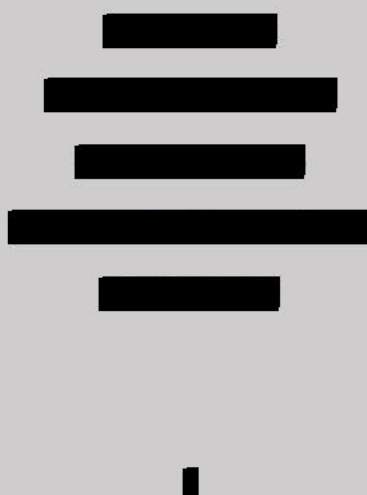


Submission for the Mineral and Energy Resources and
Other Legislation Amendment Bill 2020



Background

I'll start off by saying thank you to those of you who have started to listen to those who's health and safety is most affected within the coal mining industry, us the coal mine workers.

Now I'll give some context on who I am. My name is [REDACTED] and I'm a generational coal miner, I have been working within the Coal Mining Industry since 1992 in a vast range of capacities that include mechanical, construction, production and health and safety. I hold an extensive arrange of operating competencies and qualifications up to and including Open Cut Examiner and Site Senior Executive.

So in a nutshell I'm a 45yr old CMW (coal mine worker) who has been at the coal face for 28yrs and counting, I have seen things that can't be unseen, I have seen boundaries pushed and our legislation bastardised by those unqualified to interpret in the name of productivity or self-interest, I have seen people's livelihood's manipulated and threatened in the name of productivity, self-interest and corporate greed.

Ill try and keep this submission as short as I can but given the topic and what it means to me personally and to the thousands of other CMW's in QLD it will be hard as there is a lot to cover but for this exercise ill keep it to a small number of big ticket items, so please take the time to read and understand each item as I go through them, I'd be more than happy to meet and discuss this submission in person if given notice.

I will talk to the open cut mining side of things as this is where my knowledge and history is cemented and where my demonstrated skill and knowledge has been measured and tested.

Ill treat s54 & s59 as one in the same as both proposed amendments are the same.

Topics:**Proposed Amendments**

- | | |
|------------|--|
| Division 2 | Amendments relating to statutory office holders |
| 4 | Amendment of s 54 (Appointment of site senior executive) |
| 6 | Amendment of s 59 (Additional requirements for management of surface mines). |
| Division 3 | Amendments relating to other matters |
| 11 | Insertion of new pt 3A |
| | Part 3A Industrial manslaughter |
| | 48A Definitions for part |
| | 48B Exception for the Criminal Code, |
| | 48C Industrial manslaughter—employer |
| | 48D Industrial manslaughter—senior officer. |

Submission

I submit that by in large I agree with all proposed amendments, although not perfect or airtight I applaud the Introduction of this bill by Hon A Lynham MP on 04/02/2020.

After being approached at my place of employment to give opinion on the opposition of these proposed changes I feel I MUST write this submission to the positive as I have now been made aware there is a push to oppose this from behind closed doors, what a disgusting attribute these companies and faceless people carry, for me if you are against this change come out and say it publicly as you do in private.

Section 59 of CSMH Act currently states;

59 Additional requirements for management of surface mines.

A site senior executive must appoint a person holding an open cut examiner's certificate of competency to carry out the responsibilities and duties prescribed under a regulation in 1 or more surface mine excavations.

And when the proposed is past the below will be added

(2) The coal mine operator for the surface mine must ensure that the site senior executive appoints a person under subsection (1) only if the person is an employee of the coal mine operator. Maximum penalty—500 penalty units

This is a great step in the right direction, although it is still open to bastardisation by the CMO as they can still directly employ people under an arrangement employment options eg casual, fixed term etc.

The intent of this amendment must stay, strengthen even further if possible, I can't stress on this enough.

Currently contract or labour Hire OCE's are being exploited, pushed and used. These people carry a large responsibility when it comes to health and safety in or around the excavation during mining activities in and around the excavation.

I have personally worked alongside them and been one on a couple of occasions, now let me tell you this, being the contract OCE employed by a third party (labour hire company) is a horrid place to be, you don't have protection from reprisal for making health and safety decisions, don't for one minute try and say there's protection under 274 or 275AA of the Act as history in that space will talk for its self, how many prosecutions have ever been laid under that section?

Many a Labour Hire OCE has been told your services are no longer required then moved onto the next mine, then when they have dig again, get the same again and again.

I'm thankful I am directly employed as an OCE but each day I work with some that aren't, I challenge them on decisions they make and get there horror stories of being made unemployed for discharging their obligations, once they know they are relatively safe with us they start making the "tough calls" again and that's putting safety ahead of production, how sad is it when this is the commentary used now days?

It is without doubt that I can say that the right decisions about health and safety are made a lot more often by those who are directly employed.

Now some will also write submissions opposing these new changes and for that they are entitled but I implore that when you read those you take the time and ask yourself why have they?

Now I know that companies aren't going to like this because they will lose a layer of separation which will mean they will have to deal with the OCE's directly and in turn might just find themselves face prosecution under 274/275AA as it will be easier to prove. So with that in mind CMO's have a level of self interest for this legislation to be squashed, quietly and behind closed doors.

Also Labour Hire companies are going to write submissions that this will impact their business and livelihoods, and yes it will, but to what extent? Now one of the contract OCE's I work with gets \$130+ per hour (sorts his own super etc), the Labour hire company gets \$20-25 per hour as he's hired to site for \$150-\$155 per hour, that's \$20 per hour min for literally zero overhead and running cost, maybe a few hrs work to invoice the company each week.

I know of one person who only contracts out a team of OCE's and SSE's does so on his iphone while traveling Australia in his mobile-home making what would be millions of dollars for essentially minimal overhead and only has to jockey them around various mine sites.

Let me crystal ball their submissions, these amendments aren't required because it will damage our businesses and there is current legislation to deal with it. If SSE's or OCE's aren't fulfilling their obligations, then there is provision to remove their statutory tickets and or prosecute.

Yes this is 100% correct, but how narrow minded is that? Warranted yes when [REDACTED] has happened or could have happened, after the fact, it's alike to shutting the gate after the horse has bolted or taking away his ticket after someone is crippled or dead.

Again how many times has this been done?

This argument that I have already been told from the company I work for is nothing short of [REDACTED] and screams nothing other than pure self-interest.

These amendments are front end, these will encourage OCE's to discharge their obligations in a professional manner to achieve the objects of the act.

An OCE's roles and responsibilities are vast and varied s104-109 from CSMH Regs;

- 104 Presence of, and access to, open-cut examiner
- 105 Open-cut examiner's responsibilities and duties—general
- 106 Inspecting surface excavations
- 107 Reducing unacceptable level of risk
- 108 Role in developing and reviewing safety and health management system
- 109 Giving technical directions to open-cut examiner

This is by no means an exhaustive list of roles and responsibilities, if you search open cut examiner throughout the act and regs you'll find a plethora of additional requirements, and to think if you were the OCE and you were employed via a labour hire company where the very reality of your job is 90% made up of telling people they can't do certain things, must stop doing certain things, they must investigate certain things, must include OCE's in certain things, must ensure certain things happen.

It only takes 1 person to pick up a phone and say that person is no longer required, that simple

So the question the committee needs to consider when reading all submissions and considering the proposed amendments, do they meet or align with the objects of the act?

Will an OCE/SSE being directly employed by the CMO help to achieve the objects of the Act?

6 Objects of Act

The objects of this Act are

- (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
- (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and
- (c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation.

This is further supported by the proposed amendments 48D Industrial manslaughter—senior officer. Which will take care of the back end.

So, in short, as decision makers, what message are you going to send?

For me, I ideally hope its one that paints a picture of – We will ensure your classification of employment can't be used as a tool of influence, we will ensure that we maintain protections for those decision makers who make the correct health and safety “tough calls” but if you do not heed those protections offered and discharge ones obligations prescribed then you will be looking down the barrel of 20yrs.

I Know how the above works in reality has I live and breath it every shift, I have done so for 28yrs but have seen the industry change in this field since the large scale introduction of casualised workforces especially in statutory positions.

I have and will continue to make the “tough calls”, I have shut down my entire mine site on no less than 4 occasions, I had to stand forward and explain my decisions and reasons why to the highest levels of management, which I'm comfortable in doing as I have protections under this legislation as well as other industrial instruments.

I shut down sections of the mine, ensure compliance to our SHMS, ensure we maintain a documented auditable system and discharge my obligations from s104 to s109 regularly and always meet a robust questioning as to why and how have I made the decisions I have made,

I face a more robust questioning or investigation than the incident at hand does, but as mentioned I can maintain this position because of the protections offered with my employment classification and the industrial instrument protections that fall on the back of it.

Please help us holders of statutory tickets discharge our obligations without fear by ensuring these proposed legislation amendments go through without being watered down to appease industry.

Remember we are real people at the coal face, we have families and they want us to come home.

It's in the public's best interest for these amendments to be made, if it's not in the public's best interest that I return home from work then I don't know what is.

Further Amendments required

Submission two

As a result of a review of legislation after the Moura disaster in 1986 we went to a *risk based legislation*, this I believe has served us well until now.

We haven't had a multiple fatality since we changed legislation, but I truly believe we are only one more fatality away from one.

I could go get any number of statistical reports or tools used to measure the likelihood of this but went as it commonly accepted that X amount of near misses lead to an incident, X amount of incidents lead to injury, X amount of injuries lead to a fatality and X amount of single fatalities lead to multiples.

What I'm alluding to is our risk based legislation has had its day and has served us well for over 30 years and before it totally fails us we need to review it and make change, I'm aware of the reports that the government has sanctioned and read them both, again I won't waste this opportunity in dissecting them as they fall short on the realities of what happens at the coal face, were conducted away from the coal face and those at the coal face had little to no input.

Yes they were done by academics and I'll leave it at that, application and interpretation are wonderful things.

Below are extracts currently under our CSMH Act

Division 1 Control and management of risk

29 What is an acceptable level of risk

(1) For risk to a person from coal mining operations to be at an acceptable level, the operations must be carried out so that the level of risk from the operations is—

- (a) within acceptable limits; and
- (b) as low as reasonably achievable.

- (2) To decide whether risk is within acceptable limits and as low as reasonably achievable regard must be had to—
- (a) the likelihood of injury or illness to a person arising out of the risk; and
 - (b) the severity of the injury or illness.

30 How is an acceptable level of risk achieved

- (1) To achieve an acceptable level of risk, this Act requires that management and operating systems must be put in place for each coal mine.
- (2) This Act provides that the systems must incorporate risk management elements and practices appropriate for each coal mine to—
- (a) identify, analyse, and assess risk; and
 - (b) avoid or remove unacceptable risk; and
 - (c) monitor levels of risk and the adverse consequences of retained residual risk; and
 - (d) investigate and analyse the causes of serious accidents and high potential incidents with a view to preventing their recurrence; and
 - (e) review the effectiveness of risk control measures, and take appropriate corrective and preventive action; and
 - (f) mitigate the potential adverse effects arising from residual risk.
- (3) Also, the way an acceptable level of risk of injury or illness may be achieved may be prescribed under a regulation.

These intertwined with others have served us well but are being bastardised to push production.

Now this I will try an explain in simple laymen terms and I apologies for war stories but this is where the proof lays.

Management and coal mine operators etc have all looked at the Act and Regs as being over prescriptive and even say openly that they are restrictive.

Of course they are and so they should be, they have a mitigating effect, well they should prevent history from repeating.

Now what I have seen first hand in the last 10yrs but is now a snowballing effect in the last 5yrs is managements ability to circumvent the intent of the Act and Regs especially in relation to the management of risk and whats ALARA (As Low As Reasonably Achievable).

The last 5yrs at my mine I have seen large scale incremental increases is risk, this is done through amendment to policy and procedures on site.

Example 1

We stopped hot-seating loaded trucks in the late eighties due to people being struck by material falling off trucks, also had uncontrolled movement of loaded trucks at park up areas.

Now recently through risk assessment processes its now decided that the risk is now acceptable to hot-seat loaded trucks, no change in tech- knowledge, no additional controls other than words on paper. In short its an incremental increase in risk.

Example 2

We use to conduct full and proper machine defect inspections at the start of shift or immediately after taking control of it, this was to ensure safety of components and functions.

Again recently through risk assessment processes it is now deemed acceptable to do them later in the shift when machine gets refuelled, later fuel tanks are enlarged so only need fuel once every 24hrs so now these inspections are only getting done once every 24hrs instead of at the start of every 12hr shift, again no new tech, no additional controls other than words on paper, another incremental increase in risk

Now imagine this applied to hundreds of processes, each one is done as a production gain, saves 10mins here and 10 mins there, not one of these has reduced risk at all.

How is it done you ask?, simple really, Section 10 of the CSMH Regulation below is used, I left out the last half as its not of point but please feel free to find and examine yourself.

10 Developing standard operating procedures

- (1) The site senior executive **must ensure the following steps are taken in developing standard operating procedures for managing and controlling hazards at the mine—**
 - (a) the site senior executive **must consult with a cross-section of the mine’s coal mine workers involved in carrying out a task under the proposed standard operating procedure to identify the hazards associated with the task and ways of controlling the hazards;**
 - (b) the site senior executive **must prepare a draft standard operating procedure and give a copy of it to the coal mine workers with whom the site senior executive consulted;**
 - (c) **if the coal mine workers agree with the draft standard operating procedure, the site senior executive must prepare it as the final standard operating procedure;**
 - (d) if the coal mine workers do not agree with the draft standard operating procedure—
 - (i) for a disagreement that is not about a legal or technical matter—the site senior executive must decide the disagreed matter and prepare the final standard operating procedure; or
 - (ii) for a disagreement that is about a legal or technical matter—the site senior executive must—
 - (A) obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter; and
 - (B) after consulting with the workers about the information or advice, prepare a further draft standard operating procedure and give a copy of it to the workers; and

(C) if the workers disagree with the further draft—decide the disagreed matter and prepare the final standard operating procedure;

(e) the site senior executive must include the final standard operating procedure in the mine’s safety and health management system.

So what happens is the cross section gets formed and the amendment draft version of the procedure the company wants is given to the **cross-section of the mine’s coal mine workers involved in carrying out a task under the proposed standard operating procedure, they then risk assess it** as per section 29 up above giving **regard must be had to—(a) the likelihood of injury or illness to a person arising out of the risk; and (b) the severity of the injury or illness.**

Sounds cool yeah? Well actually its flawed, most of the cross sections these days are that inexperienced they don’t know why we stopped doing it years earlier, or they are contract/casual labour and if they speak against it they get the call they are no longer required.

Gets worse, even if disagreed matter (non consensus) items are put in they very rarely get a reply as required.

- (i) (ii) for a disagreement that is about a legal or technical matter—the site senior executive must—
 - (A) obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter; and
 - (B) after consulting with the workers about the information or advice, prepare a further draft standard operating procedure and give a copy of it to the workers; and
 - (C) if the workers disagree with the further draft—decide the disagreed matter and prepare the final standard operating procedure;

So company decides it can increase production by changing a “restrictive” safety procedure, develop the words they need, give a copy to those affected with little to no input into the words, get them to risk assess it, if the management facilitator gets them to agree bingo mission accomplished, if disagreed matters arise they either just ignore them if they can or ask them to remove them or will lie about the **obtain further information or advice, including, for example, from a person having the necessary qualifications and experience to give the advice or from a recognised text on the matter**, or will just accept the risk based on its as low as reasonably achievable.

As Low As Reasonably Achievable – how can this change to process like in the examples given above possibly be ALARA when we are incrementally increasing risk by taking away current controls, only to gain an increase in productivity?

What can or should be done?

Firstly we need recognise that there is a problem with our risk based legislation, industry will deny it as they have found a way to work around it rather than work through it as it was designed to do.

Secondly we need to come up with a remedy to rectify these issues, for me these needs to be in a form of active *risk reduction strategies* to dynamically counter act the increasingly large amounts of *incrementally risk increased exposures* that have now and are still being entrenched into SHMS's state wide.

Point being, It's internationally recognised that you can't keep using the same investigations tools forever without change as humans being the ever intuitive and cunning creatures we are we will find a way to work around the system, hence why we change investigation tools and methods.

Why would we not apply the same mentality to our risk based legislation? The objects of the acts states we must.

6 Objects of Act

The objects of this Act are

- (a) to protect the safety and health of persons at coal mines and persons who may be affected by coal mining operations; and
- (b) to require that the risk of injury or illness to any person resulting from coal mining operations be at an acceptable level; and
- (c) to provide a way of monitoring the effectiveness and administration of provisions relating to safety and health under this Act and other mining legislation

It then goes further and tells us how to do it.

7 How objects are to be achieved

The objects of this Act are to be achieved by—

- (a) imposing safety and health obligations on persons who operate coal mines or who may affect the safety or health of others at coal mines; and
- (b) providing for safety and health management systems at coal mines to manage risk effectively; and
- (c) making regulations and recognised standards for the coal mining industry to require and promote risk management and control; and
- (d) establishing a safety and health advisory committee to allow the coal mining industry to participate in developing strategies for improving safety and health; and
- (e) providing for safety and health representatives to represent the safety and health interests of coal mine workers; and
- (f) providing for inspectors and other officers to monitor the effectiveness of risk management and control at coal mines, and to take appropriate action to ensure adequate risk management; and
- (g) providing a way for the competencies of persons at coal mines to be assessed and recognised; and
- (h) requiring management structures so that persons may competently supervise the safe operation of coal mines; and
- (i) providing for an appropriate coal mines rescue capability; and
- (j) providing for a satisfactory level of preparedness for emergencies at coal mines; and

- (k) providing for the health assessment and health surveillance of persons who are, will be or have been coal mine workers; and
- (l) establishing the office of Commissioner for Mine Safety and Health.

But yet we refuse to see and address the reality of it and that makes me ask myself why. The only reasons I can come up with are as an industry our regulatory bodies have become complicit in what they do, some of this I believe is deliberate, mischievous and rife with self-interest while the rest is just naive or uneducated, by uneducated I mean industrially dumb and not from the coal face.

Supervision

Submission 3

This is another where ambiguity needs to be removed and some very clear legislation word smithing to step out exactly who a supervisor is.

For me section 26 of the act isn't specifically clear, sounds it when read as written but application of it muddies the water.

26 Meaning of supervisor

A *supervisor* at a coal mine is a coal mine worker who is authorised by the site senior executive to give directions to other coal mine workers in accordance with the safety and health management system.

Example – Shotfirers, OCE's, trainer assessors etc are now appointed as supervisors as they give directions to other CMW's in accordance with the SHMS's.

For me their needs to be a separation of sorts, should Shotfirers, OCE's, trainer assessors etc require some additional competency as they do give direction? Absolutely, S1 S2 S3 and G2 or relevant parts there of that suit their job description or that are relevant to their positions.

Fact - Workers get sacked for refusing to follow "a reasonable request".

Anyone who can issue such a "reasonable request" and then commence disciplinary action is a Supervisor.

Currently within the company I work for and I know it's the same at other mines, those I have mentioned above are appointed as supervisors but aren't called out in the management structure as required in section 55.

Hence why their needs to be some clear wording or better still appointment as a supervisor only for those who meet the requirements I've suggested above or the alike.

55 Management structure for safe operations at coal mines

- (1) The site senior executive for a coal mine must—
 - (a) develop and maintain a management structure for the coal mine in a way that allows development and implementation of the safety and health management system; and
 - (b) document the management structure.

Maximum penalty—40 penalty units.

(2) The document must state—

- (a) the responsibilities of the site senior executive; and
- (b) the responsibilities and competencies required for senior positions in the structure; and
- (c) the names of the persons holding the senior positions and their competencies; and
- (d) the name of the person who is responsible for establishing and implementing a system for managing contractors and service providers at the coal mine; and
- (e) the competencies required, and the responsibilities, for each other supervisory position at the mine.

Maximum penalty—40 penalty units.

(3) For subsection (2)(b), an inspector may by notice given to the site senior executive declare a position to be a senior position.

(4) For each supervisory position mentioned in subsection (2)(d), the site senior executive must also keep a record of the names and competencies of each person authorised to carry out the responsibilities of the position.

Section 56 is where the ambiguity and or misinterpretation lays.

56 Competencies of supervisors

A site senior executive must not assign the tasks of a supervisor to a person unless the person—

- (a) is competent to perform the task assigned; and
- (b) if there is a safety and health competency for supervisors recognised by the committee, has the relevant competency.
- (c) Maximum penalty—100 penalty units.

Lets look at (a) and (b) separately.

- (a) is competent to perform the task assigned; **and**

The way I interpret this, the supervisor should have the demonstrated skill and knowledge to supervise all people under their supervision to ensure the safety and health of those persons and others who maybe affected.

Example – if the supervisor is supervising the blast crew then the supervisor should be a qualified shotfirer or if supervisor is in charge of pre-strip then the supervisors should hold or have held the majority of the skill sets in that area.

This isn't the reality in our industry now and as an OCE myself I find myself doing their jobs for them, I have raised complaints with management and department alike and these have fallen on deaf ears or told I'm wrong because they hold S1 S2 S3 and G2, for me this is where management and certain inspectors are wrong, they all forget about the word **AND**.

If they don't know how to actually do the inherent tasks of the roles they are supervising how can they know if somethings unsafe or being done wrong, a lot goes unseen or just becomes production driven.

- (b) if there is a safety and health competency for supervisors recognised by the committee, has the relevant competency.

Simply this is S1 S2 S3 and G2 as recognised by the committee.

So to summarise what I believe the intent for supervisors is, it is that the supervisor must be able to perform the tasks they are supervising (competence means *Competence for a task at a coal mine is the demonstrated skill and knowledge required to carry out the task to a standard necessary for the safety and health of persons.*) *and* has the relevant competency which is S1 S2 S3 and G2 and as such the SSE must only appoint those to supervisory roles who hold those attributes.

There simply is no other competency for supervisors and the above is being abused to the point we now have supervisors who are looking after large crews and have only been in the industry for a very few years or in charge of work groups for which they have never worked in.

Its horrifying to think the person who's job it is to give your direction isn't capable of giving you advice when you come across issues or can't identify the inherent hazards of certain jobs because they have never performed them themselves.

This needs to change ASAP, I bet when you look at the majority of fatalities and or serious injuries from the last 5yrs there will be gaps in this space.

Trainer assessors is pretty much the same, the vast majority of labour hire companies now push to get their employees put through as trainer assessors, why? They get paid more and that means more to the labour hire company.

So you now have green people training green people while being supervised by others who cant do the job they are supervising, scary to think hey.

Would you want your father, son, wife or daughter exposed to this?

Well if you have family or friends in the mining industry in QLD at the moment there is a very high probability that's exactly what they are exposed to everyday.

Section 56 needs to be re worded to reflect that the supervisors can actually do the tasks or have the majority of the skill sets and competency of the task that they are assigned to supervise as well as hold the relevant competency to be a supervisor S1 S2 S3 and G2.

But again it will be interesting to see what happens when it's their conduct through their act's or omission's to perform an act and that leads to the death of a person.

Thankyou for taking the time to read my submissions and as I said before im more than willing to sit down with who ever to discuss anything mentioned above.

Yours In Safety

[Redacted signature]

[Redacted contact information]