

# **A Mine Safety and Health Authority for Queensland**

**including the committee's exposure draft  
Mine Safety and Health Authority Bill 2017**

**Report No. 3, 55th Parliament**

**Coal Workers' Pneumoconiosis Select Committee**

**August 2017**

## **Coal Workers' Pneumoconiosis Select Committee**

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### **Acknowledgements**

The committee acknowledges the assistance provided by the Office of the Queensland Parliamentary Counsel.

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<sup>1</sup> The Member for Greenslopes, Mr Joe Kelly MP, was a member of the Committee up until 14 June 2017, at which time the Queensland Parliament agreed to a number of changes to committee membership. The Member for Mackay, Mrs Julieanne Gilbert MP, was appointed to the committee from 14 June 2017 onwards.

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## Abbreviations

CFMEU	Construction, Forestry, Mining and Energy Union
Committee	Coal Workers' Pneumoconiosis Select Committee
CWP	Coal workers' pneumoconiosis
DNRM	Department of Natural Resources and Mines
NSW	New South Wales
OQPC	Office of the Queensland Parliamentary Counsel
QRC	Queensland Resources Council
SIMTARS	Safety in Mines Testing and Research Station
USA	United States of America

## Foreword

This Report is the first report by the Coal Workers' Pneumoconiosis Select Committee in relation to its Parliament-assigned 'monitor and review' function, under which the committee is charged with monitoring and reviewing the implementation of its report recommendations, including developing a draft Bill for the consideration of the Legislative Assembly.

On behalf of the committee, we wish to extend a sincere thank you to the many individuals and organisations who have provided input to the committee, both during the development of the recommendations and in subsequent written feedback and consultation regarding their nature and implementation.

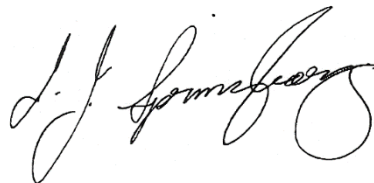
We also thank the committee's secretariat, counsel assisting, and the Office of the Queensland Parliamentary Counsel.

We commend this report to the House.



Jo-Ann Miller MP

**Chair**



Hon Lawrence Springborg MP

**Deputy Chair**



## Recommendation

### Recommendation 1

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The committee recommends that the exposure draft of the Mine Safety and Health Authority Bill 2017 be referred to the relevant parliamentary portfolio committee to review and report back to the Parliament by 5 October 2017.





# 1 Introduction

## 1.1 The committee and its role

In September 2015, Queensland's Commissioner for Mine Safety and Health reported the diagnosis of 'the first case of coal workers' pneumoconiosis in a Queensland coal miner in 30 years'.<sup>2</sup> The re-identification of this entirely preventable disease – thought incorrectly to have effectively been eradicated in Australia – shocked and dismayed all involved in the coal industry. In the two years since, a further 23 cases of coal workers' pneumoconiosis (CWP) have been diagnosed in Queensland coal miners, making a total of 24 confirmed cases to date. Sadly, this number will increase.

The CWP Select Committee (committee) was established by the Queensland Parliament on 15 September 2016 to conduct an inquiry and report on the 're-emergence' of CWP amongst mine workers in Queensland.

The committee was initially due to report on its inquiry by 12 April 2017. The Parliament subsequently extended this reporting deadline to 29 May 2017. In addition, while the committee's initial terms of reference focussed only on coal mine workers, the Parliament also provided the committee with:

- further terms of reference in relation to other workforce cohorts and occupational respirable dust issues (the 'extended terms of reference'), and
- a broader role of monitoring and reviewing the implementation of the committee's recommendations on both its initial and extended terms of reference, including the development of a draft Bill for the consideration of the Legislative Assembly.<sup>3</sup>

The committee tabled an interim report on 12 April 2017<sup>4</sup> and tabled its final report on the initial terms of reference, *Black lung, white lies*, on 29 May 2017.<sup>5</sup> The detailed final report included 34 key findings and 68 recommendations for reform. In short, the committee found that there had been 'a catastrophic failure, at almost every level, of the regulatory system intended to protect the health and safety of coal workers in Queensland'.<sup>6</sup>

The committee is due to report to the Parliament on its extended terms of reference, including any relevant recommendations, by 29 September 2017.

In the meantime, as the committee made clear in issuing its 68 report recommendations, 'significant reform of the regulatory framework for coal mining in Queensland is **urgently** needed'.<sup>7</sup>

Recognising the critically time sensitive nature of the Committee's legislative recommendations, particularly given the catastrophic failings of the regulatory regime in Queensland and the long history of neglected recommendations and abandoned reforms within the mining portfolio; the committee

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<sup>2</sup> Queensland Government, Commissioner for Mine Safety and Health, *Queensland Mines Inspectorate Annual Performance Report, 2014-15*, 2015, p 3.

<sup>3</sup> Reporting Date, Terms of Reference, Coal Workers' Pneumoconiosis Select Committee, *Hansard*, 23 March 2017, pp 871.

<sup>4</sup> The interim report can be accessed here:

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T467.pdf>

\*All web references in this report are correct as at 24 August 2017.

<sup>5</sup> Report No. 2 of the committee, *Black lung, white lies*, can be accessed here:

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T815.pdf>

The committee also tabled an executive summary version of this report, which can be accessed here:

<http://www.parliament.qld.gov.au/Documents/TableOffice/TabledPapers/2017/5517T816.pdf>

<sup>6</sup> *Black lung, white lies*, p 5.

<sup>7</sup> *Black lung, white lies*, p 3.

was determined to initiate the process of translating these recommendations into proposed legislation without delay.

This report presents, at **Appendix A**, an exposure draft of the committee's proposed Mine Safety and Health Authority Bill 2017 for the consideration of the Parliament and by extension, the citizens of Queensland.

This approach to the presentation of the committee's draft Bill is in keeping with the bi-partisan and widely consultative approach taken by the committee in its inquiry activities to-date.

## **1.2 Bill consultation**

### **1.2.1 The initial terms of reference**

During the inquiry into its initial terms of reference, the committee received 47 written submissions and held a total of 27 public hearings, 15 private hearings and one departmental briefing. A significant proportion of the hearings took place in 14 key regional mining centres<sup>8</sup> and were held at mine change of shift times, in order to best allow industry workers, their families, and community members to participate.

The committee also conducted site visits to Vale Australia's Carborough Downs underground mine<sup>9</sup>, Anglo American's Grasstree underground mine<sup>10</sup>, the Wiggins Island Coal Export Terminal at the Port of Gladstone, and the Dalrymple Bay Coal Terminal at the Port of Hay Point, to view and discuss measures put in place to mitigate coal dust generation and exposure.

Further, the committee visited the Department of Natural Resources and Mines' (DNRM) Safety in Mines Testing and Research Station (SIMTARS) at Redbank, as well as travelling to New South Wales (NSW) and to the United States of America (USA), to gather lessons and evidence in the jurisdictions respectively recognised as demonstrating Australia's and the world's best practice in relation to the monitoring and management of coal dust exposure and the health surveillance of workers.

In sum, the committee has received evidence from state, national and international government departments and agencies, medical specialists, occupational safety and health professionals, union representatives, peak industry bodies, academics, mining engineers, mine operators, retired and former coal workers, coal workers presently employed in the industry, and affected families and community members and groups.

### **1.2.2 Extended terms of reference and 'monitor and review' role**

The committee has to date received 25 submissions and held two public departmental briefings and two public hearings on its extended terms of reference.

A number of stakeholders have expressed their views on the the *Black lung, white lies* report recommendations and their implementation in these written submissions and in the public hearing proceedings.

Additionally, from 20 to 23 June 2017, a delegation of the committee travelled to regional centres and mining towns across central Queensland to report back on the committee's findings and recommendations, and consult with workers and community members on the reform measures

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<sup>8</sup> The committee conducted hearings in regional centres and mining towns including Ipswich, Mackay, Rockhampton, Collinsville, Moranbah, Dysart, Middlemount, Tieri and Blackwater.

<sup>9</sup> Carborough Downs mine is located approximately 20 kilometres east of Moranbah, in Central Queensland's Bowen Basin. Subsequent to the committee's visit, the mine was sold by Vale Australia to Fitzroy Australia Resources.

<sup>10</sup> Grasstree underground mine is located approximately 25 kilometres south-west of Middlemount in Central Queensland's Bowen Basin.

proposed. The committee held nine regional public forums, in Collinsville, Moranbah, Dysart, Middlemount, Tieri, Emerald, Blackwater, Moura and Rockhampton.<sup>11</sup>

The committee also consulted privately with representatives from the Mining and Energy Division of the Construction, Forestry, Mining and Energy Union (CFMEU) and with representatives from the Queensland Resources Council (QRC) and major mining companies.

## 2 A Mine Safety and Health Authority for Queensland

Many of the committee's recommendations have, at their core, the establishment of a new Mine Safety and Health Authority, headquartered in Mackay. As the committee articulated in the *Black lung, white lies* report:

*Given the nature of the system breakdown in relation to CWP, it is clear that DNRM's attempts to amend or improve the system within the limits of the current regulatory structure have been inadequate, resulting in a superficial treatment of some issues. This piecemeal approach will not be sufficient to restore workers' trust in the system or in the adequacy of the protection it affords them.*

*Importantly, it is clear that the responsibility for overseeing the health and safety of workers should not rest with the body also charged with promoting and supporting the industry; namely DNRM. While the objectives of a productive coal industry and a safe and healthy workforce are not altogether incongruous, this split focus is not in the best interest of either goal.*

*A dedicated and independent statutory mining safety and health body would be best positioned and most trusted by workers and the wider industry to address these aims without dilution. The committee notes the demonstrated benefits of such bodies in NSW and the USA...*

*Only a truly independent regulatory body, charged with responsibility for ensuring the safety and health of Queensland's mine and resource industry workers, can restore public faith in the system.*<sup>12</sup>

The attached exposure draft Bill would provide for the establishment of the independent Mine Safety and Health Authority and its composition, structure, governance, functions and powers.

It also includes related and consequential amendments to the *Coal Mining Safety and Health Act 1999*, *Mining and Quarrying Safety and Health Act 1999*, and *Public Health Act 2005*, which were identified as necessary to enhance the integrity, accountability and responsiveness of system actions to address CWP and other industry health and safety issues more broadly.

In order to ensure the prompt consideration and discussion of the draft Bill, the committee has resolved to call on the Parliament to immediately refer the attached exposure draft of the Mine Safety and Health Authority Bill 2017 to the relevant parliamentary portfolio committee for review.

Noting the time sensitive nature of the proposed reforms and the extensive stakeholder consultation already undertaken to inform their development, the committee is recommending a reporting date of 5 October 2017.

### **Recommendation 1**

The committee recommends that the exposure draft of the Mine Safety and Health Authority Bill 2017 be referred to the relevant parliamentary portfolio committee to review and report back to the Parliament by 5 October 2017.

<sup>11</sup> A power point presentation that was given at each of the regional public forums can be accessed here: <http://www.parliament.qld.gov.au/documents/committees/CWPSC/2016/CWPSC/regionalForums-Jun2017.pdf>

<sup>12</sup> *Black lung, white lies*, pp 5-6.



# Appendix A – Exposure Draft: Mine Safety and Health Authority Bill 2017



Queensland

## Mine Safety and Health Authority Bill 2017

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**2017**

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**A Bill**

for

**An Act to establish the Mine Safety and Health Authority**

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**Working draft only**

**The Parliament of Queensland enacts—**

**Part 1 Preliminary**

**1 Short title**

This Act may be cited as the *Mine Safety and Health Authority Act 2017*.

**2 Commencement**

This Act commences on a day to be fixed by proclamation.

**3 Purpose of Act**

The purpose of this Act is to establish the Mine Safety and Health Authority to—

- (a) have responsibility for ensuring the safety and health of mining and resource industry workers in Queensland; and
- (b) act independently of the department and other entities responsible for regulating the Queensland mining and resource industry.

**4 Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

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## Part 2                      Establishment of Mine Safety and Health Authority

### 5            **Establishment**

The Mine Health and Safety Authority (the *authority*) is established.

### 6            **Legal status**

The authority—

- (a) is a body corporate; and
- (b) may sue and be sued in its corporate name.

### 7            **Relationship with State**

- (1) The authority represents the State.
- (2) Without limiting subsection (1), the authority has the status, privileges and immunities of the State.

### 8            **Application of other Acts**

- (1) The authority is—
  - (a) a unit of public administration under the *Crime and Corruption Act 2009*; and
  - (b) a statutory body under—
    - (i) the *Financial Accountability Act 2009*; and
    - (ii) the *Statutory Bodies Financial Arrangements Act 1982*.
- (2) The *Statutory Bodies Financial Arrangements Act 1982*, part 2B sets out the way that Act affects the authority's powers.

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**9 Administrative structure**

The authority is to consist of the following—

- (a) the board;
- (b) the commissioner;
- (c) the chief executive officer;
- (d) the officer of the chief executive officer (corporate services);
- (e) the inspectorates;
- (f) a technical services division;
- (g) a research division;
- (h) the Coal Workers Health Scheme.

**10 Offices**

The authority is to have the following offices—

- (a) the authority's principal office in Mackay;
- (b) other offices in locations decided by the Minister.

**Part 3 Functions and powers**

**11 Functions**

(1) The authority's functions are—

- (a) to ensure, to the extent possible, the health and safety of persons working in the Queensland mining and resource industry; and
- (b) to ensure compliance with legislation about the health and safety of persons working in the Queensland mining and resource industry; and
- (c) to administer the Coal Workers' Health Scheme, including, for example—

- 
- (i) approving providers of services under the scheme; and
  - (ii) setting criteria and standards for health assessments under the scheme; and
  - (d) to provide research, testing, certification, engineering, scientific and training services that ensure health and safety outcomes for the Queensland mining and resource industry; and
  - (e) to conduct research into—
    - (i) health conditions experienced by persons working in the Queensland mining and resources industry; and
    - (ii) dust management techniques and technologies used within and outside the State; and
  - (f) to maintain a database of dust management techniques and technologies used in mining operations in Queensland; and
  - (g) to consider, approve and make recommendations to the Minister about, dust abatement plans; and
  - (h) to assess and approve commercial providers of atmospheric dust monitoring services for compliance with relevant legislation; and
  - (i) to consult with other entities about the incidence of pneumoconiosis, coal mine dust lung disease and other occupational diseases suffered by persons working in the mining and resources industry.
- (2) The authority also has the other functions given to it under this Act or another Act.

## 12 Powers

- (1) The authority has all the powers of an individual and may, for example—
  - (a) enter into contracts; and

- (b) acquire, hold, deal with and dispose of property; and
  - (c) appoint agents and attorneys; and
  - (d) engage consultants; and
  - (e) charge a fee for services it provides; and
  - (f) do anything else necessary or convenient to be done in performing its functions, or exercising its powers, under this Act or another Act.
- (2) The authority also has the other powers given to it under this Act or another Act.

## **Part 4                    The board**

### **Division 1                General provisions**

#### **13        The board**

The authority has a board of directors.

#### **14        Role of board**

- (1) The board is responsible for the way the authority performs its functions and exercises its powers.
- (2) Without limiting subsection (1), it is the board's role to ensure the authority performs its functions in an appropriate, effective and efficient way.

### **Division 2                Membership of board**

#### **15        Appointment of members**

- (1) The board consists of the following members—
  - (a) the commissioner, who is the chairperson of the board;

- 
- (b) 2 persons representing operators of coal mines;
  - (c) 2 persons representing operators of metalliferous mines or quarries;
  - (d) 2 persons representing operators of businesses or undertakings involving the transport, processing, handling or combustion of coal;
  - (e) 2 persons representing workers employed in coal mines;
  - (f) 2 persons representing workers employed in metalliferous mines or quarries;
  - (g) 2 persons representing workers employed by businesses or undertakings mentioned in paragraph (d);
  - (h) 2 persons who are independent of the mining and resources industries.
- (2) For subsection (1)(h), a person is *independent* of the mining and resources industries if the person is not, and has not been in the previous 5 years—
- (a) an employee, contractor or consultant of any business or undertaking involved in the mining or resources industry of any State, including, for example—
    - (i) a coal mine, metalliferous mine or quarry; and
    - (ii) a business or undertaking mentioned in subsection (1)(g); or
    - (iii) a union or employee organisation representing persons employed in the mining or resource industry; or
  - (b) an officer or employee of the department; or
  - (c) an officer of the authority.
- (3) The members other than the commissioner (each an *appointed board member*) are to be appointed by the Governor in Council by gazette notice, on the recommendation of the Minister in consultation with the parliamentary committee.

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- (4) An appointed board member may be appointed on a part-time or sessional basis.
- (5) A member of the board appointed under this section is appointed under this Act and not the *Public Service Act 2008*.

#### **16 Disqualification as board member**

A person is disqualified from becoming, or continuing as, an appointed board member if the person—

- (a) has a conviction, other than a spent conviction, for an indictable offence; or
- (b) is an insolvent under administration under the Corporations Act, section 9; or
- (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
- (d) is a member of authority's staff or a contractor of the authority.

#### **17 Term of appointment**

- (1) An appointed board member holds office for the term, not longer than 3 years, stated in the member's instrument of appointment.
- (2) A person holding office as an appointed board member may be re-appointed to the office for a further term or terms as long as—
  - (a) no term of appointment is longer than 3 years; and
  - (b) the person does not hold that office for more than 9 years in total.

#### **18 Conditions of appointment**

- (1) A board member is to be paid the remuneration and allowances decided by Governor in Council.



- (2) A board member holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.

**19 Vacancy in office**

- (1) An appointed board member's office becomes vacant if—
- (a) the member completes the member's term of office [and is not reappointed?]; or
  - (b) the member resigns office by signed notice given to the Minister; or
  - (c) the member's appointment is terminated by the Governor in Council under subsection (2); or
  - (d) the member becomes disqualified under section 14 from continuing as a member.
- (2) The Governor in Council may, at any time, terminate a board member's appointment for any reason or none.

**20 Board decision not invalidated by defect in appointment or vacancy**

A decision of the board is not invalidated by—

- (a) a defect or irregularity in the appointment of an appointed board member; or
- (b) a vacancy in the membership of the board.

**Division 3 Proceedings**

**21 Conduct of business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

**22 Chief executive officer may attend meetings**

The chief executive officer may attend board meetings but is not entitled to vote at a meeting.

**23 Time and place of meetings**

- (1) The board may hold its meetings when and where it decides.
- (2) However, the board must meet at least once every 3 months.
- (3) The chairperson—
  - (a) may at any time call a meeting of the board; and
  - (b) must call a meeting if asked by at least 25% of the other board members.

**24 Quorum**

A quorum for a board meeting is at least half of the members appointed to the board.

**25 Presiding at meetings**

- (1) The chairperson is to preside at all board meetings at which the chairperson is present.
- (2) If the chairperson is not present at a meeting, the board member chosen by the members present is to preside.

**26 Conduct of meetings**

- (1) A question at a board meeting is decided by a majority of the votes of the members present at the meeting.
- (2) Each member present at a meeting has a vote on each question to be decided.
- (3) If the votes are equal, the member presiding at the meeting also has a casting vote.
- (4) A member present at a meeting may abstain from voting.

- 
- (5) A meeting may be held using any technology allowing reasonably contemporaneous and continuous communication between members.

*Example of use of technology—*

teleconferencing

- (6) A member who takes part in a meeting under subsection (5) is taken to be present at the meeting.

**27 Attendance by proxy**

- (1) A board member may attend a board meeting by proxy.
- (2) A board member is not entitled to preside at a board meeting merely because the member is a proxy holder for the chairperson.

**28 Decisions outside meetings**

A decision of the board, other than a decision at a board meeting, may be made only with the written agreement of a majority of the board members.

**29 Minutes**

The board must keep—

- (a) minutes of its meetings; and
- (b) a record of its decisions.

**Division 4 Other matters**

**30 Disclosure of interests**

- (1) This section applies to a board member if—
- (a) the member, or a close relative of the member, has a direct or indirect financial or personal interest in an

- issue being considered, or about to be considered, by the board; and
- (b) the interest could conflict with the proper performance of the member's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the member's knowledge, the member must disclose the nature of the interest to a board meeting.
  - (3) The disclosure must be recorded in the board's minutes.
  - (4) Unless the board otherwise decides, the member must not—
    - (a) be present when the board considers the issue; or
    - (b) take part in a decision of the board about the issue.
  - (5) The member must not be present when the board is considering its decision under subsection (4).
  - (6) If there is another person who must, under subsection (2), also disclose an interest in the issue, the other person must not—
    - (a) be present when the board is considering its decision under subsection (4); or
    - (b) take part in making the decision.
  - (7) Subsection (8) applies if—
    - (a) because of this section, a board member is not present at a board meeting for considering or deciding an issue, or making a decision under subsection (4); and
    - (b) there would be a quorum if the member were present.
  - (8) The remaining members present are a quorum of the board for considering or deciding the issue, or making a decision under subsection (4), for the meeting.
  - (9) If there are no members who remain present for considering or deciding an issue, the Minister may, by signing consent to a proposed resolution, consider and decide the issue.

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- (10) A contravention of this section does not invalidate any decision of the board.
  - (11) However, if the board becomes aware a member contravened this section, the board must reconsider any decision made by the board in which the member took part in contravention of this section.

## **Part 5 Commissioner for Mine Safety and Health**

### **Division 1 Provisions about appointment**

#### **31 Appointment of commissioner**

- (1) There is to be a Commissioner for Mine Safety and Health.
- (2) The commissioner is to be appointed by the Governor in Council by gazette notice.
- (3) The commissioner is to be appointed on a full-time basis.
- (4) The commissioner is appointed under this Act and not the *Public Service Act 2008*.

#### **32 Qualifications for appointment**

To be appointed as commissioner, a person must have—

- (a) a science or engineering qualification relevant to the mining industry, and professional experience in mine safety; or
- (b) a qualification in law, and professional experience in the law relating to mine safety; or
- (c) at least 10 years professional experience in senior positions relating to operational mine safety management.

*Example of a senior position for paragraph (c)—*  
a site senior executive at an underground mine

### **33 Acting commissioner**

- (1) The chief executive may appoint a person who is eligible for appointment as commissioner to act in the office of commissioner during any period or all periods when—
  - (a) the office is vacant; or
  - (b) the person holding the office is absent from duty or is, for another reason, unable to perform the functions of the office.
- (2) The appointment is for the term, and on the conditions, decided by the chief executive.
- (3) The chief executive's power to appoint a person to act in the office of the commissioner does not limit the Governor in Council's powers under the *Acts Interpretation Act 1954*, section 25(1)(b)(ii), (iv) or (v).

### **34 Advertising and consultation requirements**

- (1) The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the commissioner.
- (2) The Minister may nominate a person for appointment as the commissioner only if—
  - (a) the Minister has consulted with the parliamentary committee; and
  - (b) the nomination is made with the bipartisan support of the parliamentary committee.
- (3) Subsection (1) does not apply to the reappointment of a person as the commissioner.

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**35 Disqualification as commissioner**

A person is disqualified from becoming, or continuing as, the commissioner if the person—

- (a) has a conviction, other than a spent conviction, for an indictable offence; or
- (b) is an insolvent under administration under the Corporations Act, section 9; or
- (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6.

**36 Term of appointment**

- (1) The commissioner holds office for the term, not longer than 5 years, stated in the commissioner's instrument of appointment.
- (2) A person holding office as the commissioner may be re-appointed to the officer for a further term or terms as long as—
  - (a) no term of appointment is longer than 5 years; and
  - (b) the person does not hold that office for more than 10 years in total.

**37 Conditions of appointment**

- (1) The commissioner is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) For matters not provided for under this Act or stated in the commissioner's instrument of appointment, the commissioner holds office on the terms and conditions decided by the Governor in Council.

**38 Vacancy in office of commissioner**

- (1) The office of the commissioner becomes vacant if the commissioner—

[s 39]

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- (a) completes the commissioner's term of office [and is not reappointed?]; or
  - (b) resigns office by signed notice given to the Minister; or
  - (c) is removed from office by the Governor in Council under subsection (2); or
  - (d) becomes disqualified under section 31 from continuing as commissioner.
- (2) The Governor in Council may, at any time, remove the commissioner from office for any reason or none.

**39 Commissioner not to engage in other paid employment**

The commissioner must not, with the prior written approval of the board—

- (a) engage in paid employment outside the duties of the office of the commissioner; or
- (b) actively take part in activities of a business, or in the management of a corporation carrying on business.

**40 Acting commissioner**

The Governor in Council may appoint a person to act in the office of commissioner during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the commissioner is absent from duty, or can not, for another reason, perform the functions of the office.

**41 Preservation of rights**

- (1) This section applies if—
- (a) a person is appointed as the commissioner; and
  - (b) the person resigns the person's role as a public service officer in order to accept the appointment.



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- (2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the commissioner were a continuation of service as a public service officer.
  - (3) At the end of the person's term of office or on resignation—
    - (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as the commissioner; and
    - (b) the person's service as the commissioner is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

## **Division 2                      Functions and powers**

### **42            Commissioner's functions**

The functions of the commissioner are—

- (a) to advise the Minister, the authority and the board on mine health and safety matters generally; and
- (b) to fulfil the role of chairperson of the board; and
- (c) to monitor and report to the Minister and to Parliament on the administration of provisions about safety and health under this Act and other mining legislation; and
- (d) to start and conduct proceedings for an offence against a mine and safety law; and
- (e) to perform the functions given to the commissioner under this Act or another Act.

Working draft only

**43 Commissioner's powers**

- (1) The commissioner has the powers necessary or convenient to perform the commissioner's functions.
- (2) Without limiting subsection (1), the commissioner may direct an inspector under a mining safety and health law to conduct an investigation about a contravention, or alleged contravention, of the law.

**44 How commissioner must perform functions**

- (1) In performing the commissioner's functions, the commissioner must act independently, impartially and in the public interest.
- (2) Except to the extent required for complying with a direction under section 58, the commissioner is not subject to direction by anyone about how the commissioner performs the commissioner's functions.

**Part 6 Chief executive officer**

**45 Appointment**

- (1) The authority must have a chief executive officer.
- (2) The chief executive officer must be appointed by the Governor in Council.
- (3) A board member must not be appointed as chief executive officer.
- (4) The chief executive officer is appointed under this Act and not the *Public Service Act 2008*.

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**46 Advertising and consultation requirements**

- (1) The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the chief executive officer.
- (2) The Minister may nominate a person for appointment as the chief executive officer only if—
  - (a) the Minister has consulted with the parliamentary committee; and
  - (b) the nomination is made with the bipartisan support of the parliamentary committee.
- (3) Subsection (1) does not apply to the reappointment of a person as the chief executive officer.

**47 Chief executive officer's responsibilities**

The chief executive officer is responsible for ensuring the authority is managed as required by the policies of the board.

**48 Disqualification as chief executive officer**

A person is disqualified from becoming, or continuing as, the chief executive officer if the person—

- (a) has a conviction, other than a spent conviction, for an indictable offence; or
- (b) is an insolvent under administration under the Corporations Act, section 9; or
- (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6.

**49 Term of appointment**

- (1) The chief executive officer holds office for the term, not longer than 5 years, stated in the officer's contract of employment.

- (2) A person holding office as the chief executive officer may be re-appointed to the office for a further term or terms as long as—
  - (a) no term of appointment is longer than 5 years; and
  - (b) the person does not hold that office for more than 10 years in total.

**50 Conditions of appointment**

- (1) The chief executive officer is to be paid the remuneration and allowances decided by the authority.
- (2) For matters not provided for under this Act or stated in the chief executive officer's contract of employment, the chief executive officer holds office on the terms and conditions decided by the authority.

**51 Vacancy in office of chief executive officer**

- (1) The office of the chief executive officer becomes vacant if the chief executive officer—
  - (a) completes the officer's term of office [and is not reappointed?]; or
  - (b) resigns office by signed notice given to the authority; or
  - (c) is removed from office by the authority under subsection (2); or
  - (d) becomes disqualified under section 46 from continuing as chief executive officer.
- (2) The authority may, at any time, remove the chief executive officer from office for any reason or none.
- (3) The ending of the appointment under subsection (2) does not affect any rights to compensation that the chief executive officer is entitled to under the contract of employment.

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**52 Acting chief executive officer**

The Governor in Council may appoint a person, other than a member of the board, to act in the office of chief executive officer during—

- (a) any vacancy, or all vacancies, in the office; or
- (b) any period, or all periods, when the chief executive officer is absent from duty, or can not, for another reason, perform the functions of the office.

**53 Preservation of rights**

- (1) This section applies if—
  - (a) a person is appointed as the chief executive officer; and
  - (b) the person resigns the person's role as a public service officer in order to accept the appointment.
- (2) The person retains and is entitled to all rights that have accrued to the person because of the person's employment as a public service officer, or that would accrue in the future to the person because of that employment, as if service as the chief executive officer were a continuation of service as a public service officer.
- (3) At the end of the person's term of office or on resignation—
  - (a) the person is entitled to be appointed to an office in the public service at a salary level not less than the current salary level of an office equivalent to the office the person held before being appointed as the chief executive officer; and
  - (b) the person's service as the chief executive officer is to be regarded as service of a like nature in the public service for deciding the person's rights as a public service officer.

Working draft only

**54 Chief executive officer not to engage in other paid employment**

The chief executive officer must not, with the prior written approval of the board—

- (a) engage in paid employment outside the duties of the office of chief executive officer; or
- (b) actively take part in activities of a business, or in the management of a corporation carrying on business.

**55 Conflicts of interest**

If the chief executive officer, or a close relative of the officer, has a direct or indirect financial or personal interest that conflicts or may conflict with the discharge of the chief executive officer's responsibilities, the chief executive officer—

- (a) must disclose the nature of the interest and conflict to the board as soon as practicable after the relevant facts come to the chief executive officer's knowledge; and
- (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the board.

**Part 7 Other staff**

**56 Authority's staff**

- (1) The authority may employ other staff it considers appropriate to perform its functions.
- (2) The staff are employed under this Act and not the *Public Service Act 2008*.

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**57 Alternative staffing arrangements**

- (1) The chief executive officer may arrange with the chief executive of a government entity for the services of officers or employees of the entity to be made available to authority.
- (2) An officer or employee whose services are made available under subsection (1)—
  - (a) continues to be an officer or employee of the government entity; and
  - (b) continues to be employed or otherwise engaged by the government entity on the same terms and conditions applying to the officer or employee before the services were made available; and
  - (c) is, for the period the services are made available and for the performance of authority's functions, taken to be a member of the staff of the authority.
- (3) Nothing in subsection (1) requires a chief executive of a government entity to enter into an arrangement mentioned in that subsection.

**58 Engagement of agents**

- (1) To meet temporary circumstances, the authority may engage suitably qualified persons to provide it with services, information or advice.
- (2) A person engaged under subsection (1) is engaged on the terms and conditions decided by the authority and not under the *Public Service Act 2008*.

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## **Part 8                    Other entities**

### **Division 1                Minister's role**

#### **59            Minister's functions**

The Minister has the following functions under this Act—

- (a) to oversee the performance of the authority's functions; and
- (b) to keep Parliament and the community informed of the matter mentioned in paragraph (a).

#### **60            Ministerial direction**

- (1) The Minister may give a written direction to the authority or the commissioner about the performance of the authority's or commissioner's functions or the exercise of the authority's or commissioner's powers.
- (2) However, a direction may be given under subsection (1) only if the Minister is satisfied it is necessary to give the direction in the public interest.
- (3) Also, a direction may be given to the commissioner under subsection (1) only if the Minister has consulted the authority.
- (4) The authority or commissioner must comply with a direction given the authority or commissioner under subsection (1).
- (5) The Minister must publish a direction given under subsection (1) in the gazette within 21 days after it is given.
- (6) The authority—
  - (a) must include in its annual report, prepared under the *Financial Accountability Act 2009*, section 63, details of any direction given under subsection (1) during the financial year to which the report relates; and



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- (b) may include in the report a comment about the effect on authority's or commissioner's activities of complying with the direction.

**61 Minister may request information from chief executive officer**

- (1) The Minister may, by written notice, ask the chief executive officer for information about a stated matter relevant to the authority's functions.
- (2) The chief executive officer must comply with a request made by the Minister under this section.
- (3) A request by the Minister under this section—
  - (a) may state reasonable requirements about the information that is to be given or published, including, for example—
    - (i) the period within which information is to be given or published; and
    - (ii) the form in which information is to be given or published; and
    - (iii) the performance measures to be used in preparing information; and
  - (b) may nominate a particular person who may receive information on the Minister's behalf.
- (4) In this section—

*information* includes a report.

**62 Use or disclosure of information**

- (1) This section applies in relation to information given to the Minister, or someone else on the Minister's behalf, under this part that is not publicly available.
- (2) The information may be used or disclosed only in the performance of the Minister's functions under section 57.

- (3) Subsection (2) does not limit the *Parliament of Queensland Act 2001*, section 8.

## Division 2 Parliamentary committee's role

### 63 Committee's functions

- (1) The parliamentary committee has the following functions under this Act—
- (a) to monitor and review the performance by the authority of the authority's functions under this Act;
  - (b) to advise the Minister in relation to the appointment of the commissioner, a board member or the chief executive officer;
  - (c) to periodically review the percentage of mining royalties payable to the fund under section 68;
  - (d) to report to the Legislative Assembly on—
    - (i) any matter referred to the committee by the Legislative Assembly; and
    - (ii) any matter that the committee considers should be implemented, including, for example, a change to this Act, to ensure the effective operation of this Act;
    - (iii) any other matter about the authority, the authority's functions or the performance of the authority's functions that the committee considers should be brought to the Assembly's attention.
  - (e) any other function conferred on the committee by this Act or another Act.

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**64 Committee may request information from chief executive officer**

- (1) The parliamentary committee may, by written notice, ask the chief executive officer for information about a stated matter relevant to the authority's functions.
- (2) The chief executive officer must comply with a request made by the parliamentary committee under subsection (1).
- (3) A request may state reasonable requirements about giving information or reports to the committee including, for example, the period within which, or the form in which, the information or reports are to be given.

**65 Committee's powers not limited**

To remove any doubt, it is declared that this part does not limit the parliamentary committee's powers under the *Parliament of Queensland Act 2001*, chapter 3, part 1.

**Division 3 Committees and panels**

**66 Standing Committee on Dust Research and Control**

- (1) The Standing Committee on Dust Research and Control is established.
- (2) The committee consists of the number of members decided by the board, who are to include 1 or more persons representing each of the following—
  - (a) operators of mines;
  - (b) operators of quarries;
  - (c) workers employed in mines;
  - (d) workers employed in quarries;
  - (e) inspectors under a mining safety and health law;
  - (f) occupational hygienists;

- (g) mining engineers;
  - (h) ventilation specialist;
  - (i) medical experts.
- (3) The committee has the following functions—
- (a) to monitor results of respirable dust samples;
  - (b) to evaluate dust hazards;
  - (c) to research new dust control methods;
  - (d) to educate and inform persons involved in the mining or resources industry about its findings;
  - (e) to make recommendations to the authority about dust control and compliance with dust control measures;
  - (f) to refer non-compliance with dust control measures to the commissioner.
- (4) The committee has the powers necessary or convenient to perform the committee's functions

#### **67 Expert Medical Advisory Panel**

- (1) The Expert Medical Advisory Panel is established.
- (2) The panel consists of the number of members decided by the board, who are—
- (a) to be suitably experienced and qualified medical specialists and internationally recognised experts; and
  - (b) to include—
    - (i) at least 2 respiratory physicians; and
    - (ii) at least 1 specialist in occupational medicine.
- (3) The panel has the following functions—
- (a) to advise the authority about the health and safety of workers employed in the mining or resources industry and how to protect the workers from injury or disease;

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- (b) to consult with, and advise, the authority about the approval of service providers under the Coal Workers' Health Scheme;
  - (c) to consult with, and advise, the authority about the authority's research functions.
- (4) The panel has the powers necessary or convenient to perform the panel's functions

**68 Advisory committees**

The authority may establish an advisory committee to provide advice relevant to the performance of the authority's functions.

**Part 9 Mine Safety and Health Fund**

**69 Establishment**

- (1) The Mine Safety and Health Fund is established.
- (2) The fund is to be administered by the authority.
- (3) The fund does not form part of the consolidated fund.

**70 Payments of amounts into fund**

- (1) The following amounts are payable into the fund—
  - (a) the prescribed percentage of all mining royalties paid in each financial year;
  - (b) amounts received by the authority for a borrowing under the *Statutory Bodies Financial Arrangements Act 1982*, part 5;

- (c) amounts received by the authority for an investment under the *Statutory Bodies Financial Arrangements Act 1982*, part 6;
- (d) any other amounts received by the authority in carrying out its functions or exercising its powers under this Act or another Act, including, for example, interest received in relation to a fund or bank account kept under this Act;
- (e) any amount appropriated by Parliament for the purposes of the fund;
- (f) any amount paid into the fund at the direction of or with the approval of the Minister and the Treasurer.

(2) In this section—

*mining royalties* means royalties paid under the *Mineral Resources Act 1989*, chapter 11.

*prescribed percentage* means the percentage prescribed by regulation for this section.

## 71 Payments of amounts from fund

A payment of an amount from the fund may be made for any of the following purposes—

- (a) paying expenses incurred by the authority for—
  - (i) the administration or enforcement of this Act or another Act; or
  - (ii) performing another function, or exercising another power, under this Act or another Act;
- (b) paying fees or expenses related to administering the fund or another fund or bank account kept under this Act;
- (c) paying an amount the Minister and the Treasurer direct the authority, in writing, to pay into the consolidated fund.

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## Part 10                      Miscellaneous

### 72        **Excluded matter for Corporations Act**

The authority is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the following provisions of the Corporations Act—

- (a) parts 2D.1 and 2D.6;
- (b) chapters 2K and 2L;
- (c) parts 5.7, 5.7B, 5.9 and 5B.2.

### 73        **Public authority for Right to Information Act 2009**

The authority is a public authority for the purposes of the *Right to Information Act 2009*.

### 74        **Criminal history report**

- (1) To decide if a person is disqualified from becoming or continuing as the commissioner, an appointed board member or the chief executive officer, the Minister may ask the commissioner of the police service for—
  - (a) a written report about the criminal history of the person; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) However, the duty to comply applies only to information in the commissioner's possession or to which the commissioner has access.

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- (5) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.
- (6) In this section—  
*criminal history*, for a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

**75 New convictions must be disclosed**

- (1) This section applies if a person who is the commissioner, an appointed board member or chief executive officer is convicted of an indictable offence during the term of the person's appointment.
- (2) The person must, unless the person has a reasonable excuse, immediately give notice of the conviction to the Minister.
- (3) The notice must include—
  - (a) the existence of the conviction; and
  - (b) when the offence was committed; and
  - (c) details adequate to identify the offence; and
  - (d) the sentence imposed on the person.

**76 Annual budgets and financial management policies**

- (1) Before 31 March each year—
  - (a) the authority must prepare a budget—
    - (i) of estimated costs of the authority for the next financial year; and
    - (ii) consistent with the strategic priorities of the authority; and
  - (b) the board members must approve the budget and the authority's financial management policies; and



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- (c) the authority must give the approved budget and financial management policies to the Treasurer.
  - (2) The Treasurer must approve, or refuse to approve, the budget and financial management policies by 30 April each year.
  - (3) However, a failure by the Treasurer to act under subsection (2) does not prevent the Treasurer approving, or refusing to approve, a budget or financial management policy at a later time.
  - (4) A budget or financial management policy has no effect until it has been approved by the Treasurer.
  - (5) During a financial year, the authority may prepare amendments to the budget for that year.
  - (6) An amendment to a budget has no effect until it has been approved by—
    - (a) for a minor amendment—the chairperson in consultation with the other board members; or
    - (b) otherwise—the Treasurer on the recommendation of the chairperson in consultation with the other board members.
  - (7) If the chairperson and the other board members differ about what should be recommended to the Treasurer for an approval under this section, the Treasurer may still give the approval.
  - (8) In this section—

***financial management policies*** means the policies to be observed in financial and performance management by the authority.

*Note—*

Under the *Financial Accountability Act 2009*, section 57, the authority must comply with a provision of a financial and performance standard that applies to the authority as a statutory body.

***minor amendment***, of a budget, means an amendment of a minor nature that does not change the total of the estimated costs mentioned in the budget.

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## **77 Annual report**

- (1) The authority must include in its annual report prepared under the *Financial Accountability Act 2009*, section 63—
  - (a) details of the functions performed by the authority during the year; and
  - (b) information about how efficiently and effectively the authority has performed its functions, including identifying key achievements and financial and non-financial performance; and
  - (c) details of—
    - (i) each direction given by the Minister under section 56 during the financial year to which the report relates; and
    - (ii) action taken by the authority because of the direction.
- (2) The details mentioned in subsection (1) may include statistics.
- (3) The board must approve the report before it is given to the Minister.
- (4) The report must not be prepared in a way that discloses confidential information.

## **78 Delegation**

- (1) The authority may delegate the authority's functions under this Act to a board member or an appropriately qualified officer of the authority.
- (2) The board may delegate the board's functions under this Act to a committee or panel established under part 8, division 3.
- (3) The chief executive officer may delegate the chief executive officer's functions under this Act to another appropriately qualified officer of the authority.
- (4) In this section—

*functions* includes powers.

**79 Cooperation with other entities**

The authority must consult and cooperate with other public entities with functions that are relevant to, or may impact on, the authority’s functions, including, for example, any of the following entities—

- (a) the department;
- (b) the department in which the *Public Health Act 2005* is administered;
- (c) a government entity responsible for administering a law about the health and safety of workers;
- (d) the department in which the *Workers’ Compensation and Rehabilitation Act 2003* is administered.

**80 Confidentiality**

- (1) This section applies to a person who is or was—
  - (a) an official; or
  - (b) another person involved in the administration of this Act.
- (2) The person must not disclose confidential information to anyone else except to the extent the disclosure is permitted under this section.

Maximum penalty—100 penalty units.

- (3) Confidential information may be disclosed in the performance of a function under this Act or to the extent required or permitted under this Act.

*Example—*

Confidential information may be disclosed to a member of a committee or panel established under part 8, division 3 for the purpose of the member providing advice to the authority.

- (4) Confidential information about a person may be disclosed to the person or with the person’s consent.
- (5) Confidential information may be disclosed—

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- (a) to the Minister or the parliamentary committee; or
- (b) to a government entity with functions about protecting the health and safety of the public; or

*Examples—*

- 1 the Queensland Police Service
  - 2 the department in which the *Hospital and Health Boards Act 2011* is administered
  - 3 the chief health officer under the *Hospital and Health Boards Act 2011*
  - 4 a coroner under the *Coroners Act 2003*
- (c) to the extent required or permitted under an Act (whether of the Commonwealth or a State); or
  - (d) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
  - (e) to an entity, or for a purpose, prescribed by regulation.
- (6) In this section—
- confidential information*** means information that—
    - (a) is not publicly available; and
    - (b) is in a form that identifies an individual; and
    - (c) was acquired by, or may be accessed by, a person in his or her capacity as a person mentioned in subsection (1).

***disclose*** includes give access to.

***information*** includes a document.

## **81 Protection of officials from liability**

- (1) An official is not civilly liable to someone for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.

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**82 Evidentiary provision**

- (1) This section applies for a proceeding under this Act or a mine safety and health law.
- (2) The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—
  - (a) the appointment of the commissioner or the chief executive officer;
  - (b) the authority of a person to do anything under this Act.
- (3) A signature purporting to be the signature of the commissioner or the chief executive officer is evidence of the signature it purports to be.
- (4) In a proceeding, a certificate purporting to be that of the chief executive officer stating any of the following matters is evidence of the matter—
  - (a) a stated document is an appointment made under this Act;
  - (b) a stated document is a document made by, or given to, the authority, the commissioner or chief executive officer;
  - (c) a stated document is a copy of a document mentioned in paragraph (a) or (b).

**83 Regulation-making power**

The Governor in Council may make regulations under this Act.

Working draft only



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**Division 2**                      **Amendment of Mining and  
Quarrying Safety and Health Act  
1999**

**88**      **Act amended**

This division amends the *Mining and Quarrying Safety and Health Act 1999*.

**89**      **Amendment of s 116 (Powers of district workers’  
representatives)**

Section 116(1)(b), from ‘functions’—

*omit, insert—*

functions;

**90**      **Amendment of sch 2 (Dictionary)**

Schedule 2, definition *commissioner*, ‘*Coal Mining Safety and Health Act 1999*’—

*omit, insert—*

*Mine Safety and Health Authority Act 2017*

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## Schedule 1 Dictionary

### section 4

***appointed board member*** see section 13(3).

***authority*** means the Mine Safety and Health Authority established under section 5.

***board*** means the authority's board of directors under section 11.

***board member*** means a member of the board.

***chairperson*** means the chairperson of the board under section 13(1)(a).

***chief executive officer*** means the chief executive officer of the authority appointed under section 41.

***close relative***, of a person, means the person's—

- (a) spouse; or
- (b) parent or grandparent; or
- (c) sibling; or
- (d) child or grandchild.

***commissioner*** means the Commissioner for Mine Safety and Health.

***conviction*** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

***fund*** means the Mine Safety and Health Fund.

***mining safety and health law*** means—

- (a) the *Coal Mining Safety and Health Act 1999*; or
- (b) the *Mining and Quarrying Safety and Health Act 1999*.

***officer***, of the authority, means—

- (a) the chief executive officer; or

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- (b) an employee of the authority, whether or not there is a written contact of employment between the authority and the employee; or
- (c) an individual performing services for the authority other than as an employee—
  - (i) under a contract between the individual and the authority; or
  - (ii) under an arrangement between the authority and a person other than the individual.

**official** means—

- (a) a board member; or
- (b) an officer of the authority; or
- (c) a member of a committee or panel established under part 8, division 3.

**parliamentary committee** means—

- (a) if the Legislative Assembly resolves that a particular committee of the Assembly is to be the parliamentary committee under this Act—that committee; or
- (b) if paragraph (a) does not apply and the standing rules and orders state that the portfolio area of a portfolio committee includes the authority—that committee; or
- (c) otherwise—the portfolio committee whose portfolio area includes the department, or the part of a department, in which this Act is administered.

**spent conviction** means a conviction—

- (a) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired under that Act; and
- (b) that is not revived as prescribed by section 11 of that Act.

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