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05 OCT 2017

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Mine Safety and Health Authority Bill 2017

Report No. 54, 55th Parliament
Infrastructure, Planning and Natural Resources Committee
October 2017

Infrastructure, Planning and Natural Resources Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Coal Workers' Pneumoconiosis Select Committee and those organisations, departments and individuals who provided submissions and appeared at the committee's public hearing.

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Abbreviations

the authority	the proposed Mine Safety and Health Authority
the Bill	the exposure draft Mine Safety and Health Authority Bill 2017
CFMEU	Construction, Forestry, Mining and Energy Union
CMSHA	<i>Coal Mining Safety and Health Act 1999</i>
CMSHR	Coal Mining Safety and Health Regulation 2001
the committee	Infrastructure, Planning and Natural Resources Committee
CWP	coal workers' pneumoconiosis
CWPSC	Coal Workers' Pneumoconiosis Select Committee
the department	Department of Natural Resources and Mines
EA	<i>Explosives Act 1999</i>
the fund	the proposed Mine Safety and Health Fund
ISHRs	industry safety and health representatives
LSA	<i>Legislative Standards Act 1992</i>
mg/m ³	milligrams per cubic metre
Monash Review	Monash Centre for Occupational and Environmental Health, <i>Review of the respiratory component of the Coal Mine Workers' Health Scheme</i> , July 2016
MQSHA	<i>Mining and Quarrying Safety and Health Act 1999</i>
PGPSA	<i>Petroleum and Gas (Production and Safety) Act 2004</i>
QLS	Queensland Law Society
QRC	Queensland Resources Council
Report No. 2	Report No. 2, 55th Parliament, <i>Black lung white lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland</i>
Report No. 3	Report No. 3, 55th Parliament: <i>A Mine Safety and Health Authority for Queensland, including the committee's exposure draft Mine Safety and Health Authority Bill 2017</i>
the response report	<i>Queensland Government response to Coal Workers' Pneumoconiosis Select Committee report no. 2 – Inquiry into the re-identification of coal workers' pneumoconiosis in Queensland</i>
Simtars	Safety in Mines Testing and Research Station
WCRA	<i>Workers' Compensation and Rehabilitation Act 2003</i>
WHS Act	<i>Work Health and Safety Act 2011</i>

Note: All Acts and regulations are Queensland legislation, unless specified otherwise.

Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the exposure draft of the Mine Safety and Health Authority Bill 2017.

The committee's task was to consider the policy outcomes to be achieved by the exposure draft legislation, as well as the application of fundamental legislative principles—that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank the Coal Workers' Pneumoconiosis Select Committee for its assistance, and those individuals, organisations and departments who lodged written submissions or appeared at the committee's public hearing. I also thank the committee's secretariat.

I commend this report to the House.

A handwritten signature in blue ink, appearing to read 'D. Pegg'. The signature is written in a cursive style with a circular flourish at the beginning.

Mr Duncan Pegg MP
Acting Chair

Recommendations

Recommendation 1

2

The committee recommends that the Legislative Assembly note the committee's consideration of the Mine Safety and Health Authority Bill 2017 as outlined in this report.

1 Introduction

1.1 Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) is a portfolio committee of the Legislative Assembly that commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's areas of portfolio responsibility are:

- Transport, Infrastructure and Planning
- State Development, Natural Resources and Mines, and
- Local Government and Aboriginal and Torres Strait Islander Partnerships.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles, and
- for subordinate legislation – its lawfulness.

1.2 Inquiry process

The exposure draft of the Mine Safety and Health Authority Bill 2017 (the Bill) was tabled by the Coal Workers' Pneumoconiosis Select Committee (CWPC) as part of its Report No. 3, 55th Parliament: *A Mine Safety and Health Authority for Queensland, including the committee's exposure draft Mine Safety and Health Authority Bill 2017* (Report No. 3) to the Legislative Assembly on 24 August 2017.

The Bill was referred to the committee for consideration on the same day and, in accordance with the Standing Orders, the Committee of the Legislative Assembly required the committee to report to the Legislative Assembly by 5 October 2017.

Two members of the committee were also members of the CWPC, which was responsible for drafting the Bill. The Chair of the committee had also been significantly involved in the CWPC inquiry and had been a substitute member of the CWPC on several occasions. As such, to avoid any perceived or real conflicts of interests Mr Shane Knuth MP had limited involvement in the Bill inquiry, and Mr Jim Pearce MP and Mr Craig Crawford MP withdrew from the inquiry and substitute members, Mr Duncan Pegg MP and Ms Leanne Donaldson MP, were appointed.

On 25 August 2017, the committee invited stakeholders and subscribers to lodge written submissions. The committee received six submissions (see Appendix A).

The committee held a public briefing on 4 September 2017 and a public hearing on 8 September 2017 (see Appendix B).

On 8 September 2017, the committee wrote to the CWPC seeking a response to the submissions received for the inquiry. The response to submissions was received on 21 September 2017.

1.3 Bills referred to portfolio committees

Standing Rules and Orders of the Legislative Assembly set out the reference of a bill to a portfolio committee and the procedures for the committee's examination of a bill.²

¹ *Parliament of Queensland Act 2001*, section 88 and Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, Standing Order 194.

² Legislative Assembly of Queensland, *Standing Rules and Orders of the Legislative Assembly*, Chapter 23, Standing Orders 131-136.

The referral of the exposure draft Bill to the committee was unique as it was as a result of a recommendation made by the CWPSC in its Report No. 3.³

The referral of the Bill was also unique in that the Bill was drafted by the CWPSC and provided to the committee as an exposure draft bill. The CWPSC argued the need for this approach as:

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 was determined to initiate the process of translating these recommendations into proposed legislation without delay.⁴

Given the Bill was provided to the committee as an exposure draft bill, the committee saw its role under Standing Order 132 was to examine the Bill and to consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* (LSA).

1.4 Committee findings

The committee acknowledges the valuable work of the CWPSC in highlighting the systemic failures within Queensland's mine safety and health framework and its conviction that these failures be immediately addressed.

In part, the CWPSC's solution is the proposed establishment of an independent Mine Safety and Health Authority. This is based upon the CWPSC's assertion the Department of Natural Resources and Mines (the department) was responsible for the failure of the mine safety and health system in Queensland.⁵ The committee found this assertion was not widely supported. Evidence given to the committee suggested the systemic failure of the mine safety and health system was a result of the collective failure of governments, industry, medical professionals, unions, departments and workers over a significant period of time, and that improvements are required across the entire system.

The evidence to the inquiry reflected both support of and opposition to the Bill. During its inquiry, the committee found that stakeholders raised a number of concerns regarding the policy intent of the Bill and the process to develop the legislation. The committee and stakeholders had limited time to consider exposure draft of the Bill, which it is noted the CWPSC intended to be developed further.⁶

This report presents a summary of the committee's examination of the exposure draft of the Bill. The committee considers that its inquiry has facilitated some stakeholder feedback on the Bill.

Recommendation 1

The committee recommends the Legislative Assembly note the committee's consideration of the Mine Safety and Health Authority Bill 2017 as outlined in this report.

³ Coal Workers' Pneumoconiosis Select Committee, *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* (Report No. 3), 24 August 2017.

⁴ Coal Workers' Pneumoconiosis Select Committee, Report No. 3, p 7.

⁵ Coal Workers' Pneumoconiosis Select Committee, *Report No. 2, 55th Parliament, Black lung white lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland* (Report No. 2), p 18.

⁶ Public briefing transcript, Brisbane, 4 September 2017, p 1.

2 Background to the Mine Safety and Health Authority Bill 2017

2.1 The Coal Workers' Pneumoconiosis Select Committee

The CWPSC was established by the Queensland Parliament on 15 September 2016 to conduct an inquiry and report on the re-emergence of coal workers' pneumoconiosis (CWP) in Queensland. The CWPSC tabled an interim report on 12 April 2017. The parliament subsequently extended the CWPSC's reporting date to 29 May 2017 and provided the select committee with additional terms of reference, including the development of a draft bill for consideration by the Legislative Assembly.

The CWPSC tabled its final report on the initial terms of reference, Report No. 2, 55th Parliament, *Black lung white lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland* (Report No. 2), on 29 May 2017. The report included 34 key findings and 68 recommendations for reform. One of the recommendations was the establishment of a new authority, the Mine Safety and Health Authority.⁷ On 24 August 2017, the CWPSC tabled the exposure draft Bill in the Legislative Assembly as part of its Report No. 3.

2.2 Coal Workers' Pneumoconiosis

There are three primary types of lung disease classified as pneumoconiosis:

- asbestosis, cause by the inhalation of asbestos dust particles
- silicosis, caused by the inhalation of silica dust particles, and
- CWP, caused by the inhalation of fine coal dust particles.⁸

CWP was the focus of the CWPSC's initial terms of reference. CWP is an occupational lung disease that results from the cumulative, long-term exposure to fine airborne coal dust. The disease may take several years to develop, and there are often no symptoms in the early stages.

The CWPSC reported that there are difficulties diagnosing both simple (early-stage) CWP and complex or developed CWP. Inflammation and fibrosis in the lung are indications of CWP, but they are also features that can be produced by a range of other diseases, including the other types of pneumoconiosis as well as pneumonia and emphysema.⁹

The CWPSC also reported there is no cure for CWP, and treatment consists of managing the symptoms. However, the select committee stated CWP is completely preventable through avoiding or limiting exposure to coal dust. Early detection of simple CWP is therefore vital so those still in the workforce can be removed from exposure, and the possibility of developing complex CWP can be reduced.¹⁰

2.3 Detection of CWP in current and former coal mine workers

The re-identification of CWP in Queensland was first formally publicised in September 2015, when the then Queensland Commissioner for Mine Safety and Health stated in his *Annual Report* that the 'first case of coal workers' pneumoconiosis in a Queensland coal miner in 30 years was reported this year'.¹¹ That worker was diagnosed in May 2015.

Prior to this, it was widely accepted by coal mine operators, managers, workers and regulators that Australia had effectively eradicated CWP.

⁷ Coal Workers' Pneumoconiosis Select Committee, *Report No. 2, 55th Parliament, Black lung white lies: Inquiry into the re-identification of Coal Workers' Pneumoconiosis in Queensland* (Report No. 2), p 35.

⁸ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 4.

⁹ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 59.

¹⁰ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 4.

¹¹ Queensland Commissioner for Mine Safety and Health, *Annual Performance Report 2014-15*, pp 3-4.

As at 11 September 2017, there have been 26 confirmed cases of CWP reported to the department.¹² The detection of CWP has not been limited to current and former underground mine workers. Among the 26 confirmed cases are a number of workers who only worked at open-cut or surface mines.¹³

The CWPSC concluded in Report No. 2 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.¹⁴

2.4 Key Queensland mines legislation

All mines must comply with obligations prescribed in either the *Coal Mining Safety and Health Act 1999* (CMSHA) or the *Mining and Quarrying Safety and Health Act 1999* (MQSHA) to protect the safety and health of persons at mines. The Mining and Quarrying Safety and Health Regulation 2001 includes monitoring and recording of exposure levels during mining operations and the health surveillance of workers, while the Coal Mining Safety and Health Regulation 2001 (CMSHR) includes requirements for a safety and health management system.

The *Work Health and Safety Act 2011* (WHS Act), which generally provides a framework for the health, safety and welfare of most workers and protection for the general public who might be affected by work activities, does not apply to coal and metalliferous mining.

The *Workers' Compensation and Rehabilitation Act 2003* (WCRA) provides workers' compensation arrangements for all workers, including workers who have been diagnosed with, or are suspected to have, CWP.¹⁵

2.5 Coal dust management

Dust is a recognised hazard for workers in the coal industry, particularly those working in underground coal mines. The CWPSC stated in its Report No. 2:

*Over the last 30 years, advances in mining equipment technology and methodology have contributed to a significant increase in coal production in Queensland. This increased productivity has meant that more dust is being produced. While there has been limited publication or analysis of resulting respirable dust exposure levels, the available evidence points to the inevitable conclusion that exposure levels have similarly increased.*¹⁶

In Queensland, all coal mine operators are legally required to monitor and manage worker exposure to respirable airborne coal dust. Mine operators must have a documented dust management system to ensure respirable dust is kept to an acceptable level and statutory exposure standards are met.¹⁷ The current occupational exposure limit for respirable coal mine dust is 3.0 milligrams per cubic metre (mg/m³) for the equivalent of an eight hour shift, nominally the highest limit of any Australian jurisdiction.¹⁸

¹² Queensland Government, *Coal workers' pneumoconiosis*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis>, accessed 18 September 2017.

¹³ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, Appendix G, pp 368.

¹⁴ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 3.

¹⁵ Queensland Government, *Information for current coal mine workers*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis/information-workers>, accessed 22 September 2017.

¹⁶ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 94.

¹⁷ Department of Natural Resources and Mines, *Queensland mines legislation and dust management*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/hazards/dust/legislation>, accessed 22 September 2017.

¹⁸ Coal Mining Safety and Health Regulation 1999, s 89. Workplace exposure standards are currently under review by the Australian Government's Safe Work Australia.

As stated above, preventing exposure to coal dust is understood to prevent CWP. The CWPC found that, in the past, mine operators believed the dust controls were sufficient and they engaged in limited review of their efficiency in the absence of health-based indicators to reaffirm the dangers of the respirable coal dust hazard. In open-cut mines, dust risks appear to have been especially neglected because of a false assumption only underground coal mine workers could contract CWP.¹⁹

2.6 Government response to the re-identification of CWP since 2015

The government has undertaken a series of reforms since 2015 in response to the re-identification of CWP in coal mine workers.

The reforms have been informed by the government's response to an independent review commissioned by the department and undertaken by Monash University Centre for Occupational and Environmental Health. The final report, *Review of the respiratory component of the Coal Mine Workers' Health Scheme* (the Monash Review), was published in July 2016.²⁰

The Monash Review found 'major system failures at virtually all levels' of the design and operation of the department's Coal Mine Workers' Health Scheme.²¹ In response to the review, the government commenced reform in three key areas: prevention, early detection and the provision of a safety net for affected workers.

The department advised the committee that the government allocated \$2.457 million in 2016–17 and \$1.28 million in 2017–18 to respond to CWP, including reforms to the Coal Mine Workers' Health Scheme.²²

2.6.1 Prevention

The department has developed new dust control and monitoring standards, and coal mines are now required to report all dust monitoring results to the department on a quarterly basis.²³

2.6.2 Early detection

From 1 January 2017, all Queensland coal mine workers are required by regulation to receive a health assessment:

- upon entry to the industry
- at least every five years while employed in the industry, and
- at retirement (on a voluntary basis).²⁴

The health assessment must include a lung function test using accredited spirometry equipment.

A chest x-ray is required at least every five years for underground mine workers and at least every 10 years for above-ground mine workers.²⁵

¹⁹ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 10.

²⁰ Queensland Government, *Queensland Government's response*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis/government-response>, accessed 18 September 2017.

²¹ Monash Centre for Occupational and Environmental Health, *Review of the respiratory component of the Coal Mine Workers' Health Scheme: Final Report*, 12 July 2016, p 16.

²² Department of Natural Resources and Mines, Response to question taken on notice on 8 September 2017, 13 September 2017, p 1.

²³ Queensland Government, *Queensland Government's response*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis/government-response>, accessed 18 September 2017.

²⁴ Coal Mining Safety and Health Regulation 2001, s 46.

²⁵ Coal Mining Safety and Health Regulation 2001, s 46A.

All coal mine workers' chest x-rays must now be examined against an international standard and be read by an Australian radiologist. They must then be read by readers approved by the United States' National Institute for Occupational Safety and Health.

To achieve better quality and consistency of health assessments, the department has introduced a register of doctors, x-ray imaging practices and spirometry practices that offer approved health services to Queensland's coal mine workers.²⁶

2.6.3 Safety net for affected workers

WorkCover Queensland is responsible for the government's response to workers' compensation claims in respect to CWP, and WorkCover Queensland has created a specialised team to assist workers during the claim process.²⁷

Additionally, the Minister for Industrial Relations has created a CWP Workers Compensation Stakeholder Reference Group to advise the government on any gaps within the workers' compensation scheme.²⁸

On 23 August 2017, the Queensland Parliament passed the *Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Act 2017*. The Act includes amendments to the WCRA in relation to workers diagnosed with CWP. Key changes include:

- establishing a medical examination process for retired or former coal workers
- introducing an additional lump sum compensation for workers with pneumoconiosis, and
- clarifying that a worker with pneumoconiosis can access further compensation entitlements if they experience disease progression.²⁹

2.7 Government response to CWPSC's Report No. 2 in September 2017

The *Queensland Government response to Coal Workers Pneumoconiosis Select Committee report no. 2 – Inquiry into the re-identification of coal workers' pneumoconiosis in Queensland* (the response report), tabled on 8 September 2017, provided an update on the reforms delivered in relation to the identified three key areas, described above.

The government stated it 'supports many of the recommendations' in Report No. 2:

*In supporting the recommendations, the Queensland Government accepts the intent of the recommendations and acknowledges that additional analysis and consultation is required to better understand the most appropriate implementation pathway.*³⁰

²⁶ Queensland Government, *Queensland Government's response*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/safety-health/mining/medicals/pneumoconiosis/government-response>, accessed 18 September 2017.

²⁷ Office of Industrial Relations, *Mining and Resource Industry*, <http://www.worksafe.qld.gov.au/mining/resources>, accessed 15 September 2017.

²⁸ Hon Grace Grace MP, Minister for Employment and Industrial Relations, 'Extra support on way for Queensland coal workers', media release, 23 March 2017.

²⁹ Office of Industrial Relations, WorkCover Queensland, *Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Bill 2017*, <http://www.worksafe.qld.gov.au/laws-and-compliance/workers-compensation-laws/laws-and-legislation/wcr-coal-workers-pneumoconiosis-and-other-legislation-amendment-bill-2017>, accessed 15 September 2017..

³⁰ Queensland Government, *Queensland Government response to Coal Workers Pneumoconiosis Select Committee report no. 2 – Inquiry into the re-identification of coal workers' pneumoconiosis in Queensland*, 8 September 2017, p 17.

The response report includes eight key actions:

1. establish an independent regulator
2. implement an alternative funding model for the regulator
3. improve respirable dust monitoring and management
4. improve enforcement and oversight of coal dust management
5. improve health arrangements for coal mine workers
6. require that CWP be compulsorily reported as a notifiable disease
7. improve workers' compensation and rehabilitation, and
8. address the CWPSC's observations.³¹

The key actions are to be implemented by a number of reforms, including the establishment of an independently led Project Management Office to undertake additional investigation and consultation with stakeholders.³²

The department advised that the government has allocated \$21.051 million over two years to 'implement the CWP Select Committee's recommendations'.³³

The response report did not consider the CWPSC's Report No. 3.³⁴

³¹ Queensland Government, *Queensland Government response to Coal Workers Pneumoconiosis Select Committee report no. 2 – Inquiry into the re-identification of coal workers' pneumoconiosis in Queensland*, 8 September 2017.

³² Queensland Government, *Queensland Government response to Coal Workers Pneumoconiosis Select Committee report no. 2 – Inquiry into the re-identification of coal workers' pneumoconiosis in Queensland*, 8 September 2017, p 17.

³³ Department of Natural Resources and Mines, Response to question taken on notice on 8 September 2017, 13 September 2017, p 1.

³⁴ Queensland Government, *Queensland Government response to Coal Workers Pneumoconiosis Select Committee report no. 2 – Inquiry into the re-identification of coal workers' pneumoconiosis in Queensland*, 8 September 2017, p 4.

3 Examination of the Mine Safety and Health Authority Bill 2017

3.1 The Bill presented as an exposure draft

The Bill is presented as an exposure draft Bill and is not in a finished state. The CWPSC's Report No. 3 confirmed this, 'the committee [CWPSC] was determined to initiate the process of translating these recommendations into proposed legislation without delay'.³⁵

*In order to ensure the prompt consideration and discussion of the draft Bill, the committee [CWPSC] 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.*³⁶

Chair of the CWPSC, Mrs Jo-Ann Miller MP, stated upon tabling the exposure draft Bill:

Whilst not in its final form, this exposure draft will provide the basis for the ultimate bill.

*In tabling this exposure draft for consideration, this committee hopes to progress the implementation of these critical recommendations to protect our mining industry's most vital resource—that is, our valued workers.*³⁷

The committee received evidence from Mr Ben McMillan, the CWPSC's legal counsel, in a public briefing, who noted:

*It is important to recognise at this stage that the draft bill that was prepared is intended to be a consultation draft. It was expected by the committee that a range of stakeholders would wish to contribute their views about the provisions—provisions that should be included that have not been and provisions that have been included that they think ought not be. It was never intended by the committee that this should be the final iteration of the bill.*³⁸

A number of stakeholders expressed confusion that the Bill, while being referred to as an exposure draft bill, has the words 'Working draft only' on the margin of the Bill's pages.³⁹ Stakeholders also highlighted a number of drafting errors in the Bill.⁴⁰

The Queensland Resources Council (QRC) noted the Bill does not appear to cover all consequential amendments that would be required for the policy proposals it contains. It is therefore, according to QRC, 'impossible to know if apparent omissions are an oversight or whether the CWP Committee has changed its mind on some issues'.⁴¹

Some submitters noted that while the CWPSC's Report No. 2 recommends changing the current Coal Mine Workers Health Scheme to the Coal Workers Health Scheme, the Bill does not define the scheme, nor provide for consequential amendment to the Coal Mining Safety and Health Regulation 2017 to change the name of the scheme.⁴²

³⁵ Coal Workers' Pneumoconiosis Select Committee, Report No. 3, pp. 7-8.

³⁶ Coal Workers' Pneumoconiosis Select Committee, Report No. 3, p 9.

³⁷ Queensland Parliament, Record of Proceedings, 24 August 2017, p 2411.

³⁸ Public briefing transcript, Brisbane, 4 September 2017, p 1.

³⁹ Ms Rachel Cronin, Deputy Director-General, Department of Natural Resources and Mines, public hearing transcript, Brisbane, 8 September 2017, p 18; QRC, submission 1.

⁴⁰ See for example submissions 2 and 4.

⁴¹ Submission 1, correspondence attached, p 3.

⁴² QRC, submission 1, correspondence attached, p 9; Mr David Ralph, submission 4, p 2.

Additionally, the committee was advised that in appearing to extend to workers other than coal mine workers, the Bill could potentially create a legislative overlap, as workers in the coal industry other than coal mine workers, currently fall under the jurisdiction of the *Work Health and Safety Act 2011*.⁴³

CWPSC response

In response to stakeholder's comments regarding the draft nature of the Bill the CWPSC advised:

*The CWPSC notes the typographical and cross-referencing errors identified in the draft Bill and accepts that these should be corrected...*⁴⁴

Regarding the requirement for consequential amendments, the CWPS also stated:

The CWPSC recognises that further consequential amendments, including regulatory amendments, will be required to give full effect the provisions of the draft Bill and the recommendations in its Report No. 2 Report No. 2 Black lung: white lies.

...

*It is accepted that the use of the term "Coal Workers' Health Scheme" in the draft Bill may give rise to confusion in the absence of published proposed changes to the CMHR that would give effect to the renaming of the current Coal Mine Workers' Health Scheme.*⁴⁵

Mr McMillan noted that, aside from the Bill, most of the recommendations from Report No. 2 'will be affected, if they are ultimately affected, by amendment to regulations and policy as it is implemented by the various departments, principally the Department of Natural Resources and Mines'.⁴⁶

The CWPSC also advised that 'clarity is needed to ensure that there is not unintended regulatory overlap with obligations under the *Work Health and Safety Act 2011*'.⁴⁷

3.2 The Mine Safety and Health Authority

The CWPSC concluded in its Report No. 2 that Queensland's coal industry needed a more effective system of oversight and compliance, 'including greater levels of transparency and accountability surrounding the roles and responsibilities of all industry players'.⁴⁸ Report No. 2 noted 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 the department.⁴⁹

The CWPSC's first recommendation was that there should be a Mine Safety and Health Authority (the authority), established by statute, with responsibility for ensuring the safety and health of mining and resource industry workers in Queensland.⁵⁰ The Bill proposes to establish the authority.

Mr McMillan explained that the authority was proposed to oversee regulation of the industry as:

*The failures that were identified by the Coal Workers' Pneumoconiosis Select Committee ... indicate a significant degree of failure in the department to properly and independently regulate the industry in terms both of the relationship between the inspectorates and industry and between senior officers of the department and industry.*⁵¹

⁴³ Ms Rachel Cronin, Department of Natural Resources and Mines, public hearing transcript, Brisbane, 8 September 2017, p 16.

⁴⁴ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 4.

⁴⁵ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 5.

⁴⁶ Public briefing transcript, Brisbane, 4 September 2017, p 1.

⁴⁷ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 4.

⁴⁸ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 71.

⁴⁹ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 6.

⁵⁰ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 6.

⁵¹ Public briefing transcript, Brisbane, 4 September 2017, p 2.

The Queensland Government acknowledged that the creation of statutory authorities for the performance of executive functions is a well-established model in Queensland, and that it has been 'an attractive model' to achieve a level of separation for those executive functions from the traditional departmental structure to ensure objectivity.⁵²

The Construction, Forestry, Mining and Energy Union (CFMEU) supported the establishment of the authority. Representatives from the union stated:

Having true independence is the only way the system is going to move forward. We need a change. If we do not change that means that we have not learnt from the mistakes of the past.

*We are in an industry that has a reputation of not learning from the past. We need to go forward.*⁵³

Conversely, QRC preferred strengthening the existing regulator with the existing structure and governance arrangements, rather than establishing a new authority:

*While we support having a stronger regulator, the existing structure and governance arrangements could be able to be amended to achieve that outcome without a wholesale disruption of establishing a new authority.*⁵⁴

BHP Billiton also raised concerns regarding the establishment of the authority, noting that while the CWPSC 'has identified certain historic concerns relating to the administration of health surveillance, such sweeping, wholesale change is not warranted'.⁵⁵ BHP Billiton also stated:

We are concerned that the creation of the MSHA [authority] ... would create considerable administrative complexity and confusion, which would hinder, rather than help, the administration of mine health and safety in Queensland.

*...it appears there would be a duplication of functions with the Department of Natural Resources and Mines...*⁵⁶

3.2.1 Functions and powers of the authority

The Bill outlines the functions and powers of the authority. The authority's functions include:

- ensuring the health and safety of persons working in the mining and resource industry
- ensuring compliance with legislation about the health and safety of persons working in the mining and resource industry
- administering the Coal Workers' Health Scheme
- providing research, testing, certification, engineering scientific and training services
- conducting research into relevant health conditions and dust management techniques and technologies
- maintaining a database of dust management techniques and technologies, and
- considering, approving and making recommendations about dust abatement plans.⁵⁷

⁵² Submission 2, p 4.

⁵³ Mr Jason Hill, CFMEU, public hearing transcript, Brisbane, 8 September 2017, p 2.

⁵⁴ Hon Ian Macfarlane, QRC, public hearing transcript, Brisbane, 8 September 2017, p 9.

⁵⁵ Submission 5, p 2.

⁵⁶ Submission 5, p 2.

⁵⁷ Mine Safety and Health Authority Bill 2017, cl 11.

Some stakeholders submitted that the authority's functions and powers are too focussed on the management of coal dust and administration, without appropriately considering other aspects of the mining and resources industry.⁵⁸ For example QRC noted that the 'stated functions of the MSHA [the authority] within the working draft Bill have an undue focus on mining dust management'.⁵⁹

Further, in relation to maintaining a database of dust management techniques and technologies, Mr McMillan acknowledged that the provision is not wide enough to capture other scientific data monitoring or health surveillance:

I do not think it does adequately provide for all sorts of other databases. It is specifically directed towards implementing the recommendation in the 'Black lung white lies' report.⁶⁰

The Queensland Government raised some concerns regarding the scope and nature of the authority's functions, noting:

The stated functions of the Authority are unusually specific. Typically, provisions setting out the functions of statutory officer are drafted in more inclusive language to give the office an appropriated degree of flexibility...⁶¹

The government commented that the drafting 'may have an unintended limiting effect if tested judicially'. The government also noted that some of the functions were a desired policy objective or outcome and 'not a necessary function'.⁶²

Acknowledging the Bill was indeed a draft piece of legislation, Mr McMillan stated:

The functions of the authority set out in clause 11 are intended to be inclusive, not exclusive. Certainly the authority will have other functions that are not listed there. However, in terms of consideration of the provisions, I do not see that there is any difficulty at all with a suggestion of other functions that should be expressly provided for in that functions section of the act.⁶³

The CWPC also noted:

The enumerated functions are intended to be inclusive, not exhaustive. Sub-section (2) expressly provides that the Authority also has the functions given to it "under this Act or another Act." However, there is merit in the suggestion that the functions and powers provided for in the Act that establishes the Authority should be enumerated in a more general way, consistent with the purpose of the Act, to allow for greater flexibility in the administration of the Authority and the exercise of its functions in accordance with the Act.⁶⁴

3.2.2 Location of the authority's principal office

The CWPC in Report No. 2 recommended the authority 'should be established in Mackay, ensuring the Commissioner, senior management, the Mines Inspectorate, and the Coal Workers' Health Scheme and mobile units are all based in central Queensland'.⁶⁵ Giving effect to this recommendation, the Bill proposes to require that the authority's principal office is in Mackay, with other offices in locations decided by the Minister.⁶⁶

⁵⁸ Submissions 1 and 2.

⁵⁹ Submission 1, correspondence attached, p 4.

⁶⁰ Public briefing transcript, Brisbane, 4 September 2017, p 3.

⁶¹ Submission 2, p 10.

⁶² Submission 2, p 10.

⁶³ Public briefing transcript, Brisbane, 4 September 2017, p 3.

⁶⁴ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 2.

⁶⁵ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 73.

⁶⁶ Mine Safety and Health Authority Bill 2017, cl 10.

QRC commented that the proposed location was a reflection of the ‘dust and coal-centric nature of the working draft bill’, and that ‘the Queensland resources industry is distributed far more widely than that’. QRC also raised concerns regarding a regional location for the authority:

If the regulator’s headquarters are moved to a regional centre, then it would be isolated from all the other relevant government departments, making coordination and information sharing even harder.

Existing attraction and retention issues will be exacerbated, noting that the Mines Inspectorate already struggles to attract and retain the best inspectorate candidates from industry, which is the only source of people with the appropriate skills.⁶⁷

The department noted ‘it is unusual to put in legislation where an office would necessarily be located’, and that it ‘could lead to some inefficient operation’.⁶⁸

The CFMEU appeared less concerned about the proposed location, stating:

Where it is established is probably not of great concern to us. The majority of the mining and ports in Queensland are around the Central and North Queensland area and out to the west, especially if you are talking about hard rock mines. It would probably make more sense to be where the action takes place.⁶⁹

3.3 The board

The Bill provides for a board of directors, responsible for the way the authority performs its functions and exercises its powers.⁷⁰ Mr McMillan advised the committee that a key function of the board is ‘an oversight function’:

...recognising that senior people appointed to a government board to oversee an independent body gives a level of independence and should give the public a level of confidence in that authority.⁷¹

The Bill proposes the board would consist of the commissioner, who is chairperson, 12 persons representing key stakeholders within the mining and resource industry, and two persons independent of the mining and resource industry. Independent is defined to mean the person is not or has not been in the previous five years, an employee, contractor or consultant of any business in the mining or resources industry, a union representative, or an officer or employee of the department.⁷²

The Bill provides that a board member may be appointed on a part-time or sessional basis, and paid the remuneration and allowances decided by the Governor in Council.⁷³ On these provisions, Mr McMillan stated:

It has been identified in the hearings that the Coal Workers’ Pneumoconiosis Select Committee has had that there have been some difficulties with attendance and contribution to the advisory committees, because they are not remunerated positions. The coal workers’ committee considered that it was important that there be a professional element to appointment to the board and that those members be remunerated appropriately. That is the reason that the provisions for them to be appointed part-time and remunerated are there.⁷⁴

⁶⁷ QRC, submission 1, correspondence attached, p 4.

⁶⁸ Ms Rachel Cronin, Department of Natural Resources and Mines, public hearing transcript, Brisbane, 8 September 2017, p 16.

⁶⁹ Mr Jason Hill, CFMEU, public hearing transcript, Brisbane, 8 September 2017, p 4.

⁷⁰ Mine Safety and Health Authority Bill 2017, cls 13, 14.

⁷¹ Public briefing transcript, Brisbane, 4 September 2017, p 4.

⁷² Mine Safety and Health Authority Bill 2017, cl 15.

⁷³ Mine Safety and Health Authority Bill 2017, cls 15, 18.

⁷⁴ Public briefing transcript, Brisbane, 4 September 2017, p 2.

The Bill proposes that board members, other than the commissioner, would be appointed by the Governor in Council on the recommendation of the Minister in consultation with the parliamentary committee.⁷⁵ The Bill also enables the Governor in Council to terminate a board member's appointment at any time with or without reason.⁷⁶

The Queensland Government raised a concern that the Governor in Council's power to terminate a board appointment at any time for any reason 'may impact on the Authority's independence', and suggested that the power should be limited to 'specified circumstances'.⁷⁷

QRC sought additional detail in the Bill regarding the qualifications required to be a board member, and for there to be 'some guidance' on the requirements for the two independent members: 'it seems logical that these two people, who may hold the deciding vote on an issue, should have a sound understanding of resources safety and health issues'.⁷⁸

CWPSC response

In response to the government's comments regarding the Governor in Council's power to remove board members, the CWPSC advised:

*The CWPSC accepts the Queensland Government submission that additional protections should be included to ensure the independence of the authority by limiting the circumstances in which members of the Board, including the Commissioner, may be removed from office by the Governor-in-Council.*⁷⁹

3.3.1 Representational nature of the board and conflicts of interest

The Queensland Government commented that a representational board does not provide the best form of governance for an authority, due to conflicts of interest and 'the potential for directions to be primarily concerned with the interests of representational board members rather than the success of the entity'.⁸⁰

The Bill proposes that when a board member has a direct or indirect financial or personal interest in an issue being considered by the board and the interest could conflict with the proper performance of the member's duties regarding the consideration of the issue, unless the board decides otherwise, the member must not be present when the board considers the issue or be present or take part in a decision of the board about the issue.⁸¹

Mr McMillan informed the committee that it was 'deliberately intended'⁸² for the board to be made up of representatives from industry stakeholders. He stated:

*The requirement for those members to disclose those interests in any given situation is a standard corporate governance mechanism so that all of the other board members understand the basis upon which members are making decisions.*⁸³

Mr McMillan explained the board featured more than one person from each of the stakeholder groups in order to account for this occurrence.⁸⁴

⁷⁵ Mine Safety and Health Authority Bill 2017, cl 15(3).

⁷⁶ Mine Safety and Health Authority Bill 2017, cl 19(2).

⁷⁷ Submission 1, correspondence attached, p 14.

⁷⁸ Submission 1, correspondence attached, p 9.

⁷⁹ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 3.

⁸⁰ Submission 1, p 6.

⁸¹ Mine Safety and Health Authority Bill 2017, cl 30.

⁸² Public briefing transcript, Brisbane, 4 September 2017, p 6.

⁸³ Public briefing transcript, Brisbane, 4 September 2017, p 6.

⁸⁴ Public briefing transcript, Brisbane, 4 September 2017, p 6.

3.4 Commissioner for Mine Safety and Health

The role of the commissioner currently exists under the CMSHA. The appointment requirements and process, and the functions and powers of the commissioner, proposed under the Bill are broadly consistent with the current provisions of the CMSHA. However, Mr McMillan advised that the Bill proposes some differences to give the role 'a statutory level of independence'.⁸⁵

3.4.1 Appointment of the commissioner

The proposed requirements and process for appointing the commissioner are similar to those currently provided for in the CMSHA, however there are some variances.

The required qualifications proposed by the Bill for the appointment of a person as commissioner are identical to those set out in section 73B of the CMSHA. However, the Bill proposes to introduce additional obligations requiring the Minister to consult with the parliamentary committee prior nominating a person for appointment and for the nomination to have the bipartisan support of the parliamentary committee.⁸⁶

The committee sought clarification of the definition of 'bipartisan support' regarding consultation with the parliamentary committee for a nomination of a commissioner.⁸⁷ The CWPSC advised:

...we envisage the term 'bipartisan support' in the Mine Safety and Health Authority Bill would have the same meaning as that term has in the Crime and Corruption Act 2001. To put the position beyond doubt, we propose that a definition be added to the dictionary in schedule 1 to the draft Mine Safety and Health Authority Bill (identical in terms to that in the dictionary in Schedule 2 of the Crime and Corruption Act 2001) in these terms:

bipartisan support, of the parliamentary committee, means—

- (a) support of the members of the parliamentary committee unanimously; or*
- (b) support of a majority of the members, other than a majority consisting wholly of members of the political party or parties in government in the Legislative Assembly.⁸⁸*

On appointment, under the current provisions the commissioner is engaged as a public service officer under the *Public Service Act 2008*,⁸⁹ however under the Bill the commissioner would be appointed under the proposed Mine Safety and Health Authority Act and would not be a public servant.⁹⁰

Additionally, in relation to appointing an acting commissioner the CMSHA provides that the chief executive of the department may appoint a person to act in the role during a vacancy.⁹¹ The Bill similarly proposes that the chief executive may appoint an acting commissioner but also provides that the Governor in Council may appoint a person to act in the role.⁹² The Queensland Government noted that these 'provisions give rise to overlapping powers ... in relation to the appointment of an acting Commissioner'.⁹³

⁸⁵ Public briefing transcript, Brisbane, 4 September 2017, p 4.

⁸⁶ Mine Safety and Health Authority Bill 2017, cl 34.

⁸⁷ Mr Ben McMillan, public briefing transcript, Brisbane, 4 September 2017, pp 5-6.

⁸⁸ Coal Workers' Pneumoconiosis Select Committee, response to question taken on notice on 4 September 2017, 6 September 2017, p 1.

⁸⁹ *Coal Mining Safety and Health Act 1999*, s 73A.

⁹⁰ Mine Safety and Health Authority Bill 2017, cl 31.

⁹¹ *Coal Mining Safety and Health Act 1999*, s 73B.

⁹² Mine Safety and Health Authority Bill 2017, cls 33, 40.

⁹³ Queensland Government, submission 2, p 15.

CWPSC response

In response to the concerns raised by the Queensland Government regarding the authority to appoint an acting commissioner, the CWPSC advised:

The CWPSC accepts that clauses 33 and 40 grant overlapping authority to the CEO and Governor-in-Council to appoint an Acting Commissioner in certain circumstances. The CWPSC considers that such authority should be granted only to the Governor-in-Council.⁹⁴

3.4.2 Functions and powers of the commissioner

The functions and powers of the commissioner as set out in the Bill are similar to those currently provided for in sections 73C and 73D of the CMSHA. However, proposed section 42(d) extends the commissioner's functions to include starting and conducting proceedings for an offence against a mine and safety law, and proposed section 43(2) expressly provides that the powers of the commissioner include directing an inspector under a mining safety and health law to conduct an investigation about a contravention of the law.

Additionally, the Bill provides that the commissioner is not subject to direction from anyone in relation to the performance of their functions.⁹⁵

3.4.2.1 Starting and conducting proceedings

In relation to starting and conducting proceedings, the committee was advised that the commissioner currently has the function of 'running prosecutions'.⁹⁶ The CMSHA and the MQSHA designate certain positions, including the commissioner, with authority to commence proceedings for offences under those Acts. The committee was informed that the intention of the Bill is for the commissioner to run prosecutions 'independently through the authority rather than through the department'.⁹⁷

The Queensland Government noted that the function to start and conduct proceedings would be limited to offences under the CMSHA and MQSHA, and would not extend to offences under the *Explosives Act 1999* (EA) or the *Petroleum and Gas (Production and Safety) Act 2004* (PGPSA) which 'also address safety and health in the mining and resource industry'.⁹⁸

Mr McMillan noted that the Bill did not extend to the PGPSA as petroleum and gas 'was beyond the terms of reference of the committee's [CWPSC] initial inquiry' and stated that 'one might think that petroleum and gas probably should be included in the authority if it is ultimately enacted'.⁹⁹

Additionally, the Queensland Law Society (QLS) suggested that a mechanism to refer matters to the Director of Public Prosecutions for investigation and prosecution, similar to the provisions in workplace health and safety legislation be put in place. QLS noted that 'this has not been expressly included in the current drafting of the Bill'.¹⁰⁰

⁹⁴ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 3.

⁹⁵ Mine Safety and Health Authority Bill 2017, cl 44.

⁹⁶ Mr Ben McMillan, public briefing transcript, Brisbane, 4 September 2017, p 7.

⁹⁷ Mr Ben McMillan, public briefing transcript, Brisbane, 4 September 2017, p 7.

⁹⁸ Queensland Government, submission 2, p 16.

⁹⁹ Mr Ben McMillan, public briefing transcript, Brisbane, 4 September 2017, p 6.

¹⁰⁰ Queensland Law Society (QLS), submission 3, p 2.

CWPSC response

In response to the Queensland Government's submission regarding the application of the Bill to the CMSHA and MQSHA, and not the EA and PGPSA, the CWPSC advised:

The CWPSC considers that matters regarding the petroleum and gas inspectorate and the explosives inspectorate were beyond the scope of its initial terms of reference and its report on those terms of reference... The draft Bill reflects the recommendations of that report, as far as they relate to the establishment of a Mine Safety and Health Authority.

Subsequent to its further consideration of these issues within the scope of its extended terms of reference, the CWPSC remains committed to the structure of the Authority recommended in Report No. 2, Black lung: white lies and reflected in the exposure draft Bill.

*Any supporting administrative arrangements are ultimately a matter for government.*¹⁰¹

In response to the suggestion by QLS regarding the referral of matters to the Director of Public Prosecutions, the CWPSC advised that 'there is no requirement for a specific provision in the draft Bill, or amendments to any of the mining safety and health laws, to provide for referral of a charge to the DPP [Director of Public Prosecutions]'.¹⁰²

*Sections 11 and 12 of the DPP Act [Director of Public Prosecutions Act 1984] also authorise the Director to direct any complainant or person bringing a charge (including under a work health and safety law) to refer the matter to the Director. This effectively authorises the Director of Public Prosecutions to oversee or take over a prosecution being conducted by another regulatory agency or officer of the State.*¹⁰³

3.4.2.2 Directing an inspector to undertake an investigation

In relation to the commissioner's powers the Bill replicates section 73D of the CMSHA, providing the commissioner with 'the powers necessary or convenient to perform the commissioner's functions'. The Bill also expressly provides that without limiting this provision, the commissioner may direct an inspector under a mining safety and health law to conduct an investigation about a contravention of the law.¹⁰⁴

Similar to the issue raised by the Queensland Government in relation to the commissioner's functions, the Queensland Government noted that the Bill does not address the direction of an inspector to undertake an investigation under the EA or PGPSA.¹⁰⁵

QLS raised a concern that the Bill does not contain 'details of and limits to the inspector's powers', and 'strongly' recommended that the Bill be amended to 'particularise the inspector's powers' to ensure they are appropriately regulated¹⁰⁶ and 'provide certainty for all parties involved'.¹⁰⁷

3.4.2.3 Performance of functions

In relation to performing the commissioner's functions the Bill proposes to introduce a new provision requiring the commissioner to 'act independently, impartially and in the public interest' and stating that they are not subject to direction from anyone, except a direction from the Minister in accordance with the Bill, in relation to the performance of their functions.¹⁰⁸

¹⁰¹ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, pp 1-2.

¹⁰² Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 6.

¹⁰³ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 6.

¹⁰⁴ Mine Safety and Health Authority Bill 2017, cl 43.

¹⁰⁵ Queensland Government, submission 2, p 16.

¹⁰⁶ QLS, submission 3, p 2.

¹⁰⁷ Mr James Plumb, Chair, QLS Mining and Resources Law Committee, public hearing transcript, Brisbane, 8 September 2017, p 5.

¹⁰⁸ Mine Safety and Health Authority Bill 2017, cl 44.

The Queensland Government raised a concern that the commissioner not being subject to direction from anyone 'may create difficulty for the Board to discharge its role of ensuring the Authority performs its functions, including ensuring compliance with legislation'.¹⁰⁹

3.5 Chief executive officer

The Bill provides for the appointment of a chief executive officer for the authority, 'responsible for ensuring the authority is managed as required by the policies of the board'.¹¹⁰ The chief executive officer would be appointed by the Governor in Council, on nomination from the Minister. The Governor in Council may also appoint a person to act in the role during any periods of vacancy.¹¹¹

The Queensland Government noted that the appointment process is inconsistent with other statutory authorities, where the chief executive officer is commonly appointed by the board with the approval of the Minister.¹¹²

CWPSC response

In response to the government's comments regarding the appointment of the chief executive officer, the CWPSC advised that it 'accepts the submission that the appointment of a CEO in a statutory authority would ordinarily be the responsibility of the Board'.¹¹³

The CWPSC also noted other inconsistencies in the Bill regarding the appointment, conditions of engagement and removal of the chief executive officer, and stated:

*The CWPSC considers that Part 6 of the draft Bill should be amended to make it consistent with other Queensland legislative provisions dealing with the chief executive officers of statutory authorities. Specifically, the CEO or acting CEO should be appointed by the Board of the Authority, upon conditions set by the Board and subject to removal by the Board.*¹¹⁴

3.6 Other staff of the authority

The Bill provides that other staff may be employed by the authority, and the chief executive officer may arrange with the chief executive of a government entity for employees of the entity (public servants) to be made available to the authority.¹¹⁵ Staff employed by the authority would be engaged under the proposed Mine Safety and Health Authority Act and not the *Public Service Act 2008*.¹¹⁶ However, staff made available to the authority from another government entity would continue to be an employee of the entity, engaged on the terms and conditions applying to them prior to working at the authority.¹¹⁷

Addressing concerns regarding employment of staff at the authority, Mr McMillan noted, 'most of them are likely to be employed by the Department of Natural Resources and Mines now and one would think in the machinery-of-government process would be transitioned across into the new authority'.¹¹⁸

¹⁰⁹ Queensland Government, submission 2, p 16.

¹¹⁰ Mine Safety and Health Authority Bill 2017, cl 47.

¹¹¹ Mine Safety and Health Authority Bill 2017, cls 45-55.

¹¹² Queensland Government, submission 2, pp 16-17.

¹¹³ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 3.

¹¹⁴ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 3.

¹¹⁵ Mine Safety and Health Authority Bill 2017, cls 56, 57.

¹¹⁶ Mine Safety and Health Authority Bill 2017, cl 56(2).

¹¹⁷ Mine Safety and Health Authority Bill 2017, cls 56, 57.

¹¹⁸ Public briefing transcript, Brisbane, 4 September 2017, p 4.

*There is certainly no intention ... to lose the institutional knowledge that exists within the department already. They are very experienced occupational hygienists, inspectors, certification officers, engineers and so on. To those who have concern that this is intended to be a clean out of everyone in the department and a whole bunch of new people—they would rightly be concerned, I think, that there will be a loss of institutional knowledge—that is certainly not proposed in the legislation that that occur.*¹¹⁹

In relation to the transition of staff from the public service to the authority, the department raised some concerns noting that the Bill:

*Does not provide for the transition of these staff to the Authority or for the preservation of their rights and entitlements. It also does not provide any assurance that these staff would have equivalent rights, entitlements and protections as public service officers.*¹²⁰

The department also noted that the Bill does not provide for the delegation of powers to appropriate staff, stating that '[w]ithout appropriate amendments, the chief executive [officer] would have limited ability to delegate matters to Authority staff'.¹²¹

CWPSC response

In response to the Queensland Government's comments regarding employment of staff by the authority, the CWPSC noted 'the draft Bill is silent as to the protections for current public servants employed ... whose positions are administratively relocated within the Authority', and acknowledged the 'Bill should contain such provisions'.¹²²

The CWPSC also noted the 'Bill should also contain necessary provisions to allow the chief executive of a department to delegate matters to staff of the Authority'.¹²³

3.7 Other entities

3.7.1 Minister

The Bill provides for the Minister's role and functions with respect to the authority.¹²⁴ Clause 60 enables the Minister to give a written direction to the authority or the commissioner in relation to the authority's performance, the commissioner's functions or the exercise of the authority or commissioner's powers. However, a direction may only be given if the Minister 'is satisfied it is necessary to give the direction in the public interest'.¹²⁵

The Queensland Government expressed concern that the Minister's proposed role may interfere with the intended independence of the authority:

*...the Minister is proposed to be given power to issue directions to the Authority and the Commissioner in relation to the exercise of their functions. This appears to be inconsistent with the CWP Committee recommendation that the Commissioner not be subject to the direction of the Minister to ensure there is proper statutory independence, free from administrative or political control by the department or the Minister.*¹²⁶

¹¹⁹ Public briefing transcript, Brisbane, 4 September 2017, p 4.

¹²⁰ Submission 2, p 17.

¹²¹ Submission 2, p 17.

¹²² Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 4.

¹²³ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 4.

¹²⁴ Mine Safety and Health Authority Bill 2017, Part 8, division 1.

¹²⁵ Mine Safety and Health Authority Bill 2017, cl 60(2).

¹²⁶ Queensland Government, submission 2, p 6.

The Queensland Government suggested that ‘consideration be given to removing the power of the Minister to give a direction to the Commissioner, or alternatively to limiting the scope of the power to exclude operational and regulatory matters...’.¹²⁷

The committee noted that the public interest test for issuing a direction could be applied to a broad range of circumstances in public administration. The term has been described as difficult to define and difficult to apply.¹²⁸

CWPSC response

In response to the government’s comments regarding the Minister’s power to issue directions the CWPSC stated:

The CWPSC considers that it is appropriate for the Minister to be given the limited power provided for in clause 60, subject to the public interest protections...

*The CWPSC also agrees with the Queensland Government submission that the Minister’s power to direct the Commissioner should be limited so as to exclude operational and regulatory matters including the commencement and conduct of prosecution proceedings under the mining safety and health laws.*¹²⁹

3.7.2 Parliamentary committee

Report No. 2 of the CWPSC recommended that a parliamentary committee should oversee and monitor the operation of the authority and play a role in the appointment of the commissioner and the board.¹³⁰ The Bill provides the responsible parliamentary committee with these functions. The Bill also provides the parliamentary committee with a function to ‘periodically review the percentage of mining royalties payable to the [mine safety and health] fund’.¹³¹

The Queensland Government acknowledged that ‘it is common for integrity bodies to be overseen by a parliamentary committee’ but that it ‘is not aware of any examples of parliamentary committees having oversight functions similar to the Authority’s proposed functions’, which are ‘executive functions’.¹³²

The government’s submission stated:

*An additional level of oversight from a parliamentary committee may impact on ministerial accountability for the mining and resources safety and health portfolio, and the Authority’s ability to effectively exercise those executive functions.*¹³³

The department reiterated this point:

*A permanent parliamentary oversight committee is not common for boards such as this. It is not clear how the parliamentary committee’s oversight function would sit alongside that of the minister and it could lead to divided accountability for this function.*¹³⁴

¹²⁷ Queensland Government, submission 2, p 19.

¹²⁸ Chris Wheeler, ‘The public interest revisited: we know it’s important but do we know what it means?’, *AIAL Forum*, No. 72, 2013, pp 34-49.

¹²⁹ Coal Workers’ Pneumoconiosis Select Committee, correspondence dated September 2017, p 3.

¹³⁰ Coal Workers’ Pneumoconiosis Select Committee, Report No. 2, p 6.

¹³¹ Mine Safety and Health Authority Bill 2017, cl 63(c)

¹³² Submission 2, p 20.

¹³³ Submission 2, pp 20-21.

¹³⁴ Ms Rachel Cronin, Department of Natural Resources and Mines, public hearing transcript, Brisbane, 8 September 2017, p 16.

QRC also raised concerns regarding the proposed oversight by a parliamentary committee:

*The QRC believes that the person most responsible under the Westminster governance system that Australia employs, both at a state and federal level, is the minister in his or her role as the representative of the Premier and of the executive government. Committees certainly have roles and their oversight in a number of areas is very important. We do not for a moment take that away. However, in terms of responsibility, we believe that the minister should be responsible for the function of the authority and that the authority should function to him.*¹³⁵

3.7.3 Advisory committees and panels

The Bill provides for the establishment of a standing committee on dust research and control and an expert medical advisory panel, and for the roles and functions of both entities. Each entity is to consult with and advise the authority on matters relevant to their specified functions.¹³⁶ The Bill also provides for the establishment of advisory committees ‘to provide advice relevant to the performance of the authority’s functions’.¹³⁷

The Australasian Faculty of Occupational and Environmental Medicine was supportive of the establishment of an expert medical advisory panel, stating:

*The involvement of specialist physicians ... is essential to ensuring the effectiveness of the proposed independent Mine Safety and Health Authority.*¹³⁸

QLS suggested that a the function of the expert medical advisory panel should be extended to include making ‘recommendations as may be appropriate to ensure that the authority’s processes ... evolve in accordance with good medical practice and developments in medical research’. QLS also suggested that the process might be more appropriately managed by Queensland Health.¹³⁹

In relation to the establishment and operation of both the standing committee on dust research and control and the expert medical advisory panel, QLS and the Queensland Government suggested that more detailed provisions would be beneficial.¹⁴⁰ For example the government suggested that provisions could be included regarding:

- a) *the appointment of members*
- b) *the duration and conditions of appointment; and*
- c) *procedural and governance matters for committee and panel meetings.*¹⁴¹

QRC was critical of the proposed establishment of both the standing committee and the advisory panel, being only related to dust, also stating ‘the proposed functions of the [authority] do not appropriately reflect the full scope of the requirements to manage resources safety and health outcomes’.¹⁴²

CWPSC response

The CWPSC, in response to comments regarding the establishment and operation of the standing committee and the advisory panel, stated:

¹³⁵ Hon Ian Macfarlane, QRC, public hearing transcript, Brisbane, 8 September 2017, p 10.

¹³⁶ Mine Safety and Health Authority Bill 2017, Division 3, cls 66-67.

¹³⁷ Mine Safety and Health Authority Bill 2017, Division 3, cl 68.

¹³⁸ Australasian Faculty of Occupational and Environmental Medicine, submission 6, p 1.

¹³⁹ QLS, submission 3, p 2.

¹⁴⁰ Queensland Government, submission 2, p 21; QLS, submission 3, p 3.

¹⁴¹ Queensland Government, submission 2, p 21.

¹⁴² QRC, submission 1, correspondence attached, p 10.

*It is accepted that ... the draft Bill should include greater detail and clarity surrounding the roles and functions of the Standing Dust Committee and Expert Medical Advisory Panel, and the necessary qualification, process and duration of appointment for members of those bodies.*¹⁴³

3.8 Mine Safety and Health Fund

Report No. 2 of the CWPSC recommended the safety and health fee be abolished and the authority be funded by a dedicated proportion of the coal and mineral royalties paid to the Queensland Government.¹⁴⁴

3.8.1 The current safety and health fee (levy)

Much of the current regulatory framework for mine safety and health, including the Mines Inspectorate, the health scheme and part of Simtars within the department is funded by a statutory safety and health fee established under the CMSHR. The levy, as it is commonly referred to, is charged to industry annually and is based on the number of workers in the industry and the budgeted cost of services. In 2015–16, the levy collected from the mining industry totalled \$38.96 million.¹⁴⁵

3.8.2 Mining royalties in Queensland

Mining and petroleum royalties are payments made to the owner of resources for the right to extract them. As the state owns all petroleum and gas and most mineral resources, resource permit holders generally pay royalties to the Office of State Revenue within Queensland Treasury. These payments are not a tax, but part of the cost of leasing the land—effectively, compensation to the state for the resource value extracted from the land.¹⁴⁶ Coal and mineral processing businesses, including those engaged in leaching, refining, smelting and other processing operations, are liable to pay royalties.¹⁴⁷

Mining royalties are based on a percentage of the value, or commodity price, of the particular mineral for the financial year.¹⁴⁸ For the financial year 2015–16, total mining royalties, excluding petroleum royalties, paid to the state was \$1,944.9 million. In the same year, the levy was \$38.96 million, equivalent to 1.97% of the royalty revenue received.¹⁴⁹

3.8.3 Proposal to move from levy to royalties to fund the authority

The Bill proposes to establish a mine safety and health fund (the fund) to be administered by the authority.¹⁵⁰ A prescribed percentage of all mining royalties paid under the *Mineral Resources Act 1989* would be contributed to the fund,¹⁵¹ with the percentage of royalty revenue determined by regulation.¹⁵²

The CWPSC suggested in Report No. 2 that an allocation of up to 2.5% of royalty revenue, equivalent to \$48.62 million in 2015–16, may support the establishment and funding of the authority.¹⁵³

¹⁴³ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 4.

¹⁴⁴ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 79.

¹⁴⁵ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 76.

¹⁴⁶ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 8.

¹⁴⁷ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 77.

¹⁴⁸ Queensland Government, *Mineral royalty rates*, <https://www.business.qld.gov.au/industries/mining-energy-water/resources/applications-compliance/royalties/calculating/rates>, accessed 15 September 2017.

¹⁴⁹ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 78.

¹⁵⁰ Mine Safety and Health Authority Bill 2017, Part 9.

¹⁵¹ Mine Safety and Health Authority Bill 2017, cl 70(1)(a).

¹⁵² Mine Safety and Health Authority Bill 2017, cl 70(2).

¹⁵³ Coal Workers' Pneumoconiosis Select Committee, Report No. 2, p 78.

Queensland Treasury representatives noted the high volatility in royalty revenue and the implications this has for forward planning in a budget.¹⁵⁴ QRC also noted that royalty revenue would be subject to a very high rate of fluctuation, unrelated to the costs of mine safety and health compliance.¹⁵⁵

In addition, the committee was advised that, '[i]f one particular commodity price increases while another drops then the relative contributions of those sectors would change, even though the risk associated with their workers might not necessarily do so'.¹⁵⁶ According to QRC, 'it is unclear how the proposal would ... even out discrepancies and differences between commodities'.¹⁵⁷

The Queensland Government also raised some concerns regarding funding the authority from royalty revenue, noting it would 'shift the policy for collecting royalty from a payment for the right to extract the state's resources to a payment to achieve a particular function', and may 'introduce elements of cross subsidisation'.¹⁵⁸ The government also noted that as the Bill does not remove the payment of the levy, utilising royalty revenue would 'seemingly result in duplication of funding towards mine safety and health outcomes'.¹⁵⁹

Some stakeholders also expressed concern that the Bill proposes to establish funding for the authority through a percentage of royalty revenue, but does not amend current legislation to discontinue the safety and health fee.¹⁶⁰ As QRC stated, 'unless the current funding model is revoked, industry will end up paying twice'.¹⁶¹

BHP Billiton was not supportive of the proposed fund, describing it as 'poorly conceived', and noting that the Bill does not make any reference to administrative costs or safety and health criteria in determining a percentage.¹⁶² QRC similarly, stated there would be a 'total disconnect' between royalty revenue and any resources cycle, which typically sees its own fluctuations in employment and risk.¹⁶³

The CFMEU thought the proposed change from levy to royalty funding would 'probably [be] a bit of an advantage. It is currently done per head of miners and the figures can be fudged'.¹⁶⁴ The union was however, essentially indifferent to the source of the funding:

*At the end of the day we do not care how this is funded as long as it is overfunded and not underfunded. That is our main concern.*¹⁶⁵

Mr David Ralph noted that the proposed definition of mining royalties in the Bill is limited to royalties paid under the *Mineral Resources Act 1989*, which would not include royalties payable under Special Agreement Acts.¹⁶⁶ Mr Ralph suggested that royalty revenue payable under these Special Agreement Acts should be included in the definition of mining royalties for the purpose of the fund.¹⁶⁷

¹⁵⁴ Mr Glenn Miller, Acting Assistant Under Treasurer, Office of State Revenue, Queensland Treasury, public hearing transcript, Brisbane, 8 September 2017, p 20.

¹⁵⁵ QRC, submission 1, correspondence attached, p 6.

¹⁵⁶ Mr Glenn Miller, Acting Assistant Under Treasurer, Office of State Revenue, Queensland Treasury, public hearing transcript, Brisbane, 8 September 2017, p 20.

¹⁵⁷ Hon Ian Macfarlane, QRC, public hearing transcript, Brisbane, 8 September 2017, p 9.

¹⁵⁸ Submission 2, p 20.

¹⁵⁹ Submission 2, p 21.

¹⁶⁰ Submissions 1 and 5.

¹⁶¹ Submission 1, p 4.

¹⁶² Submission 5, p 3.

¹⁶³ Submission 1, correspondence attached, p 7.

¹⁶⁴ Mr Jason Hill, CFMEU, public hearing transcript, Brisbane, 8 September 2017, p 4.

¹⁶⁵ Mr Jason Hill, CFMEU, public hearing transcript, Brisbane, 8 September 2017, p 4.

¹⁶⁶ Mr David Ralph, submission 4, Schedule 1. For example, *Central Queensland Coal Associates Agreement Act 1968*, *Mount Isa Mines Limited Agreement Act 1985* and *Queensland Nickel Agreement Act 1970*.

¹⁶⁷ Submission 4, p 11.

QRC also stated that without a draft regulation accompanying the Bill providing more detail on the proposal to fund the authority, the CWPSC is 'essentially asking the Parliament, industry and the community to sign off on a blank cheque'.¹⁶⁸

CWPSC response

In response to the concerns raised by the Queensland Government regarding duplicate funding the CWPSC stated:

*It is the intention of the CWPSC that the safety and health fee created by Part 2A the Coal Mining Safety and Health Regulation 2017 would be removed so as to avoid duplication of funding.*¹⁶⁹

The CWPSC also acknowledged the issue raised by Mr Ralph regarding Special Agreement Acts, stating:

*The CWPSC agrees with Mr Ralph's submission that clause 70(2) should be amended to include royalties payable to the State under "Special Arrangements Act", which should be defined in the dictionary in the Bill.*¹⁷⁰

The CWPSC noted that QRC and BHP Billiton 'favours the current model of funding through regulatory levies'.¹⁷¹

3.9 Other provisions

3.9.1 Giving reasonable notice of inspection

The Bill proposes amendment to the CMSHA and MQSHA to remove the requirement for industry safety and health representatives (ISHR) or district workers' representatives to provide reasonable notice of a proposed entry onto any part of a coal mine or quarry to carry out their functions. A representative would be able to enter any part of a coal mine or quarry at any time without prior notice.¹⁷²

BHP Billiton and QRC were not supportive of the proposal to remove the requirement to give reasonable notice of an inspection.¹⁷³ BHP Billiton commented that 'it is unclear how the requirements (sic) removal would further improve health and safety of Mine Workers'.¹⁷⁴ While QRC stated 'it defies logic why this requirement would be removed', suggesting that removing the requirement to provide reasonable notice could increase the risk of a misuse of power.¹⁷⁵

CWPSC response

In response to concerns about representatives misusing their power the CWPSC stated:

*The removal of the requirement for ISHR to give reasonable notice ... does not ... authorise an ISHR to "misuse" the right of entry. An ISHR who "misuses" this power, either negligently or dishonestly, would not be afforded the protection from liability...*¹⁷⁶

¹⁶⁸ Submission 1, correspondence attached, p 6.

¹⁶⁹ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 4.

¹⁷⁰ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 6.

¹⁷¹ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, pp 5, 6.

¹⁷² Mine Safety and Health Authority Bill 2017, cls 86 and 89; *Coal Mining Safety and Health Act 1999*, s 119; *Mining and Quarrying Safety and Health Act 1999*, s 116.

¹⁷³ Hon Ian Macfarlane, QRC, public hearing transcript, Brisbane, 8 September 2017, p 9; Submission 5, p 3.

¹⁷⁴ Submission 5, p 3.

¹⁷⁵ Submission 1, correspondence attached, p 7.

¹⁷⁶ Coal Workers' Pneumoconiosis Select Committee, correspondence dated September 2017, p 5.

3.9.2 Confidential information

The Bill includes a provision prohibiting the disclosure of confidential information except as required in the performance of a function under the proposed Act, or as required or permitted under the proposed Act.

QLS expressed concern that the confidentiality provisions ‘do not go far enough’,¹⁷⁷ and informed the committee:

*The authority will be in the practice of regularly collecting, storing, analysing and reporting on sensitive and personal information which must be treated with the utmost care to safeguard the privacy of individuals giving the information. This information should be handled in accordance with the Queensland’s information privacy principles.*¹⁷⁸

CWPSC response

In response to this concern regarding the confidentiality of information the CWPSC stated:

*Clause 73 provides that the Authority is a “public authority” for the purposes of the Right to Information Act 2009. As such, the Information Privacy Principles and other provisions of the Information Privacy Act 2009, apply to the Authority.*¹⁷⁹

¹⁷⁷ Submission 3, p 2.

¹⁷⁸ Mr James Plumb, Chair, QLS Mining and Resources Law Committee, public hearing transcript, Brisbane, 8 September 2017, p 5.

¹⁷⁹ Coal Workers’ Pneumoconiosis Select Committee, correspondence dated September 2017, p 6.

4 Compliance with the *Legislative Standards Act 1992*

4.1 Fundamental legislative principles

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

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

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following matters to the attention of the House.

4.1.1 Rights and liberties of individuals

4.1.1.1 Power to obtain criminal history reports

Clause 74 proposes that the Minister may obtain a written report about the criminal history of a prospective or existing commissioner, chief executive officer or board member, including a summary of the circumstances of any conviction mentioned in the report.

Three proposed caveats on the Minister’s power to obtain a criminal history report act as safeguards against potential abuse of the power.

Firstly, the person must give their written consent for the report to be obtained. While they will be disqualified from becoming or remaining the commissioner, chief executive officer or a board member if they do not consent, they could refuse to provide consent and recuse themselves if they were strongly opposed to a report being obtained. Secondly, the criminal history report must not contain information about spent convictions. Finally, the Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for deciding whether a person is disqualified from becoming or continuing as the commissioner, chief executive officer or a board member.

Providing the Minister with the power to obtain a criminal history report potentially breaches the FLP regarding the person’s right to privacy with respect to their personal information.

Committee comment

The committee notes the following safeguards would be put into place with respect to information obtained about the criminal history of a prospective or existing commissioner, chief executive officer or board member:

- the report may only be obtained with the person’s written consent
- the report must not contain information about spent convictions, and
- the report must be destroyed when no longer required for the purpose it was obtained.

The committee also notes that if a person does not wish for their criminal history report to be obtained by the Minister, they can simply not give their consent and disqualify themselves from becoming, or continuing as, the commissioner, chief executive officer or a board member.

4.1.1.2 Required disclosure of convictions

Clause 75 proposes a requirement for the commissioner, chief executive officer or a board member who is convicted of an indictable offence during their term of appointment to immediately disclose the conviction to the Minister.

Safeguards equivalent to those to protect a person’s privacy regarding their criminal history report, are not proposed in the Bill to protect information disclosed regarding a conviction during the term of appointment. There is no requirement that the information be destroyed as soon as practicable after it is no longer needed.

Requiring the commissioner, chief executive or a board member to disclose a conviction during their appointment also potentially breaches the FLP regarding the person's right to privacy with respect to their personal information, particularly in the absence of safeguards to protect the information.

Committee comment

The committee notes the Bill does not propose safeguards to protect information disclosed regarding a conviction for an indictable offence during appointment as the commissioner, chief executive officer or a board member.

The committee also notes that other legislation, such as the *Grammar School Act 2016* and the *Plumbing and Drainage Act 2002*, provides safeguards for criminal history information required to be disclosed during the term of an appointment to a board or council, such as requiring that notice of the conviction must be destroyed after it is no longer needed.

4.1.2 Onus of proof

Clause 82 proposes to introduce evidentiary matters including that a certificate purporting to be that of the chief executive officer stating certain matters is evidence of the matter.

The proposed evidentiary provisions potentially breach the FLP regarding the reversal of the onus of proof in criminal matters.

Committee comment

The committee notes the evidentiary matters able to be included in a certificate are administrative in nature and are likely to be non-contentious, and that the content of the certificate is not conclusive evidence and may therefore be challenged by contrary evidence put forward by the defendant.

The committee also notes that such evidentiary aids are fairly common, administratively convenient and avoid the need to unnecessarily protract court hearings by adducing evidence to prove matters not likely to be in contention.

4.1.3 Power to enter premises

Clauses 86 and 89 remove the requirement for a ISHR or district representative to give reasonable notice of a proposed mine entry, allowing a representative to enter any part of a coal mine at any time, without notice, in order to carry out their functions.

The proposed power to enter a premises without the occupier's consent or a warrant issued by a judge or magistrate potentially breaches the FLPs.

Committee comment

The committee notes that removing the notice requirements may allow representatives to see the mine, as it actually operates, which may give a truer picture of the mine's usual operation. The possibility of a random visit or inspection from a representative could also help ensure a mine is operated appropriately at all times and may in that sense have a deterrent effect against possible breaches.

4.1.4 Immunity from proceedings

Clause 81 provides that an official is not civilly liable for an act done, or omission made, honestly and without negligence, under the Bill. Civil liability would instead attach to the State.

The proposed immunity from civil liability potentially breaches the FLP regarding the conferral of immunity from proceeding or prosecution.

Committee comment

The committee notes that such immunity clauses are fairly standard in legislation and generally serve to allow public servants, officials and statutory officers to make decisions and exercise powers and functions without being unduly concerned they may be held personally liable for acts or omissions in the course of carrying out their duties, providing those actions or omissions are made honestly and without negligence or malice.

The committee also notes that an aggrieved person is able to make a claim for loss or damage suffered as a result of actions taken by officials under the Bill, however the claim will be made against the State.

4.1.5 Clear and precise drafting

There are a number of technical or drafting errors in the Bill, such as cross-referencing errors and provisions that appear not to have been finalised. There are also a number of issues created by the definitions of some terms and in relation to regulatory overlap of the provisions of the Bill with other legislation.

These issues may breach the FLP requiring that legislation be unambiguous and drafted in a sufficiently clear and precise way.

Committee comment

The committee notes that the Bill is an exposure draft, and is 'not in its final form'.¹⁸⁰

¹⁸⁰ Mrs Jo-Ann Miller MP, Queensland Parliament, Record of Proceedings, 24 August 2017, p 2411.

Appendix A – List of submissions

Sub #	Submitter
001	Queensland Resources Council
002	Queensland Government
003	Queensland Law Society
004	Mr David Ralph
005	BHP Billiton
006	Australasian Faculty of Occupational and Environmental Medicine

Appendix B – List of witnesses at public briefing and public hearing

Public briefing – 4 September 2017

Coal Worker’s Pneumoconiosis Select Committee – Counsel Assisting

- Mr Ben McMillan – Barrister-at-Law

Public hearing – 8 September 2017

CFMEU – Mining and Energy Division

- Mr Jason Hill, Industry, Safety and Health Representative
- Mr Stephen Woods, Industry, Safety and Health Representative

Queensland Law Society

- Ms Vanessa Krulin, Senior Policy Solicitor
- Mr James Plumb, Chair – Queensland Mining and Resources Law Committee

Queensland Resources Council

- Hon Ian Macfarlane, Chief Executive
- Ms Judith Bertram, Deputy Chief Executive and Director, Safety and Community Policy
- Ms Lucy Simmons, Manager Safety and Community Policy
- Mr Shane Hansford, Health and Safety Policy Advisor

Department of Natural Resources and Mines

- Ms Rachel Cronin, Deputy Director-General, Resources Safety and Health
- Mr Robert Djukic, Director, Compliance and Regulatory Policy

Queensland Treasury, Office of Industrial Relations

- Mr Paul Goldsbrough, Executive Director, Safety, Policy and Workers’ Compensation Services

Queensland Treasury, Office of State Revenue

- Mr Glenn Miller, Acting Assistant Under Treasurer, Fiscal Management

