draft consultation Bill.[19]

The QRC and MEU submit that some provisions of the tabled Bill do not reflect the agreed outcomes of the working group. For example, the QRC submit that the Bill's provision to allow direct employment exemptions for an entity who employs or engages at least 80 per cent of workers on a coal mine site did not come from the consultation process.[20]

The MEU are opposed to any exemptions for the direct employment requirements contained in the CMSH Act, and submit that the proposed amendments are significant alterations that move away from original intent of the 2020 legislative change and do not meet the findings and agreed positions of the tripartite working group, as outlined in their final report.[21]

In response, RSHQ advised:

> The working group identified that, under the direct employment requirements, contractor companies would be unable to provided statutory positions where they held full-service contracts for whole-of-mine operations where the contractor is not the coal mine operator. However, the working group did not reach consensus on a solution to this issue.[22]

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

Submissions from the QRC and Idemitsu Australia stated that the Bill represents an industrial relations instrument that is not in line with the Bill's policy objective of safety and health. In response, RSHQ advised:

> The inclusion of direct employment requirements in the CMSH Act reflects the intention of Parliament when it passed amendments in May 2020, and that the proposed amendments still achieve the safety intent of the 2020 amendments.[23]

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17 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 1.

18 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 1.

19 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 3.

20 Submission 3, p 3.

21 Submission 10, p 2.

22 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 11.

23 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 3.

QRC and Idemitsu Australia additionally submit that the implementation timeline for the Bill, if passed, will create structural and contractual difficulties for the industry and has the potential to create significant disruption in the workplace, and these requirements will serve to reinforce serious skill shortages currently faced by the industry. QRC submits that industry should be given an additional six months before the Bill commences.[24]

The committee notes that if the Bill does not commence operation by 25 November 2022, industry will be required to comply with the 2020 amendments to the CMSH Act regarding direct employment. RHSQ further advise:

> If the QRC is suggesting the six months deferral of commencement should apply to the Bill in addition to the existing direct employment requirements taking full effect – this is not supported on the basis that industry has already had a two-and-a-half-year transitional period to implement the direct employment requirements and address any challenges to implementation.[25]

The MEU submit that, 'Ideally, as some are already doing, mines should have a training scheme that provides a continual pipeline of statutory officials with any excess performing other roles until required.'[26]

The Committee notes that the two and a half years transitional period would appear to be an adequate amount of time for industry to implement sufficient workforce planning and training to comply with the direct employment provisions.

The MEU raised concerns about how the exceptions to the direct employment provisions will be monitored, and penalties for non-compliance enforced. It said:

> … the number of exemptions place a significant and unnecessary regulatory burden on the regulator in order to ensure that the exemptions are genuine. There is still no guidance as to who RSHQ is to monitor and regulate how and when the 80% threshold is met and would be open to abuse by contractors.[27]

Submitter 8 also raised concerns about RSHQ's capacity to monitor implementation of the amendments.[28] In response the RSHQ have advised that it 'will monitor the implementation of the direct employment requirements'.[29]

The committee notes that clarification by the Minister of the enforcement body for the exceptions to the direct employment requirement would be appropriate.

Recommendation 2

- The committee recommends clarification by the Minister of which body will enforce compliance with the exceptions to direct employment provisions.

2.1.1 Direct employment of coal mine statutory position holders by associate entities

The Bill proposes amendments to the CMSH Act to enable direct employment of the SSE, UMM and VO statutory position holders by associated companies/joint ventures. This would provide coal mine operators with greater flexibility to engage SSEs, UMMs or VOs from a broader pool of employees

24 Submission 3, p 7.

25 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 3.

26 Submission 10, p 3.

27 Submission 10, pp 5-6.

28 Submission 8, p 5.

29 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 10.

across its different operations and joint venture companies, without the need to restructure individual employment arrangements each time. It would also facilitate access to a potentially larger pool of eligible appointees across a coal mine operator's different operations and joint venture companies.[30]

The MEU and Submitter 8 are opposed to this amendment on the basis that it would allow for practices that would undermine the intent of the legislation.[31] The MEU recommends that only the coal mine operator, and not any associated entity, be permitted to hire all statutory officials.[32]

In response, RHSQ stated:

> The exception, as drafted, is intended to enable the engagement of statutory officers from a broader pool of employees across a coal mine operator's diverse operations and associated companies, without the need to restructure individual employment arrangements each time.[33]

Two submissions raised concerns with the way that the term 'associated entities' is proposed to be defined by the Bill.[34] In response RHSQ stated:

> The introduction of the term 'associated entity' into the Bill comes after relevant matters were considered. The reference in the Bill to 'associated entity' and its definition referring to the *Corporations Act 2001* (Cth) was drafted by the Office of the Queensland Parliamentary Counsel (OQPC). It supports the policy intent of the associated entity exception; and aligns with the definition in other Queensland legislation (e.g., the *Environmental Protection Act 1994*).[35]

Some submissions queried why the associated entity exception does not include the role of OCE and/or ERZ controller, EEM and MEM roles.[36] Stuart Vaccaneo submits that by not extending the exception to OCEs, OCEs will continue to be forced onto contracts instead of permanent full-time employment.[37]

Conversely, the MEU submits that only coal mine operators should be responsible for the hiring of OCE and ERZ statutory roles.[38] QRC states that not including the EEM and MEM roles in the associated entity exception creates additional burden on operators if these positions cannot be shared across company sites.[39] Idemitsu Australia submit that not including the EEM and MEM roles in the associated entity exception unnecessarily restricts their employment.[40]

In response, RHSQ notes that the tripartite working group:

> …reached a consensus that the senior statutory positions of SSE, VO and UMM may be employed by an associated entity. The tripartite working group did not reach a consensus on ERZ controller and OCE positions and the EEM and MEM positions were not raised in the working group process.
>
> The OCE and ERZ controller were specifically excluded in the Bill from the associated entity exception on the basis the appointed person should be attached to a particular mine and not be interchangeable across different mines in relation to an associated entity. The

30 Explanatory notes, p 2.

31 Submission 10, p 2; Submission 8, p 3.

32 Submission 10, p 2.

33 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 10.

34 Submission 1; Submission 2.

35 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 2.

36 See Submissions 3, 6, 8 and 9.

37 Submission 1, p 4.

38 Submission 10, p 6.

39 Submission 3, p 5.

40 Submission 6, p 3.

> underground EEM and MEM positions were not previously raised, so have also been excluded from the associated entity exception in the Bill.[41]

The committee notes that the application of the associated entity exception to the direct employment requirements for EEM and MEM roles appears to be an issue that was not resolved during consultations and may require further consideration by the Minister.

Recommendation 3

- The committee recommends the Minister further consider the application of the associated entity exception to the direct employment requirement for EEM and MEM roles.

2.1.2 Exceptions for direct employment requirements for absence or vacancies up to 12 weeks

The Bill proposes further amendments to the CMSH Act to provide exceptions to the direct employment requirements for short-term temporary absences or vacancies of up to 12 weeks for the SSE, OCE, UMM, ERZ controller, EEM, MEM and VO statutory positions. The Explanatory Notes state:

> This change provides coal mine operators some latitude for covering unplanned short-term absences or vacancies for a statutory position, so a person who is not an employee can act temporarily in the role. This will be most beneficial for single mine operators, who may struggle to address unplanned absences or vacancies in statutory roles resulting from resignations, long term sickness/injury and statutory position holders taking long service leave.[42]

QRC submit that the 12-week exception to the direct employment requirements is too short for filling a vacancy.[43] Idemitsu Australia also submit that, 'The 12-week concession as proposed is wholly insufficient in these circumstances, resulting in the operation being put on care and maintenance during the gap period of employment, with impacts on continuity of employment.'[44]

Idemitsu Australia submits that recruitment in the industry is challenging as there are not enough people in the industry to fill the positions of SSEs, UMMs and VOs, and that the 12-week limit on the use of sub-contractors to fill statutory roles on mine sites will have a detrimental impact on mine safety and outcomes and create an unnecessary burden and risk with respect to continuity of mining operations.[45]

RHSQ responds that this proposed exception in relation to a vacancy provides additional flexibility for the direct employment provisions which are due to commence on 25 November 2022.[46]

The MEU does not support this exception for a number of reasons, including that the proposed amendments will water down the provisions of the CMSH Act and the exception discourages coal mines to provide continual training of coal mine workers in statutory positions such as OCEs and ERZ controllers, but rather plays to their short-term focus of having the ability to turn on and off statutory positions on an as needed basis, which is detrimental to safety.[47]

41 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 4.

42 Explanatory notes, p 3.

43 Submission 3, p 2.

44 Submission 6, p 3.

45 Submission 6, p 3.

46 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 6.

47 Submission 10, p 3.

The MEU also submits that there are too many loopholes with this exception and the exception is open to abuse. For example, the MEU submits, 'It is arguably permissible under s.59A that an SSE could appoint a statutory official for a period of 12 weeks on the basis that a permanent statutory official was absent for a single day.'[48]

In response, RHSQ submit that, 'the exception, as drafted, is clear that it only allows for a temporary appointment during the absence/vacancy (i.e. not beyond or in excess of the period of absence/vacancy).'[49]

The committee notes that continual training in statutory positions by coal mine operators may assist to mitigate recruitment concerns and reduce the burden and risk regarding mining operation continuity, as expressed by industry. Adequate training by industry for these safety-critical statutory roles, in the lead up to this legislation being enacted, seems to have been insufficient.

2.1.3 Exceptions for direct employment requirements for entities who employ at least 80% of workers at a coal mine

The CMSH Act is also proposed to be amended by the Bill to provide exceptions to the direct employment requirements for entities which employ at least 80 per cent of the workers at a coal mine. The exemption applies for entities that employ or otherwise engage at least 80 per cent of the total number of coal mine workers at a coal mine in its entirety.

The Explanatory notes state that:

> This change means the SSE, OCE, UMM, ERZ controller, electrical engineering manager, mechanical engineering manager and VO statutory positions at such a coal mine can be directly employed by the entity (e.g., a large contractor company, major service provider, etc.) which also employs the vast majority of the mine's workers. This change also facilitates the operation of full-service contracts for whole-of-mine operations where the contractor is not the coal mine operator but are substantially responsible for operations and are essentially the de facto operator.[50]

Stuart Vaccaneo and Submitter 8 submit that this exception will allow the operator and the parent company to evade most legal obligations except as the statutory position holder.[51] Stuart Vaccaneo also submits this exception is contrary to the wording and intent of the legislation for the last 22 years, and undermines the recommendation from the Grosvenor Inquiry relating to corporate governance.[52] In response RHSQ state:

> The 80% exception would apply in limited instances where a contractor company may be responsible for all aspects of coal mining operations, or be substantially responsible for operations, but is not appointed the coal mine operator.
>
> This change will ensure a contractor company substantially responsible for providing the majority of workers (i.e., 80% or more) at a coal mine can also provide the statutory position holders. This will facilitate the operation of full-service contracts for whole-of-mine operations where the contractor is not the coal mine operator.
>
> The operator company will remain liable for fulfilling all statutory obligations of an operator under the CMSH Act.[53]

48 Submission 10, p 4.

49 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 11.

50 Explanatory notes, p 3.

51 Submission 1; Submission 8.

52 Submission 1, p 7.

53 Resources Safety and Health Queensland, correspondence, 26 October 2022, pp 1-2.

QRC queries where the 80% exception originated and states there is not a not a major contractor in Queensland which the 80% exception would apply to.[54] QRC contends that major contractors often undertake specialist work (e.g., longwall moves, supplemental bord and pillar mining, underground mine construction, gate road development, underground ventilation control devices services, periodic open cut operations, etc.) and therefore should also be able to engage their own statutory position holders (without needing to either be the operator or engaging most coal mine workers at the mine).[55] QRC and member companies are concerned these requirements will create a disconnect between the statutory position holders and the shift crew which has the potential to have a significant adverse effect on safety.[56]

In response RHSQ note:

> The QRC position would negate the original intent of the direct employment requirements as introduced in May 2020 – i.e., the objective of the direct employment requirements being to ensure that holders of statutory roles at coalmines can make safety complaints, raise safety issues, or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.
>
> Also, in the examples provided by QRC of specialised contractors who engage their own statutory position holders, it is not clear in all cases which statutory positions the specialist contractor employs in the best interests of safety (as QRC submits); and why it is in the best interests of safety for them to do so. For instance, in the example of longwall moves, QRC submits 'additional supervisors' may be required, but does not articulate what statutory positions would be required (a supervisor is not a statutory position).
>
> In the example of roof bolting, QRC submits that work will normally be under the supervision of permanent ERZ controllers but does not state why that position must be an employer of the contractor company, rather than the operator, in the interests of safety.
>
> RSHQ queries the submission that the requirements will create a disconnect between the statutory position holders and the shift crew. Under existing legislation, where operators engage contractor companies, both parties are under mutual obligations to integrate contractor work plans into the mine's safety and health management system – that is, in essence to work together to ensure there is no disconnect between personnel and work performed. It is not clear how, if operators and contractors fulfil existing obligations, the requirements would create a disconnect with adverse safety effects.[57]

The MEU does not support the use of exceptions. It submits that the CMSH Act does not allow for exceptions, that the target of 80% of coal mine workers is arbitrary and not based on any recommendations, principles, or academic research, and that this exception was never raised nor discussed by the working group and there is no agreement for such a proposal.[58]

The MEU also submits that it considers that the exception to hire OCE and ERZ statutory officials for contractors who employ 80% of coal mine workers at the mine to be a dangerous and impracticable legislative change that should be removed and that only coal mine operators should be responsible for the hiring of these statutory roles.[59]

In response, RHSQ state:

> The working group identified that, under the direct employment requirements, contractor companies would be unable to provided statutory positions where they held full-service

54 Submission 3, p 3.

55 Submission 3, pp 4-5.

56 Submission 3, p 5.

57 Resources Safety and Health Queensland, correspondence, 26 October 2022, pp 3-4.

58 Submission 10, p 5.

59 Submission 10, p 6.

> contracts for whole-of-mine operations where the contractor is not the coal mine operator. However, the working group did not reach consensus on a solution to this issue.
>
> A non-consensus option identified within some members of the working group was that a contractor working under a full-service contract for whole-of-mine operations, where the contractor is not the coal mine operator but directly employs the SSE and all statutory roles at the mine and operates under its own safety and health management system, should be allowed to employ its own statutory officials.
>
> A second non-consensus option identified within the working group was that contractors providing services for part of a mining operation be allowed to employ their own statutory officials.
>
> It is understood the MEU did not support either of these options.
>
> As the working group did not arrive at a consensus view on this issue, government identified a middle-option between the two non-consensus options, namely the 80% option. This proposal was put to the stakeholders and included in the consultation draft Bill.
>
> Feedback received from stakeholders during the drafting of the Bill was taken into consideration and that feedback resulted in the exception been tightened in the Bill now applying only where those entities engage 80% or more of workers across the entire coal mine, rather than within a separate part of a surface mine as originally drafted.
>
> The parliament has full plenary power to include exemptions or exceptions in legislation, including the CMSH Act. It is usual for legislation to clarify the scope of its application and place explicit limits on its application; the CMSH Act currently contains provisions whose application is expressly limited or excepted in certain circumstances.[60]

The committee is concerned that the various members of the tripartite working group remain significantly far apart on this specific exception to the direct employment requirements, and the 80% threshold may require further consideration by the Minister.

Recommendation 4

- The committee recommends the Minister revisit the percentage threshold for the exception for direct employment requirements for entities who employ at least 80% of workers at a coal mine.

2.1.4 Exceptions for direct employment requirements for a coal mining operator whose only coal mining operations are exploration activities

The Bill proposes amendments to the CMSH Act to provide that the requirement to directly employ an SSE does not apply for a coal mine operator whose only coal mining operations for the coal mine are exploration activities.

The Explanatory notes state that:

> The change will mean that a company undertaking exploration activities, and that is not involved in other aspects of coal mining operations, would have greater flexibility in relation to appointing an SSE. This will be most beneficial for junior and mid-tier companies which undertake exploration activities and are not the operator (or an associated entity) of an operating coal mine because they may find it uneconomical to directly employ an SSE.[61]

[60] Resources Safety and Health Queensland, correspondence, 26 October 2022, pp 11-12.

[61] Explanatory notes, pp 2- 3.

QRC and Peabody Energy submit that this exception should also apply to coal mine operators whose only coal mining operations are rehabilitation, care and maintenance activities, given the infrequent nature of the work.[62]

RHSQ notes this issue was not raised during the tripartite working group consultation.[63]

MEU opposes this exception on the basis that there should be no exceptions under the CMHS Act.[64] In response RHSQ state:

> Given the relatively low risks of exploration activities, this exception is not considered to significantly diminish the effectiveness of the direct employment requirements. The exception in the Bill is considered to be balanced in that it provides flexibility for a company undertaking exploration activities and that is not involved in other aspects of coal mining operations, in appointing an SSE…
>
> This exception was advanced as a consensus solution by the tripartite working group, of which the MEU was a part.[65]

2.2 Amendment of the *Mineral Resources Act 1989*

The proposed amendments will support implementation of a key action in the QRIDP that the government will develop and implement a framework to allow the Minister for Resources to defer the first years rent for specific critical minerals mining leases. The amendments will allow the Minister for Resources to defer rent for a mineral that is prescribed in the Mineral Resources Regulation 2013, and in circumstances where the proponent can prove that the funds saved from the deferral will be utilised towards start-up costs for the project.[66]

The Association of Mining and Exploration Companies (AMEC) is supportive of the rent deferral proposal and implementation and supports the change in terminology from 'new economy minerals' to 'critical minerals'.[67] AMEC submit that it is important to ensure that the definition of 'critical minerals' is such that ambition and implementation of the QRIDP are not negatively impacted.[68] AMEC further submit that to be sound this amendment should be supported by clear guidance and case studies (real or theoretical) that demonstrate clearly what 'start up and development costs' includes.[69]

In response the department states:

> To assist applicants the department's Mining Lease Application Guideline will clarify that the applicant for the grant of a critical mineral mining lease that is seeking to defer the first years rent for the lease, would need to lodge a statutory declaration from a suitably qualified person (such as a director, auditor or chief financial officer) that sets out the proposed expenditure and describes how these costs directly relate to the start-up and development of the project. What constitutes as start-up costs for a site are broad as they can vary widely, however, examples include, but are not limited to: consultants for pit design, refurbishments of an old dam or construction of a new dam, costs for assessment and reports, costs associated with groundwater monitoring bores and costs for development of bores.[70]

62 Submission 3; Submission 9.

63 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 5.

64 Submission 10, p 6.

65 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 12.

66 Explanatory notes, p 3.

67 Submission 5, p 2.

68 Submission 5, p 2.

69 Submission 5, p 2.

70 Resources Safety and Health Queensland, correspondence, 26 October 2022, pp 5-6.

In terms of the amendment schedule which lists critical minerals, AMEC submits that the Minister should consider including phosphate which it states is a critical fertiliser mineral used by the agricultural industry.[71] AMEC submits there are significant phosphate deposits being developed in the north-west mineral's province, and sees it as an opportunity for the Queensland Government to use its supply reliability as an investment attraction mechanism and consequently facilitate the development of phosphate in Queensland.[72]

In response the department states:

> The list of critical minerals has been developed to include minerals that fall into the category of minerals that are critical to support renewable energy projects or a part of a decarbonisation process moving towards addressing climate change both domestically and globally.
>
> The list was developed in consultation with AMEC, the Queensland Resources Council, and the Geological Survey of Queensland. AMEC has said that phosphate is an important mineral used for fertiliser for agricultural purposes and whilst it is important for food security, it does not fall into the category of critical minerals for rent deferral purposes.[73]

Isaac Regional Council (IRC) is supportive of rent deferral. IRC submits that rent deferral is a positive action that will allow proponents to direct investment to research and exploration however this concept must be further supported by mineral leases that are designed to encapsulate the intent of the *Strong and Sustainable Resource Communities Act 2017* (SSRC Act).[74]

IRC further submits that it is imperative that critical mineral leases are considered in the context of ensuring the intent of the SSRC Act is maintained with the social impact assessment processes remaining a key component of early engagement with proponents to secure commitments to communities.[75]

IRC submits that adequate resources be provided to state regulators of major resource and renewable projects (including the Office of the Coordinator General, Department of Environment and Science and Department of Resources) to enable both upfront education and assessment processes, understanding of social impacts vital for achieving optimum outcomes for industry and communities in the facilitation of resource, renewable and clean energy projects.[76]

IRC requests that it be relieved of the onus and burden of educating proponents on State approvals, legislation and standards and responses to road infrastructure, water, waste and social impacts.[77]

In response the department advises:

> QRIDP commits the Queensland Government to ensure that its resources-related assessment processes, systems and regulations are efficient, effective, and transparent, and promote certainty.
>
> Government also commits to provide clear guidance materials and to process applications quickly and transparently and inform applicants and the community as applications progress.
>
> The QRIDP includes two initiatives that will also address Isaac Regional Council's concerns.

71 Submission 5, p 2.

72 Submission 5, p 2.

73 Resources Safety and Health Queensland, correspondence, 26 October 2022, p 6.

74 Submission 7, p 5.

75 Submission 7, p 5.

76 Submission 7, p 6.

77 Submission 7, p 6.

- Action 36: Improve resources project assessment processes: this will involve the Department of Resources, the Department of Environment and Science and the Office of the Coordinator-General working to together to improve regulatory efficiency by creating a credible, transparent, and efficient assessment system, which is easily understood and respected by industry and the community. The Queensland Government will collaborate with stakeholders to implement business process reform and efficiency improvements to achieve:
    - a transparent and engaged customer experience;
    - improved clarity of material to drive application quality; and
    - technology and data platforms and requirements that achieve fit-for-purpose integrated automated systems to support and operationalise reforms.

Currently, the Department of Resources' Mineral Assessment Hub provides the resources sector with the support, guidance and information necessary to meet their statutory requirements and social licence commitments. This includes referring proponents for projects to the Office of Coordinator-General for the administration of the SSRC Act.

For the SSRC Act to apply to a mining lease it must be a large resource project for which an environmental impact statement is required or holds a site-specific environmental authority and has more than one hundred workers. If a critical mining lease triggers these criteria, then a social impact assessment is required.[78]

2.3 Amendment of the *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009* and *Petroleum and Gas (Production and Safety) Act 2004*

A fundamental principle of the Resources Acts is that resources companies seeking to explore and produce the state's resources must coexist with other landholders. This is supported by the compliance provisions in the P&G Act, the GE Act and the GHG Act. The ability to levy monetary penalties is limited by sections 790(2)(b) of the P&G Act, 320(2) of the GE Act and 379(2) of the GHG Act which state that a monetary penalty may only be made where the holder has agreed to the requirement being made. The effect of these sections is that a resource authority holder may be able to negotiate the terms of any monetary penalty that might be proposed by a relevant official and delay the resolution of a coexistence matter for an indefinite period.[79]

The Explanatory notes state that:

> The current provisions are inconsistent with the MRA and limit the department's ability to regulate and take action for breaches of the Land Access Framework and obligations and conditions of a resource authority. Failure to address this issue may damage the community's confidence in the department as an efficient and effective regulator that works in the public interest.
>
> The proposed amendments will remove the requirement for holders to agree to the monetary penalty, limiting their ability to delay enforcement action. These amendments will not limit rights of resource authority holders with notice provisions providing an opportunity for natural justice and any decision being appealable to the Land Court of Queensland.[80]

The committee notes it received no public submissions regarding this amendment.

78 Resources Safety and Health Queensland, correspondence, 26 October 2022, pp 8-9.

79 Explanatory notes, p 3.

80 Explanatory notes, pp 3-4.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

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

We bring the following to the attention of the Legislative Assembly.

3.1.1 Amendment of the *Coal Mining Safety and Health Act 1999*

3.1.1.1 Rights and liberties of individuals

Section 4(2) (a) of the *Legislative Standards Act 1992* requires that legislation has sufficient regard to the rights and liberties of individuals.

The government position, as set out in the Explanatory Notes, is that:

> The Bill seeks to create a number of new offence provisions based on existing comparable offence provisions under the CMSH Act. A considered and justified approach was undertaken when determining the maximum penalty for each new offence provision. Each proposed maximum penalty was assessed to align with similar offence provisions within the same legislation and assessed to be of an appropriate level against the offence. Higher maximum penalties are proposed for offences of greater seriousness. It is considered that any potential breaches of individual rights and liberties by the proposed new offence provisions are justified and appropriate.[81]

3.1.1.1.1 Penalties should be reasonable and proportionate

This fundamental legislative principle relates to the appropriateness of penalties, including:

a) Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation

b) Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence

c) Penalties within legislation should be consistent with each other.[82]

The Bill introduces new penalties relating to the 12-week limit on acting appointments for statutory positions. Clauses 5, 7, 9 and 11 of the Bill amend the CMSH Act to introduce new offence provisions relating to the 12-week limit on acting appointments for statutory positions. The amended provisions no longer require a person to be a direct employee of the coal mine operator while acting in an identified position; however, it caps the acting period at 12 weeks, after which an offence is committed if a person who is not an employee of the operator or an applicable entity remains acting in the role. The maximum penalty for these new offences are 500 penalty units (currently, equal to $71,875).

Clauses 4, 7, 9 and 11 also amend the direct employment requirements of the CMSH Act, including the requirements for acting in statutory positions temporarily, however the relevant penalties, which range from 40 to 500 penalty units, '…essentially carryover from existing offence provisions for

[81] Explanatory notes, pp 4-5.

[82] *Legislative Standards Act 1992*

replaced or amended provisions and are based on existing comparable offences – so are not 'new' penalties as such'.[83]

The new and amended offence provisions appear generally consistent with existing provisions in the CSMH Act, and with each other.

3.1.1.1.2 Administrative power is sufficiently defined and subject to review

Section 4(3)(a) of the *Legislative Standards Acts 1992* requires that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The principles of natural justice require that something should not be done to a person that will deprive the person of some right, interest, or legitimate expectation of a benefit, without the person being given an adequate opportunity to present the person's case to the decision-maker.

Clause 12 of the Bill inserts new section 324 in the CMSH Act, which provides for transitional provisions applicable to SSEs and specified appointees,[84] who were in office immediately before commencement. The Bill provides that if, on commencement, the appointee could not be appointed under the new appointment provisions, and the appointee goes out of office, without compensation.

The proposed amendments could result in an existing appointee having their position terminated, without compensation, without a right of review and without a right to be heard. Despite this potential breach of fundamental legislative principle, the explanatory notes do not identify these amendments in its discussion of consistency with fundamental legislative principles.

The committee is satisfied that any improvements in managing the safety and health of workers that accompany the Bill's new competency requirements, justify the potential impact on existing appointees, who do not meet the new standards.

3.1.2 Amendment of the *Mineral Resources Act 1989*

3.1.2.1 Administrative power is sufficiently defined and subject to review

Section 4(3)(a) of the *Legislative Standards Act 1992* requires that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 23 inserts new section 291 in the MR Act which provides that, on the granting of a mining lease, the Minister must defer payment of the first rent, where the Minister is satisfied the holder of the lease satisfies specified conditions, including having requested a deferral.[85]

The proposed new section does not refer to an available review process (such as, a requirement that the lease holder receive reasons for decision or an opportunity to respond to the decision) that would apply in circumstances where, upon application by a holder of a mining lease, the Minister is not satisfied that the necessary conditions for rent deferral have been met.

Despite the potential for the Minister to make a decision contrary to the interests of a lease holder, the explanatory notes do not identify an issue of fundamental legislative principle. However, the notes state that the Minister's decision is subject to review under the *Judicial Review Act 1991* (Qld).[86]

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83 Explanatory Notes, p 4.

84 Those appointees being an OCE, an UMM, an alternate UMM, a person appointed by the UMM to be responsible for the control and management of underground activities when the UMM is not in attendance at the mine, an ERZ controller, an electrical engineering manager and a mechanical engineering manager.

85 The other conditions being where the Minister is satisfied the holder of the lease proposes to mine a critical mineral under the lease, and proposes to spend an amount that is at least equivalent to the first rent for the lease on start-up and development costs payable in order to start mining operations under the lease.

86 Explanatory notes, p 19.

Although the committee notes that the amendments do not propose the inclusion of a review process in the MR Act for a lease holder to access where it may receive an adverse decision, the committee notes that an aggrieved lease holder may apply to court for a judicial review. The committee is satisfied that the rent deferral provisions have sufficient regard to the rights and liberties of individuals.

3.1.3 Amendment of the *Geothermal Energy Act 2010*, *Greenhouse Gas Storage Act 2009* and *Petroleum and Gas (Production and Safety) Act 2004*

3.1.3.1 Administrative power is sufficiently defined and subject to review

Section 4(3)(a) of the Legislative Standards Acts 1992 requires that legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clauses 15, 18 and 29 of the Bill propose to omit existing provisions in the *Geothermal Energy Act 2010*,[87] *Greenhouse Gas Storage Act 2009*[88] and *Petroleum and Gas (Production and Safety) Act 2004*,[89] relating to the types of noncompliance action the Minister may take in specified circumstances. The Bill seeks to remove the existing requirement that a geothermal tenure holder agree to pay a monetary penalty,[90] as opposed to the Minister taking other noncompliance action. This will result in the Minister possessing the discretion to select the monetary payment as the noncompliance action, without recourse to the tenure holder.

The explanatory notes acknowledge that these provisions potentially infringe the fundamental legislative principle that legislation has sufficient regard to rights and liberties of individuals, but state:

> However, the penalty is capped at up to 2,000 penalty units per non-compliance activity and these Acts contain procedural fairness provisions for taking noncompliance action and rights of appeal against a Ministerial decision regarding noncompliance which provides adequate protection for the rights and liberties of individuals… [91]

The committee notes that these provisions propose to remove an existing requirement that a tenure holder agree to a monetary penalty as a form of noncompliance action. In that regard, it removes an existing right that a tenure holder currently enjoys.

In justifying the amendments, the explanatory notes state that the existing sections potentially allow a resource authority holder to 'negotiate the terms of any monetary penalty that might be proposed by a relevant official and delay the resolution of a coexistence matter for an indefinite period'.[92] According to the explanatory notes, the existing provisions are inconsistent with the MR Act, and the amendments will limit the ability of holders to delay enforcement action:

> These amendments will not limit rights of resource authority holders with notice provisions providing an opportunity for natural justice and any decision being appealable to the Land Court of Queensland.[93]

Despite the removal of an existing right, the committee is satisfied that the Bill seeks to limit delays in enforcement action against tenure holders who have not complied with the requirements of their authority, and who will be able to access an avenue of appeal. The committee is satisfied that, in the

87 *Geothermal Energy Act 2010*, s 320(2).

88 *Greenhouse Gas Storage Act 2009*, s 379(2).

89 *Petroleum and Gas (Production and Safety) Act 2004*, s 790(2).

90 The maximum penalty is 2000 penalty units, which is currently $287,500.

91 Explanatory notes, pp 6-7

92 Explanatory notes, p 3.

93 Explanatory notes, p 4.

circumstances, the proposed amendments have sufficient regard to the rights and liberties of individuals.

3.1.4 Institution of Parliament

Section 4(2) (b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. No issues with respect to the institution of Parliament were identified during the inquiry.

3.2 Explanatory notes

Part 4 of the *Legislative Standards Act 1992* requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

The committee believes it would have been preferable for the explanatory notes to identify a greater number of issues in its discussion of consistency with fundamental legislative principles. For example, as explained above, several potential issues of fundamental legislative principle were not identified as such, including clause 12 (inserting new section 324 in the CMSH Act) and clause 23 (inserting new section 291 in the MR Act).

The committee notes that an Erratum to the Explanatory notes was tabled on 28 October 2022 correcting an error regarding the timeframe of when an exposure draft of amendments was provided to key stakeholders, as part of the consultation process.

Recommendation 5

- The committee recommends the Explanatory Notes be amended to identify a greater number of issues in its discussion of consistency with fundamental legislative principles. For example several potential issues of fundamental legislative principle were not identified as such, including clause 12 (inserting new section 324 in the CMSH Act) and clause 23 (inserting new section 291 in the MR Act).

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.[94]

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or
(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).[95]

94 HRA, s 39.

95 HRA, s 8.

The HRA protects fundamental human rights drawn from international human rights law.[96] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

4.1.1 Right to life

Section 16 of the HRA provides that every person has the right to life and has the right not to be arbitrarily deprived of life. Industrial activities have the potential to impact on the right to life and the clauses of the Bill that create exceptions to the direct employment requirements for statutory coal mining safety positions appear relevant to the protection of the right to life. According to the statement of compatibility tabled with the Bill:

> The Bill promotes the right to life by ensuring that coal mining industry companies have practical ways of implementing the direct employments requirements and that holders of statutory roles can make safety complaints, raise safety issues or give help to an official in relation to a safety issue without fear of reprisal or impact on their employment.[97]

The committee is satisfied that these exceptions will not impact on the enjoyment of the right to life.

4.1.2 Freedom of expression

Section 21 of the HRA protects freedom of expression. The statement of compatibility discusses the potential for clauses 15 to 19, 29 and 30 of the Bill to raise issues related to the right to hold an opinion without interference and to seek, receive, and express information and ideas. The Bill removes the requirement for a resource authority holder to agree to a penalty for non-compliance under the *Geothermal Energy Act 2010*, the *Greenhouse Gas Storage Act 2009* and the *Petroleum and Gas (Production and Safety) Act 2004*. The statement of compatibility states:

> The P&G Act, the GE Act, and the GHG Act contain procedural fairness provisions for taking noncompliance action and rights of appeal against a Ministerial decision regarding noncompliance. These provisions give adequate protection for the rights and liberties of individuals. As such, the amendments do not limit freedom of expression.[98]

The committee notes that it is unclear whether any issue under s 21 arises in respect of this aspect of the Bill. Corporate entities that are resource authority holders do not possess human rights.[99] Natural persons who are resource authority holders have not had their rights under s 21 limited. They are still able to exercise their rights. The Bill merely removes a legal consequence that flowed from the exercise of that expression. The statement of compatibility notes there was no less restrictive or reasonable way to achieve the purpose of the amendment. The committee is satisfied that the amendment will not impact on the enjoyment of the right to freedom of expression.

---

96 The human rights protected by the HRA are set out in sections 15 to 37 of the Act. A right or freedom not included in the Act that arises or is recognised under another law must not be taken to be abrogated or limited only because the right or freedom is not included in this Act or is only partly included; HRA, s 12.

97 Statement of compatibility, p 3.

98 Statement of compatibility, p 4.

99 HRA s 11.

4.1.3 Right to property

Section 24 of the HRA provides that a person must not be arbitrarily deprived of the person's property. Clause 12 of the Bill provides that where persons are removed from statutory positions by virtue of the Bill, the State will not be liable for the payment of any compensation.[100] On its face, the removal of an entitlement to compensation might raise issues in relation to the right to property. The committee notes that it does not appear that such a removal of possible liability in such limited circumstances, through a prospective change to safety legislation, could constitute an arbitrary deprivation of property. The committee is satisfied that the amendment will not impact on the enjoyment of the right to property. We find the Bill is compatible with human rights.

4.2 Statement of compatibility

Section 38 of the HRA requires that a member who introduces a Bill in the Legislative Assembly must prepare and table a statement of the Bill's compatibility with human rights.

A statement of compatibility was tabled with the introduction of the Bill as required by s 38 of the HRA. The committee believes it would have been preferable for the statement of compatibility to include a discussion of the engagement of the right to property resulting from Clause 12 of the Bill.

Recommendation 6

- The committee recommends the Statement of Compatibility be amended to include a discussion of the engagement of the right to property resulting from Clause 12 of the Bill.

[100] Explanatory notes, p 16.

Appendix A – Submitters

Sub #	Submitter
001	Stuart Vaccaneo
002	CONFIDENTIAL
003	Queensland Resources Council
004	Commissioner for Resources Safety and Health
005	Association of Mining and Exploration Companies
006	Idemitsu Australia
007	Isaac Regional Council
008	NAME WITHHELD
009	Peabody Energy Australia Pty Ltd
010	Mining and Energy Union Queensland

Appendix B – Officials at public departmental briefing

Resources Safety and Health Queensland

- Peter Newman, Chief Inspector of Coal Mines
- Rob Djukic, Chief Operating Officer

Department of Resources

- Lana Bartholomew, Executive Director, Georesources Policy

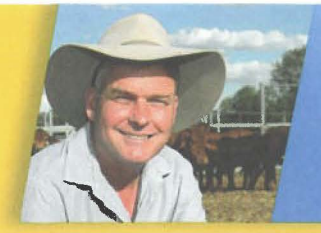
Appendix C – Witnesses at public hearing

Queensland Resources Council

- Judith Bertram, Deputy Chief Executive, Policy Director Safety and Community
- Paul Goldsbrough – Manager Health and Safety Policy

Mining and Energy Union

- Stephen Smyth – District President
- Jason Hill - District Check Inspector
- Stephen Watts - District Check Inspector
- Chris Newman – Legal Officer



Lachlan MILLAR MP
Member for Gregory

Statement of Reservation

LNP Members of the Transport and Resources Committee

Coal Mining Safety and Health and Other Legislation Amendment Bill 2022

The LNP understands the importance of safety for Queensland resources workers and welcomes legislative changes that are measured, thought out and well consulted. Concerningly but not surprisingly, the draft legislation has sound intent, however significant flaws in the detail. As many submitters have identified, the government has failed to consider feedback and unnecessarily rushed these amendments when they have had 18 months to consult and draft meaningful legislation.

The LNP initially raised our concerns with the detail of the legislation when it was first introduced by the former Minister Anthony Lynham in 2020. The government has had close to two years to get this right. Instead, the Minister has labelled this urgent, giving the parliamentary committee a mere few weeks to consider such a serious issue. There is no doubt the limited timeframe has drastically reduced the number of submissions received and the opportunity for consultation through the few public hearings conducted.

The concerns from this ill-thought through legislation are reinforced by comments Peter Coaldrake identified in a recent review, where he described the government as a system that *"from the top down, is not meeting public expectations"*. It is clear the current integrity issues affecting the government are directly linked to the Minister failing to appropriately consult. This is referenced in submissions the committee received from a raft of affected stakeholders. The question needs to be asked, what has the Minister been doing for the past two years? Why is this suddenly urgent now?

The consequences from a lack of consultation are serious and wide reaching, with the Mining and Energy Union (MEU) saying in their submission the *"MEU doesn't believe the Bill will improve health and safety outcomes in its current format."* The MEU goes on to say the *"Bill only seeks to undermine the original intent of legislative change and places coal mine workers at risk."*

The draft legislation states the entity who employs or engages greater than 80% of workers on site, must employ the statutory office holder in its own right. If the contractor employs or otherwise engages less than 80% of workers on site, the statutory position holders will be employed by the Coal Mine Operator or an associated entity. Many submitters raised concern with the ambiguity surrounding this. The Queensland Resources Council (QRC) in their submission said *"It is unclear where this requirement came from as it was not discussed in the working group established by the Hon Scott Stewart MP, Minister for Resources"*. The QRC went on to say that *"While it has been suggested that the increasing use of contractors is leading to a dilution or fragmentation of safety responsibility at mine sites, this is not supported by evidence and is offensive to contractors that they cannot employ their own statutory position holders"*.

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Idemitsu warns in their submission that *"amendments contained in the Bill will lead to unintended consequences, including measures that will increase the risk of fatality and serious incidents in Queensland coal mines by making it so much harder to engage well-trained, experienced and qualified persons to undertake statutory roles"*

Submitters identified that the draft legislation fails to consider any detail as to how the 80% is calculated and/or enforced. It raises question as to whether contractors undertaking security, cleaning, gardening or administrative duties may also be captured by this, making it an impossible milestone for companies to reach.

The Opposition is concerned Part 2 of the Bill is scheduled to commence on 25 November 2022. Part 2 sets out to impose employment restrictions for statutory roles, and given the short timeframe, has very limited time for industry to adjust systems and processes to ensure compliance with the new requirements. The draft legislation fails to detail the process for when appropriate statutory position roles cannot be filled due to these new requirements, which raises serious safety concerns.

The Opposition is also concerned about the proposed obligation which will require coal mine operators to directly employ statutory position holders in mines that are for rehabilitation, care, and maintenance activities.

As Idemitsu has identified in their submission, *"Government processes have in recent times provided limited opportunity for genuine tripartite consideration of potential reforms".* Idemitsu goes on to say *"This has been coupled with an approach favouring legislative intervention, which will introduce new complexities and will have a negative impact on mine safety."*

It is clear the Government have failed to appropriately consult on this important policy change. The fact that there is such strong opposition from industry and unions shows this draft legislation is ill-thought-out and has significant unintended consequences.

It is for these reasons the Opposition believes that this timeframe needs to be extended for at least 12 months to correct the serious concerns raised during the very brief committee process. The safety of mine workers should not be put at risk because of the ineptitude of this government.

Lachlan Millar MP
Deputy Chair
Member for Gregory

Trevor Watts MP
Member for Toowoomba North

Bryson Head MP
Member for Callide